

## New Regulation on Risk-Based Business Licensing

On 2 February 2021, the Government of the Republic of Indonesia issued Government Regulation No. 5 of 2021 concerning Administration of Risk-Based Business Licensing (“**GR 5/2021**”). GR 5/2021 was issued as an implementing regulation to the Law No. 11 of 2020 concerning Job Creation, which has been promulgated as of 2 November 2020. The issuance of GR 5/2021 revokes the regulation governing the implementation of licensing through the Online Single Submission (“**OSS**”) system, i.e., Government Regulation No. 24 of 2018 concerning the Electronically Integrated Business Licensing Services (“**GR 24/2018**”).

Some key provisions under GR 5/2021 are as follows:

### 1. Risk-Based Business Licensing arrangements

Based on GR 5/2021, business activities are classified into:

- a. Low risk business activities;
- b. Medium-Low risk business activities;
- c. Medium-High risk business activities; and
- d. High risk business activities.

The abovementioned classifications distinguish the business licenses that are required for business practitioners to carry out their activities, i.e.:

No.	Low risk business activities	Medium-low risk business activities	Medium-high risk business activities	High risk business activities
1.	Business Identification Number ( <i>Nomor Induk Berusaha</i> – “ <b>NIB</b> ”)			
2.	-	Certificate of Standards		License

### 2. Norms, Standards, Procedures, and Criteria (“NSPC”) for Risk-Based Business Licensing

GR 5/2021 regulates the NSPC for the Risk-Based Business Licensing in the following sectors:

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|----------------------------------|--------------------|
| a. marine and fishery;           | e. nuclear energy; |
| b. agriculture;                  | f. industry;       |
| c. environment and forestry;     | g. trade;          |
| d. energy and mineral resources; |                    |



- |                                     |   |
|-------------------------------------|---|
| h. public works and public housing; | m. religious affairs;   |
| i. transportation;                  | n. post, telecommunications, broadcasting and electronic system and transactions; |
| j. health, medicine, and food;      | o. defense and security; and  |
| k. education and culture;           | p. employment.  |
| l. tourism;                         |   |

The NSPC as mentioned above contains a list of requirements for each business sector which in turn divided into several subsectors. Further, the type of risk and the required business license and also the requirements and/or obligations for each sectors and subsectors are listed in detail in Attachments I and II of GR 5/2021.

In addition to the abovementioned sectors, GR 5/2021 also stipulates that the NSPC for business activities in the creative economy sector, which have been stipulated under the Indonesia Standard Business Classification (*Klasifikasi Baku Lapangan Usaha – “KBLI”*) code but have not been stipulated in Risk-Based Business Licensing, will be regulated by the relevant minister.

### **3. Risk-Based Business Licensing through the OSS system**

Risk-Based Business Licensing is implemented electronically and integrated through the OSS System. Furthermore, the applicants of the business licensing as stipulated in GR 5/2021, consist of:

- a. individual person, who are legally capable and an Indonesian citizen;
- b. business entities that are either established as a legal entity or not a legal entity and incorporated within the territory of the Republic Indonesia;
- c. representative offices; and
- d. foreign business entities.

GR 5/2021 stipulates that the NIB is valid as:

- a. Identity for business practitioners as evidence of registration to carry out business activities;
- b. Importer Identification Number (*Angka Pengenal Importir – “API”*);
- c. Customs Access Rights (*Hak Akses Kepabeanan*);
- d. Registration of Healthcare Social Security Agency (*Badan Penyelenggara Jaminan Sosial Kesehatan*) and Workers Social Security Agency (*Badan Penyelenggara Jaminan Sosial Ketenagakerjaan*); and
- e. The first period of Mandatory Manpower Report (*Wajib Laporan Ketenagakerjaan*).



Further, GR 5/2021 provides that the minimum investment requirements for foreign investments shall be more than Rp10,000,000,000 (ten billion Rupiah), excluding land and buildings, for each business class (5-digit KBLI code) and each project location, with a few exceptions for certain business fields, i.e.:

No.	Business Field	Minimum Investment Requirement
1.	Wholesale trading	More than Rp10,000,000,000 (ten billion Rupiah), excluding land and building, for each business sub-group (4-digit KBLI code)
2.	Food and beverages services	More than Rp10,000,000,000 (ten billion Rupiah), excluding land and building, for each business division (2-digit KBLI code) and each location
3.	Construction	More than Rp10,000,000,000 (ten billion Rupiah), excluding land and building, for each business sub-group (4-digit KBLI code)
4.	Industry/ manufacture	More than Rp10,000,000,000 (ten billion Rupiah), excluding land and building, for each production line

#### **4. Sanctions**

Please be informed that non-compliance with the provisions of GR 5/2021 may result in the imposition of administrative sanctions, among others, in the form(s) of:

- a. written warning;
- b. temporary suspension of activities;
- c. government coercion;
- d. administrative fine;
- e. suspension of business licenses;
- f. revocation of business licenses; and
- g. other sanctions in accordance with the relevant business sector(s).

However, the type of imposed sanction will vary between one business sector to another. Furthermore, GR 5/2021 also prescribes for criminal sanctions for non-compliance with the regulation in certain business sectors, specifically in the sectors of post, telecommunications, broadcasting and electronic systems and transactions and the sector of defense and security.

#### **5. Transitional Provisions**

Upon the enactment of GR 5/2021, the provisions of this regulation are exempted for business practitioners whose business licenses have been approved and are effective before GR 5/2021 takes effect. However, in the event that a business practitioner has



obtained a license which is not yet effectively valid (e.g., due to non-fulfillments of certain mandatory commitments to the government), the said business license shall be further processed in accordance with GR 5/2021.

Meanwhile, business practitioners who have obtained access rights in the OSS systems prior to the enactment of GR 5/2021 are obligated to update their respective access rights' data in the OSS system. Such obligation will be notified via email by the OSS system.

Further, with the enactment of GR 5/2021, other laws and regulations regarding business licensing services shall continue to be valid as long as they are not in contradiction with GR 5/2021. In addition, GR 5/2021 also stipulates that the implementing regulations of GR 5/2021 must be issued in no later than 2 (two) months after the enactment of GR 5/2021 and the implementation for Risk-Based Business Licensing through the OSS system will commence within 4 (four) months as of the enactment date of GR 5/2021.

### **Going Forward**

We still need to see further measures taken by related government agencies in Indonesia, especially the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal – “BKPM”*) as the government agency which manages the OSS System, including any socialization and further guidance on the implementation of GR 5/2021 through the OSS System.

This client alert is intended to provide a general overview only on several provisions and may not cover all provisions of GR 5/2021, thus, cannot be deemed or treated as a legal advice. Please do not hesitate to contact us if you need a more detailed discussion and/or advice or have specific questions.

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