

Bird & Bird

Foreign Direct Investments (FDI)

Southeast Asian Requirements
as of August 2024

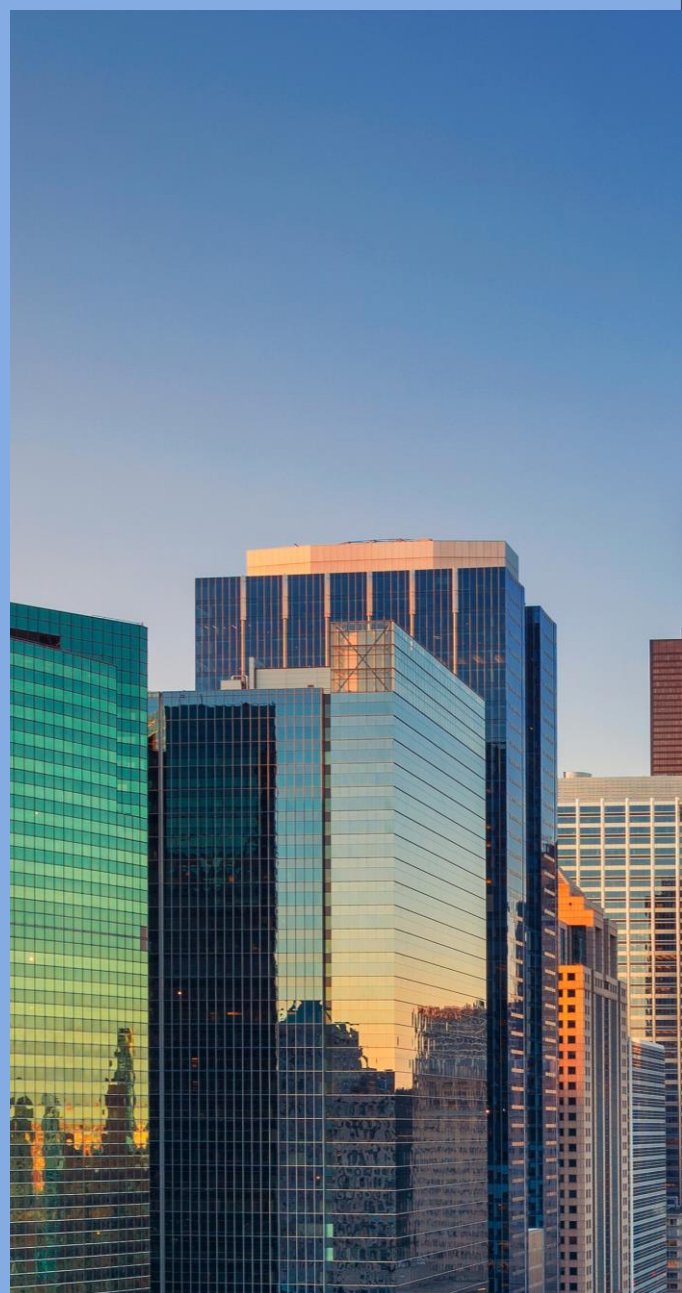
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August 2024



Singapore

FDI requirements

Do FDI restrictions apply?

Yes. While in general, there is no distinction in the treatment of foreign and domestic investment in Singapore, there are restrictions on FDI for a limited list of sectors and certain critical business entities. These FDI restrictions are regulated by sector-specific legislation and the Significant Investments Review Act (**SIRA**) respectively.

The SIRA aims to protect the national security interests of Singapore by regulating significant investments that affect the ownership and control of critical business entities by both local and foreign investors. The SIRA complements the sector-specific legislation by further designating critical business entities that will be regulated under it. The designation is done by the Ministry of Trade and Industry (**MTI**).

If yes, which authority is responsible for the verification of an FDI?

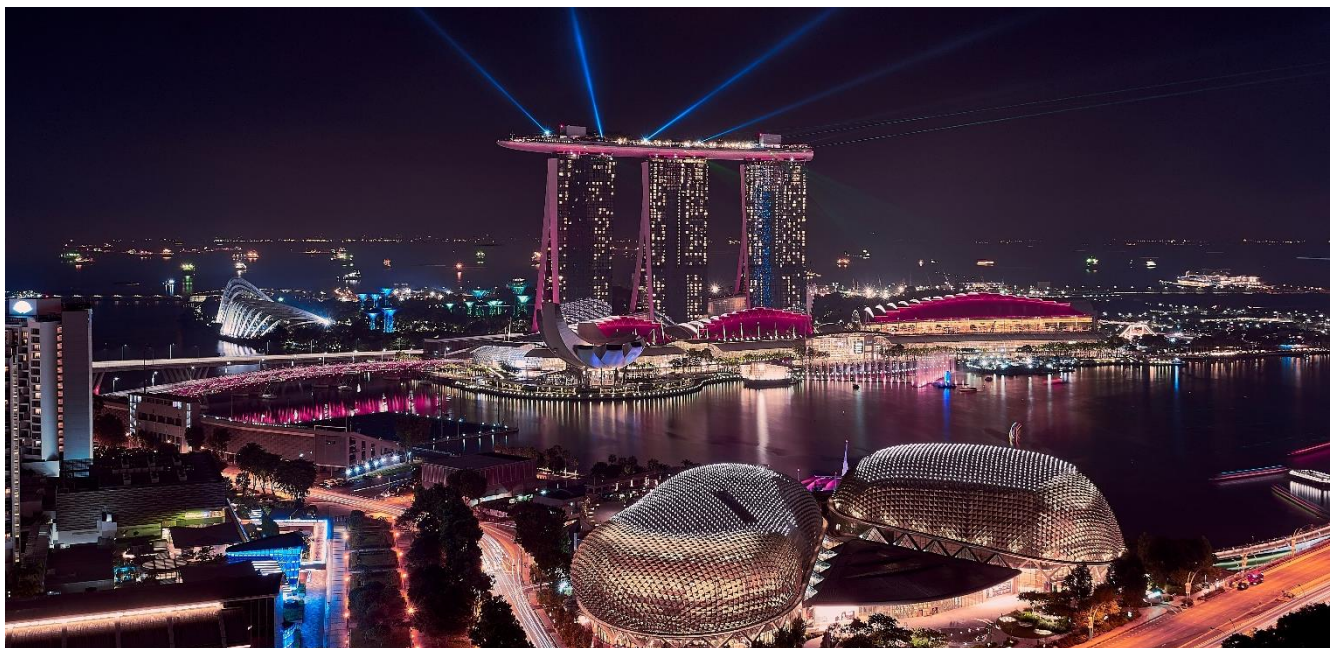
There is no central authority regulating and verifying an FDI, and any restrictions on foreign investment are implemented by the relevant sectoral regulatory authority. If FDI involves a designated entity under the SIRA, the MTI will be overseeing the FDI.

If yes, are these general restrictions or industry/sector-specific restrictions?

There are no general restrictions. Restrictions are industry/sector-specific, applying in areas such as telecommunications, financial services, professional services, media and land ownership. Restrictions are also entity-specific under the SIRA, applying to designated entities which are in the MTI's opinion, necessary to be regulated in the interest of Singapore's national security. Such entities can be incorporated in Singapore, carry on any business activity, or provide goods and services in Singapore.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No.



If yes, are these restrictions dependent on certain control thresholds being reached?

Sector-specific legislation

The thresholds vary based on the sector in question. For example:

- Real estate, foreign ownership of certain types of residential property (including vacant land, landed residential property, and public residential housing units) is restricted in its entirety, whereas private high-rise residential condominium units, housing on Sentosa Island and industrial and commercial real estate are generally not restricted.
- Domestic newspaper and broadcasting companies require prior approval from the Info-communications Media Development Authority (IMDA) with regard to funds from a foreign source.
- For domestic broadcasting companies whose operations require a broadcasting licence, the IMDA will not grant such a licence if the company is controlled by foreign investors or if foreign investors hold more than 49% of the shares or voting power of the company.

SIRA

There are various circumstances where restrictions are imposed. For example:

- Buyers must notify the MTI, within 7 days of becoming a 5% controller of a designated entity. Buyers must seek approval from the MTI before becoming a 12%, 25% or 50% controller, indirect controller, or acquiring a designated entity.
- Sellers of designated entities must seek approval from the MTI if they cease to be a 50% or 75% controller.
- Designated entities must seek approval from the MTI to appoint key officers and to be voluntarily wound up or dissolved. Officers may be removed if appointed without approval or if approval conditions are breached.
- The MTI may make a special administration order to manage the designated entity during a period in which the order is in force. Such an order will be to ensure the survival and/or security of the designated entity's business.
- The MTI may exercise its power to take targeted action against any entity (even non-designated entities) that has acted against Singapore's national security interests by reviewing such transactions within two years since the occurrence of the transaction.

If yes, what is the administrative procedure?

Sector-specific legislation

As explained above, the procedure varies for each sector and is set forth in the relevant sector-specific legislation.

While some transactions (such as restricted foreign land ownership) are not permitted and will be deemed null and void, other decisions are taken by the relevant regulatory authority on a case-by-case basis, such as those relating to applications for foreign financing of domestic newspaper and broadcasting companies. Certain industries such as domestic banking and telecommunications have a licensing regime in which the competent regulatory authority applies qualitative and quantitative criteria to determine whether new entrants should be granted a licence to operate in the sector in Singapore.

Broadly speaking, the Singapore government remains open to foreign investment and encourages, where possible, consultation with regulatory authorities when applications are made by foreign investors applying for approvals to invest into controlled sectors.

SIRA

An Office of Significant Investments Review set up by the MTI is a dedicated one-stop touchpoint for stakeholders and will provide more information on the administrative procedure.

In general, the MTI has the discretion to issue remedial directions to designated entities and void transactions in contravention of the SIRA. Appeals can be made for appealable decisions (as defined in the SIRA) to the MTI, and subsequently to a reviewing tribunal, whose members are appointed by the President of Singapore on the advice of the Cabinet of Singapore. Determinations by the reviewing tribunal is final and may not be challenged in any court except in regard to any questions relating to procedural compliance under the SIRA.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No additional FDI restrictions have been implemented in connection to the COVID-19 pandemic.

Have these restrictions already expired or when will they expire?

N/A

FDI restrictions in light of the Ukraine war

Have FDI restrictions temporarily been tightened?

N/A



Malaysia

FDI requirements

Do FDI restrictions apply?

Yes. Although Malaysia does not have a centralised regulatory body, an overarching legislation or guideline that governs all FDI, FDI is managed sectorally and regulated by the relevant authorities overseeing each industry or sector, in accordance with applicable legislation, rules, guidelines, and policies.

If yes, which authority is responsible for the verification of an FDI?

Foreign investment requirements in Malaysia vary by sector, with specific regulatory authorities responsible for reviewing investments involving foreign investors and enforcing local participation requirements where applicable. These regulatory authorities possess broad discretion to approve, reject, or impose conditions on licenses and approvals based on various criteria, including national security and public order.

If yes, are these general restrictions or industry/sector-specific restrictions?

These are industry/sector-specific restrictions, typically applying to the sectors such as manufacturing, banking, insurance and financial institutions, telecommunications, healthcare facilities and services, education, distributive trade and logistics.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

These restrictions generally apply to all jurisdictions.



If yes, are these restrictions dependent on certain control thresholds being reached?

The applicability of FDI restrictions in Malaysia depends on the specific industry or sector of the investment. The relevant thresholds may be based on total investment or asset value, the percentage of ownership acquired or held, or other financial metrics. For instance:

a) Acquisition of land

- Approval from the relevant state authority is required for non-citizens or foreign companies, including Malaysian-incorporated companies with 50% or more voting rights held by non-citizens or foreign companies, to acquire or lease land.
- Foreign interests cannot acquire properties valued at less than MYR 1 million per unit, residential units classified as 'low cost' and 'low-medium cost' by state authorities, properties on Malay reserve land and properties allocated to Bumiputera interests in any property development project as determined by state authorities.
- Prior approval from the Economic Planning Unit (EPU) is required for:
 - Direct acquisition of property valued at MYR 20 million or more, resulting in a dilution of ownership held by Bumiputera interests and/or government agencies; and
 - Indirect acquisition of property by interests other than Bumiputera interests, through the acquisition of shares that results in a change of control of a company owned by Bumiputera interests and/or government agencies, having property that exceeds 50% of its total asset value, with the property valued at more than MYR 20 million.

b) Distributive trade services

- Hypermarket operators are allowed to be up to 70% foreign owned, with at least 30% Bumiputera ownership.
- Departmental stores are allowed to be up to 100% foreign owned.

c) Oil and gas

- A Standardised Work and Equipment Categories (SWEC) license is required for any vendor that wishes to supply products and/or services to upstream sector in the oil and gas industry in Malaysia. The minimum Bumiputera requirement to hold a Petronas licence for upstream activities ranges from 30% to 100%, depending on the type of services to be provided.

If yes, what is the administrative procedure?

The administrative procedures for FDI in Malaysia vary by sector, with each sectoral regulator having its own procedures and policies. Approval conditions depend on the regulatory authority and the specific activity being regulated. For instance, conditions may include minimum divestment levels of foreign equity, capital commitments, or hiring a minimum number of local workers.

Regulatory authorities will assess whether the foreign investor complies with local participation requirements and other administrative conditions. The application process for approval or an operational license involves submitting the necessary documentation to the relevant authorities, demonstrating compliance with these requirements. Notification methods, forms, and fees depend on sector-specific laws, regulations, and guidelines. Typically, unless specified by statutes or guidelines, notifications do not follow a specific format.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

FDI restrictions have not been temporarily tightened in light of the Covid-19 Pandemic. Instead, the Malaysian Government has implemented several economic stimulus measures to attract FDI, including:

- Special Tax Incentive under PENJANA (National Economic Recovery Plan): Existing manufacturing companies relocating overseas facilities to Malaysia with a capital investment above RM300 million are eligible for a 100% Investment Tax Allowance (ITA) for 5 years. This allowance is offset against 100% of the statutory income for each assessment year and is available to companies that apply by 31 December 2022.

Have these restrictions already expired or when will they expire?

N/A

FDI restrictions in light of the Ukraine war

Have FDI restrictions temporarily been tightened?

N/A



Indonesia

FDI requirements

Do FDI restrictions apply?

Yes, foreign direct investment (“**FDI**”) restrictions do apply in Indonesia. Generally, the Indonesian government has implemented policies and regulations aimed at facilitating foreign investors to establish businesses in Indonesia including restrictions on certain sectors that, (i) requires partnerships with local companies or micro, small, or medium enterprises (“**MSMEs**”) or (ii) business sectors with certain requirements that have a maximum limit for foreign ownership. Before engaging in business in Indonesia, foreign investors must navigate through investment laws, licensing requirements, and partnerships with local entities or authorities, which vary depending on the sector and investment size.

The governance of FDI has long been guided by specific regulations namely the Law Number 25 of 2007 on Investment (“**Investment Law**”) and its ancillary or associated regulations. However, since the enactment of the Job Creation Law (Law No.11 of 2020) in Indonesia, which was subsequently replaced by the Government Regulation in Lieu of Law No.2 of 2022 on Job Creation and enacted into law under Law No.6 of 2023 (“**Job Creation Law**”), the Indonesian government has specifically set limits and requirements on FDI through Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 on the Investment Business Fields (“**PR 49/2021**”). This regulation determines the allowable percentage of foreign ownership in different industries as specified in its appendices, known as the new investment list (“**NIL**”). The NIL in Indonesia reduces restrictions on wholly closed sectors and partially opens others to foreign investment, aiming to attract more FDI, create jobs, and foster a positive investment climate.

If yes, which authority is responsible for the verification of an FDI?

The Ministry of Investment/Indonesia Investment Coordinating Board (“**BKPM**”) is responsible for verifying the FDI. BKPM is a non-ministerial government body responsible for formulating government policies in the field of investment, both domestically and internationally, reporting directly to Indonesia’s President. Its primary responsibilities include supervising and facilitating FDI in Indonesia, issuing investment or business licenses, providing advice and education to potential investors, and ensuring compliance with investment laws and guidelines. BKPM plays an essential role in promoting Indonesia as a desirable investment destination, in easing the entry or admission and operations of foreign investors.

To implement the Job Creation Law and to streamline the registration and licensing process of foreign or local entities or business agencies, BKPM established an integrated, centralized, and easily accessible online portal called the risk-based Online Single Submission (“**OSS RBA**”), which can be virtually accessed from abroad and has functions to, among others, simplify the process for businesses and investors by eliminating the need to manage applications across multiple platforms. This centralized OSS RBA system facilitates the registration and licensing process for both domestic and foreign investments.

If yes, are these general restrictions or industry/sector-specific restrictions?

FDI restrictions in Indonesia are industry/sector-specific restrictions. Such restrictions are stipulated in the NIL of PR 49/2021, which are then divided into business fields or sectors based on the Standard Classification of Indonesian Business Fields 2020 (“**KBLI**”) that are completely closed or partially open to FDI with a predetermined maximum percentage.

Certain sectors such as, the alcoholic beverages industry, coffee processing, raw materials for traditional medicine or the cosmetics industry, are completely closed to FDI. However, foreign investors may invest in Indonesia by entering specific sectors that are partially open to FDI, such as financial services (bank or non-bank), courier services, or the transportation industry; or participating in those sectors which are entirely open to FDI such as, the electronic commerce / e-commerce industry.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

Investment activities in Indonesia adhere to the principles of equal treatment and non-discrimination based on the country of origin, as stated in Article 3 paragraph 1(d) of Investment Law amended by the Job Creation Law. These principles ensure that both domestic and foreign investors will receive equal services without discrimination from relevant authorities and institutions under applicable laws and regulations.

However, foreign investors from the Association of Southeast Asian Nations (ASEAN) member countries may be entitled to a greater foreign ownership compared to those from non-ASEAN countries. For instance, in the Coastal Protection Construction Services sector (KBLI 42922), ASEAN countries can have up to 70% (seventy percent) foreign ownership, while non-ASEAN countries are restricted to 67% (sixty-seven percent).

If yes, are these restrictions dependent on certain control thresholds being reached?

Yes, the restrictions for some sectors may be dependent on certain control thresholds being reached. For instance, courier services require partnerships with local entities or limit the percentage of foreign ownership allowed up to maximum of 49% (forty nine percent). These restrictions are outlined in the NIL and other relevant regulations that specify the conditions and limitations for FDI in Indonesia.

If yes, what is the administrative procedure?

Administrative procedures:

Prior to entering foreign investment in Indonesia, it is crucial to review key regulations such as: (i) PR 49/2021 and the NIL to identify FDI restrictions in the chosen business sector; (ii) Government Regulation Number 5 of 2021 on the Organization of Risk-Based Business Licensing; and (iii) BKPM Regulation Number 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities. These regulations govern, among others, the FDI's restrictions, minimum issued and paid-up capital requirements, minimum investment capital requirements for FDI, risk-based licensing, and operational permits. The administrative procedures involve selecting business sector, preparing an investment plan, determining company's structure and capital needs based on the KBLI code, finalizing articles of association notarized and ratified by the Ministry of Law and Human Rights of Indonesia, and submitting required documents via the OSS-RBA system. Once approved, the foreign investors will obtain business licenses such as, the business identification number (NIB), additional permits for specific sectors with moderate to high risk-profiles, and continuous compliance with regulatory obligations, including reporting, taxation, and labor laws.

As some business sectors are wholly or partially closed off for foreign investment or require partnerships with local companies or MSMEs under the NIL of PR 49/2021, failure to comply by foreign investors may result in an automatic rejection by the OSS-RBA system when submitting an investment application. This could prevent foreign investors from obtaining necessary permits like the business identification number (NIB) and other operational permits if required.

Administrative sanctions for non-compliance:

If a foreign investor holds a valid business license but fails to comply with the FDI restrictions, such as attempting to maximize their restricted foreign ownership percentage, then the administrative sanction mechanism may apply in accordance with Article 47, in conjunction with Article 46 of BKPM Regulation No.5 of 2021 on Guidelines and Procedures for the Supervision of Risk-Based Business Licensing ("**Perka BKPM 5/2021**"). These sanctions include: (i) written warnings, (ii) temporary suspension of business activities, (iii) revocation of the business license; or (iv) revocation of other business licenses supporting business activities, which may be imposed gradually.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No additional FDI restrictions have been implemented in connection to the COVID-19 pandemic.

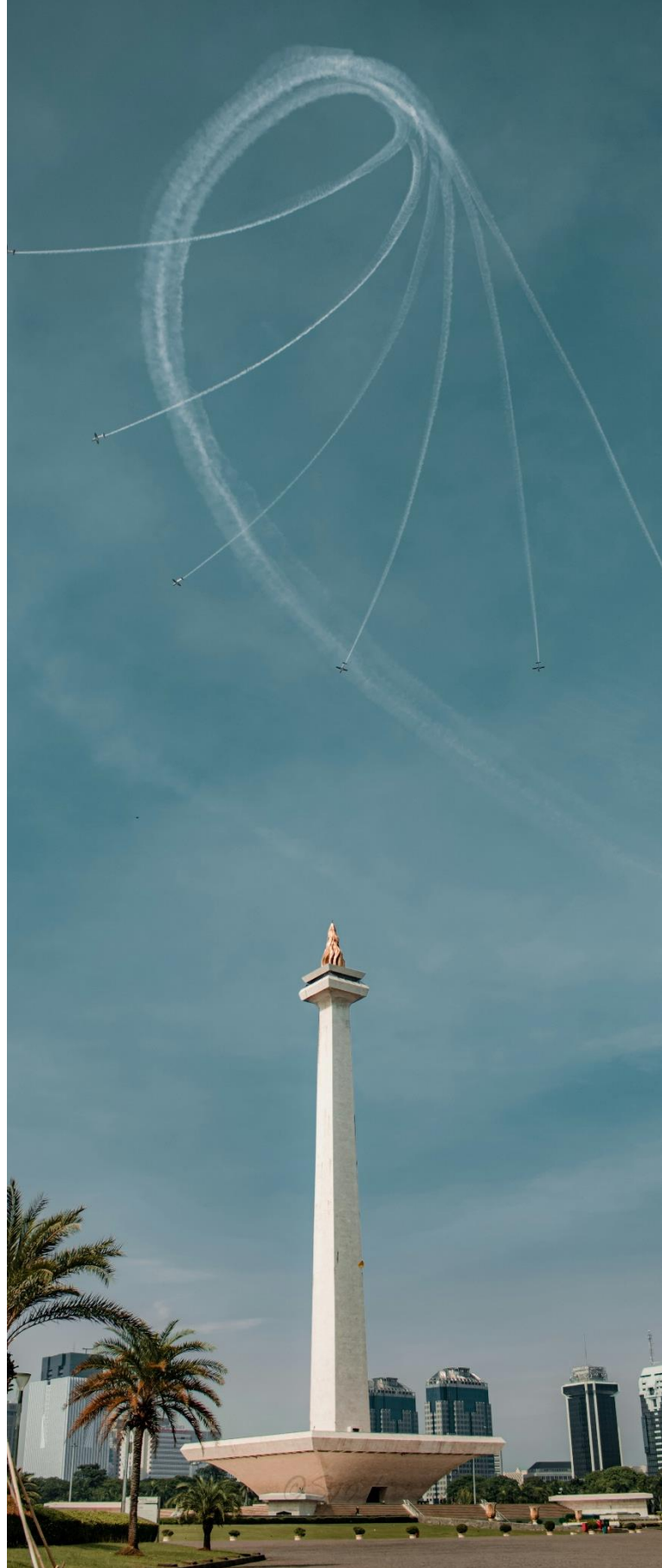
Have these restrictions already expired or when will they expire?

N/A

FDI restrictions in light of the Ukraine war

Have FDI restrictions temporarily been tightened?

No, there aren't any FDI restrictions implemented in Indonesia due to the Ukraine war.



Thailand

FDI requirements

Do FDI restrictions apply?

Yes. FDI in Thailand is primarily governed by the Foreign Business Act B.E. 2542 (1999) (“**FBA**”). The FBA regulates economic activities foreigners are generally restricted from undertaking that are reserved for Thai nationals (collectively, “**Restricted Activities**”). The FBA, defines a “foreigner” as:

- (1) a natural person who is not of Thai nationality;
- (2) a juristic person not registered in Thailand;
- (3) a juristic person registered in Thailand:
 - a. at least one-half of its issued share capital is held by (1) or (2) above; or in which investment has been placed by (1) or (2) above in the amount equivalent to at least one-half of the total capital thereof; or
 - b. being a limited partnership or a registered ordinary partnership, the managing partner or the manager of which is a person under (1) above;
- (4) a juristic person registered in Thailand at least one-half of the issued share capital of which is held by (1), (2) or (3) above; or a juristic person in which investment has been placed by (1), (2) or (3) above in the amount equivalent to at least one-half of the total capital thereof.

If yes, which authority is responsible for the verification of an FDI?

Foreign Business Department, Ministry of Commerce is the regulatory authority under the FBA. A foreigner (as defined in the FBA) that conducts or engages in Restricted Activities without obtaining a foreign business license or foreign business certificate or an applicable exemption is subject to the penalties imposed under the FBA.

If yes, are these general restrictions or industry/sector-specific restrictions?

Both.

The FBA categorizes Restricted Activities into three lists:

- (1) list one sets forth economic activities that foreigners are strictly prohibited from undertaking in any circumstance;
- (2) list two contains economic activities related to national safety and security, that impact arts, culture, traditions, customs, and folk handicrafts or impact natural resources and the environment ; and
- (3) list three pertains to economic activities which Thai nationals are not ready to compete against foreigners.

List three notably includes the provision of accounting, legal, architectural, engineering, and other service businesses other than services business prescribed in the Ministerial Regulation Prescribing Service Businesses Which Do Not Require A Foreign Business License B.E. 2556 (2013) and its B.E. 2559 (2016), B.E. 2560 (2017) and its B.E. 2562 (2019) amendments (“**Ministerial Regulation**”) Correspondingly, the scope of “other service businesses” is quite broad and catches most business services activities in Thailand.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No.

If yes, are these restrictions dependent on certain control thresholds being reached?

Yes, pursuant to the definition of foreigner in the FBA.

Certain categories of business activities may require a higher threshold under industry specific regulations. For example, in the telecommunications sector, foreign ownership is typically restricted to a maximum of 49% unless special approval is obtained. Other sectors such as banking and financial institutions have different thresholds in certain circumstances where foreign ownership exceeding 25% may require approval from the Bank of Thailand, and anything beyond 49% requires special approval from the Ministry of Finance.

These thresholds are designed to ensure that critical sectors remain under Thai control, while still allowing for substantial foreign investment.

If yes, what is the administrative procedure?

Foreign Business License

In Thailand, the Foreign Business License (“**FBL**”) is essential for foreign businesses engaged in activities restricted under the FBA. To obtain a FBL, foreign investors must submit a detailed application to the Ministry of Commerce, which includes information about the business, investment capital, and shareholder structure. The Foreign Business Committee reviews the application, and often requests additional information or supplemental clarifications. Upon approval, the Ministry of Commerce issues the FBL, granting the foreign business the legal right to operate within the specified sectors. This process ensures that foreign investments comply with national regulations and contribute positively to the Thai economy.

Foreign Business Certificate

For businesses that fall under categories allowed by the Treaty of Amity (with USA majority beneficial ownership throughout all upstream shareholding entities), ASEAN Framework Agreement on Services or other certain international agreements, a Foreign Business Certificate (“**FBC**”) can be obtained instead of an FBL. This certificate allows the company to operate as a majority foreign-owned entity in Thailand without the typical restrictions. The application process involves submitting necessary documentation to the Department of Business Development (DBD) within the Ministry of Commerce, which then issues the certificate upon verification of compliance with the relevant treaty or agreement conditions.

BOI Investment Promotions

The Board of Investment (“**BOI**”) in Thailand offers a range of incentives to attract foreign direct investment in targeted sectors that contribute to the country's economic development. Businesses can apply for BOI promotion by submitting a comprehensive business plan, project proposal, and financial projections. If the application satisfies relevant BOI criteria, such as project size, technological advancement, and economic benefits, the BOI grants an Investment Promotion Certificate. This certificate provides various incentives, including tax holidays, exemptions on import duties for machinery and raw materials, and relaxed foreign ownership restrictions. BOI-promoted companies also benefit from streamlined visa and work permit processes for foreign employees, facilitating smoother business operations in Thailand. Furthermore, BOI-promoted activities are FBC eligible, further easing the regulatory burden for foreign investors and removing certain unilateral discretionary permitting risks.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No, FDI restrictions remained unchanged during the COVID-19 pandemic.

Have these restrictions already expired or when will they expire?

N/A

FDI restrictions in light of the Ukraine war

Have FDI restrictions temporarily been tightened?

No. FDI restrictions remained unchanged.





Thank you

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