INDONESIAN LEGAL YEAR IN REVIEW

2015

The enclosed articles have been prepared by SSEK lawyers to provide a snapshot overview of what has occurred in the Indonesian legal sector during 2015. If there were significant laws and regulations adopted in 2014 or at the beginning of 2016 before this volume went to press, we added appropriate commentary.

These articles are intended to provide insight into Indonesian legal and regulatory developments in specified sectors during the year 2015 and are intended, when taken together, to provide tone and content to Indonesian legal developments. There are, of course, many matters that cannot be addressed in such a presentation. Also, these articles are summaries and are not intended to be exhaustive of their topics or to be a substitute for legal advice in specific situations. Legal advice is always fact specific and the reader should always consult counsel for specific problems.

For more information on Indonesian legal developments and trends, please visit the SSEK website (www.ssek.com) and blog (http://blog.ssek.com), and follow us on Twitter (@SSEK_lawfirm) and LinkedIn (https://www.linkedin.com/company/ ssek-legal-consultants).

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SSEK
Indonesian Legal Consultants

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Senior Foreign Legal Advisor - Editor
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1. Introduction

This article focuses on the types of business activities that can be conducted at airports pursuant to the most recent regulations. The regulation of airports is under the jurisdiction of the Ministry of Transportation (the “MOT”). The most recent basic regulation on airport business activities is MOT Regulation No. 69 of 2013 on the Order of National Airport Affairs (August 20, 2013) (“MOT Reg 69/2013”). In general, MOT Reg 69/2013 was issued to set out the functions, hierarchy and classification of airports, including an airport national master plan. In addition, the MOT also issued Regulation No. 56 of 2015 on Airport Business Activities (March 18, 2015) (“MOT Reg 56/2015”) as amended by MOT Regulation No. 187 on the Amendment of MOT Regulation No. 56 of 2015 regarding Airport Business Activities (December 4, 2015) (“MOT Reg 187/2015”). This regulation concentrates on business activities conducted at airports, including the administrative and financial requirements for business players to conduct such activities.

Airport business activities are carried out by an “Airport Business Entity,” which is defined as a State-Owned Enterprise, Regional Government-Owned Enterprise or an Indonesian legal entity in the form of a limited liability company or cooperative, the main business of which is to operate an airport for the interest of the public.

2. Regulations

Read together, MOT Reg 69/2013, MOT 56/2015 and MOT Reg 187/2015 contain the following major points:

A. Airport Business Activities

Pursuant to MOT Reg 69/2013, MOT Reg 56/2015 and MOT Reg 187/2015, business activities in airports are divided into two categories - airport affairs services and airport-related services. Airport affairs services include providing services for aircraft, passengers, baggage and postal communications. These activities consist of the procurement and development of (i) landings, take-offs, maneuvers, parking and storage of aircraft facilities; (ii) terminal facilities for passengers, cargo and postal communications; (iii) electronic, electricity, water and waste installation facilities; and (iv) areas for buildings, fields and industrial territories including buildings related to air transport activities.

Airport-related services include services to support aircraft operations in airports (e.g., the provision of warehouses, catering, cargo, postal communications, ground handling, passengers and baggage, etc.), to support the services provided to passengers and goods (e.g., accommodation, food, health care services, etc.), and other services that add value to airport business activities. Examples are playgrounds, office facilities, sport arenas, refueling points and the like.
B. Requirements to Implement Airport Affairs Services

An Airport Business Entity must first secure an Airport Business License from the MOT to engage in airport affairs services. Once obtained, the Airport Business License is valid as long as the relevant Airport Business Entity continues to conduct its airport business activities. One business license obtained by an Airport Business Entity can cover more than one airport business activity. Although there is no time period of the license, it is subject to an evaluation that is done every two years by the relevant government agency.

To secure an Airport Business License, the Airport Business Entity must meet several administrative, financial and management requirements. As to the administrative requirement, the relevant Airport Business Entity's articles of association must state it engages in airport-affairs activities and does not implement commercial air transportation. To satisfy the financial requirement, an Airport Business Entity must be majority-owned by Indonesian citizens or Indonesian legal entities. Under President Regulation No. 39 of 2014 regarding the List of Businesses Closed and Open with Requirements (April 24, 2014) (the “Negative Investment List”), the maximum foreign investment in Airport Affairs Services is 49 percent. Investors must also submit evidence to show that they paid the minimum required capital. Under Article 14 of MOT Regulation No. 45 regarding Capital Ownership Requirement in the Field of Transportation (February 24, 2015) (“MOT Reg 45/2015”), the minimum paid-up capital is Rp 500 billion for domestic airports and Rp 1 trillion for international airports.

C. Requirements to Implement Airport-Related Services

Airport-Related Services can be implemented by an Indonesian individual or an Indonesian legal entity based on a cooperation agreement with an airport administrator. The Indonesian individual or Indonesian legal entity is required first to obtain from the MOT a certificate of operation, which is required by Article 38.(1) of MOT Reg 56/2015, and an Airport-Related Services Business License from the Head of the relevant Airport Authority. The Airport-Related Services Business License is valid for five years but may be extended. The license is only applicable for one airport.

Similar to the requirement for an Airport Affairs Services License, an Indonesian legal entity that intends to conduct Airport-Related Services must be at least majority-owned by Indonesian citizens or Indonesian legal entities. Based on the Negative Investment List, the maximum foreign investment in Airport-Related Services is 49 percent.

D. Reporting Obligations

An Airport Business Entity conducting Airport Affairs Services is required to make a periodic report to the Directorate General of Air Transportation and the relevant Airport Authority. The report must include comments on the condition of the airport affairs services facilities, the airport business activities and a financial report audited by an independent auditor.

For Airport-Related Services, the relevant entity or individual conducting such activities must also submit a periodic report that discloses (i) the condition of facilities and equipment and the personnel of the provider; (ii) the airport-related services activities and the (iii) supervision and management implemented internally by the Airport-Related Services entity or individual.

3. Conclusions

Before the issuance of MOT Reg 56/2015, there were no clear guidelines for businesses that participated in providing airport services. The above-discussed matters are only generally regulated by Article 238 of Law No. 1 of 2009 regarding Aviation. Hopefully, MOT Reg 56/2015 will improve the quality of Indonesian airports to create a reliable, integrated and globally competitive airport system to support the national and regional economy.
Anti-Corruption

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The new Government of Indonesia (the “GOI”) began implementing its anti-corruption policy in 2015. However, there have been many anti-corruption developments that have tested and defined this policy starting as early as January 2015.

The Corruption Eradication Commission (Komisi Pemberantasan Korupsi or “KPK”) lists on its official website that as of September 30, 2015, it has carried out examinations (penyelidikan) of 67 cases, investigations (penyidikan) of 31 cases and prosecution of 47 cases. Twenty-five cases have been finalized and the judgments are final and legally binding. Enforcement of the judicial decisions (i.e., execution) has been carried out in 25 cases. It should be noted that this data does not constitute all of the GOI’s anti-corruption eradication efforts, as the KPK still shares some of its corruption-related authority with the Indonesian National Police and the Attorney General’s Office, whose efforts cannot be as easily accessed.

The above data shows a decrease in the KPK’s corruption cases. In 2014, the KPK carried out examinations of 81 cases and judicial decisions and executions were implemented in 48 cases. Indonesian Corruption Watch (the “ICW”) has also indicated that all enforcement agencies (not just the KPK) were only able to prosecute half of the total number of corruption cases.

In a nutshell, the anti-corruption policies, regulations and events can be summarized as follows.

A. Notable New Regulations in 2015

1. Amendment of the KPK Law

On February 18, 2015, the GOI issued Government Regulation in Lieu of Law No. 1 of 2015 regarding the Amendment of Law No. 30 of 2002 regarding the Commission for the Eradication of Criminal Acts of Corruption (“GR 1/2015”), which was later enacted into law as Law No. 10 of 2015 regarding the Stipulation of GR 1/2015 (May 25, 2015) (“Law 10/2015”). GR 1/2015 and Law 10/2015 were enacted in response to the vacant positions of the chairmen of the KPK, as a result of the arrest of the chairmen by the police on criminal charges. Specifically, when the KPK declared the nominated head of the National Police a suspect in a criminal corruption case, the police reacted by charging the chairmen of the KPK with various crimes, which were widely regarded as having dubious validity. Nonetheless, by law, the chairmen of the KPK were forced to resign. These resignations are considered by many to have impaired the KPK’s performance.

GR 1/2015 and Law 10/2015 added two new articles to Law No. 30 of 2002 regarding the Commission for the Eradication of Criminal Acts of Corruption (the “KPK Law”), being Article 33A and Article 33B.

• Article 33A provides that in the event there is a vacancy that results in the KPK having fewer than three chairmen, the President shall appoint temporary chairmen to fill such vacancies.

• Article 33B clarifies that the term of office of such temporary members shall terminate (a) when one of the KPK chairmen who was replaced due to a temporary termination under the KPK Law is reactivated, or (b) after new KPK chairmen appointed through the process under Article 33, paragraph (2) of the KPK Law are sworn in.

2. Other Regulatory Changes

• Presidential Instruction: Presidential Instruction No. 7 of 2015 regarding 2015 Corruption Prevention and Eradication Actions (May 6, 2015) (“PI 7/2015”) was issued to various state bodies and officials, including
ministers, the attorney general, the Indonesian National Police and governors, and contains action plans to be taken for the prevention and eradication of corruption in 2015.

• Other Authorities’ Regulations: Supreme Court Regulation No.5 of 2014 regarding Additional Penalties of Compensation Money in Corruption Criminal Acts (December 31, 2014) (“SC Reg. 5/2014”) provides that the maximum amount of money a person convicted of a criminal act of corruption may be required to repay is equal to the amount the person obtained from the corrupt act and is not limited to the financial loss incurred by the state. The regulation does not address the question of what amount must be paid if the state loss exceeds such amount. Several other ministries and state institutions (i.e., the Ministry of Industry and the Indonesian Investment Coordinating Board or “BKPM”) have issued various regulations in support of anti-corruption actions.

B. Notable Corruption Cases/Events in 2015

What is often called the “Third Gecko vs. Crocodile Conflict” (Konflik Cicak vs. Buaya Jilid Ketiga) (with the first conflict involving Susno Duadji and the second involving Djoko Susilo) between the KPK and the Indonesian National Police occurred early in January 2015. It began when the KPK named Budi Gunawan, the candidate for chief of the Indonesian National Police at that time, as a suspect in a corruption case. Budi Gunawan then filed a pre-trial claim against the KPK.

The police “counterattacks” were launched when KPK Commissioner Bambang Widjojanto was arrested by the Indonesian National Police for the alleged criminal act of making a false statement, and when the head of the KPK at that time, Abraham Samad, was named a suspect in a document forgery case by the South and West Sulawesi Police.

The judge who heard the pre-trial claim ruled in favor of Budi Gunawan, in a controversial decision. Later, President Joko Widodo canceled the nomination of Budi Gunawan as the chief of the Indonesian National Police and nominated Badrodin Haiti instead. In media statements, the President is also said to have issued a presidential decree to temporarily terminate Bambang Widjojanto and Abraham Samad from their respective positions in the KPK, as required by law. Badrodin Haiti later appointed Budi Gunawan as his deputy chief. Around March 2015, Denny Indrayana, the former vice minister of law and human rights, was named by the police as a suspect in a corruption case involving a payment gateway at the Ministry of Law and Human Rights. Some observers saw this as the police going after anti-corruption activists such as Denny Indrayana.

In July 2015, attorney OC Kaligis was named by the KPK as a suspect in an alleged bribery case involving a Medan State Administrative Court judge. The KPK also named the secretary general of the Nasional Demokrat Party, Patrice Rio Capella, as a suspect in a corruption case.

In October 2015, six factions in the Indonesian Parliament (the “DPR”) suggested revisions to the KPK Law. The GOI rejected such revisions and delayed discussions thereof until the next session of the DPR.

C. What to Expect in 2016

The GOI has a large number of laws waiting enactment. The revision of the Corruption Law (Law No. 31 of 1999 regarding the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001) is included in the National Legislation Program (Prolegnas) for 2015-2019. Revisions to the Indonesian Criminal Code (the “KUHP”) and the Indonesian Criminal Procedural Code (the “KUHAP”) also are scheduled. Some observers have indicated that the essential revisions to the KUHP and KUHAP are part of a process in the DPR to weaken the eradication of corruption in Indonesia. It is uncertain whether such laws and regulations will be issued in 2016.
Anti-Monopoly

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Introduction

Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (March 5, 1999) (the “Anti-Monopoly Law”) was first enacted in 1999 and has never been amended. However, an amended law has been expected for more than a year. A draft of the new Anti-Monopoly Law (the “New Anti-Monopoly Law”) was introduced in 2014 but has not been enacted to date. In 2015, the New Anti-Monopoly Law was included in the 2015 National Legislation Program (Program Legislasi Nasional or “Prolegnas”) of the Indonesian Parliament, which means it is one of the laws prioritized for enactment by the Government of Indonesia (the “GOI”).

The GOI views that the current Anti-Monopoly Law no longer fulfills its needs to create a more established competitive regime in Indonesia.

Based on the current draft New Anti-Monopoly Law, there are several major changes that will be introduced. These are:

1. Leniency Procedure: The current Anti-Monopoly Law and existing regulations of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha or “KPPU”) do not recognize a leniency procedure. The draft New Anti-Monopoly Law provides that the KPPU can give leniency to a business actor that admits and/or reports its action that involves illegal price fixing, the division of territory, boycotts, cartels, trusts, oligopoly, oligopsony, closed agreements and loss selling.

2. Mandatory Pre-closing Merger Review Filings: The current Anti-Monopoly Law requires that a post-notification be made to the KPPU for mergers or consolidations of business entities and for acquisitions of shares, if the resulting asset value and/or sales value exceeds certain threshold amounts. The GOI expects an increase of merger and acquisition transactions and believes it is necessary to replace the current post-notification system with a pre-closing merger filing system.

3. Increase in Penalties: The GOI wishes to increase the maximum fine for violations of the Anti-Monopoly Law by 20 times, from Rp 25 billion to Rp 500 billion, for parties committing prohibited practices.

4. New Administrative Sanctions: The new Anti-Monopoly Law will introduce new sanctions such as the cancellation of prohibited agreements, the winding up of mergers and the criminalization of acts of non-compliance with KPPU decisions.

5. Expansion of the Definition of Business Actors: The current Anti-Monopoly Law covers only those business actors established and domiciled or conducting activities in the Republic of Indonesia. The draft New Anti-Monopoly Law covers business actors established and domiciled abroad whose activities have an impact on the Indonesian market. Thus, the KPPU will have extraterritorial power to prosecute antitrust violations committed abroad, including illegal acts committed by international cartels that the KPPU finds affect the Indonesian economy. This expansion of the KPPU’s jurisdiction anticipates the impact of illegal anti-trust activities by foreign business actors in the ASEAN Economic Community.
Arbitration and Mediation

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1. Construction Arbitration

On September 22, 2015, the Indonesian Centre for Arbitration and Alternative Dispute Resolution for Construction, BADAPSKI, held its first seminar to announce its existence as a dispute resolution body in the field of construction. BADAPSKI was established by the Minister of Public Works on August 19, 2014 pursuant to Law No. 18 Year 1999 regarding Construction Services (May 7, 1999) ("Law 18/1999"), which requires that the Ministry of Public Works encourage the use of arbitration, mediation and expert appraisals to settle disputes in the construction sector. The arbitration procedures used by BADAPSKI are based on the BADAPSKI Arbitration Rules, which include the general arbitration rules under Law No. 30 Year 1999 regarding Arbitration and Alternative Dispute Resolution (August 12, 1999) (the "Arbitration Law"). The purpose of BADAPSKI is to become the choice of dispute resolution to settle Indonesian construction disputes, both domestically and internationally, and to perform such services quickly and inexpensively to achieve legal certainty while maintaining good relations between the parties. One goal of the Government of Indonesia (the “GOI”) is to ensure that construction disputes do not impede infrastructure development.

2. New Mediation Rule

A recent dispute resolution development is the issuance of a new mediation rule by the Indonesian Supreme Court, pursuant to Supreme Court Regulation No. 1 of 2016 (February 4, 2016) ("SC Reg 1"). SC Reg 1 contains a different time period for the mediation process than its predecessor. Previously the time period for the mediation process was 40 business days, which could be extended for 14 business days. SC Reg 1 provides for a mediation process of 30 business days, which can be extended for another 30 business days.
Banking

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1. Introduction
The Financial Services Authority (the “OJK”) has had regulatory authority over Indonesian banks, except Bank Indonesia (“BI”), since December 31, 2013, as stipulated under Law No. 21 of 2011 regarding the Financial Services Authority (Otoritas Jasa Keuangan) (November 22, 2011). BI is Indonesia’s central bank and maintains jurisdiction over the monetary supply.

2. Bank Acquisition Trends
The OJK changed its policy in 2015 for bank acquisitions involving more than 40 percent of the shares of the target bank. In the past, the acquiring bank could only initially acquire a maximum of 40 percent of the target bank’s issued shares. If the acquirer wished to acquire a greater percentage, then it had to file a separate application for approval after the initial 40 percent acquisition. The application also required the acquirer and the target companies to satisfy more stringent requirements. Among others, both the acquirer and the target companies had to be public companies. In 2015 the OJK informally changed its policy such that the acquirer is now allowed to obtain approval to acquire more than 40 percent of the shares in a target company at one time, provided the acquirer agrees to purchase more than one target company and then merges or consolidates the two subsidiaries after completion of the acquisition.

3. Branchless Banking
The OJK issued Circular Letter No.6/SEOJK.03/2015 regarding Non-Office Financial Services in the Framework of Inclusive Finance by Banks (February 6, 2015) (“OJKCL 6”). OJKCL 6 implements OJK Regulation No. 19/POJK.03/2014 regarding Financial Services (November 18, 2015) (“POJK 19”). Among other matters, OJKCL 6 allows branchless banking. While this should be helpful for people in remote areas of Indonesia, where they have to travel far to get to the nearest bank branch, branchless banking is limited. For example, it only covers basic savings accounts. The requirements for a basic savings account are: (i) it can only be registered under the individual name of an Indonesian citizen; (ii) it must be in Rupiah currency; (iii) there must be no minimum deposit or balance; (iv) the maximum balance in the account must not exceed Rp 20 million; and (v) the cumulative transactions in the bank account must not exceed Rp 5 million in one month.

4. Mandatory Use of Rupiah
Under Bank Indonesia Regulation No. 17/3/PBI/2015 regarding the Mandatory Use of Rupiah within the Republic of Indonesia (March 31, 2015) (“BI Reg 17/2015”), BI requires cash and non-cash transactions within Indonesia to be done in Rupiah.

BI Reg 17/2015 and related BI rules are discussed in the article on Currency on page 27.
Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations (October 18, 2014) (the “Bankruptcy Law”) sets forth the requirements for filing a bankruptcy petition. The essential requirement is that there must be two or more creditors and at least one mature but unpaid debt for a bankruptcy action to be initiated against a debtor. The Bankruptcy Law provides that if the debtor is a securities company, stock exchange, clearing and guarantee institution, or a depository and settlement institution, the bankruptcy petition may only be submitted by the Capital Market Supervisory Board (“Bapepam”). If the debtor is an insurance company, a reinsurance company, a pension fund or a state-owned enterprise, the bankruptcy petition may only submitted by the Minister of Finance.

These provisions, reserving the filing of a bankruptcy petition to Bapepam and the Minister of Finance, were delegated to the Financial Services Authority (the “OJK”) pursuant to Law No. 21 of 2011 regarding the OJK (the “OJK Law”), so that now the OJK has the authority concerning bankruptcy petitions for all such companies. However, this delegation raises the issue under the Bankruptcy Law of whether the OJK has such authority even if the requirements of two creditors and one unpaid debt are not satisfied.

This issue arose in the 2015 decision of the Commercial Court at the Central Jakarta District Court in Case No. 04/PDT-SUS-PAILIT/2015/PN.NIAGA.JKT.PST. Jo. Case No. 27/Pdt.Sus.PKPU/2015/PN. NIAGA.Jkt. Pst, which involved the OJK’s petition for bankruptcy against the insurance company PT Asuransi Jiwa Bumi Asih Jaya (“BAJ”).

The OJK asserted that there were at least two or more creditors and at least one unpaid debt that was due and unpayable, rather than unpaid, because BAJ was insolvent under statutory standards and was therefore unable to pay claims on the policies it had issued, in addition to having failed to comply in general with the OJK’s statutory solvency requirements applicable to insurance companies. As a result, the OJK revoked BAJ’s business license on the ground that BAJ did not have the capability to maintain its solvency level.

Upon the bankruptcy petition filed by the OJK, BAJ filed what is known as an absolute competence exception, arguing that the Commercial Court at the Central Jakarta District Court did not have jurisdictional authority to adjudicate a bankruptcy petition filed by the OJK. BAJ argued that under Law No. 40 of 2014 regarding Insurance (October 17, 2014) (the “New Insurance Law”), any dispute between an insurance company and policyholder(s) must be settled, if possible, through mediation conducted by the Indonesian Insurance Mediation and Arbitration Body (Badan Mediasi dan Arbitrase Asuransi Indonesia or “BMAI”).

BAJ also argued that the OJK did not have legal standing to file a bankruptcy petition under Article 51(1) of the New Insurance Law, insofar as unpaid creditors were required to submit an application to the OJK before the OJK could file an application to the bankruptcy court, and no creditor had done so. It also argued that a judgment issued by the state administrative court, concerning the revocation of
BAJ’s business license by the OJK pursuant to a Decision of the Board of Commissioners of the OJK, Number KEP-112/D.05/2013 dated October 18, 2013 regarding Revocation of Business License in the Life Insurance Sector, was not final because the decision had been appealed to but not decided by the Supreme Court of Indonesia. BAJ further argued that an insurance policy was in any case not a debt and the insurance policyholder was not a creditor under the New Insurance Law.

On April 1, 2015, the Commercial Court at the Central Jakarta District Court ruled that BAJ’s claim that the OJK lacked absolute competence to bring the bankruptcy petition was incorrect and that it had the authority to bring such proceedings. However, in the examination of the merits of the case, the Commercial Court ruled on April 16, 2015 that the authentication of the insurance claims in this case was not simple and therefore the bankruptcy petition was rejected.

The OJK appealed to the Supreme Court and on August 28, 2015 the Supreme Court accepted the OJK’s appeal and declared BAJ bankrupt.

The effect of the Supreme Court’s decision appears to mean that the OJK has the authority to file bankruptcy petitions against the financial companies and insurance companies noted above and that there need not be two creditors and one unpaid debt as a condition for doing so.

This Supreme Court decision is not necessarily the end of the debate. *Stare decisis* (the concept of controlling precedent) is not an accepted jurisprudential principle in Indonesia and future Supreme Court panels could make a contrary decision based on essentially the same facts.
Indonesia’s international investment policy has been in the spotlight since the Government of Indonesia (the “GOI”) conveyed in 2014 its intention to terminate all of its existing bilateral investment treaties (“BITs”). This announcement has raised concerns among current and prospective foreign investors in Indonesia, since BITs provide the foundation for protection against governmental expropriation and nationalization. Most BITs also offer an investor-state dispute settlement mechanism that can and has played a decisive factor for foreign investors to invest in developing countries such as Indonesia.

True to its announced intention, in 2015 the GOI terminated existing BITs with several countries, a move that received a negative response from the international community. These countries were the Netherlands, Bulgaria, China, France, Italy, Laos, Malaysia and Slovakia. In addition, Indonesia delivered diplomatic notes in 2015 to India, Cambodia, Romania, Turkey, Spain, Hungary and Vietnam conveying its intention to terminate its BITs with those countries in 2016.

Indonesia’s former coordinating minister for economic affairs, Mr. Sofyan Djalil, shed light during his tenure on the reason behind such terminations. He attributed the terminations to the unsuitability and irrelevancy of the BITs with Indonesia’s current development and that, as a result, the BITs needed to be reviewed, with termination being a necessary precursor to that end. In addition, he said that several arbitration disputes had been brought against Indonesia and the preliminary decisions had been unfair and contrary to Indonesia’s interests. At the same time, the GOI has indicated that it does not intend to withdraw from BITs permanently but will concurrently with the terminations seek to renegotiate the investment treaties.

The Indonesian Capital Investment Coordinating Body (Badan Kordinasi Penanaman Modal or “BKPM”) has reported that the GOI is currently drafting a new model BIT for that purpose or renegotiating the investment treaties. There is little information regarding the draft model BIT. However, according to the BKPM, the draft will limit BIT terms to 10 years and will exclude the “automatic renewal” provision that is usually contained in BITs. According to the BKPM, the draft model BIT is scheduled to be finalized and proposed in 2016.

For existing foreign investors from countries whose BITs have been terminated by Indonesia, such terminations do not necessarily mean they will immediately lose the protections of the BITs, since most BITs have a “survival” or “sunset” clause that provides the BIT will survive termination for a certain period of time. The sunset period is different under each BIT.

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Company Law

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Indonesia's Company Law (Law No. 40 of 2007 regarding Limited Liability Companies) (August 16, 2007) (the "Company Law") regulates how companies operate their corporations in Indonesia. Since the Company Law was enacted in 2007, it has not been amended nor were there any new regulations issued in 2015 related to the Company Law.

One regulatory development in 2014 is noteworthy and this was the enactment of Law No. 2 of 2014 regarding Notaries (January 15, 2014) ("Law 2/2014"), which amended Law No. 30 of 2004 regarding Notaries (October 6, 2004) ("Law 30/2004").

Law 2/2014 made several changes to Law 30/2004 that affect companies in Indonesia and how they organize and report changes in their corporate organs, the term used to describe the Shareholders, Board of Directors and Board of Commissioners. The major changes are as follows:

- Before a notary will sign any notarial deed, such as one that changes the Board of Directors or Board of Commissioners, or the minutes of a General Meeting of Shareholders, the notary now requires the authorized signatory not only to sign the relevant notarial deed but also to provide a fingerprint in the notary's presence.

- A notarial deed must now be made in the Indonesian language. The deed can also be made in a foreign language if the parties agree, but in that case the deed must also be translated into Indonesian.

- There also are changes in how a notary reports changes in a company’s organization. Previously, any changes to a company had to be reported to the Ministry of Law and Human Rights (the "MOLHR"), which would then examine the reported changes and issue a letter. Now the notary has the responsibility to prepare a report on changes in the company. The MOLHR now only provides the system for reporting changes and prints the letter. It makes no independent examination of the changes.

This change to the MOLHR process now requires companies to double-check not only the notarial deed that is signed but also the notary's report and the MOLHR letter itself, to ensure that all the information and changes made by the notary are correct and consistent with one another.
Constitutional Law

I. Introduction

As of December 31, 2015, the Constitutional Court (the "Court") had rendered 157 decisions. Of those cases, only 25 applications for judicial review were granted by the Court. This article focuses only on those applications that have been granted and then only on those judicial review decisions that reviewed the constitutionality of laws and which we consider significant from a commercial law perspective or which are otherwise key decisions. As might be known, the Court can also examine disputes between state institutions, disputes concerning regional elections and disputes regarding general elections. Those types of disputes are not addressed here.

II. Constitutional Court Decisions

A. Environmental Protection

In early 2015, in Decision No. 18/PUU-XII/2014, the Court entertained a judicial review petition of Law No. 32 of 2009 regarding Environmental Protection and Management (October 3, 2009) (the "Environmental Law"). The petition was filed by Bachtiar Abdul Fatah, an employee of PT Chevron Pacific Indonesia. The petition concerned the constitutionality of the Environmental Law's provisions regarding the management of hazardous, or B3, waste. Article 59, paragraph (4) of the Environmental Law requires that a permit be obtained for the management of B3 waste. Article 59, paragraph (1), in conjunction with Article 103 of the Environmental Law, obliges persons and companies to perform management of B3 waste and if they fail to do so, they risk the imposition of sanctions. The petitioner argued that these provisions contradict one another and impair the right of the petitioner, especially since the company for which he worked had already obtained a B3 waste management license under the previous environmental law and an extension of such license was still in process with the relevant authorities at the time it expired. The petitioner argued that the contradiction in these provisions created a situation in which a person or company may be held in violation of the Environmental Law when that person's or company's B3 waste management license is in the process of renewal. The Court granted the petitioner's application. The Court held that Article 59, paragraph (4) of the Environmental Law was unconstitutional insofar as the provision was not interpreted to include those who had already obtained a B3 waste management license and whose license was in the process of extension. The Court also struck down the word "may" (dapat) from Article 95, paragraph (1) of the Environmental Law and stipulated a modified interpretation of such article.

B. Water Resources

In Decision No. 85/PUU-XI/2013, the Court reviewed a petition that contended that Law No. 7 of 2004 regarding Water Resources (March 18, 2004) (the "Water Law") was unconstitutional. The petition was filed by the Muhammadiyah Central Leaders (Pimpinan Pusat Muhammadiyah) and several other groups and individuals. The petitioner argued that the Water Law paved the way for the privatization of water management and the complete relinquishment of control over the management of water resources by the State, which the petitioner argued was contrary to Article 33 of the 1945 Constitution. The Court held that Article 33 of the 1945 Constitution mandates that access to water is a human right. The Court further concluded that the 1945 Constitution guarantees the State's control over water resources management. Since the Water Law and several implementing regulations enacted by the Government of Indonesia (the "GOI") run counter to the principles of water resources management enshrined in the 1945 Constitution, the Court annulled the Water Law and reinstated Law No. 11 of 1974 regarding Irrigation (December 26, 1974).
C. Criminal Investigations, Due Process and Pre-Trials

In Decision No. 21/PUU-XII/2014, the Court dealt with a fundamental criminal law issue. A petition was filed with regard to the scope of Law No. 8 of 1981 regarding the Criminal Procedure Law (December 31, 1981) (the “CPL”) by Bachtiar Abdul Fatah, the PT Chevron Pacific Indonesia employee. The petition’s core issue concerned due process in criminal investigations. One particular issue that was raised concerned the scope of Article 77 of the CPL, which states that the district court is authorized to examine and decide on matters in relation to: (a) the lawfulness of arrest, detention, termination of a criminal investigation, or cessation of prosecution; and (b) damages and/or rehabilitation for a person whose criminal case has been terminated at the stage of criminal investigation or prosecution.

As can be seen, Article 77 on its face only provides limited grounds for challenging certain prosecutorial actions. The petitioner argued that the scope of such article does not adequately protect the rights of a suspect from violation of a person’s human rights. In reaching a decision, the Court examined the interpretation and application of the CPL in light of Article 28I, paragraph (4) of the 1945 Constitution. Ultimately, the key decision of the Court opened the door to an examination of the proper status of a “suspect,” as well as the lawfulness of a search or seizure, which may be challenged pursuant to Article 77 of the CPL in connection with a motion for pre-trial. The Court also stipulated that the provisions of Article 1, number 14, Article 17, and Article 21, paragraph (1) of the CPL, specifically with regard to the “minimum evidentiary threshold,” meant two valid items of evidence as referred to in Article 184 of the CPL. The impact of the Court’s decision paved the way for a pre-trial challenge on the ground of a suspect’s status, i.e., such that the naming of a person as a suspect can be lawfully determined by a pre-trial. This interpretation broadened the scope of the CPL beyond the expressly limited grounds of the CPL.

D. Criminal Defamation

In another decision regarding criminal law, the Court reviewed a petition for judicial review of the Criminal Code filed by heads of non-governmental organizations. The background of the case revolved around a criminal defamation report concerning alleged defamation of regional government officials in Tegal, Central Java by the petitioners. The report was lodged by a person who was not a subject of the alleged defamation and the relevant provision of the Criminal Code appeared to allow such a report.

The petitioners argued that this went against the concept that a criminal defamation report is a report based on a crime and that it must be reported by the alleged subject of the defamation. The petitioners raised issues of equal treatment before the law and the rule of law as grounds for striking down the relevant provision under the Criminal Code and referred to the Court’s past decisions. The Court in Decision No. 31/PUU-XIII/2015 accepted the petition and struck down the relevant phrase under Article 319 of the Criminal Code, which allowed a defamation report to be reported by other than the subject of the alleged defamation.

E. Taxation

In Decision No. 46/PUU-XII/2014, the Court granted a petition filed by PT Kame Komunikasi Indonesia for a judicial review of Law No. 28 of 2009 regarding Regional Taxation and Regional Retribution (September 15, 2009) (“Law 28/2009”). The issue at hand concerned the way the calculation of the retribution on telecommunication towers imposed by the GOI was applied, which was alleged to have caused unconstitutional legal uncertainty. Specifically, the essence of Law 28/2009 is that retribution is to be calculated on the costs incurred in supervising telecommunication towers. However, the Elucidation of Article 124 of Law 28/2009, which imposes a flat tariff of 2 percent, permits the GOI to collect a retribution that would exceed its actual supervision costs provided that the retribution of 2 percent is not exceeded, which thus violated Law 28/2009. The Court annulled the Elucidation of Article 124 of Law No. 28 of 2009 regarding Regional Taxation and Regional Retribution because, in the Court’s opinion, it was inconsistent with Article 28D, paragraph (1) of the 1945 Constitution, which provides a constitutional guarantee of legal certainty.
F. Banking
In Decision No. 109/PUU-XII/2014 with regard to the judicial review of Law No. 10 of 1998 regarding the Amendment of Law No. 7 of 1992 regarding Banking (November 10, 1998) (the "Banking Law"), the Court examined the constitutionality of Article 49 of the Banking Law. Article 49, paragraph (2)b stated in pertinent part: "b. not conducting the steps necessary to ensure compliance by banks of provisions of this law and provisions of other laws for banks ... " The Court accepted the petition and struck down the phrase “for banks” (“bagi bank”). The Court reasoned that the inclusion of such a phrase in the provision could lead to the interpretation that banks were only bound by regulations governing banks and were not bound by other laws, regulations and court orders on other matters. Hence, the phrase was declared unconstitutional.

G. Financial Services Authority
In Decision No. 25/PUU-XII/2014, the Court examined a petition for the judicial review of Law No. 21 of 2011 regarding the Financial Services Authority ("Otoritas Jasa Keuangan" or "OJK") (November 22, 2011) (the "OJK Law"). The petition was filed by three Indonesian citizens concerning the independence of the OJK. The petitioners argued that Article 23D of the 1945 Constitution required that banking matters be regulated by the central bank, Bank Indonesia and not the OJK. The petitioners cited Article 1 (1) of the OJK Law, which stipulates that the: “Financial Services Authority, hereinafter referred to as OJK, is an institution that is independent and free of intervention from other parties ...” The Court held that the independence of the OJK is derived from and therefore intertwined with the independence of the central bank and the Court annulled the phrase “and free of intervention from other parties” (“dan bebas dari campur tangan pihak lain”) from Article 1 (1) of the OJK Law. The Court reasoned that such phrase was already covered under the term “independent” that preceded the phrase.

H. Electricity
In Decision No. 58/PUU-XII/2014, the Court rendered its decision on the judicial review of Law No. 30 of 2009 regarding Electricity (September 23, 2009) (the "Electricity Law"). The petitioner was a private employee. The relevant provisions that were submitted for review were Article 44, paragraph (4) of the Electricity Law, which imposes the obligation to obtain a certificate of worthiness for every electric installation, and also Article 54, paragraph (1) of the Electricity Law, which imposes a criminal sanction of five years and a fine of not more than Rp 500 million for failure to comply with that requirement. The interpretation of the foregoing articles would appear to allow the imposition of a criminal sanction for an administrative violation (the failure to obtain a certificate of worthiness). In short, the Court held the imposition of a criminal sanction for a failure to comply with Article 44, paragraph (4) was unconstitutional. The impact of such decision is that one can no longer be imprisoned for failure to obtain a certificate of worthiness for an electric installation.

I. Criminal Investigation of a Member of Parliament and Presidential Approval
On two occasions, the Court rendered decisions on the judicial review of Law No. 17 of 2014 regarding the People’s Consultative Assembly, the House of Representatives, the Regional Representatives and the People’s Legislative Council (August 5, 2014) ("Law 17/2014"). The respective petitions were filed by a private group and citizenry as well as parliamentary members. The Court’s decision in 2015 regarding Law 17/2014 is that a criminal investigation of a Parliament member must obtain the President’s written approval. Other parts of the decision concerned the procedure for submission of draft laws and the draft budget of the Regional Representatives.

J. Advocates
In Decision No. 112/PUU-XII/2014 and Decision No. 36/PUU-XIII/2015, the Court examined by judicial review Law No. 18 of 2003 regarding Advocates (April 5, 2003) (the “Advocates Law”). The Court’s decision concerned the scope of a provision in the Advocates Law, namely the interpretation of Article 4, paragraph (1), as to whether there is discrimination in the oath taking of advocates from a particular advocates organization. The Court ruled that the High Court must accept advocates who are sworn in
irrespective of the membership of the organization of the person, specifically whether it is the Peradi organization or the KAI organization. The Court reiterated its position on the issue from its past decisions.

K. Courts
The Court entertained petitions that affect other Indonesian courts. Specifically, in Decision No. 68/PUU-XIII/2015, the Court made a decision with respect to the written recommendation by mediators and conciliators in industrial relations disputes pursuant to Law No. 2 of 2004 regarding Settlement of Industrial Relations Disputes (January 14, 2004) (the “Industrial Dispute Law”).

Under the Industrial Dispute Law, a mediator and a conciliator are only authorized to issue a “written recommendation.” However, the Industrial Dispute Law imposes a requirement that a plaintiff submit “minutes of settlement” from the mediator or conciliator before his case may be heard by the court. Since a plain reading of the Industrial Dispute Law prevents a mediator or conciliator from issuing “minutes of settlement,” which is a requirement for a case to be heard, no plaintiff would ever have his case be heard by the Industrial Dispute Court. This was considered a violation of the petitioner’s constitutional right enshrined under Article 28D, paragraph (1) of the 1945 Constitution. Following this, the Court interpreted the relevant provisions of the Industrial Dispute Law to synchronize a written recommendation with minutes of settlement.

In Decision No. 43/PUU-XIII/2015, the Court in effect held that the selection of judges for district courts, religious courts and state administrative courts must be done by the Supreme Court alone, and not by or with the approval of the Judicial Commission.

L. Manpower
In Decision No. 7/PUU-XII/2014, the Court entertained a petition for judicial review of Law No. 13 of 2003 regarding Manpower (March 25, 2003) (the “Manpower Law”). The petitioners argued the unconstitutionality of several provisions of the Manpower Law insofar as they negate the right of employees to apply for enforcement of the Employment Memoranda (Nota Pegawai) of Manpower officials. The petitioners argued that the Employment Memoranda issued by a Manpower official stipulates, and thereby converts by law, a particular employee’s fixed-term contract to be a permanent contract. The petitioners argued that the refusal to enforce such Employment Memoranda impairs the employee’s constitutional rights. The Court accepted the petition.

M. Forests
Last, the Court examined the constitutionality of Law No. 18 of 2013 regarding Prevention and Eradication of Deforestation (August 6, 2013) and Law No. 41 of 1999 regarding Forestry (September 30, 1999) (collectively, the “Forestry Laws”), in Decision No. 95/PUU-XII/2014. The petitioners were several private individuals and non-governmental organizations. The gist of the petitions pivoted primarily on the uncertainty of the provisions of the Forestry Laws that could lead to the unfair criminalization of certain local communities and indigenous people who have lived and built settlements in forestry areas for years. The Court decided that so long as the forest was not used for commercial purposes and it was only used for the necessary survival of the local community and indigenous people living in the forest, certain criminal provisions under the Forestry Laws do not apply.

For further discussion on this topic, please see the article on Environment on page 42.
There were several regulatory changes in the construction industry in 2015. These were:

1. Construction Services Development Board ("LPJK") Regulation No. 3 of 2015 regarding the First Amendment to LPJK Regulation No. 5 of 2014 regarding Integrated Construction Services Registration (February 18, 2015) ("LPJK Reg 3/2015"): By way of background, in 2014 the Construction Services Development Board (the "LPJK") issued LPJK Reg 5/2014 on integrated construction services, which is comprised of the integrated construction business activities of construction planning (consultation), supervision services, and construction implementation (contracting) services. This regulation requires a company engaged in such activities to obtain a Construction Business License (an "IUJK") from the Regional Government if the applicant is a local company or from the Indonesian Capital Investment Coordinating Board (the "BKPM") if the applicant is a foreign investment limited liability company (a "PMA Company"). To obtain an IUJK, the applicant must first obtain a Business Entity Certificate (an "SBU") from the LPJK. This is required by LPJK Reg 5/2014. An SBU is a certificate formally acknowledging the company’s level of competence and capability by determining its classification and qualifications.

Article 8 of LPJK Reg 5/2014 provides the following services:
- integrated services for transportation infrastructure;
- integrated services for construction of water supply and sanitation work;
- integrated services for construction of manufacturing facilities;
- integrated services for construction of oil and gas facilities.\(^2\)

LPJK Reg 3/2015 amended this list to add a new classification for integrated construction called “integrated services for construction of buildings.”

LPJK Reg 3/2015 did not change the substantive requirements for the qualifications required for a large construction company. A large-scale construction company is divided into two types: (i) a Large 1 ("B1") qualified construction company and (ii) a Large 2 ("B2") qualified construction company. Companies that have B1 and B2 large-scale qualifications are able to conduct integrated construction work that is high-risk, high-tech and high-cost. However, B1 companies generally engage in lighter large-scale projects with a value of up to Rp 250 billion. A B2 qualified construction company is the highest qualification a construction services company can obtain and companies that receive this qualification can engage in any large-scale integrated construction work. As stipulated under Article 9, paragraph 4 of LPJK Reg 5/2014, a PMA Company cannot qualify as a B1 qualified construction company but can only become a B2 qualified construction company.

To qualify as a B2 construction company, a PMA Company must meet the same experience requirements as a local company. A PMA Company that wants to be licensed as an integrated construction services company, so that it can perform large B2 projects, is unable to do so because the only construction association that can give the recommendation to the LPJK for the SBU is GAPENRI. GAPENRI refuses to do so unless the PMA Company has achieved the necessary experience in Indonesia. GAPENRI has taken that position since 2011. Prior to that year, GAPENRI allowed PMA Companies to use the foreign construction experience of their foreign shareholders abroad to qualify for an SBU.

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1. The BKPM was delegated the authority to issue an IUJK to PMA Companies by the Ministry of Public Works ("MPW") in 2014 under MPW Regulation No. 22/PRT/M/2014 (December 31, 2014) (“MPW Reg 22/2014”).
2. Qualified construction company
which allowed them to ultimately obtain an integrated construction services license. Since that is no longer possible, a PMA Company must first qualify as a construction implementation company. This means the PMA Company cannot do integrated construction projects. Integrated construction companies can do construction procurement and engineering and are commonly referred to as EPC contractors. A PMA construction implementation company can do construction and presumably procurement but cannot do engineering, while an integrated construction company can do all of these activities. Once the PMA Company has the necessary Indonesian experience, it can obtain the recommendation from GAPENRI for the SBU, which if granted by the LPJK will allow it to obtain a license from the Government of Indonesia (the “GOI”) as an integrated construction company. In short, the refusal by GAPENRI, which is not a part of the GOI, to allow a new PMA Company to meet the experience standards of LPJK Reg 5/2014, as amended by LPJK Reg 3/2015, means that this type of construction service is effectively closed to new foreign investment. We have been advised by the LPJK, which is a body formed by a government regulation, that it will adopt a new regulation that disallows the use by a PMA Company of its shareholders’ experience to obtain an SBU. This is expected to be issued this year. This means that a PMA Company that wants to be licensed only as a construction implementation company also cannot use foreign shareholder experience and cannot obtain a license at all, unless it has a local company as a shareholder with the necessary experience.

In the case of the oil and gas industry, integrated construction service companies have been closed to foreign investment expressly by Presidential Regulation No. 39 of 2014 regarding the List of Activities that are Closed and Opened with Requirements in the Framework of Capital Investment (April 23, 2014), (the Negative Investment List, also referred to as the “DNI”).

2. LPJK Regulation No. 1 of 2015 regarding Foreign Construction Services Entity Registration (February 18, 2015) (“LPJK Reg 1/2015”):
A foreign construction company can form a representative office (in Indonesian, a Kantor Perwakilan Badan Usaha Jasa Konstruksi Asing or “BUJKA”) to conduct construction work in Indonesia by obtaining a representative office license from the Ministry of Public Works (the “MPW”), a process which has been delegated to the BKPM by MPW Reg 22/2014. The requirements to obtain a representative office license are still based on MPW Regulation No. 10/ PRT/M/2014 regarding Guidelines for the Licensing of the Representative Office of Foreign Construction Services Companies (September 22, 2014) (“MPW Reg 10/2014”).

One of the requirements under MPW Reg 10/2014 is that prior to obtaining the representative office license, the applicant must also obtain an SBU from the LPJK. LPJK Reg 1/2015 now implements this requirement, which previously had been waived in practice because no implementing regulation had been issued under MPW Reg 10/2014 on how to obtain an SBU.

To obtain an SBU under LPJK Reg 1/2015, a BUJKA must meet the following requirements:

(a) Net Worth: A representative office engaged:
   (i) in construction implementation and integrated construction services must have net worth of at least Rp 50 billion;
   (ii) in construction consultation and supervision must have a net worth of at least Rp 500 million.

(b) Experience: A representative office engaged:
   (i) in construction implementation and integrated construction services must have experience in construction work in its country of origin within the last 10 years with a total cumulative value of at least Rp 250 billion or have undertaken a construction project with a minimum value of Rp 83.330 billion within the last 10 years;
   (ii) in construction consultation and supervision must have experience in construction services within the last 10 years in its country of origin with a total cumulative value of at least Rp 2.5 billion.

A representative office engaged in construction implementation, integrated construction services and construction consultation and supervision must employ engineers as evidenced by a Certificate of Expertise (Sertifikat Keahlian or “SKA”) issued by the LPJK. These engineers may be local or foreign nationals. However, if a representative office hires foreign national engineers, they must be certified as evidenced by an SKA issued by the LPJK and must have a work permit and a resident permit.
Consumer Protection

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Minister of Transportation Regulation No. 89/2015 regarding Flight Delay Management on Scheduled Commercial Air Transport Business Entities in Indonesia (May 12, 2015) ("MOT Reg 89/2015"): An important development in the consumer protection area in 2015 concerned air travel consumers. The Ministry of Transportation (the "MOT") first addressed consumer protection for airline passengers in 2011 with the issuance of Minister of Transportation Regulation No. 77 of 2011 regarding the Responsibilities of Air Carriers, (August 10, 2011) ("MOT Reg 77/2011"). That regulation, among other things, created an obligation for air carriers to indemnify passengers for delays, baggage loss, accidents or death caused by carriers. As to delays, MOT Reg 77/2011 required airlines to indemnify passengers for a delay of more than four hours.

This regulation provided legal certainty in the growing airline industry at that time. With the proliferation of airlines operating in Indonesia, however, passengers have experienced more frequent delays. Whether this is due to poor airline operations or a lack of adequate infrastructure is not known, but there certainly have been instances in which this may have been the responsibility of the airlines themselves. For example, on February 18, 2015, several airplanes belonging to Lion Air could not be operated due to technical reasons in several parts of the country. As a result, several thousand passengers were delayed for three days at airports.

In response to overwhelming public complaints, the MOT issued MOT Reg 89/2015. This regulation sets out a new obligation that airlines must inform passengers if there is any flight delay along with its reasons. Such information must be provided at least 45 minutes before the scheduled departure or once the airline realizes the possibility of such delay, such as in the event of delay caused by weather factors. Previously, under MOT Reg 77/2011, an airline did not have a prior announcement obligation in the event of delay. As to indemnification, MOT Reg 89/2015 requires airlines to indemnify passengers for any delay of more than 30 minutes from the actual flight schedule. The indemnification required is varied from snack box or heavy meal, financial compensation to a ticket refund.

In addition to the indemnification obligation, MOT 89/2015 allows the MOT to impose sanctions on an airline that does not adhere to the regulation by reducing and/or freezing its routes.
The year 2015 was eventful in the realm of criminal law in Indonesia. The emergence of pre-trial hearings, the execution of drug traffickers and the JIS case would be the three most notable events. This article provides a summary of the changes in the laws and regulations, the landmark events that took place in 2015 and also what to expect in 2016.

1. Regulatory Amendments

A. Constitutional Court Decision No. 21: The focal point of the change in criminal law has not come from the enactment of new legislation, but rather from a decision of the Constitutional Court of the Republic of Indonesia (the "Constitutional Court"). Decision of the Constitutional Court No. 21/PUU-XII/2014 dated April 28, 2015 ("Constitutional Court Decision No. 21") indirectly "amended" the provisions of Law No. 8 of 1981 regarding the Criminal Procedure Law ("CPL") on the definition of sufficient evidence in a criminal investigation and the conditions for a pre-trial hearing. Constitutional Court Decision No. 21 in essence decided two points:

- the phrases "preliminary evidence," "sufficient preliminary evidence" and "sufficient evidence" in Article 1, number 14, and Article 17, Article 21, paragraph (1) of the CPL were interpreted as a minimum of two pieces of evidence as set out in Article 184 of the CPL; and Article 77, point a of the CPL was interpreted to include the stipulation of a suspect, search and confiscation.

The cumulative effect of these two rulings created a minimum evidentiary requirement for an investigator to name a person as a suspect and to allow an alleged failure to meet such a requirement to be contested by a named suspect through a pre-trial proceeding. Prior to Constitutional Court Decision No. 21, pre-trial proceedings were mainly an avenue to contest the arrest and detention of a suspect and not for the purpose of deciding whether a case could proceed to prosecution itself. After the Constitutional Court’s decision, there was a surge of applications for pre-trial hearings, with most applications being applied for by suspects in corruption cases. It is noteworthy that the district courts decide pre-trial hearings, not the Corruption Courts.

For more information, refer to the article on Constitutional Law on page 18.

B. Circular Letter 7: Another change in criminal law was created by the issuance of Circular Letter of the Supreme Court of Indonesia No. 7 of 2014 regarding Application of Judicial Review in Criminal Cases (December 31, 2014) ("Circular Letter No. 7"). Circular Letter No. 7 was issued to provide legal certainty in the application of judicial review after the Constitutional Court revoked Article 268, paragraph (3) of the CPL by Decision of the Constitutional Court No. 34/PUU-XI/2013 dated March 6, 2014. Circular Letter No. 7 now allows only an application for judicial review in criminal cases to be made one time and not multiple times as in the past.

2. Landmark Cases

A. Pre-Trials: District courts, mostly in Jakarta, were quite busy in 2015, due to a resurgence of pre-trial hearings.
The notorious decision by Judge Sarpin Rizaldi in the pre-trial hearing of Budi Gunawan at the South Jakarta District Court in February 2015 opened the floodgates for other suspects, especially in investigations by the Corruption Eradication Commission (the “KPK”). Budi Gunawan was named as a suspect by the KPK on January 12, 2015, prior to his inauguration as the Chief of the National Police. Despite its controversial timing, the KPK’s investigation resulted in the cancellation of his appointment.

On February 16, 2015, Judge Sarpin Rizaldi rendered an unexpected decision in the pre-trial hearing that the investigation by the KPK of Budi Gunawan was unlawful and that the KPK’s stipulation of Budi Gunawan as a suspect was not binding. Others then followed suit, with Constitutional Court Decision No. 21 providing the legal foundation for such applications. See the discussion above.

For more information, refer to the article on Anti-Corruption on page 9.

B. Execution of Drug Traffickers: The execution of drug traffickers in 2015 was controversial and received worldwide attention. The Australian and the Brazilian ambassadors for Indonesia were recalled to their countries as the Government of Indonesia carried out death penalties on 14 people sentenced for drug trafficking, including their nationals.

C. The JIS Case: Another international headline case in 2015 was the JIS case, involving the investigation of allegations that first one and then several months later two other JIS kindergarten students were gang-raped multiple times by eight adults starting in March 2014. At first, a parent reported her child had been sodomized on the JIS campus by first one and then six cleaners working for the multinational company ISS amid charges of coerced confessions of the ISS cleaners, including the death of one cleaner (who did not confess) under mysterious circumstances while in police custody. Over time, the allegations morphed into several JIS teachers being involved in bizarre allegations of multiple rapes during school hours over the course of a year in highly trafficked public areas of the school, with the use of a “magic stone.” The police came under critical scrutiny for the way they handled the investigation, as did the prosecution and district courts for the way in which they handled the trials.

The current status is that the two JIS teachers have been acquitted on appeal to the High Court of DKI Jakarta. However, the prosecution has appealed their acquittal to the Supreme Court and the outcome is pending. The five cleaners remain in custody waiting to apply for judicial review.

3. Criminal Law in 2016

The most anticipated event in 2016 is the possible amendment of the law regarding the KPK. The current bill is controversial as it is seen as an attempt to weaken the KPK as the nation’s chief anticorruption body.

There are also proposed changes in the CPL and the Indonesian Criminal Code (the “ICC”). The draft amendment of the CPL represents a process that was started in 2000. A draft ICC has been under consideration since 2012 and is an effort to further update and codify substantive criminal law.

Of the three pieces of legislation, the top priority should be the amendment of the CPL as the existing criminal procedural law is outdated and needs to be reformed to achieve consistency, certainty and fair and equitable treatment of suspects and the public in criminal law enforcement.
1. Introduction
Perhaps the most talked-about regulation in 2015 was Bank Indonesia's regulation and circular letter on the mandatory use of Rupiah. These were Bank Indonesia Regulation No. 17/3/PBI/2015 regarding the Mandatory Use of Rupiah within the Republic of Indonesia (March 31, 2015) (“BI Reg 17/2015”) and Bank Indonesia Circular Letter No. 17/11/DKSP (June 1, 2015) regarding the Mandatory Use of Rupiah within the Territory of the Republic of Indonesia (“CL 17”), which implemented BI Reg 17/2015. BI Reg 17/2015 and CL 17 are collectively referred to here as “BI Regulations on Rupiah.” Bank Indonesia (“BI”) has the authority to regulate monetary affairs in Indonesia, including the obligation to use Rupiah in transactions in Indonesia, as the monetary and payment system authority based on Law No. 23 of 1999 regarding Bank Indonesia, last amended by Law No. 6 of 2009 (the “BI Law”).

Before the BI Regulations on Rupiah were issued, the Currency Law, Law No. 7 regarding Currency (June 28, 2011), already required the mandatory use of Rupiah for cash transactions. The BI Regulations on Rupiah extended this concept also to apply to non-cash transactions and set out more detailed requirements on the mandatory use of Rupiah than what was already regulated by the Currency Law. BI believed that the depreciation of the Rupiah was in significant part caused by events outside Indonesia that were beyond Indonesia’s control. BI also believed that many local transactions were conducted in US Dollars, thus creating an unnecessary demand for that currency. Thus, the purpose of the BI Regulations on Rupiah was to stabilize the Rupiah exchange rate in the face of the ongoing depreciation of the Rupiah.

BI justified these new rules on the basis of national sovereignty and the integrity of the Rupiah – every country has the right to require the use of its own currency for domestic transactions. The BI Regulations on Rupiah are based on the territorial principle that every transaction conducted in Indonesia, whether performed by Indonesian citizens or non-citizens, and whether cash or non-cash transactions, should be in Rupiah.

Whether BI went too far in some cases and adversely affected international transactions remains to be seen. BI is addressing on a case-by-case basis particular issues that may not be clearly covered by a number of exemptions in the BI Regulations on Rupiah.

2. Exemptions
There are several types of transactions that are exempted from the mandatory use of Rupiah, such as transactions related to the state budget, grants and bank deposits. Other exempt transactions include the following:

A. International Trade Transactions
These consist of:
(i) trade transactions involving the export and import of goods;
(ii) trade transactions related to services that cross Indonesia’s borders conducted by way of:
(a) cross-border supplies, which includes the assignment of experts with particular skills to work in Indonesia by their home office employ abroad;
(b) consumption of goods and service and paid for from Indonesia.

B. International Financing Transactions

C. Transactions in Foreign Exchange Conducted Pursuant to Law

This category includes, transactions based on Law No. 25 of 2007 regarding Capital Investment (April 26, 2007) (the “Capital Investment Law”), and Law No. 3 of 2011 regarding Fund Transfer (March 23, 2011) (the “Fund Transfer Law”).

Article 8(3) of the Capital Investment Law provides that capital investors have the right to transfer and repatriate foreign currency for the following, among others:
(i) capital;
(ii) profit, bank interest, dividends and other income;
(iii) funds required for the purchase of raw and supporting materials, semi-finished goods, finished goods and the replacement of capital goods to sustain capital investment;
(iv) additional funds required for the funding of capital investment;
(v) loan repayments;
(vi) royalties or other fees payable abroad;
(vii) compensation to foreign individuals working for capital investment companies, under certain circumstances;
(viii) proceeds from any sale or the liquidation of the capital investment;
(ix) compensation for losses;

(x) compensation for an expropriation;
(xi) technical assistance payments, management service fees, payments made under a project contract, and payments for intellectual property rights;
(xii) proceeds from asset sales.

D. Strategic Infrastructure Projects

Transactions that are related to strategic infrastructure projects and obtain BI approval can use foreign currency if they meet the following conditions:

(i) the project must obtain a Government of Indonesia (“GOI”) or regional government declaration by a letter from the relevant ministry or institution to the project owner that confirms the project is a strategic infrastructure project;
(ii) the project must obtain BI’s approval as an exemption.

Investors have raised concerns that these requirements assume investors have formed Indonesian entities or advanced funds and such steps will not be taken without obtaining the exemption first. BI has this concern under consideration.

E. Ad Hoc Exemptions

If investors with “certain business characteristics” have issues in implementing the BI Regulations on Rupiah, they may apply to BI for an exemption. Unfortunately, the BI Regulations on Rupiah do not specify the meaning of “certain business characteristics” but state that BI will consider the following:

(i) whether the business actor is ready to implement the mandatory use of Rupiah, such as whether a change in its system or business process will be
required;

(ii) whether the continuity of the business activity will be adversely affected, for example, if the transition period is insufficient for that business to require the mandatory use of Rupiah;

(iii) whether the investment activity requires financing in foreign currency for a certain period, such that the immediate implementation of the mandatory use of Rupiah would interfere with the implementation of the investment; and

(iv) whether the mandatory use of Rupiah would have a significant impact on national economic growth.

In issuing its approval, BI will also consider whether the business actor’s compliance with the BI Regulations on Rupiah would adversely affect exchange earnings from exports and the implementation of the prudential principle in the management of foreign debt for non-bank corporations.

3. Price Quotations

Price quotations or price clauses in an agreement for any transaction in Indonesia must be in Rupiah; dual quotation (i.e., one made concurrently in both Rupiah and in a foreign currency) is prohibited. However, BI has confirmed that an agreement that stipulates a price in Rupiah that is subject to exchange rate movements is not prohibited. With regard to this issue, BI’s Guidelines on Questions and Answers on the Mandatory Use of Rupiah in the Territory of Indonesia, issued in September 2015, confirmed this view and further stated that the parties can agree to a formula that has a foreign currency component.


The BI Regulations on Rupiah provide that any written agreement regarding payment in foreign currency for a non-cash transaction made before July 1, 2015 is effective until the expiration of the written agreement. The extension or any amendment to such written agreement (among others, the change of the parties, the price of goods or services, or the object of the agreement) made after July 1, 2015 is subject to the BI Regulations on Rupiah. A written agreement that is a derivative or an implementation of a main agreement made after July 1, 2015 is treated as an independent agreement and is subject to the provisions in the BI Regulations on Rupiah.

5. The Oil and Gas Sector

SKK Migas and BI have arranged to separately agree on the types of transactions in the oil and gas sector that are covered by the BI Regulations on Rupiah.
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1. Introduction
Three new regulations issued by the Government of Indonesia (the “GOI”) in 2015 are noteworthy.

2. Minister of Finance Regulation No. 106/PMK.010/2015 on Types of Goods Other than Automobiles Subject to Luxury Sales Tax (June 9, 2015) (“MOF Reg 106/2015”): Through the issuance of MOF Reg 106/2015, the GOI wishes to increase domestic consumption and at the same time increase taxpayer compliance concerning luxury goods. MOF Reg 106/2015 revokes a similar regulation, Ministry of Finance Regulation No. 121/PMK.011/2013 of 2013 (August 26, 2013), as amended by Minister of Finance Regulation No. 130/PMK.011/2013 of 2013 (September 18, 2013) (collectively, “MOF Reg 121/2013”).

MOF Reg 106/2015, which went into effect on July 9, 2015, provides a luxury sales tax exemption for certain goods that were not exempted under MOF Reg 121/2013. The types of consumer goods are mainly household and electronic goods such as:

- refrigerators, water heaters, washing machines, monitors and televisions, sports equipment, audio and video recording devices, radio receivers, photography equipment, all previously subject to a 10 percent luxury tax;
- cooking equipment, broadcasting receivers, televisions with an import value or sales price of more than Rp 15 million, dishwashers, music equipment and fragrances, previously subject to a 20 percent luxury tax;
- golf equipment, wetsuits, diving equipment and water sports equipment, previously subject to a 30 percent luxury tax;
- branded bags and pouches with a sales price of more than Rp 5 million, watches, clothes with an import value or sales price of more than Rp 6 million per set or Rp 3 million for each item, tapestries, carpets, crystal goods, precious metals goods, footwear, home decorations, mattresses, lamps and porcelain goods, previously subject to a 50 percent luxury tax; and
- goods made from precious stones or pearls, previously subject to a 75 percent luxury tax.

MOF Reg 106/2015 also introduced a range of tariffs from 20 percent to 75 percent in lieu of the 10 percent to 30 percent luxury tax tariff imposed previously. The applicable luxury tax tariffs are outlined in the following table:

<table>
<thead>
<tr>
<th>Luxury Tax Tariff</th>
<th>List of Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 percent</td>
<td>• exclusive housing:</td>
</tr>
<tr>
<td></td>
<td>• houses or town houses under non-strata title with an area ≥ 350 m2;</td>
</tr>
<tr>
<td></td>
<td>• apartments, condominiums and town houses under strata title with an area ≥ 150 m2.</td>
</tr>
<tr>
<td>40 percent</td>
<td>• hot air balloons and drone planes;</td>
</tr>
<tr>
<td></td>
<td>• firearm bullets except for official use.</td>
</tr>
<tr>
<td>50 percent</td>
<td>• aircraft;</td>
</tr>
<tr>
<td></td>
<td>• helicopters;</td>
</tr>
<tr>
<td></td>
<td>• other types of airplanes;</td>
</tr>
<tr>
<td></td>
<td>• firearms, except for official use.</td>
</tr>
<tr>
<td>75 percent</td>
<td>• luxury cruise ships, except for official use or public transportation;</td>
</tr>
<tr>
<td></td>
<td>• yachts, except for official use or public transportation.</td>
</tr>
</tbody>
</table>

4. Director General of Customs and Excise Regulation No. PER-2/BC/2015 on Procedures for the Storage, Acceptance, Release and Transportation of Excisable Goods (February 13, 2015) ("DGCE Reg 2/2015"): In addition to the two regulations stated above, another important regulation issued in 2015 was DGCE Reg 2/2015. This regulation revokes Director General of Customs and Excise Regulation No. PER-54/BC/2011 and its amendment. DGCE Reg 2/2015 came into effect as of February 15, 2015 and governs at length the storage and release of excisable goods such as tobacco products and alcoholic beverages.

Under DGCE Reg 2/2015, unpaid excisable goods that are used as raw materials or support materials may be temporarily stored in a factory area if it complies with the following conditions:

- recording of the acceptance, storage and utilization of the excisable goods;
- placing of the raw materials, support materials and products in separate rooms in order to monitor the type and amount of excisable goods on which excise tax is payable;
- preparation of a monthly report to the DGCE on such goods on the 10th day of the following month.

The factory administrator or storage place administrator must notify the local excise office when it accepts excisable goods, using the Excisable Goods Transfer Notification Form (Pemberitahuan Mutasi Barang Kena Cukai or "CK-5"). The same document must also be used for the release of excisable goods, excluding tobacco products for which the excise tax had already been fully paid. The CK-5 Form protects the excisable goods from and during storage through the transport process.

The transportation of excisable goods will also use the CK-5 Form and the transportation must be done during the exact times stated in the CK-5 Form, subject to extension if any impediment arises.

Once the excisable goods reach their destination the CK-5 Form will be processed using a system called the Centralized Excise Application System (Sistem Aplikasi Cukai Sentralisasi or "SAC-S"). If the SAC-S is not used the CK-5 Form must be returned to the local excise office where the document was issued within 14 days after the transportation of the goods. The requirement for a CK-5 Form may be waived in emergencies such as fire, flood or any other natural disaster.

One of the important changes in DGCE Reg 2/2015 compared to its predecessor is the possible revocation of the CK-5 Form if the date of the Payment Letter for Excise and Tax Customs (Surat Setoran Pabean Cukai dan Pajak) exceeds the date in the CK-5 Form, by which date payment is required. Such revocation can also be done based on an application for a revocation that is submitted by the businessperson for the excisable goods.
1. Introduction
To stimulate an ailing economy, the Government of Indonesia (the “GOI”) released a series of economic packages in 2015 and early 2016 focused on deregulation in order to simplify business procedures, provide greater legal certainty, accelerate the development of national strategic projects and expand fiscal incentives. The economic packages address more than 134 regulations. The first package was released on September 9, the second on September 29, the third on October 7, the fourth on October 15, the fifth on October 22, the sixth on November 7, the seventh on December 4, the eighth on December 21, the ninth on January 27, 2016, and the tenth was released on February 11, 2016. Some of these economic packages contain amended regulations and some are new regulations intended to streamline investment. The discussion below highlights the main points of the economic packages.

2. Investment
The first highlight concerns investment. The GOI, along with the Indonesian Capital Investment Coordinating Board (the “BKPM”), issued a new regulation that allows investors to obtain an investment license within three hours if the investment is established in an industrial zone and has an investment value of at least Rp 100 billion or not less than 1,000 employees. The process includes the issuance of an investment license, the approval from the Minister of Law and Human Rights of the company’s deed of establishment, as well as a taxpayer identification number. This process accelerates the usual period of time to obtain a BKPM license for investments inside an industrial zone, which can take about eight days. This provision is set forth in Head of the Indonesian Capital Investment Coordinating Board Regulation Number 14 Year 2015 regarding Guidelines and Procedures for Principal Licensing of Capital Investment (October 8, 2015) (“Perka BKPM No. 14/2015”), which revoked Head of the Indonesian Capital Investment Coordinating Board Regulation Number 5 Year 2013 regarding Guidelines and Procedures for Licensing and Non-Licensing of Capital Investment (April 12, 2013), as amended by Head of the Indonesian Investment Coordinating Board Regulation Number 12 Year 2013 (September 18, 2013) (“Perka BKPM No. 5/2013 as amended”), as part of the second economic package.

3. Banking
A. Liberalized Bank Account Rules for foreigners: Indonesia’s Financial Services Authority (the “OJK”), based on OJK Circular Letter S-246/S.01/2015 (September 15, 2015) (“OJK Circular Letter 246/2015”), now allows...
more liberal rules for foreigners to open bank accounts in Indonesia, including term deposits of three months. The purpose is to allow frequent foreign visitors to open foreign exchange deposits in anticipation of investment. This regulation simplifies the requirements for foreigners with limited balances (US$20,000-US$50,000) to merely submit their passports. Previously, foreigners had to be resident in Indonesia to open a local bank account of up to US$50,000. Foreigners who wish to open bank accounts with more than US$50,000 are allowed to do so by submitting their passports and one additional document, such as a credit card.

B. Trustee Banks: The OJK has expanded the number of banks that can engage in the trustee business to attract foreign currency holders to place their currencies in domestic banks.

C. Venture Capital Businesses: The OJK has allowed new venture capital businesses to be formed to allow technology-based start-up companies and creative-based SMEs to finance their early development.

D. Rupiah and Inflation Stabilization: Bank Indonesia ("BI") issued several monetary policies to coordinate inflation measures between the central and regional governments. BI also changed its auction procedure for reverse repos of government bonds, re-issued BI certificates of 9- and 12-month maturities with fixed rates, adjusted the frequency of foreign exchange swap auctions from twice a week to once a week, extended term deposit tenure to three months, tightened foreign exchange purchases so that every foreign exchange purchase of more than US$25,000 (down from the previous US$100,000) would require the underlying reason and a taxpayer number, and accelerated the approval for banks’ foreign loans.

4. Forestry
The Ministry of Environment andForestry (the "MOEF") is planning to eliminate eight licenses in the field of forestry and accelerate the licensing process from two to four years to 12 to 15 working days, although the specific licenses to be eliminated have not been disclosed.2

5. Taxation
Government Regulation Number 69 Year 2015 regarding the Import and Delivery of Certain Transportation Equipment and Delivery of Taxable Services in Relation to Certain Transportation Equipment that Is Not Subject to Value Added Tax (September 17, 2015) (“GR 69/2015”), announced as a part of the second installment of economic packages, exempts certain goods and services from value added tax upon their import and delivery. Among such goods and services are sea vessels, airplanes and their spare parts, and imported trains and their spare parts, if they are imported or delivered to certain governmental agencies such as the Ministry of Defense, or state-owned companies such as Garuda Airlines, as well as vessel leasing services and port services received by such agencies and companies. Further, Minister of Finance (“MOF”) Regulation No. 200/PMK.03/2015 regarding Tax Treatment for Taxpayer and Taxable Entrepreneur Using Certain Collective Investment Contract Scheme for the Enhancement of Finance Sector (November 10, 2015) (“MOF Reg. 200”) was issued to boost the real estate market by eliminating double taxation on collective investment contracts for real estate investment trusts. Under this proposal, subject to the fulfillment of certain

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requirements, qualified Collective Investment Contracts will not be subject to certain income tax on dividends received from a special purpose company.

The seventh package contains the GOI’s plan to revise Government Regulation No. 18 of 2015 regarding Income Tax Facilities for Capital Investment in Certain Lines of Business and/or in Certain Regions (April 6, 2015) (“GR 18/2015”). This revision aims to enable additional labor-intensive industries (mostly footwear industries) to benefit from tax allowance facilities.

In the eighth package, the MOF issued Regulation No. 132/PMK.010/2015 regarding the Third Amendment of MOF Regulation No. 213/PMK.011/2011 regarding the Determination of the Goods Classification System and Imposition of Import Duty Tariff upon Imported Goods (July 9, 2015) (“MOF Reg 132/2015”). This regulation exempts aircraft spare parts from import duty but increases the import duty on some goods, such as SUVs, sports cars, preserved and processed meat, cosmetics, refrigerators and wine.

For more information, refer to the article on Customs and Excise on page 30.

6. Land Ownership
The GOI issued Government Regulation Number 103 Year 2015 regarding Ownership of Residence by Foreigners Domiciled in Indonesia (December 28, 2015) (“GR 103/2015”), which revoked Government Regulation Number 41 of 1996 regarding the Ownership of Residences or Houses by Foreigners Domiciled in Indonesia (June 17, 1996). This regulation allows foreigners to own houses and apartments for a longer period than previously permitted under a right of use title.

For full details of this provision, see the article on Land on page 78.

7. Recent Updates in 2016
The two most recently announced economic packages in 2016 consist of a plan to accelerate the construction of electricity infrastructure and to revise the Negative Investment List (Daftar Negatif Indonesia or “DNI”).

On electricity infrastructure, Presidential Regulation No. 4 of 2016 regarding the Acceleration of the Construction of Electricity Infrastructure (January 19, 2016) instructs PT PLN to implement the acceleration of construction of electricity infrastructure. The package regulates the mandatory use of Rupiah under a rate that is governed by Bank Indonesia for logistical activities, such as sea transportation and storage.

With regard to the DNI, the film Industry, previously closed for foreign ownership, has been opened for 100 percent foreign investment. Distributors, warehouses and cold storage facilities that were previously open for 33 percent foreign investment will be opened for 67 percent and 100 percent foreign investment, respectively. Ground public transportation and facilities, high and extra-high voltage electricity utilization installations, previously closed to foreign ownership, will each be opened for 49 percent foreign investment. Job training, travel agencies, golf courses and air transportation supporting services, sports centers, film processing laboratories and crumb rubber industries that were limited previously to 49 percent foreign investment will be opened to 67 percent and 100 percent, respectively. Restaurants that were previously open for 51 percent will soon be opened 100 percent. Construction service for which the project value exceeds Rp 10 billion was previously open 55 percent to foreign investment and now will be opened to 67 percent. Telecommunication network providers integrated with telecommunication services that were previously open to 65 percent will soon be open to 67 percent, drug ingredient manufacturers that were previously opened up to 85 percent foreign investment will be opened for 100 percent foreign investment, while road concessions, laboratory testing institutions, telecommunication device testing institutions, previously open up to 95 percent, will be open for 100 percent foreign investment.
1. Introduction

In 2015, the Government of Indonesia (the “GOI”) issued a package of economic policies designed to simplify and to remove irrelevant requirements and to deregulate and spur the growth of the Indonesian economy. The result is that more than 31 percent of licensing processes at the Ministry of Trade (the “MOT”) were eliminated by deleting unnecessary examination procedures at more than 15 licensing ministries and government entities.

2. Licenses

The economic packages mandate the MOT to eliminate the requirement for business actors to secure 38 licenses that involve 20 ministries and government bodies. The 38 licenses include four types of registered exporter designations, or *Eksportir Terdaftar* (“ET”), 21 types of import registration requirements, or *Izin Importir Terdaftar* (“IT”), and 30 types of producer importer licenses.

To increase the efficiency of the bureaucracy in issuing licenses, an Indonesian National Single Window (“INSW”) was launched, creating a single electronic counter to process export and import licenses. The INSW gives business actors one electronic location to submit applications and through which the GOI can then process the applications and grant the licenses.

3. Special Importer Identification Number

A. Regulations: MOT Regulation No. 50/M-DAG/PER/7/2015 regarding Revocation of Ministry of Industry and Trade Decision No. 141/MPP/KEP/3/2002 regarding Special Importer Identification Number as amended by MOT Regulation No. 07/M-DAG/PER/3/2008 (July 9, 2015) (“MOT Reg 50/2015”): MOT Reg 50/2015 removed the requirement for business entities to secure a Special Importer Identification Number, called an “NPIK,” and replaced Ministry of Industry and Trade Decision No.141/MPP/KEP/5/2002 and its amendment, MOT Regulation No. 07/M-DAG/PER/3/2008 on NPIKs, which required an NPIK to be obtained. To put the importance of this change in perspective, 16,900 NPIKs were obtained for importers from 2002 to mid-2015. Before MOT Reg 50/2015 was issued, importers were required to obtain import licenses without a clear directive to obtain the license before importation. In practice, importers usually arranged for goods to be imported first and applied for the required license later, causing delays in import clearances for all importers. The purpose of MOT Reg 50/2015 is to expedite processing time by requiring importers to first secure an import license before the imported goods arrive in the Indonesian customs area. MOT Reg 50/2015 has been effective as of July 9, 2015.
B. Prior to the issuance of MOT Reg No. 50 of 2015, the MOT also issued MOT Reg No.48/M-DAG/PER/7/2015 on General Provisions regarding Importation ("MOT Reg 48/2015"). Essentially MOT Reg 48/2015 requires importers to obtain an Import Identification Number, or Angka Pengenal Importir ("API"), before the imported goods arrive in the Indonesian customs area. If the imported goods are classified as Import Restricted Goods, in addition to the API, the relevant importer is also required to obtain other types of importation licenses, namely: (i) a Producer-Importer Acknowledgement; (ii) a Registered-Importer License; (iii) an Importation Approval; (iv) a Surveyor Report; and/or (v) other importation licenses.

If an importer fails to secure the required import licenses before the imported goods arrive in the Indonesian customs area, the importer’s API will be suspended and the importer must re-export such imported goods.
1. Introduction

Today, many retail transactions are conducted through websites or mobile applications - in other words, they are digitalized. Business actors in Indonesia have often raised the question whether there are any Indonesian legal restrictions on digitalizing their businesses through websites or mobile applications.

There is no specific Government of Indonesia (“GOI”) law or regulation that deals with e-commerce activities in any depth or detail. However, the GOI’s current Negative Investment List (discussed below) provides that an e-commerce business must be 100 percent owned by Indonesians, because this is seen as a retail activity closed to foreign investment. There are a number of other laws and regulations that deal in part or otherwise touch on this business sector but do not purport to directly regulate it.

2. Laws and Regulations

B. Law No. 11 of 2008 regarding Electronic Information and Transactions (April 21, 2008) (the “ITE Law”) and Government Regulation No. 82 of 2012 regarding the Implementation of Electronic Systems and Transactions (October 12, 2012) (“GR 82”): The ITE Law, GR 82 and various MOCI regulations implementing the ITE Law deal partly with the e-commerce sector. An e-commerce business actor is also regarded as an Electronic Systems Provider since it manages a website and stores personal data of its customers. The e-commerce website itself must be registered with the MOCI because it has a domain name. At present, there are no requirements to register or obtain a license from the MOCI for e-commerce business actors. However,
investors are advised to verify licensing requirements with the MOCI before entering this business since it could regulate this sector at any time.

C. Minister of Communications and Information Technology Regulation No. 82 of 2012 regarding Implementation of Electronic System and Transactions (October 15, 2012) ("MOCI Reg 82/2012"): Article 41 of MOCI Reg 82/2012 states that any business actor conducting an electronic transaction may be certified by a Certificate of Competence Institution. The purpose of a Certificate of Competence is to evidence that a business actor conducting electronic trading has been assessed or audited by an authorized agency. The proof that a Certificate of Competence has been obtained is a trust mark logo on the web home page of the business actor. However, this is a compulsory requirement applicable only for electronic transaction providers for national services. This requirement is not mandatory for electronic transaction providers that are not providing any services intended for national services. Therefore, few Indonesian electronic transaction providers, and in particular, e-commerce business actors, have trust mark logos on their websites.

D. Government Regulation No. 39 of 2014 regarding List of Business Fields Closed to Investment and Business Field Open with Conditions to Investment (April 24, 2014) ("GR 39/2014"): GR 39/2014 is the GOI’s latest version of the Negative Investment List (the “2014 DNI”). The 2014 DNI contains a list of those sectors that are closed for foreign investment or are open with restrictions. As noted above, the e-commerce business sector is presently closed to foreign investment. This is because e-commerce activities are regarded as retail activities open only for domestic investors. However, the GOI has recently announced a plan to issue a new DNI (the “2016 DNI”) and attendant press coverage has indicated that this new DNI will, inter alia, loosen the foreign investment restrictions on e-commerce business, as discussed further below.

E. Chairman of Central Statistics Agency Regulation No. 95 of 2015 on Standard Indonesian Business Field Classification or Klasiifikasi Baku Lapangan Usaha Indonesia (October 29, 2015) (the “KBLI"): The KBLI contains industrial classifications and provides specific descriptions of e-commerce activities, incorporating the stages of ordering, payment and delivery. An e-commerce transaction is defined to describe the ordering stage only, the ordering and payment stages, or to include all stages conducted through the internet or other electronic procedures.

The current KBLI divides e-commerce transactions into two KBLI types: (i) KBLI Code: 4791, which covers retail trade through postal order or internet, and (ii) KBLI Code: 62012, which covers Development Activities of Commercial Application through the internet (e-commerce). KBLI Code 4791 covers retail activities through the internet by which the customers select a product through a catalog or advertisements available on the merchant’s website and then pay for the product by credit card or other electronic means. An important change in the KBLI Code 4791 is that there is an addition to the business activities covered, which is contained in one of the sub-categories, Sub-Code 47919 9 (Retail through Media for Other Types of Goods).

The activities conducted by PTPMSEs (as defined in point A above) are electronic communication platform services that enable users to conduct commercial transactions (e.g., market place, daily deals, price grabbers, online classified advertising, etc.). This business activity was not included in Code 4791 in the previous KBLI issued in 2009. There are now two types of business activities represented in Sub-Code 47919: (i) online sellers (merchants) and (ii) PTPMSEs. The additions to KBLI Code 4791 therefore define a broader scope of e-commerce activity, such as the development of e-commerce applications and consultation, analysis and programming of such e-commerce applications. There are no details provided with regard to KBLI...
Code 62012 and we assume that category includes supporting services for e-commerce.

F. BI Regulation No. 17/3/PBI/2015 regarding Mandatory Use of Rupiah within the Territory of the Unified State of the Republic of Indonesia (March 31, 2015) ("BI Reg 17/2015"): BI Reg 17/2015 provides that a price quotation on any online media in Indonesia aimed at local or foreign customers must state the price of a product or service in Indonesian Rupiah, regardless of whether the payment by a foreign customer would be completed in a foreign currency.

For more information, refer to the article on Currency at page 27.

3. The Future – 2016 DNI and the Draft GR on E-Commerce

As noted, the 2016 DNI is anticipated this year and the GOI has announced it will open e-commerce to foreign investment in some manner. The Coordinating Minister for Economic Affairs issued an official press release on February 15, 2016 attaching the list of business activities that will be 100 percent open or conditionally open for foreign investment including the new requirements to be stipulated in the new DNI. Specifically for the PTPMSE business, the 2016 DNI apparently will provide that foreign investors may invest 100 percent in that part of the e-commerce sector if the minimum capital of the foreign capital investment company is at least Rp 100 billion. In the event the foreign capital investment company’s capital is less than Rp 100 billion, the foreign investor can hold a maximum of 49 percent of the shares. There is no further information on the foreign ownership requirement for online merchants’ business activities and presumably that part of the e-commerce business will remain closed for foreign investment. We emphasize that the foregoing information is subject to change until the 2016 DNI is actually issued.

In addition, the MOCI is expected to issue a government regulation for this sector in 2016.
1. Introduction

After major legal reforms in 2013 and 2014, 2015 was a relatively quiet regulatory year in the education sector. However, there were three significant developments in this sector in 2015: (i) the use of the one-door integrated services system (Pelayanan Terpadu Satu Pintu or “PTSP”) for education-related licensing and services by the Ministry of Education and Culture (the “MOEC”), (ii) the Jakarta and Indonesia smart card program system (Jakarta Kartu Pintar and Indonesia Kartu Pintar) and (iii) changes in the national exam procedure.

2. One-Door Integrated Service

Starting in early 2015, applications for licenses related to the non-formal education sector (supplementary education outside school, such as study courses) could be made through the PTSP of the Indonesian Investment Capital Coordinating Board (the “BKPM”). The MOEC assigned an official to the BKPM to receive, review and approve applications for non-formal education licenses submitted by investors. This step was taken by the MOEC following the President’s instruction for the centralization of licensing processes generally pursuant to Presidential Instruction No. 4 of 2015 regarding the Administration of PTSP at the BKPM (March 16, 2015).

However, the MOEC has not yet issued a regulation that delegates authority to the BKPM or the MOEC official stationed at the BKPM to issue licenses in the education sector generally and any specific education sub-sector.

The MOEC has stated that it has implemented its own PTSP for other services and reports that are initially processed in various sub-units spread over its directorates. By virtue of this PTSP, all processing of services and reports by the MOEC and its Directorates General, other than the ones processed by the BKPM, will be done in a centralized PTSP unit within the MOEC.

3. Jakarta Smart Card and Indonesia Smart Card Programs

Another 2015 development in the education sector was the Jakarta Smart (Jakarta Pintar) Card Program and the Indonesia Smart (Indonesia Pintar) Card Program. The Jakarta Smart Card Program was developed by the Regional Government of DKI Jakarta, while the Indonesia Smart Card Program was developed by the central government. The cards essentially provide direct funding for children of school age to obtain formal education and purchase educational-related goods.

The public response to this program has been positive. A recent poll by non-governmental institutions concluded that the Indonesia Pintar Card Program is considered one of the most successful and satisfactory achievements of President Joko Widodo’s administration thus far.
4. Changes in the National Exam Procedure

MOEC Regulation No. 5 of 2015 regarding Criteria for Students to Graduate, Administration of National Exam and Administration of School Exam for Junior High School Level or Equivalent and High School Level or Equivalent (March 12, 2015) ("MOEC Reg 5/2015"): MOEC Reg 5/2015 provides that students of junior high and high school level can graduate after they have successfully completed their courses and passed the final examinations administered by their schools, without being required to pass the national exam administered by the Government of Indonesia. National exams will still be held yearly and MOEC Reg 5/2015 provides that the results of the national exam (i) will be used for mapping education program quality in Indonesia, (ii) can be considered in the selection to enter the next level of education (i.e., when a junior high school student wishes to enter high school and when a high school student wants to enter a university), and (iii) will be considered in providing assistance to schools that need support and improvement.

One of the purposes of this regulation is to address the longstanding criticism of the national exam as a basis to determine whether junior high and high school students graduate. However, it appears that whether the national exam score will be assessed or not is at the discretion of the student admission department of each school and university.
1. Regulatory Actions in 2015

A. Presidential Regulation No. 16 of 2015 regarding the Ministry of Environment and Forestry (January 23, 2015) (“PR 16/2015”): Among the actions taken in 2015 by President Joko Widodo to strengthen regulatory and enforcement functions in the environmental sector was the integration of two previously separate but interlinked departments to become the Ministry of Environment and Forestry (the “MOEF”), through the issuance of PR 16/2015.

B. Presidential Instruction No. 8 of 2015 (May 13, 2015) (“PI 8/2015”): PI 8/2015 effectuated a moratorium on the issuance of new licenses in primary natural forest areas (hutan alam primer) and peatland (lahan gambut) that are located in conservation forests, protected forests, production forests and other utilization areas, stated in the Indicative Map of Suspension of New Licenses. This moratorium, however, does not apply to (i) applications that have received principle approval from the MOEF, (ii) vital national development in the fields of geothermal, oil and gas, electricity, and land for rice and sugarcane, (iii) extension of existing forest utilization licenses and/or use of forest area licenses of companies whose main businesses license are still valid and (iv) ecosystem restoration.

2. Important Regulatory Action in 2014

While this article focuses on 2015 legal impacts, there were significant developments in 2014 that should be noted:


B. Minister of Environment Regulation No. 7 of 2014 regarding Environmental Damage Due to Environmental Pollution and/or Destruction (October 17, 2014) (“MOE Reg. 7/2014”): MOE Reg 7/2014 provides that the sum of environmental damage computed by the experts at the preliminary stage of an environmental dispute settlement may change during the dispute settlement process in light of technical factors (such as the duration of the environmental pollution and/or destruction, the volume and parameters of a pollutant that exceeds quality standards, the status of destroyed land) and non-technical factors (such as inflation and government policy). This allows the calculation of environmental damage produced by the appointed experts to be adjusted during the process of dispute settlement.

C. Minister of Environment Regulation No. 4 of 2014 regarding Quality Standards for Emissions from Immovable Resources from Mining Activities and Businesses (October 14, 2014) (“MOE Reg. 4/2014”) and Minister of Environment Regulation No. 5 of 2014 regarding Wastewater Quality Standards (November 25, 2014) (“MOE Reg. 5/2014”): The Government of Indonesia (the “GOI”) regularly evaluates and updates regulations regarding environmental quality
standards. Some of the latest regulations in this regard are the emissions quality standards for mining businesses contained in these two regulations.

D. MOE Regulation No. 3 of 2014 regarding Company Performance Ranking Assessment in Environmental Management Program (August 8, 2014) (“MOE Reg. 3/2014”): Companies whose businesses require an AMDAL or a UKL/UPL are regularly evaluated for compliance under the Company Performance Ranking Assessment in Environmental Management Program, often abbreviated as PROPER, pursuant to this regulation. The available ranks in the order from most compliant to least compliant are gold, green, blue, red and black. Awards in the form of a trophy and/or certificate are granted to companies ranked blue, green and gold, whereas re-evaluation or sanctions are imposed upon those ranked red or black. PROPER is expected to incentivize companies doing business in Indonesia to contribute to environmental management and protection.


The judicial review by the Constitutional Court of Law No. 32 of 2009 regarding Environmental Management and Protection (October 3, 2009) (the “Environmental Law”), Constitutional Court Decision Number 18/PUU-XII/2014, was brought by a Chevron employee who had been convicted of corruption in what is known as Chevron’s bioremediation case. The employee alleged he was unlawfully convicted, arguing that several of the articles of the Environmental Law used to convict him were unconstitutional, and he therefore sought judicial review by the Constitutional Court of such articles to have them declared unconstitutional. The judicial review decision in 2015 clarified Article 59(1) of the Environmental Law to protect an environmental license holder who has submitted an application for extension but has not yet received approval of the extension before the initial license expires. In that situation, the Constitutional Court held that the license holder is deemed as having obtained the license extension.

The Constitutional Court also amended Article 95 of the Environmental Law to the effect that law enforcement against a party in violation of the Environmental Law must be conducted in an integrated manner under the coordination of the MOEF. Following the Constitutional Court decision, such employee filed a petition for reconsideration (peninjauan kembali) to have his conviction overturned. As of the writing of this article, there is no report yet on the outcome of such reconsideration. For more information, refer to the article on Constitutional Law on page 18.

4. Possible Future Developments

A. Environmental Management and Protection Plans: To support systematic and integrated management and protection of the environment, the GOI is considering the enactment of a regulation regarding environmental management and protection plans, as mandated by Article 11 of the Environmental Law. The MOEF, the Governor and/or the Regent or Mayor, in accordance with their respective authority, would be responsible for the formulation of an environmental management and protection plan, which would consist of plans on the utilization and/or reservation of natural resources,
preservation and protection of environmental quality and/or functions, control and supervision of natural resources, and adaptation and mitigation of climate change. As of the writing of this article, such government regulation has yet to be issued.

B. Indonesia’s Haze Issue: Increasing public awareness of environmental sustainability and improving legal foundations have caused law enforcement to be more aggressive to ensure that business operations and activities in Indonesia do not adversely impact the environment and to take action against those that do. For example, in the last trimester of 2015, the MOEF, among others, has been under scrutiny and pressure in light of the massive Sumatra forest fires that created unhealthy haze in and beyond the Indonesian archipelago.

In addition to imposing administrative sanctions on the perpetrators, the MOEF indicated it would represent the community in bringing claims for compensation against the perpetrators on the basis of Article 90 of the Environmental Law, which allows the GOI standing to make environmental claims for compensation. The President also indicated that entities responsible for slash-and-burn practices would lose their concessions.

C. Global Commitments: The GOI has committed to contribute to reducing global emissions up to 26 percent below the Business As Usual (“BAU”) standard by 2020 in the Intended Nationally Determined Contribution (the “INDC”). Based on www.climateactiontracker.org, Indonesia’s deforestation and peatland destruction “at present account for the largest source of the country’s emissions, an average of 60% of total emissions over the last ten years (based on national data)”. PI 8/2015 is one of the GOI’s responses to this issue. (See the discussion above).
1. Introduction

In order to stimulate and improve the Indonesian economy, the Financial Services Authority (the “OJK”) issued or amended several regulations affecting banking, the capital market and non-bank financial institutions. The first stimulus package was launched on July 24, 2015 and encompassed 35 policies, 12 in the banking sector, 15 policies in the capital market sector, 4 in the non-bank financial sector and 4 in the education and consumer protection sectors.

A. Banking: The stimulus package for the banking sector includes debt or loans guaranteed by the central government (the “GOI”) with a risk weighting of zero percent in the credit risk calculation of risk weighted assets (“RWA”); the risk for vehicle loans (“KKB”) stipulated at 75 percent in the credit risk calculation of RWA; the implementation of a business’s prospect assessment as a requirement for loan restructurings without considering the market conditions and the debtor’s business sector; the implementation of credit restructuring prior to a decline in credit quality; and the weighted reduction of the credit risk of the residential mortgage-backed non-governmental program at 35 percent, regardless of the value of the loan to value (“LTV”) in the credit risk calculation of RWA.

B. Capital Market: The stimulus package for the capital market sector includes the development of a market infrastructure for repurchase agreements (“Repos”); the development of small and medium enterprises (“SMEs”) to go public, including the preparation of regulations for SME development, and the establishment of a special trading board index for SMEs; the determination of the electronic trading platform (“ETP”), including the development of an integrated bond trading platform used by bond investors or issuers, stock market investors and for stock market supervisors; and the use of the central bank, Bank Indonesia (“BI”), for settlement transactions.

C. Non-Bank Financial Sector: The stimulus package for the non-bank financial sector includes relaxation policies for non-performing financing (“NPF”) to encourage the growth of finance receivables by industrial finance companies; the development of agricultural insurance to improve farmers’ access to the financial system; and a rating agency formation for micro enterprises and SMEs.

D. Education and Consumer Protection. The stimulus package includes efforts to promote a savings culture to support increased access to public finance; education of SMEs to encourage increased access to the financing of financial institution services (“LJKs”) to SMEs and capacity-building of SMEs in the field of financial management; and efforts to increase consumer empowerment, in order to increase public confidence in the financial services industry and LJKs.

2. Implementation

In order to implement the above policies, the OJK issued several regulations and circular letters to stimulate and improve the Indonesian economy. Several of these regulations are important developments in each financial sector:

A. Capital Market:

(1) OJK Circular Letter No. 22/SEOJK.04/2015
regarding Other Conditions Classified as Market Conditions that Fluctuate Significantly in the Implementation of the Repurchase of Shares Issued by Issuers or Public Companies (August 21, 2015) ("OJK CL No. 22"): This OJK regulation sets out additional conditions from those specified under Article 1, letter b of OJK Regulation No. 2/POJK.04/2013 regarding the Repurchase of Shares Issued by Issuers or Public Companies during Significant Fluctuations in Market Conditions (August 23, 2013) ("OJK Reg 2"). Issuers and public companies may repurchase their shares without obtaining approval of a shareholders meeting if they meet the following conditions and requirements: (a) the total repurchase of shares is a maximum of 20 percent of the paid-up capital (excluding treasury stock); and (b) the floating shares must not be less than 7.5 percent of the paid-up capital.

The following conditions are stipulated as "Other Conditions":

- the composite stock price index (the "IHSG") of the Indonesian Stock Exchange must have continuously declined over the preceding five months;
- the economic condition since the beginning of 2015 until the third quarter of 2015 must have declined;
- the regional economic condition must have declined.

(2) OJK Regulation No. 32/POJK.04/2015 on Capital Increases in Public Companies with Pre-emptive Rights (December 22, 2015) ("OJK Reg 32"): OJK Reg 32 incorporates a number of changes and new requirements that are applicable to public companies as follows:

(i) Payment for Shares in-Kind: OJK Reg 32 acknowledges a payment of shares in-kind provided that: (i) it is related to the use of the funds and (ii) an appraiser is appointed to assess the fair value of the in-kind contribution. The payment for shares in-kind should not be made later six months after the appraisal report.

(ii) Disclosure Information: In addition to the prospectus that must be prepared prior to a rights issue, OJK Reg 32 also requires a public company to disclose all relevant information no later than the date of the announcement of the general meeting of shareholders ("GMS"). The announcement must be (i) placed in at least one daily newspaper with nationwide circulation or posted on the stock exchange website, and (ii) posted on the company's website. Such announcement must at least cover the following information:

- the maximum number of shares with pre-emptive rights that will be issued;
- the estimated time frame for completion of the capital increase;
- an analysis of the effects of the capital increase on the public company's financial condition and on its shareholders;
- a general statement on the proposed use of the proceeds;
- information on the in-kind contribution, including appraisal reports;
- GMS and Registration Statement: Previously, the registration statement was required to be submitted concurrently with the announcement of the GMS. Under OJK Reg 32, the Registration Statement may be submitted after the GMS.

OJK Reg 32 provides clarity in relation to the requirement that the standby buyer, the majority shareholders and a prospective assignee of pre-emptive rights must each provide a declaration that they have sufficient funds to exercise their rights and obligations to purchase the remaining shares (as the case may be), supported by evidence from its bank in the form of a bank statement or a current account balance. These documents should be submitted at the same time as the submission of the registration statement to the OJK. This requirement is not applicable where payment is to be made in-kind.

(3) OJK Regulation No. 9/POJK.04/2015 regarding
Financial Services Authority

Guidelines on Repurchase Agreement Transactions for Financial Services Institutions (June 26, 2015) ("OJK Reg 9"): Pursuant to OJK Reg 9, a repurchase agreement transaction (a “Repo Transaction”) is a sale or purchase agreement of stock with a covenant to purchase or resell the stock within a stipulated time and for a stipulated price. A Repo Transaction must be documented by a written agreement. The Repo Transaction agreement must contain at least (i) the assignment of the ownership right over the stock, (ii) the obligation to adjust the stock value with a reasonable market value (mark-to-market), (iii) an initial margin and/or haircut for the stock in the Repo Transaction, (iv) the margin maintenance obligation including the substitution of the stock margin, (v) the rights and obligations of the parties regarding the ownership of the stock, (vi) a list of the events of default, (vii) the manner in which an event of default will be settled, (viii) the stipulation of Indonesian law as the governing law, (ix) the position of the financial services institution (either as the agent or the party), and (x) procedures for the confirmation of the Repo Transaction and/or any material amendment related to the Repo Transaction. The Repo Transaction agreement must implement the Indonesian Global Master Repurchase Agreement (the “GMRA”) issued by the OJK or other parties recognized by the OJK.

Any non-compliance with the provisions of OJK Reg 9 may result in administrative sanctions as set out in the regulation. OJK Reg 9 also provides that any ongoing and existing Repo Transaction agreement entered into prior to the issuance of OJK Reg 9 need not be adjusted to the Repo Transaction requirements of OJK Reg 9. Repo Transactions conducted based on sharia principles also are not subject to OJK Reg 9.

B. Insurance

(1) OJK Circular Letter No. 24 of 2015 regarding Debt Instrument Investment Valuation and Adjustment of Risk-Based Minimum Capital for Insurance Companies (August 31, 2015) ("SEOJK 24"): Under SEOJK 24, insurance and reinsurance companies can use amortized acquisition values in valuing debt instruments. When an amortized acquisition value is used, it must be used in valuing all debt instruments owned by the relevant company.

The minimum Risk-Based Capital ("RBC") requirement for insurance and reinsurance companies is reduced to 50 percent of the minimum RBC required under Chairman of Capital Market and Financial Institutions Supervisory Body Regulation No. PER-08/BL/2012 on Guidelines for the Calculation of Risk-Based Minimum Capital for Insurance Companies and Reinsurance Companies (December 27, 2012). The reduction in the minimum RBC, however, must not cause the solvency level to exceed 120 percent.

The minimum RBC requirement above will not apply if the use of the amortized acquisition value in debt instrument valuation is already sufficient to maintain compliance with the minimum solvency level stipulated under Minister of Finance Regulation No. 53/PMK.010/2012 on Financial Soundness of Insurance and Reinsurance Companies (April 3, 2012).

(2) OJK Circular Letter No. 25 of 2015 on Sharia Securities Valuation and Fund Calculation to Anticipate Failure Risks in Managing Assets and/or Liabilities of Sharia Insurance Companies and Sharia Reinsurance Companies (August 31, 2015) ("CLOJK 25"): Sharia insurance and reinsurance companies can use an amortized acquisition value in valuing sharia debt securities. When an amortized acquisition value is used it must be used in valuing all sharia debt securities owned by the relevant company.

The minimum fund requirement for sharia insurance and reinsurance companies to anticipate risks of failure in managing assets and/or liabilities for the calculation of the solvency level ("Minimum Fund") is reduced to 50 percent of the Minimum Fund required under Chairman of Capital Market and Financial Institutions Supervisory Body No.
PER-07/BL/2011 on Guidelines on Calculation of Funds Required to Anticipate Loss Risks in Managing ‘Tabarru’ Funds and Calculation of the Amount of Funds Required for Companies to Anticipate Potential Loss Risks in Conducting Sharia Insurance and Reinsurance Businesses (April 29, 2011). The reduction in the Minimum Fund, however, must not cause the solvency level to exceed 30 percent.

The Minimum Fund requirements will not apply if the use of an amortized acquisition value in sharia debt securities valuation is already sufficient to maintain compliance with the minimum solvency level stipulated under Minister of Finance Regulation No. 11/PMK.010/2011 on Financial Soundness of Insurance and Reinsurance Companies with Sharia Principle (January 12, 2011).

C. Banking

(1) OJK Regulation No. 11/POJK.03/2015 regarding Prudential Principle Provisions for Commercial Banks to Stimulate the National Economy (August 21, 2015) (“OJK Reg 11/2015”): OJK Reg 11/2015 requires commercial banks to implement prudential principles with the stated goal of stimulating economic growth. Prudential principles are carried out for (i) the calculation of risk-based assets to determine credit risks using standard approaches, (ii) asset quality assessment and stipulation for credit and credit restructuring, and (iii) capital participation for commercial banks. The above matters were previously regulated under several BI regulations (i.e., BI Regulation No. 14/15/PBI/2012 regarding Quality Assessment for Commercial Bank Assets (October 24, 2012); BI Regulation No. 15/11/PBI/2013 regarding Prudential Principles for Capital Participation Activities (November 22, 2013); and BI Circular Letter No. 13/6/DPNP regarding Guidelines for the Calculation of Risk-based Assets for Credit Risk Using Standard Approaches (February 18, 2011)). Following the issuance of OJK Reg 11/2015, these BI regulations remain valid provided that they do not contradict OJK Reg 11/2015. OJK Reg 11/2015 came into effect on the date of its promulgation and is applicable for two years.

D. Other Non-Bank Financial Institutions

(1) OJK Regulation No. 1/POJK.05/2015 regarding the Implementation of Risk Management for Non-Bank Financial Services Institutions (March 23, 2015) (“OJK Reg 1/2015”): Pursuant to OJK Reg 1/2015, risk management includes at a minimum (i) active monitoring by the Board of Directors or the Board of Commissioners of the company, (ii) adequate policies, procedures and determination of risk limitations, (iii) adequate identification, measurement, monitoring and risk control, (iv) a risk management information system, and (v) a comprehensive internal control system. Financial services institutions must submit an annual risk management report to the OJK at the latest by February 28 of each year. Administrative sanctions apply to any party that violates the provisions of OJK Reg 1/2015.

(2) OJK Regulation No. 3/POJK.05/2015 regarding Pension Fund Investments (April 16, 2015) (“OJK Reg 3/2015”). The stated aim of OJK Reg 3/2015 is to allow pension fund providers to invest the necessary funds for optimum results, while ensuring the success of pension programs in Indonesia. OJK Reg 3/2015 provides that pension funds established by an employer or a financial services institution (together, the “Pension Fund Organizers”) may invest in 17 types of investments and provide managers and officers for pension fund investors. The types of investment are (a) bank deposits, (b) on-
call bank deposits, (c) bank term deposits, (d) deposit certificates, (e) commercial paper issued by Bank Indonesia, (f) government commercial paper, (g) stock listed in the stock exchange in Indonesia, (h) corporate bonds listed in the stock exchange in Indonesia, (i) mutual funds, (j) medium-term notes, (k) asset-backed securities, (l) real estate investment through a collective investment contract, (m) options and future securities contracts traded in the stock exchange in Indonesia, (n) repurchase agreements, (o) direct placements in Indonesia or overseas, (p) land in Indonesia and (q) property in Indonesia. However, such managers and officers must be certified by a professional agency. The certification must be conveyed to the OJK not later than December 31, 2015.

OJK Reg 3/2015 also provides that the founders or board of supervisors of the Pension Fund Organizers must establish investment objectives that cover 10 components, including the quantitative objective of the Pension Fund Organizers, the maximum amount of funds allocated for each investment, prohibited investments and sanctions for non-compliance. OJK Reg 3/2015 came into force on the date of its enactment.

(3) OJK Circular Letter No. 19/SEOJK.05/2015 regarding the Amount of Down Payments for Motor Vehicle Financing by Financing Institutions (June 30, 2015) ("CL OJK 19"): CL OJK 19 implements Article 17, paragraph (3) of OJK Regulation No. 29/POJK.05/2014 regarding the Implementation of the Business of Finance Companies (November 19, 2014) ("OJK Regulation No. 29"), specifically concerning the amendment of the amount of down payment required for motor vehicle financing. The down payment amount varies based on the non-performing financing ratio (the "NPF Ratio") value of the finance company. If the NPF Ratio value of the finance company is equal to or less than 5 percent, the percentage of the down payment must be at least (i) 15 percent of the vehicle selling price for any two- or three-wheeled vehicle, (ii) 15 percent of the vehicle selling price for any four-wheeled (or more) vehicle that is used for investment financing (productive purposes) and (iii) 20 percent of the vehicle selling price for any four-wheeled (or more) vehicle used for multi-purpose finance (non-productive purposes).

If the NPF Ratio value of the finance company is higher than 5 percent, the percentage of the down payment must be at least (i) 20 percent of the selling price of the vehicle for any two- or three-wheeled vehicle, (ii) 20 percent of the vehicle selling price for any four-wheeled (or more) vehicles used for investment financing (productive purposes) and (iii) 25 percent of the vehicle selling price for any four-wheeled (or more) vehicles used for multi-purpose financing. The calculation of the amount of the down payment shall be made on the selling price of the vehicle after price discounts and other reductions. A violation of CL OJK 19 regarding down payment amounts is subject first to an initial notice of non-compliance and administrative sanctions as contained in OJK Regulation No. 29. This Circular Letter came into effect on the date of its stipulation.
In May 2015, the President of Indonesia issued President Instruction No. 8 of 2015 regarding the Moratorium on the Granting of New Licenses and the Improvement of the Organization of Premier Natural Forest and Peatland (May 13, 2015) (“PI 8/2015”). PI 8/2015 extended for two years the moratorium on the grant of new licenses, recommendations and location permits until May 13, 2017, which moratorium had originally been granted pursuant to President Instruction No. 6 of 2013 regarding the Moratorium on the Granting of New Licenses and the Improvement of the Organization of Premier Natural Forest and Peatland (May 13, 2013) (“PI6/2013”) and which expired on May 13, 2015.

Based on PI 8/2015, the President has instructed the (i) Minister of Environment and Forestry (the “MOEF”), (ii) Minister of Home Affairs, (iii) Minister of Land and Spatial Layout, (iv) Cabinet Secretary, (v) Head of the Geospatial Information Agency, (vi) Governors, and (vi) Regents or Mayors to continue the moratorium on the granting of new licenses on primary natural forest (hutan alam primer) and peatland licenses on conservation forests, protected forests, production forests and other utilization areas (area penggunaan lain or “APL”). As with PI 6/2013, pursuant to PI 8/2015, the moratorium does not apply to:

(i) applications that have obtained a principle license from the MOEF;

(ii) implementation of projects fundamental to national development, i.e., geothermal, oil and gas, electricity, and rice and sugarcane plantation areas;

(iii) extensions of forest utilization permits and/or forest area utilization that have been granted, for as long as the main business licenses remain valid;

(iv) ecosystem restoration projects.

Forestry areas that are subject to the moratorium will be set out in an indicative map that will be issued by the MOEF. Under PI 8/2015, the MOEF must revise and stipulate the Moratorium on the Granting of a New License Indicative Map (the “Moratorium Indicative Map”) every six months. The previous Moratorium Indicative Map was stipulated under Minister of Environment and Forestry Decree No. SK. 2312/Menhut/VII/IPSDH/2015 (May 27, 2014), was thus issued more than six months ago and must therefore be revised.

The MOEF issued the ninth and latest revision of the Moratorium Indicative Map pursuant to Decree No. SK. 5385/MenLHK-PKTL/IPSDH/2015 regarding the Stipulation on the Indicative Map on the Moratorium on the Granting of New Licenses for Forestry Utilization, Forestry Area Utilization and the Change of the Designation of the Forestry Area and Other Utilization Area (Area Penggunaan Lain or “APL”) (November 20, 2015) (“MOF Decree No. 5385”).
Based on the ninth revision of the Moratorium Indicative Map, 71,099 hectares has been added as part of the moratorium area and therefore the total moratorium forestry area under the ninth revision of the Indicative Map is now 65,086,113 hectares. The ninth revision of the Moratorium Indicative Map can be downloaded from the following link:


The moratorium on the granting of new forestry licenses was first introduced in 2011 by the issuance of President Instruction No. 10 of 2011 (May 20, 2011) and extended by PI16/2013. The issuance of these President Instructions is intended to reduce emissions that occur as the result of forest deforestation and degradation as well as to improve forest and peatland organization in Indonesia.
Foundations

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1. Work Permits and Yayasans: The only legal change in 2015 affecting foundations (called “yayasans” in the Indonesian language) was a new work permit (Izin Mempekerjakan Tenaga Asing or “IMTA”) requirement for foreign non-resident members of the Board of Patrons (the “BOP”), the Board of Supervisors (the “BOS”) and the Board of Management (the “BOM”). This requirement was imposed in June 2015 by Ministry of Manpower (“MOM”) Regulation No. 16 of 2015 regarding Expatriate Manpower Utilization Procedure (June 29, 2015) (“MOM Reg 16/2015”) and was amended a few months later by MOM Regulation No. 35 of 2015 regarding the Amendment of MOM Regulation 16/2015 (October 23, 2015) (“MOM Reg 35/2015”).

MOM Reg 16/2015 not only applied to yayasans but to business entities, by requiring non-resident foreign Directors and Commissioners also to obtain work permits. This policy can only be described as misguided as it would require non-residents to in effect become residents and pay Indonesian income taxes. Indonesians and foreigners alike often voluntarily contribute their time and energy to yayasans. This policy would discourage foreigners from participating in yayasans, thus potentially depriving them of manpower support and possibly financial support. In addition, the work permit requirement would become an issue for foreign resident BOP members and BOS members of a yayasan who work for another company or other organization in Indonesia, for which they have the required work permits.

This policy was thus so contrary to the efforts of the Government of Indonesia (the “GOI”) to attract foreign investment that its revocation was inevitable. In addition, the IMTA requirement is arguably unlawful as contrary to Government Regulation No. 63 of 2008 regarding the Implementation of the Yayasan Law (September 23, 2008) (“GR No. 63/2008”), which does not require non-resident foreign BOP and BOS members to obtain work permits but does require that BOM members of a yayasan do so. In addition, GR No. 63/2008 does not require foreign BOP and BOS members of a yayasan to reside in Indonesia but does require BOM members of a yayasan to do so.

For further reading on the MOM regulations, refer to the article on Manpower on page 83.

2. 2014 Developments: While this article focuses on regulatory changes in 2015, there were important developments in 2014 that merit attention:

A. Faster Establishment of Yayasans: A yayasan obtains legal entity status after its Deed of Establishment (“DOE”) is approved by the Minister of Law and Human Rights (the “MOLHR”). Prior to the issuance of MOLHR Regulation No. 5 of 2014 regarding the Legalization of Yayasan Legal Entities (March 26, 2014) (“MOLHR Reg 5/2014”), MOLHR approval required approximately three to four months because the MOLHR manually reviewed the DOE containing a yayasan’s articles of association. With the issuance of MOLHR Regulation No. 5 of 2014, the MOLHR now issues its approvals electronically not later than 14 days after submission, though in practice the MOLHR’s approval is often obtained within three to four days after submission. Prior to submission of the DOE to the MOLHR, the yayasan must first reserve and obtain the MOLHR’s approval for its name. The application for a reservation and approval of the name is subject to a non-refundable administration fee and...
the approval is valid for 60 days for one name only.

**B. Recommendations from Other Ministries:** A recommendation letter from the Ministry of Foreign Affairs or the Ministry of Defense is required if the yayasan is to be established by foreigners or by foreigners and Indonesians. Prior to the issuance of MOLHR Reg 5/2014, the MOLHR was free to determine whether a recommendation from a GOI institution was needed.

**C. Amount of Initial Assets:** Under the Social Organization Law, Law No. 17 of 2013 regarding Social Organizations (July 22, 2013), one of the forms a social organization (Organisasi Kemas stryakatan or "Ormas") may take is a yayasan established under the Yayasan Law by foreigners and/or foreign legal entities. The minimum level of initial assets of a yayasan classified as an Ormas is Rp 1 billion. This contradicts the Yayasan Law, Law No. 16 of 2001 regarding Foundations (August 6, 2001), as amended by Law No. 28 of 2004 (October 6, 2004) (together, the "Yayasan Law"), which provides that a yayasan may be established by Indonesian individuals with minimum initial assets of Rp 10 million and by foreigners, or Indonesian individuals together with foreigners, with minimum initial assets of Rp 100 million. The Social Organization Law also prohibits a yayasan classified as an Ormas founded in whole or part by foreigners from conducting local fund-raising whereas the Yayasan Law and GR No. 63/2008 are silent on this matter.

**D. Registration and Activity Licenses:** A yayasan operating in DKI Jakarta and established either by an Indonesian or a foreigner, or jointly established by foreigners and Indonesians, must obtain a yayasan registration certificate from the DKI Jakarta Social Service Office. The current policy of the DKI Jakarta Social Service Office is that the registration obligation applies to any type of yayasan that operates within the jurisdiction of DKI Jakarta. In addition to such registration, a yayasan is obligated also to obtain an activity license from the Head of the DKI Jakarta Social Service Office to conduct its activities. If such yayasan has not obtained an activity license, it is prohibited to conduct any fund-raising activities. For a yayasan located outside the DKI Jakarta area, the relevant regional regulation may impose different requirements.
1. Introduction

With approximately 260 million people, Indonesia is the largest consumer market in Southeast Asia and the ASEAN region and is attractive to international and local franchise businesses. The Government of Indonesia (the “GOI”) introduced eight economic policy packages as of December 21, 2015 in a deregulation effort to stimulate the economy. However, none of the policy packages focused on the franchising sector. The fact then that no regulatory change occurred in 2015 is noteworthy. The following background information is helpful to understand that there may be no deregulation in this sector.

2. Current Law

(i) Law Number 7 of 2014 on Trade, dated (March 11, 2014);

(ii) Government Regulation Number 42 of 2007 regarding Franchise (July 23, 2007) (“GR 42/2007”);

(iii) Minister of Trade (“MOT”) Regulation Number 53/M-DAG/PER/9/2012 regarding Franchise Organization as amended lastly by MOT Regulation No. 57/M-DAG/PER/9/2014 regarding Amendment of MOT Regulation No. 53/M-DAG/PER/8/2012 (September 17, 2014);

(iv) MOT Regulation Number 68/M-DAG/PER/10/2012 regarding Franchise for the Modern Store Business (October 29, 2012);

(v) MOT Regulation Number 07/M-DAG/PER/2/2013 regarding Partnership Development in Franchise for the Food and Drinks Service Business as lastly amended by MOT Regulation No. 58/M-DAG/PER/9/2014 regarding Amendment of MOT Regulation No. 07/M-DAG/PER/2/2013 (September 17, 2014).

The above regulations are collectively referred to as the “Franchise Regulations”.

Under the Franchise Regulations, the franchisor and franchisee have legal obligations, be they jointly or separately. Among others, these are:

- **Registration**: The Franchise Regulations require both the franchisor and franchisee to obtain a Franchise Registration Certificate (Surat Tanda Pendaftaran Waralaba or “STPW”) issued by the MOT.

- **Franchise Logo**: The franchisor and franchisee who have obtained the STPW must use the franchise logo. Please note that the franchise logo is expected to be further regulated by a ministerial regulation that has not been issued to date.

- **Local Content**: Eighty percent of the raw materials and business tools used and the goods and services sold by a franchisor and franchisee must be produced in Indonesia. In some circumstances, the MOT may permit a deviation from that local content requirement upon application to the MOT. GR 42/2007 provides that domestic products should be used insofar as they fulfill the written quality standards stipulated...
by the franchisor.

- **Partnership Requirement**: A franchisor must cooperate with a small and medium enterprise in the territory as the franchisee or supplier of goods and/or services so long as it fulfills the terms and conditions stipulated in writing by the franchisor.

- **Training**: The franchisor must provide training and assistance to the franchisee regarding the franchise management system, operational management, market development through promotion, and market and product research and development.

- **Reporting Obligations**: A foreign franchisor, a domestic franchisor, sub-franchisor of a foreign franchise, a sub-franchisor from a domestic franchise, and a franchisee from a foreign franchise must report on the franchisor activities to the MOT.

There are also GOI regulatory limitations on what franchise businesses can do:

- **Limitation to Business Activities**: The franchisor and franchisee may only conduct the activities stipulated in their business licenses. However, there is no limitation on the types of businesses that can be franchised. Under certain circumstances, the franchisor and franchisee may sell supporting goods. However, the maximum amount of supporting goods that can be sold is 10 percent of the total goods sold (e.g., branded traveler coffee cups for a coffee franchise).

- **Restriction on the Appointment of a Franchisee**: The franchisor cannot appoint a franchisee controlled by the franchisor, either directly or indirectly. The maximum equity that may be held by such foreign franchisor is 49 percent. This means that neither a foreign nor domestic parent company franchisor may appoint its subsidiary as its franchisee. An appointment of an affiliate is acceptable if it is non-controlled by the franchisor. It also means that a foreign franchisor may not establish a foreign investment (“PMA”) company to conduct the same business activities as its franchisee.

### 3. Termination of the Franchise Agreement

If a franchisee disputes a unilateral termination by a franchisor prior to the expiration of the franchise agreement, the franchisor may not appoint a new franchisee in the same territory before the parties resolve their dispute amicably or until there is a valid and binding court decision.

*For further discussion on the GOI policy packages, refer to the article on Deregulation on page 32.*
1. Introduction

Indonesia’s geothermal resources are among the largest in the world, with 299 geothermal locations and a total potential of 28,807 MW, or around 40 percent of the total geothermal resources worldwide. In order to utilize this enormous energy potential, the Government of Indonesia (the "GOI") has intensified its efforts to encourage geothermal power development. Some background to the regulatory climate will put these developments in perspective.

2. Prior and Existing Laws

A. Law No. 27 of 2003 on Geothermal (October 22, 2003) (the “2003 Geothermal Law”): The GOI enacted the 2003 Geothermal Law to make geothermal the only renewable energy resources governed by its own law. In 2004, the Ministry of Energy and Mineral Resources (the "MEMR") issued the “Blueprint for Geothermal Development in Indonesia,” a roadmap to develop 6,000 MW of geothermal power capacity by 2020. In 2005, the Directorate General of Geothermal Enterprise Supervision and Groundwater Management was established by the MEMR to strengthen management and support in this sector. In 2006, the MEMR initiated the Master Plan Study for Geothermal Power Development in Indonesia, funded by the Japan International Cooperation Agency, to further solidify knowledge and understanding about developing Indonesia’s geothermal resources. In 2012, the MEMR, with the issuance of MEMR Regulation No. 22 of 2012 (August 23, 2012), set out a feed-in-tariff (“FIT”) policy for geothermal electricity, and in the same year, the Ministry of Finance established a geothermal fund in the amount of more than US$200 million of initial capitalization to mitigate resource risks related to geothermal development. In 2014, the MEMR, through the issuance of MEMR Regulation No. 17 of 2014 (June 3, 2014), set out a new FIT policy based on commercial operation dates and regions.

B. Law No. 21 of 2014 on Geothermal (September 17, 2014) (the “2014 Geothermal Law”): The 2014 Geothermal Law was enacted to replace the 2003 Geothermal Law. The 2014 Geothermal Law was a major policy change to boost geothermal exploration activity by separating the geothermal sector from mining activity. This was necessary because the restrictions on mining within protected and conservation forests also prohibited geothermal development in those areas, as most geothermal resources are located there.

C. MEMR Regulation No. 14 of 2015 regarding Procedures for the Imposition, Collection and Remittance of Non-Tax State Revenues Derived from Geothermal Activity at the Directorate General of New Energy, Renewable and Energy Conservation (April 15, 2015) (“MEMR Reg. 14/2015”): After the 2014 Geothermal Law, the GOI has not adopted further regulations to encourage geothermal power development, with the exception of MEMR Reg. 14/2015. This is an implementing regulation of Government Regulation No. 9 of 2012 regarding


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Types and Fees over the Types of Non-Tax State Revenues Applicable at the Ministry of Energy and Mineral Resources (January 6, 2012).

Under MEMR Reg. 14/2015, the types of Non-Tax State Revenues derived from geothermal activity are as follows:

(i) Fixed fees that consist of (a) fixed fees on geothermal exploration and (b) fixed fees on geothermal operation production, both of which are imposed annually on the geothermal working area after the issuance of the geothermal business license until the commercial operation date. The formula for the calculation of fixed fees is based on the size of the geothermal working area (in hectares) times the applicable fee.

The fixed fee payment obligation on geothermal exploration for the first year is calculated based on the number of months from the date of the issuance of the geothermal business license until December 31 of the current year. The fee must be remitted to the state treasury account not later than one month after the issuance of the geothermal business license. In the following years, the fee is calculated from January 1 until December 31 and must be remitted to the state treasury account not later than January 15 of the following year.

The fixed fee payment obligation on geothermal operation production for the first year is calculated on the same basis as the fixed fee on exploration but must be remitted to the state treasury account not later than one month after the commercial operation date of the first production unit. In the following years, the method of calculation is again the same as the fixed fee for exploration and must be calculated as of January 1 until December 31 and be remitted to the state treasury account not later than January 15 of each year. In the final year, the fee is calculated on the number of months from January 1 until the end of the geothermal business license and must be remitted to the state treasury account at the latest on January 15 the following year.

There is a late payment penalty of the foregoing fees of 2 percent per month.

(ii) A production fee is imposed on the electricity power that is generated from the geothermal steam upon the commercial operation date. The calculation of the production fee is based on the total production of electricity sold (in kilowatts per hour) at the delivery point of electricity from the holder of the geothermal business license to the holder of the electric power supply business license, times the applicable fee multiplied by the sale prices of electricity.

The production fee is calculated as of the commercial operation date of the first production unit each month not later than the 15th day of the following month for the supply of electricity of the previous month in accordance with the relevant power purchase agreement.

Any late payment of the production fee is subject to a 2 percent penalty per month of the outstanding production fee.

(iii) A fee for information map printing services on geothermal areas.

(iv) A fee for data of geothermal working areas collected from preliminary surveys and/or exploration activities.

The transitional provisions of MEMR Reg. 14/2015 stipulate the payment obligation of fixed fees and production fees for the holder of a

geothermal mining business license issued before the enactment of MEMR Reg. 14/2015.

3. Draft Regulations

There are several draft regulations in process concerning geothermal production bonuses, direct utilization of geothermal resources and indirect utilization of geothermal resources. However, no details have been released about these drafts, except one publication by the Directorate General of New Energy, Renewable and Energy Conservation that mentioned the draft regulation on geothermal production bonuses would provide that people living in the neighborhood closest to the geothermal activity would be given priority access to the geothermal production bonus. The GOI is also planning to allow 100 percent foreign share ownership for investments in geothermal power plants with a capacity of 10 MW or more and 67 percent foreign share ownership for plants with a capacity of less than 10 MW. Currently, foreign share ownership is capped at 95 percent and 49 percent, respectively, for the above megawatt capacities. However, to date this plan has not yet been implemented.

4. The Future

Despite the efforts by the GOI to date, geothermal development in Indonesia is still under-developed. This is primarily the result of a number of outstanding challenges that have not yet been resolved by the GOI, particularly with respect to the feed-in tariff of geothermal electricity that many investors consider unattractive in view of the high capital requirements needed to develop a geothermal working area in Indonesia. This factor alone may hinder the GOI’s efforts to add 35,000 MW of electricity throughout Indonesia by 2019, 4,815 MW of which is intended to come from geothermal resources.³

Health

1. Introduction

There were no major changes in health sector regulations in 2015. Presidential Regulation No. 39 of 2014 regarding the List of Business Fields that Are Closed and Business Fields that Are Open with Requirements for Investment (April 23, 2014) (the “Negative Investment List”) provides that pharmaceutical manufacturing businesses are limited to a maximum 85 percent foreign ownership. Hospital management services and specialist/sub-specialist hospital companies are limited to a maximum of 67 percent foreign ownership, though this can be increased to 70 percent foreign ownership for specialist/sub-specialist hospital businesses from ASEAN countries, if the investors open hospitals in provincial capitals in eastern Indonesia, other than Makassar in South Sulawesi and Manado in North Sulawesi. The 67 percent foreign ownership limitation also applies if foreign investors open clinics, including dental clinics.

No changes were made to these rules in 2015. However, according to media reports on January 21, 2016, the Chairman of the Indonesian Capital Investment Coordinating Board (the “BKPM”) indicated that the new Negative Investment List, expected to be issued in March 2016, will allow 100 percent foreign investment in the drug ingredient manufacturing industry, from the current limitation of 85 percent.

2. Policy Differences between the Ministry of Health (the “MOH”) and the BKPM

It became apparent in 2015 that there were policy differences between the MOH and BKPM concerning the importation of medical devices. The Negative Investment List limits foreign ownership in distribution companies to 33 percent. However, the BKPM has allowed 100 percent foreign ownership in companies engaged in the wholesale business if the company limited its activities to the import and sale of goods to a local distributor that is 100 percent Indonesian-owned. Thus, the 100 percent foreign-owned company could only import goods and sell them to a distribution company that was 100 percent Indonesian-owned; it could not distribute such goods itself. Several investors viewed the BKPM policy as an opportunity to hold 100 percent foreign ownership in medical device companies, which could then themselves hold the product registration or marketing authorization (called an Izin Edar) of medical devices and appoint local distributors to distribute the medical devices.

The MOH does not agree with the BKPM’s policy. The MOH Director General of Pharmaceuticals and Medical Devices advised the BKPM on April 13, 2015 that the import of medical devices could only be conducted by a company that had obtained a medical device distributor license (an Izin
Penyaluran Alat Kesehatan or “IPAK”) and had registered its medical devices with the MOH. The MOH thus reaffirmed that the foreign ownership limitation of 33 percent applied to such companies. Further, the MOH’s April 13, 2015 letter reaffirmed Ministry of Health Regulation No. 1190/MENKES/PER/ VII/2010 regarding Marketing Authorization of Medical Devices and Household Health Products (August 23, 2010), which requires a company to obtain an IPAK before it can obtain the product registration of medical devices. As the technical ministry in charge of health, the MOH’s view prevails over that of the BKPM.

This restrictive approach of the MOH on the import of medical devices is a departure from the import and distribution of household health products generally. A company is only required to obtain a BKPM business license (an Izin Usaha or “IU”) to register and market household health products. Therefore, the BKPM’s policy is that a foreign investment (“PMA”) company owned 100 percent by foreign investors can import household health products and sell them to a local distributor except if the products are medical devices. Such 100 percent foreign-owned companies can thus hold the marketing authorization of household health products if they obtain an IU from the BKPM, but this policy does not apply if the products are medical devices.
Immigration

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1. Introduction
A major change was made in 2015 in Indonesian visa requirements.

2. Regulations

A. Presidential Regulation No. 69 of 2015 regarding Visitor Visa Exemptions, which was amended by Presidential Regulation No. 104 of 2015 (September 18, 2015), ("PR 69/2015," as amended): On June 9, 2015 the Government of Indonesian (the “GOI”) issued PR 69/2015, which became effective on September 23, 2015. The purpose of PR 69/2015 is to encourage tourism to Indonesia by waiving the visa requirement for visitors from certain countries.

While such visa exemptions were previously regulated in 2003 (as amended several times, the last of which was in 2011), PR 69/2015 adds new countries whose citizens are exempted from visa requirements if they enter Indonesia for tourism purposes. The new regulation also requires entry into the country through specified immigration checkpoints. This was not required under previous regulations.

| List of Special Countries Exempted from Visitor Visa for Tourism Purposes |
|---------------------------|----------------|----------------|----------------|----------------|----------------|
| 5. Azerbaijain            | 20. Finland    | 35. Latvia     | 50. People’s Republic of China |
| 12. Cyprus                | 27. India      | 42. Mexico     | 56. San Marino  |
| 14. Denmark               | 29. Italy      | 44. Netherlands | 58. Seychelles |
|                          |                |               | 60. Slovenia    |

Above is the list of new countries whose citizens now qualify for visa-free travel to Indonesia for tourism purposes.

The visa exemption is valid for up to 30 days and cannot be extended or converted to a different type of visa. If foreign nationals who qualify for visa-free entry wish to stay in Indonesia for more than 30 days or engage in activities other than for tourism purposes, they must apply for and obtain a different type of visa regulated under the applicable laws and regulations. Such application for
a different visa must be in accordance with the rules for that visa and the application for such an additional visa requires the foreign national to exit Indonesia.

Pursuant to PR 69/2015 foreign nationals from certain countries and special administrative regions who have already obtained visitor visa exemptions pursuant to previously applicable Presidential Decree No. 18 of 2003 regarding Short-Term Visitor Visa Exemptions as last amended by Presidential Regulation No. 43 of 2011 (July 18, 2011) (collectively, the “Old Exemption Rules”) will continue to enjoy visa-free entry to Indonesia for tourism purposes, as well as for government, educational, social and cultural, business, family or transit purposes, but only for the remaining period of the visa exemption that was granted pursuant to the Old Exemption Rules and they may enter Indonesia through any immigration border or checkpoint. The visitor visa exemption for foreign nationals from these special countries and administrative regions is also given for up to 30 days and may not be extended or converted to a different type of visa.

Below is the list of special countries and special administrative regions exempted from the visitor visa requirement for government, educational, social and cultural, tourism, business, family or transit purposes:

B. Indonesian Director General of Immigration Regulation No. F-434.IZ.01.10 Year 2006 regarding Form, Size, Wording, Types, Indices and Markings of Visas (April 24, 2006), as amended by DGI Regulation No. IMI-330.IZ.01.10 Year 2009, and by DGI Reg. No. IMI-819.IZ.01.10 Year 2009 (July 2, 2009) (together, “DGI Reg. 434/2006”). Foreign citizens will still be able to enter Indonesia for purposes other than tourism under the following types of visas provided under DGI Reg. 434/2006:

(i) Transit Visas (Index 111): A Transit Visa is used for any purpose related to transit or a temporary activity for the purpose of continuing travel to another country, to use transportation vehicles in Indonesia, and due to emergency situations concerning the transportation vehicle, weather or other reasons that cause a delay of travel. It is given for no more than 14 days. In practice, this type of visa is actually no longer issued. In emergency situations, foreign nationals would be given a Visit Stay Permit based on a Directorate General of Immigration ("DGI") decree. Such Visit Stay Permit is valid for no more than 30 days and is non-extendable.

(ii) Multiple Entry Visa (Index 212): A Multiple Entry Visa is a visa given to a foreign national for a 12-month period to enter Indonesia for business purposes without engaging in employment in Indonesia. During that time, the holder of the Multiple Entry Visa may travel to and from Indonesia and may be physically present in Indonesia for up to 60 days at one time. Every 60 days the visa holder must exit Indonesia (e.g., fly to Singapore). A one-year Multiple Entry Visa cannot be extended but the holder can

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<table>
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<th>Special Administrative Regions</th>
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<td>1. Hong Kong Special Administrative Region (Hong Kong SAR)</td>
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<td>2. Macao Special Administrative Region (Macao SAR)</td>
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obtain a new one-year Multiple Entry Visa upon application overseas at the end of the year.

DGI Reg. 434/2006 provides the following representative list of permitted activities under a Multiple Entry Visa:

- cooperation between the government of another nation and the Republic of Indonesia;
- tourism;
- family or social affairs;
- educational exchanges;
- the receipt of short-term training;
- the holding of business discussions, such as purchase and sale transactions for goods or services and quality control of goods or production;
- the delivery of a lecture or participation in a social, cultural or governmental seminar which is not commercial, after obtaining a required permit from the relevant agency;
- participation in a meeting with a head office or representative office in Indonesia.

There is an unwritten DGI policy currently applicable that expatriates can only obtain a Multiple Entry Visa if they have previously entered Indonesia three times using a Single Entry Visa. An application to obtain a Multiple Entry Visa must be initiated at the DGI by an Indonesian sponsor of the expatriate.

(iii) Single Entry Visa (Index 211): A Single Entry Visa is obtained outside Indonesia and must be used within 90 days of its issuance. It permits a stay up to 60 days from the date of entry. This 60-day visit visa is a single entry visa. It can be extended inside Indonesia up to four times consecutively for up to 30 days each, for a total of six months. An application for a Single Entry Visa may be made by the visa applicant to any Indonesian embassy or consulate by filling out a visa application form accompanied by supporting documents.

Pursuant to DGI Reg. 434/2006, the permitted activities under a Single Entry Visa are the same as under a Multiple Entry Visa as mentioned above, with the following additional permitted activities:

1. journalism, after obtaining any required permit to be issued by the relevant agency;
2. the making of films which are not commercial, after obtaining any required permit to be issued by the relevant agency;
3. participation in an international exhibition that is not commercial.

(iv) Visa on Arrival (Index 213): A Visa on Arrival (“VOA”) is used for all aspects of government administration, tourism, socio-cultural and business activities (not including work) and is given upon arrival in Indonesia for a period of not more than 30 days. A VOA can be extended one time inside Indonesia for 30 days. From time to time the DGI has applied an unwritten policy that VOAs are not permitted for entry other than for tourism, even though that contravenes DGI Reg. 434/2006.

(v) Limited Stay Visa (Index 311-319): A Limited Stay Visa or VITAS can be used for work purposes, non-work purposes and to facilitate non-permanent work purposes during vacations. A VITAS is collected at an appropriate Indonesian embassy or consulate. A VITAS must be utilized by an expatriate within 90 days as of its issuance and an expatriate holding a VITAS who has entered Indonesia must obtain a Limited Stay Permit (Kartu Izin Tinggal Sementara or “KITAS”). A VITAS is a temporary document permitting the holder to enter Indonesia for the purpose of obtaining a KITAS. A VITAS is thus a prerequisite visa for obtaining a KITAS, which allows an expatriate to live in Indonesia for a maximum period of two years.
1. Introduction

In 2015 most of the regulations issued by the Minister of Industry (the “MOI”) were related to the mandatory Indonesian National Standards (Standar Nasional Indonesia or “SNI”) for products either manufactured in or imported to Indonesia. The purposes of the SNI regulations are to improve the quality of the products covered by the SNI, to protect consumers and to create fair business competition. Among others, such products covered by the SNI are cement, glass for buildings – glass blocks, rubber seals for LPG valve tubes, hoses for LPG stove tires, ceramics, helmets, biscuits, flour and instant coffee. The MOI has also appointed several certification agencies to determine compliance with SNI requirements.

2. Regulations

Among the MOI regulations issued in 2015, the main regulations that have a significant impact on industrial businesses are as follows:

A. MOI Regulation No. 68/M-IND/PER/8/2015 regarding the Provisions and Procedures for the Calculation of Local Content Level (Tingkat Komponen Dalam Negeri or “TKDN”) for Electronic and Telematic Products (August 19, 2015) (“MOI Reg 68/2015”): MOI Reg 68/2015 revoked the previous regulation on the same subject, i.e., MOI Regulation No. 69/M-IND/PER/9/2014 (September 1, 2014), and applies to electronic and telematic products manufactured for distribution in Indonesia in the form of:
   - electronic goods and their components;
   - information technology and/or telecommunication devices;
   - software and content services;
   - a combination of information technology and/or telecommunication devices and the development of the same.

The variables used in the calculation of TKDN for electronic and telematic products mentioned in the first two points above consist of raw materials, working equipment and labor. The variables for the calculation of TKDN of electronic and telematic products mentioned in the third point consist of design, system installation, copyright, labor, competence certificate, working equipment and used materials. Specifically for products mentioned in the fourth point, the calculation of which combines the variables of raw materials, working equipment and labor for the manufacturing process with the variables of intellectual property rights and firmware for developmental value, the calculation of TKDN is based on the country of origin of the raw materials, the ownership and manufacturer of the working equipment and the citizenship of the labor.

B. Minister of Communications and Informatics (the “MOCI”) Regulation No. 27 of 2015 regarding Technical Requirements of Telecommunication Equipment and/or Devices with Long-Term Evolution Standard Based Technology (July 7, 2015) (“MOCI Reg 27/2015”): Under MOCI Reg 27/2015, any telecommunication devices and/or equipment with LTE standard technology manufactured, assembled, imported for trading and/or use within Indonesia must meet the technical requirements based on testing in accordance with the provisions specified in Attachments I and II of MOCI Reg 27/2015.
The telecommunication devices and/or equipment with LTE standard technology consist of:

(i) Base Station ("BS"), which functions to provide connectivity, management and control of a Subscriber Station, including the antenna;

(ii) Subscriber Station ("SS"), which is the telecommunications device used by the customer, such as a cellular telephone that uses LTE standard technology.

Further, MOCI Reg 27/2015 also sets forth the minimum TKDN requirements for both BS and SS as follows:

(i) 30 percent for BS and 20 percent for SS, which is effective as of the promulgation date of MOCI Reg 27/2015, i.e. July 7, 2015.

(ii) 40 percent for BS and 30 percent for SS. This increase of the minimum TKDN requirement will be phased-in as follows:

(a) as of January 1, 2017 for LTE standard technology operating at the radio frequencies band of 2100 MHz, 1800 MHz, 900 MHz, 800 MHz;

(b) as of January 1, 2019 for LTE standard technology operating at the radio frequency band of 2300 MHz. MOI Reg 68/2015 is used as the basis to calculate TKDN for products of certain industries set out in the attachment to MOI Reg 68/2015, one of which is the cellular telephone manufacturing industry. The calculation of TKDN is conducted by an independent surveyor appointed by the MOI based upon an application of the product supplier, the results of which must be reviewed and approved by the Director General of Metal, Machinery, Transportation Equipment and Electronics Industries within the MOI.

With the issuance of MOCI Reg 27/2015, the importation of cellular telephones with LTE technology in the form of finished products is prohibited, since there must be some part of the manufacturing conducted in Indonesia to meet the TKDN requirement under MOCI Reg 27/2015. The calculation and certification of that percentage are under the authority of the MOI.

C. MOI Regulation No. 34/M-IND/PER/3/2015 regarding the Four-Wheel or More Motor Vehicle Industry and Motorcycle Industry (March 20, 2015) as amended by MOI Regulation No. 61/M-IND/PER/8/2015 (August 4, 2015) and MOI Regulation No. 73/M-IND/PER/9/2015 (September 21, 2015) (together, "MOI Reg 34/2015") revokes MOI Regulations No. 80/M-IND/PER/9/2014 and 59/M-IND/PER/5/2010 and will be effective on March 23, 2016: MOI Reg 34/2015 regulates the four-wheel or more motor vehicle industry under Indonesian Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia or “KBLI”) No. 29100 and the motorcycle industry under KBLI No. 30911. The manufacturing process of the above-mentioned vehicles consists of (i) body printing, (ii) body unification, (iii) body painting, (iv) main component assembly, (v) assembling and (vi) quality testing and control.

The manufacturer may carry out the manufacturing process by itself with its own facilities and infrastructure and/or by a sub-contract with another manufacturing company in Indonesia based on a written agreement. The relevant manufacturing industry company must have a (i) Motor Vehicle Industry Business License, (ii) Company Code Stipulation Letter and (iii) Trademark Registration Letter from the Directorate General of Intellectual Property Rights and/or Recognition Letter as a Trademark Holder Agent.

Further, any components of the motor vehicles manufactured in Indonesia or imported for further
manufacturing in Indonesia must meet the quality standards set out in the mandatory SNI and other technical requirements under MOI Reg 34/2015. In conducting the manufacturing process, the motor vehicle manufacturer may use Completely Knocked-Down ("CKD") motor vehicles and Incompletely Knocked-Down ("IKD") motor vehicles and/or components. CKD and IKD motor vehicles may only be imported by manufacturers of motor vehicles based on a recommendation letter from the Director General that supervises the motor vehicle manufacturing industry within the MOI.

D. MOI Regulation No. 48/M-IND/PER/5/2015 regarding the Criteria and/or Requirements for the Implementation of the Use of Income Tax Facilities for Investment in Certain Lines of Business and/or Certain Areas in the Industry Sector (May 5, 2015) ("MOI Reg 48/2015"): MOI Reg 48/2015 allows taxpayers that meet certain criteria to be granted income tax facilities, namely those taxpayers that (i) have made high-value investments; (ii) have a high number of employees; or (iii) have a minimum 20 percent local content for raw materials, supporting materials or machinery, all of which must be evidenced by a certification letter from the MOI, which letter must be submitted with the application to obtain the income tax facility to the Indonesian Capital Investment Coordinating Board (the “BKPM”).

Further, the taxpayer must also (a) have a partnership with a micro-scale, a small-scale and/or a mid-scale business or a cooperative; (b) be integrated in terms of the production process from raw materials manufacturing up to downstream finished products and/or be integrated in a partnership with a cultivation business or raw materials supplier and/or be integrated in terms of components; (c) conduct transfer of technology; (d) use environmentally friendly technology, i.e. technology that, among other things, conserves energy and water in the production process and minimizes waste production; and/or (d) uses new technology.
Infrastructure Reform

1. Introduction

Infrastructure development is a major focus of the Government of Indonesia (the “GOI”). Almost all of the infrastructure projects listed in the Ministry of National Development Planning/Head of National Development Planning Agency (“Bappenas”) 2015 Book of PPP Projects are stalled, mostly because of problems related to land acquisition and funding. Other constraints include nationalistic government policies and legal uncertainty. Examples of these are Indonesia’s requirement to use Rupiah and the recent Constitutional Court ruling rejecting private sector participation in water projects. Regulations to clarify these matters are needed to create a stable investment climate to attract investors to Indonesia’s infrastructure programs.

A fundamental policy change occurred in January 2015 when the GOI removed the subsidy for premium gasoline to generate funds for infrastructure development, particularly in the transportation, power and water sectors. The premium gasoline subsidy was removed by Presidential Regulation No. 19 of 2014 regarding the Supply, Distribution and Retail Price of Fuel Oil (December 31, 2014).

Subsequent to that policy change, the GOI introduced and implemented a number of other regulations to create a more favorable environment for infrastructure development in Indonesia. These are discussed below:

2. Regulations

A. Presidential Regulation No. 38 of 2015 regarding Cooperation Between the Government and Business Entities in the Procurement of Infrastructure (March 20, 2015) (“PR 38/2015”): PR 38/2015 replaces Presidential Regulation No. 67 of 2005 regarding Public Private Partnerships (“PPP”), last amended by Presidential Regulation No. 66 of 2013. PR 38/2015 was enacted to create investment interest and a more constructive framework for investors in PPP projects by expanding the types of infrastructure that could be developed through the PPP scheme. Some of the key changes introduced by PR 38/2015 are:

(i) expansion of infrastructure sectors to include transportation, roads, water resources and irrigation, drinking water, wastewater, waste management, telecommunications and informatics, electricity, and oil and natural gas, as well as city facilities, education facilities, sports and arts facilities, development zones or areas (such as scientific centers, tech parks and/or industrial areas), tourism, health and correctional facilities, and public housing. In addition to expanding the type of infrastructure to include oil and gas infrastructure, urban infrastructure and large social infrastructure projects, PR 38/2015 allows construction of commercial facilities, such as shopping centers, using the PPP format;
(ii) the bundling of two or more PPP projects; 

(iii) the direct appointment of private entities under certain circumstances. In prior PPP regulations, PPP procurement could only be conducted through tenders. PR 38/2015 allows direct appointment if:

(a) the prequalification stage results in only one participant,
(b) the project is an infrastructure project that is developed and/or operated by that same developer,
(c) the project uses new technology and only one developer can provide that technology, or
(d) the developer has acquired all or a majority part of the land required for the project;

(iv) PR 38/2015 contemplates the formation of a Government Contracting Agency (a “GCA”) for infrastructure projects. A GCA is comprised of a Minister, a Head of an Institution, a Regent or the Head of a State or Regional-Owned Enterprise (an “SOE” or “ROE”) as the administrator of an infrastructure project. The GCA’s role is to identify, prioritize and select the PPP projects for tender or direct appointment. It will then tender the project and enter into a cooperation agreement with the project company. If the source of funding for land acquisition is from the budget of an SOE or ROE or from private business entities, the GCA will administer the land acquisition;

(v) rewards for unsolicited infrastructure projects or projects that were initiated by private developers and not initiated by the GOI, as follows:

(a) an additional 10 percent price preference in bid evaluation;
(b) the right to match a lower price bid by a competitor;
(c) the right to require the purchase of intellectual property rights if the proponent loses in the bid evaluation process. For example, the losing party can require the winning party to purchase its feasibility study.

(vi) A PPP can only be in the form of a cooperation agreement and no longer only through a form of concession. The SOE or ROE can act as a GCA;

(vii) There are three types of investment return models under PR 38/2015: (a) tariff from end-user customers, (b) availability payments (periodic payments made by the GOI entity in charge to the developer during the operational period of the project based on the services given by the developer), and/or (c) other forms of payment that do not violate the law;

(viii) PR 38/2015 provides that further provisions on the procedures for PPP arrangements will be regulated separately not later than 30 days after its enactment. To date, however, only one implementing regulation has been issued by Bappenas, i.e., Minister of National Development Planning/Head of National Development Planning Agency Regulation No. 4 of 2015 regarding the Procedures for the Implementation of PPP in Infrastructure Procurements (May 29, 2015) (“Bappenas Reg 4/2015”).

For further reading on PPPs, see the article on Public-Private Partnership on page 98.

B. Presidential Regulation No. 30 of 2015 regarding Third Amendment of Presidential Regulation No. 71 of 2012 regarding the Implementation of Land Acquisition for Development for the Public Interest (March 17, 2015) (“PR 30/2015”): This is the main implementing regulation of Law No. 2 of 2012 regarding Land Acquisition for Development for Public Interest (January 14, 2012) (“Law 2/2012”). The main stumbling block in PPP projects has been land acquisition. Many infrastructure projects have been delayed by extended land acquisition disputes, caused by either legal restrictions
on land acquisition or funding problems that were only partially overcome by Law 2/2012.

Under Law 2/2012 land acquisition can only be funded by the GOI. Under PR 30/2015, the GOI is authorized to partner with private entities to secure the necessary funding to conduct land acquisition. However, in acquiring land, private entities do not act on behalf of themselves but as proxies of the GCA for that particular infrastructure project. The private entities providing the funding must be repaid by the relevant government body after the land is acquired, with the repayment amount to be based on an agreed return on investment.

When land is procured by a private entity on behalf of the GCA, the land right is restricted to a right to manage (hak pengelolaan) and the private entity may only be granted a right of build (hak guna bangunan) or a right to use (hak pakai). This is in accordance with Minister of Agrarian and Spatial Planning/Head of the National Land Agency Regulation No. 6 of 2015 regarding the Amendment of National Land Agency Regulation No. 5 of 2012 regarding the Technical Guidelines for the Implementation of Land Acquisition (April 28, 2015).

C. Bappenas Reg 4/2015: This regulation is a guideline for PPP participation in Indonesia. It details the requirements in each procurement stage, i.e., (i) planning (among others, identification and stipulation of the PPP project, budgeting and categorization), (ii) preparation (among others, pre-feasibility studies, government support or guarantees), and (iii) transaction details (among others, market studies, a public tender or direct selection, location determination, documentation and the financial close). The regulation also specifies the roles and responsibilities of the GCA and the procurement committees.

D. A series of 2015 Indonesian Capital Investment Coordinating Board ("BKPM") regulations were issued on October 26, 2015 as part of phase two of the GOI’s economic stimulus package. These BKPM regulations are intended to improve the climate for foreign investment, support a centralized licensing point for certain sectors and increase the efficiency of licensing processes related to infrastructure projects in Indonesia, in addition to promoting direct investment in general.

For further discussion on the GOI policy packages, refer to the article on Deregulation on page 32.
I. Introduction

Last year the Government of Indonesia (the “GOI”) issued Law No. 40 of 2014 regarding Insurance (October 27, 2014) (the “New Insurance Law”), which replaced Law No. 2 of 1992 regarding the Insurance Business (February 11, 1992) (the “Old Insurance Law”). The New Insurance Law introduces several key provisions that have a major impact on the insurance business:

• **Single Presence Policy (the “SPP”):** The SPP requires that a person or legal entity can only be a controlling shareholder in one type of insurance company at one time. The six types of insurance companies are life insurance companies, general insurance companies, reinsurance companies, sharia life insurance companies, sharia general insurance companies and/or sharia reinsurance companies. The SPP is not applicable if the controlling shareholder is the Indonesian Government. Compliance with the SPP must be completed within three years as of the enactment of the New Insurance Law.

• **Indonesian Shareholders:** Insurance business companies\(^1\) may only be owned by Indonesian nationals or legal entities that are directly or indirectly owned by Indonesian nationals or by an Indonesian shareholder owned by Indonesian nationals, with a foreign national citizen or foreign legal entity that satisfies the criteria of the New Insurance Law. This concept clarifies an ambiguous provision under the Old Insurance Law that did not clearly define an Indonesian shareholder. The New Insurance Law obligates non-compliant insurance companies to comply with the Indonesian shareholder requirement within five years of the enactment of the New Insurance Law, by either transferring the required shareholding to Indonesian nationals or conducting an initial public offering.

However, there continues to be some confusion over what the shareholding requirement is. The New Insurance Law, as did the Old Insurance Law, requires the Indonesian shareholding to be 20 percent of the total issued capital on formation. However, many companies have diluted their Indonesian shareholders since the 1998 Asian financial crisis, if the latter could not respond to capital calls. Such dilution was allowed by regulation. It is not clear at this stage but it is presumed that the Indonesian shareholding is not required to be restored to the original 20 percent. Rather, the purpose of this requirement is to ensure that the actual Indonesian shareholding percentage is owned directly and indirectly by Indonesian nationals. This is a reversal of policy adopted under the Old Insurance Law.

• **Spin-off for Sharia Business:** The New Insurance Law differentiates conventional insurance business from sharia insurance business. Sharia insurance businesses are only allowed to conduct general insurance sharia business, life insurance sharia business and reinsurance sharia business. A non-compliant insurance business must spin-off its sharia business unit to become a separate sharia insurance company or sharia reinsurance company on the earlier of (i) the date when the insurance or reinsurance company

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\(^1\) This term means insurance companies, sharia insurance companies, reinsurance companies, sharia reinsurance companies, insurance broker companies, reinsurance broker companies and loss adjuster companies.
has a sharia unit with tabarru' funds and participant investment funds that reach at least 50 percent of the total amount of the insurance funds, the tabarru’ funds and participant investment funds of such insurance or reinsurance company, or (ii) within 10 years as of the enactment of the New Insurance Law.

The New Insurance Law mandates that an implementing regulation of the New Insurance Law must be issued no later than 2 years and 6 months as of the enactment of the New Insurance Law, or approximately April 2017. It has not been issued to date.

II. Current Implementation of the SPP

The deadline for compliance with the SPP is October 2017. The Financial Services Authority (Otoritas Jasa Keuangan or “OJK”) has indicated SPP compliance can be achieved by way of a merger of sister insurance companies within the same insurance line or by a sale of one of the companies. If compliance is by way of merger, the business license of the non-surviving insurance company must be returned to the OJK and the insurance business license of the non-surviving company may not be acquired by another party.

Failure to comply with the SPP allows administrative sanctions to be imposed by the OJK. It is not clear whether the sanctions will be imposed on the controlling shareholder of the insurance company or the insurance company itself.

To date, the OJK is yet to issue regulations for the SPP implementation. The OJK has circulated a letter to insurance companies requesting their action plan for SPP implementation. The OJK will review the action plans and then invite insurance companies to explain their plans. By requiring submission of action plans, the OJK expects that any complications that may delay SPP compliance can be avoided.

III. Other Insurance Business Issues

A. Foreign Ownership Restrictions: GR No. 73/1992 provides that a foreign shareholder’s share ownership at the time of establishment of an insurance business company must not exceed a maximum of 80 percent. GR No. 73/1992 is the implementing regulation of the Old Insurance Law and it is reasonable that its provisions will not change under the New Insurance Law’s implementing regulations when they are issued. We note that there have been unconfirmed reports that the GOI is considering an amendment of the minimum foreign ownership requirement under GR No. 73/1992 to be less than 80 percent. [However, this would be inconsistent with both the New Insurance Law and the Old Insurance Law.]

B. Minimum Capitalization of Reinsurance Broker Companies: GR No. 39/2008 provides that the minimum paid-up capital of a reinsurance broker company must be at least Rp 1 billion. The GOI is considering an increase in this requirement to at least Rp 5 billion. As long as a new regulation revoking the provision on minimum paid-up capital under GR No. 39 has not been enacted, applications should be approved at the Rp 1 billion level.
1. Introduction
Indonesia is a member of the World Intellectual Property Organization (the “WIPO”) and the World Trade Organization (the “WTO”) and is obliged to adjust its laws and regulations concerning Intellectual Property Rights (“IPR”) with the Trade Related Aspects of Intellectual Property Rights (“TRIPs”) of the WTO. Consequently, the Government of Indonesia (the “GOI”) has started to revise its intellectual property rights laws. A new law regarding copyright was issued at the end of 2014, Law No. 28 of 2014 on Copyrights (October 16, 2014) (the “Copyright Law”). As of December 31, 2015, new trademark, patent and design laws were still being reviewed.

2. Intellectual Property Laws

A. Copyright Law: Even though the Copyright Law was issued in 2014, it had a significant impact in 2015. The following are its major provisions.

(i) Length of Protection: The copyright protection of creations, such as songs or books, is now valid for the life of the creator plus 70 years after the creator’s death, starting from January 1 of the year following his or her death. This protection is not retroactive. The previous law gave protection for the life of the author plus 50 years after the creator’s death.

(ii) Collective Management Organization (“CMO”) (Lembaga Manajemen Kolektif): This is a new organization to be formed as a nonprofit legal entity that is authorized by the creator, the holder of the copyright and/or the holder of related rights to manage the holder’s economic affairs in the form of collecting royalties from users on behalf of authors and/or such holders of related rights. To obtain such royalties, each creator, holder of the copyright or owner of such related rights should become a member of the CMO. The user of a copyright and related rights should pay royalties to the creator, the holder of the copyright or the owner of related rights, through the CMO. To enable the CMO to collect, compile and distribute the royalties, the CMO must obtain an operational license from the Ministry of Law and Human Rights (the “MOLHR”). A national CMO has been established for copyright and related rights especially for music and songs.

(iii) Building Management Liability: There is now a building management liability provision that applies to leased areas in malls and shopping centers. The building management of such leased areas is prohibited to allow tenants to sell and/or reproduce copyright infringing goods on such premises. A building management that intentionally allows the sale and/or reproduction of infringing goods can be fined up to a maximum Rp 100 million for each offense.

(iv) Websites: The new Copyright Law allows websites to be blocked if they contain content that violates a copyright. The GOI has issued a Joint Regulation on this matter that is discussed below.

(v) Security Interest: A copyright can now be given as collateral security for a loan.
(vi) **Dispute Resolution Mechanism:** The Copyright Law now allows different dispute resolution options, such as mediation, arbitration and the courts. Criminal actions can also be instituted by filing a complaint with the police.

**B. Copyright Violations by Use of Electronic Media:**
Joint Regulation of the Minister of Law and Human Rights and the Minister of Communications and Information (the “MOCI”) No. 14 of 2015 and No. 26 of 2015 regarding the Implementation of the Closure of Content and/or the User’s Access Right of the Violation of Copyrights and/or Related Rights through Electronic Systems (July 2, 2015) (the “Joint Regulation”) provides that any violation of a copyright or a related right conducted through an electronic system for commercial utilization or other utilization causing losses to the creator, the holder of the copyright or the owner of related rights can be reported to the MOLHR. If the MOLHR finds there is sufficient evidence of a violation under the Joint Decree, the MOLHR verification team must issue a recommendation letter to the MOCI to close or otherwise make inaccessible part or all of the content of the electronic system that violates the copyright and/or the related right. If the MOLHR finds that it is an emergency case, the MOCI must close the content and/or the user’s access right within 24 hours. If it is not an emergency, such closure must be done within five days. The owner of the electronic system and/or a user of the access right can apply to the MOLHR to re-open the system and allow access through the procedures and requirements stated in the Joint Regulation.

**C. Patent Law:** Revisions to the Patent Law have been proposed to simplify the administrative procedure for applying for registration and to create a new system of post-granting of patents that will be faster and simpler. Minister of Finance Regulation No. 72/PMK.02/2015 regarding Remuneration Derived from Non-Tax Revenues of Patent Royalties to Inventors (April 6, 2015) (“MOF Reg 72/2015”) allows remuneration to be paid to an inventor who works for the GOI and whose invention produces non-tax revenue patent royalties. An investor whose name is stated in a patent certificate and who is employed by the GOI shall receive a percentage of royalties earned by the state as remuneration, provided: (i) his patented invention is in the name of and owned by the state, (ii) the patent has been licensed to the state and (iii) non-tax revenue patent royalties have been paid to the state treasury. The remuneration to be paid to such investors is based on a decreasing percentage value, such that if the amount is (i) up to Rp 100 million, the inventor will be paid 40 percent, (ii) more than Rp 100 million up to Rp 500 million, 30 percent, (iii) more than Rp 500 million up to Rp 1 billion, 20 percent, and (iv) more than Rp 1 billion, 10 percent.

**D. Trademark Law:** Revisions to the Trademark Law have been proposed in draft legislation to provide a broader definition of trademarks that will allow greater protection. For example, a clearer definition of a “well-known mark” is anticipated. The draft legislation is expected to expand the definition of a mark to contain at least two principal matters, which are (a) that the definition of a mark should be a trademark on or for goods or services, and (b) the mark is one which distinguishes the indicated goods or services from those of others. Protection for non-traditional marks (such as 3D marks, color and sound marks) and provisions
arising from the Madrid Protocol, which allows online registration of trademarks using the WIPO system, is also anticipated.

Indonesia has committed itself to sign the Madrid Protocol. The Madrid Protocol, relating to the Madrid Agreement concerning the International Registration of Marks, is an international treaty that allows a trademark owner to seek registration in any of the countries that have joined the Madrid Protocol by filing a single application, called an “international application.” The International Bureau of the WIPO in Geneva, Switzerland, administers the international registration system. The resulting “international registration” serves as a method of protection in member countries that have their own rules and laws to determine whether a mark may be protected in their jurisdiction. Neither the Madrid Protocol nor the Madrid Agreement provide for registration of an internationally effective trademark. The basic concept of the Madrid Protocol is that one trademark application can be registered in the multiple member countries of the Madrid Protocol. Using the WIPO system, applications can be filed in a local trademark office or directly addressed to the WIPO and then the applicant can choose and register the marks it wants to be registered in any member countries of the Madrid Protocol. This will allow for speed of registration, avoid the need to register trademarks in multiple countries and will reduce registration fees and the costs of consultants.

**E. Design Law:** Revisions to the Design Law are proposed regarding the registration of industrial designs in which the registration of the industrial design application can be registered in one step in all registration offices abroad, thereby reducing costs to the applicant and offering more comprehensive protection.
Investment - BKPM

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1. Central Integrated One-Stop Service: In early January 2015, the Government of Indonesia (the “GOI”) introduced the central one-door integrated service (Pelayanan Terpadu Satu Pintu or “PTSP”) at the Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal or “BKPM”) to eliminate administrative roadblocks to investment approvals.

By working with relevant ministries and agencies, the BKPM played a vital role to achieve this result and four key milestones:

- the issuance of ministerial decrees on the delegation of authority to the BKPM;
- the issuance of ministerial regulations on standard operating procedures for all licensing processes under the central PTSP;
- the organizational set-up of the central PTSP;
- the initial engagement of the private sector in the reform process, including obtaining its feedback on the identification of problems.

To establish and improve the PTSP, the President of Indonesia issued Presidential Instruction No. 4 of 2015 regarding the Implementation of the Central Integrated One-Stop Service in BKPM in Jakarta (March 16, 2015) (“PI 4/2015”). With PI 4/2015, the President instructed 23 Ministries and Heads of Government Agencies to delegate investment licensing authority to the BKPM not later than December 31, 2015 to support the “one-stop shop” concept in the BKPM.


The first three regulations replaced Head of BKPM Regulation No. 5 of 2013, as last amended by Head of BKPM Regulation 12 of 2013 regarding Guidelines and Procedures for Licensing and Non-Licensing Matters in Relation to Investment (September 18, 2013).

In addition, the BKPM issued Head of BKPM Regulation No. 18 of 2015 regarding the Amendment of Head of BKPM Regulation No. 8 of 2015 regarding Application Procedure for Tax Allowance Facilities for Certain Fields of Business and/or Certain Areas (October 8, 2015) (“BKPM Reg 18/2015”), and Head of BKPM Regulation No. 19 of 2015 regarding the Amendment of Chair of BKPM Regulation No. 19 of 2015 regarding Application Procedure for Income Tax Reduction Facilities for Entities (“BKPM Reg 19/2015”) (October 8, 2015).
The following provides an overview of the above-referenced regulations:

A. BKPM Reg 14/2015: This regulation introduces an administration system that will allow investors to acquire a BKPM principle license in three working hours for projects that have either an investment value of Rp 100 billion and/or employ 1,000 people.

In brief, the application process for a principle investment license is made to the BKPM’s Central PTSP in Jakarta by all of the shareholders or by one shareholder who represents the others through a power of attorney. A principle investment license will be issued within three working hours upon the BKPM’s acceptance of the completed documents. If the application is rejected, the BKPM will issue an investment rejection letter at least three working hours as of the acceptance of the application.

This regulation clarifies issues regarding minimum investment. A minimum investment in the amount of above Rp 10 billion (excluding the investment for land and buildings) only applies to companies with foreign shareholders (“PMA Companies”) and applies for one line of business and one project location. The expansion of a PMA Company’s business, after obtaining the business license, may be done without any additional investment by the investors if the expansion is in the same line of business and at the same project location.

BKPM Reg 14/2015 also contains provisions that were not expressly stipulated in prior regulations, namely the change of status of a domestic capital investment company (a “PMDN Company”) if the shares are listed on the stock exchange, and the prohibition on nominee arrangements. The change of status of a PMDN company whose shares are listed on the stock exchange due to the participation of foreign investors recorded in the deed of establishment of the company will be required to change its status to a “PMA Company.” This change of status requires it to apply for a principle license to do so.

The prohibition on nominee arrangements is already set forth in Article 33 of Law No. 25 of 2007 regarding Investment (April 26, 2007). While this is the first time that the prohibition is set forth in a regulation, there is no additional legal consequence arising from this provision.

B. BKPM Reg 15/2015: BKPM Reg 15/2015 focuses on the regulation of business licensing and non-licensing approvals. Licensing approvals cover several types of licenses: a business license, an expansion business license for one company with several business sectors, a business license for a merger, an amended business license, a representative office license and an operational license. Non-licensing approvals cover matters such as the use of foreign manpower, imports and technical recommendations for several business sectors. These approvals are based on a delegation of authority from the relevant ministry or non-ministerial government institution. This regulation provides the list of business licenses in various sectors that may be issued by the BKPM pursuant to this delegation of authority and BKPM Reg 15/2015 must therefore be checked to see if licensing authority has been delegated for any particular sector.

If a company received a principle license or an expansion principle license (and such licenses still valid) at a time when less than Rp 10 billion in investment was required the company need not increase its investment level to Rp 10 billion.

The BKPM is also now authorized to issue approvals for foreign construction representative offices (Kantor Perwakilan Badan Usaha Jasa Kontruksi Asing), which was formerly under the exclusive jurisdiction of the Ministry of
Public Works, in addition to its present authority to issue approvals for foreign company representative offices and foreign trade representative offices. In addition, a company that intends to open a branch office must obtain BKPM approval from the provincial BKPM.

C. BKPM Reg16/2015: This regulation focuses on fiscal facilities. The regulation grants fiscal facilities in the form of a tax exemption on import duties for imports of raw material for production, capital goods used by companies engaged in the construction and development of public power plants, and capital goods for coal mining contracts of work. In addition, this regulation provides an exemption and/or a deferment of value added tax on the import of capital goods used by companies with mining contracts of work.

D. BKPM Reg 17/2015: The deadline for the submission of a periodical investment realization activity report (known as an “LKPM”) is quarterly for PMA or PMDN companies that have not yet obtained permanent business licenses and semi-annually for PMA or PMDN companies that have obtained such licenses. The report is submitted to the BKPM through an online reporting system. A foreign company representative office must submit an annual LKPM and a foreign trade representative office must submit an LKPM report semi-annually.

A PMA or PMDN company that has obtained import duty facilities must submit an import realization report not later than seven days after the date of its custom clearance approval.

PMA or PMDN companies that conduct commercial production without a business license can be sanctioned administratively by the BKPM. The previous regulation, Head of BKPM Regulation No. 3 of 2012 (July 10, 2012) (“BKPM Reg 3/2012”), was silent about sanctions.

As part of its supervisory responsibility, the BKPM may conduct a site visit without notice to the relevant company if there is an indication that the company has violated its investment implementation.

BKPM Reg 17/2015 sets out the procedure to close a foreign company representative office and a foreign trade representative office. In addition, this regulation sets forth the procedure to close a branch office.

E. BKPM Reg 18/2015 and BKPM Reg 19/2015: These regulations govern the procedure to obtain tax holidays and tax allowances. BKPM Reg 18 of 2015 and BKPM Reg 19 of 2015 make no substantial changes in the requirements and procedures to obtain such facilities. The changes made focus primarily on the time frame. Under BKPM Reg 18/2015, the administration of the application for a tax allowance takes a maximum of 25 working days instead of 28 working days. BKPM Reg 19/2015 states the application procedure process takes a maximum of 45 working days as of the submission of the application until the grant of the facility, a process that previously took a maximum of 125 working days. Both regulations came into force on October 26, 2015.
This article deals with Indonesian land-related matters in 2015.

1. Minister of Agrarian and Spatial Affairs/Head of National Land Agency Regulation No. 5 of 2015 on Location Permits (April 28, 2015) ("MOA Reg 5/2015"). A location permit is an early stage requirement for any investor acquiring land in Indonesia. Before land can be acquired a company needs to first obtain a location permit. MOA Reg 5/2015 supersedes MOA Regulation No. 2 of 1999 regarding Location Permits ("MOA Regulation No. 2 of 1999"). MOA Reg 5/2015 sets the maximum area a location permit may cover for the following business activities:

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<thead>
<tr>
<th>Business Activity</th>
<th>Specification</th>
<th>Total Area Allowed (Ha)</th>
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<tr>
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<td>In One Province</td>
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<tr>
<td>Developers</td>
<td>Residences</td>
<td>400</td>
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<tr>
<td></td>
<td>Resorts and Hotels</td>
<td>200</td>
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<tr>
<td>Businesses in Industrial Areas</td>
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<td>400</td>
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<tr>
<td>Large Plantation Businesses Under a Right to Cultivate (Hak Guna Usaha)</td>
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<td>Other Food Commodities</td>
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<td>Fishpond Businesses</td>
<td>Inside Java</td>
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<td></td>
<td>Outside Java</td>
<td>200</td>
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MOA Reg 5/2015 provides that the total land area that may be granted in the provinces of Papua and West Papua is twice the above areas.

A location permit is not required or will be considered as secured if the land is:

(i) provided by the investors’ shareholders as a grant;
(ii) already occupied by other investors;
(iii) within an industrial area;
(iv) obtained from an area development authority or institution in accordance with the relevant spatial layout;
(v) required for expansion of an existing business which already has a business expansion permit;
(vi) utilized for agricultural investment (up to a maximum of 25 hectares) or non-agricultural investment (up to a maximum of 10,000 m2);
(vii) owned by the investors by a transfer of rights from another company, provided that the use of such land is in accordance with the objectives set out under the relevant spatial layout plan.

A location permit is valid for three years and another
location permit cannot thereafter be issued for the same land. If a new location permit is issued for the same land, it is deemed as legally null and void. A location permit must be signed by (i) the relevant Regent or Mayor, (ii) the Governor for inter-regent regional or city areas in one province, or (iii) the Minister of Agriculture (the "MOA") for inter-provincial land areas.

The holder of a location permit is allowed to acquire land in the location permit area from a landowner based on a sale and purchase agreement, land consolidation and other lawful acquisition methods.

2. Presidential Regulation No. 30 of 2015 (March 17, 2015) ("PR 30/2015"): PR 30/2015 is an effort to increase the ability of private business entities to develop public infrastructure. It amended Presidential Regulation No. 71 of 2012 on Organizing Land Procurement for the Public Interest.

PR 30/2015 provides that business entities can procure land in the public interest subject to approval from one of the following institutions, as relevant:

(i) a state institution;
(ii) ministries;
(iii) non-ministerial government institutions;
(iv) provincial, regency or city governments;
(v) a State/Regional-Owned Enterprise.

Article 117A, paragraph (1) provides that the funding for the procurement of such land may originate from the business entity that needs the land for which authorization has been given by one of the above institutions. Such authorization must be based on an agreement. The funding is to be later repaid by the relevant institution, pursuant to Article 117A, paragraph (2).

3. Government Regulation No. 103 of 2015 regarding the Ownership of a Dwelling House or Residence by a Foreign Person Domiciled in Indonesia (December 28, 2015) ("GR103/2015"). GR103/2015 revoked Government Regulation No. 41 of 1996 regarding the Ownership of a Dwelling House or Residence by a Foreign Person Domiciled in Indonesia ("GR41/1996"), which regulated the same matter. However, GR103/2015 contains several changes from its predecessor.

A. Indonesian Domicile: One of the requirements is that the foreign buyer be domiciled in Indonesia. A notable change made by GR103/2015 is the expansion of the definition of a “foreign person domiciled in Indonesia” to mean a person who is not an Indonesian citizen and whose presence provides a benefit to Indonesia or who conducts business in, or who works or invests in Indonesia. This is in contrast to the more ambiguous provisions in GR41/1996, which defined the term as a foreign person whose presence in Indonesia provides benefits to national development.

The requirement that the foreigner be domiciled in Indonesia means non-resident foreigners are ineligible to use the new regulation to purchase land. It is also unclear whether the foreigner must have an Indonesian domicile only at the time of acquisition or throughout the period of ownership.

B. Indonesian Married to a Foreigner: GR103/2015 also introduces a new provision regarding the rights of land ownership for an Indonesian citizen who is married to a foreign person. An Indonesian citizen married to a foreign person can still own land, the same as any other Indonesian citizen, provided that there is a notarial deed prenuptial agreement for separation of assets. This concept was not contained in GR41/1996 but was followed as a matter of practice pursuant to instructions from the Minister of Law and Human Rights.

C. Type of Housing and Land Title: GR103/2015 provides that the house or residence of a foreign person may be one of the following:

(i) a single house above ground that is constructed on land with:
   1. a Right of Use (a "Hak Pakai");
2. a Hak Pakai over land with an Ownership Right (a “Hak Milik”) pursuant to an agreement with the owner of the Hak Milik land, drawn up by a land deed official (a “PPAT”);

(ii) an apartment unit built on land having a Hak Pakai right.

The provision contained in Point (i)2 above is an important change from GR41/1996. GR41/1996 provided that a house that could be owned by a foreign person could only be built on state land with a Hak Pakai title, or based on an agreement with the owner of a land right, which term includes land rights other than a Hak Milik right. GR103/2015 means that a foreign person can own land that is already covered by a Hak Pakai or land that is covered by a Hak Milik, if a recorded Hak Pakai over that land is agreed by the Hak Milik owner. In practical terms, this suggests that a company, which is not permitted to own Hak Milik title and typically owns land with a HGB title, cannot transfer that land to a foreigner, unless the company “downgrades” the HGB title to Hak Pakai status or transfers the land to an Indonesian individual entitled to and who then “upgrades” the title to Hak Milik status.

D. New House or Apartment and Multiple Ownership: GR103/2015 allows a foreigner to be granted a Hak Pakai for the purchase of a new house and a Hak Milik over an apartment unit built on Hak Pakai land, for the purchase of a new unit. This language raises a question whether the new regulation applies to buildings already constructed, i.e., that are not new. GR103/2015 does not limit the foreign person to only one house or apartment, which was clearly specified in GR41/1996.

E. Ownership Period: Another significant change of GR103/2015 regards the period of time for foreign ownership of the house or apartment. For a house built on land with Hak Pakai title, a foreigner can be granted ownership for a period of 30 years, which can be extended for 20 years and be renewed with the approval of the Government of Indonesia (“GOI”) for another 30 years, making the total period 80 years on land with a Hak Pakai right over a Hak Milik right. For land obtained by way of an agreement with the owner of a land right, GR41/1996 provided only an initial period of 25 years, extendable for another 25 years, for a total of 50 years.

F. Transfer of Rights: GR103/2015 allows the transfer of the right over the land and house to another foreign person domiciled in Indonesia on the death of the original owner. GR41/1996 also permitted a transfer of the right over the land and house but did not specifically regulate inheritance due to the death of the original owner. Both regulations provide that the agreement between the foreigner and the owner of the underlying Hak Milik land right must be noted on the land certificate of the underlying Hak Milik land right. The fact that the heir or successor will also need to be a resident in Indonesia may limit the number of people who can use this right.

Further implementation regulations are mandated and are expected to be issued in the near term.

4. Possible Future Developments: The GOI has indicated plans for the establishment of an agrarian court designed specifically to handle land disputes. However, the MOA has more recently conveyed his view that an agrarian court should not be established for at least the next 10 years.
Language Law

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Law No. 24 of 2009 regarding the National Flag, Language, Emblem and Anthem (July 9, 2009) (the “Language Law”) was very likely not one of the most visited regulations until the West Jakarta District Court rendered a groundbreaking decision in 2013 (i.e., West Jakarta District Court Decision No. 451/Pdt.G/2012/PN.Jkt.Bar (the “Court Decision No. 451”) that immediately multiplied the level of scrutiny by both business players and lawyers of the relevant provision under the Language Law concerning the mandatory use of the Indonesian language in agreements. Article 31(1) of the Language Law stipulates:

“The Indonesian Language must be used in a memorandum of understanding or agreement involving state institutions, government agencies of the Republic of Indonesia, Indonesia’s private institutions or individual Indonesian citizens.”

Court Decision No. 451 ruled that a commercial agreement with an Indonesian party that was not executed in the Indonesian language is null and void because it violates Article 31(1) of the Language Law. The district court reasoned that the mandatory requirement to use Indonesian in an agreement was a clear and objective element of the legality of an agreement under the Indonesian Civil Code.

In the first quarter of 2014, the High Court of Jakarta affirmed the decision of the West Jakarta District Court. The High Court of Jakarta decision was then appealed to the Supreme Court and in August 2015, the Supreme Court issued Decision No. 601 K/PDT/2015 that rejected the appeal and upheld the High Court’s affirmation of the Jakarta decision. Unfortunately, the Supreme Court Decision was not yet publicly available as of December 31, 2015 and hence a comprehensive analysis cannot yet be made, although it would not be surprising if the Supreme Court merely upheld the High Court decision without providing a full analysis. Also, as a matter of Indonesian law, the Supreme Court Decision is not yet final and binding because the losing party may resort to further appeal remedies. It is also to be noted that Indonesia does not follow the stare decisis principle familiar to common law systems, so that Indonesian courts are not bound by previous court decisions. To obtain as much legal certainty as possible, business players have chosen to ensure that their agreements with an Indonesian party are executed only in the Indonesian language or in the Indonesian language and a foreign language, most commonly English.

It is inevitable that in cross-border transactions the underlying agreement will not be in the Indonesian language alone, as a foreign party would not be comfortable with a language it does not understand. Also, it will want the language it does understand to be the prevailing language. In most cases, the second language is English, as the prevailing lingua franca for commercial transactions. The Language Law explicitly allows execution of an agreement in more than one language (provided that one of the languages is the Indonesian language) and does not

impose an obligation to use the Indonesian language as the prevailing language.

While English is most often chosen as the prevailing language, there is a risk in this approach, as the Language Law does not explicitly, or otherwise, provide that a foreign language will prevail over the Indonesian version. It is possible, therefore, that a future court could decide that the Indonesian language must prevail. An additional but perhaps unavoidable disadvantage from a commercial perspective of a dual language document is the additional time and cost incurred to properly translate the agreement into Indonesian, which may be considerable and can delay signing and closing a transaction.

Further, as a legal document is involved and the translation must be accurate, reliance on a translator might be insufficient, especially when the document is complex. In that case, a lawyer may be called on to either prepare or review the translation. The Indonesian version is very important, especially if any dispute is to be resolved in Indonesia. Whatever is said about prevailing languages, any court in Indonesia, whether on original jurisdiction or to enforce a foreign arbitral award, will naturally read the Indonesian version first and one would then have to dislodge the court from a position taken based on the Indonesian version in the event of any inconsistency.

Finally, in addition to having transaction documents in dual languages, the incorporation of one or more provisions related to Language Law issues in the underlying agreement is also a prevalent practice. Parties try to remove legal uncertainty by formulating provisions that address language issues that may arise in the future and safeguard their interests against the possible arguments that could be invoked by their counterparts to challenge the enforceability of the agreement.

Unfortunately, there is a paucity of other court decisions dealing with this issue and other provisions under the Language Law. Furthermore, as of this date, the implementing Presidential Regulation regarding the mandatory use of the Indonesian language in an agreement with an Indonesian party, as mandated by Article 40 of the Language Law, has not been promulgated.
Manpower

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There were three important regulations issued by the Indonesian Ministry of Manpower (the “MOM”) in 2015.

1. Expatriate Manpower Issues

MOM Regulation No. 16 of 2015 regarding Procedures to Utilize Foreign Manpower (June 29, 2015) (“MOM Reg 16/2015”) created a number of controversial requirements for non-resident foreign employees. One of these was the requirement that non-resident members of Boards of Directors ("BOD") and Boards of Commissioners ("BOC") of Indonesian companies, and non-resident members of the Board of Patrons, Board of Management and the Board of Supervisors of Indonesian foundations, obtain work permits.

MOM 16/2015 created a storm of uncertainty and controversy just as Indonesia was trying to further incentivize foreign investment and within four months the most controversial portions of MOM 16/2015 were amended by MOM Regulation No. 35 of 2015 regarding Revisions to MOM Regulation No. 16 of 2015 regarding Procedures to Utilize Foreign Manpower (October 23, 2015) (“MOM Reg 35/2015”). MOM Reg 35/2015 came into effect on October 23, 2015 and significantly changed the controversial requirements by:

• removing the requirement that there be 10 Indonesian employees for every 1 foreign employee, which had been imposed by Article 3 of MOM 16/2015.
• amending the requirement of a temporary Manpower Utilization Plan (Rencana Penggunaan Tenaga Kerja Asing or “RPTKA”) and temporary work permits (Izin Mempekerjakan Tenaga Asing or "IMTA") from eight activities to three activities, which had been imposed by Articles 16 and 46 of MOM 16/2015, respectively.
• removing the requirement that non-resident BOD and BOC members of Indonesian companies, and non-resident members of the Boards of Patrons, Management and Supervisors of Indonesian foundations, obtain work permits in Indonesia, which had been imposed by Article 37 of MOM 16/2015.
• clarifying that work permits were required only for resident BOD and BOC members of Indonesian companies, and resident members of the Boards of Patrons, Management and Supervisors of Indonesian foundations.

2. Minimum Wage Formula and Wage Structures

Government Regulation No. 78 of 2015 regarding Wages (October 23, 2015) ("GR 78/2015") implements Article 97 of Regulation No. 13 of 2003 regarding Manpower (March 25, 2003) and Government Regulation No. 8 of 1981 regarding Protection on Wages (March 2, 1981). Three key points are:

Minimum Wage Calculation: GR 78/2015 sets out a
formula to calculate minimum wages annually after 2015 to create legal certainty for both employees and employers, to avoid yearly negotiations and to reduce labor strife.

The formula is:
\[ UMn = UMt + \{UMt \times (\text{Inflation} + % \Delta \text{PDBt}) \} \]

Where:
- \( UMn \) = new minimum wage
- \( UMt \) = current minimum wage
- % \( \Delta \text{PDBt} \) = current year’s Gross Domestic Product (economic growth)

For example: if the current minimum wage (\( UMt \)) is = Rp 2,000,000, and inflation is 5 percent and economic growth is 6 percent, the new minimum wage will be Rp 2,220,000

**Wage Scale and Structure:** According to GR 78/2015, the employer must prepare the wage scale and structure by taking into consideration the employees’ group, position, years of service, education and competence. This wage scale and structure must be informed to the employees and be made a mandatory document to be attached in the application to register or renew a company’s regulation.

**Rupiah Payment:** Wages must be paid in Indonesian Rupiah. GR 78/2015 does not differentiate between foreign or local employees in this regard.
There were several significant changes in the Indonesian mining industry in 2015, from limitations on regional authority and the issuance of mineral benchmark price formulas, to letters of credit requirements.

1. Regents’ Authority
Since the issuance of the Regional Government Law (Law No. 23 of 2014) (October 2, 2014), which limited regional government authority in the mining sector, the Government of Indonesia (the “GOI”) has issued numerous regulations curbing the authority of Regents. On March 4, 2015, the Minister of Energy and Mineral Resources (the “MEMR”) issued MEMR Regulation No. 8 of 2015 to amend MEMR Regulation No. 1 of 2014 regarding Increasing the Added Value of Minerals through Domestic Processing and Refining. One of the main changes under MEMR 8/2015 was the revocation of Regents’ authority to issue smelter licenses and giving such authority to provincial Governors.

On April 30, 2015, Circular Letter No. 04.E/30/DJB/2015 regarding Implementation of Government Affairs in the Coal and Mineral Mining Sector was issued by the Directorate General of Mineral and Coal (the “DGMC”) to all Governors and Regents. It confirmed that as of October 2, 2014, Regents no longer had any authority related to the mining sector. The Circular Letter also instructed all Regents to surrender any mining licenses previously issued by them to their provincial Governors for domestic companies and to the MEMR for foreign capital investment companies.

The GOI’s authority related to foreign capital investment companies in this sector is now vested only in the MEMR. Both Regents and Governors must submit any mining licenses previously issued by them to foreign investment companies to the MEMR to be re-issued. This instruction was provided under DGMC Circular Letter No. 01.E/30/DJB/2015 regarding Change of Status of Mining Business License in the Framework of Domestic Capital Becoming Foreign Capital (April 7, 2015) (“DGMC 01/2015”).

2. Another Clean and Clear Review
In connection with the transfer of mining authority pursuant to the Regional Government Law as discussed above, the MEMR is conducting another review of existing mining licenses (known as IUPs) previously issued by Regents and Governors.

MEMR Regulation No. 43 of 2015 regarding Procedures for the Evaluation of Issuance of Mineral and Coal Mining Business License (December 30, 2015) (“MEMR 43/2015”) sets forth the requirements for IUPs to be declared clean and clear (“CNC”), meaning they have been validly issued and conform to the requirements of the Mining Law. The requirements and consequences for failure to satisfy them are as follow:
The MEMR will only issue CNC Certificates to mining companies that have submitted the following documents:
- An exploration report and, if applicable, a feasibility study report;
- environmental documents, i.e., AMDAL or UKL-UPL;
- evidence of payment of dead-rent and, if applicable, royalty.

Failure to submit the above documents may result in administrative sanctions in the form of written warnings, temporary suspension of mining activities or revocation of the IUP.

### 3. Issuance of Certain Mining Licenses by the BKPM

As part of the GOI’s effort to make the Capital Investment Coordinating Board (the “BKPM”) a one-door integrated licensing service in Indonesia, the MEMR delegated its authority for the issuance of mining licenses to the BKPM. This delegation was done under MEMR Regulation No. 25 of 2015 regarding Delegation of Authority for the Issuance of Licenses in the Coal and Mineral Mining Sector in the Framework of Implementing the One-Door Integrated Service to the Chairman of the BKPM (August 12, 2015).

The authority to issue nine types of mining licenses has now been delegated to the BKPM. These are (i) the Mining Business License (Izin Usaha Pertambangan or “IUP”) for Exploration, (ii) the IUP for production operations, (iii) the Termination of IUP, to be returned to the GOI, (iv) the Trading License (the IUP for Transportation and Trading), (v) the Smelter License (the IUP for Processing and Refining), (vi) the Temporary License for Transportation and Trading, (vii) the IUP for Sales, (viii) the Principal License for Smelters, and (ix) the Mining Service Business Requirement.
License.

4. Requirement to Use Letters of Credit
As of April 1, 2015, the export of mining products (minerals and coal) must use letters of credit (L/Cs) as the method of payment. This requirement was imposed under Ministry of Trade (“MOT”) Regulation No. 4/M-DAG/PER/1/2015 regarding Provision of the Use of Letters of Credit for the Exportation of Certain Goods (January 5/2015) (“MOT 4/2015”). While MOT 4/2015 does not specify the type of L/C to be used for this purpose, the L/C must be accepted by an Indonesian foreign exchange bank. Consequently, whatever L/C is issued must conform to the bank’s requirements. In addition, the export price as provided in the L/C must be at least equal to the applicable international market price, i.e., a benchmark price.

On March 30, 2015, the MOT issued MOT Regulation No. 26/M-DAG/PER/3/2015 regarding Special Provisions for the Implementation of Letters of Credit Usage for Exports of Certain Goods, which allows exporters to request a suspension of the use of L/Cs. Suspension will only be granted for a certain period of time and shall be subject to the approval from the MEMR.

5. Regulation on Metal Minerals Benchmark Price
Four years after the issuance of the coal benchmark price, the GOI has issued a formula for calculating the monthly benchmark price for metal minerals under DGMC Regulation No. 630.K/32/DJB/2015 regarding the Formula for Stipulating Metal Mineral Benchmark Price (April 27, 2015) (“DGMC 630/2015”). Twelve types of minerals are regulated under DGMC 630/2015: nickel, cobalt, lead, zinc, bauxite, iron, silver, gold, tin, copper, manganese and chromium. No formula has been stipulated for other types of minerals. The benchmark price formula is applicable to all mining companies, IUP holders as well as holders of Contracts of Work (Kontrak Karya) and is applicable both for domestic and export sales of minerals.

The benchmark price formula stipulated in DGMC 630/2015 is calculated based on the average mineral price from the 20th day in the second month before a given benchmark price period up to the 19th day of the month before the benchmark price period, as published in the relevant price reference. There are four different price references in DGMC Reg. 630/2015, namely the:
- London Metal Exchange (“LME”) for nickel, cobalt, lead, zinc, bauxite and copper;
- London Bullion Market Association (“LBMA”) for gold and silver;
- Asian Metal (“AM”) for iron, manganese and chromium;
- Indonesia Commodity & Derivatives Exchange (“ICDX”) for tin.

As with the coal benchmark price, the mineral benchmark price is also calculated based on Free on Board Mother Vessel (“FOB MV”). The sale of minerals under a different term, such as FOB Barge, Cost and Freight and Cost Insurance Freight, is allowed but is subject to price adjustments as stipulated by the DGMC. Under DGMC 630/2015, the metal mineral benchmark price and any price adjustments may be calculated in Indonesian Rupiah or United States Dollars. The exchange rate for such calculation shall be the Bank Indonesia middle rate on the date as agreed between the mining company and the buyer.

6. Final Income Tax on Mineral and Coal Sales
By the issuance of Minister of Finance (“MOF”) Regulation No. 107/PMK.010/2015 regarding the Fourth Amendment of MOF Regulation No. 154/PMK.03/2010 regarding Collection of Article 22 Withholding Tax in Connection with Payment for Delivery of Goods and Imports or Other Business Activities (June 8, 2015), Article 22 income tax at the rate of 1.5 percent now applies to any sale, either domestic or foreign, of non-processed or non-refined minerals (metal, non-metal and stone) and coal. This regulation came into force 60 days after its issuance.

This final income tax is only applicable to holders of an IUP. It does not apply to holders of Contracts of Work or Coal Contracts of Work (Perjanjian Kerjasama Pengusahaan Pertambangan Batubara), which are subject to different financial obligations under their respective contracts.
I. Regulatory Reform

The Government of Indonesia (the “GOI”) has made a number of regulatory reform efforts to increase oil and gas investment. One of the most practical actions is the simplification of licensing procedure, which has always been a concern of foreign investors, from some 100 licenses to 42 licenses, all to be processed in a one-door integrated system. Moreover, major changes are being discussed within the oil and gas managing body, the Special Task Force for the Implementation of Upstream Oil and Natural Gas Business Activity (“SKK Migas”).

A. Draft Oil and Gas Law: The GOI is expected to issue a new Oil and Gas Law (the “New Oil and Gas Law”) to replace Law No. 22 of 2001 regarding Oil and Natural Gas (the “Old Oil and Gas Law”). This was necessitated after a number of the provisions in the Old Oil and Gas Law were declared unconstitutional by the Constitutional Court in 2012, which resulted in the disbandment of the Executive Agency for Upstream Oil and Natural Gas Business Activity and the establishment of SKK Migas. Multiple versions of the New Oil and Gas Law are under consideration but the draft of the Minister of Energy and Mineral Resources (the “MEMR”) appears to be the prevailing draft. The changes made by the draft would include:

(i) an addition to oil and gas main activities, namely supporting activities (which include supporting services and supporting industries);

(ii) the establishment of oil and gas managing agencies in the form of state-owned enterprises, namely an Upstream Cooperation Executive Agency (Badan Usaha Milik Negara Pelaksana Kerja Sama Hulu or “BUMN-K”) and a Safeguarding Business Entity (Badan Usaha Penyangga or “BUP”). BUMN-K would have the authority to enter into cooperation with upstream businesses on behalf of the GOI under the supervision of the MEMR;

(iii) PT Pertamina (Persero) ("Pertamina"), the Indonesian state-owned oil and natural gas company, would have the right of first refusal to any work area determined by the MEMR;

(iv) Upstream Business License (a “UBL”) to Pertamina or the BUMN-K would be required for every work area. In the latter case, the UBL would be the basis for entering into a cooperation contract with a production sharing contractor (a “PSC Contractor”). The UBL would be valid for 30 years and could be extended for up to 20 years. A second extension could be granted for a UBL, but only Pertamina would be entitled to receive the extended UBL;

(v) an amendment of the maximum exploration period, which is currently set at 10 years, could be made depending on whether the hydrocarbon extraction was conventional or non-conventional;

(vi) a PSC Contractor would be required to offer at...
least a 10 percent participating interest to the BUMN-K, in contrast to a Regional Government-Owned Enterprise (a "BUMD");

(vii) a PSC Contractor would have an obligation to dedicate all production to the domestic market through the BUP. There have been press reports that the GOI is considering the establishment of a gas aggregator to which all gas must be sold;

(viii) a business entity engaging in refinery activities would be obligated to purchase oil and gas from the BUP or from importers and to sell its refined products back to the BUP.

B. Regulation No. 15 of 2015 regarding Management of Oil and Natural Gas Work Area which Cooperation Contract Is Expiring (May 11, 2015) ("MEMR 15/2015"): MEMR 15/2015 deals with contract extensions, which is a timely matter given that numerous Production Sharing Contracts ("PSCs") executed from the 1960s to the 1980s are nearing expiry. Under MEMR 15/2015, a PSC Contractor who wishes to extend its PSC must submit an application to the MEMR. Also, Pertamina may submit an application to the MEMR to assume the operation of an expiring PSC. The MEMR shall then stipulate whether the operations in an expiring work area shall be assumed by Pertamina, resumed by a PSC Contractor, or jointly operated by Pertamina and a PSC Contractor with the approval of the MEMR. The decision of the MEMR must be given at least one year prior to the PSC’s expiration. Alternatively, the MEMR can also re-tender the work area. The appointed operator shall provide the opportunity for a BUMD to acquire up to a 10 percent participating interest in the work area. If the PSC Contractor is appointed by the MEMR to resume the operations in the work area, the PSC Contractor shall also give Pertamina the opportunity to acquire up to a 15 percent participating interest in the relevant work area.

A related and controversial issue concerns abandonment and site restoration ("ASR") obligations. Recently adopted laws and regulations require post-operation activities to be conducted on an oil and gas work area that is to be abandoned or no longer operated, such as the dismantling of facilities and environmental remediation. Such laws and regulations, however, do not apply retroactively to PSCs. ASR activities were not regulated in old-generation PSCs. This fact has sparked a debate as to who should perform the ASR activities in the relevant work area. Article 32 of MEMR 15/2015 stipulates that any post-operation obligations of an expiring PSC must be borne by the succeeding operator that is appointed by the MEMR. However, the question remains for PSCs that will no longer be operated: does the PSC Contractor then have the obligation to conduct ASR activities if it was never required to do so by its contract or the laws and regulations applicable thereto? Or is this obligation automatically assumed by the GOI, to which the work area reverts upon the expiration of the PSC?

C. Regulation No. 37 of 2015 regarding the Provision and Procedure in the Determination of the Allocation and Utilization, as well as Price of Natural Gas (October 13, 2015) ("MEMR 37/2015"): This regulation mandates the prioritization, allocation and utilization of gas production in Indonesia for (i) transportation, households, and small-scale gas users, (ii) national oil and gas production, (iii) the fertilizer industry, (iv) industries that use natural gas as a basic material, (v) provision of electricity power and (vi) industries that use natural gas as fuel.

The allocation of natural gas for the foregoing uses is prioritized for State-Owned Enterprises ("Badan Usaha Milik Negara" or "BUMNs") or BUMDs. Natural gas may also be allocated for export if domestic natural gas consumer needs have been fulfilled, there exists a lack of sufficient domestic infrastructure or there is a lack of domestic consumer purchasing power. Also, if domestic needs have been met, PSC Contractors may sell the remainder of their natural gas by way of tender, provided the winner is approved by the MEMR. In light of these requirements, PSC Contractors are obligated to submit proposals to...
the MEMR, through SKK Migas, for the allocation and utilization of natural gas in their blocks.

MEMR 37/2015 was subject to severe criticism from business players in the gas sector. Press reports indicated that the MEMR would review MEMR 37/2015 and might make necessary revisions, although as of this date, no revisions have been made.

D. Regulation No. 38 of 2015 regarding Expediting Non-Conventional Oil and Gas Operations (November 2, 2015) (“MEMR Reg. 38/2015”): To increase coal-bed methane (“CBM”) production, which has been on average not more than 0.3 million standard cubic feet per day (“MMSCFD”), the MEMR issued MEMR Reg. 38/2015. MEMR Reg. 38/2015 endorses two new contract schemes for non-conventional energy in addition to the original PSC, namely a Sliding Scale PSC and a Gross Split Sliding Scale PSC. These mechanisms have been used in other countries, such as Australia. A Sliding Scale PSC is a form of contract with progressive production sharing based on annual cumulative production with an operational cost recovery mechanism, while a Gross Split Sliding Scale PSC involves the sharing of progressive gross production based on annual production without a cost-recovery mechanism.

Under MEMR Reg. 38/2015, the calculation of reserves to obtain Plan of Development (“POD”) approval shall be proven reserves plus 70 percent of probable reserves. This calculation may be done without a certification of reserves. Another interesting point is that MEMR Reg. 38/2015 allows a PSC Contractor to sell its production prior to first POD approval with the consent of the MEMR, based on the approved of the Chairman of SKK Migas. The income from such sale shall be split according to the split proportion stipulated in the relevant cooperation contract. For PSCs and Sliding Scale PSCs, the split shall precede the taking of first tranche petroleum and the calculation of cost recovery. Lastly, the transitional provision of MEMR Reg. 38/2015 allows a CBM Contractor whose contract is still valid to propose an amendment to its current contract or a change of form of its current contract, provided that the CBM Contractor has fulfilled at least 60 percent of its firm commitment. The amendment proposal must be submitted to the MEMR through the Chairman of SKK Migas.

E. Government Regulation No. 23 of 2015 regarding Joint Management of Oil and Gas Natural Resources in Aceh (“GR 23/2015”): Aceh province has been carved out of the jurisdiction of SKK Migas by the enactment of GR 23/2015. Under GR 23/2015, onshore and offshore oil and gas work areas in Aceh shall be jointly managed by the central government and the Aceh provincial government. GR 23/2015 mandates the establishment of an Acehnese oil and gas managing body (Badan Pengelola Migas Aceh or “BPMA”), much like SKK Migas, which will be responsible for upstream oil and gas business activities in Aceh province. As at the preparation of this article, the BPMA had not yet been established.

II. Oil and Gas Developments in 2015

The GOI also awarded new blocks to PSC Contractors and supported the execution of several downstream contracts. In mid-2014, 12 cooperation contracts were signed, comprising eight conventional work areas and four non-conventional work areas. These altogether raised an investment amount of US$155,815,000 from firm commitments. As of the end of October 2015, at least eight new oil and gas blocks were up for tender.

In downstream business, six gas sales agreements (“GSA”) were executed in October 2015 and are expected to raise state income up to US$587 million. These include a GSA between PetroChina International Jabung Ltd. and PLN, a GSA between Energy Equity Epic (Sengkang) Pty. Ltd. and South Sulawesi BUMD, and a GSA between ConocoPhillips Indonesia and Pertamina.

Indonesia officially rejoined OPEC in late 2015 and expects to strengthen its cooperation with oil-producing countries, provide direct or otherwise greater access to
crude oil supplies and strategize its position among energy producers and consumers. The GOI has also signed a Memorandum of Understanding (“MOU”) with the United States and renewed its MOU with South Korea in hope of strengthening international cooperation in the oil and gas sector.

III. Possible Future Developments

Press reports have been released that the GOI is planning to issue a new Presidential Regulation on natural gas management, with the objective to meet domestic demand for natural gas by, among other steps, accelerating infrastructure development for compressed natural gas and liquefied natural gas. Under this proposed Presidential Regulation, a BUMN would be appointed by the MEMR to act as a safeguarding business entity for natural gas. Among its roles, the safeguarding business entity would be the aggregator of all natural gas produced by upstream companies, meaning that all sales and gas allocations would be under its control. The safeguarding business entity would have the responsibility to calculate gas sale prices and recommend the same to the MEMR and to supervise gas sale and purchase agreements. This new concept has raised concern among natural gas business players in Indonesia, particularly with respect to the readiness of any BUMN to purchase all gas production in Indonesia and the potential for monopolistic and manipulative practices by such party. Nonetheless, the GOI remains confident that having a gas aggregator entity will be beneficial to fulfill domestic demand. It is yet to be seen how this Presidential Regulation, if and when issued, would align with MEMR 37/2015.

Press reports have also indicated that as of late December 2015, a Presidential Regulation on the acceleration of construction and development of oil refineries has been signed by the President. This Presidential Regulation is intended to reduce oil fuel imports and enhance energy sustainability. It would stipulate, among other things, the mechanism for business entities to participate in refinery construction projects and would provide fiscal and non-fiscal incentives for such projects. Bearing in mind that Indonesia currently relies heavily on imported fuel to fulfill its domestic needs and that Indonesia has not constructed an oil refinery for more than 20 years, the Presidential Regulation is highly anticipated. As the promulgation of this Presidential Regulation is under way, the GOI has also expressed plans to construct at least two new refineries, in Bontang, in East Kalimantan province, and in Tuban, in East Java province.

The foregoing indicates Indonesia’s eagerness to reform the enforcement of the GOI’s authority over its natural reserves and at the same time better its oil and gas business climate. Stakeholders have been proactive in expressing criticism or support for the development of laws and regulations, both those newly enacted and those soon to be issued, in hope of making the regulations more practical and mutually beneficial to both the GOI and business players. Most of all, it is expected that newly introduced regulations will provide more legal certainty for business players.
1. Introduction

In 2015, the Government of Indonesia (the “GOI”) focused its attention on palm oil and its derivative products such as crude palm oil (“CPO”). Most of the regulations in 2015 were issued to provide a sustainable business environment for the palm oil business in Indonesia.

2. Regulations

A. Minister of Agriculture (“MOA”) Regulation No. 11/Permentan/OT.140/3/2015 regarding the Certification System of Indonesian Sustainable Palm Oil (“ISPO”) (March 25, 2015) (“MOA Reg 11/2015”): MOA Reg 11/2015 was issued to manage the certification of ISPO that was required under Law No. 39 of 2014 regarding Plantations (October 17, 2014) (the “Plantations Law”). Every plantation company holding a cultivation business license (a Cultivation IUP or “IUP-B”), a processing business license (a Processing IUP or “IUP-P”) or an integrated cultivation and processing business license (an Integrated IUP or “IUP”) is required to obtain an ISPO Certificate issued by a certification agency. MOA Reg 11/2015 sets out complete and detailed information concerning how a certification agency is to make its determination to issue an ISPO Certificate. A certification agency must first obtain an acknowledgement from the ISPO Commission, an independent commission chaired by a senior official (Eselon 1) of the MOA and which formation is mandated by MOA Reg 11/2015. A foreign certification agency can obtain the acknowledgement from the ISPO Commission, provided that the foreign certification agency has a registered office in Indonesia and has received accreditation from an accreditation institution in its country of origin. The names of certification agencies that have received the acknowledgement from the ISPO Commission are available to the public and are accessible at www.ispo.org.or.id.

B. Government Regulation No. 24 Year 2015 regarding the Collection of Plantation Funds (May 25, 2015) (“GR 24/2015”): GR 24/2015 creates a plantation fund to provide for sustainable plantation business development and to improve the development of the downstream plantation business. The collection of plantation funds focuses on the seven strategic plantation commodities the growth of which affects the national economy and the welfare of plantation farmers, i.e., palm oil, coconut, rubber, coffee, cacao, sugarcane and tobacco.

C. Presidential Regulation No. 61 Year 2015 regarding the Collection and Utilization of Palm Oil Plantation Funds (May 25, 2015) (“PR 61/2015”): To implement GR 24/2015, the President of the Republic of Indonesia issued PR 61/2015. PR 61/2015 imposes an export tariff and dues (iuran). Specifically, the export tariff must be paid by (i) business actors engaging in the palm oil plantation business that export palm oil and its derivative products, (ii) business actors engaging in industrial businesses with material from palm oil plantations, and (iii) exporters of palm oil commodities and/or their derivative products. Any of the foregoing business actors that fail to pay the export tariff are subject to the administrative sanction...
of termination of all export activities. The export tariff must be paid in Indonesian Rupiah. Unlike the case of dues (iuran), discussed below, individual farmers are not exempted from paying the export tariff, because individuals can be classified as either (i) business actors engaging in the palm oil plantation business that export palm oil and its derivative products, or (ii) exporters of palm oil commodities and/or their derivative products, both of which are subject to the export tariff.

Dues (iuran) must be paid by companies engaging in the palm oil plantation business. Individual farmers engaging in the plantation business are exempted from the obligation to pay dues. PR 61/2015 is silent on the currency used for the payment of dues.

Both export tariff and dues are managed by the Management Agency of Palm Oil Plantation Funds (the “PO Fund Manager”).

D. Minister of Finance (“MOF”) Regulation No. 133/PMK.05/2015 regarding the Tariff for Public Services of the Management Agency for Palm Oil Plantation Fund in the Ministry of Finance (July 14, 2015) (“MOF Reg 133/2015”): MOF Reg 133/2015 sets out the 24 derivative products of palm oil and/or crude palm oil and the export tariff per ton in US Dollars for each product. As for the amount of dues, the President Director of the PO Fund Manager and the palm oil companies are required to cooperate to determine the amount. The considerations of continuity, service development and fairness must be taken into account in such determination. MOF Reg 133/2015 also states that the payment mechanism of the export tariff and dues shall be further regulated by the President Director of the PO Fund Manager. As of this date, the President Director of the PO Fund Manager has not done so.

E. Minister of Agriculture Regulation No. 26/Permentan/HK.140/4/2015 regarding the Requirements, Procedure and Standard Operational Procedure for the Issuance of Technical Recommendation of Business License in the Field of Agriculture in Relation to Capital Investment (May 5, 2015) (“MOA Reg 26/2015”): This regulation supports the implementation of one-stop integrated services carried out by the Indonesian Capital Investment Coordinating Board (the “BKPM”).

One of the requirements to obtain a principle business license from the BKPM (a “Plantation IU”) is the issuance of a technical recommendation by the Director General of Plantations of the MOA for the plantation business. The material requirements are (i) a plantation development plan, (ii) a facility development plan in support of the development of the people around the plantation area, and (iii) a statement letter setting out that the group of plantation companies and the plantation company itself do not own plantation areas greater than the limitations set by the Minister of Agriculture.

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1 The 24 derivative products are: fresh fruit, palm oil and palm kernel oil, oil cake, empty seeds of palm oil, the shell of palm kernel oil, CPO, Crude Palm Kernel Oil (CPKO), Crude Palm Olein, Crude Palm Kernel Stearin, Palm Fatty Acid Distillate (PFAD), Palm Kernel Fatty Acid Distillate (PKFAD), Split Fatty Acid of CPO, CPKO, Split Palm Fatty Acid Distillate (SPFAD), Split Palm Kernel Fatty Acid Distillate (SPKFAD), Refined, Bleached and Deodorized (RBD) Palm Olein, RBD Palm Oil, RBD Palm Stearin, RBD Palm Kernel Oil, RBD Palm Kernel Olein, RBD Palm Kernel Stearin, RBD Palm Olein, and Biodiesel from Palm Oil.

2 Since the beginning of 2015, the MOA has delegated its authority to the BKPM to issue business licenses in the agricultural sector, one of which is the Plantation IU (IUP-P, IUP-B and IUP). For more details, refer to Minister of Agriculture Decree No. 1312/Kpts/KP.340/12/2014 regarding the Delegation of Authority for the Issuance of Business Licenses in the Field of Agriculture to the Chairman of the Capital Investment Coordinating Board for the Purpose of Capital Investment (December 29, 2015).

3 The area limitation for plantation areas is determined by the type of IUP and the crop. For details on plantation area limitations, please refer to Minister of Agriculture Regulation No. 98/Permentan/OT.140/9/2013 regarding Guidelines of Plantation Business Licensing (October 2, 2013).
The GOI has imposed a limitation on foreign capital investment in the plantation sector. As set out in President Regulation No. 39 of 2014 regarding the Negative Investment List (April 23, 2014), a plantation business that requires the utilization of more than 25 hectares of land is open for foreign investment and the foreign investors may own up to 95 percent of the issued capital. If the plantation business utilizes less than 25 hectares of land, then it is 100 percent restricted for foreign investment.

### 3. The Future

The media has indicated contradictory GOI reports on foreign investment limitations in 2016. A January publication\(^4\) indicated that the GOI is considering closing the palm oil plantation and CPO business entirely for foreign investment, as well as cacao, tea, rubber, copra and dry tobacco. In February\(^5\), however, the media indicated that such proposals were still being discussed by the GOI and no amendment to the current Negative Investment List had been made. The latter point is true – no change has been made to the 2014 Negative Investment List, but a new Negative Investment List is expected to be issued soon.

The GOI is also currently working on a new draft Plantations Law to amend the Plantations Law. This is expected to be enacted in 2016.

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1. Introduction

In early 2015, the President of the Republic of Indonesia, Joko Widodo, announced a plan to develop power plants with a total capacity of 35,000 megawatts ("MW") over the next five years, to meet Indonesia’s electricity needs by 2020. To provide the regulatory framework for this plan, the President was expected to issue a Presidential Regulation, but this has not happened to date.

To achieve its power development goal, the Government of Indonesia (“GOI”) must overcome several hurdles, one of which is the regulatory and licensing requirements for Independent Power Producers (“IPPs”) to participate in the power sector. One of the main issues is that IPPs must cooperate with the state-owned electricity company, PT Perusahaan Listrik Negara (Persero) (“PLN”), which has an electricity business area that covers Indonesia.

2. New Regulations in 2015

A. MEMR Regulation No. 3 of 2015 regarding the Procedure for the Purchase of Electricity and the Benchmark Price for the Purchase of Electricity from Mine-Mouth Steam Power Plants ("Mine-Mouth PLTU"), Coal Hydropower Plants ("Coal PLTA"), Gas Power Plants ("PLTG"), Gas Turbine Power Plants ("PLTMG") and Hydropower Plants ("PLTA") (January 13, 2015) ("MEMR Reg 3/2015"): The Minister of Energy and Mineral Resources ("MEMR"), in an effort to achieve the GOI’s goal of adding 35,000 MW of electric power by 2020, issued MEMR Reg 3/2015. Under this regulation, the purchase of electricity from a Mine-Mouth PLTU, Coal PLTA, PLTG, PLTMG or PLTA may be conducted by direct selection or direct appointment as long as the conditions set out under MEMR Reg 3/2015 are met.

The purchase of electricity from a Mine-Mouth PLTU, Coal PLTA, PLTG, PLTMG and PLTA by direct selection can be conducted under one or a combination of the following conditions:

• energy diversification of the power plant to non-fuel oil;
• increase of the capacity of a power plant that has been in operation in a different location in the local system by the business entity that holds the Electricity Supply Business License (Izin Usaha Penyediaan Tenaga Listrik or “IUPTL”) or a new business entity established by the developer.

MEMR Reg 3/2015 provides that the process of direct selection must take no more than 45 days. The process is preceded by a due diligence on the financial and technical capabilities of the candidates. Due diligence may be conducted by a procurement agent appointed by PLN. The process is completed by the signing of a power purchase agreement.

The purchase of electricity from a Mine-Mouth PLTU, Coal PLTA, PLTG, PLTMG and PLTA through direct appointment can be done under one or a combination of the following conditions:

• the purchase of electricity is made from a Mine-Mouth PLTU, Marginal PLTG or PLTA;
• the purchase of excess electricity is made from a Mine-
Mouth PLTU, Coal PLTU, PLTG/PLTMG, or PLTA;
- the purchase of electricity from a Mine-Mouth PLTU, Coal PLTU, PLTG/PLTMG, and PLTA is permitted if the local power system is in critical condition or if there is an emergency in the provision of electricity;
- the purchase of electricity from a Mine-Mouth PLTU, Coal PLTU, PLTG/PLTMG, and PLTA is for the purpose of increasing the generation capacity of a power plant that has been in operation in a similar location.

MEMR Reg 3/2015 stipulates that the process of direct appointment will take no more than 30 days. The process is preceded by a due diligence on the financial and technical capabilities of the candidates. Due diligence may be conducted by a procurement agent appointed by PLN. The process is completed by the signing of a power purchase agreement.

If there is more than one developer interested in submitting a bid for the purchase of electricity under the above conditions, a direct selection must be conducted.

As a general rule, the price for the sale of electric power is subject to approval by the MEMR, Governor and/or Regent or Mayor in accordance with their authority. However, in certain circumstances, pursuant to MEMR Reg 3/2015, the sale price of electricity generated from a Mine-Mouth PLTU, Coal PLTA, PLTG, PLTMG and PLTA that satisfies the conditions set out under MEMR Reg 3/2015 does not require the approval of the MEMR if the price is based on the highest benchmark set out in the attachment of MEMR Reg 3/2015. Pursuant to Article 6(2) of MEMR Reg 3/2015, the highest benchmark price payable by PLN shall be based on the levelized base price on the power plant's busbar and the price applicable on the Commercial Operation Date of the power plant. The "levelized base price" means the average cost in a fixed currency that is needed to generate a kWh of electricity, taking into account the cost of the construction of the power plant, operational costs and fuel costs, waste management costs, decommissioning and other factors. Since the levelized price is calculated at the busbar, transmission cost is not taken into account. By referring to the highest benchmark set out in MEMR Reg 3/2015, the price for the sale of electric power may be adjusted in accordance to the terms of the power purchase agreement.

For particular areas, PLN may purchase electricity at a price that exceeds the highest benchmark as set out under MEMR Reg 3/2015. The price is based on PLN's estimate of the proper price for procuring electricity and the approval of the MEMR of that price is required. However, MEMR Reg 3/2015 does not list the areas where this is allowed.

Pursuant to Article 9 of MEMR Reg 3/2015, cooperation between PLN and an IUPTL holder that owns the business area for the purchase of electricity from the Mine-Mouth PLTU, Coal PLTA, PLTG, PLTMG and PLTA that is in accordance with the highest benchmark price set out under MEMR Reg 3/2015 does not require the approval of the MEMR.

From a licensing point of view, the IUPTL application for electricity supply must be submitted to the MEMR through the Director General of Electricity (the “Director General”). The application must comply with all relevant administrative, technical and environmental requirements. To expedite the licensing process for foreign investment companies (“PT PMAs”) the IUPTL application is processed through the Indonesian Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal or “BKPM”), based on MEMR Regulation 35 of 2014 regarding the Delegation of the Granting of Electricity Business License for the Purpose of Implementation of One-Stop Service to the Head of the Investment Coordinating Board.

Other than an IUPTL, a PT PMA may also apply for the following licenses through the BKPM:
- an Operational License;
- a Stipulation of Business Area;
- a business License for Electricity Support Services;
• a license for the Inter-State Sale and Purchase of Electricity;
• a license for the Utilization of Electricity Network for Telecommunications;
• a license for Multimedia and Information Interests.

B. Presidential Regulation No. 38 of 2015 regarding the Cooperation Between the Government and Enterprises in Infrastructure Procurement (March 20, 2015) ("PR 38"): This regulation was issued to support the development of Indonesia’s strategic infrastructure, including its electricity infrastructure, and revoked the previous regulations on Public Private Partnership ("PPP"), i.e., Presidential Regulation No. 67 of 2005, as last amended by Presidential Regulation No. 66 of 2013. To entice investors to develop infrastructure using the PPP arrangement, PR 38 allows PPPs to be granted government support in the form of Viability Support, which means a fiscal contribution of a financial nature granted by the GOI and/or tax incentives.

C. Presidential Regulation No. 30 of 2015 regarding the Third Amendment to Presidential Regulation No. 71 of 2012 regarding Procurement of Land for Development for the Public Interest (March 17, 2015) ("PD 71"): Another problem faced by IPPs has been the procurement of land required for power projects. As an example, Bhimasena Power Indonesia, a joint venture company set up by the Indonesian coal company Adaro Energy and Japan’s Itochu and Electric Power Development (J-Power) to operate and build a power plant, the first IPP project to be awarded using the PPP scheme, sent a force majeure notice to contractors last year due to its inability to acquire the land. Bhimasena Power Indonesia still hopes to meet its 2018 target for the start of operations.

To resolve such land procurement problems, the GOI issued PD 71 in March 2015 which authorizes the GOI to partner with private entities to secure the necessary funding for land acquisitions, after obtaining written authority from the relevant government institution or state entity (a "BUMN") or a Regional Government-Owned Enterprise (a "BUMD"). PD 71 is intended to facilitate direct land procurement by private entities, although in doing so the private entities are not acting on their own behalf but rather as proxies for the relevant government institution, BUMN or BUMD.

For further discussion on this issue, see the article on Infrastructure Reform on page 67.
1. Introduction

The concept of Public-Private Partnerships ("PPP") embodies one or more private parties comprising a consortium, commonly consisting of construction companies, operating companies and financiers that together undertake to finance and develop a project or asset for use by the government on behalf of the public and to be paid for over time. The types of projects and assets are normally infrastructure related and are of interest to investors because of the government’s support and guarantee of repayment.

The Government of Indonesian (the “GOI”) has put forward pro-PPP policies since early this millennium, although only a handful of projects have been completed successfully. In many cases, the work has been awarded to state-linked enterprises and may not be considered PPPs. That said, the GOI has evidenced its intent to improve the development of PPP projects in Indonesia by making them more appealing to investors.

2. 2015 Regulations

The year 2015 saw the issuance of Presidential Regulation No. 38 of 2015 regarding Cooperation Between the Government and Enterprises in Infrastructure Procurement (March 20, 2015) (“PR 38/2015”). PR 38/2015 revokes previous regulations on PPP, namely Presidential Regulation No. 67 of 2005 (November 9, 2005), as last amended by Presidential Regulation No. 66 of 2013 (October 1, 2013) (as amended, “PR 66/2013”). PR 38/2015 has been further implemented by Minister of National Development Planning/Head of National Development Planning Agency Regulation No. 4 of 2015 regarding the Implementation Procedure of Cooperation Between the Government and Enterprises in Infrastructure Procurement (June 4, 2015) (“Bappenas Reg 4/2015”). Bappenas Reg 4/2015 sets out the specific details on the administrative procedure and how the cooperation between the GOI and the private sector is to work.

PR 38/2015 adds 11 new types of infrastructure projects to the list set out in PR 66/2013 that can be developed through the PPP scheme, resulting in a total of 18 types of infrastructure projects. The additions under PR 38/2015 include, energy conservation, city facilities, educational facilities, sports and arts facilities, public infrastructure, tourism facilities, correctional facilities and public housing infrastructure. The original list in PR 66/2013 was comprised of, among others, transportation, roads, water, drinking water, wastewater, telecommunications, electrical, and oil and gas.

One of the changes introduced by PR 38/2015 is that it is now possible to bundle a PPP proposal for two or more types of infrastructure projects. In such a scheme, the business entity will cooperate with a new GOI ad hoc body that will be formed for the particular project, known as a Government Contracting Agency (a “GCA”). PR 38/2015 requires the GOI institutions involved or otherwise relevant to the project to enter into a memorandum of understanding to, among other matters, decide on which GOI institution will be the GCA coordinator of the bundled project. The purpose of this body is to facilitate development and this provision is meant to avoid any confusion as to which GOI entity will be in charge of the
PPP project on behalf of the GOI

To encourage investors to develop infrastructure projects using the PPP approach, PR 38/2015 allows GOI support in the form of what is called Viability Support, which is a financial contribution granted by the GOI or tax incentives. A GOI guarantee is also available in the form of an Infrastructure Guarantee, which is to be further regulated by a separate regulation that has not been enacted as of this date. PR 38/2015 also introduces the possibility of the GCA to co-fund part of the infrastructure development.

3. Judicial Decisions

Despite the adoption of PR38/2015, the year 2015 represented a setback for PPP infrastructure projects in Indonesia. Only days after the issuance of PR 38/2015, the Central Jakarta District Court rendered a decision which declared null and void the PPP cooperation agreement and projects between the state-owned water company, PAM Jaya, and the private entities PT PAM Lyonnaise Jaya (“Playa”) and PT Astra Air Jakarta (“Astra”). Though the written decision of the Central Jakarta District Court is still unavailable some nine months later, press reports have indicated the Central Jakarta District Court found the cooperation agreements invalid because such agreements had been entered into by PAM Jaya under the undue influence of former President Suharto and were therefore illegal. This reasoning opens the door to the GOI and others to void PPP investments if there is a change in GOI policy or if competitors are unhappy with the selection outcome.

The Central Jakarta District Court’s decision poses even more significant ramifications for PPP projects in Indonesia, insofar as the judges also reached the conclusion that PAM Jaya’s cooperation with Playa and Astra conflicted with PAM Jaya’s duties as a regional government waterworks company, which under applicable regulations are to improve public welfare, increase regional income and the distribution of water in Jakarta. The judges effectively substituted their judgment over that of the GOI and PAM Jaya as a contractor as to how best to achieve these objectives. The court reportedly considered that the cooperation agreements caused significant losses to PAM Jaya, though no details were provided on this point. The decision of the Central Jakarta District Court has been appealed to the High Court of Jakarta. Nonetheless, this decision creates significant legal uncertainty as to the future of the PPP model to develop Indonesia’s infrastructure.
There were reports during 2015 regarding the plan by the Government of Indonesia ("GOI") to develop rail transport infrastructure and facilities, consisting of rail services (i) connecting the regions of Jakarta, Bogor, Depok and Bekasi; (ii) within the region of DKI Jakarta province; and (iii) consisting of a high-speed train connecting Jakarta to Bandung. Railway infrastructure includes the railway line, railway stations, and railway operational facilities to make the railway operate; railway facilities means the trains themselves.

To support the development of railway infrastructure and facilities, the President of Indonesia, Joko Widodo, issued the following three Presidential Regulations in 2015:

1. Presidential Regulation No. 98 of 2015 regarding Acceleration of the Implementation of the Light Rail Transit Integrated in the Region of Jakarta, Bogor, Depok and Bekasi (September 2, 2015) ("PR 98/2015"): The integrated Light Rail Transit ("LRT") project to be developed pursuant to PR 98/2015 consists of railway infrastructure and facilities that connect the following regions and areas:
   - Cawang – Cibubur;
   - Cawang – Kuningan – Dukuh Atas

   The GOI may determine other connecting lines pursuant to Minister of Transportation ("MOT") regulations. The LRT, including overpass construction, connecting the three regions will be constructed by the state-owned company PT Adhi Karya (Persero) Tbk ("Adhi").

   During the infrastructure construction period, the MOT will establish a business entity to administer, maintain and operate the LRT and its facilities.

   During construction, Adhi is required to maximize the use of domestic components. Adhi may also cooperate with other business entities in the construction, but it is unclear whether this includes foreign entities. The MOT will engage an international qualified supervisory consultant through direct appointment to supervise the work.

   The LRT project will be financed with state budget funds and/or other financial arrangements permitted by law. The Finance and Development Supervisory Board...
Badan Pengawasan Keuangan dan Pembangunan or "BPKP") will conduct an audit to ensure the work has been completed properly in accordance with the budget.

The GOI has assigned other GOI institutions and local governments to facilitate licensing and permitting to avoid delays, including the taxation and customs authorities, Minister of State-Owned Enterprises, Minister of Public Works and Public Housing, Minister of Agrarian Affairs and Spatial Layout, the Head of the National Land Agency, the Governor of DKI Jakarta province, the Regent of Bekasi regency, the Mayor of Bekasi city, the Mayor of Depok city, the Regent of Bogor regency, and the Mayor of Bogor city. In general, those institutions are requested to give or obtain approval for the land needed by Adhi to implement the LRT project.

2. Presidential Regulation No. 99 of 2015 regarding Acceleration of the Public Railways Implementation in the Special Capital City Region of Jakarta (September 2, 2015) ("PR 99/2015"): PR 99/2015 appoints the DKI Jakarta Provincial Government to construct the infrastructure and facilities of an LRT network in DKI Jakarta. The DKI Jakarta Provincial Government shall determine the location of the railway lines to be built. However, the construction of the Jakarta LRT must be coordinated with the inter-regional LRT to be built according to PR 98/2015, so that they are integrated.

To do the construction work, the Governor of DKI Jakarta may appoint a DKI Jakarta Region-Owned Company (a "DKI Jakarta BUMD") to construct the LRT according to technical specifications specified by the MOT. To ensure integration between the LRT lines, the DKI Jakarta BUMD may request the MOT to procure the land. The DKI Jakarta BUMD is allowed to cooperate with other business entities but again it is not clear whether these may be foreign entities. Maximizing the use of domestic components is also a requirement.

As with the LRT construction under PR 98/2015, the Governor of DKI Jakarta must appoint an international qualified supervisory consultant to ensure quality. This again can be done by direct appointment.

The DKI Jakarta BUMD may draw on a number of financial resources to construct the project: (i) its own capital; (ii) a capital venture with other business entities; (iii) capital participation of the DKI Jakarta Provincial Government; (iv) loans from financial institutions; (v) the issuance of commercial paper or bonds; (vi) loans from the DKI Jakarta Provincial Government; (vii) non-binding grants (i.e., gifts to DKI Jakarta that are not designated for a specific purpose); (viii) other financing from the Government Investment Board created pursuant to Government Regulation No. 1 of 2008 regarding Government Investment (February 4, 2008) ("GR 1/2008"), as amended by Government Regulation No. 49 of 2011 (December 2, 2011) regarding the amendment of GR 1/2008. This Board was established as a working unit responsible for the implementation of the government investment in accordance with the policies determined by the Minister of Finance; and/or (ix) other financing in accordance with law.

The Governor of DKI Jakarta, the MOT and other Ministers and Heads of Government Institutions must provide the necessary permits needed by the DKI Jakarta BUMD for the project.

3. Presidential Regulation No. 107 of 2015 regarding the Acceleration the Implementation of the Facilities and Infrastructure of the High-Speed Train between Jakarta and Bandung (October 6, 2015) ("PR 107/2015"). This project involves the construction of a high-speed railway between Jakarta and Bandung that is expected to cover a distance of approximately 140 kilometers in 30 to 40 minutes at a maximum speed of approximately 300 kilometers per hour. The cost of the project is estimated to be US$5.5 billion. Of that total, 75 percent of the funding is from a loan from the Chinese Development Bank to a consortium of state-owned
companies. The media has advised that the loan term will be 40 years with a grace period of 10 years and that the loan will carry an interest rate of 2 percent per annum. For the remaining 25 percent of the project, or USD1.37 billion, an injection will be made to the project by a consortium or joint venture between a Chinese construction company and the state-owned enterprises. The Indonesian members of the consortium will have a 60 percent stake in the joint venture or consortium and will be required to inject capital of US$825 million.

According to PR 107/2015, the Indonesian members of the consortium will obtain that capital by issuance of bonds, loans made by state and foreign financial institutions, and/or other funding in accordance with legislation. This other funding could come from capital injections into the state-owned enterprises. Article 4, paragraph (2) of PR 107/2015 indicates that there is no government guarantee and no funds from the state budget will be used to build the railway line. PR 107/2015 states that the Minister of State-Owned Enterprises will provide corporate guidance and supervise the implementation of the project and will coordinate with other state-owned enterprises to achieve completion. The MOT is assigned the responsibility to create the consortium and determine the route, issue various licenses and advise on technical implementation.

The Government has assigned several state-owned companies (*Badan Usaha Milik Negara* or "BUMNs") led by PT Wijaya Karya (Persero) Tbk ("Wika") to establish a joint venture company or consortium. Other than Wika, the following are the other BUMNs stipulated in PR 107/2015: PT Kereta Api Indonesia (Persero) ("KAI"); PT Jasa Marga (Persero) Tbk ("Jasa Marga"); and PT Perkebunan Nusantara VIII ("PTPN VIII").
1. Introduction

There were no significant changes in the regulations for the retail sector in 2015. In contrast, the Minister of Trade (the “MOT”) issued approximately 90 regulations on wholesale trading, most of which regarded imports.

The Government of Indonesia (the “GOI”) also adopted a number of economic packages to stimulate the economy, including those designed to simplify the licensing and non-licensing procedures of the Capital Investment Coordinating Board (the “BKPM”). Stimulus packages for retail activities are anticipated but most observers believe little will be done to improve conditions for foreign investment in this sector.

2. Regulations

Two regulations affecting the retail sector in 2015 are noteworthy:


Category A alcoholic beverages have an ethanol level of 0 percent to 5 percent, Category B beverages have an ethanol level of more than 5 percent to 20 percent, and Category C beverages have an ethanol level of 20 percent to 55 percent. Alcoholic beverages included in Categories A, B and C are allowed to be distributed and retailed in Indonesia, but distributors, retailers and direct sellers must obtain a specific license to do so.

Before MOT Reg 06/2015, the MOT stipulated several types of licenses to be issued by the MOT, or any authorized institution appointed by the MOT, for the sale of alcoholic beverages. These were:

(i) Stipulation for a Registered Importer of Alcoholic Beverages (“IT-MB”), meaning an approval granted by the MOT to conduct the import of all categories of alcoholic beverages.

(ii) Trade Business License for Alcoholic Beverages (“SIUP-MB”), meaning a license to conduct business activities related to alcoholic beverages. The SIUP-MB is required by any business actor that intends to conduct sales of any type of any category of alcoholic beverages.

(iii) Statement Letter of Category A Alcoholic Beverages Retailer (“SKP-A”), meaning a statement letter for any company selling Category A alcoholic beverages to end-consumers in packaging at a certain place. This would cover a supermarket or
other outlet where liquor is purchased but not consumed on the premises.

(iv) Statement Letter of Category A Alcoholic Beverages Direct Seller (“SKPL-A”), meaning a statement letter for any company selling Category A alcoholic beverages to end-consumers to be directly consumed at a certain place. This would cover restaurants and bars where liquor is sold for consumption on the premises.

There were also several restrictions provided by MOT Reg 20/2014 on the distribution and sale of liquor in Indonesia. These were:

(i) An IT-MB, distributor or sub-distributor of alcoholic beverages must store the alcoholic beverages in a warehouse separated from other goods and record the amount of liquors supplied and taken out of the warehouse;

(ii) Any individual is restricted from bringing alcoholic beverages from overseas in luggage, except for his or her own consumption, up to a maximum of 1 liter per person, with the content in the packaging of not less than 180ml;

(iii) Any retailer or direct seller of alcoholic beverages may not sell such products in a location near a youth center or stadium, a street area or a kaki lima area, a terminal, station or small kiosk, or a youth guest house, a campground, a house of worship, a school, a hospital or any other place stipulated by the Regent or Mayor for any region or municipality in Indonesia or by the Governor of the Special Region of the Capital City of Jakarta for Jakarta province.

Previously, the retail sale of Category A alcoholic beverages by minimarts, supermarkets, hypermarkets or other retail shops having a sales area of at least 12 m² was allowed. MOT Reg 06/2015 now prohibits minimarts and other retail shops having a sales area of at least 12 m² to sell alcoholic beverages and requires them to withdraw all beverage supplies from their shops not later than three months after the issuance of the regulation, i.e., by January 16, 2015. Accordingly, all SKP-As of minimarts and other retail shops having a sales area of at least 12 m² are deemed null and void. However, the retail sale of alcoholic beverages conducted in duty free shops or other places stipulated by the relevant authority is still permitted.

B. MOT Regulation 73/M-DAG/PER/9/2015 of 2015 regarding Mandatory Label Inclusion on Goods in Bahasa Indonesia (September 28, 2015) (“MOT Reg 73/2015”): This new regulation on Bahasa Indonesian labeling was issued in 2015 and creates an obligation to provide information in Indonesian on labels attached to goods. MOT Reg 73/2015 revoked MOT Regulation No. 67/M-DAG/PER/11/2013 (November 26, 2013) as amended by MOT Regulation No. 10/M/DAG/PER/1/2014 (January 30, 2014) regarding the same. All business actors (i.e., Indonesian nationals, legal entities and business entities incorporated or established in the territory of the Republic of Indonesia engaging in business within the trade sector) that produce or import goods to be traded in the Indonesian market must ensure their products have labels in Bahasa Indonesia. This requirement applies to producers of goods produced in Indonesia and also elsewhere and then imported into Indonesia. The labeling of the products may be done by embossing or printing, and may be affixed or attached to or inserted in the packaging of the goods.

While the foregoing provisions of MOT Reg 73/2015 are applicable to producers, importers and collector traders (pledging pengumpul), their impact on retailers is obvious.
Several regulations on seaports were issued in 2015 by the Government of Indonesia (the “GOI”):

1. Ministry of Transportation ("MOT") Regulation No. PM 15 of 2015 regarding Concessions and Other Forms of Cooperation Between the Government and Seaport Business Entities in the Field of Seaports (January 22, 2015) ("MOT Reg. 15/2015"): Government Regulation No. 61 of 2009 regarding Seaports (October 20, 2009) provides that all seaport business activities and services can only be conducted by a Seaport Business Entity (a “BUP”) through cooperation with the GOI in the form of a concession and/or another form of cooperation, and must be documented by an agreement. MOT Reg. 15/2015 regulates the procedure for such cooperation between a BUP and the GOI in the form of a concession and other forms of cooperation and provides that they can be conducted through a tender or direct appointment mechanism, depending on the type of cooperation that has been entered into between the BUP and the GOI. The types of cooperation are as follows:

a. Cooperation in the Form of a Concession:
   (i) Concession to Develop and/or Operate a Port: The cooperation can be conducted through a direct appointment mechanism;

   (ii) Concession for a New Port: The cooperation can be conducted through a tender or direct appointment mechanism. If through a direct appointment mechanism (i) the land area of seaport must be owned by the BUP and (ii) the BUP must make the entire investment in the project without using state or regional funds;

   (iii) Concession at a Port to Develop a New Terminal: If the cooperation is a port that is developing a new terminal that is part of a facility that already exists, then it can be conducted through a direct appointment mechanism; (ii) if the concession is at a port that is developing a new terminal that is not part of an existing facility, then it can be conducted through a tender or a direct appointment mechanism. If the concession is done through a direct appointment mechanism, then the land area of the seaport must be owned by the BUP and the BUP must make the entire investment in the project without using state or regional funds;

   (iv) Concession at a Shipping Channel and Port Basin: The concession can be conducted through a tender or direct appointment mechanism. If through a direct appointment mechanism, the BUP must make the entire investment in the project without using state or regional funds;

b. Other Forms of Cooperation:
   (i) Port Management Facility Developed by the GOI: If it has not yet been decided that funds will be provided from state capital or a state-owned company and if the port has been commercially operated and is part of an existing facility, it can be conducted thorough a direct appointment mechanism. However, if the port has been commercially operated and is not part of an existing facility, then it must be conducted through a tender mechanism.

   (ii) Port Management Facility to Be Developed by State, Regional and BUP funds: In this case, the cooperation can be conducted through a direct appointment mechanism.

51/2015 revokes Ministry of Transportation Decision No. KM 54 of 2002 regarding the Implementation of Seaports ("MOT Dec. 54/2002") and sets out the procedures and requirements related to the implementation of seaport business activities.

MOT Reg. 51/2015 provides that a BUP may conduct seaport business activities and services, in the form of services for vessels, passengers and goods. Services for vessels, passengers and goods consist of the following:

- services to docks;
- refueling services and provisioning of clean water;
- passenger drop-off and pick-up service;
- dock loading and unloading services and container activities;
- warehouse and stockpiling services, dock-side loading and unloading of equipment;
- container, water and dry bulk terminal services;
- loading and unloading goods;
- distribution center and consolidation of goods services;
- services for delayed vessels.

To conduct the above business activities, a BUP must obtain a BUP license from the Ministry of Transportation (the "MOT"). A BUP license is valid for five years. The requirements to obtain a BUP license are as follows:

(i) administrative requirements: The applicant must be in the form of a State-Owned Company, a Regional-Owned Company or a company engaged in the field of seaports and submit the following:
- a taxpayer registration number ("NPWP");
- a deed of establishment along with all amendments;
- a Ministry of Law and Human Rights approval;
- a certificate of domicile;
- an audited financial report by an external auditor for the last year;
- a proposal for a seaport activity plan;

(ii) technical requirements: The applicant must: own and/or operate land and seaport equipment; have at least two permanent employees holding seaport certificates issued by the Directorate General of Transportation; have experience in providing seaport services.

Further, a BUP must also conduct cooperation with the GOI in the form of a concession and/or another form of cooperation, which must be documented by an agreement. MOT Reg. 51/2015 also provides that a seaport can only be built by the GOI. However, a BUP may build a seaport if there is a concession and/or another form of cooperation with the GOI to do so.

3. Government Regulation No. 64 of 2015 regarding the Amendment to Government Regulation No. 61 of 2009 regarding Seaports (August 19, 2015) ("GR 64/2015"): GR 64/2015 sets out the terms under which the GOI can make a direct appointment concession to a BUP. Article 74 of GR 64/2015 provides that:

- the land area of the seaport must be owned by the BUP;
- the BUP must make the entire investment in the project without using state or regional funds.

Article 75 of GR 64/2015 provides that after the concession agreement between the BUP and GOI expires, the land area must be transferred or given to the relevant seaport organizer¹.

¹ A seaport organizer is a government institution in the port area which consists of the port authority, seaport organizer units and the harbormaster.
1. Introduction

The year 2015 was an interesting one for Indonesia’s transportation industry as a number of regulations on licensing, investment and taxation were issued. These regulations will be discussed in turn.

2. Regulations

A. Minister of Transportation (“MOT”) Regulation No. 3 of 2015 regarding the Implementation of One-Door Integrated Service in the Field of Transportation at the Indonesian Investment Coordinating Board (January 7, 2015) (“MOT Reg 3/2015”): MOT Reg 3/2015 delegates the authority to issue various transportation business licenses to the Indonesian Capital Investment Coordinating Board (the “BKPM”). These business licenses are:

(i) Sea Transport Company Business License (Surat Izin Usaha Perusahaan Angkutan Laut or “SIUPAL”);

(ii) Special Sea Transportation Company Business License (Surat Izin Operasi Perusahaan Angkutan Laut Khusus or “SIOPSUS”);

(iii) Determination of Port Legal Entities (Penetapan Badan Usaha Pelabuhan);

(iv) Salvage and Underwater Works Company Business License (Surat Izin Usaha Perusahaan Salvage dan Pekerjaan Bawah Air);

(v) Recruitment and Placement of Vessel Crews Business License (Izin Usaha Perekutan dan Penempatan Awak Kapal or “IUPPAK”);

(vi) Commercial Airport Exploitation Permit (Izin Pengusahaan Bandar Udara Komersil);

(vii) Air Transportation Business License (Izin Usaha Angkutan Udara).

Based on this delegation, the BKPM has the authority to administratively process applications and issue the above standard business licenses. However, the MOT retains the authority to assess and issue licenses for technical matters.

B. MOT Regulation No. 45 of 2015 regarding Capital Requirements for Business Entities in the Field of Transportation (February 24, 2015) (“MOT Reg 45/2015”): MOT Reg 45/2015 sets out the minimum capital requirements that must be satisfied by investors that wish to operate certain transportation businesses. These are:
Companies that currently hold one of the above licenses are obliged to make adjustments to the above requirements within three years after the issuance of MOT Reg 45/2015.

It should be noted that the minimum capital requirements for two of the businesses are inconsistent with the requirement set out in the Head of BKPM Chairman Regulation No. 14 of 2015 regarding Guidelines and Procedures for Principle Licenses of Capital Investment (October 8, 2015) ("BKPM Reg 14/2015"). BKPM Reg 14/2015 provides generally that all foreign investment companies ("PMA Companies") should have a minimum paid-up and issued capital of Rp 2.5 billion,¹ whereas the minimum paid-up and issued capital for (i) a salvage and underwater work business and (ii) a vessel crew placement business is Rp 1.5 billion and Rp 750 million, respectively, substantially below the minimum BKPM capital requirement. While there has been no effort to date to reconcile this inconsistency, MOT Reg 3/2015 will be regarded as the prevailing regulation for such transportation businesses because it is more specific and the more specific regulation will prevail over the more general. Nonetheless, foreign investors will most likely face practical difficulties when they apply to the BKPM for foreign investment licenses (known as a principle license) with a minimum paid-up and issued capital that does not conform to the BKPM’s requirements.

¹ This requirement was also provided in BKPM Head of Chairman Regulation No. 12 of 2013 regarding Amendment of BKPM Head of Chairman Regulation No. 5 of 2013 regarding Guidelines and Procedures for Licensing and Non-Licensing of Capital Investment (September 11, 2013), which was revoked by BKPM Reg 14/2015.

<table>
<thead>
<tr>
<th>No.</th>
<th>Types of Business License</th>
<th>Authorized Capital</th>
<th>Paid-Up and Issued Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SIUPAL</td>
<td>Rp 50 billion</td>
<td>Rp 12.5 billion</td>
</tr>
<tr>
<td>2</td>
<td>Operating Ports (Kepelabuhan):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. Business License to Determine Special Terminal Location (Izin Penetapan Lokasi Terminal Khusus), to Construct and Operate Special Terminals (Izin Pembangunan dan Pengoperasian Terminal Khusus), and to Operate Terminals for One’s Own Interests (Persetujuan Pengelolaan Terminal untuk Kepentingan Sendiri)</td>
<td></td>
<td>Rp 25 billion</td>
</tr>
<tr>
<td></td>
<td>b. Port Business Entity (Izin Usaha Badan Usaha Pelabuhan):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- main ports (pelabuhan utama)</td>
<td>-Rp 1 trillion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- feeder ports (pelabuhan pengumpul)</td>
<td>-Rp 200 billion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- freight crossing (angkutan penyebrangan)</td>
<td>-Rp 25 billion</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Salvage and/or Underwater Work (Izin Usaha Salvage dan/atau Pekerjaan Bawah Air):</td>
<td>Rp 3 billion</td>
<td>Rp 750 million</td>
</tr>
<tr>
<td></td>
<td>a. PT Local</td>
<td>Rp 6 billion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. PT PMA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Businesses for Vessel Crew Placement (Izin Usaha Penepatan Awak Kapal)</td>
<td>Rp 3 billion</td>
<td>Rp 750 million</td>
</tr>
<tr>
<td>5</td>
<td>Dredging and Reclamation Business (Izin Pekerjaan Pengerukan dan Reklamasi)</td>
<td>Rp 25 billion</td>
<td></td>
</tr>
</tbody>
</table>
C. Government Regulation No. 69 of 2015 regarding Import and Delivery of Certain Transportation Equipment and Delivery of Taxable Services Concerning Certain Transportation Equipment which Value Added Tax Is Not Withheld (September 16, 2015) (“GR 69/2015”): GR 69/2015 provides an exemption from Value Added Tax (“VAT”) for the import and/or delivery of seagoing vessels, river transportation ships, lake transportation ships, ferry transportation ships, fishing ships, harbor pilot boats, tugboats, barges, and their spare parts, navigational safety equipment and human safety equipment imported and used by national commercial shipping companies, national fishing companies, national harbor service provider companies, and national river, lake and ferry transportation service organizer companies.

Further, GR 69/2015 also exempts from VAT any taxable service, which includes services received by any of the foregoing companies, such as ship charter services, port services including tug, barge, pilotage and anchoring services, and docking services.

Each of the foregoing companies must present its Non-Taxable Certificate (Surat Keterangan Tidak Dipungut or “SKTD”), issued by the Tax Office where the company is registered, at the time of the import and/or delivery of the vessel or equipment or when the foregoing services are received. The SKTD itself may be obtained by submitting an application to the respective Tax Office where the company is registered along with an Import Plan and Procurement Necessity (Rencana Kebutuhan Impor dan Perolehan or “RKIP”), which is a list of the required goods to be imported or services to be received. This RKIP is valid up to December 31 of the year in which it is issued. The procedure to obtain an SKTD is governed by Minister of Finance Regulation No. 193/PMK.03/2015 regarding Procedures for Granting the Facility not to Withhold Value Added Tax on the Import and/or Delivery of Certain Transportation Equipment and Delivery of Taxable Services Concerning Certain Transportation Equipment (October 20, 2015) (“MOF Reg 193/2015”), which came into force on a retroactive basis as of October 17, 2015.

VAT on the above goods and services that is exempt but which has been paid may be credited against other VAT payable by the taxpayer when it imports or receives the goods and/or services. If the imported and/or delivered taxable goods are used inconsistently with their initial purpose or are transferred to other parties, in part or in whole, within four years as of their import and/or delivery, VAT will be payable. Procedures and Requirements of License Granting for the utilization of Foreign Ships for other activity which is not included as the activity of Transporting Passengers and/or goods in Transportation Activity.

D. Minister of Transportation Regulation No. PM 200 of 2015 regarding the Third Amendment of Minister of Transportation No. PM 10 of 2014 regarding Procedures and Requirements for Granting License for the Utilization of Foreign Ships for Other Activities Not Included in the Transportation of Passengers and/or Goods in Domestic Sea Transport Activity (December 29, 2015) (“PM 200/2015”): Under PM 200/2015, the tender announcement, as the step to procure an Indonesian-flagged vessel prior to the granting of a license to use a foreign vessel (Izin Penggunaan Kapal Asing or “IPKA”), is no longer communicated to the Indonesian National Shipowners Association (the “INSA”). Instead, the tender announcement must be communicated to the Directorate General of Sea Transportation and copied to the Directorate of Sea Traffic and Transportation and sent by email on the commencement of the tender process. The purpose of this communication is to obtain a determination whether the requested type of Indonesian-flagged vessel with the required technical specifications is available or unavailable or is not sufficiently available in Indonesia. The Directorates General are required to decide on the availability of the requested vessel within five business days of receiving the communication of the
tender announcement. PM 200/2015 specifies that, prior to the granting of the IPKA, the tender shall prioritize (i) Indonesian-flagged vessels and (ii) foreign-flagged vessels if the purchase by an Indonesian individual or entity is financed by a leasing company pursuant to a capital lease. The following documents are used to determine whether priority is to be given:

- the lease agreement between the buyer or its subsidiary and the leasing company;
- the deed of establishment of the subsidiary, if applicable, the shares of which are 100 percent owned by Indonesian individuals or Indonesian legal entities.

The foregoing is our best interpretation of very ambiguous and vague language.

If a shipping company requests to use a foreign vessel that is not regulated under PM 200/2015, the MOT may approve such request if it is recommended by a team which consists of representatives of the Directorate of Sea Traffic and Transportation, the Directorate of Port and Dredging, the Directorate of Shipping and Seamen, the Directorate of Indonesian Sea and Coast Guard, the Directorate of Navigation, the Law Bureau and KSLN, Legal Division of the Directorate General Secretariat of Sea Transportation, DPP INSA, and the relevant association. This team may also include the relevant stakeholders. INSA is included in the team instead of requiring INSA’s recommendation as a separate element to support the recommendation.

PM 200/2015 also provides that in the event of an emergency, accident or occurrence that interferes with navigational safety, the application for a foreign vessel use license does not require evidence of a tender.

Below is a list of the types of foreign-flagged vessels that are allowed to be used in 2016:

<table>
<thead>
<tr>
<th>TYPE OF ACTIVITY/ TYPE OF VESSEL</th>
<th>PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drilling</td>
<td></td>
</tr>
<tr>
<td>a. jack-up rig/jack-up barge/self- elevating drill-ing unit;</td>
<td>up to the end of December 2016</td>
</tr>
<tr>
<td>b. semi-submersible rig;</td>
<td>up to the end of December 2016</td>
</tr>
<tr>
<td>c. deepwater drill ship.</td>
<td>up to the end of December 2016</td>
</tr>
</tbody>
</table>
1. Presidential Regulation No. 82 of 2015 regarding Government Guarantees of Infrastructure Financing Directly from International Financial Institutions to State-Owned Enterprises (July 15, 2015) (“PR 82/2015”): This regulation sets forth the procedure if a State-Owned Enterprise (“SOE”) applies for a Government of Indonesia (“GOI”) guarantee for loans from an international financial institution. Such guarantees are limited to loans relating to infrastructure projects. PR 82/2015 identifies two entities that are eligible for such guarantees, namely: (i) those SOEs that are in the infrastructure business and that are 100 percent owned by the GOI, or the shares of which are 100 percent owned by the GOI and other SOEs that are in turn wholly owned by the GOI, and (ii) the State-Owned Infrastructure Financing Enterprise established under Government Regulation No. 66 of 2007 regarding Capital Injection of the Republic of Indonesia for the Establishment of Companies in the Field of Infrastructure, (December 10, 2007) as last amended by Government Regulation No. 75 of 2008 regarding Amendment to Government Regulation No. 66 of 2007 regarding Capital Injection of the Republic of Indonesia for the Establishment of Companies in the Field of Infrastructure (December 18, 2008), whose borrowings will be provided to SOEs operating infrastructure businesses.

The guarantee applicant must submit an application to the Ministry of Finance (the “MOF”) after having received a statement of interest from the international financing institution that intended to make the loan. There will also be a feasibility appraisal of the application, based on generally applicable credit appraisal standards. This feasibility appraisal is done by the MOF. PR 82/2015 has been implemented by Minister of Finance Regulation No. 189/PMK.08/2015 regarding Procedures of Granting and Implementation of Government’s Guarantee over Infrastructure Financing through Direct Loans from International Financial Institution to State-Owned Enterprises (October 6, 2015) (“MOF Reg 189”), which serves as the implementing regulation of PR 82/2015. MOF Reg 189 stipulates that the MOF will determine periodically the maximum amount of the guarantee that may be provided.

MOF Reg 189 specifies that infrastructure projects that are eligible to receive the guarantee are those projects that (i) are determined by the Priority Infrastructure Development Acceleration Committee, (ii) are determined by Ministries/Non-Ministerial Government Agencies, or (iii) have already been approved pursuant to the National Development Midterm Plan, based on a letter from the Head of the National Development Planning Agency.
2. PLN Transmission Network: As a part of the GOI’s long-term plan for 2015-2019, manifested in Government Regulation No. 2 of 2015 regarding National Midterm Development Plan Year 2015-2019 (January 8, 2015), PT Perusahaan Listrik Negara (“PLN”) is to install a transmission network 46,000 kilometers in length to support the 35,000 MW power project. PLN is supposed to install 4,717 kilometers of transmission lines by the end of 2015. However, as of September 2015, only 922 kilometers had been built. PLN’s President Director, Sofyan Basir, has stated the main hurdle encountered by PLN is land acquisition. The currently applicable law governing land relinquishment for the public interest, Law No. 2 of 2012 regarding Land Provision for the Public Interest (January 14, 2012) (“Law 2/2012”), only provides a specific regime for land relinquishment if the area is more than five hectares, whereas PLN’s transmission lines usually require only 100 meters of land.

Two hundred trillion Rupiah has been budgeted for this project but PLN has had difficulty identifying sources of funds. So far PLN has only obtained an additional capital injection from the GOI and multilateral loans and domestic loans as financing sources. Additional capital sourced from the state budget requires parliamentary approval, which has not been forthcoming. PLN predicts that it will require about Rp 40 trillion annually to finance the project. In 2015, PLN managed to receive only Rp 8 trillion in capital and US$ 10 billion in loans from a Chinese bank.

3. Indonesian Refineries Upgrade: Pertamina has teamed up with Saudi Aramco and JX Nippon Oil & Energy Corp. to increase the capacity and quality of two aging refineries, the Cilacap and Balikpapan refineries. Pertamina will hold 70 percent of the joint venture project for the Balikpapan refinery and JX Nippon will own the remaining 30 percent, whereas for the Cilacap refinery, Pertamina will own between 55 and 65 percent, and the remaining 35 to 45 percent will be owned by Saudi Aramco. In these schemes, each of the foreign partners will supply the crude oil stock for the refineries but will allow other companies to also supply the feedstock.
1. Introduction

There were no major changes in the Indonesia Stock Exchange (the "IDX") rules in 2015, although there were several technical rule changes made by the IDX. There was a significant change in the last quarter of 2014 affecting mining companies that merits discussion.

2. IDX and Mining Companies

IDX Rule No. I-A.1 regarding the Listing of Stock and Equity Securities other than Stock Issued by Mineral and Coal Mining Companies (November 1, 2014) ("IDX Rule No. I-A.1" or the "Rule") made it easier for mining companies to become publicly listed. Under IDX Rule No. I-A.1, mining companies that are in the exploration stage are allowed to list on the IDX, so long as they fulfill certain requirements specified in the Rule. As one would expect, these requirements are more stringent than those imposed on mining companies engaged in the production stage. These additional requirements are (i) a feasibility study for the last three years prepared by an independent party registered with a mining and/or geology association, (ii) a business feasibility study from an independent appraisal company registered with the Financial Services Authority (the "OJK"), (iii) that the company have the relevant permit to conduct the operation-production stage, (iv) a business plan and budget that has been provided to the relevant institution, and (v) a financial projection that indicates the company will obtain business and net profit from its core business not later than four years after being listed.

The foregoing requirements are in addition to the requirements that otherwise apply to mining companies that intend to list on the IDX. Those requirements are a net tangible asset requirement of Rp 100 billion to be listed on the main board and Rp 5 billion to be listed on the development board, (ii) an operation-production mining permit (in Indonesian, an *Izin Usaha Pertambangan Operasi Produksi* or "IUP-OP," or a Special Operation-Production Mining Business License (*Izin Usaha Pertambangan Khusus Operasi Produksi* or "IUP-OPK")), (iii) a land related permit, (iv) a clear and clean certificate, (v) a requirement to have one director with a technical educational background and experience in the mining sector of at least five years, and (vi) proven and probable reserves based on a report from a registered independent party.

Other than the mining company itself, the parent company that controls a company in the mining sector is also allowed to be listed on the IDX, as long as such parent company has received more than a 50 percent contribution from its controlled subsidiary in the mining sector or will receive such contribution not later than the fourth year after production, according to its financial projections.

A mining company that only possesses a special permit to transport, to process and refine, and to trade minerals is not included within the scope of the Rule, as the Rule only applies to mining companies or their parent companies who control a company that holds an IUP-OP or IUP-OPK.

After being listed, the listed company must comply with...
the requirements of IDX Rule No. I-A to stay listed on the Stock Exchange. Mining companies that are still in the exploration stage, or that are in the process of operation and production but have not yet sold mineral products, must file a monthly report to the IDX on the realization of their operation and production business plan until they trade their mineral products. In addition, any information related to their development projection goals must be submitted to the IDX along with annual financial statements, from the first year until either (i) the fifth year after being listed on the IDX or (ii) until the company has recorded after-tax net profit, whichever is earlier.

This regulation was issued to allow mining companies still in the exploration stage to receive fresh funds from the public because mining companies in that stage often find it difficult to borrow funds from the banking sector.

We note that the IDX has announced it will also allow oil and gas companies to publicly list their shares when they are still in the exploration stage. This plan is still in discussion with the Directorate General of Oil and Gas of the Ministry of Energy and Mineral Resources and upon approval will be regulated under a new rule, IDX Rule No. I-A.2. However, it is not clear whether or when such regulation will be promulgated.
Regulatory Encouragement for the Payment of Taxes:
The year 2015 was designated by the Government of Indonesia (the “GOI”) as the “Year of Tax Guidance,” or in the Indonesian language, “Tahun Pembinaan Pajak.” The GOI attempted to increase taxpayers’ compliance in 2015 by issuing regulations to “gently” encourage taxpayers to fulfill their tax obligations. Several new regulations that were issued in 2015 do not “punish” negligent taxpayers; instead they allow a second chance to taxpayers to fulfill their tax obligations.

The first such regulation was MOF Reg 29/2015, which provides that eligible taxpayers are allowed to submit a request to cancel the imposition of interest that would otherwise have been imposed on the late payment of unpaid tax assessment letters.

B. Minister of Finance Regulation No. 91/PMK.03/2015 regarding the Reduction or Waiver of Administrative Sanctions on the Late Submission of Tax Returns, Amended Tax Returns and the Late Payment or Remittance of Tax (May 4, 2015) (“MOF Reg 91/2015”):
The next such regulation was MOF Reg 91/2015, which reduces or waives administrative sanctions (such as interest, penalties and fines) that are imposed on taxpayers for the late submission of tax returns or revised tax returns, as well as late payment of tax. Taxpayers are allowed to request a reduction or waiver of administrative sanctions imposed as a result of negligence other than those instances of negligence that are stipulated in Article 36(1) of the Law on General Taxation Provisions. Reductions and waivers provided in MOF Reg 91/2015 should not be mistaken with reductions and waivers provided under MOF Reg 29/2015, which regulates the waiver of administrative sanctions imposed on the late payment of tax bills based on an assessment letter.

C. Minister of Finance Regulation No. 159/PMK.010/2015 regarding the Granting of Corporate Income Tax Facilities (August 18, 2015) (“MOF Reg 159/2015”):
This regulation is one of a number of regulations issued by the GOI in 2015 to support investment growth in Indonesia. It allows a business entity whose main business activity is in a recognized pioneer industry to secure income tax deductions between 10 percent and 100 percent of taxable income. Such deductions are allowed for a maximum of 15 years, which can be extended up to 20 years. MOF Reg 159/2015 also broadens the definition of pioneer industries eligible for this tax facility. These pioneer industries now include (i) the upstream metal industry, (ii) the oil refinery industry, (iii) the organic primary chemical industry sourced from oil and natural gas, (iv) the industry that produces industrial equipment, (v) the agriculture, forestry and fishery products processing industries, (vi) the telecommunications, information and communications industries, (vii) the sea transportation industry, (vii) any processing industry that is the main industry in a special
economics zone, and (ix) non-public private partnerships engaged in infrastructure businesses.

The procedure to submit an application for the foregoing tax facility under MOF Reg 159/2015 is governed by Chairman of Capital Investment Coordinating Board (“BKPM”) Regulation No. 13 of 2015 (September 7, 2015), as amended by Chairman of BKPM Regulation No. 19 of 2015 regarding Amendment of Chairman of BPM Regulation No. 13 of 2015 regarding Procedures on the Granting of Corporate Income Tax Reduction Facility (October 8, 2015).

D. Minister of Finance Regulation No. 89/PMK.010/2015 regarding the Granting of Income Tax Facility for Investment in Certain Business Fields and/or Regions as well as Transfer of Assets and Sanctions for Domestic Corporate Taxpayers Given Income Tax Facility (April 28, 2015) ("MOF Reg 89/2015"): This regulation provides income tax facilities for business fields and/or regions in the form of:

(i) a reduction of net income in the amount of 30 percent of the total investment in tangible fixed assets taken in equal amounts of 5 percent per year for six years;

(ii) acceleration of the depreciation of tangible assets and amortization of intangible assets acquired in the framework of a new investment and/or business expansion;

(iii) imposition of income tax on dividends paid to foreign taxpayers in the amount of 10 percent or a lower rate based on prevailing tax treaties;

(iv) an increase in the loss carryforward period from the normal 5 years to 10 years.

MOF Reg 89/2015 is an implementing regulation of Government Regulation No. 18 of 2015 regarding Income Tax Facilities for Investment in Certain Business Fields and/or Regions (April 6, 2015). The requirements that must be met to benefit from the tax facilities provided under MOF Reg 89/2015 are set out in Minister of Industry Regulation No. 48/M-IND/PER/5/2015 regarding Criteria and/or Requirements in the Implementation of Income Tax Facilities for Investment in Certain Business Fields and/or Regions (May 5, 2015) ("MOI Reg 48/2015"). The income tax facilities under MOF Reg 48/2015 are given to industries that have (i) a high investment value, (ii) a highly intensive labor force or (iii) high local content (equal to or more than 20 percent). The amount of the investment value and the number of employees that need to be met for each of business field and/or region are set forth in the attachments to MOI Reg 48/2015. These industries are also required to (i) have some form of cooperation with small and medium businesses or cooperatives, (ii) have integration into their production process of some form of cooperation with their suppliers with regard to their components, (iii) conduct transfer of technology, (iv) use environmentally friendly technology and/or (v) use new technology.

E. Minister of Finance Regulation No. 200/PMK.03/2015 regarding Tax Treatment for Taxpayers and Taxable Entrepreneurs Using Certain Collective Investment Contract Scheme for the Enhancement of Finance Sector (November 10, 2015) ("MOF Reg 200/2015"): In the capital market field, the GOI has tried to make the Indonesian financing sector more appealing by issuing MOF Reg 200/2015, which waives the imposition of income tax upon income received by transferors of real estate, which otherwise is generally subject to a final income tax of 5 percent.

F. Minister of Finance Regulation No. 107/PMK.010/2015 regarding the Collection of Withholding Tax in Connection with Payment for Delivery of Goods and Imports or Other Business Activities (June 9, 2015) ("MOF Reg 107/2015"): Contrary to the theme of the above regulations, which are designed to ease tax
burdens on investors, MOF Reg 107/2015 imposed income tax on the sale of certain mining products that were not previously subject to income tax. This regulation imposes income tax at the rate of 1.5 percent on any sale, whether domestic or export, of non-processed or non-refined minerals (metal, non-metal and stone) and coal. This income tax is only applicable to holders of a mining business license (Izin Usaha Pertambangan). It does not apply to holders of a Contract of Work (Kontrak Karya) or Coal Contract of Work (Perjanjian Kerjasama Pengusahaan Pertambangan Batubara), the taxation consequences of which are governed by their contracts.

G. Government Regulation No. 74 of 2015 regarding VAT Treatment on the Delivery of Certain Port Services to Sea Transportation Companies Conducting International Sea Transportation (October 1, 2015), (ii) MOF Regulation No. 43/PMK.010/2015 regarding Criteria and/or Details of Hotel Services that Are Exempted from VAT (March 9, 2015), and (ii) MOF Regulation No. 158/PMK.010/2015 regarding Criteria of Art and Entertainment Services that Are Exempted from the Imposition of VAT (August 13, 2015): The GOI in 2015 also issued the foregoing three regulations that waive the imposition of Value Added Tax (“VAT”) on certain port, hotel and entertainment services.
1. Introduction

There were several changes to existing telecommunications regulations in 2015. Most of these were to slightly amend and refine existing procedures. The highlight of the year was the introduction of local content requirements for handsets and the publication of the highly anticipated and long-sought draft Law on Personal Data Protection (the “Draft PDP Law”), which has now been drafted by the Ministry of Communication and Informatics (the “MOCI”) but not yet enacted by the Indonesian Parliament.

2. Laws and Regulations

A. MOCI Regulation No. 27 of 2015 regarding Technical Requirements of Telecommunication Equipment and/or Device with Long-Term Evolution ("LTE") Standard Based Technology (July 7, 2015) ("MOCI Reg 27/2015"): This regulation sets out the newly introduced local content rules.

MOCI Reg 27/2015 was immediately effective on July 8, 2015. Article 1 of MOCI Reg 27/2015 provides that any telecommunication devices and/or equipment with LTE standard technology manufactured, assembled, imported for trading and/or used within Indonesia must meet local content requirements based on testing in accordance with the provisions specified in Attachments I and II of MOCI Reg 27/2015.

The telecommunication devices and/or equipment with LTE standard technology consist of:

- Base Stations ("BS"), which function to provide connectivity, management and control for Subscriber Stations, including the antenna;
- Subscriber Stations ("SS"), which are telecommunications devices used by customers, such as a cellular telephone, and which use LTE standard technology.

In addition to the technical requirements mentioned above, MOCI Reg 27/2015 sets forth the minimum local content requirements (Tingkat Komponen Dalam Negeri or "TKDN") for both BS and SS as follows:

- 30 percent for BS and 20 percent for SS: MOCI Reg 27/2015 does not provide for any deferred effective date for the local content requirements. MOCI officials advised early in 2015 that the new local content requirements would be immediately effective without any grace period. Therefore, based upon the plain reading of MOCI Reg 27/2015, the minimum local content requirements under MOCI Reg 27/2015 were effective as of July 7, 2015;
- 40 percent for BS and 30 percent for SS: This increase of the minimum TKDN requirements will be phased in on the following schedule:
  (a) as of January 1, 2017, for LTE standard technology operating at the radio frequencies band of 2100 MHz, 1800 MHz, 900 MHz and 800 MHz;
  (b) as of January 1, 2019, for LTE standard technology operating at the radio frequency band of 2300 MHz.
As noted, the MOCI has not provided any framework to apply for exceptions or deferrals. It also has not provided any clarification on whether local investment in research and technology may be counted as local content under Ministry of Industry regulations. The Ministry of Industry is the relevant authority that determines the technical calculation to measure local content.

**B. Law No. 11 of 2008 regarding Electronic Information and Transactions (April 21, 2008) (the “ITE Law”) and Government Regulation No. 82 of 2012 regarding the Implementation of Electronic Systems and Transactions (October 15, 2012) (“GR 82”):** Indonesia has enacted various laws on data privacy in a number of specific areas. Chief among them is the ITE Law, Article 26 of which prohibits the use of any information which has been acquired through electronic media without the consent the person involved and which contains that individual’s personal data. Article 15 of GR 82 provides that an electronic systems provider must (a) maintain the confidentiality, integrity and availability of personal data that it manages, (b) guarantee that any acquisition, use and utilization of personal data is done with the consent of the owner of the personal data, unless otherwise stipulated by laws and regulations, and (c) guarantee that any use or disclosure of personal data is conducted with the consent from its owner and in accordance with the objectives communicated to the owner of the relevant personal data upon the data acquisition.

**C. Draft PDP Law:** The Draft PDP Law is the first proposed legislation that purports to comprehensively regulate data privacy. The Draft PDP Law distinguishes between personal data and sensitive personal data. Personal data is any data about a person’s life that can be identified on its own or in combination with other information, either directly or indirectly, through an electronic system and/or by non-electronic means. Sensitive personal data is defined as personal data requiring special protection, which includes data related to religion, health, physical and mental condition, sex, personal financial data and any other personal data disclosure of which may endanger and be detrimental to the privacy of the data owner. Sensitive personal data can be disclosed with the prior consent of the data owner, and without such consent for the protection of the safety of the data owner, for employment purposes, for medical purposes and for law enforcement purposes to allow the relevant authorities to implement their lawful functions, or if such sensitive personal data is already in the public domain due to the owner’s actions.

The Draft PDP Law sets out the requirements and procedures of a personal data organizer (defined as a person, legal entity, business entity, government institution, public entity or other societal institutions) that gathers, maintains, safeguards and eliminates personal data.

Prior to collecting the data and obtaining the consent of the data owner, a personal data organizer must provide information concerning:

- the legality of the personal data organizer;
- the purpose of collecting the personal data;
- the types of personal data to be managed;
- the retention period of the documents containing the personal data;
- the detail on what data is to be collected;
the period for the collection and deletion of the personal data by the personal data organizer;

• the right of the data owner to refuse to provide consent.

The above approval is not required (a) if there is a legal provision requiring the collection of personal data, (b) if the personal data is required for the implementation of a contract with the personal data owner, (c) if collection is required to protect the personal data owner from threats of life or physical well-being, or (d) if the data is for the economic benefit of the personal data owner.

The Draft PDP Law also regulates the transfer of personal data to third parties within Indonesia and cross-border transfers of such personal data, the use of such personal data in the event of a merger, dissolution or consolidation of a company, or for other business transactions.

CCTV recordings are also regulated under the Draft PDP Law. The use of a visual data processing device is prohibited to be installed in public spaces except under specific circumstances, which are primarily to prevent crime and to ensure public safety.

The Commission of Central Information, which was established under Law No. 14 of 2008 on the Disclosure of Public Information (April 30, 2008), is tasked to ensure that personal data owners are compliant with the Draft PDP Law. The Draft PDP Law imposes sanctions for theft and/or fraudulent use of personal data, by imprisonment of a maximum of one year and/or a maximum fine of Rp 300 million. If the criminal offense is conducted by a legal entity the fine is a maximum of Rp 1 billion.

A personal data organizer who has maintained personal data prior to the effective date of the Draft PDP Law must comply with the law no later than one year after the Draft PDP Law becomes effective. All laws and regulations governing the collection of information shall remain effective as long as they do not contradict the Draft PDP Law.

The Draft PDP Law is listed under the 2016 National Priority Legislation Program for consideration by the House of Representatives.
1. **Introduction:** During 2015, the Government of Indonesia (the “GOI”) took several steps to increase tourism. One of these was the visa-free program and another was the easing of the procedure allowing the entrance of foreign-flagged cruise ships and yachts to Indonesia.

**A. Visa-Free Program:** Indonesia introduced a visa-free program for tourists from specified countries that allow them to enter Indonesia for up to 30 days. This program has been described in detail in the article on Immigration. See page 61.

**B. Marine Tourism:** As one of the efforts to develop marine tourism in Indonesia, the GOI recently enacted Presidential Regulation No. 105 year 2015 regarding Foreign Yacht Visits to Indonesia (September 30, 2015) (“GR 105/2015”) and Minister of Transportation Regulation No. 121 of 2015 regarding Giving Ease to Tourists Using Foreign-Flagged Cruise Ships (August 19, 2015) (“MOT Reg 121/2015”).

GR 105/2015 provides a simplified procedure for customs, immigration, quarantine and port procedures if cruise ships and yachts enter or exit Indonesia through the following ports: Sabang, Belawan, Teluk Bayur, Nongsia Point Marina, Bandar Bintan Telani, Tanjung Pandan, Sunda Kelapa, Marina Ancol, Benoa, Tenau, Kumai, Tarakan, Nunukan, Bitung, Ambon, Saumlaki, Tual, Sorong and Biak. One example of the simplified procedure is that port, customs, immigration and quarantine examinations and the issuance of a Sailing Approval Letter (Surat Persetujuan Berlayar) are conducted in an integrated manner at the entrance and exit ports.

GR 105/2015 also allows for facilities for foreign yachts in the form of the preparation of a voyage route for foreign yachts, facilities for the development of marinas and special terminals for foreign yachts, development of tourism wharves, installation of navigational aids, facilities to maintain and repair yachts, development of ports, anchoring and layover points and other facilities as needed.

As to MOT Reg 121/2015, the background of this regulation was the complicated procedure for foreign-flagged cruise ships to enter Indonesian territory, with the result that only 10 to 20 out of 10,000 cruise ships worldwide actually entered Indonesian territory annually, according to the remarks of the Indonesian Coordinating Minister of Maritime Affairs and Resources, Mr. Rizal Ramli, at the National Conference of the Chamber of Commerce and Industry (Kadin) on October 18, 2015.

MOT Reg 121/2015 allows foreign-flagged cruise ships to bring tourists into Indonesia to travel from a port to a tourism destination in Indonesia and to return to the embarkation port, as long as such trip is part of a tour. The port authorities will then supervise and control the embarkation and disembarkation of tourists who use foreign-flagged cruise ships by issuing a standard operating procedure, which may vary from port to port. MOT Reg 121/2015 limits the ports that can be used for embarkation and disembarkation for foreign-flagged cruise ships, i.e., Tanjung Priok Port, Tanjung Perak Port, Belawan Port, Makassar Port and Tanjung Benoa Bali Port. There is an issue of whether MOT Reg 121/2015 is consistent with Indonesian law.
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