

INDONESIA INVESTMENT UPDATES - ESTABLISHING A PRESENCE IN INDONESIA: WHAT YOU NEED TO KNOW

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This article is the second in CNPUpdate's new series on Indonesia Investment Updates, and aims to provide you with a general overview of the laws and regulations governing foreign investments into Indonesia.

How can I enter the Indonesian market?

Generally speaking, you can enter the Indonesian market by:

- establishing a general representative office (also known as a *Kantor Perwakilan Perusahaan Asing*, or “KPPA”); or
- incorporating a foreign investment limited liability company (*Perseroan Terbatas Penanaman Modal Asing*, or “PT PMA”).

There are other types of representative offices. For example, if you are in the construction industry, you may wish to consider establishing a foreign construction company representative office (also known as a *Badan Usaha Jasa Konstruksi Asing* or “BUJKA”), and if you are in the trade industry, a foreign trade representative office (also known as a *Kantor Perwakilan Perdagangan Asing* or “KP3A”). However, for the purposes of this article, we will only consider the KPPA.

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Should I establish a KPPA or incorporate a PT PMA?

Whether you should establish a KPPA or incorporate a PT PMA depends on your objective. On the one hand, a KPPA is simply a representative office established by a company that has already been incorporated outside of Indonesia. A KPPA is not a separate legal entity, and cannot engage in commercial or revenue-generating activity or participate in the management of any company in Indonesia. Although it is possible for a KPPA to refer potential business transactions back to its foreign parent company, do remember to obtain tax advice as to whether, for example, withholding taxes may apply. Once you have received the relevant approvals, you will be granted a KPPA licence, which has an initial validity period of 3 years. You can apply to extend your KPPA licence twice, with each extension having a maximum period of 1 year.

A PT PMA, on the other hand, is a limited liability company. A PT PMA can sue and be sued in its own name, and own certain rights and assets. Unlike a KPPA, a PT PMA can engage directly in sales and revenue-generating activities provided that the necessary licences and permits have been obtained and exist in perpetuity. Note also that a PT PMA must have at least one director, one commissioner, and two shareholders (to whom an annual report must be presented) at any one time, and that foreign investment regulations may limit the extent of foreign ownership in the PT PMA.

How to establish a KPPA

Establishing a KPPA is relatively simple and can take between 30 to 40 business days. First, the foreign company must first appoint an individual as its chief representative in Indonesia. Whilst this individual can be an employee of the foreign company, they cannot be a director of the foreign company (though they can, for example, be a director of the foreign company's subsidiary). There is presently no requirement for the chief representative to be an Indonesian citizen.

Second, and once the foreign company has appointed a chief representative, an application may be made to the Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”). The application can be made by the foreign company, its chief representative, or any person authorised by the foreign company or chief representative to do so by way of a power of attorney. The application should be supported by, among other things:

1. a Letter of Intent from the foreign company addressed to BKPM stating the foreign company's intention to set up a representative office in Indonesia;
2. a copy of the Letter of Appointment from the foreign company addressed to BKPM stating that the foreign company has appointed the individual named in the Letter of Appointment as the foreign company's chief representative in Indonesia; and
3. a Letter of Statement from the chief representative stating their willingness to stay and work only as the chief representative, without engaging in any other form of business in Indonesia.

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Third, and once BKPM has approved the foreign company's application by providing the foreign company with a Letter of Approval, the foreign company can proceed to apply to the Tax Registry for a Tax ID Number.

The KPPA will have been duly established once these documents have been obtained. Thereafter, the KPPA can proceed to sponsor applications for the relevant work and residence permits (respectively, *Izin Mempekerjakan Tenaga Kerja Asing* or “**IMTA**”; and *Kartu Izin Tinggal Terbatas* or “**KITAS**”) for expatriates.

How to incorporate a PT PMA

The process of incorporating an operationally-ready PT PMA involves several steps and applications to various authorities.

The first step is to conduct a name search and reserve the PT PMA's name with Ministry of Law and Human Rights (“**MOLHR**”, which performs the functions of the registrar of companies), and prepare and sign a Deed of Establishment (also known as the *Akta Pendirian Perseoran Terbatas*). The Deed of Establishment is then signed by the founding shareholders of the PT PMA or their duly appointed attorneys in Indonesia before an Indonesian notary. The Deed of Establishment must, among other things:

1. contain the Articles of Association of the PT PMA (*Anggaran Dasar*);
2. state the members of the PT PMA's board of directors and commissioners; and
3. state the authorised, paid-up, and issued share capital of the PT PMA.

The second step is to obtain MOLHR's approval and ratification of the incorporation of the PT PMA. The Indonesian notary before whom the Deed of Establishment was signed will, after signing, lodge the signed Deed of Establishment with the MOLHR for the MOLHR's review, approval, and ratification. Once the Deed of Establishment has been reviewed and approved by the MOLHR, MOLHR will issue the PT PMA with a letter stating that MOLHR has ratified the incorporation of the PT PMA. Only then is the PT PMA considered to have been validly incorporated. A shareholder's resolution can thereafter be passed to amend the Articles of Association to conform with and/or incorporate the relevant terms of any joint venture or shareholders' agreement.

Once incorporated, the PT PMA must hold its first extraordinary general meeting (“**EGM**”) within sixty (60) days. At this EGM, the shareholders of the company should ratify all acts of the promoters in relation to the abovementioned granting of powers of attorney, thereby verifying the legitimacy of the PT PMA as a legal entity. The first annual general meeting is to be held within six (6) months of the end of the PT PMA's financial year.

The third step comprises applications for several mandatory documents, licences, and approvals that must be completed to enable the PT PMA to commence operations. This includes applying for, for example and among other things:

1. a tax identity number (*Nomor Pokok Wajib Pajak* or “**NPWP**”) and tax registration certificate (*Surat*

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Keterangan Terdaftar or “SKT”);

2. apply for a business identification number (*Nomor Induk Berusaha* or “NIB”) through the Online Single Submission (“OSS”) system;
3. apply for a social security certificate (*Badan Penyelenggara Jaminan Sosial Ketenagakerjaan* or “BPJS”) and a mandatory manpower report (*Wajib Laporan*);
4. where the PT PMA intends to employ expatriates, an IMTA and KITAS for each expatriate; and
5. the relevant general and technical licences that the PT PMA is required by Indonesian laws and regulations to hold, before having their business licence (*Izin Usaha*) activated on the OSS and starting commercial operations in the respective lines of business.

The following table summarizes the different steps in brief:

S/No.	Process	Approximate time required	Required?	
			KPPA	PT PMA
1.	Reservation of company name	2 business days	No	Yes
2.	Obtain Power of Attorney (<i>Surat Kuasa</i>) to appoint relevant representative to sign the relevant documents and applications	10 business days	Yes	Yes
3.	Submit relevant applications through OSS	up to 21 business days	Yes	Yes
4.	Prepare and sign the Deed of Establishment	3 business days	No	Yes
5.	Approval of the Deed of Establishment by MOLHR, which will establish the company as a legal entity.	3 business days	No	Yes
6.	Ratification of the legal entity / Legalisation of the Deed of Establishment with MOLHR	7 business days	No	Yes
7.	Apply for an NPWP	2 business days	Yes	Yes
8.	Apply for a SKT	2 business days	No	Yes
9.	Apply for BPJS and <i>Wajib Laporan</i>	1 month	No	Yes
12.	Apply for IMTA and KITAS, if necessary	1 month	Yes	Yes
13.	Apply for the relevant general and technical licences that is required by Indonesian laws and regulations to hold before starting commercial operations in the relevant lines of business.	Subject to the type of licence	No	Yes

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