

NEW BKPM REGULATION ON INVESTMENT

Nov 20, 2013

There has been a new development in the investment sector. The Investment Coordinating Board (“**BKPM**”) has issued amendments to BKPM Regulation No. 5 of 2013 regarding the Guidelines and Procedures for Permit and Non-Permit Capital Investment Applications (“**Reg. 5/2013**”) by way of BKPM Regulation No. 12 of 2013 on Amendments to BKPM Reg 5/2013 (“**Reg. 12/2013**”).

Reg. 12/2013 clarifies certain matters which are not covered under Reg 5/2013. Some of the changes relate to the procedures and documents required for investment application approvals. We also note that several articles have been amended, elaborated on or removed from BKPM Reg. 5/2013. The material changes include:

a. Publicly Listed Companies

BKPM has removed Articles 49 – 50 of Reg. 5/2013 with regard to public companies thereby leaving no articles related to public companies in Reg. 12/2013. As a result, a public listed company controlled by foreign shareholders is no longer deemed to be a foreign investment company.

b. Conversion of Subsidiaries

Previously, under Reg. 5/2013, subsidiaries of a newly converted foreign investment company had to change their status to foreign investment companies within one year of the domestic investment company becoming a foreign investment company. This requirement no longer applies under Reg. 12/2013.

c. Divestment Requirements

Reg. 12/2013 deletes the provision of Reg. 5/2013 which requires a foreign investment company that has complied with the divestment requirement under its BKPM approval to maintain the Indonesian shareholder’s shareholding percentage.

In addition, Reg. 12/2013 only allows an extension to the divestment deadline if the company

can show evidence that it (i) has tried to comply with the requirement, and (ii) has not been successful in finding an Indonesian shareholder.

d. Venture Capital Companies

Reg. 12/2013 allows venture capital companies to own shares in foreign investment companies for up to 10 years (extendible for another 5 years under prevailing laws and regulations).

Please also note that BKPM's unwritten policies and procedures are also changing in certain respects and it is important to ensure that these aspects are taken into account when preparing any establishment timeframe and when completing investment applications, etc. Finally, it should also be noted that a new Negative List is presently under discussion and we will keep you advised of further developments in this regard.