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Indonesia

**DRAFT OF OMNIBUS BILL: THE GOVERNMENT PLANS TO LIBERALIZE FOREIGN INVESTMENT**

2019年10月に発足した第2期ジョコ・ウィドド政権下のインドネシアでは、外国からの投資をさらに促進するべくオムニバス法の成立を目指している。オムニバス法とは、複数の法律の条項を一度に改正する法律を意味し、これによってインドネシアの投資阻害要因となっていた複雑な投資関連法令の統廃合を目指すものである。オムニバス法がカバーする分野は多岐にわたるが本稿では、外資による投資規制業種を定めるネガティブリストに関する改正の方向性について概観する。

**Background**

As the main agenda of the first year of the second term of President Joko Widodo's administration, the draft of Omnibus Bill was finally submitted to the Parliament last month. The Parliament will conduct further review, discussion, and invite public to give input and comments on the draft bill.

**Proposed Amendments Related to Foreign Investment**

With regard to foreign investment, the draft bill contains significant changes to attract foreign investors to invest in Indonesia. One of the changes is the introduction of "positive list" as a replacement of negative list which is currently known by public as the list of business activities which are restricted for foreign investment.

The concept of positive list was firstly announced by the Government in December 2019, which is essentially a list of business activities that are open for foreign investment. The Government plans that all business will be open for foreign investment, except those that are 100% restricted.

In order to implement such proposal, the Government proposes to amend the provision of Article 12 of Law No. 25 of 2007 on Investment which current states that "all business activities are open for investment, except for the businesses that are closed or open with certain limitation". This provision is the basis for the Government to issue the negative list.

According to the draft bill, Article 12 will be amended to state "all business activities are open for investment, except for the businesses that are closed or business that can only be carried out by central government". The draft bill further regulates that the businesses which are closed for investment are:

1. Cultivation and industry of narcotics;
2. Gambling and/or casino activities;
3. Catching of species fish listed in Appendix I Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
4. Utilization and collecting corals;
5. Industry of chemical weapons; and
6. Industry of chemical industry materials and industry of ozone depleting substance.

In terms of the businesses that can only be carried out by central government, it will be further regulated under Presidential Regulation. Based on some news and articles available for public, these businesses will be very specific, i.e. businesses which are related to national security or other activities that must be carried out by the Government as mandated by the prevailing laws and regulations.

### **Conclusion**

Although the draft bill is still subject to the review and approval from the Parliament, it, at least, gives us a brief picture of the intention of the Government to liberalize foreign investment. President Joko Widodo is trying hard to attract foreign investors to Indonesia to create jobs and enhance the economic level of Indonesia.

In the beginning, the Government expected that the draft bill will be passed into law in April 2020. However, due to Covid-19 outbreak, it seems that there will be delay in the enactment. We will keep you updated of any important changes or issues related to this matter.

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Vietnam

### **REGULATIONS ON RENEWABLE ENERGY**

ベトナムでは太陽光発電を中心に再生可能エネルギーへの投資が盛んになっている。しかし、その法制度にはいまだに課題が多い。本稿はその概要を紹介するものである。

While the traditional sources of energy like coal, petroleum, and hydropower are being exhausted, Vietnam is seeking ways to encourage manufacture and development of renewable energy. According to Decision No. 2068/QĐ-TTg dated November 25, 2015 of the Prime Minister approving the renewable energy development strategy of Vietnam to 2030 and the vision to 2050 (“**Decision 2068**”), in addition to traditional hydropower, Vietnam encourages the development and use of renewable energy like wind power, solar power, biomass power. It is targeted that renewable energy will increase to 38% of total energy of Vietnam in 2020, 32% in 2030, and 43% in 2050.

### **Foreign investment**

In furtherance to Vietnam’s commitments to CPTPP, foreign investment into renewable energy is not restricted, although Vietnam reserves the right to adopt or maintain measures with respect to hydroelectricity and nuclear power. The Law on Electricity (“LOE”) and its implementing regulations do not mention any conditions specifically applicable

to foreign investment in electricity generation. Article 5 of the LOE requires the Government to encourage and create favorable conditions for foreign organizations to participate in the electricity sector. Accordingly, Decision 2068 requests the Ministry of Planning and Investment (“MPI”) to propose the policies and methods to attract foreign investors. Thus, on the face of it, there is no additional condition applicable to foreign investment in comparison to domestic investment and foreign investors are welcomed.

### **Main regulations on renewable energy**

According to Schedule 4 of the Law on Investment (“LOI”), electricity generation is a conditional business. An electricity generation company must satisfy various conditions (i.e. investment project is in line with the approved electricity development plan, qualified personnel, suitable infrastructure system, equipment satisfying the technical tests, firefighting and prevention system, approved environmental impacts report) and obtain an electricity generation license (“License”). Although the regulatory timeframe to obtain a License is only 30 working days, it would take a long time for the investor to complete all preparation stages. Prior to obtaining the License, the investor will need to obtain the investment registration certificate (“IRC”), sign the land lease agreement with the Government, obtain the required construction permit and construct the plant, enter into agreements with the power purchaser (Vietnam Electricity Corporation (“EVN”) and power transmission company.

#### **1. Incentives**

The renewable energy sector is in the list of preferential investment (Schedule I of Decree 118/2015/ND-CP implementing the LOI). Therefore, a renewable energy investment project is eligible for following incentives:

- Investment credit: eligible for investment credit incentives in accordance with the applicable regulations
- Taxes:
  - Import tax: exemption for goods imported to form the project’s fixed assets; materials, components, and semi-finished products that Vietnam is not able to manufacture;
  - Corporate income tax: exemption for the first 4 years counting from the first year of generating taxable income or from the fourth year of the project; 50% reduction for the following 9 years; and preferential tax rate of 10% for the first 15 years counting from the first year of generating income;
- Land use fee/rental: exemption or reduction in accordance with the applicable regulations. According to the Government’s Decree 46/2014/ND-CP on the collection of land and water surface rent, the exemption period ranges from 11 years to the entire project term. In addition, the exemption up to 3 years may be granted for the period of project construction.

#### **2. Feed in Tariff (FIT)**

Different categories of renewable energy command different tariffs from approximately USD 5.8 cents//kWh for biomass power to 9.35 cents/kWh for grid connected solar power. The tariffs are subject to satisfaction of stipulated conditions, especially meeting the deadline of commercial operation imposed by the Government (i.e. June 30, 2019 for grid-connected solar power projects; November 1, 2021 for wind power projects).

#### **3. Construction commencement**

The construction of a wind power and biomass power plant is only commenced if the following key conditions are satisfied:

- (i) The conditions to construct the plant are satisfied;
- (ii) The Power Purchase Agreement (“PPA”) has been signed with the power purchaser;
- (iii) The Connection Agreement with the power distribution company or power transmission company has been signed.

The law is silent on the conditions to commence the construction of a solar power plant. It is likely that an executed PPA is not an essential condition for the construction commencement of a solar power plant because, currently, certain solar power plants could not reach PPA with EVN upon their construction.

#### 4. PPA

PPA must be made on the standard form issued by the Ministry of Industry and Trade (MOIT). In general, the forms of PPA that MOIT has issued for the sale of wind power, solar power, or biomass power comprise the following main contents:

- The term is 20 years from the date of commercial operation commencement and extendable;
- Basic purchase price and price adjustment rule;
- Agreement on connection, measurement, and operation of the power plant;
- Agreement on invoice issuance and payment;
- Rights and obligations of each parties;
- Power receipt and delivery;
- Force majeure.

Decision 63/2013/QĐ-TTg dated November 8, 2013 of the Prime Minister sets forth the roadmap for the development of a competitive electricity market. Accordingly, Vietnam has targeted to set up the competitive wholesale market by 2021 and competitive retail market by 2023. However, it seems unlikely that Vietnam would be able to meet such deadlines. Currently, EVN dominates monopoly in the market. In fact, it would be very difficult to negotiate with EVN to change the standard form of PPA in order to meet specific targets of the project owner because EVN would not accept any content beyond the standard PPA. This may limit the project's bankability.

#### **Conclusion**

Although foreign investment to develop renewable energy is encouraged by the Vietnam Government, a foreign investor should take various factors into account such as EVN's exclusive role and its credibility; land use rights relating to the land lots to construct power plant and transformer station, and land lots under power transmission lines; possibility to get project finance by domestic or foreign banks. To overcome numerous issues relating to land use rights, licensing procedures, and PPA, foreign investors tend to cooperate with local partners or acquire shares/projects from local investors.

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## Myanmar

**MYANMAR AND SINGAPORE SIGN MEMORANDUM OF GUIDANCE ON RECOGNITION AND ENFORCEMENT OF MONEY JUDGEMENTS**

2020年2月10日、シンガポールとミャンマー双方の最高裁判所の間で金銭の支払いを求める判決の執行に関するメモランダムが締結された。この枠組みにより相互に外国判決の執行が認められることになり、裁判の利便性が高まることが期待される。

**Introduction**

On 10<sup>th</sup> February 2020, the Supreme Court of Union of Myanmar and the Supreme Court of Singapore signed a Memorandum of Guidance on Recognition and Enforcement of Money Judgments (MOG) in Nay Pyi Taw, Myanmar. The purpose of the MOG is to provide guidance on the standards and procedures for money judgment issued by the Singapore courts in commercial cases to be recognized and enforced by courts in Myanmar, and vice versa.

**The Applicability of the MOG**

The MOG stipulates that it does not create any binding legal obligations on the parties. The MOG is also not intended to be exhaustive and is not intended to create or alter any existing or future legal rights or relations or to create any binding arrangements for the reciprocal enforcement of each party's money judgment in the other party's court. The MOG applies only to judgements requiring a person to pay a sum of money to another person.

**Enforcement of Myanmar courts judgments in the courts of Singapore**

The MOG provides that a Myanmar court judgment sought to be recognized and enforced in a Singapore court must be a final and conclusive judgment on the merits of the case, and for a fixed or ascertainable sum of money. The fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive.

Courts of Singapore will not enforce a judgment of the Myanmar courts which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law or that orders the person against whom the judgment was given to do anything else apart from the payment of the judgment sum.

The Myanmar court's judgment may be challenged in Singapore courts on limited grounds. Those grounds include but are not limited to the following:

1. where the judgment was procured by fraud;
2. where the judgment is contrary to Singapore public policy; and
3. where the proceedings in which the judgment was obtained were conducted in a manner which the courts of Singapore regard as contrary to the principles of natural justice.

When the Myanmar courts judgment is presented to the Singapore courts for enforcement, the Singapore courts will not re-examine the merits. Also, the judgment cannot be challenged on the ground that it contains an error of fact or law. A judgment of the Myanmar court will be enforced on the basis that the judgment debtor has a legal obligation, recognized by the courts of Singapore, to satisfy a judgment passed by a Myanmar court.

Pursuant to the MOG, in order to enforce a Myanmar court's judgment in Singapore, the judgment creditor has to commence an action by filing a Writ of Summons, with a concise statement of the nature of the claim and claiming the amount of the judgment debt and a certified copy of the judgment exhibited to the writ.

**Enforcement of the judgments of Singapore courts in Myanmar**

Before the signing of the MOG, to enforce a foreign judgment in Myanmar, a territory would need to notified as a

“Reciprocating Territory” and the court of such country as a ‘Superior Court’ as provided for under section 44A of the Code of Civil Procedure (1908).

Pursuant to the MOG, in order to be enforced in any Myanmar court of competent jurisdiction, a judgment of a court of Singapore shall be conclusive as to any matter thereby directly adjudicated upon between the same litigating parties, or between litigating parties under whom they or any of them claim under the same legal suit. The fact that there is an appeal to a higher court does not prevent the judgment from being conclusive. Noting that the Myanmar courts will not enforce a judgment of the courts of Singapore for the payment of taxes or the payment of a similar nature or for a fine or other penalty.

The MOG provides that a final and conclusive judgment of a Singapore court may be recognized and enforced by a Myanmar court, unless:

1. the judgment has not been pronounced by a court of competent jurisdiction;
2. the judgment has not been given on the merits of the case;
3. the judgment appears on the face of the proceedings to be founded on an incorrect view of international law or refusal to recognize the laws of Myanmar in cases in which such law is applicable;
4. the proceedings in which the judgment was obtained are opposed to natural justice;
5. the judgments has been obtained by fraud;
6. the judgment sustains a claim founded on a breach of any law in force in Myanmar.

Similarly, a Myanmar court will not review the merits of a judgment of a court of Singapore. A Singapore court judgment cannot be challenged on the grounds that it contains an error of fact or law.

The MOG also sets out the procedure to enforce a judgment of the courts of Singapore in the Myanmar courts. In order to enforce a judgment, certified copy of a judgment of a court of Singapore should be submitted in the Myanmar court of competent jurisdiction.

### **Conclusion**

Although the MOG is not legally binding, it is particularly relevant for the parties who have commercial dealings in both Myanmar and Singapore. The signing of the MOG is a significant development in relations between the Singapore and the Myanmar judiciaries. The signing of the MOG will also help in safeguarding the interests of investors and offer better business opportunities in both Myanmar and Singapore.

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