



The Funding of Pension Funds

by Margareth Nita Gunawan

The Financial Services Authority (*Otoritas Jasa Keuangan* "OJK") recently issued Regulation of the Financial Service Authority No. 8/POJK.5/2018 regarding The Funding of Pension Funds ("OJK Regulation No. 8/2018"). The pension funds which are used to manage and run programs that organize or provide pension benefits and other benefits to pension fund participants need to be regulated. This is in order to provide a guarantee of sustainability of the income of the participant at the time of retirement or eligibility if the participant dies. OJK Regulation No. 8/2018 has been in force since 31 May 2018.

The OJK Regulation No. 8/2018 requires administrators of employer pension funds (Dana Pensiun Pemberi Kerja "DPPK") to report the funding quality of Defined Benefit Pension Programs (Program Pensiun Manfaat Pasti "PPMP") to the OJK.

The quality of funding covers the following below:

1. if the DPPK holding the PPMP is in the condition of the Fulfilled Fund;
2. if the Wealth for Funding is less than the Actuarial Value and not less than the Solvency Liability; and
3. if Wealth for Funding is less than the Solvency Liability.

OJK Regulation No. 8/2018 requires the DPPK which organizes PPMP and Defined Contribution Pension Plans (Program Pensiun Iuran Pasti "PPIP") to maintain a "fulfilled funding" status. It authorizes participants in the DPPK which organize PPMP and PPIP to increase their accumulated funds in the form of voluntary participant contributions. These contributions should be based on written declarations that must address the following areas at least: 1) Contribution amounts; 2) Contribution payment frequencies; and 3) Contribution payment starting dates.



OJK Regulation No. 8/2018 authorizes the DPPK to organize Other Defined Benefit Programs (Program Manfaat Lain Manfaat Pasti) and Other Defined Contribution Benefit Programs (Program Manfaat Lain Iuran Pasti) for which the relevant funding is the responsibility of the employer.

It also requires the DPPK which manages various pension plans to submit periodic actuary reports to the OJK in hardcopy or softcopy formats by no later than the 30 April of the year following the relevant reporting period.

Those in violation of OJK Regulation No. 8/2018 will be subjected to administrative sanctions, as detailed below:

1. written warning;
2. temporary suspension of partial or entire business activities; and/or
3. license revocation.

OJK Regulation No. 8/2018 provides that in the event the DPPK has administered another Benefit Program prior to the enactment of the Financial Services Authority Regulation No. 5/POJK.05 /2017 regarding Premiums, Pension Benefits and Other Benefits Organized by Pension Funds and funding mechanism of the Other Benefit Program administered from Surplus, the Pension Fund may continue to fund the program of Other Benefits.

Government Regulation No. 24 of 2018 on the Electronically Integrated Business Licensing Service

by Melisa Kristian



In an effort to accelerate and improve the investment and business climate in Indonesia, Government Regulation No. 24 of 2018 on the Electronically Integrated Business Licensing Service ("**Government Regulation No. 24 of 2018**") has been promulgated. This regulation introduces Online Single Submission ("**OSS**") the newly launched electronic licensing system that was previously introduced by Government Regulation No. 91 of 2017 concerning the Acceleration of Business Implementation ("**Government Regulation No 91 of 2017**").

The OSS system ("**OSS System**") is intended to simplify the business licensing process, which hopefully will result in increased efficiency in obtaining business licences. The OSS System integrates and becomes the gateway of the existing government service systems in ministries/government bodies and regional government. It is the single reference in business licensing implementation. The system is managed by the OSS Body (the "**OSS Body**") who is in power to:

- issue business licences through the OSS System;
- stipulate policies in relation to business licensing through the OSS System;
- set out a statement of practice for business licence issuance through the OSS System;
- manage and develop the OSS System; and
- cooperate with other parties in implementing, managing, and developing the OSS System.

The above authorities must be exercised in coordination with ministers, chairmen of government bodies, governors, and/or regents/mayors ("**Government Authorities**") and such coordination must be facilitated by the coordinating minister for economic affairs.

Government Regulation No. 24 of 2018 divides business permits into two major classifications, business licence or izin usaha ("**Business Licence**") and commercial or operational licence or izin komersial atau operasional ("**Commercial or Operational Licence**"). A Business Licence is issued by the OSS Body for and on behalf of Government Authorities after the entrepreneur has conducted registration, and to begin carrying out business and/or activities up until commercial or operation performance commences by fulfilling any requirements and/or commitments ("**Commitment**")¹. A Commercial or Operational Licence is issued by the OSS Body in the same manner, although it is issued after the entrepreneur has obtained a Business Licence and for a different purpose, which is to conduct commercial or operational activities. These licences may be applied for by individuals or non-individual entities. Despite the licences and other related documents still being issued by the relevant Government Authorities, the OSS Body for and on behalf of it will process and issue such documents electronically.

The process of business licensing through OSS begins with business registration by accessing the OSS site. The OSS Body will issue a Business Registration Number or Nomor Induk Bisnis ("**NIB**") which is intended to be a business identity and used by entrepreneurs to obtain Business Licences and Commercial or Operational Licences. This number remains valid for the period where the entrepreneurs operate their business and/or activity in accordance with the prevailing laws and regulations. The number is also used as Company Registration Certificate or Tanda Daftar Perusahaan ("**TDP**"), Importer Identification Number or Angka Pengenal Importir ("**API**"), and right of access to customs (*hak akses kepebeanaan*).

Entrepreneurs who have obtained NIB are obliged to acquire a Business Licences. The OSS Body will issue Business Licences based on a Commitment to entrepreneurs. Entrepreneurs in particular who require the infrastructure to perform business activities but do not own or have access to such infrastructure, they will obtain the business licences after the OSS Body has issued a location permit, water location permit, environmental permit, and/or building permit.

The acquisition of business licences is applicable for the entire region of Republic of Indonesia. Entrepreneurs with Business Licences may perform further activities related to the business establishment, such as land procurement, building construction and operation, infrastructure procurement, human resource procurement, and so on, with regard to certain conditions set out by the relevant prevailing laws and regulations.

To fulfil the required standards, certificates, and/or licences, and/or good/service registration, the OSS Body based on a Commitment will issue Commercial and Operational Licences, pursuant to the types of goods and/or services commercialized by the entrepreneurs through the OSS system. Business licences and/or Commercial or Operational Licences will come in effect after the entrepreneurs have fulfilled the Commitment and completed the related payment for business licensing in accordance with the prevailing laws and regulations. The OSS Body will revoke issued Business Licences and/or Commercial or Operational Licences in the event of Commitment non-fulfilment by entrepreneurs.

Although the issuance of licences (such as location permit and environmental licence) is performed by the OSS Body through the OSS system, it must be followed by technical consideration and approval/denial from the relevant Government Authorities and must be in accordance with terms and conditions stipulated by the prevailing laws and regulations in relation to the concerned licences. Technical consideration is generally given based on the required documents provided by the entrepreneurs to the concerned Government Authorities. To ensure efficiency in licence issuance, Government Regulation No. 24 of 2018 sets out a time limitation for the relevant Government Authorities to express their approval or denial of the issued licences. If the Government Authorities do not express such approval or denial within the stipulated time period, the issued licences will come in effect.

Business licensing fees, such as non-tax state revenue (*penerimaan negara bukan pajak*); import duty (*bea masuk*) and/or export duty (*bea keluar*); excise (*cukai*), and/or regional tax or retribution (*pajak or retribusi daerah*) paid by entrepreneurs are a part of the Commitment fulfilment. Payment receipts shall be uploaded to the OSS system. Non-payment will result in Business Licence and Commercial or Operational revocation.

A Business Licence remains in effect as long as the entrepreneurs carry out their business and/or activity, unless stipulated otherwise by law. A Commercial or Operational Licence remains in effect for a period of time set out by the relevant prevailing laws and regulations. Nevertheless, the licences may be returned to the Government Authorities before expiring. However, returning the license shall not relieve the concerned entrepreneurs of their obligations, which are embedded in such licences.

Problems and obstacles in relation to business licensing shall be solved through the OSS System by the concerned Government Authorities in accordance with the prevailing laws and regulations. Reports and/or complaints from citizens may be filed with the Government Authorities or attorney (*kejaksaan*) or the Indonesian national police regarding any deviation or abuse of power committed in the implementation of the OSS System. Administrative process must be given precedence in settling such a deviation or abuse of power.

Business licences which have been applied for by entrepreneurs before the regulation was promulgated and have not been issued must be processed through the OSS System. In the event where a new Business Licence and/or Commercial or Operational Licence is needed for business expansion, the application must be conducted through the OSS System in accordance with Government Regulation No. 24 of 2018. Business Licences and/or Commercial or Operational Licences that have been issued and are in effect shall remain in effect and registered to the OSS System.

¹ Article 1 paragraph 10 defines commitment as a statement made by the related entrepreneurs to fulfil the requirements to obtain Business Licences and/or Commercial or Operational Licences.

Integrated System for National Single Data and Information Submission

by Gilbert Hansel

On 31 May 2018, the Government of the Republic of Indonesia issued Presidential Regulation No. 44 of 2018 regarding the Indonesian National Single Window, (“INSW”). INSW is a national system integration that enables single data and information submission, single data processing and information synchronisation, and sole discretion for the granting of customs clearance and disposal of goods in accordance with applicable regulations. This system has been in operation since 2007 as a follow-up to the Bali Concord declaration of 2003, to guarantee the Ease of Doing Business in Indonesia, particularly relating to import and export customs documents.



The INSW allows users to manage export / import related documents through a single platform only, integrating export and import licensing among 15 institutions:

1. Ministry of Trade;
2. Ministry of Industry;
3. Ministry of Transportation;
4. Ministry of Agriculture;
5. Ministry of Communications and Informatics;
6. Ministry of Marine and Fisheries;
7. Ministry of Health;
8. Ministry of Environment and Forestry;
9. Ministry of Energy and Mineral Resources;
10. Ministry of Defense;
11. Police of the Republic of Indonesia;
12. National Agency for Drug and Food Control;
13. Nuclear Power Supervisory Agency;
14. Investment Coordinating Board; and
15. Bank Indonesia.

This INSW system can be accessed through www.insw.go.id. Management of the INSW system is carried out by the National Single Window Agency, the agency performs the following functions:

1. the formulation and implementation of guidelines for the management of INSW and SINSW Operation;
2. providing facilities for submission, processing and approval of the handling of customs documents, quarantine documents, licensing documents, port/airport documents, and other documents related to exports and imports;
3. providing facilities for the delivery, inclusion, and abolition of post border trading regulations on SINSW;

4. simplification and standardization in the INSW concerning the implementation of policies related to exports and imports;
5. preparing technical support through SINSW in order to improve trade facility, monitoring of goods traffic, and optimizing state revenues relating to export/import activities;
6. implementation of information management on legislation as the main reference in the filing of customs documents for export and / or import activities;
7. implementation of data governance and Electronic Information related to export and / or import;
8. implementation of communication, coordination, and cooperation of the National Single Window system in a national and international forum;
9. coordination of task implementation, guidance, and provision of administrative and technical support to all organizational elements within the National Single Window Institution;
10. the harmonization and synchronization of business processes between ministries and agencies in the implementation of the INSW; and
11. the implementation of other functions provided by the Minister.

With the enactment of this presidential regulation, Presidential Regulation Number 10 of 2008 on the Use of Electronic Systems in the Framework of Indonesia National Single Window as amended by Presidential Regulation Number 35 of 2012, and Presidential Regulation Number 76 of 2014 on Indonesia Portal Manager National Single Window has been revoked and.

List of Business Fields that may be Granted a Corporate Income Tax Reduction Facility Pursuant to Regulation of Capital Investment Coordinating Board No. 5 Year 2018

by Budi Wibowo



The Capital Investment Coordinating Board (**BKPM**) has issued a Regulation of Capital Investment Coordinating Board No. 5 Year 2018 concerning List of Business Fields and Pioneer Industry Classification that may be Granted with a Corporate Income Tax Reduction Facility, along with Guidelines and Procedures on Issuance of Corporate Income Tax Reduction Facility (**Regulation of BKPM No. 5/2018**). This regulation was issued on 25 May 2018 and entered into force on its issuance date.

Pursuant to Regulation of BKPM No. 5/2018, in order to obtain a 100% (one hundred percent) reduction on the indebted corporate income tax (**Tax Holiday**), a company must fulfil the following criteria: (i) a company's business field is a pioneer industry; (ii) a company is a new capital investment; (iii) the minimum value of the capital investment plan is Rp500.000.000.000,- (five hundred billion Rupiah); (iv) a company must fulfil the stipulations on comparison of debt and capital as regulated in the related Regulation of the Finance Minister; (v) the Minister of Finance has never rejected or issued a rejection notification concerning corporate tax income reduction; and (vi) a company is an Indonesian legal entity. In addition, before obtaining a Tax Holiday, every shareholder of the company who is an Indonesian Taxpayer must fulfil their taxation obligations in the first place.

There are 17 (seventeen) types of business field which are acknowledged as a pioneer industry under Regulation of BKPM No. 5/2018, such as upstream base metal industry, pharmaceutical raw material industry, power plant industry, economic infrastructure, etc. If a company wants the Tax Holiday facility, it has to submit an application before prior to the start of its production activities, specifically along with the application for capital investment registration, or 1 (one) year at the latest after the issuance of the capital investment registration. A request for the Tax Holiday facility for any business fields beside the aforementioned fields may also be lodged as long as the applicant can prove that their business field is a pioneer industry as intended in Regulation of BKPM No. 5/2018.

Regulation of BKPM No. 5/2018 recognizes the In Advance Confirmation system. The In Advance Confirmation system permits confirmation of whether a company may obtain a Tax Holiday facility or not. However, this confirmation is not a basis for a company to obtain a Tax Holiday facility, hence, the company needs to apply further to the Minister of Finance to obtain a Tax Holiday Facility.