

FDI and Indonesia's New Investment List

Opportunity Knocks for Business



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HIGHLIGHTS

- **Foreign Direct Investment (“FDI”) Regime in Indonesia: 2007 - 2021**
- **2016 Negative Investment List vs. New Investment List**
- **Key Items to Consider in the New Investment List**
 - ✓ Priority Business List – Capitalizing on Available Fiscal and Non-Fiscal Facilities
 - ✓ Key Business Lines Subject to FDI Limitations
 - ✓ Investment Restrictions at the Ministerial Level

HIGHLIGHTS

- **Implementing the New Investment List**
 - ✓ Overview of Risk-Based Licensing (“RBL”)
 - ✓ Key Items to Consider in RBL
- **Trends and Challenges**

Introduction to FDI Regime in Indonesia



FDI Regime: 2007 - 2021

2007

Presidential Regulation No. 76 of 2007 dated July 3, 2007 as amended by Presidential Regulation No. 111 of 2007 dated December 27, 2007

2010

Presidential Regulation No. 36 of 2010 dated May 25, 2010

2014

Presidential Regulation No. 39 of 2014 dated April 23, 2014

2016

Presidential Regulation No. 44 of 2016 dated May 12, 2016 ("**2016 Negative Investment List**")

2021

Presidential Regulation No. 10 of 2021 as amended by Presidential Regulation No. 49 of 2021 dated May 24, 2021 ("**New Investment List**")



2016 Negative Investment List vs. New Investment List

2021

Presidential Regulation No. 10 of 2021 as amended by Presidential Regulation No. 49 of 2021 dated May 24, 2021 ("New Investment List")

- Business fields that are specifically closed for investment
- Priority business sectors
- Business sectors that are allocated to or that require partnerships with MSMEs
- Business sectors with certain requirements

Business fields that are specifically closed for investment

2016

20 business sectors listed in this category

2021

6 business sectors listed in Omnibus Law and 3 additional business sectors under the New Investment List

Business fields that are specifically closed for investment

2021

Article 12 of Law No. 25 of 2007 dated April 26, 2007, regarding Investment as amended by Law No. 11 of 2020 dated November 2, 2020, regarding Job Creation (“Investment Law”), as amended by Article 77 of the Omnibus Law:

- Class-I narcotics cultivation and industries
- All forms of gambling and/or casino-related activities
- Illegal fishing of endangered species under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Utilization of coral or natural reefs for certain uses
- Chemical weapons manufacturing industries
- Industrial chemicals and industrial ozone-depleting substances industries

*only allowed in Bali, East Nusa Tenggara, North Sulawesi, and Papua

Article 2(2) of the New Investment List *

- Alcohol beverages industry
- Alcohol beverages industry: wine
- Malt beverages industry

Priority business sectors

2021

Priority business sectors are based on the following criteria:

- Must be part of a nationally strategic program/project;
- Must be capital- and/or labor-intensive;
- Must utilize advanced technologies;
- Must be categorized as a pioneering industry;
- Must be oriented toward export/import substitutions; and/or
- Must be oriented toward research, development and other innovative activities.

Priority business sectors

2021

Parties looking to invest in priority business fields can receive the following benefits*

- **Fiscal incentives:** tax holidays, tax allowances, investment allowances, and import-duty exemptions; and/or
- **Non-fiscal incentives:** encompass ease of business licensing, provision of supporting infrastructure, energy, guaranteed availability of raw materials, immigration, employment, and others

**See: Annex I of the New Investment List*

Business sectors that are allocated to or that require partnerships with MSMEs

Classification of MSMEs

Past

MSMEs Law 2008

MSMEs are classified according to <u>net worth</u> or annual sales. Net worth is the amount of assets before deducting any debts or liabilities		Criteria		MSMEs are classified according to <u>capital</u> or annual sales. Capital includes capital from loans	
Micro :	maximum IDR 50 million	Net Worth	Capital	Micro :	maximum IDR 1 billion
Small :	more than IDR 50 million - maximum IDR 500 million			Small :	more than IDR 1 billion - maximum IDR 5 billion
Medium :	more than IDR 500 million - maximum IDR 10 billion			Medium :	more than IDR 5 billion - maximum IDR 10 billion
Micro :	maximum IDR 300 million	Annual Sales		Micro :	maximum IDR 2 billion
Small :	more than IDR 300 million - maximum IDR 2.5 billion			Small :	more than IDR 2 billion - maximum IDR 15 billion
Medium :	more than IDR 2.5 billion - maximum IDR 50 billion			Medium :	more than IDR 15 billion - maximum IDR 50 billion

New

MSMEs GR 2021

Business sectors that are allocated to or that require partnerships with MSMEs

2021

Annex II of the New Investment List

Allocated to MSMEs

- Food crop farming with an area of less than 25 Ha
- Supply of electricity for power plants < 1 MW
- Building construction using simple and intermediate technology
- Construction of civil facilities, including maintenance and road construction using simple and intermediate technology

Business sectors that are allocated to or that require partnerships with MSMEs

Require Partnerships with MSMEs

- Other transportation repair services, excluding motorized vehicles
- Courier agent activity
- Electrical power installation consultation
- Marketing, distribution, wholesale trading, and export of fishery products

Business sectors with certain requirements

2016

350 business sectors listed under this category

2021

37 business sectors listed under this category

Business sectors with certain requirements

2021

Key Sectors

Still listed:

- Coffee (with geographical indication) processing industry – **Closed for foreign ownership (“FOR”)**
- Traditional cosmetics industry – **Closed FOR**
- Shipping industry - Pinisi, Cadik, vessel with traditional design – **Closed FOR**
- Domestic sea transportation for tourism - **49% maximum FOR**
- River and lake transportation for special goods - **49% maximum FOR**
- Courier activity - **49% maximum FOR**

Business sectors with certain requirements

2021

Key Sectors

No longer listed :

- Web portal and/or digital platforms with commercial purposes
- All telecommunication network and service activities, including telecommunication activities with or without cable, satellite telecommunication activities, premium call services, premium SMS content services, and other multimedia services
- Pharmaceutical industry
- Pharmaceutical wholesale
- Power plant construction and installation
- Plantation: sugar cane, tobacco, coffee, cocoa, rubber plants, coconut, and palm oil plantation
- Airports and seaports

Business sectors with certain requirements

Key Sectors – Retail and Distribution

2021

Sector	Line of Business	2016 Negative List	New Investment List (2021)
Distribution (wholesale)	Distributor affiliated with manufacturing	Not restricted	Not restricted
	Distributor <i>not</i> affiliated with manufacturing	Maximum foreign ownership of 67%	Not restricted
Retail and self-service stores (<i>toko swalayan</i>)	Department stores	<ul style="list-style-type: none"> Department stores with floor space of more than 2,000 sqm – not restricted Department stores with floor space of between 400sqm to 2,000 sqm – maximum foreign ownership of 67% Subject to additional sectoral requirements 	<ul style="list-style-type: none"> Not restricted Subject to additional sectoral requirements under GR 29/2021
	Minimarkets	<ul style="list-style-type: none"> 100% domestic ownership for minimarkets with floor space of less than 400sqm 	Reserved for CMSMEs
	Supermarkets	<ul style="list-style-type: none"> Supermarkets with floor space of at least 1,200 sqm – not restricted Supermarkets with floor space of less than 1,200sqm – 100% domestic ownership 	<ul style="list-style-type: none"> Not restricted Subject to additional sectoral requirements under GR 29/2021
	Retailing of various products outside department stores under one management whose main products are not food, beverage or tobacco products (e.g., clothing, household appliances, jewellery, children's toys, cosmetics)	100% domestic ownership	Reserved for CMSMEs
	Retail of certain types of products: <ul style="list-style-type: none"> Cars, motorbikes and commercial vehicles, and their spare parts and accessories Jewellery, antiques Water transportation tools and equipment Textiles (including household appliances made from textiles) Children's toys Cosmetics Electronics 	100% domestic ownership	<ul style="list-style-type: none"> Not restricted <i>Note:</i> Potential overlap of products with the business line in the row immediately above this one
	Retail of certain types of products: <ul style="list-style-type: none"> Footwear Non-alcoholic beverages Rice, bread, cookies, cakes, coffee, refined sugar, red sugar, tofu, tempeh, fermented beans and <i>oncom</i>, processed meat and fish, other foods 	100% domestic ownership	Reserved for CMSMEs

Business sectors with certain requirements

2021

Investment Restriction at Ministerial Level

Notwithstanding the New Investment List, investors must examine investment restrictions that may be set forth under sectoral regulations. For instance:

- **Payment Systems**: Bank Indonesia (BI) Reg. 23/7/PBI 2021 and BI Reg. 23/06/PBI 2021 set forth specific requirements on the share ownership of Payment System Infrastructure Providers and Payment Service Providers.
- **Shipping Industry**: The Shipping Law (as amended by the Omnibus Law) sets forth that a vessel owned by a Foreign Investment Company may only be registered in Indonesia if the company is majority-owned by an Indonesian company and/or individual.

Business sectors with certain requirements

2021

Investment Restriction at Ministerial Level

Notwithstanding the New Investment List, investors must examine investment restrictions that may be set forth under sectoral regulations. For instance:

- **Construction Services**: The Construction Services Law (as amended by the Omnibus Law) continues to require foreign investors to establish an Indonesian construction service company through a joint venture with a locally owned construction service company.
- **Mining Sector**: The Mining Law (as amended by the Omnibus Law) continues to require foreign-owned mining companies to gradually divest to local shareholders so that, by the tenth year of commencing commercial production operation, at least 51% of the shares in the mining company are held by Indonesian shareholders.

The New Investment List: Key considerations

2021

- **Grandfather Clause**

Art. 6 (4) of the New Investment List:

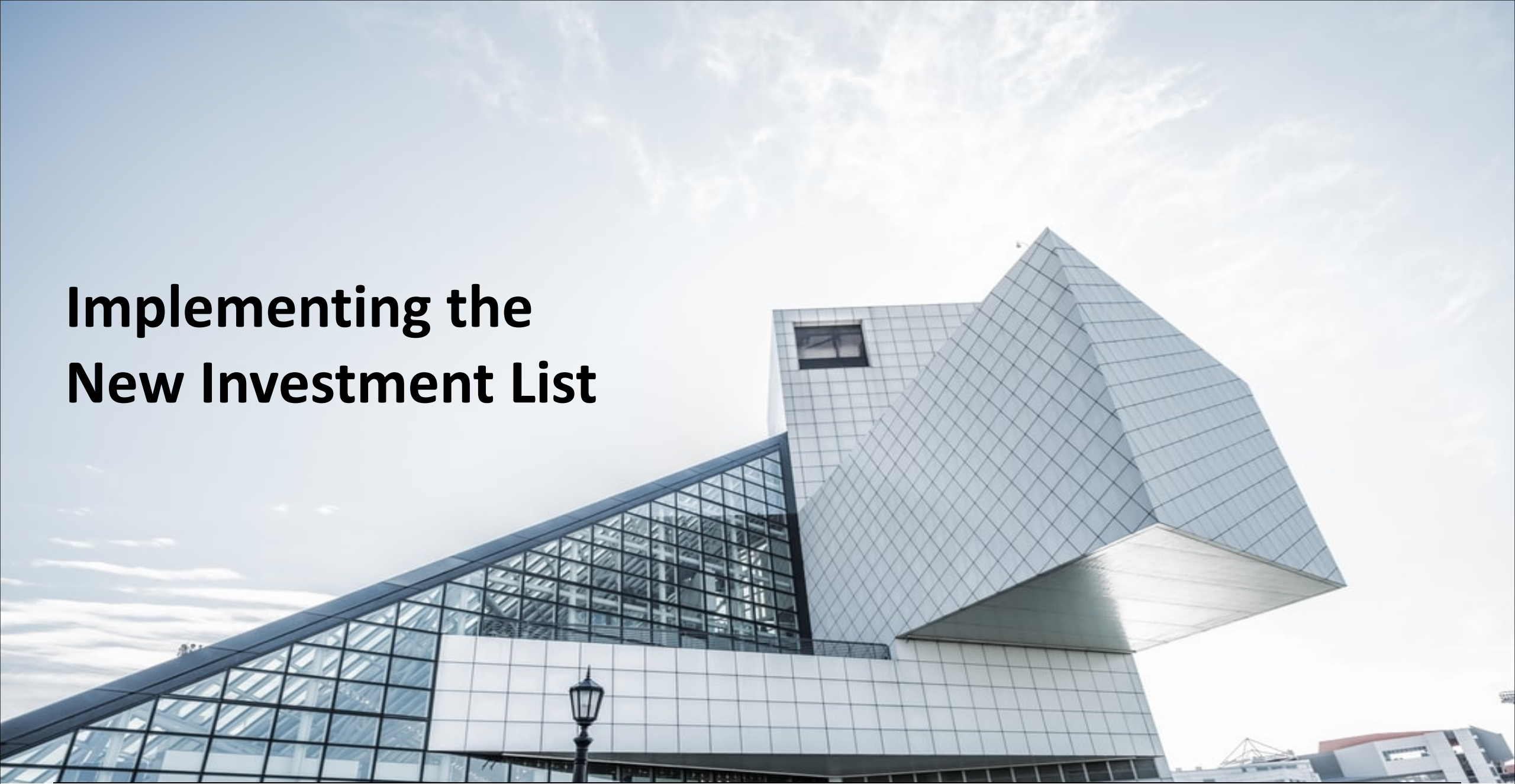
Investment restrictions under the New Investment List do not apply to:

- a. Investments approved prior to the promulgation of the New Investment List, as listed in the business licensing, unless the provisions under the New Investment List are more favorable for Investment; or
- b. Investors who obtain special rights based on an agreement between Indonesia and the country of origin of said investor, except if the same provisions on business fields regulated under this New Investment are more favorable for Investment.

- **Restrictions at the Ministerial Level**

- **Confirmation with Appropriate Government Officials**

Implementing the New Investment List



IMPLEMENTING THE NEW INVESTMENT LIST

- Overview of the Risk-Based Licensing system ("RBL System")
- Key items to be considered under the RBL System



RISK-BASED LICENSING

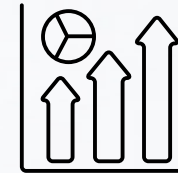
- *See: Omnibus Law, Government Regulation No. 5/2021, Government Regulation No. 6/2021, Government Regulation No. 7/2021, and BKPM Reg. 4/2021.*



**Covering 16 Sectors and
18 Ministries/Agencies**



**Simplification of
Business Licensing**



**Key Items to Be
Considered**

COVERING 16 SECTORS AND 18 MINISTRIES/AGENCIES



SIMPLIFICATION OF BUSINESS LICENSING

Low Risk

Business Identification Number (*Nomor Induk Berusaha* - "**NIB**")

Medium Low Risk

Business Identification Number (*Nomor Induk Berusaha* - "**NIB**") + Standard Certification (without verification)

Medium High Risk

Business Identification Number (*Nomor Induk Berusaha* - "**NIB**") + Standard Certification (with verification)

High Risk

Business Identification Number (*Nomor Induk Berusaha* - "**NIB**") + Business License (+ Standard Certification (with verification))

SIMPLIFICATION OF BUSINESS LICENSING

Low Risk

Business Identification
Number (*Nomor Induk
Berusaha* - "NIB")

- **Primary License**
Environmental Permit, Location Permit, Building Approval Permit
- **NIB**
- **Operational & Commercial Activities**

SIMPLIFICATION OF BUSINESS LICENSING

Medium Low Risk

Business Identification Number (*Nomor Induk Berusaha* - "**NIB**") + Standard Certification (without verification)

- **Primary License**
Environmental Permit, Location Permit, Building Approval Permit
- **NIB + Standard Certification (without verification)**
- **Operational & Commercial Activities**

SIMPLIFICATION OF BUSINESS LICENSING

Medium High Risk

Business Identification Number (*Nomor Induk Berusaha* - "NIB") + Standard Certification (with verification)

- **Primary License**
Environmental Permit, Location Permit, Building Approval Permit
- **NIB + Standard Certification (unverified)**
- **Preparatory Activities**
Among others: Land procurement, development of buildings and their operations, equipment and facilities procurement, HR recruitment
- **Verification**
- **NIB + Standard Certification (verified)**
- **Operational and Commercial Activities**

SIMPLIFICATION OF BUSINESS LICENSING

High Risk

Business Identification Number (*Nomor Induk Berusaha* - "**NIB**") + Business License (+ Standard Certification (with verification))

- **Primary License**
Environmental Permit, Location Permit, Building Approval Permit
- **NIB + (Standard Certification (unverified))**
- **Preparatory Activities**
Among others: Land procurement, development of buildings and their operations, equipment or facilities procurement, HR recruitment
- **Verification**
- **NIB + Business License + (Standard Certification (verified))**
- **Operational and Commercial Activities**

KEY ITEMS TO BE CONSIDERED

GRANDFATHER CLAUSE

Article 562 of GR 5/2021

CAPITAL REQUIREMENTS

Article 12 of BKPM Reg. 4/2021

GRANDFATHER CLAUSE

Article 562 of GR 5/2021

The provisions under Risk-Based Licensing, including the capital requirement thereof, will not affect the Investor if the Company was established, obtained an NIB, and obtained an effective business license before the implementation of Risk-Based Licensing (i.e., August 4, 2021).

CAPITAL REQUIREMENTS

Article 12 of BKPM Reg. 4/2021

- Minimum investment value required: more than IDR 10 billion (excluding land and building) per 5-digit KBLI Number per project location;*
- Minimum issued and paid-up capital: at least IDR 10 billion.

*Please see Articles 12(3) and 12(4) of BKPM Reg. 4/2021 for sectors that are exempted

TRENDS AND CHALLENGES



TRENDS AND CHALLENGES

- Change in shareholding structure in light of the New Investment List
- Technical challenges in the implementation of RBL System

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