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INDONESIA'S NEW OSS LICENSE APPLICATION SYSTEM – AN UPDATE

Following the issuance of Government Regulation No. 24 of 2018 (“GR 24/2018”) introducing an online based system for processing and issuing certain business licenses, on 10 July 2018, the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* – “BKPM”) issued Announcement No. 2/ Pengumuman (“Announcement”) stating that the One-Stop Integrated Services (*Pelayanan Terpadu Satu Pintu* – “PTSP”) system is still open to provide services. The services include, among others: providing information on investment policies in certain sectors and the procedures for applying for licenses through the Online Single Services (“OSS”) system, as well as providing support to Business Actors facing obstacles in the investment process.

Previously, BKPM issued a press release on 29 June 2018, stating that the BKPM-PTSP had put every license application on hold during the transition to the newly introduced OSS system. BKPM also conveyed that some permits and licenses remained under the authority of BKPM, without specifying which permits and licenses. In the Announcement, BKPM has finally made it clear which licenses are not processed through the OSS system but remain under the authority of BKPM-PTSP. According to the annex to the Announcement, these licenses include several business licenses in the energy and mineral resources sector, public works and housing sector, and the financial sector. In addition, BKPM will also continue processing applications for:

- 1) a Foreign Company Representative Office (*Kantor Perwakilan Perusahaan Asing* – “KPPA”) for businesses in sectors other than trade and construction;
- 2) a Branch Opening License for Business Actors whose business licenses were issued by the Central PTSP;
- 3) a recommendation for a Limited Stay Visa (*Visa Terbatas* – a “VITAS”) for shareholders;
- 4) a recommendation for changing a Visit Stay Permit into a Temporary Stay Permit (*Izin Tinggal Sementara* – “ITAS”); and
- 5) a recommendation for changing an ITAS to a Permanent Stay Permit (*Izin Tinggal Tetap* – “ITAP”).

Now, since the issuance of GR 24/2018, BKPM has returned every Investment Registration (*Pendaftaran Penanaman Modal*) and Business License (*Izin Usaha*) application and directed applicants to re-submit their applications through the OSS system.

The Business Identification Number (*Nomor Induk Berusaha* – “NIB”)

One of the important points of this new mechanism is the NIB, a business identity issued by the OSS Agency after businesses have registered in the OSS system. The NIB is a requirement for all business license and commercial or operating license applications through the OSS system and will also apply simultaneously as a Company Registration Certificate (*Tanda Daftar Perusahaan* – “TDP”), Importer’s Identification Number (*Angka Pengenal Importir* – “API”), and customs access.

As explained in the Guidelines on Licensing through the OSS System for Business Actors Version 1.5 issued by the Coordinating Ministry of the Economy (the “Licensing Guidelines”), the procedure for obtaining an NIB is the following:

- a. log in to the OSS system;
- b. input the required data, eg company data, names of shareholders, information on share-ownership, investment value and manpower utilization plan (including foreign manpower);
- c. input the required information regarding the business using the 5 digits of Standard Indonesian Business Classifications (*Klasifikasi Baku Lapangan Usaha Indonesia – “KBLI”*). If the business field under the relevant KBLI code is categorized as a business field conditionally open to investment under the Investment Negative List, the Business Actor must first confirm the statement that it will comply with the requirements under Attachment III to Government Regulation Number 44 of 2016 so that it can proceed with its registration in the OSS system; and
- d. tick the disclaimer box to confirm the correctness and authenticity of the submitted data.

Business Actors who commenced their business activities before the OSS system became operational

GR 24/2018 does not clearly state when Business Actors must register in the OSS system and obtain an NIB. This may raise questions for Business Actors who have started to operate and are currently engaged in their business activities. The Licensing Guidelines provide 2 scenarios:

- 1) Business Actors who need an NIB but are planning to do so without amending their licenses or changing their business activities. Such Business Actors should activate their OSS account, input the relevant company data, including a list of the licenses they already hold, and then the OSS system will issue the NIB.
- 2) Business Actors who have not yet obtained an NIB and are planning to expand. Such Business Actors will first have to obtain an NIB. Then, they must update the information regarding the business expansion:
 - if the business expansion is in the same regency/municipality, the information must be updated in the OSS system;
 - if the business expansion causes an expansion of the business area, whether it is in the same regency/municipality, the Business Actors must comply with, among others, the Location Permit, Environmental Permit, Building Permit, and Building Worthiness Certificate (*Sertifikat Laik Fungsi*) requirements for the new business expansion location.

In addition to the above, since the NIB applies simultaneously as a TDP, we believe that Business Actors whose TDPs have expired may as well register in the OSS system and obtain an NIB.

Just to add, some Business Actors are concerned about the possible implications of activating their OSS registration and NIB issuance and whether there may be unwanted consequences, eg requests to implement divestment requirements or increase investment/capital and such like. Accordingly, we do expect that some Business Actors will try to delay or postpone taking any action until there is further clarity in this regard.

The status of (still applicable) BKPM regulations

Following the recent updates, many are asking whether current BKPM regulations (eg Regulation No. 13 of 2017 on the Guidelines and Procedures for Investment Licensing and Facilities) still apply, since new procedures have been set out. With regard to this issue, according to BKPM officials, a new draft BKPM regulation is already in place and expected to be issued soon.

As the transition remains ongoing and the issues arising are still being resolved, we suggest that Business Actors concerned keep a close eye on BKPM's website and other official media for further updates and clarification.

M&T will issue further advisories and updates as and when appropriate but, if in the meantime you have any questions of the somewhat complex and still uncertain situation relating to the introduction of the new OSS system, please do not hesitate to contact your usual M&T contact.

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