

What Constitutes A Dormant Company

Written by Kiki Setiawan, S.H., LL.M.

Definition

Some literatures generally defines a dormant company as a company which is not carrying on its business activities or not recording any transaction in its accounting book for specific period of time. Others argue that a company is inactive from tax reporting perspectives.

According to elucidation of Article 146 of Law Number 40 of 2007 on Limited Liability Company (“**Indonesian Company Law**”), a company is considered not able to continue operations if the company does not conduct business activities (non-active) for 3 (three) years or more, as evidenced by a notification letter conveyed to the tax office.

Meanwhile, tax authorities define a company as a Non-active Tax Payer, based on Directorate General of Tax Circular Letter Number SE-89/PJ/2009 on Procedures For Handling Non-active Tax Payer, if they fulfill one of the following criteria:

1. tax payer never perform its tax obligations either paying tax or reporting periodic tax return (*SPT Masa*) or annual tax return (*SPT Tahunan*) for 3 (three) consecutive years;
2. domicile of tax payer is unknown;
3. the business activities are obviously closed.

Why should be dormant?

There are various reasons on why business owners put their companies in a dormant status. Firstly, to minimize potential loss due to unfavorable response on the company’s products/services or declining market demand. It is somehow happened to companies which expand their market aggressively without carefully considering market trend, economic development in broad sense or even competitor’s creative penetration method to the market.

Further information please contact:

Kiki Setiawan
Managing Partner

Kiki Setiawan and Partners
Palma One Building, 5th Floor #500
Jalan H.R. Rasuna Said Kav. X-2 No. 4
Jakarta 12950 - Indonesia

M : +62 812 9691 3777

T : +62 21 3972 2042

E : kiki.setiawan@ksplaw.co.id

W : www.ksplaw.co.id

Additionally, people establish a company at first to set all business strategy before doing the real business activities. If it is a foreign investment company, investors have maximum 5 (five) years to do project preparation or construction depending on the company's line of business as determined in its Investment Registration Approval.

Other reason is because the company is being wound up or operating at a loss. While the shareholders making a decision to continue the business or dissolving the company, the company shall normally stop all business activities, terminating all staffs (only employing administrative staffs) and somehow maintaining necessary tax reports. For a multinational company, all management shall be taking over by the head office.

Consequences of Being Dormant

Being a dormant company leads to the legal consequence that the Indonesian District Court is authorized to dissolve the company upon request from its shareholders, directors or board of commissioner based on Article 146.1.(c) of the Indonesian Company Law.

Although the company is in dormant status, some obligations still need to be performed by the company among others:

1. Organizing the Annual General Meeting of Shareholders to approve the BOD annual report on yearly basis.
2. Regularly re-appointing directors and commissioners according to their term of offices respectively.
3. Submitting investment reports and updating company's information at the BKPM for a foreign investment company.

Furthermore, tax office is required to submit some required applications for company to be declared as a dormant company. The approval shall be granted within 10 (ten) working days. As a result, tax authorities shall never issue tax warning letters if the company does not submit *SPT Masa/SPT Tahunan* report or does not submit monthly tax report or does not pay any administrative sanction.

Being a dormant is commercially acceptable provided that the dormant company maintain its compliances under the Indonesian Company Law and relevant Indonesian tax laws.