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Investment Applications Procedure - New BKPM Regulation

Overview

The capital investment application process in Indonesia has been transformed. The provenance of this overhaul can be traced to Law No. 25 of 2007 on Capital Investment (the Investment Law). Co-produced by the government and House of Representatives, the Investment Law remodels the capital investment system to make it a more streamlined, straightforward, and standardized process. A critical facet of those changes has been the provision of One Door Integrated Service - or 'PTSP' - centers.

Centralization defines PTSPs. Not only will the centers integrate all investment-related information - from application forms to legal information - to help prospective investors understand state regulatory expectations, among other things they assist and guide investors through the application process, issue the approval documents for licensed and non-licensed activities, and also allow increased supervision over the process as whole - capital investment is notorious for the 'triple threat' of *korupsi*, *kolusi*, and *nepotisme*.

The Investment Law's provisions regarding PTSPs are general, and required subsequent implementing regulation(s) to be translated into a reality. Initially, Presidential Regulation No. 27 of 2009 on PTSPs in the Capital Investment Sector was issued on 23 June 2009.

The Presidential Regulation does not specifically implement PTSPs in detail. This is addressed by the subsequent, and most recent document: Head of the Capital Investment Coordinating Board (BKPM) Regulation No. 12 of 2009 on Guidelines and Procedures for Capital Investment Applications (the Regulation, or Regulation 12/2009).

Generally, the Regulation extensively details the capital investment application procedure. Not only does it contain specific provisions relating to all relevant parties in a capital investment - the authority, the investors, the general public, and others - but it also speaks to investment "facilities" which are essentially fiscal preferences for certain activities.

Table of Contents

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Overview	1
The Purpose	2
PTSP Organs	2
Scope of Investment Application Services	2
Investment Application Process under the Regulation	2
Fiscal and Non-Fiscal Facility	3
Forms, Applications, and Licenses	3
Enforcement	3
Conclusion	3

This edition of the Indonesian Law Digest (ILD) will flag the key provisions of the Regulation, with attention to the provisions that relate to investors and the general public as a whole.

For a brief overview of the topic see ILB No. 1273 11/1/2010.

The Purpose

In essence, the Regulation is designed to support local and foreign investment by providing a service to guide investors through capital investment application processes from start to finish. Specifically, there are three rationales behind the making of the Regulation. These include:

- Uniformity of capital investment procedures-the procedures used to be different from one to another as investment application were not integrated;
- Providing the general time limitation for applying investment-related licenses or when those applications must be returned to the applicants by the official authorities, and;
- Achieving a simple, speedy, concise, and transparent service on the part of the official authorities.

PTSP Organs

In short, PTSPs are principally defined by the centralized organization of Licensing and Non-Licensing processes; from the application stage to the issuing stage.

Essentially, there are three organs that implement the PTSP mechanism under this Regulation:

- The BKPM;
- The Provincial Organ in the Capital Investment Sector (or 'PDPPM'), which acts on behalf of Provincial governments, and;
- The Regency / City Organ in the Capital Investment Sector (or 'PDKPM'), which acts on behalf of Regency / City government.

The BKPM centralizes a great deal of the real authority. The Regulation not only assigns it to represent the central government in matters relating to investment applications, but other responsibilities set out in Article 3(2)(b) of the Regulation include:

- Capital investment relating to non-renewable natural resources;
- Capital investment in industries in which there is a national interest, and;
- Capital investment relating to the defense and security of the nation.

Scope of Investment Application Services

Investment applications under this Regulation are generally differentiated into two types of services: licensing and non-

licensing services. Licensing: approval from the central and regional governments with respect to capital investment. Non-licensing: every form of leniency services, fiscal facilities, and information regarding investment.

Of 13 categories of Licensing that the Regulation provides for in Article 13(2), only 5 are governed by Regulation: (1) investment registration; (2) principle investment license; (3) principle on expansion investment license; (4) principle on amendment investment license, and; (5) business license, business license expansion, business license on a merger-type investment, and business license amendment.

'Non-Licensing' contains 9 types of services, yet only 7 types are regulated by this Regulation. These are (1) import duty facility on imported machines, (2) import duty facility on imported goods and materials, (3) recommendation to acquire Income Tax (PPh) facility, (4) Producer-Importer's Identification Number (API-P), (5) Plan for Using Expatriate Labor (RPTKA), (6) Work Visa Recommendation (TA.01), and (7) License to Employ Expatriate Labor (IMTA).

The aforementioned terms are defined extensively in Article 1 of the Regulation.

Investment Application Process under the Regulation

Generally, local and foreign investors go through the same investment application process: submit their investment application to the PTSP center for licensing or non-licensing services; this is done either manually or via the Electronic Licensing and Information Services System (SPIPSE). The SPIPSE is provided and regulated by Head of BKPM Regulation No. 14 of 2009 (see ILB No. 1276 13/1/2010).

Although most processes are standardized, local and foreign investors do have to meet slightly different procedural requirements. Foreign investors have to register with BKPM before they can engage in any investment initiatives within Indonesia. As such, foreigners must fill out the application form provided by Attachment I to Regulation 12/2009. That application requires supporting documents: the company's Deed of Establishment (preferably as a Limited Liability Company-Perusahaan Terbatas) from the Minister of Law and Human Rights, Articles of Association, and a letter of recommendation from the investors' country of origin or embassy in Indonesia (Article 33(3)).

Foreign investors must also obtain a Principle Investment License from the BKPM by fulfilling requirements set out by Article 34 of Regulation 12/2009. However, this obligation is only applicable to those whose businesses utilize fiscal facilities; such businesses are defined by Article 3(2, 3) of the Regulation.

For foreign investors whose businesses are not entitled to 'fiscal facilities', the Regulation grants certain 'non-fiscal facilities'. The difference will be discussed in the subsequent section.

The Regulation similarly obliges local investors to obtain a Principle Investment License if their business(es) fall into the category of 'fiscal facilities' as elaborated by Article 3(2, 3) of the Regulation. The license is to be acquired from the relevant PTSP center.

According to Article 20, once local or foreign investors are prepared for activity and have fulfilled those initial obligations, they are required to submit an application for a Business License to the relevant PTSP center. Investors must additionally provide supporting documents when submitting the application form; the required documents are listed in Article 45 (3) of the Regulation.

Fiscal and Non-Fiscal Facility

There is no doubt that fiscal and non-fiscal facilities are principally intended to attract investors and / or their capital to Indonesia (indeed, the entire regulatory offensive is designed to make the country more conducive to investment as the government moves to embrace Free Trade Agreements).

Article 18 of Regulation 12/2009 details fiscal and non-fiscal facilities. Among other things, fiscal facilities include:

- (1) Import duty facility on imported machines;
- (2) Import duty facility on imported goods and materials, and;
- (3) Recommendation to acquire Income Tax (PPh) facility.

On the other hand, non-fiscal facilities include, among others:

- (1) Producer-Importer's Identification Number (API-P);
- (2) Plan for Using Foreign Expatriate Labor (RPTKA);
- (3) Working Visa Recommendation (TA.01), and;
- (4) License to Employ Expatriate Labor (IMTA).

The fiscal and non-fiscal facilities are further elaborated in Chapter VI of the Regulation.

Forms, Applications, and Licenses

The Regulation includes 45 Attachments. Each of these Attachments is the current copy of the relevant forms that must be submitted to BKPM with regards to capital investment applications. That includes: relevant forms for new applications, business licenses, status change applications, importer numbers, and application forms for the use of foreign employees. It is critical for any business entity preparing to be, or already involved in capital investment in Indonesia to comply with the recent regulatory mandate to submit these applications and meet the new, more sophisticated license-related demands.

Enforcement

The Regulation was issued on 23 December 2009, and has been in force from 2 January 2010.

Conclusion

The raft of regulations released to streamline the investment process in Indonesia clearly reflects - and is a critical facet of - a broader agenda to warmly invite investment in Indonesia on the heels of a series of Free Trade Agreements (FTA), notably the ASEAN-China FTA. Additionally, the increased supervision made possible by a centralized, standardized process will act in hopefully substantial ways to mitigate the corruption that has come to be reflexively associated with capital investment processes in Indonesia. It is further a corollary of the general commitment made by the current and previous government to bureaucratic reform, as it centralizes the entire license operation in PTSP centers, clarifies the regulatory framework, and provides all the relevant, integrated information in one physical location.

At the level of outcomes, it can only be hoped that the Investment Law and its numerous implementing regulations is tantamount to an overhaul of capital investment in Indonesia. At the very least, however, it should help investors to clearly understand their regulatory obligations. 