

## Summary

The application procedure for making new or amending existing domestic and foreign investments in Indonesia has never been entirely simple or straightforward. Policies of BKPM and even individual officers within BKPM have been introduced and amended or revoked, sometimes with little or no prior notice.

Chairman of BKPM Regulation No. 5 of 2013 tries to codify certain previous policies and simplify the application procedure. BKPM has also increased its supervisory capabilities of investments and has introduced important requirements for PMA public companies.

Although there is no doubt that Regulation No. 5 of 2013 has clarified a number of issues and has simplified various processes, there are a number of concerns at present with regard to other, new procedural and administrative requirements which BKPM seem to be introducing and which are causing some confusion with investors and their advisors.

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# BKPM's New Guidelines for Investment Applications

## Introduction

The Capital Investment Coordinating Board (“**BKPM**”) as the first gate for foreign investment has tried to simplify the procedures for foreign and domestic investment in Indonesia by issuing Chairman of BKPM Regulation No. 5 of 2013 regarding The Guidelines and Procedures for Capital Investment Licenses and Non-Licensing Applications (“**Regulation**”). The Regulation revokes a previous, similar regulation from 2009 as well as a separate regulation relating to venture capital companies.

The Regulation adds regulatory weight to informal policies of BKPM which were previously not explicitly stipulated such as the provision regarding minimum capital investment. BKPM has also increased its supervision of foreign investment (“**PMA**”) companies in Indonesia by, for example, undertaking on-site inspection on a PMA company proposing an extension of its Principle License if the given timeframe had lapsed. According to informal discussions with BKPM, they found several cases in the past where a PMA company was only used for certain purposes (eg. to obtain work permits) and did not carry out any activities.

In certain sectors such as general services, BKPM requires an initial business plan to be presented to it prior to applying for the license.

## Minimum Capital Investment

The Regulation requires foreign capital investment to be more than Rp.10 billion (or USD equivalent) excluding land and buildings. The issued capital must be at least the same as the paid up capital, ie not less than Rp.2.5 billion (or USD equivalent) while the minimum capital participation in the company of each shareholder must be at least Rp.10 million (or USD equivalent). These minimum capital requirements are a formalization of BKPM's previous unwritten policy and, of course, will have a significant impact on investors who, for example, may wish to only establish a small consultancy company. Domestic capital (PMDN) investment must be at least Rp.500 million

## Types of License

The previous “Investment Registration/SP BKPM,” will be replaced by the “Principle License/*Ijin Prinsip*”. Accordingly, there are now only two types of license under the Regulation, namely Principle Licenses (*Ijin Prinsip*-IP) and Business Licenses (*Ijin Usaha*-IU). These licenses may be issued for starting a

business or for an expansion or a merger of an existing company.

### **Initiating an Investment**

The areas of business in which a foreign investment company may operate are still restricted by the so-called Negative List. As before, it is important to make preliminary inquiries at BKPM to ensure there are no objections to the proposed line of business which would cause the investment application to be rejected or subject to certain policy restrictions.

Unlike before, no registration is now required for the establishment of the entity. The first step is to apply for a Principle License. Certain documents required for Principle License applications must be originals; however, BKPM stated in an informal discussion, that if an applicant cannot present original documents and can provide an acceptable reason for this, BKPM will not be too strict about this requirement.

Upon obtaining a Principle License and once it is ready to commence operations/ production, the company can submit an application for a Business License to BKPM.

### **Project Timeframe**

Projects for industrial companies under a Principle License must be in commercial production or operation within 3 years of the issuance of the Principle License, although for certain lines of business which take longer to complete a longer period might be given by BKPM. Further, if the projects cannot be completed within the given period under the Principle License, a 3 year extension is possible. Further extensions will only be approved by BKPM after an on-site inspection.

### **Amendments to Investment Plans**

For many existing companies, their first encounter with the Regulation may relate to an amendment to the investment plan, for example, in respect of a change of name, location, production capacity, capital and financial sources, as well as a change in shareholder. In each case, a Principle License for Amendment will be required from BKPM.

### **Expansion**

For an industrial company, an “expansion” (which will require a Principle License for Expansion) means an increase in production capacity for a certain product under the same KBLI of more than 30% of its current licensed capacity and in the same location as the current production facility. For non-industrial companies, an expansion may be the addition of a new line of business and/or an increase in current licensed production capacity in the same location or in another location. An expansion should be completed within 3 years, but the license is extendable. There are a number of activities which are not an expansion under the Regulation but which are classified as the start of a new business and therefore a new Principle License must be applied for.

### **Change of Status**

If a company changes to PMA status within one year of the issuance of the Regulation, any subsidiary of the company must also similarly change its status. According to informal discussions with BKPM, the one year period to change the status of a subsidiary will not be strictly enforced. If the relevant PMA has more than one subsidiary, BKPM will require at least one subsidiary to be converted to PMA within a one year period while the other subsidiaries may be given a longer period to change status. Further, if the subsidiary’s business line is closed for foreign investment, it will also have to either change its shareholding composition or its line of business. Inadequate supervision of subsidiaries of PMA companies in the past led to some businesses taking advantage of the absence of this requirement.

### **Public Company**

An important new development under the Regulation is the classification of a public company which is now viewed as either a PMA company (if all or one of its controlling shareholders is a foreign investor) or a domestic investment company (if all of its controlling shareholders are domestic investors). The Regulation defines a “*controlling shareholder of a public company*” as a party owning more than 50% of all issued shares or a party which can directly or indirectly determine the management and/or policy of the company.

Under the Regulation, a PMA public company must now apply for a Principle License or an amendment to its existing Principle License if there is any change of controlling shareholder(s). Such application requires the Financial Services Authority (**OJK**) to state that the shareholder is a controlling shareholder of the public company. According to an informal discussion with

BKPM, as long as there is no corporate action, this does not apply to existing public companies.

### **Divestment**

The Regulation also strengthens the divestment obligation which was not included in the previous 2009 regulation. Divestment obligations imposed before the Regulation remain valid and must be complied within the stipulated time limit. If the deadline is now due, the company can apply to BKPM for an extension of up to 2 years. Once the divestment obligation is satisfied, the Indonesian shareholding must be maintained for as long as the company continues to operate. However, in an informal discussion, BKPM stated that the level of Indonesian shareholding might be changed as long as the company still maintains its Indonesian shareholding.

### **KPPA (Foreign Company Representative Office)**

Licenses for foreign company Representative Offices are now limited to 3 years under the Regulation, but may be extended twice for one year each time. After 5 years, a representative office may apply for an extension if its activities are to change from those undertaken during the first 5 year period.

### **Transitional Provision**

Licenses issued before the issuance of the Regulation remain valid and companies which obtained their Investment Registration before the issuance of the Regulation can, in most cases, still apply directly for a Business License.

### **Conclusion**

The Regulation is intended to simplify the procedure for capital investment in Indonesia as well as the license application forms and does provide some certainty with regard to the timing of the licensing process. The Regulation also appears to refine its predecessor by amending existing and adding new provisions, such as the somewhat controversial minimum capital investment levels for foreign and domestic investment companies.

Some provisions in the Regulation may not be practical; for example, where applicants must show original documents. This is a response to past cases of false documents being submitted. Supervision of subsidiaries is also a notable feature of the Regulation.

The Regulation is more comprehensive than its 2009 predecessor and, as mentioned above, some provisions are strict. However, the effectiveness (especially regarding simplification) of the Regulation remains to be proven as it only became effective on 27 May 2013 and there will no doubt be continuing discussions within BKPM and among investors as to many aspects of the detailed implementation of the Regulation.

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