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Additional Comments on the proposed amendments

to the Retail Trade Law of 2000 – RA 8762

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The case of Indonesia

Indonesia was cited as an example of an economy that receives significant FDI despite the many investment limitations as reflected in its negative investment list (list of business fields that are closed to investment and business fields which are conditionally open to investment).

It should be noted that in the case of its retail sector, investments in recent years have gone into technology companies engaged in e-commerce. The well-known e-commerce unicorns are Tokopedia and Bukalapak while others such as Traveloka and Tiket.com are more related to travel and tourism services.[1] These companies have all received a lot of FDI from big Chinese (Tencent, Alibaba), US (Google) and Japan (Softbank) firms as well as elsewhere. Gojek, which was Indonesia's first unicorn, has already reached decacorn status.[2]

The growth potential of Indonesia's retail sector particularly online retailing is huge given its population of about 270 million and growing middle class. This explains why it continues to attract market-seeking FDI despite the various restrictions.

Importance of clarity and certainty

It also helps that in the case of Indonesia, foreign investors know the regulation that applies to investments in e-commerce platforms. According to its negative investment list, the maximum foreign investment allowed is 49% for "Electronic trade transaction providers (platform-based market place, daily deals, price grabber, online classified advertising) with an investment value of less than IDR100,000,000,000". In the Philippines, the applicable restriction for digital platforms is subject to interpretation.[3] Thus, in addition to the foreign equity limitation which is a barrier to entry in itself, the lack of clarity and certainty on the applicable law adds to the risks of investing in the country particularly in technology companies.

Sole proprietorship

Under the current RTL law, foreign-owned single proprietorships are allowed subject to various requirements and qualifications.

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[1] A unicorn is a privately held startup company valued at over $1 billion.
[2] Gojek's valuation has breached the $10 billion mark (https://www.dealstreetasia.com/stories/gojek-decacorn-129438/)
[3] See https://www.bworldonline.com/advertising-and-mass-media-in-the-digital-age/ and http://www.sec.gov.ph/wp-content/uploads/2018/12/2018OpinionNo18-21.pdf

In Indonesia and Malaysia, a foreigner is not allowed to operate as a sole proprietor. Singapore which has a very open investment regime has certain requirements for foreigners wishing to set up a business under a single proprietorship.[4]

With the lowering of the paid-up capital and removal of other qualification requirements as proposed, the Committee may wish to review the possible risks with this form of business organization (e.g. ease of exit or "flight" by the business owner) so that appropriate safeguards could be put in place.

[4] https://www.acra.gov.sg/how-to-guides/starting-sole-proprietorships/who-can-set-up-a-sole-proprietorship-or-partnership-in-singapore