



Guidelines and Procedures for Investment Licensing and Facilities

by Margareth Nita Gunawan



In order to implement Presidential Regulation No 91 of 2017 regarding The Acceleration of Business Operations, the Chairman of the Investment Coordinating Board (“BKPM”) has issued Regulation No. 13 of 2017 on Guideline and Procedure for Investment Licensing and Facilities (“BKPM Regulation No. 13/2017”) which repeals and replaces the previous regulation. Guidelines and Procedures for Investment Licensing and Facilities as governed by this BKPM Regulation No.13/2017 is intended as a guide for central PTSP officials in BKPM, Provincial DPMPSTP, DPMPSTP Regency / City, KEK Administrator, KPBPB Management Board, business actors and the public.

As the official codification of the above-mentioned five regulations, Regulation No.13/2017 specifically addresses the following matters:

1. Scope of regulation and distribution of authorities;
2. Investment licensing provisions and procedures;
3. Licensing provisions and procedures for representative and branch offices;
4. Provisions and procedures for the application of tax and customs facilities;
5. Provisions and procedures for the issuance of Importer Identification Numbers and immigration facilities; and
6. Priority services.

Regulation No.13/2017 sets out various guidelines and procedures which relate to the provision of the various licensing services and investment facilities for businesses that fall within the scope of this regulation.

Licensing services encompass certain matters like Investment registration (this license replaces the principle license which was introduced under the Previous Regulations); business licensing; and representative office licensing. Investment facilities are divided into fiscal and non-fiscal facilities. Fiscal facilities involve import-duty exemptions; income-tax deductions for investment in certain business sectors and/or areas; and corporate income-tax deductions, while non-fiscal facilities involve immigration-service facilities; API; and establishment of branch offices.

Investment licensing provisions and procedures, as set out under Regulation No. 13/2017, comprise: 1) General provisions; 2) Investment registration provisions and procedures and 3) Business license provisions and procedures.

The prioritized services will be implemented through completion of requirements set out in a checklist form. These services can be applied by investors that are located in certain areas. The checklist will need to be registered at BKPM after which a Statement Letter of Fulfilment of Licensing Requirements Registry is issued.

The Regulation No. 13/2017 governing such a facility was not regulated by the previous regulation. Basically, to start production/operation, both PMDN and PMA must have a business license, but this regulation allows for investments within certain business fields to be directly awarded business licenses by BKPM without the need to first obtain an investment registration, provided that such businesses:

1. Are in the form of domestic business entities;
2. Have secured Taxpayer Identification Numbers;
3. Are in possession of an office/place of business;
4. Do not require any form of construction activities; and
5. Do not require any customs-duty facility relating to the importation of capital goods.

BKPM Regulation No. 13/2017 came into force on 2 January 2018 for central PTSP at BKPM and entered into force on 2 July 2018 for PTSPs at all other levels.

New BKPM Regulation on Guidelines and Procedures for Controlling the Implementation of Investment

Eduardy Armandana Eddin

On 4 December 2017, the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”) issued Chairman of BKPM Regulation No. 14 of 2017 regarding Guidelines and Procedures for Controlling the Implementation of Investment (“**BKPM Regulation No. 14/2017**”). This regulation redefines a number of provisions as previously regulated under Chairman of BKPM Regulation No. 17 of 2015 in respect of Guidelines and Procedures for Controlling the Implementation of Investment (“**BKPM Regulation No. 17/2015**”). BKPM Regulation No. 14/2017 has been issued to accommodate the new Chairman of BKPM Regulation No. 13 of 2017 regarding Capital Investment Licensing and Facilities.

According to BKPM Regulation No. 14/2017 every company that holds a checklist issued by BKPM should report on their development in accordance with their commitment under the checklist monthly until they start construction. After the companies start construction, they will go to a quarterly investment activity report (*Laporan Kegiatan Penanaman Modal* or “**LKPM**”). Based on article 11 BKPM Regulation No. 14/2017, the submitted LKPM can only be corrected twice during the same submission period. This differs from BKPM Regulation 17/2015 which has no limitation for corrections to the LKPM.

Further, BKPM Regulation No. 14/2017 stipulates that the regional representative offices shall submit the activity report every six months to the BKPM within the following periods: (i) the first semester report is submitted no later than the 10th of July of the year; and (ii) the second semester report is submitted no later than the 10th of January of the following year (“**Semi-Annual**”). This regulation also specifies the reporting obligations for construction representative offices and oil and gas representative office, based on article 12 BKPM Regulation No. 14/2017 according to which the construction representative office and oil and gas representative office must submit Semi-Annual reports to BKPM.

The investment approval that has not been realised cannot be cancelled anymore by the relevant authority and the holder of



the approval. BKPM Regulation 14/2017 removes the cancellation approval concept whether or not investment approvals have been realised. The available options are then only either revocation by the authority on the basis of an application from the approval holder followed by liquidation, or revocation not followed by liquidation.

Moreover, in the event that the company:

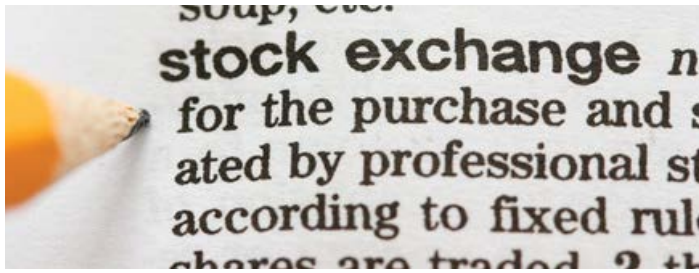
- (i) does not submit the investment activity report in accordance with the provisions of the implementation of the investment for 3 (three) periods; and / or
- (ii) there is a report from the authorized technical agency and / or the relevant institution concerning the violation of the laws and regulations;

administrative sanctions in the form of a first and last warning may be imposed. The companies shall respond in writing and follow-up within 30 (thirty) calendar days from the date of the issuance of the warning letter. Otherwise, the revocation of investment approval and/or investment facility shall be imposed on them.

Furthermore, BKPM Regulation No. 14/2017 became effective on 2 January 2018 for BKPM and will do so on 2 July 2018 for provincial/regional investment boards. With the enactment of BKPM Regulation No. 14/2017, BKPM Regulation No. 17/2015 has been revoked and no longer valid.

Circular Letter of Financial Service Authority for Securities Companies Conducting Business as Underwriter and Securities Broker

by Pratiwi Widyastuti



Securities Companies are one of the many Financial Service Institutions supporting the Indonesian capital market industry, especially in developing trade and the provision of goods and services. They also have influence on the rotation of funds and information, supporting the system and activities of the Stock Exchange as part of capital markets and as business units, and increasing the investment activities in capital markets to sustain the national economy. Therefore, governance is required based on the governance principle to maintain the role of Securities Companies in the Indonesian financial sector. Furthermore, through the implementation of governance, they are able to survive various crises and grow sustainably.

On 6 December 2017, the Financial Service Authority (“OJK”) issued a Circular Letter No. 55/SEOJK.04/2017 regarding the Report on the Implementation of Corporate Governance Securities Companies Conducting Business as Underwriter and Securities Broker. It was released to facilitate the provision of Article 55 of OJK Regulation No. 57/POJK.04/2017 concerning the Implementation of Corporate Governance Securities Conducting Business and Securities Brokerage. In short, to give guidance on the implementation of reporting on the governance such companies. The subjects of this circulate letter are Securities Companies conducting Business as Underwriter and/or Securities Broker which are members of the Stock Exchange.

In general, there are two main topics explained here; those are the governance of securities companies and the guideline on the report of the governance implementation.

The implementation of the governance of Securities Companies is based on five principles of governance. First, transparency, i.e.

openness in the process of taking decisions and the disclosure of information. Second, accountability, i.e. the clarity of function, structure, system, and accountability of the company’s organ so that the company’s management runs in a transparent, fair, effective, and efficient way. Third, responsibility, i.e. the compliance of the company’s management towards the regulatory provisions. Fourth, independence, i.e. a condition where the company is managed professionally without any conflict of interest and influence or pressure from any parties that are not in accordance with regulatory provisions. Last but not least, fairness, i.e. justice and equality in complying with the rights of the Stakeholders arising based on agreements and regulatory provisions.

The governance report contains at least three parts. Those are transparency, self-assessment, and action plan. Every part has their own details.

There are certain things exposed in relation to transparency. The disclosure of governance implementation, share ownership by the members of Board of Directors (BoD) and/or Board of Commissionaire (BoC), financial or family relationships between one Securities Companies’ organ and another, the settlement of internal and legal issues, conflicts of interest, and any other disclosure of important matters must be contained in the report.

The self-assessment is used as the threshold to assess on how far the Securities Companies apply governance based on the principle of governance. It is held annually in the period between January and December. The evaluation is set forth in the worksheet by involving the assessment of structure, process, and outcome of the governance. If the Securities Company obtains four or five for the Composite Rank factor, they must arrange and deliver to the OJK an action plan containing comprehensive and systematic remedial steps along with a target implementation time. The action plan must include the corrective action needed, completion target, and the completion constraints. The OJK may evaluate the action delivered by the Securities Company.

The delivery procedures of the report on governance implementation are divided into two main steps. Securities Companies must deliver a report that has been signed by the Main Director and Main Commissionaire where the cover letter is delivered in hardcopy and the content in both forms, hardcopy and softcopy. This report once completed as such is then to be conveyed to the OJK.

The Minister of Finance Regulation No. 107/PMK.03/2017 Concerning Dividends Arising from The Investment of Resident Taxpayers in Foreign Business Entities Other Than Publicly Listed Companies

by Alexander Josua Hutagalung

In many countries across the world, governments use the Controlled Foreign Company (“CFC”) to ensure that domestic tax bases are not eroded and to discourage their citizens from shifting their income to jurisdictions that either do not impose tax or that have very low tax rates. In many jurisdictions, a foreign company would only qualify as a CFC if the tax rate in the CFC’s home jurisdiction were lower than the rate in the jurisdiction of its controller. Different jurisdictions have different rules and regulations around the types of income from CFC’s that are taxed.

The Minister of Finance has established the CFC rules through the issuance of regulation number 107/PMK.03/2017 which is dated and effective as of 27 July 2017, and applicable from fiscal year 2017. This regulation revokes Minister of Finance regulation number 164/KMK.03/2002 regarding Foreign Tax Credits (“FTC”) for dividends paid by a CFC. This regulation explicitly mentions the criteria of direct and indirect CFC as follows: (i) a direct CFC is a foreign company that is owned by a Resident taxpayer, or together with other Resident taxpayer(s), with direct ownership of at least 50% of the total paid-in share capital; (b) an indirect CFC is a foreign company at least 50% of whose shares are collectively owned by a resident taxpayer and another resident taxpayer through direct or indirect CFC or collectively owned by direct and/or indirect CFC.

As stated in Article 4 of this regulation, the amount of Deemed Dividend shall be calculated by way of multiplying the percentage of investment of a resident taxpayer in a directly-controlled Non-stock exchange CFC with the basis for imposition of



Deemed Dividend. In the event that a directly-controlled Non-stock exchange CFC has no obligation to submit an annual income tax return, or there is no provision on the deadline for the submission of an annual income tax return, the acquisition time of Deemed Dividends as above-mentioned shall be stipulated at the end of the seventh month following the end of the tax year concerned.

Another important feature of this regulation is that Deemed Dividend can be offset against the actual dividend received from the direct CFC within the past 5 (five) consecutive years. In the case that the actual dividend received is greater than the Deemed Dividend, the discrepancy is subject to income tax and shall be declared in the annual income tax return for the fiscal year when the actual dividend is received.