

## NEWSLETTER

4 May 2020

### NEW PROVISIONS ON BUSINESS LICENSING SERVICES THROUGH THE OSS SYSTEM

*Indonesia Investment Coordinating Board Regulation No. 1 of 2020*

### Background

On 30 March 2020, the Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM) issued BKPM Regulation No 1 of 2020 (**BKPM Reg 1/2020**). BKPM Reg 1/2020 was issued as an implementing regulation of Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services and President Instruction No 7 of 2020 on Acceleration of the Ease of Doing Business and was enforced on 1 April 2020.

By the issuance of BKPM Reg 1/2020, among others: (i) business actors will have more detailed guidelines on how to process and obtain a Business Identification Number (*Nomor Induk Berusaha*), which under the new Online Single Submission (**OSS**) system it must be obtained by business actors; (ii) some additional Indonesian Standard Business Classification – *Klasifikasi Baku Lapangan Usaha (KBLI)* (e.g., trading) may not require shareholders of PT PMAs to inject additional investment value of IDR 10 Billion if they add additional certain same qualification KBLI number activity of the PT PMAs; (iii) there are new types of Business License and Commercial/Operational License being introduced to be issued by the OSS system; and (iv) there will be a new business license to be issued by the OSS system if business actors conduct a merger.



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## Main Changes

### 1. **Business Identification Number** (*Nomor Induk Berusaha* or NIB)

BKPM Reg 1 of 2020 defines NIB as the identity of business actors, issued upon registration by business actors. Differently from the previous regulation which did not provide details on the guidelines, BKPM Reg 1/2020 specifically sets out guidelines for business actors to obtain NIBs.

BKPM Reg 1/2020 requires business actors to submit an application to obtain NIBs through the OSS system. Such application consists of the following data: (i) a company identity (i.e., name of company, address, objectives and purpose, shareholders and management, and tax payment registration number or NPWP), (ii) business data, and (iii) a KBLI data.

Upon submission of such application, the OSS system will validate such application data. After the application data is declared valid by the OSS, such business actors can complete the registration of NIBs.

Business actors who have not obtained an NIB but they have (i) a company registration, (ii) an import identification numbers, and (iii) a custom access, that are still valid, or if the documents above already expired or there are any changes of data in the documents above, such business actors must apply for the NIBs registration.

### 2. **Investment Value and Capital Requirement of Foreign Investment Company** (*PT Penanaman Modal Asing* or PT PMA);

BKPM Reg 1/2020 requires a PT PMA to comply with the minimum investment value and capital requirement as stipulated under the regulation to obtain business license.

Further, BKPM Reg 1/2020 also requires a PT PMA to fulfill the total investment value of more than IDR 10 Billion (excluding the

value of land and buildings), which it applies for each line of business activity per KBLI per project location. The requirement of minimum issued and paid-up capital amount for a PT PMA under BKPM Reg 1/2020 remains the same, which the amount must be at least IDR 2,5 Billion. However, BKPM Reg 1/2020 now provides certain exception on additional investment when the company is engaged in a Large Scale Trading (*Perdagangan Besar*).

**Large Scale Trading (*Perdagangan Besar*)**. A PT PMA that is engaged in a large-scale trading sector must meet the total investment value of more than IDR 10 Billion (excluding land and buildings), which it applies for each 2 (two) initial digits of the KBLI number.

For example, if a PT PMA carries out trading activity (export or local sales) of fruits under KBLI number 46312 and wants to add additional trading activity of vegetables under KBLI number 46313, such PT PMA must meet only minimum IDR 10 billion of total investment value (i.e., the minimum investment will not be doubled to IDR 20 billion). As trading activity of fruits and trading activity of vegetables have similar 2 (two) initial digits of the KBLI number i.e.: 46312 and 46313. However, this will not apply where the 2 (two) initial digits of the KBLI number are different.

### **Food and Beverage Services and Construction**

Further, previously, BKPM does not specifically regulate the total investment value for a PT PMA that is engaged in food and beverage services and in construction services. Under BKPM Reg 1/2020, it is now clear that a PT PMA that is engaged in food and beverage services and construction service must meet the total investment value of more than: (i) IDR 10 Billion (excluding land and buildings) within one regency/municipality, for food and beverage services companies; and (ii) IDR 10 billion (excluding land and buildings) for each construction activity.

However, BKPM Reg 1/2020 states that the investment value and capital requirement do not apply to: (i) a PT PMA that has obtained Capital Investment license that is still valid prior to the issuance of Government Regulation No 24 of 2018 and (ii) such PT PMA has not changed any business activity.

### **3. Merging of Business**

Unlike the previous regulation, BKPM Reg 1/2020 sets out the provisions related to merger. Under BKPM Reg 1/2020, business actors can carry out merger under the business license. The merger can be carried out upon the Merger Deed has been approved by the Ministry of Law and Human Rights (**MOLHR**) through legal administration system (*Administrasi Hukum Umum* or AHU).

Upon the approval from MOLHR, the OSS system will receive the Merger Deed from AHU system and then OSS system will issue a Merger Business License. Note that the surviving entity must still fulfill the commitment against the business license and/or commercial/operational license and requirement of business sectors in accordance with prevailing laws and regulations.

## **Other Provisions**

### **1. Types of Business License and Commercial/Operational License**

BKPM Reg 1/2020 sets out new types of issuance of business license and commercial/operational license which are now divided into the following types:

- (a) Type 1: Business License and Commercial/Operational License issued without commitment fulfillment.
- (b) Type 2: Business License and Commercial/Operational License with technical requirements.

- (c) Type 3: Business License and Commercial/Operational License with fee requirements; and
- (d) Type 4: Business License and Commercial/Operational License with technical and fee requirements.

In relation to type 1, the OSS authority will issue a business license and commercial/operational license that will be effective immediately but in relation to type 2, 3, and 4, the OSS authority will issue an effective business license and commercial/operational license once the requirements are completed by the applicant. Further details in relation to types of business license and commercial/operational license as elaborated above will be regulated by the Head of BKPM.

2. The appendix of BKPM Reg 1/2020 also provides clarity on format of NIB, Business License, and Commercial/Operational License issued by OSS system.

### 3. Representative Office

- Under the previous BKPM regulations, a Foreign Representative Office (*Kantor Perwakilan Perusahaan Asing* or KPPA) must only obtain a KPPA License (*Izin KPPA*) to operate in Indonesia.

Meanwhile under BKPM Reg 1/2020, for a KPPA to operate in Indonesia, it must obtain a Registration for Foreign Representative Office (*Pendaftaran KPPA*) and an NIB.

- Differently from the previous BKPM Regulation which was silent on *Kantor Perwakilan Perusahaan Perdagangan Asing/KP3A* provisions, BKPM Reg 1/2020 also sets out provisions related to KP3A. Based on BKPM Reg 1/2020, a KP3A must obtain a KP3A Business License and an NIB in order to operate in Indonesia.

These additional provisions on KP3A Business License in BKPM Reg 1/2020 are in line with provisions of Minister

of Trade Regulation No 8 of 2020 on Electronically Integrated Business Licensing Services in Trade Sector.

#### **4. Transitional Provisions**

BKPM Reg 1/2020 sets out the following transitional provisions:

- Provisions under the Principle Licenses, Investment Registration, Investment Licenses, and Business License and/or Commercial License that were issued before the issuance of BKPM Reg 1/2020 are still valid as long as they do not conflict with or are not specifically regulated under the regulation.
- Business actors who have existing a Business License and/or Commercial License prior to the issuance of BKPM Reg 1/2020 but require a new Business License and/or Commercial License for business expansion, must apply for the relevant license through the OSS system by submitting the relevant data and information.

## **Closing**

BKPM Reg 1/2020 is a positive development as it provides clarity on items, which in practice usually being solved by an unwritten policy of BKPM. Further, as BKPM Reg 1/2020 only sets ground provisions for types of business license and commercial/operational license as discussed above, we expect further BKPM regulations will be issued later on to regulate more details on types of business license and commercial/operational license and also its requirement and application process.