

An Update on the Changes to the Guidelines and Procedures for Capital Investment Licensing in Indonesia

The Capital Investment Coordination Board (“BKPM”) has released Regulation of the Head of the Capital Investment Coordination Board Number 5 of 2013 concerning Guidelines and Procedures for Capital Investment Licenses and Non Licences (“Perka No. 5/2013”) to replace Regulation of the Head of the Capital Investment Coordination Board Number 12 of 2009 concerning Guidelines and Procedures For Capital Investment Applications (“Perka No. 12/2009”). With Perka No.5/2013, Perka No.12/2009 is declared no longer valid / is revoked. Henceforth, application for capital investment licenses and non-licenses to BKPM must be submitted with reference to Perka No.5/2013.

Perka No.5/2013 was enacted on the 12th April 2013 and came into effect as from 30 (thirty) days after its enactment, i.e. on the 12th May 2013.

However as announced by BKPM, Perka No.5/2013 only came into effect at BKPM on the 27th May 2013, while Perka No.5/2013 must be put into effect by capital investment administrators in provinces, regencies/cities not later than 90 (ninety) days from when Perka No.5/2013 was enacted.

The thoughts behind Perka No.5/2013 are as follows:

- a. simplification of investment license procedures;
- b. implementation of provisions/regulations on lines of business; and
- c. the results of evaluation of the implementation of Perka No.12/2009.

The coming into effect of this Perka No.5/2013 will hopefully bring:

- a. consistency in methods/ procedures for assessment of applications;
- b. consistency in processing times for issuance of licenses;
- c. uniformity in license products issued between capital investment licensing board serving licenses /non licenses in the center, in provinces, or in regencies/cities.

I. REGULATION OF BASIC PRINCIPLES

A. Domestic Capital Investment (“PMDN”)

The total investment value for PMDN starts from 500,000,000 RP (five hundred million Rupiah) the licenses for which must be processed using the Electronic Investment Licensing and Information Services System (“SPIISE”). This provision is in Article 22 paragraph (2) of Perka No.5/2013.

Previously Perka No.12/2009 did not provide a minimum investment value for PMDN.

B. Foreign Capital Investment (“PMA”)

1. a total investment value greater than 10,000,000,000 RP (ten billion Rupiah) or the equivalent in US Dollars beyond land and buildings;
2. a subscribed capital and paid up capital value of at least 2,500,000,000 RP (two billion five hundred million Rupiah) or the equivalent in US Dollars;
3. each shareholder’s participation in the company must be at least 10,000,000 RP (ten million Rupiah) or the equivalent in US Dollars, and the percentage of ownership must be calculated based on the nominal value of shares.

The above provision is in Article 22 paragraph (3) of Perka No. 5/2013, while Perka No.12/2009 did not have a the provision regarding minimum investment value.

C. In the process of issuing the Principle License (*Izin Prinsip*) for a PMDN, the company must make a presentation before the BKPM officials from the *BKPM One Stop Integrated Service* (BKPM PTSP), *Capital Investment Sector Provincial Government Officials One Stop Integrated Service* (PDPPM PTSP), *Capital Investment Sector Regency/City Government Officials One Stop Integrated Service* (PDKPM PTSP), *Free Trade Zone and Free Port One Stop Integrated Service* (KPBPB PTSP), or *Special Economic Zone One Stop Integrated Service* (KEK PTSP) in accordance with their respective competencies in business activities for:

1. trading services; and/or
2. other business sectors as necessary.

This provision is in Article 26 paragraph (2) of Perka No.5/2013.

Note:

Updated information from BKPM states that both PMA and PMDN companies are obliged to present to BKPM officials; this information will be officially issue by BKPM at a later date.

D. The difference in the basic principles for capital investment licenses between Perka No.12/2009 and Perka No.5/2013 is in the simplification of investment license procedures whereby the Capital Investment Registration (*Pendaftaran Penanaman Modal*) has been abolished; so the investor can now submit applications for the Principle License (*Izin Prinsip*) directly and after fulfilling the specific requirements. This Principle License (*Izin Prinsip*) will be followed by an application for a Business Licenses (*Izin Usaha*) as shown in the chart below.

II. NEW REGULATION ON CAPITAL INVESTMENT LICENSING

The following table shows the capital investment licensing procedures governed by Perka No.5/2013:

Stages		Types of Licenses	
1.	Starting Up In Business	1.	Principle License
2.	Expansion	2.	Expansion Principle Licence
3.	Merger	3.	Merger Principle Licence
	Ready for Production/Operation	1.	Business License
		2.	Expansion Business License
		3.	Merger Business License
	Changes	1.	Change Principle License
		2.	Change Business License
	Representative Office	1.	Foreign Company Representative Office (KPPA) License
		2.	Foreign Trading Company Representative Office (UP3A) License

A. Principle License (Starting Up in Business)

According to the provisions in Article 23 paragraph (1) of Perka No. 5/2013 Starting Up in Business has the following interpretations:

1. Establishing a New Business

To start business activities as a PMDN company or PMA company, an investor must have a Principle License (*Izin Prinsip*). Principle Licenses for the manufacturing business sector and Principle Licenses for business sectors other than manufacturing are issued separately.

Under Article 24 paragraph (2) of Perka No.5/2013 a Venture Capital Company (VCC) may not become a shareholder in a large scale PMA/PMDN company.

Furthermore, under Article 24 paragraph (3) of Perka No. 5/2013, it is stipulated that a PMDN company, if shares are owned by a VCC, they must transfer ownership of such shares to a national party within 10 (ten) years.

2. Change of Status

A change of status in Perka No.5/2013 means a change of the company's status from PMDN/local to PMA or PMA to PMDN.

Under Article 28 paragraphs (9) and (12) Perka No.5/2013, if a company which changes its status to a PMA after Perka No. 5/2013 is issued, no later than 1 (one) year as from the issuance of the Principle License (*Izin Prinsip*) as a PMA company, it must be followed by subsidiaries applying for a Principle License (*Izin Prinsip*) as a PMA company. When a company applies for a change of status from PMDN/local to PMA, BKPM will ask for a list of all subsidiary companies from the company concerned which will change their status.

If a subsidiary company has a business sector declared closed to PMA companies, it must assign all of its shares to Indonesian citizens or PMDN companies.

3. Moving Location

This situation applied should a company start its business activities in a new location such as a PMDN in a business sector within the competency of the Provincial/ Regency/City Government as a result of the project location being moved.

As explained earlier, one of the most striking changes in Perka No.5/2013 compared with Perka No.12/2009 is regarding the abolition of the Capital Investment Registration (*Pendaftaran Penanaman Modal*) being the first step for a

PMA company in starting a business activities in Indonesia in accordance with Perka No.12/2009. This is due to the implementation of the Capital Investment Registration (*Pendaftaran Penanaman Modal*) in Perka No.12/2009 being judged as less effective for foreign investors in Indonesia due to the reason that some institutions/agencies did not accept this Capital Investment Registration (*Pendaftaran Penanaman Modal*) as the first license held by a PMA company in starting its business in Indonesia.

The periods for completion of the project as determined in the Principle Licence (*Izin Prinsip*) under Article 24 of Perka No.5/2013 are:

1. maximum of 3 (three) years as from the date of issuance of the Principle Licence (*Izin Prinsip*), except for certain business sectors which need a longer time for completion of the project;
2. extension for a maximum of 3 (three) years (maximum within the period of the project);
3. after the period for the project (3 + 3 years), the minutes of an inspection (*Berita Acara Pemeriksaan/BAP*) will be made, if there is no realization and the company declares that it is still interested in doing business, then a replacement Principle Licence (*Izin Prinsip pengganti*) will be issued subject to the provisions prevailing when the replacement Principle Licence (*Izin Prinsip pengganti*) is issued.

B. Expansion Principle License

Under Article 38 paragraph (1) of Perka No.5/2013, a company which will expand its business sectors must have an Expansion Principle Licence (*Izin Prinsip Perluasan*).

1. Expansion of capital investment in manufacturing business sectors means:
 - a. an increase in capacity for the products with the same KBLI (Indonesian standard classification of fields of business);
 - b. an increase of 30% (thirty percent) over the licensed capacity (cumulatively), and
 - c. expansion in the same location as previous activities.
2. Expansion of capital investment in business sectors other than manufacturing means:
 - a. the addition of new business sectors; and/or
 - b. an increase in production capacity from the licensed capacity at the same location or a different location.

C. Business License (Ready for Production/Operations)

Pursuant to Article 31 of Perka No.5/2013, to conduct activities under the Principle License (*Izin Prinsip*), a PMA company must have a Business License (*Izin Usaha*) when it is ready for production/operations. The Business License (*Izin Usaha*) is separately issued for each business sector or line of business pursuant to the respective Minister mentoring each sector. A company having a Principle License (*Izin Prinsip*) stating more than 1 (one) line of business other than a manufacturing business sector, must submit applications for Business Licenses at the same time. If the applications for Business Licenses concerned are not submitted at the same time, the business sector not submitted will be declared not realized.

The period for the Business License (*Izin Usaha*) is valid for as long as the company still does its business.

If a company has a Business License (*Izin Usaha*) which is issued by BKPM as a license to start operations, the Permanent Business Trading License (SIUP) which is issued by local governments is not necessary.

The nomenclature of the Business License (*Izin Usaha*) issued by BKPM shall follow the provisions of laws and regulations of the Ministry/Institution mentoring the business sector concerned.

Technically, BKPM can issue the Business License (*Izin Usaha*) for a manufacturing company after about 80% (eighty percent) of the machines are installed.

D. Expansion Business License

According to Article 38 of Perka No. 5/2013, an investment company can expand its business with the requirement that the company concerned has a Business Expansion License (*Izin Usaha Perluasan*). Further, Article 43 paragraph (1) of Perka No.5/2013 stipulates that a company which has an Expansion Principle License (*Izin Prinsip Perluasan*) and it is ready for operation/production, is obliged to obtain a Business Expansion License (*Izin Usaha Perluasan*).

E. Merger Business License for Company

According to Article 67 of Perka No.5/2013, a surviving company resulting from a merger is obliged to have a Business License (*Izin Usaha*) at the time when it is

ready for production/operation.

F. Alteration

1. Alteration Principle License

According to Article 45 paragraph (1) of Perka No.5/2013, an Alteration Principle License (*Izin Prinsip Perubahan*) is used for the alteration of plans and/or realization of Investment approved and determined by the Government in the Principle License/Expansion Principle License/Business License/Expansion Business License.

2. Alteration Business License

According to Article 46 of Perka No.5/2013, companies that have a Business License/Expansion Business License may change its investment realization, in:

- a. the project location;
- b. the provisions of the line of business that cover:
 - i. types of production as a consequence of diversification of production without adding machinery/ investment and in the scope of the same KBLI, or;
 - ii. the production capacity stated in the Business License not matching with the installed capacity in the project location according to the results of the site inspection, and/or;
 - iii. marketing and/or annual export value;
- c. validity period of business license.

G. Merger of the Company

According to Article 65 of Perka No.5/2013, 2 (two) or more companies may merge and to do so, the companies must have a Company Merger Principle License (*Izin Prinsip Penggabungan Perusahaan*). Each of the companies which will merge may have more than 1 (one) Principle License/Approval and must have a Business License for some or all of the Principle Licenses/Approvals.

H. Opening of Branch Offices

According to Article 64 paragraph (1) of Perka No.5/2013, companies that are going to open branch offices may obtain a License to Open Branch Office (*Izin Pembukaan*

Kantor Cabang) from the Capital Investment Sector Provincial Government Officials (PDPPM)/One Stop Integrated Service Provider (PTSP) agency in the province where the branch office is located.

I. Representative Office

1. Foreign Company Representative Office License (“KPPA”)

Perka No.12/2009 did not provide a time limit for the establishment of a KPPA in Indonesia. However, Perka No.5/2013 specifies a validity period of KPPA of 5 (five) years with the details that the time period of KPPA is for 3 (three) years which can be extended 2 (two) times for 1 (one) year for each extension. After the period of 5 (five) years, the KPPA may be given another extension only if the activities of the KPPA are different from the activities in the last period. The provisions regarding KPPA are in Article 68 of Perka No.5/2013.

2. Foreign Trading Company Representative Office Business License (SIUP3A)

Article 72 of Perka No.5/2013 provides various types of SIUP3A consisting of:

- a. provisional SIUP3A, valid for 2 (two) months as from the issuance date;
- b. a New/Absolute SIUP3A, valid for 1 (one) year as from the issuance date;
- c. an extension SIUP3A, valid for the validity of the appointment letter from the foreign company or group of companies overseas, maximum for 3 (three) years unless determined in less period under the appointment letter, and can be extended in accordance with the appointment letter; or
- d. on the Alteration SIUP3A, it will be issued if there is change in the data in the SIUP3A held.

III. NEW RULES FOR NON LICENCED CAPITAL INVESTMENT

1. In conducting its business as the investment company, the companies may use domestic and/or imported production machinery. According to Article 78 of Perka No.5/2013, such companies should submit a procurement plan for the whole investment in machinery from the first application for facilities and the composition will be used as the basis for granting import duty relief on imports of machinery.

2. Further, under Article 83 of Perka No.5/2013, the time period for the validity of import duty facilities for imports of machinery/materials is 2 (two) years from the issuance of the determination, and it can be extended each year for a maximum

of the project completion period stated in the Principle License (*Izin Prinsip*). The application for the extension of the period of import duty facilities on machineries /equipment must be filed before the expiration of the import period.

3. According to Article 84 paragraph (4) of Perka No.5/2013, the application for customs facilities for materials and goods must be submitted no later than 2 (two) years from the issuance of the Industrial Business License (*Izin Usaha Industri*).

Applications for customs facilities for machinery, goods and materials must be submitted to the BKPM One Stop Integrated Service (BKPM PTSP), with attachments based on the attachments of Perka No. 5/2013.

IV. PROCEDURES FOR SUBMITTING APPLICATIONS

According to Article 103 of Perka No.5/2013, the application for the capital investment principle license may be submitted by the company before or after the company obtains the status of an Indonesian legal entity,

The procedures to submit the application are as follows:

1. an application for a capital investment principle license submitted by investors that do not have the status of an Indonesian legal entity, must be signed by all of the prospective shareholders or other parties given the authority to do so; and
2. an application for a capital investment principle license submitted by a company that has already obtained the status as an Indonesian legal entity, must be signed by the board of directors (BOD) /head of the company, or, by the company's employee having a 1 (one) degree-lower position to the BOD /head of the company, completed by:
 - a. letter from the BOD /head of the company explaining the conditions that made it is impossible for the BOD /head of the company to sign the application, and that the BOD /head of the company acknowledges and approves the application being submitted;
 - b. instruction letter from the BOD /head of the company;
 - c. copy of identities of the BOD /head of the company with the original shown,

and

d. the proxy must be evidenced by a copy of his /her identity and the most recent appointment letter as an employee, with the original shown.

Authorization to sign both applications above cannot be given to other parties as substitutes.

The process of submitting the application for licensed or non-licensed capital investment to BKPM or investment in PTSP administrators in the regions, in accordance with the Article 103 of Perka No.5/2013, can be carried out by:

1. the BOD /head of company as the applicant;
2. an employee of the company given a special power of attorney (POA) to process the application without the right of substitution; or
3. a consultant service provider /legal consultant that has legal entity status and is given a special POA for the application process without the right of substitution.

The above explanation shows the differences in the mechanism of the signing in relation to the capital investment application and its process between Perka No.12/2009 and Perka No.5/2013, whereby, according to Perka No.5/2013, the capital investment application may only be signed by the BOD /head of the company or the company's employee having a 1 (one) degree-lower position to the BOD /head of the company. Furthermore, in conducting the process related to the capital investment applications at the central or regional/local BKPM offices, Perka No.5/2013 regulates that a proxy cannot be given the right of substitution. Only those, whose names are stated in the POA can submit the relevant investment application, both for licensed or non-licensed capital investment.