

BKPM Issues New Regulation on Investment Licenses and Facilities

by Vincent

On 4 December 2017, the Head of Indonesia Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”) issued the Head of BKPM Regulation No. 13 of 2017 regarding Guidelines and Procedures for the Implementation of Capital Investment Licensing and Facilities (“**BKPM No. 13/2017**”). BKPM No. 13/2017 was promulgated on 11 December 2017. However, BKPM No. 13/2017 only became effective on 2 January 2018 for the BKPM and at the latest on 2 January 2018 for the regional capital investment boards. BKPM No. 13/2017 effectively revokes the following regulations:

- Head of BKPM Regulation No. 8 of 2015 regarding Guidelines on the Application of Income Tax Facility in Capital Investment on Certain Lines of Business and/or at Certain Locations (as amended);
- Head of BKPM Regulation No. 13 of 2015 regarding Guidelines on the Application of Corporate Income Tax Reduction Facility (as amended);
- Head of BKPM Regulation No. 14 of 2015 regarding Guidelines and Procedures for Capital Investment Principle Licenses (as amended);
- Head of BKPM Regulation No. 15 of 2015 regarding Guidelines and Procedures for Capital Investment Licensing and Non-Licensing Matters;
- Head of BKPM Regulation No. 16 of 2015 regarding Guidelines and Procedures for Capital Investment Facilities.

The aim of BKPM No. 13/2017 is merely to simplify the regulation pertaining capital investment procedures in Indonesia. It integrates the previous regulations into BKPM No. 13/2017.

Several key changes to the previous regulations, among others, are as follows:



- the term “Principle License” (locally known as *Izin Prinsip* or “**IP**”) is amended to “Investment Registration” (locally known as *Pendaftaran Penanaman Modal* or “**PPM**”);
- subject to several conditions, companies with certain lines of business are allowed to directly obtain business licenses (locally known as *izin usaha* or “**IU**”) without the requirement to obtain PPM in the first place;
- prohibits any arrangement where an investor has an agreement or statement stating that his or her or its share(s) ownership in a company is for or on behalf of another party; BKPM No. 13/2017 allows the BKPM (if necessary) to require the investor to produce a certain statement letter legalized by a notary confirming that his or her or its share(s) ownership in a company is not for or on behalf of another party;

- subject to the approval from the BKPM, it is possible for the foreign investment company (locally known as *perusahaan modal asing* or “**PMA**”) to avoid the divestment requirement (in their BKPM licenses) only if:
 - the existing local shareholders state their approval in a general meeting of shareholders (“**GMS**”) confirming that they do not require the divestment; or
 - for a 100% foreign-owned PMA, all shareholders state in a GMS that they do not possess any commitment or agreement with a certain domestic party to sell/ divest the shares.
- applications for branch offices of the PMA that are under the BKPM authority will be processed by the BKPM.

Any IP issued before the effectivity of BKPM No. 13/2017 that are still valid will be valid until its expiration. As for the IU, the application of those licenses will be subject to BKPM No. 13/2017. The IP applications that have been accepted and deemed complete by the BKPM and under review when BKPM No. 13/2017 became effective, will be processed subject to BKPM No. 13/2017.

Guidance on Securities Portfolio Management in The Client's Interest as an Individual

by *Monica Sonya Ginanti*

The Financial Services Authority of Indonesia has issued a new regulation concerning securities portfolio management in the client's interest as an individual. It is Regulation of Financial Services Authority number 21/POJK.04.04/2017 on Guidance on Securities Portfolio Management in the Client's Interest as an Individual ("**Regulation**"). The Regulation itself governs several matters such as type of securities portfolio, procedure to form a securities portfolio, amount of funds that may be managed in a securities portfolio, and also rights and obligations of the investment manager and custodial bank.

The management of a securities portfolio in the client's interest as an individual is a management service of securities portfolio and/or funds which perform by an investment manager for a specific client pursuant to an agreement on a securities portfolio and/or funds in the client's interest as an individual ("**Client's Portfolio Management**"). An investment manager has full authority given by the client to manage the securities portfolio and/or funds. The type of securities portfolio and/or funds in Client's Portfolio Management are: (i) domestic securities; (ii) money market instruments; (iii) other financial instruments determined by Financial Services Authority as securities; and/or (iv) international securities as long as such securities have obtained a license from an authorized institution and traded on a foreign stock exchange, which information may be accessed through the media.

An investment manager shall make a written agreement on the Client's Portfolio Management with each client ("**Agreement**") as a procedure to form a securities portfolio. Furthermore, an investment manager shall ensure the existence of the securities portfolio and/or funds deposit agreement between client and custodial bank. A client



who signs both agreements shall have the authority and capability. The initial funds management for the Client's Portfolio Management shall be a minimum Rp5.000.000.000,00 (five million rupiah) or other amount which is equal to the foreign currency using Bank Indonesia's middle exchange rate. The initial deposit may be used to form a securities portfolio and/or funds.

The rights and obligations of the custodial bank is also stated in the Regulation, which are to: (i) ensure the asset account of the client in the custodial bank is on behalf of the client who uses a Client's Portfolio Management service; (ii) record and administer the client's assets along with its amendment for those who use a Client's Portfolio Management service; (iii) finalize

transactions related to the Client's Portfolio Management; (iv) perform or receive payment on securities transactions pursuant to the Agreement. There are also rights and obligations of investment management, which are to: (i) manage the securities portfolio and/or funds owned by a client pursuant to the Agreement (ii) ensure the separation of the securities portfolio and/or funds deposit account for each client from the investment manager account or other account; (iii) determine fair market value on securities owned by the client; (iv) record each client transaction separately; (v) record each client transaction separately between records on behalf of the client and records on behalf of investment manager; and (vi) describe investment risk to the client.

Reporting on The Implementation of Good Corporate Governance by Securities Companies

by Galih Adi Prasetya

The volatile nature of the global capital market has compelled every country, including Indonesia to always be adaptable and adjust to every change. Recently, the Financial Service Authority (“OJK”), the financial services regulatory and supervisory agency in Indonesia, issued the OJK Circular Letter No. 55/SEOJK.04/2017 on the Reporting on the Implementation of Good Corporate Governance by Securities Companies acting as Securities Underwriters and Securities Brokers (“Circular Letter No. 55/2017”). Circular Letter No. 55/2017 serves as a supporting regulation for OJK Regulation No. 57/POJK.04/2017 on the Implementation of Good Corporate Governance by Securities Companies acting as Securities Underwriters and Securities Brokers (“Regulation No. 57/2017”), as mandated in Article 55 of Regulation No. 57/2017.



As a supporting regulation, the Circular Letter No. 55/2017 governs more comprehensive provisions in reporting the implementation of Good Corporate Governance (“GCG”) by the securities companies. Pursuant to the third provision of Circular Letter No. 55/2017, the report on the implementation of GCG shall include at least transparency, self-assessment results, and an action plan. With regard to the transparency requirement, the securities company shall include at least 7 (seven) aspects to the report, which are: the form of the implementation of GCG disclosure; direct and indirect

Board of Director and Board of Commissioners share ownership; financial and/or family relations between Board of Directors, Commissioner, and Shareholders; type, amount, and resolution of internal deviation regarding financial issues; type, amount, and resolution of legal issues including civil and criminal cases; conflict of interests and/or transaction with the affiliating party; and other prominent disclosure (e.g. resignation of Board of Directors or Commissioners).

On the other hand, in the self-assessment, the securities companies are

required to assesses their own company based on the Appendix I of the Circular Letter No. 55/2017. This assessment plays an important role in determining whether the securities should make an action plan for their company or not. If the assessment results place the company in first to third position in the Composite Ratings, the company is not obligated to make an action plan. Self-assessment shall be conducted once in a year and will be evaluated by the OJK. If the company is placed in fourth or fifth position in the composite ratings, it company shall implement an action plan based on Appendix II of the Circular Letter No. 55/2017. The action plan shall be given to the OJK at least 10 (ten) working days after the designated action plan. All reports regarding the implementation of GCG by securities companies shall be signed by the President Director and President Commissioner. If the securities companies fail to give the report to the OJK, then administrative sanctions shall be imposed (pursuant to article 58 of Regulation No. 57/2017).

New Regulation on Guidelines and Procedures for Investment Control

by Galih Adi Prasetya

The Capital Investment Coordinating Board (“BKPM”), as the one and only investment coordinating board in Republic of Indonesia, has frequently published new and actual regulations as one of their duties to support the Government programs in the investment sector. On 4 December 2017, BKPM issued the BKPM Regulation No. 14 of 2017 on the Guidelines and Procedures for Investment Control (“**Regulation No.14 of 2017**”). Regulation 14/2017 plays a role as an implementing regulation of Presidential Regulation No. 91 of 2017 on the Acceleration of Business Operations and supersedes the previous BKPM Regulation on the Guidelines and Procedures for Investment Control (“**Regulation No.17 of 2015**”).



In Regulation 14/2017, BKPM has made several changes and added several provisions in order to comply with the recent applicable law and regulation. The critical change that has been added to this new regulation is the usage of BKPM’s online system, SPIPISE for every aspect of reporting in this regulation including in monitoring, guidance, and supervising processes. In this addition, there are several provisions that accommodate the construction representative office and oil and gas

representative offices, including their reporting obligation (Article 12 (3) and (4) of Regulation 14/2017). Another addition in this new regulation is the LKPM reporting obligation for business licenses obtained without the need to first obtain investment registrations (Article 11 (4) of Regulation 14/2017). Another new obligation that has been added to this regulation is regarding the monthly reporting obligation for checklist commitment fulfillment pursuant to Article 10 of Regulation 14/2017. This provision requires the company holding the checklist to report their progress once in a month until the start of construction.

Regulation 14/2017 also governs several details that have not been addressed in the previous regulation, such as the limitation access to correct the submitted LKPM as stated in Article 11 (8) of Regulation 14/2017. This provision limits the access for the company to correct their submitted LKPM to only 2 (two) times and each correction shall be made at the latest by 2 (two) working days. Another change that has been made by Regulation 14/2017 is the change of the reporting obligation

of regional representative offices to twice a year, at the latest on 10 July and 10 January (Article 12 (1) of Regulation 14/2017). In the previous regulation, the reporting obligation of regional representative offices was once a year. The Regulation 14/2017 became effective for BKPM on 2 January 2017. Meanwhile, for the regional body (e.g. Province DPMPTSP, District/City DPMPTSP, KPBPB Business Body, and KEK Administrator), Regulation 14/2017 became effective on 2 July 2017.

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