SECOND COMING

Indonesia's incumbent president Joko Widodo, who was re-elected on April's election gestures as he delivers a speech to highlight his vision for the next five years in Bogor, West Java province, Indonesia, July 14, 2019. REUTERS/Willy Kurniawan

Expectations are high for Indonesian President Joko Widodo's second term, who has a long laundry list of policy changes planned. However, lawyers say that easing of bottlenecks and infrastructure gaps across the board are essential to ensure that these political ambitions are truly achievable. BY ELIZABETH BEATTIE

With the ambition to speed up infrastructure spending across urban and digital projects, and an aim to boost economic growth, Indonesian President Joko "Jokowi" Widodo has an ambitious future in mind for Indonesia, and a variety of plans about how he wishes to achieve all he has set out to tackle.

If there's one thing that can be anticipated of Jokowi's second term, it is that it will be busy. Among his campaign promises are a pledge to reduce poverty, while also keeping prices low, and a commitment to improving tax revenue. His government has also already kicked off a staggering $350-billion infrastructure drive — the biggest in the nation's history.

In July, fresh on the heels of his election win, Jokowi held a rally at the Sentul International Convention Center in West Java, where he outlined his 2019-24 policy vision. During the speech, he pledged greater "interconnectivity" and, at the same time, reinforced his development plans.

Jokowi said his government would be accelerating its development work and connecting infrastructure projects "such as toll roads, railways, seaports and airports." A key part of this message was that such infrastructure projects across Indonesia would serve to open access to small and medium enterprises. "Our focus is to improve connectivity," Jokowi said, adding that transportation infrastructure would also help to boost tourism attractiveness. Another emphasis was enhancing Indonesia as a more "productive and competitive" nation, with a greater priority on "human resources development," which he billed as "key to Indonesia's future."

Indonesian law firm Kudri & Djamaris has been closely watching Jokowi's leadership, and believe that his recent public comments offer a great insight into his strategy going forward. "After being rightfully elected as the President and Vice President of the Republic of Indonesia for the second time, Joko Widodo with KH Ma'ruf Amin as his new partner, have shared their objectives and goals on how they bring improvements to Indonesia for the next five years," founding partner Defrizal Djamaris tells *Asian Legal Business*.

"In his speech, Jokowi declared the objectives and plans he will carry out during his reign, which are tax regulation improvement; simplification of permit and license bureaucracy; development on investment sector in Indonesia; advancement of infrastructure development; changes in Indonesian bureaucracy; and development of Indonesian natural and human resources," Djamaris outlines.

Djamaris notes that these regulatory updates, sweeping policy changes and plans to bolster the economy, are all consistent with official comments and announcements as are Jokowi's plans to "raise, develop, and maintain Indonesian investment sector through simplification of permit, reparation of bureaucracy system, tax regulation improvement."

But while such consistency is doubtless comforting for the market, there is one area where there needs to be greater changes to stimulate growth and attractiveness Djamaris says. "Jokowi and his cabinet need to support political stability through democratic values and by strengthening law supremacy to effectively implement the vision and mission that have been set by Jokowi in this second term in government," he adds.

While these comments offer a pathway forward, there are more expected policy changes and focuses that are expected as a result of these comments – key among them is ensuring Indonesia is a more investment-friendly market.

OPEN FOR INVESTMENT

While infrastructure development, and general regulatory overhauls have been among the most keenly anticipated changes by those with business interests in the region, there are other developments to be expected, and with these, greater opportunities and challenges.

Along with its contemporaries in the region, Ivan Almaida Baely & Firmansyah Law Firm (IABF) has also been closely watching Jokowi's legislative progress. In addition to these big-picture developments, there are also smaller, more focused developments expected on the horizon that will boost the Southeast Asian nation's attractiveness as a business hub— key among them, a new, hotly anticipated Negative Investment List.

The list, which outlines investment requirements and currently restricts foreign investment within certain areas, is expected to be readjusted soon to help stimulate further interest in the market.

"The Negative Investment List determines whether such business activity in a certain Standard Classification of Indonesian Business Fields code is open, or open with conditions, or closed for foreign investment," IABF explains as background.

"We have been anticipating the new Negative Investment List, which is currently regulated based on the Presidential Regulation No. 44 of 2016 regarding List of Business Fields that are Closed and Business Fields that are Open with Conditions in the Investment Field," the firm adds.

While in November last year, there was an initial investment that the Negative Investment List would be revised and relaxed around some business activities that are currently restricted, "the revised list was never enacted, and we expect that the new Negative List Investment will be issued and effective during Jokowi's second term in government," IABF says.

These key guidelines are expected to have a significant impact on Indonesia's ability to court foreign investment soon – and as a by-product, could also help to expand working opportunities for lawyers in the market going forward.

"If the New Negative Investment List is to be issued with these relaxations in place on some previously restricted areas of business, this shall bring more investors into Indonesia. Law firms in Indonesia can expect to get more work in the corporate sector, in particular, increased work related to foreign investment," IABF says, adding that this increase in work could then be further extended across the infrastructure sector, where foreign investors are typically interested in placing their investment.

This will complement the new expected infrastructure projects, which will subsequently "give room from the lawyers to provide their services," says IABF.

The firm also adds that the Belt and Road Initiative may also have a greater impact in Indonesia across the coming months following the election process, noting that this will inspire greater confidence in foreign investors. "The Jakarta-Bandung high-speed railway that is being built by a Chinese consortium and some Indonesian partners has been the major impact of the Belt and Road Initiative to date," the firm notes.

TOURISM GROWING

Tourism is another key area that is expected to balloon as a result of the planned developments across Indonesia. This year Indonesia's Tourism Ministry has a foreign tourist arrival target to 18 million in 2019, up from 15.8 million last year, and has already began ramping up its offerings for targeted tourist with tailored city tours and expos.

In order to ensure these numbers continue to grow steadily in the near future, the government has also reportedly started planning a secondary airport in Bali.

"Jokowi also sees that Indonesia has a great potential for the tourism sector," Djamaris says, noting that greater infrastructure development is expected to have a direct impact on its success.

Another positive development that this will trigger, Djamaris says, is a boost to Indonesia's economy and stimulation of further job growth to support this.

IABF agrees that before tourism can provide a viable boost for the economy and job market is somewhat dependent on infrastructure developments helping to iron out the current challenges.

"The infrastructure projects can help develop tourism in Indonesia. Many tourist locations in Indonesia have beautiful scenery but are not supported by sufficient infrastructure for tourists," IABF says. They add that new infrastructure developments will help make travelling across the country easier for sightseers, and subsequently, attract more tourist interest. With the construction of toll roads and a high-speed railway, for example, this will yield easier access for tourists, while also providing a boost to the tourism sector in Indonesia, the firm adds.

EASING BOTTLENECKS

While both firms feel there are many bright spots to look forward to in Jokowi's second term, they also note that easing bottlenecks is essential for these to be truly successful.

"From a legal perspective, licensing and/or approvals from authorised government institutions have been the bottlenecks that need to be eased in some business fields in Indonesia – including within large-scale infrastructure," IABF says.

The firm adds that the in addition to these challenges the government is also focusing on other areas that affect businesses. "We understand that the government has been trying to ease challenges are licensing by issuing Government Regulation No. 24 of 2018 regarding Electronically Integrated Business Licensing Service ("GR No. 24/2018"). GR No. 24/2018 regulates faster procedures in the issuance of business licenses/ approvals in certain business fields through the Online Single Submission ("OSS") system, which gives more benefits and certainty to investors," the firm adds.

Djamaris adds that "the biggest problems that President Jokowi has to overcome is located in the land acquisition and environmental issues." He notes that this can help be improved from a legal perspective when it comes to granting permits – ensuring these are more efficient and effective and "do not harm the people in the process of infrastructure development."

MORE OPPORTUNITIES

For lawyers in the market, these changes point to an increase in work opportunities. But they believe that there is also more to come across different sectors.

"We believe and anticipate that we will see further regulations in the field of financial technologies, information technology, renewable energy and foreign direct investment," Djamaris says. "From these regulatory and policy changes, the most affected areas are the implemented bureaucracy system in Indonesia."

He notes that, as a result of this, Jokowi will be spending his second term focusing on the improvement of his bureaucracy system, and those in the market can expect this to be overhauled and as a result, "simplified, shortened, and changed to add value to the efficiency and effectiveness of services, supervision, and law enforcement and licensing in Indonesia, especially in the economic sector."

In addition to there being further development across infrastructure generally, further work-generating developments are expected within developing economy and tourism sectors, "in order to guarantee decent living for Indonesian people," Djamaris says.

"Jokowi sees that by continuing to develop infrastructure in the region, Indonesia's economy whether it is on macro or micro level will automatically grow. Not only relying upon the development of infrastructure, Jokowi also will encourage people, both domestic and foreign, to invest in Indonesia," he adds.

> "If the New Negative Investment List is to be issued with these relaxations in place on some previously restricted areas of business, this shall bring more investors into Indonesia. Law firms in Indonesia can expect to get more work in corporate sector, in particular, increased work related to foreign investment."
>
> **— Ivan Almaida Baely & Firmansyah Law Firm (IABF)**

IABF LAW GROUP

Viability Gap Funding: Increasing Attractiveness of PPP Infrastructure Projects in Indonesia

1. At A Glance

The Government of Indonesia has been focusing to boost public-private partnership infrastructure projects ("**PPP Project(s)**") investment in Indonesia since the enactment of Presidential Regulation No. 38 of 2015 on Cooperation between Government and Business Entity in Infrastructure Provision ("**PR 38/2015**"). Referring to the Public-Private Partnerships: Infrastructure Projects Plan in Indonesia issued by Ministry Of National Development Planning / National Development Planning Agency in 2018, the Government of Indonesia is preparing about fourteen projects in eight sectors.

The Government of Indonesia has taken major steps to increase the attractiveness of the PPP Projects and to support the private partner of PPP Projects, among others, by providing Viability Gap Funding ("**VGF**") for PPP Projects. The latest regulation on this support is the Ministry of Finance Regulation No. 170/PMK.08/2018 ("**PMK 170/2018**") which came into effect on 21 December 2018 to amend Ministry of Finance Regulation No. 223/PMK.011/2012 ("**PMK 223/2012**").

2. Understanding the Viability Gap Funding

VGF is support given by the Government of Indonesia, being the Ministry of Finance, in the form of financial, fiscal contribution given to a PPP Projects which use the 'user-pays principle' to improve its financial viability and effectivity. Part of state budget shall be given to PPP Projects in the form of cash to partially fund the construction costs of PPP Projects, provided that such funding shall not dominate the construction cost of the PPP Projects.

Further, PMK 170/2018 stipulates that VGF is given if there is no other alternative to make the PPP Projects is financially viable and is subject to a complete and comprehensive assessment by the Minister / Head of Institution / Regional Governor that the PPP Projects has the social interests and benefits.

3. Criteria

In order to receive VGF, a PPP Project shall meet the following criteria:

(a) the PPP Project is economically viable but is not yet financially viable;

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(b) the PPP Project uses the 'user pays principle';

(c) the total investment cost of the PPP Project's shall at least Rp100,000,000,000;

(d) the PPP Project is operated by a business entity established by the business entity which won the tender awarded by the government institution which is responsible for the PPP Project (*Penanggung Jawab Proyek Kerja Sama* / "**PJPK**") by way of a publicly-open and competitive auction;

(e) the PPP Project is executed based on a public-private partnership contract which regulates the transfer of the assets and/or its operation from the private partner to the PJPK at the end of the PPP Project; and

(f) the PPP Project's viability study result states that: (1) optimal risk-sharing between the Government/PJPK and the private partner / tender winner; and (2) concludes that the PPP Project is economically viable; and (3) the project become financially viable after the provision of VGF.

4. Availability

The VGF may be given: (i) during the construction period of the PPP Project in accordance with the completion date agreed in the public-private partnership contract; and/or (ii) after the completion of the Commercial Operation Date of the PPP Project as agreed in the public-private partnership contract.

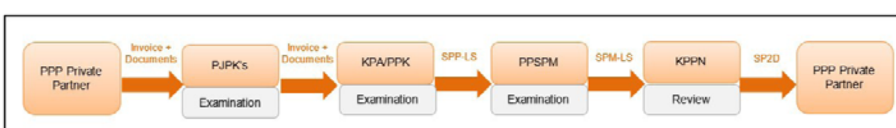
5. Key Points of PMK 170/2018

PMK 170/2018 has the following key points:

(a) the invoice for VGF is submitted by the private partner to PJPK while previously it was submitted to Proxy of Budget User (*Kuasa Pengguna Anggaran* / "**KPA**"), subject always to the agreed stages and terms under the Approval Document of Viability Support Granting (*Dokumen Persetujuan Pemberian Dukungan Kelayakan*);

(b) the documents enclosed with the invoice is simplified but the financial statement of the private partner is currently required;

(c) examination of the completeness and correctness of the invoice document by the different authorities in multiple-stages, starting from the PJPK, Proxy of Budget User (*Kuasa Pengguna Anggaran*), Commitment Making Officer (*Pejabat Pembuat Komitmen*), Payment Instruction Signatory Officer (*Pejabat Penandatangan Surat Perintah Membayar*) and State Treasury Office (*Kantor Pelayanan Perbendaharaan Negara*), with the following stages:



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