

Issuance of BKPM Regulation 13/2017: A New Concept in the Investment Sector



The Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal or “**BKPM**”) has just issued BKPM Regulation No. 13 of 2017 concerning Guidelines and Procedures for the Implementation of Capital Investment Licensing and Facilities (Peraturan BKPM No. 13 Tahun 2017 tentang Pedoman dan Tata Cara Perizinan dan Fasilitas Penanaman Modal or “**BKPM Regulation 13/2017**”) in December 2017. The BKPM Regulation 13/2017 became effective on 2 January 2018, for BKPM; and will become effective at the latest on 2 July 2018, for the provincial/ regional BKPM.

Background

The BKPM Regulation 13/2017 was issued as an implementation of the Government’s 16th Economy Policy Package mandated by Presidential Regulation No. 91 of 2017 concerning the Acceleration of Business Operations, which tends to simplify investment licensing and investment facilities procedures in Indonesia.

Highlights

1. Registration of Capital Investment (Article 10) - New

Under Old BKPM Regulations (defined below), foreign investors were required to obtain an initial approval from BKPM, known as Principle License, during the establishment and construction period before they were ready to start commercial operations.

Now, BKPM Regulation 13/2017 introduces a new terminology to substitute Principle License, namely **Investment Registration** (*Pendaftaran Penanaman Modal*, commonly known as “**PPM**”).

The requirement to obtain an Investment Registration (PPM) only applies to the foreign investment companies (“**PMA Companies**”) that fulfill one of the following criteria:

- a. businesses that need time for construction activities;
- b. businesses that are entitled to investment facilities;
- c. businesses that have a medium to high potential of environmental pollution; or
- d. businesses related to national defense, natural resources management, energy, and infrastructure; or
- e. other businesses as determined by specific regulations.

The PMA Companies with the above businesses may only start their business activities after they have obtained their business license as was the previous practice under the Old BKPM Regulations.

However, to date, there is no specific list specifying the business classifications that need an Investment Registration (PPM). The investor must therefore confirm with BKPM whether their proposed business requires a PPM before making their application. This could lead to uncertainty for investors.

2. Business License (Article 11) - New

Other than businesses which fulfill the above criteria, investors may directly apply for a Business License when they intend to start their business, provided they have fulfilled the following conditions:

- a. obtained the legal status as a legal entity, through the issuance of a Ministry of Law and Human Rights Ratification, with a share ownership in line with the limitations under the Negative List;
- b. obtained a Tax Identification Number; and
- c. acquired an office.

3. Minimum Investment Requirements (Article 12)

The minimum investment, issued and paid up capital requirements in BKPM Regulation 13/2017 remain the same as under the Old BKPM Regulations.

However, **property development and management** businesses are subject to a special provision on minimum investment value:

- if the property is in the form of a whole building or an integrated housing complex, the investment value must more than IDR10,000,000,000 (ten billion Indonesian Rupiah), including land and buildings; or
- on the other hand, if the property units are not located in a whole building or an integrated housing complex, the minimum investment must be more than IDR10,000,000,000 (ten billion Indonesian Rupiah) other than the land and buildings,

with a debt to equity ratio of 4:1.

Further, PMA Companies in capital-intensive industries and highly regulated businesses, such as the mining and financial sectors, will be subject to higher minimum investment requirements according to the relevant laws and regulations.

Note:

PMA Companies with an expansion principle license that have been approved with an investment value of less than IDR10,000,000,000 (ten billion Indonesian Rupiah) excluding investment for land and buildings must be adjusted to the current minimum investment provision for their realization.

This may cause problems in the future for some PMA Companies which have applied for an expansion principle license with an investment of less than IDR10,000,000,000 (ten billion Indonesian Rupiah) (excluding investment for land and buildings), which is permitted under the Old BKPM Regulation.

4. Large-Scale Business Requirements (Article 12 paragraph (2)) - New

Previously, BKPM had an unwritten policy requiring PMA Companies to be large-scale businesses. In this BKPM Regulation 13/2017, BKPM has clearly stated that it only allows PMA Companies that have not yet fulfilled any of the following large-scale business criteria to apply for a one (1) year (temporary) business license:

- a. having net assets of more than IDR10,000,000,000 (ten billion Indonesian Rupiah), excluding land and buildings, based on the latest financial statements; **or**
- b. having annual revenue of more than IDR50,000,000,000 (fifty billion Indonesian Rupiah) based on the latest financial statements.

5. Prohibition of Nominee Arrangement (Article 12 paragraph (6))

The BKPM Regulation 13/2017 clearly prohibits any arrangement where an investor has an agreement or statement declaring that his or her share ownership in a company is for or on behalf another party. However, BKPM Regulation 13/2017 allows BKPM (if needed) to require the investor to make a written declaration legalized by a notary confirming that its share ownership in a company is not for or on behalf of another party. This requirement to provide a statement would obviously be burdensome for the investors.

6. Divestment Obligation (Article 16)

BKPM Regulation 13/2017 requires all PMA Companies that were or are subject to divestment obligations to fulfill such obligations within the period stated in their investment licenses.

This obligation may be waived if the General Meeting of Shareholders (“GMS”) of the PMA Company approves as follows:

- a. For PMA Companies in the form of a joint venture between Indonesian and foreign shareholders, the Indonesian shareholders should expressly state in the GMS resolution that they do not wish for or demand increased share ownership in accordance with the divestment obligation. The PMA Companies may then apply for cancellation of the divestment obligation by enclosing their GMS resolution ; **or**
- b. For 100% (one hundred percent) foreign-owned PMA Companies, the foreign shareholders must state in the GMS resolution that they do not have a commitment or agreement with any Indonesian party to dispose of their shares.

Note:

However, the obligation for 100% foreign-owned PMA Companies can be reinstated in the future at the demand of any Indonesian party. This provision is highly problematic, as the regulation states no further time limits, criteria, or procedures for such a demand.

7. PMA Company’s Subsidiaries (Article 20)

On the issuance of an Investment Registration (PPM), all of the subsidiaries of PMA Companies must also convert their status into a PMA Company.

However, BKPM Regulation 13/2017 does not set out a specific deadline for this conversion and it is questionable how BKPM plans to enforce this requirement.

8. Multiple Lines of Business (Article 30) - New

BKPM Regulation 13/2017 provides that PMA Companies with multiple lines of business, as approved in the Investment Registration (PPM) or Principle Licenses, or Investment Licenses, must apply for all of their Business Licenses in simultaneously.

In the event one of PMA Companies’ businesses is not ready yet to start, that line of business will be cancelled, and the company must apply for a new Investment Registration (PPM) or a new Business License as the case may be for the business classifications when all lines of businesses are ready.

9. Representative Office (Articles 36 and 37)

BKPM Regulation 13/2017 regulates the licenses for the following types of representative offices:

- a. Foreign Company Representative Offices (*Kantor Perwakilan Perusahaan Asing* or “**KPPA**”);
- b. Foreign Trade Company Representative Offices (*Kantor Perwakilan Perusahaan Perdagangan Asing*);
- c. Foreign Construction Services Business Entity Representative Offices (*Kantor Perwakilan Badan Usaha Jasa Konstruksi Asing*); and
- d. Foreign Oil and Gas Company Representative Offices (*Kantor Perwakilan Perusahaan Asing Migas*). – **New**

Previously under the Old BKPM Regulations, the KPPA license was valid for a maximum period of 3 (three) years and could be extended twice with 1 (one) year for each extension.

Under this BKPM Regulation 13/2017, the restriction of a maximum of 2 (two) extensions has been removed. Now the KPPA can be extended in accordance with the validity period mentioned in the appointment letter of the Chief Representative. This may indicate that there is no longer any limit on the extensions of a KPPA, which would be good news for foreign investors.

10. Branch Office Approvals (Article 45 para. (2))

Under this BKPM Regulation 13/2017, applications for the opening of branch offices of companies that are under BKPM authority will be processed by BKPM.

Previous Regulations

BKPM Regulation 13/2017 **replaces** the following previous BKPM regulations (“**Old BKPM Regulations**”):

1. Head of BKPM Regulation No. 8 of 2015 concerning Procedures for Applying for Income-Tax Concessions for Investment in Certain Fields and / or Areas, as amended by Head of BKPM Regulation No. 18 of 2015;
2. Head of BKPM Regulation No. 13 of 2015 concerning Procedures for Applying for Corporate Income-Tax Deductions, as amended by Head of BKPM Regulation No. 19 of 2015;
3. Head of BKPM Regulation No. 14 of 2015 concerning Guidelines and Procedures for Principle Investment Licensing, as has been several times amended and most recently by Head of BKPM Regulation No. 8 of 2016;
4. Head of BKPM Regulation No. 15 of 2015 concerning the Guidelines and Procedures for Investment Licenses and Non-License; and
5. Head of BKPM Regulation No. 16 of 2015 concerning the Guidelines and Procedures for Investment Facilities Services.

Transitional Provisions

Lastly, by the issuance of this BKPM Regulation 13/2017:

- a. All of the PMA Companies which obtained a PPM issued under Head of BKPM Regulation No. 12 of 2009 on Guidelines and Procedures for Capital Investment Licensing must apply for a Business License within six months after the effective date of this regulation;
- b. Principle Licenses issued before the issuance of BKPM Regulation 13/2017 that are still valid, will still be valid until their expiration date. However, the Business License applications following those licenses will need to follow the provisions of BKPM Regulation 13/2017;
- c. Principle License applications that have been accepted and deemed complete by BKPM and that are still under review when BKPM Regulation 13/2017 becomes effective will be processed in accordance with provisions under BKPM Regulation 13/2017; and
- d. PMA Companies that have obtained a Business License but have not yet fulfilled the large-scale requirements must, if they want to start business as set out in Article 10 paragraph (1) of BKPM Regulation 13/2017, apply for a new PPM and comply with the large-scale requirements.

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