

Client Alert

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BKPM and some sectoral ministries have issued regulations to conform with the OSS system

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This is our fifth update of the OSS system. The previous updates can be found in our website [here](#).

Update

In our previous [update](#), we mentioned that Indonesian agencies (including the Capital Investment Coordinating Board ("**BKPM**")) need to issue technical guidance on using the OSS system, and amend their existing regulations/decrees etc. to conform with the OSS regulation. Now BKPM and some (not yet all) Indonesian sectoral ministries have issued their sectoral regulations. The following are some of the regulations issued:

BKPM	Regulation No. 6 of 2018 on Guidelines and Procedures for Capital Investment Licensing and Facilities (" Regulation 6 "). Click the link for the regulation and its attachment
Ministry of Trade	Regulation No. 75 of 2018 on Import Identification Number (API). Click here for the regulation
	Regulation No. 76 of 2018 on Company Registration Implementation. Click here for the regulation
	Regulation No. 77 of 2018 on Electronic Integrated Business Licensing Services in Trade Sector (" Regulation 77 "). Click here for the regulation
Ministry of Health	Regulation No. 26 of 2018 on Electronic Integrated Business Licensing Services in Health Sector. Click here for the regulation
Ministry of Finance	Regulation No. 71/PMK.04/2018 on Electronic Integrated Business Licensing Services in Customs, Excise and Tax Sectors. Click here for the regulation
Ministry of Education and Culture	Regulation No. 25 of 2018 on Electronic Integrated Business Licensing Services in Education and Culture Sectors. Click here for the regulation





Ministry of Agriculture	Regulation No. 29/PERMENTAN/PP.210/7/2018 on Business Licensing Guidelines in Agriculture Sector. Click here for the regulation
Ministry of Communication and Informatics	Regulation No. 7 of 2018 on Electronic Integrated Business Licensing Services in Communication and Informatics Sectors. Click here for the regulation
Ministry of Employment	Circular Letter No. 5 of 2018 on the Transition Process of the Licensing Services of the Utilization of Foreign Workers. Click here for the regulation
Ministry of Environment and Forestry	Regulation No. P.22/MENLHK/SETJEN/KUM.1/7/2018 of 2018 on the Norms, Standards, Procedures and Criteria of Electronic Integrated Business Licensing Services in Environment and Forestry Sectors. Click here for the regulation
Ministry of Public Works and Housing	Regulation No. 19/PRT/M/2018 on the Implementation of Building Permits (IMB) of Buildings and Functional Worthiness Certificates (SLF) of Buildings through Electronic Integrated Business Licensing Services. Click here for the regulation

BKPM Regulation Overview

While some issues still need to be ironed out, the following points should be noted:

- **Nature:** Regulation 6 revokes BKPM Regulation No. 13 of 2017 on Guidelines and Procedures for the Implementation of Capital Investment Licensing and Facilities, which was issued in December 2017. With the mindset of accelerating and improving capital investment, Regulation 6 has a much lighter and slimmer look, but some matters are not covered (see below).
- **Scope:** Regulation 6 regulates licenses that are still processed under BKPM's One Stop Integrated Services (PTSP-BKPM), i.e.:

Energy and Mineral Resources	Electricity Subsector: <ol style="list-style-type: none">1. Geothermal License (<i>Izin Panas Bumi</i>)2. Assignment of Geothermal Preliminary Surveys and Exploration (<i>Penugasan Survei Pendahuluan dan Eksplorasi Panas Bumi</i>)
	Oil and Gas Subsector: <ol style="list-style-type: none">1. License for Utilization of Oil and Gas Data (<i>Izin Pemanfaatan Data Minyak dan Gas Bumi</i>)



	<ol style="list-style-type: none"> 2. Survey License (<i>Izin Survei</i>) 3. Oil and Gas Storage Business License (<i>Izin Usaha Penyimpanan Minyak dan Gas Bumi</i>) 4. Oil and Gas Processing Business License (<i>Izin Usaha Pengolahan Minyak dan Gas Bumi</i>) 5. Oil and Gas Transportation Business License (<i>Izin Usaha Pengangkutan Minyak dan Gas Bumi</i>) 6. General Trade Oil and Gas Business License (<i>Izin Usaha Niaga Umum Minyak dan Gas Bumi</i>) 7. Representative Office License, subsector Oil and Gas (<i>Izin Kantor Perwakilan Asing subsektor Minyak dan Gas Bumi</i>) <p>Mineral and Coal Subsector:</p> <ol style="list-style-type: none"> 1. Exploration Mining Business License (<i>Izin Usaha Pertambangan Eksplorasi</i>) 2. Termination of Mining Business License due to Return (<i>Pengakhiran Izin Usaha Pertambangan karena Pengembalian</i>) 3. Mining Business License for Special Production Operation for Transport Sale and Renewal (<i>Izin Usaha Pertambangan Operasi Produksi Khusus untuk Pengangkutan dan Penjualan dan Perpanjangannya</i>) 4. Mining Business License for Production Operation and Renewal (<i>Izin Usaha Pertambangan Operasi Produksi dan Perpanjangannya</i>) 5. Mining Business License for Special Production Operation for Processing and/or Refining and Renewal (<i>Izin Usaha Pertambangan Operasi Produksi Khusus untuk Pengolahan dan/atau Pemurnian dan Perpanjangannya</i>) 6. Temporary License to Carry Out Transportation and Sale (<i>Izin Sementara untuk Melakukan Pengangkutan dan Penjualan</i>) 7. Mining Business License for Production Operation for Sale (<i>Izin Usaha Pertambangan Operasi Produksi untuk Penjualan</i>) 8. Mining Service Business License and Renewal (<i>Izin Usaha Jasa Pertambangan dan Perpanjangannya</i>)
Public Works and Public Housing	<ol style="list-style-type: none"> 1. Property Development and Exploitation Business License (<i>Izin Usaha Pembangunan dan Pengusahaan Properti</i>) 2. Housing Business License (<i>Izin Usaha Bidang Perumahan</i>)
Custom and Taxation	<ol style="list-style-type: none"> 1. Granting of Import Facility for Machinery, Capital Goods and Materials for Capital Investment in Industrial Sector and In Industrial Sector that Produces Services (<i>Pemberian Fasilitas Importasi Mesin, Barang Modal dan Bahan bagi Penanaman Modal Sektor Industri dan Industri yang Menghasilkan Jasa</i>) 2. Granting of Import Facility for Machinery, Capital Goods in Electricity Sector (<i>Pemberian Fasilitas Importasi Mesin, Barang Modal Sektor Ketenagalistrikan</i>)



3. Granting of Import Facility for Machinery, Capital Goods for Contract of Work and Coal Mining Exploitation Working Arrangements (*Pemberian Fasilitas Importasi Mesin, Barang Modal untuk Kontrak Karya dan Perjanjian Karya Pengusahaan Pertambangan Batu Bara*)
4. Exemption or Reduction of Corporate Income Tax Facility Proposal (Tax Holiday) (*Pengusulan Fasilitas Pembebasan atau Pengurangan Pajak Penghasilan Badan (Tax Holiday)*)
5. Corporate Income Tax Facility Proposal for Capital Investment in Certain Lines of Business and/or Certain Locations (*Pengusulan Fasilitas Pajak Penghasilan Badan untuk Penanaman Modal di Bidang-Bidang Usaha Tertentu dan/atau di Daerah-Daerah Tertentu (Tax Allowance)*)

BKPM

1. Regional Representative Office License (*Izin KPPA*)
2. Branch Office Opening Licenses in Energy and Mineral Resources Sector, Electricity Subsector; Energy and Mineral Resources Sector, Oil and Gas Subsector; Energy and Mineral Resources Sector, Mineral and Coal Subsector; and Public Works and Public Housing Sector, the business licenses of which are Issued by PTSP at BKPM (*Izin Pembukaan Kantor Cabang di Sektor Energi dan Sumber Daya Mineral, Subsektor Ketenagalistrikan; Sektor Energi dan Sumber Daya Mineral, Subsektor Minyak dan Gas Bumi; Sektor Energi dan Sumber Daya Mineral, Subsektor Mineral dan Batu Bara; dan Sektor Pekerjaan Umum dan Perumahan Rakyat, dengan ketentuan izin usaha diterbitkan oleh PTSP di BKPM*)
3. Limited Stay Visa (Vitas) Granting Recommendation as Shareholders (*Rekomendasi Pemberian Visa Tinggal Terbatas sebagai Pemegang Saham*)
4. Recommendation for Change of Status from Visit Stay Permit to Limited Stay Permit (*Rekomendasi Alih Status Izin Tinggal Kunjungan menjadi Izin Tinggal Terbatas*)
5. Recommendation for Change of Status from Limited Stay Permit to Permanent Stay Permit (*Rekomendasi Alih Status Izin Tinggal Terbatas menjadi Izin Tinggal Tetap*)

- **Foreign investment requirements:** Regulation 6 still regulates investment requirements for foreign investment ("PMA") companies. For example, the minimum investment must be more than Rp10 billion (excluding investment for land and buildings) except for certain real estate businesses, and PMA companies are classified as large scale businesses that must fulfil either of the following:
 1. being a company with net assets of more than Rp10 billion, excluding land and buildings, based on the latest financial statements
 2. being a company with annual revenue of more than Rp50 billion based on the latest financial statements



- **Licensing procedures:** Regulation 6 only refers to business licenses (no references made to registrations/principle licenses). As such, the licensing process at BKPM will be the same as that in the OSS system. That is, in case of establishment, companies (whose licenses are still processed at BKPM - see above) are established first, and then go to BKPM for business licenses. What needs to be clarified though is related with amendment of data (including corporate actions related to transfer of shares, increase of capital, change of domicile or expansion of business). The question remains whether these corporate actions will need to be completed before going to BKPM to obtain amendment of data approval.
- **Open Issues:** Regulation 6 has removed some provisions that were covered in the previous BKPM regulation. Some of these provisions are:
 1. **Divestment obligation fulfilment:** The previous BKPM regulation allowed the nonfulfillment of a divestment obligation with certain requirements. As this provision is not stipulated in Regulation 6, the question remains whether companies that have a divestment obligation in their investment licenses will still need to fulfil the obligation. A share buyback though could only be done if the Negative List allows it.
 2. **Change of status of subsidiaries:** Regulation 6 no longer have a provision where subsidiaries are required to convert their status to become PMA companies when they do a corporate action if the parent becomes a PMA company. As a consequence, one could argue that the obligation is gone. As such, a subsidiary whose parent becomes a PMA company does not need to convert its status to become a PMA company. However, we are of the view that, when the system is fully functioning, the OSS system would be able to flag a PMA company that has a non-PMA subsidiary, and as such require that non-PMA subsidiary to become a PMA company.
 3. **Status of publicly listed companies (PT TBK):** Regulation 6 no longer have a provision that a PT TBK that has a foreign shareholder in its notarial deed is classified as a PMA company. We would recommend that past practice of not naming foreign shareholders in notarial deeds be followed.

Sectoral Regulations Overview

Acknowledging that there are some inconsistencies among the sectoral regulations, the following points should be noted:

- **Types of licenses and validity:** The sectoral regulations generally list types of business licenses and commercial/operational licenses applicable in the relevant sectors, and the validity of the licenses. For example, in the trading sector, under Regulation 77:



Licenses issued before the OSS system is launched	Licenses issued through the OSS system	Type of license	Validity
Trading Business License (Surat Izin Usaha Perdagangan)	Trading Business License (<i>Surat Izin Usaha Perdagangan</i>)	business license	as long as the company operates/conduct activities
Registration Mark as Agent or Distributor of Goods and/or Services (Tanda Pendaftaran Agen atau Distributor Barang dan/atau Jasa)	Registration Mark as Agent or Distributor of Goods and/or Services (<i>Tanda Pendaftaran Agen atau Distributor Barang dan/atau Jasa</i>)	business license	in accordance with the agreement
Tire Import Approval (Persetujuan Impor Ban)	Import Approval (<i>Persetujuan Impor</i>)	commercial/operational license	<ul style="list-style-type: none"> ▪ 1 year starting from the issuance (for API-P holders) ▪ 6 months starting from the issuance (for API-U holders)

- **Commitments fulfilment:** The sectoral regulations generally list commitments for business licenses and for commercial/operational licenses applicable for lines of business under the relevant Indonesian ministry/agency, and the period of the fulfilment. For example, in the trading sector, under Regulation 77:

Type of licenses	Commitments need to be fulfilled	Period of the fulfilment
Trading Business License (Surat Izin Usaha Perdagangan)	-	-



Type of licenses	Commitments need to be fulfilled	Period of the fulfilment
Registration Mark as Agent or Distributor of Goods and/or Services (<i>Tanda Pendaftaran Agen atau Distributor Barang dan/atau Jasa</i>)	<ol style="list-style-type: none"> 1. agreement that has been legalized by a notary public and the Indonesian Trade Attaché/Indonesian Embassy in the country of origin of the principal company 2. if the agreement is with a principal supplier, the principal supplier must have an authorization letter from the principal producer 3. Indonesia sworn translation of the agreement if the agreement is in foreign language 4. leaflet/brochure/catalogue of the goods from the principal company 5. other approvals/registrations from other technical instances for certain goods (if applicable) 	5 working days
Import Approval - Tire (<i>Persetujuan Impor - Ban</i>)	For new applications: <ol style="list-style-type: none"> 1. Product Certificate Using Indonesian National Standard Mark for Tire (<i>Sertifikat Produk Penggunaan Tanda Standar Nasional Indonesia (SPPT SNI) Ban</i>) (if required) 2. Good Registration Number for Tire (<i>Nomor Pendaftaran Barang (NPB) Ban</i>) (if required) 3. good import plan covering types of goods, goods classification/tariff post/10-digit HS code, number of goods, country of origin, loading port and destination port 4. appointment letter from the principal company holding the brand or from overseas manufacturing company that has been legalized by a notary public and the Indonesian Trade Attaché where that company is located 5. evidence of ownership of storage in accordance with product characteristic (for non-producer companies) 6. evidence of ownership of transportation in accordance with product characteristic (for non-producer companies) 7. recommendation from the Directorate General of Chemical, Textile and Various Industries 	15 working days



Type of licenses	Commitments need to be fulfilled	Period of the fulfilment
	For amendment applications: <ul style="list-style-type: none">any documents in the new applications that are amended	

- **Monitoring:** The sectoral regulations emphasize the compliance monitoring. However, it is not clear whether sectoral monitoring teams (*satgas*) have been established to do the monitoring, and if they have, how the monitoring will be done.

What You Need to Do

- As noted in our prior client alerts, the OSS system relies on a self-assessment approach with compliance being checked after licenses are issued. It is imperative that clients ensure compliance in this era of an all encompassing online licenses system, otherwise noncompliance could lead to the freezing or revocation of all licenses administered by the OSS system.
- All PMA companies must still comply with the foreign investment requirements under Regulation 6. When fully functioning, the OSS system should be able to flag noncompliance. As such, compliance is key.
- Other sectoral ministries/agencies will issue their sectoral regulations soon. Clients should monitor and review the sectoral regulations relevant to them to find out the commitments that they need to fulfil, the period of fulfilment and how to fulfil them.
- There will be discussions among the ministries/agencies on the status of PT TBK related to the OSS system. So, PT TBK clients will need to wait for more developments.

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