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NEW REGULATION ON THE EMPLOYMENT OF FOREIGN MANPOWER: OFFERING SOME CLARITY WHILE RAISING QUESTIONS

On 29 June 2015, a new regulation on the procedure for employing foreign manpower (ie Minister of Manpower Regulation No. 16 of 2015) entered into force, revoking the previous regulation, Minister of Manpower Regulation No. 12 of 2013.

Some important provisions in the new regulation include the following:

- In general, an employer of foreign manpower must employ at least ten Indonesian workers for every one foreign worker.
- Associations (*Usaha Bersama* – “**UB**”) and Cooperatives are now prohibited from employing foreign manpower unless permitted under the prevailing laws and regulations.
- There are now 7 types of Foreign Manpower Employment Plans (*Rencana Penggunaan Tenaga Kerja* – “**RPTKA**”) and 8 types of Foreign Manpower Employment Permits (*Izin Menggunakan Tenaga Kerja Asing* – “**IMTA**”), some of which are new:
 - a) a general RPTKA and an IMTA;
 - b) a RPTKA and an IMTA for Emergency and Urgent Work;
 - c) a RPTKA and an IMTA for Temporary Work;
 - d) a RPTKA and an IMTA for employment in Special Economic Areas (*Kawasan Ekonomi Khusus* – “**KEK**”) and Free Trade and Free Port Areas (*Kawasan Perdagangan Bebas dan Pelabuhan Bebas* – “**KPBPB**”);
 - e) a RPTKA and an IMTA to Work in Maritime Areas;
 - f) a RPTKA and an IMTA for Entertainment Work;
 - g) a RPTKA and an IMTA for Karaoke Guides; and
 - h) an IMTA for Permanent Resident Card Holders

- Under the previous regulation, Foreign Directors and Commissioners are not required to have Indonesian assistants/understudies. This also now applies to foreign Patrons (*Pembina*), Supervisors (*Pengawas*), Executives (*Pengurus*) in foundations (*yayasan*); foreign manpower engaged in emergency or urgent, temporary or entertainment work; as well as foreigners with a Temporary Work RPTKA approval and a Temporary Work IMTA.
- A Temporary Work RPTKA approval and a Temporary Work IMTA are now required for:
 - a) providing guidance, counseling, training in the implementation and

- development of innovative industrial technology to improve product quality and design and cooperation in offshore marketing of Indonesian goods and services;
- b) making commercial films with a permit from the authorized institution;
 - c) giving seminars;
 - d) participating in meetings with the central or representative office in Indonesia;
 - e) conducting audits, quality control and inspections of Indonesian branches;
 - f) foreign manpower on probation;
 - g) one-off work; and
 - h) work related to machinery and electric power installations, aftersales service, products in test markets.
- All foreign manpower, except for those undertaking urgent and emergency works, are now required to:
 - be able to show evidence of an insurance policy from an Indonesian entity;
 - hold a Taxpayer Registration Number (NPWP) (except for those undertaking temporary and entertainment works); and
 - be enrolled in the National Social Security Program for manpower (SJSN) if they have been working in Indonesia for more than 6 months (except for those undertaking temporary and entertainment works).
 - An IMTA is also now required for foreign Directors, Commissioners, Patrons, Supervisors and Executives residing outside of Indonesia. IMTA should be obtained as of the date of issuance of approval on the establishment of the company and/or change of these positions from the relevant authorities.

Although some articles of the new regulation clarify issues that were previously grey areas (eg the need for a temporary work RPTKA approval for temporary work IMTA; whether or not an IMTA is required for foreign directors residing outside of Indonesia, etc.), there are some new provisions which will have a significant impact on foreign manpower. For example, if a visit visa is not now sufficient for giving a seminar, participating in a meeting or conducting an inspection in Indonesia, then this will result in significant inconvenience for many companies, particularly given the time and costs incurred to obtain a Temporary Work RPTKA approval and Temporary IMTA. In addition, it is also not clear what kind of insurance policy from an Indonesian entity is required, health or life.

We believe that the Ministry of Manpower will apply its own unwritten policy to these issues but in the meantime, and particularly with regard to the requirement for overseas resident foreign directors and commissioners as well as certain visiting personnel to have an IMTA, many companies in Indonesia will need to reconsider certain aspects of their corporate structure and operations.

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