

Client Update: Indonesia

15 March 2021

Shift to Risk-Based Licensing Set to Transform Indonesia's Investment Climate



Continuing our Overview Series on the Omnibus Law and in light of the issuance of the implementing regulations to the law, our team is currently examining these regulations to assess their impact on your business.

In this update, we will highlight changes in the **corporate** sector.

Following the enactment of Law No. 11 of 2020, commonly known as the Omnibus Law, the government has introduced the necessary implementing regulations to the law. Of the proposed changes under the Omnibus Law, one, in particular, will affect all businesses, namely the shift from a commitment-based licensing regime to a risk-based licensing regime. The new regime is reflected under Government Regulation No. 5 of 2021 on the Implementation of Risk-Based Business Licenses. It is aimed to administer a more streamlined and efficient business licensing process, and in some instances, even removing the licensing requirement for certain businesses.

As mentioned earlier, except for the insurance, banking, and finance industries, all of which are regulated by Bank Indonesia and/or the Financial Services Authority (OJK), all other business sectors are affected by the government regulation. These include businesses in the following sectors: energy and mineral resources; health, medicine, and food; education and culture; tourism; postal, broadcasting, and telecommunications; electronic system and transaction; and employment.

This update provides a high-level overview of the risk-based licensing regime, especially key aspects that businesses should be aware of.

Risk Level and Licensing Requirements

The regulation prescribes four risk levels, each with its own licensing requirement. The risk level of a business will be determined based on the potential impact of its business activity on health, safety,

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environment, and natural resources utilisation, as well as other hazard factors. While the Omnibus Law specifies three risk levels (high, medium, and low), Government Regulation No. 5/2021 expands and categorised the risk levels into four:

1. **Low risk**

Businesses with low-risk categorisation are only required to obtain a business identification number (*Nomor Induk Berusaha* or "**NIB**") to commence their operational and commercial activities, including the production, distribution, and/or marketing goods or services.

As an NIB also serves as, among others, Importer Identification Number (*Angka Pengenal Impor*), Customs Access Right (*Hak Akses Kepabeanan*), Halal guarantee statement (for low-risk small and medium enterprises), and Environmental Management and Monitoring Capability Statement Letter (*Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup*) (only for low-risk business), businesses that qualify as low-risk will enjoy significant relaxation in terms of starting their business.

2. **Medium-low risk**

Businesses with medium-low risk activities must obtain a NIB and a Standard Certificate (*Sertifikat Standar*) before commencing their business operation.

Under the regulation, Standard Certificate is a statement and/or evidence of the fulfilment of certain business implementation standard. Specifically for medium-low risk business, the Standard Certificate is in the form of a self-statement.

3. **Medium-high risk business activities**

Moving up the risk ladder, businesses with medium-high risk activities must obtain a NIB and an unverified Standard Certificate to commence their business' preparation stage. The preparation stage can be in the form of procurement of land, construction of a building, purchase of equipment, hiring of employees, fulfilment of business standards, and/or conducting feasibility studies.

The Standard Certificate will be unverified until the relevant government agency verifies whether the business has fulfilled specific business standards. Once the agency is satisfied that these standards have been fulfilled, it will issue the verified Certificate, and the business can commence its operational/commercial activities.

4. **High risk**

Businesses categorised as high-risk occupy the top of the risk ladder. Such businesses can still use their NIB to commence the preparation stage but will be required to obtain a license before commencing their operational/commercial activities.

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A license will be issued after the business has fulfilled certain conditions and verification by the relevant government agency. For certain business activities, they may also be required to obtain an additional Standard Certificate issued by either the central or regional government.

Illustration

The table below illustrates some of the licensing requirements under Government Regulation No. 5 of 2021. Under the previous regime, these business lines were required to obtain a Business License (*Izin Usaha*).

Business Line	License under Government Regulation No. 5 of 2021			
	Business Scale	Risk Level	License	Issuing Authority
Internet service provider (ISP)	All	High	NIB and License	Minister of Communications and Information Technologies
Web portal/e-commerce platform operator	Large and medium	High	NIB and License	Minister of Trade
	Small and micro	Low	NIB	Regent/Mayor
Private hospitals	All	High	NIB, License and Standard Certificate	Minister of Health or Governor or Regent/Mayor depending on hospital class
Wholesale distribution	All	Low	NIB	Governor or Regent/Mayor
Freight forwarding	All	Medium-high	NIB and Standard Certificate	Governor

Supervisory Measures Strengthened

Government Regulation No. 5 of 2021 also added a layer of supervisory measures to implement risk-based licensing. In addition to the (i) regular investment realisation report (*laporan kegiatan penanaman modal*) and (ii) post-audit supervisory by the relevant governmental agencies, the regulation introduces field inspection as part of the routine monitoring of business players.

The relevant government agency will carry out field inspection, which may include administrative and/or physical examination, testing, and/or mentoring and counselling. Each business will be subject to at least once a year field inspection for each of its business locations, but medium-high risk and high-risk businesses will be subject field inspection twice a year. Suppose a low-risk or medium-low risk business is declared as "compliant" by the inspector. In that case, such business may be exempted from a field

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inspection in the subsequent year (or only one inspection for medium-high risk and high-risk businesses).

The regulation also revamps the reporting obligation under the previous licensing regime. A business must now submit:

1. a quarterly report on the realisation of investments and manpower; and
2. an annual report on the realisation of production, corporate social responsibility, partnership, training, and technology transfer.

Both of these reports must be submitted after the business has commenced its operational/commercial activities.

The results of the supervisory measures detailed above will be used by the relevant government agencies to review and evaluate the business line's risk level.

Key Takeaways

The regulation is valid as of its enactment date and replaces Government Regulation No. 24 of 2018 on Electronically Integrated Business Licensing Services.

Businesses that have obtained an effective business license (meaning that they have fulfilled the commitments listed in the OSS platform) will not be affected. On the other hand, businesses with a non-effective business license may have to adjust their compliance as their application will now be processed in accordance with Government Regulation No. 5 of 2021.

We would like to highlight that this regulation does not represent the full picture of the new risk-based licensing regime. Indeed, the regulation states that further implementing regulations will be issued within two months from its enactment and that the OSS platform will be adjusted within four months. It remains to be seen how the regulation will interact with the OSS platform in accommodating the demand for an efficient licensing system.

What businesses need to do now is to re-register their OSS accounts as per the instruction under the regulation's transitional provision. It is safe to assume that failure to re-register will mean that a business will miss out on the OSS platform's new features. It is also advisable for businesses whose licenses are not yet effective to contact BKPM to check further the adjustment to the new procedures as they proceed with their licensing process.

To read our previous alerts on the Omnibus Law, please click [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

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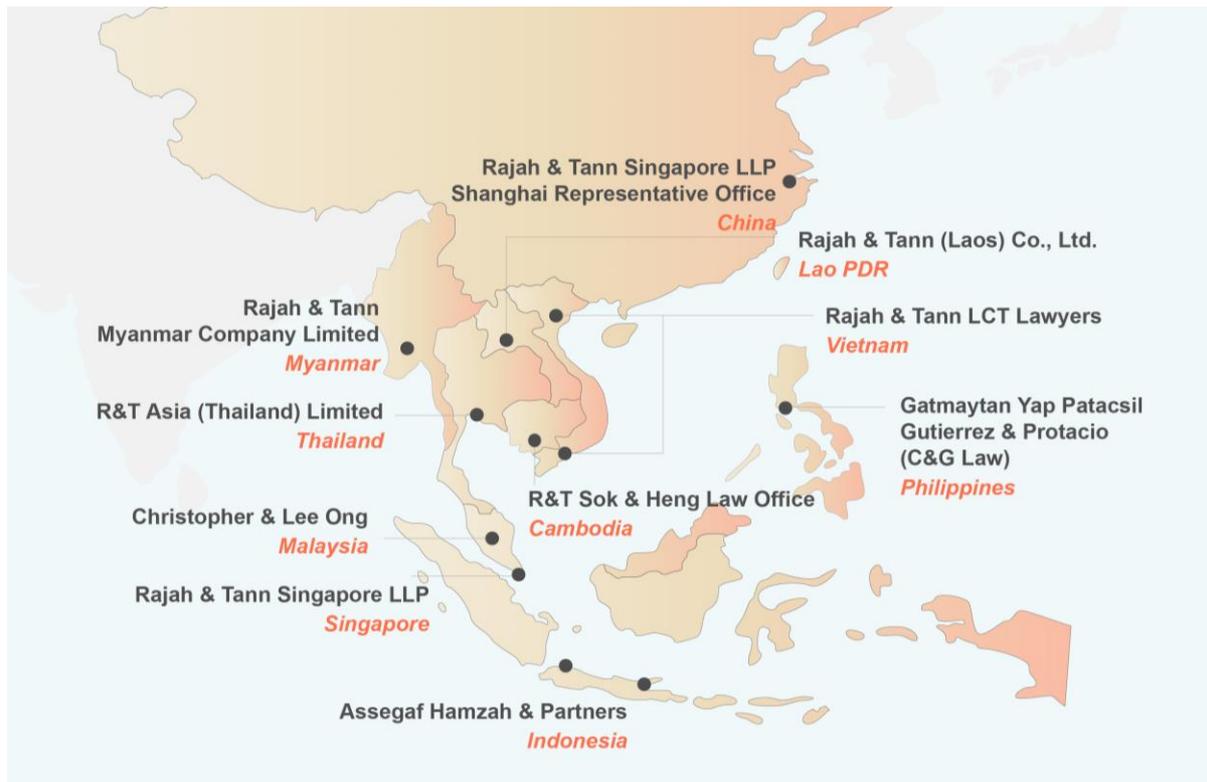
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