

NEW INTEGRATED ONLINE LICENSING SYSTEM:

The Online Single Submission Services

After being delayed from its initial planned issuance on April 2018, Government Regulation No. 24 of 2018 concerning Online Single Submission Services ("GR 24/2018") was finally signed by President Joko Widodo on 21 June 2018 and has been in force as of the same day. As a general overview, GR 24/2018 instructs that all licensing for businesses (whether by individuals or business entities, domestically or foreign owned) is to be processed and issued by the Online Single Submission system ("OSS System"). This regulation reflects the current government's aspiration to unify and simplify the licensing process with the objective to promote ease of doing business in Indonesia. Below is a general overview of GR 24/2018.

1. OSS System is Operational

Following the issuance of GR 24/2018, the processing and issuance of all licenses were put on hold, including those being processed by the Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal or "BKPM"). On 9 July 2018, the OSS System was launched under the management of the Coordinating Ministry of Economic Affairs ("Coordinating Ministry"). With this launch, all processing and issuance of licenses will resume and be processed through the OSS System, although currently its effective operations are yet to be proven. It also seems that the minimum requirement of the IDR 10 billion investment amount is expected to remain unchanged with respect to foreign direct investment.

2. The OSS System

a. BKPM as the Designated OSS Agency?

Pursuant to GR 24/2018, the management of the OSS System is to be effected by (and the authority to issue the relevant permits and/or licenses for various business objects is delegated to) the OSS Agency. The current expectation is that the OSS Agency will, in fact, be the BKPM (BKPM has stated that it is preparing itself to take over the OSS System's operation from the Coordinating Ministry within 5 months' time).

b. Businesses subject to OSS System

The OSS System is intended to bring licensing of all businesses (conducted by Indonesian individuals, limited liability companies, public service companies, state-owned legal entities, broadcasting agencies, cooperatives, commanditaire vennotschap, firms and private partnerships) under one roof.

It is to be noted that licensing for the banking and financial, mining and oil and gas sectors will remain with the current regulatory bodies.

c. The Three-Phase Licensing Process

Pursuant to GR 24/2018, the licensing process via the OSS System will comprise mainly of the following three phases, namely Registration, Business License, and Commercial/Operational License:

i. Registration

Businesses are required to register in the OSS System to obtain a Business Identification Number (Nomor Induk Berusaha or "NIB") in the first instance. The NIB, a 13-digit secured number, will function as the identification of the business enabling it to apply for business, commercial and operating licenses (as applicable) via the OSS System.

In addition to its identification/registration function within the OSS System, the issuance of the NIB will simultaneously serve as:

- Company Registration Certificate (TDP), Import Identification Number (API) and customs access right (as applicable);
- automatic participation of the business with the Health BPJS and Manpower BPJS programme.

Important note: GR 24/2018 requires that the business entity must already be established prior to registering in the OSS System to obtain the NIB.

ii. Business License

Once a business has obtained the NIB, it will subsequently be required to obtain a Business License. Issuance of the Business License by the OSS Agency will depend on "Commitments" provided by applicants, which requirements shall differ depending on the regulation governing the relevant activity (or activities) of the business.

GR 24/2018 is silent on the content, scope and timeline for realisation of such Commitments for the Business License. Practical guidance should be provided by the authorities in this respect.

With respect to the process of license issuance, GR 24/2018 distinguishes businesses into the following:

1. no construction required or requires construction of facilities which are ready: these businesses may directly apply for a Business License following obtaining a NIB; and
2. physical construction of facilities required: these businesses are required to obtain certain licenses/permits (i.e. location permit, water location permit, environmental permit, building permit and/or certificate of building fitness (as applicable), to be issued pursuant to the Commitments) prior to applying for a Business License.

The Business License will allow businesses to start certain activities, among others, land, equipment and human resources procurement, construction, commissioning and production. Whilst the scope of such activities (technically) covers activities other than commercial or operational activities, GR 24/2018 provides that 'certain businesses' (such as the Trading Business License) are allowed to conduct commercial or operational activities with the Business License.

GR 24/2018 is not clear on:

- the scope of activities that is allowed after securing a Business License; and
- what type of businesses are allowed to conduct commercial or operational activities with the Business License.

Clarification from the authorities in this respect is required.

iii. Commercial/Operational License

A Commercial/Operational License allows the business to carry out commercial or operational activities, and identical to the Business License, may be issued upon Commitments to satisfy standard, certificate, and/or licensing and/or goods/services registrations in accordance with the type of product and/or services the business is involved in.

GR 24/2018 is silent on the content, scope and timeline for realisation of such Commitments for the Commercial/Operational License is currently unclear. Practical guidance should be also provided by the authorities in this respect.

3. Transitional Period After The Start Of The Oss System

The OSS System has been officially launched by the Coordinating Ministry on 9 July 2018. GR 24/2018 sets out the following in its transitional provisions:

1. all business licenses which have been applied for and not issued prior to the enactment of GR 24/2018 will be redirected to be processed through the OSS System under the Coordinating Ministry;
2. existing unexpired Business Licenses and/or Commercial/Operational Licenses will remain valid until their respective expiry date and must be registered with the OSS System;
3. changes to existing Business Licenses and/or Commercial/Operational Licenses issued prior to GR 24/2018, (i.e. expansion or amendment of license) requires obtaining a new Business License and/or Commercial/Operational License which will be processed through the OSS System;
4. all businesses are required to apply and obtain a NIB.

We note that the timeline for existing businesses to obtain the NIB and/or register their respective unexpired Business Licenses and/or Commercial/Operational Licenses is currently unclear. Practical guidance should also be provided by the authorities in this respect.

4. Closing Remarks

The "relatively new" BKPM Regulation No. 13 of 2017 that has been in force since January 2018 showed significant attempt to simplify investment licensing by making it possible for businesses with certain requirements to directly apply for a Business License. In comparison, GR 24/2018 at a glance may seem like a setback with a three-phased licensing process. Although many Business Licenses and Commercial/Operational Licenses are removed and/or merged, as listed in GR 24/2018's appendix, it remains to be seen if timing wise, licensing process will become quicker.

GR 24/2018 does not (i) set out any timeline for the issuance of licenses by the OSS Agency; (ii) provide formats of the licenses; or (iii) or provide detailed description and requirements of the Commitments (an important element of the licensing). Implementing regulations at the ministerial level are likely to be issued. This is in line with the provision of GR 24/2018 instructing all ministers and heads of relevant institutions to: (i) establish business licensing standards which will apply in their respective sectors to cover norms, standards, procedure and criteria of business licensing; and (ii) revoke all contradicting relevant regulations; at the latest within 15 days after issuance of GR 24/2018. It remains to be seen if such deadline will be met and applications can be processed by the OSS System in the interim.

With the OSS System it seems that the government intends to carry out major reformation of the business licensing process in Indonesia. Considering the large number of ministries and government institutions (central as well as regional) that will be involved to achieve the successful implementation of the OSS System, it may be a challenge and will definitely take time, to eventually have the same level of standard of business licensing services for all institutions involved.

While there remain provisions in GR 24/2018 which require clarity, the introduction of the NIB has resulted in the elimination of the need to obtain the TDP, API and/or customs access rights. Also, prior approval for a change of shareholding in a foreign owned company is seemingly now also no longer required (approvals or notifications to industry specific authorities may still apply). These are some of the positive developments that the OSS System seems to bring to the licensing process. It will be necessary to track the implementation of the OSS System in the coming weeks for developments.



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