

1. Main Legislations

There are many types of representative office which foreign investors may establish in Indonesia, among other things, those provided in Government Regulation number 5 of 2021 on Implementation of Risk-Based Business Licensing (“**GR 05**”) and its implementing regulation, Regulation of the Indonesian Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”) number 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Capital Investment Facilities (“**Perka 4**”)¹, which has just been issued and will only become effective on 2 June 2021. Until Perka 4 comes into effect, provisions related to representative offices under Perka 6/2018 and Perka 1/2020 still prevail.

This legal update shall only discuss certain types of representative offices which are covered in GR 05 and Perka 4, including their establishment requirements.

Other than GR 05 and Perka 4, there are several related regulations applying to the types of representative offices covered in GR 05 and Perka 4. Those regulations are:

- a) Government Regulation number 25 of 2021 on Administration in the field of Energy and Mineral Resources (“**GR 25**”);
- b) Regulation of the Minister of Trade number 50 of 2020 on Provisions on Electronic Systems Trading Business Licencing and Advertising, and Guidance and Supervision of Business Actors;
- c) Regulation of the Minister of Trade number 10 of 2006 on Provision and Procedures in Issuing Trade Representative Office Business License as amended by Regulation of the Minister of Trade number 28/M-DAG/PER/6/2010 and Regulation of the Minister of Trade number 49 of 2020 (“**MOT 10**”); and
- d) Regulation of BKPM number 5 of 2021 on Supervision Guidelines and Procedures on Risk-Based Business Licensing (“**Perka 5**”).

2. Types of Representative Offices

Representative offices which are regulated under GR 05 and Perka 4 are:

- a) Foreign Trade Company Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing* – “**TRO**”);
- b) Foreign Representative Office (*Kantor Perwakilan Perusahaan Asing* – “**FRO**”);
- c) Foreign Construction Services Business Entity Representative Office (*Kantor Perwakilan Badan Usaha Jasa Konstruksi Asing* – “**BUJKA**”); and/or
- d) Foreign Electricity Supporting Services Representative Office (*Kantor Perwakilan Jasa Penunjang Tenaga Listrik Asing* – “**JPTLA**”).

¹ Perka 4 revokes Regulation of BKPM No. 6 of 2018 as amended by Regulation of BKPM No. 5 of 2019 on Guidelines and Procedures for Capital Investment Licensing and Facilities (“**Perka 6/2018**”), and Regulation of BKPM No. 1 of 2020 on Guidelines of the Implementation of Electronically Integrated Licensing Services (“**Perka 1/2020**”).

3. TRO and FRO

a) TRO

None of GR 05 and Perka 4 stipulate the permissible activities which can be conducted by a TRO as previously provided in Perka 1/2020. GR 05 only regulates the business licensing required for a TRO. However, MOT 10 clearly prohibits the TRO from engaging in trading activities and sales transactions from the beginning until the end, such as filing tender, signing contract, settling claims, etc. Accordingly, it can only act as selling agent and/or manufactures agent and/or buying agent.

To establish a TRO, the business actor must have a Business Identification Number (*Nomor Induk Berusaha* or “**NIB**”) and apply for a TRO Business License (*Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing* – “**SIUP3A**”) or a TRO Business License in the Trade Sector through Electronic System (*Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing Bidang Perdagangan Melalui Sistem Elektronik* – “**SIUP3A Bidang PMSE**”).

As a holder of SIUP3A, there are several obligations that must be complied with TRO’s commencement of business activities:

- a. TRO’s import business activities must be carried out by a national company holding business licensing and/or foreign investment companies having a general import identification number (*Angka Pengenal Importir Umum*);
- b. TRO must appoint a national company as an agent for the promoted products;
- c. Each of TRO and its branch offices must have a SIUP3A and must pay a warranty fee for IDR 5,000,000 for foreigners and IDR 1,000,000 for Indonesian citizens;
- d. TRO must employ at least 3 (three) Indonesian experts and/or administrative workers;
- e. Work permits from the Minister of Trade of the Republic of Indonesia must be obtained by the employed expatriate(s) and he/she/they must have bachelor’s degree(s) and experience of at least 3 years; and
- f. TRO must be registered in the Company Registration.

As a holder of SIUP3A in the field of PMSE, there are several obligations that must be complied with TRO’s business activities’ commencement:

- a. In starting the business activity, PPMSE must carry out storage of data of the offshore trader registered to the PMSE’s platform;
- b. If the business activities have ended, onshore and offshore PPMSE appoint representatives to end their business activities, owners, managers or people in charge shall submit reports, data and/or information electronically through the Ministry/Institution;
- c. Onshore and/or offshore PPMSE shall deliver data and/or information to government institution which administering statistical affairs;
- d. Offshore PPMSE which fulfills a certain criteria appoints representative in Indonesia can act as and under the name of related PPMSE;
- e. In carrying out PMSE business activity, business actor shall assist government’s programme such as:
 - i. Prioritizing domestic trade in goods and/or domestic producing service;
 - ii. Improving domestic trade in goods and/or domestic producing services;
 - iii. Providing promotion space for domestic goods and/or domestic producing services.
- f. If representative relation is unilaterally terminated, offshore PPMSE shall appoint new representative 14 days after the relation termination.

- g. If onshore or offshore trader receives sanction, PPMSE shall block their PMSE service.

In addition to the above obligations, the TRO must also submit an annual activity report to the issuer of SIUP3A and semi-annual activity reports through supervision subsystem under the OSS System.

b) FRO

The risk-based business licensing of FRO shall be classified as a low risk-based business, which only requires an NIB and an FRO registration, which will be issued by OSS Agency, as an inseparable part of the NIB. An FRO is chaired by a chief of representative office, who must reside in Indonesia.

FRO's activities are limited to:

- a. acting as a supervisor, liaison, coordinator and taking care of the company's or the affiliated companies' interests; and
- b. preparing the incorporation and business' expansion of a foreign investment company in Indonesia or in other countries and Indonesia.
- c. having its offices in an office building in the capital city of a province.
- d. not seeking for revenues from Indonesia including the prohibition from engaging in selling and purchasing agreements/transactions for commercial goods or services with local companies or individuals; and
- e. not participating in the management of any company, subsidiary company, or company's branch in Indonesia.

Perka 5 requires the FRO to submit a semi-annual report in relation to its activities through supervision subsystem under the OSS System.

4. BUJKA

a) BUJKA Qualitative Requirements

In carrying out its business in Indonesia, BUJKA must:

- a) form an Operations Cooperation (*Kerjasama Operasi* – “**KSO**”) with National Construction Business Entity (*Badan Usaha Jasa Konstruksi Nasional* – “**BUJKN**”) which fulfills KSO technical criteria as follow:
 - a. It is a limited liability company;
 - b. holding a large qualification construction SBU and having subclassification similarity with BUJKA; and
 - c. In the form of state-owned enterprises, regionally owned enterprise, or private-business entity.
- b) KSO to carry out construction works or integrated construction works shall comply with the following:
 - a. at least 50% of the cost value of the construction works shall be conducted onshore; and
 - b. at least 30% of the cost value of the construction works shall be conducted by BUJKN as KSO's partner.
- c) KSO to carry out construction consultation services shall comply with the following:
 - a. all construction consultation services works are conducted onshore; and
 - b. at least 50% of the contract value of construction consultation services is conducted by BUJKN as KSO's partner.

- d) prioritizing the utilization of local construction materials and technology.
- e) having high, sophisticated, efficient, environmentally friendly technology, and shall pay attention to local wisdom.
- f) carrying out transfer of technology.
- g) hiring more Indonesian experts compared to foreign experts; and
- h) hiring more Indonesian workers as companion workers in the management and technical fields at least two levels below the position of foreign workers based on the appropriate scientific classification.

b) BUJKA Quantitative Requirements

BUJKA is a representative office of a foreign legal entity which engages in the construction services business activities based on business licensing (including Business Entity Certificate (*Sertifikat Badan Usaha* or “**SBU**”). The leader of BUJKA for technical issue must be Indonesian citizen, however, the leader of BUJKA responsible for construction performance for the purpose of technology transfer can be a foreigner.

As a construction services business entity, BUJKA shall carry out activities within the scope of construction consultation services, construction works, and integrated construction works. Construction consultation and construction works are classified into two different types, i.e., general and specialist. Generally, construction consultation services and construction works cover small, medium, and large qualifications, while integrated construction works only cover large qualification. The determination of qualifications mentioned above shall be based on the feasibility assessment on the following documents:

- Annual sales: based on the construction work contract legalized by the work owner and has been recorded as the BUJKA’s experience.
- Financial capabilities: based on public accountant’s audit on the BUJKA’s balance sheet pursuant to the prevailing laws and regulations.
- Construction labor availability: it shall fulfill the minimum requirement consisting of number of labors, labors’ qualification, and labor rank/level.
- Ability to provide construction equipment: it should meet the minimum number of main equipment requirements for each sub-classification.

The above documents will be used as the basis for the Minister in the field of public works to issue a SBU and determine a construction service business entity classification.

Notwithstanding to the above, BUJKA *per se* is a foreign representative office with a large qualification requirement, but it has a different establishment prerequisite compared to other construction services companies.

5. JPTLA

Pursuant to GR 25, JPTLA is one of the private business entities which carries out business activities in the field of electricity supporting services based on business licensing and an SBU. Moreover, Perka 05 obligates JPTLA to submit annual report to the OSS. JPTLA’s business licensing shall be granted to the following types of business:

- a. consultation in the field of electricity installation;

- b. construction and setting of electricity installation; and
- c. maintenance of electricity installation.

As defined above, JPTLA' requires NIB with business entity certificate for electricity supporting business foreign representative office (sertifikat badan usaha untuk badan usaha jasa penunjang tenaga listrik asing ("**SBU BUJPTLA**") to carry out its business activities.

Please note that JPTLA may only be permitted in carrying out high-cost electricity supporting services works with the following threshold:

- a. Construction and setting of electricity installation, at least of IDR 100 billion;
- b. Consultation in the field of electricity installation or maintenance of electricity installation, at least IDR 10 billion.

JPTLA must fulfill the minimum requirements pursuant to GR 25 as follow:

- a. having a large qualification;
- b. forming an operations cooperation with a domestic, electricity supporting services company;
- c. hiring more Indonesian workers compared to foreign workers;
- d. appointing Indonesian citizen as the person in charge of JPTLA;
- e. prioritizing domestic products' utilization;
- f. possessing high, sophisticated, efficient, environmentally friendly technology, as well as paying attention to the local wisdom;
- g. conducting transfer of technology; and
- h. complying with other obligations pursuant to the prevailing laws and regulations.

Those who fail to comply with the above requirements shall be subject to certain administrative sanctions and a fine.



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