

By : Bagas Ananta

ESTABLISHING BUSINESSES IN INDONESIA DURING COVID-19 PANDEMIC

The coronavirus disease 2019 (“**COVID-19**”) is not only striking out every aspect of day-to-day life but also causes a disruption in the Indonesian investment climate. Interference from the COVID-19 can be seen in the decline of the Indonesian Investment Realization in the second quarter of 2020, whereby according to the press release of the Indonesian Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”), it was slowing down as much as 4.3% compared to the same period in 2019¹. The realization of Foreign Direct Investment was contributed to 50.9% of the total of such investment realization².

Although Indonesia’s economic sector has been affected by COVID-19, the Foreign Direct Investment is still an attractive commodity for foreign investors. In contemplation to keep the capital investment going, the ease of starting/doing business would play a critical role. Hence, this Newsletter will cover the matters on establishing enterprises even during the COVID-19 pandemic while also highlights some of the recent developments that may affect/support the ease of doing business in Indonesia.

Types of Business Structure

In general, the most common preferences for overseas investors to establish its presence in Indonesia are by setting up a limited liability company (“**PT PMA**”) or a representative office.

1. Limited Liability Company

Primarily, Foreign Direct Investment is regulated by Law No. 25 of 2007 regarding Investment and its implementing regulations (“**Investment Law**”). Based on the Investment Law, any form of foreign direct investment shall be in the form of a limited liability company, in which the investment must be by way of the foreign investor holding shares in the company domiciled in Indonesia.

The followings are the general requirements to establish PT PMA based on the applicable laws and regulations:

¹ BKPM Press Release dated 22 June 2020, can be accessed at https://www.bkpm.go.id/images/uploads/file_siaran_pers/FINALNARASI_TW_II_2020_BAHASA_INGGRIS.pdf

² *Ibid.*

Requirements	Remarks
Shareholders	At least two shareholders, whereas one or all shareholders can be foreign entities (depending on the sector/business activities).
Capital Requirements	<p>Minimum Investment Value: IDR 10,000,000,000 (ten billion Indonesian Rupiah) excluding land and buildings and only for one type of business as determined by five digits stipulated in the 2017 Indonesian Business Classification Code (“KBLI”).</p> <p>Minimum Issued and Paid-Up Capital: IDR 2,500,000,000 (two billion five hundred million Indonesian Rupiah).</p> <p>Minimum Equity per Share: IDR 10,000,000 (ten million Indonesian Rupiah).</p>
Business Activities	<p>The type of business activity shall comply with the business activities stipulated under the KBLI and follow the foreign ownership allowed under the Presidential Regulation No. 44 of 2016 (“Indonesian Negative List”).</p> <p>Based on the Indonesian Negative List, there are three categories of business for foreign investment as follows:</p> <ul style="list-style-type: none"> - Open for foreign investment; - Limited capital ownership of foreign investment; and - Closed for foreign investment.
Board of Directors and Board of Commissioners	Shall at least comprise of one director and one commissioner (for a company whose business related to managing or collecting public funds such banks or insurance companies must have at least two directors).
Licensing	<p>The followings are types of licenses that shall be obtained:</p> <p>a. General Licenses among others:</p> <ul style="list-style-type: none"> - Company’s Certificate of Domicile (note: the company may not apply/obtain this license if the local government does not require it); - Tax Payer Identification Number; and - Single Business Number (<i>Nomor Induk</i>)

Requirements	Remarks
	<p><i>Berusaha</i> or “NIB”).</p> <p>b. Obtaining Business and Operational Licenses</p> <p>The companies that engage in specific commercial sectors may immediately run their businesses after obtaining a business license, provided that such a company has acquired the necessary general licenses and fulfilling the relevant commitment for its business license. On the other hand, some companies also need to obtain an operational/commercial license before they can fully operate their business/production. Further, business and operational licenses can be obtained by applying to the Online Single Submission (“OSS”) platform and/or relevant government agencies.</p>
<p>Reporting Obligation</p>	<ul style="list-style-type: none"> - Annual Tax Return; - Investment Realization Report (<i>Laporan Kegiatan Penanaman Modal</i> or “LKPM”); and - Other report as may be required by the government institution based on its business activity.

2. Representative Office

Establishing a representative office could also be a viable option for a foreign company that is still exploring the business opportunities in Indonesia because it does not need minimum capital requirement, no shareholders required, etc. Nonetheless, the downside of this choice of business is the Representative office is not allowed to (i) participate in managing any company in Indonesia; (ii) generate any revenue in Indonesia; (iii) engage in any agreement or transaction for the sale or purchase of goods and services with an Indonesian company or Indonesian national (as such, the main foreign company is the only one through which all transactions can be handled).

Based on its utility and function, Representative Office can be divided into four classifications, namely:

- a. General Representative Office (*Kantor Perwakilan Perusahaan Asing*);
- b. Representative Office of Foreign Trade Company (*Kantor Perwakilan Perusahaan Perdagangan Asing* or “KP3A”);
- c. Foreign Construction Services Entity (*Bada Usaha Jasa Konstruksi Asing*); or
- d. Representative Office of Foreign Oil and Gas Company (*Kantor Perwakilan Perusahaan Minyak dan Gas*).

The following are the general set-up requirements that shall be fulfilled by the foreign investor/parent company to establish a Representative Office:

- a. Registering to the OSS system;
- b. Preparing and submitting the required documents for the establishment such as Article of Association of parent's company (that has been legalized and notarized in the country of origin), Letter of Appointment by the Indonesian authorized representative in the country of origin, latest financial statements of foreign investor/parent company, etc.;
- c. The Representative Office must be located in the capital of any Indonesian province (Unless it is a KP3A applicant); and
- d. Obtaining the necessary licenses for each type of Representative Office.

Almost every aspect of incorporation described above can be conducted without/with less face-to-face contact between the parties because most of the processes can be exercised through the available online platform, such as the OSS system. Therefore, it is safe to say that despite the obstacles occurrences in the business environment due to the Pandemic, the amenity of establishing the business in Indonesia is still continuing and also opens up opportunities for the business to thrive.

Recent Development on the Landscape of Doing Business Fluidity

1. OSS Version 1.1.

Since its first introduction in 2018, OSS has been a powerful tool to expedite Indonesia's licensing process. On the first half of 2020, BKPM as the party whose maintained such a national licensing system has launched the latest version of OSS called OSS V 1.1., which introduces several new features for the users, among others:

- a. The business entity can now register both its primary and supporting business operations;
- b. There are some additional permits/licenses that can be generated (such as water location permit, business license in the case of companies' merger, etc.);
- c. LKPM report can now be accessed through the OSS system; and
- d. Business License revocation (non-liquidation) can be carried out through the OSS system.

2. Omnibus Bills

Indonesia will introduce a regulation called Omnibus Law, where it will align various sectoral laws in order to boost investments and resolve some overlapping legislation in Indonesia.

On one hand, the Omnibus Law Bill has drawn some controversy because it is considered detrimental to workers' rights, such as easing the use of temporary working contracts and outsourcing schemes, the abolition of regency/city level minimum wages. On top of that, concerns also remain on the environmental topics, especially regarding the possibility that environmental license will be eliminated to be substituted with implementing a risk-based licensing approach. On the other hand, others believe that the Omnibus Law Bill may boost Indonesia's number of potential investments and hopefully improve the national economic outlook. This perspective is concluded based on the provision stipulated under the relevant Bill, which offers a reduction on the corporate tax rate, a reduction of severance payment in terms of employee termination, etc. However, this Bill is still in the development stage where the contents within may be subject to further revision before being enacted into law.

Note: The content of this article does not constitute legal advice and should not be relied as such. Judge's opinion may also be different, due to the facts relevant to the case. If you need specific advice related to this topic, please contact us by email through info@yangandco.com.