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Investment Regulatory Update: BKPM Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services.

The idea of risk-based business licensing was firstly introduced under Law No. 11 of 2020 on Job Creation (“**Omnibus Law**”) where further its enforcement is regulated under Government Regulation No. 5 of 2021 on the Organization of Risk-Based Business Licensing. On this, the Investment Coordinating Board (Badan Koordinasi Penanaman Modal – “**BKPM**”) then issued BKPM Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities (“**BKPM Regulation 4/2021**”) to ensure the legal certainty during the implementation of risk-based business licensing. By the issuance of BKPM Regulation 4/2021, BKPM Regulation No. 6 of 2018 on Guidelines and Procedures for Investment Licensing and Facilities, as amended by Regulation of the BKPM No. 5 of 2019 and BKPM Regulation No. 1 of 2020 on Guidelines for the Implementation of Electronically Integrated Licensing Services have now been revoked.

BKPM Regulation 4/2021 addresses several areas, among others, (i) Business licensing services; (ii) Implementation of business licensing through the Online Single Submission (“**OSS**”) system; (iii) Investment facilities; (iv) Risk-based business licensing services under certain conditions; etc. However, in this Newsletter, Solis will focus more to discuss on the following issues:

1. Business Licensing Services: investment and capital value requirements for micro, small and medium scale enterprises (*Usaha Mikro, Kecil dan Menengah* – “**UMKM**”) and large scale businesses; and
2. Investment Facilities: fiscal and non-fiscal.

I. **Business Licensing Services: Investment and Capital Requirements for UMKM and Large Scale Businesses**

A. Investment and Capital Requirements for UMKM

Article 11 of BKPM Regulation 4/2021 set out certain business capital criteria to qualifying for an UMKM, as follows:

1. For Micro-scale enterprises, a business capital of **up to** IDR 1,000,000,000 (one billion Rupiah) excluding land and building which is used for business premise.
 2. For Small-scale enterprises, a business capital of **more than** IDR 1,000,000,000 (one billion Rupiah) up to IDR 5,000,000,000 (five billion Rupiah), excluding land and building which is used for business premise.
 3. For Medium-scale enterprises, a business capital of **more than** IDR 5,000,000,000 (five billion Rupiah) up to IDR 10,000,000,000 (ten billion Rupiah) excluding land and building which is used for business premise.
- B. Investment and Capital Requirements for Large-Scale Business

For businesses having **capital** more than the above, they will be qualified as a Large-Scale Business. In addition to this, please note that Article 12 paragraph (1) of BKPM Regulation 4/2021 sets out that a foreign investment (“PMA”) company is deemed a Large-Scale Business which must follow the requirement of minimum **investment** value of a Large-Scale Business (unless otherwise specified by applicable laws and regulations). Please do not confuse the term ‘capital’ and ‘investment’ used in this newsletter. The term capital refers to the capital injection made by the founders/shareholders of the company to the company, while the term investment refers to the investment made by the company to the business.

A minimum **investment** value requirement for a PMA company is **more than** IDR 10,000,000,000 (ten billion Rupiah), **excluding** land and building **per** five-digit Indonesian Standard Industrial Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* – “KBLI”) business field **per** project location, with the exception that:

1. For wholesale business:
Total investment must be more than IDR 10,000,000,000 (ten billion Rupiah) excluding land and buildings, and applicable as **per the first four digits of the relevant KBLI**. Example: **45101** (wholesale of new cars) and **45102** (wholesale of used cars), since the first 4 digits are the same, they may be consolidated under one investment. **However**, if a company wants to have **45101** (wholesale of new cars) and **45301** (wholesale of car spareparts), since the first 4 digits are different, separate minimum investment is required for each KBLI.
2. For food and beverages business:
Total investment must be more than IDR 10,000,000,000 (ten billion Rupiah) excluding land and buildings, and applicable as **per the first two digits of the relevant KBLI per one-point location**.
3. For construction services business:
Total investment must be more than IDR 10,000,000,000 (ten billion Rupiah) excluding land and buildings **for one activity** (i.e. construction consultancy services, or consultation work, or integrated construction work), applies **per the first four digits of the relevant KBLI**.

4. For industrial business activities (which produces goods under different 5 digits KBLI **but produced under 1 (one) production line**):

Total investment must be more than IDR 10,000,000,000 (ten billion Rupiah) excluding land and buildings.

5. For property development and exploitation:
 - a. For property that takes the form of complete buildings or integrated housing complexes, the relevant investment value must be more than IDR 10,000,000 (ten billion Rupiah), **including** land and buildings; or
 - b. For property units not in one building or not in integrated housing complexes, the relevant investment value must be greater than IDR 10,000,000,000 (ten billion Rupiah) **excluding** land and buildings.

In addition to the above, the paid up and issued **capital** for a PMA company must be at least IDR 10,000,000,000 (ten billion Rupiah) (unless otherwise specified by the applicable laws and regulations).

II. Investment Facilities: Fiscal and Non-Fiscal

BKPM Regulation 4/2021 also regulates some investment facilities provided for business actors who has (i) Business Registration Number (*NIB*); (ii) statement or proof of standard of implementation of business activities fulfillment (*Sertifikat Standar*); and/or (iii) Licenses; may obtain the following investment facilities by submitting an application via the OSS system:

A. Fiscal Related Investment Facilities

Some fiscal related investment facilities provided under BKPM Regulation 4/2021 are as set out below:

1. **Import Duty Exemption:**

The Import-duty exemptions investment facility is applicable for the following items, as long as they are not yet manufactured locally, or has been manufactured locally but has not satisfied the required specification, or has been manufactured locally but is not sufficient to meet industrial demand:

- a. Machinery (excluding spare parts) for industrial construction or development;
- b. Goods and materials for industrial construction or development;
- c. Capital goods for construction or development of power plants for public interest; and
- d. Exemptions or relief from import duty and/or exemptions from value-added tax for imports of goods of a *kontrak karya* or a coal mining concession work agreement.

2. **Income-tax (*Pajak Penghasilan* – “PPH”) facilities for investments in certain business fields and/or areas:**

The provisions and procedures to obtain the PPH facilities for investments in certain business fields and/or areas is in accordance with the provisions set out under the relevant regulations, for example, Minister of Finance Regulation No. 11/PMK.010/2020 on the Implementation of Government Regulation No. 78 of 2019 on Corporate

Income-Tax Facilities for Investments in Certain Business Fields and/or Areas (as amended). Further consultation with a qualified tax consultant is required on this area.

3. Reductions in corporate PPh and PPh facilities for investments in certain business fields and/or areas located in Special Economic Zones (*Kawasan Ekonomi Khusus/KEK*):

The provisions and procedures to obtain this investment facility is in accordance with the provisions set out under the relevant regulations, for example, Minister of Finance Regulation No. 237/PMK.010/2020 on Tax, Customs and Excise Treatments in Special Economic Zones, as amended by Minister of Finance Regulation No. 33/PMK.010/2021. Further consultation with a qualified tax consultant is required on this area.

B. Non-Fiscal Related Investment Facilities

The Non-Fiscal related investment facilities are given with regard to the ease of service and permits in for immigration facilities. This facility is in a form of immigration recommendation specifically for PMA Company, with the following type:

1. Recommendations on the changes to the immigration status, from visitor-stay permits to limited-stay permits; and
2. Recommendations relating to changes from limited-stay permits to permanent-stay permits.

The above is aimed to provide a limited overview on the investment climate in Indonesia from legal perspective. Please note that in practice, active consultation and engagement with BKPM/OSS official is required for business actors in order to keep up with the dynamic implementation of the above regulations by the BKPM/OSS, particularly since the BKPM Regulation 4/2021 is still new and in a transition period.

*The above is prepared by Solis Advisors – Attorneys and Consultants (“Solis”), an Indonesian based Law Firm. It is only intended to inform generally on the topics covered and should **not** in any way be treated as legal advice or relied upon when making investment or business decisions. If you have any questions/comments on the matter set out above, or other subject(s) you wish to inquire, please contact your usual Solis contact or email us at consult@solis.consulting.*
