

Client Alert

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BKPM Amends Its Regulation to Exclude Real Estate Business Lines

Update

In mid-February this year, the authority to grant licenses for certain real estate business lines passed from BKPM to the online single submission (OSS) system. The relevant licenses are:

- Property Development and Exploitation Business License (*Izin Usaha Pembangunan dan Pengusahaan Properti*)
- Housing Business License (*Izin Usaha Bidang Perumahan*)

At the end of July, BKPM finally issued an amendment of BKPM Regulation No. 6 of 2018 ("**BKPM Regulation 6**") on Guidelines and Procedures for Capital Investment Licensing and Facilities, to formalize this new practice in writing, i.e., BKPM Regulation No. 5 of 2019 ("**BKPM Regulation 5**"). BKPM Regulation 5 was only made available to the public at the end of last week.

The Ministry of Public Works has not yet issued a technical regulation that brings the procedures/requirements for these licenses in line with the OSS system. As such, real estate players still need to be mindful of what is needed when processing real estate business licenses in the OSS system.

Other Things to Note

It is also worth noting certain matters under BKPM Regulation 5:

- **Compliance with foreign investment requirements:** Even though most licenses for companies are now processed through the OSS system, foreign investment companies must still comply with the investment requirements stated in BKPM regulations.

In general, a foreign investment company must have a minimum investment of more than IDR 10 billion (excluding any investments in land and buildings) unless otherwise determined by sectoral regulation. Previously, the minimum investment for foreign investment companies with certain real estate business lines should total more than IDR 10 billion, but this included any investments in land and buildings. However, BKPM No. 5 no longer contains these exceptions.

In light of the above, it is not clear whether foreign investment companies with these business lines must follow the general current investment requirement or if the Ministry of Public Works will issue a regulation that will continue to provide an exception. We suspect that this may be further regulated in the sectoral regulation to be issued by the Ministry of Public



Works, but further clarification may only be obtained once BKPM or the Ministry of Public Works have formed a view on this issue.

- **Divestment obligation fulfilment:** BKPM Regulation 5 reintroduces the requirement to fulfil divestment obligations, which was an open issue under BKPM Regulation 6.

BKPM Regulation 5 adopts the same divestment obligation fulfilment concept as that set out in BKPM Regulation No. 13 of 2017. BKPM Regulation 5 clearly states that all divestment obligations set out in previous investment approvals must be fulfilled. Once the divestment obligation has been fulfilled, the foreign shareholder may buy back the divested shares from the Indonesian shareholder, if permitted under the relevant regulations.

There are exceptions where divestment obligations set out in investment approvals do not need to be fulfilled. The criteria for these exceptions are:

- (if not a 100% foreign-owned company) the Indonesian shareholders state that they do not want/claim ownership of the shares from the foreign shareholders
- (if a 100% foreign-owned company) the foreign shareholders state that they have no commitments/agreements to sell the shares to an Indonesian party



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