

CLIENT UPDATE:

AUGUST 2016

NEW BKPM REGULATION ON AMENDMENT TO HEAD OF BKPM REGULATION NO. 14 OF 2015 ON GUIDELINES AND PROCEDURES OF INVESTMENT UNDER IN-PRINCIPLE LICENSE

Background

On 8 October 2015, the Head of Indonesian Investment Coordinating Board ("BKPM") issued a set of regulations, one of which is the Head of BKPM Regulation No. 14 of 2015 on Guidelines and Procedures of Investment under In-principle License ("BKPM Reg. 14/2015") which has been amended by the Head of BKPM Regulation No. 6 of 2016 on Amendment to BKPM Reg. 14/2015 ("BKPM Reg. 6") which came into effect on 6 June 2016.

BKPM Reg. 6 was issued as part of the Government's economic reform program to simplify the investment under In-principle License procedures, and to be in-line with the new Negative List, which was issued on 12 May 2016.

Key Change

Through BKPM Reg. 6, BKPM inserted a paragraph 3(a) in Article 25 which we translate as follows :

*If there is a change in the capital of a PT PMA company, listed on the Capital Market, which is conducted **indirectly or by portfolio investments through the domestic capital market**, then the provisions which otherwise would make the business of such PMA company to be opened only with certain requirements should be read to mean such business is opened for investments, and for the avoidance of doubt we include the Indonesian language: "Dalam hal perubahan modal perseroan bagi perusahaan PMA yang mencatatkan sahamnya di Pasar Modal, dilakukan secara tidak langsung atau portofolio melalui pasar modal dalam negeri, ketentuan bidang usaha yang terbuka dengan persyaratan menjadi bidang usaha terbuka"*

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The above paragraph, in our view, was inserted as an attempt to clarify the long-standing issue on whether a listed PT PMA is subject to the Negative List. Although not entirely clear from a drafting perspective, this paragraph should be able to be used as a legal basis to exempt the Negative List for listed PT PMAs. We note however that BKPM failed to make clearer the meaning of the terms “indirectly” and “portfolio investments”, and thus we believe there is a possibility that the matter may not be entirely free from doubt or multi-interpretation. The term “portfolio investment” is generally commonly interpreted to mean “non-controlling” and for mere economic interest only investment only.

Going forward

We will continue to monitor any further development to this issue, including as to whether in due course BKPM and the Financial Services Authority (OJK) can agree on the definition of these two important terms.

This note is intended to give a general overview only. Please do not hesitate to contact us if you need a more detailed advice, or have specific questions.

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