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— LAW PARTNERSHIP —
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Technical Provisions Concerning Cement Clinker and Cement

by Athalia Devina

Minister of Industry ("**MoI**") has enacted MoI Regulation No. 16/M-Ind/Per/3/2014 entitled Technical Provisions of Cement Clinker and Cement ("**MoI Regulation No. 16/M-Ind/Per/3/2014**"). MoI Regulation No. 16/M-Ind/Per/3/2014 has been in effect since March 24, 2014. An Industrial Cement Company is a company that carries out the production process through: (i) an integrated plant unit that processes the raw materials into cement or (ii) a grinding plant unit which processes cement clinker into cement. It is compulsory for the integrated plan units to have mining equipment, crusher/raw mills, raw mill silos, kilns, clinker silo, cement grinders, cement silos, and packing plants. Grinding plant units are required to have clinker silo equipment, cement grinders, and packing plants.

The grinding plan unit uses cement clinker as raw materials to produce cement. The HS Code of cement clinker are as follows:

No.	Type of Cement Clinker	HS Code
1.	used in the production of white cement	2523.10.10.00
2.	miscellaneous	2523.10.90.00

Type of cements that are produced in the production units are included in the following HS Codes:

No.	Type of Cement Clinker	HS Code
1.	white portland cement	
	a. white cement, of artificial colour or not	2523.21.00.00
	b. coloured cement	2523.29.10.00
	c. miscellaneous	2523.29.90.00
2.	alumina cement	2523.30.00.00
3.	other hydraulic cement	2523.90.00.00

Cement clinker as raw materials for cement in the grinding plant unit is obtained by both domestic production and import. Cement Clinker can only be imported by an importer-producer of cement ("**IP-Semen**"). Cement can only be imported by limited importers of cement ("**IT-Semen**") and cement producers who are also a producer-importer of cement ("**PI-Semen**"). In order to gain recognition as IP-Semen, IT-Semen, PI-Semen, and approval to import cement, a "Technical Recommendation for Cement" must be granted by Director General of Industrial Development.

The Technical Recommendation for Cement is granted upon application by a company. The application and its requirements for Technical Recommendation of Cement is addressed to Director General of Industrial Development. The Technical Recommendation for Cement required for recognition as an IP-Semen is granted to a company that is a producer which has:

a. an integrated plant unit conducting the following activities: (i) mining of raw material, (ii) grinding of raw material, (iii) combustion of raw material, (iv) grinding cement, and (v) packaging processes;
b. a grinding plant unit with the following minimum activities: (i) grinding of cement and (ii) packaging processes.

Technical Recommendation for Cement must contain at least the following information: (i) type of the recommendation, (ii) name and address of the company, (iii) name of the person in charge of the company, (iv) type and number of HS Code of the imported cements, (v) amount of the imported cements, and (vi) time period of the recommen`dation.

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The Future of a Branchless Banking System in Indonesia

by Athalia Devina

There are still many people in Indonesia who do not know of, use, and/or have access to banking services and other financial services, either because of their level of poverty or their secluded residential location ("**unbanked and unbankable people**"). The Indonesia Financial Services Authority ("**OJK**") has released a Draft of an OJK Regulation regarding Financial Services of Branchless Office in the Framework for Inclusive Finance ("**Draft OJK Regulation**").[1] The purpose of Draft OJK Regulation is to expand public access, especially unbanked and unbankable people, to financial services.

The operators of a branchless banking system are financial institutions (banks, liability insurance companies, health insurance companies, and other financial institutions supervised by the OJK) who have obtained approval from the OJK. Article 4 of Draft OJK Regulation specifically regulates the requirements of banks as operators of a branchless banking system. The requirements as mentioned in article 4 of Draft OJK Regulation are as follows: (i) that it is an Indonesian legal entity, (ii) its risk profile factor, to include operational risk and compliance risk has a rating of 1, 2, or 3, (iii) it has an office network in Eastern Indonesia and the province of East Nusa Tenggara, and (iv) has the supporting infrastructure to serve consumers, to provide information, to communicate effectively, and to carry out banking transactions through electronic media such as (a) sms banking or mobile banking and (b) internet banking or from host to host.

In conducting a branchless banking system, a bank may cooperate with a third party which can act as an extension of the bank. The cooperation between the bank and the third party must be reported to the OJK. The third party can be an individual agent and/or a business entity. The individual agent must meet at least the following requirements: (i) resides in the agent's operating location, (ii) has proven ability, a good reputation, and integrity in the operational area, (iii) has a primary source of income derived from the business or other activity that are conducted on the local site currently and for at least 2 (two) years, (iv) places deposits and/or warranties of the appropriate amount set by the bank that operates a branchless banking system, (v) has been a consumer of the bank for at least 2 (two) years, (vi) has passed the due diligence process by the bank that operates branchless banking system, and (vii) can only cooperate with 1 (one) bank that operates a branchless banking system. The business entity agent must meet at least the following requirements: (i) it must be an Indonesian legal entity, (ii) has a good reputation and performance record in the operational area, (iii) has a business that has been operating in a permanent business location for at least 2 (two) years, (iv) has been a consumer of the bank for at least 2 (two) years, (v) places deposits and/or warranties of the appropriate amount set by the bank that operates a branchless banking system, (vi) is capable of liquidity management when required, (vii) has adequate information technology and can integrate data from a variety of devices that are used in a branchless banking system, (viii) has passed the due diligence process by the bank that operates a branchless banking system, (ix) has special units or appointed workers who are responsible for the branchless banking system, (x) can cooperate with more than 1 (one) bank but as adjusted to its financial and operational capability and with approval from the other bank, and (xi) every office or legal entity outlet can only provide 1 (one) product of a conventional bank and/or 1 (one) shariah bank.

The products that are offered by a third party in collaboration with financial institutions in the context of a branchless banking system are listed as follows: (i) Basic Saving Account ("**BSA**"), (ii) credit to micro enterprises, (iii) micro insurances, and/or (iv) other products based on approval by the OJK. A BSA, in this case, is a savings account with the following characteristics: (i) it is held by an Indonesian citizen and limited to 1 (one) account in the same bank, (ii) the currency is in Indonesian Rupiah, (iii) the bank can name its savings products in accordance with the regulation of the bank, (iv) it is without a minimum deposit amount, (v) it does not have a minimum account balance at any time, (vi) it is within the maximum account balance limit set by the bank at any time, but the highest amount is Rp 20.000.000,- (twenty million Rupiah), (vii) there is a maximum cash withdrawal transaction and/or outgoing transfer limit within 1 (one) month set by the bank, but the highest amount is Rp 5.000.000,- (five million Rupiah), (viii) the provision concerning the highest amount of a transaction mentioned in point (vii) can be exceeded, but the maximum is Rp 60.000.000,- (sixty million Rupiah), in which case the BSA consumer is a debtor of the bank, (vii) can be excessed but the maximum is Rp 60.000.000,- (sixty million Rupiah) in which case the consumer of BSA is the debtor of the bank, (ix) there is no additional fee for monthly administration, the opening of an account, the closing of an account, cash deposit, and/or incoming transfers, (x) cash withdrawals and/or outgoing transfers to the other accounts in the same bank that is carried out by the the BSA consumer through the agent of a branchless banking system may be charged after 4 (four) transactions in the same 1 (one) month, (xi) the fee for the transaction payment through the savings account and other additional fees set by the bank should not be higher than transaction costs for a regular savings account, (xii) it is prohibited to open a join account with the status of "and/or", (xiii) the proof of identity of the holder of a savings account is submitted to the bank, and (xiv) the account must earn interest or a share of revenue, depending upon whether it is a conventional or Sharia bank.

[1] http://www.ojk.go.id/permintaan-tanggapan-rancangan-peraturan-ojk-tentang-layanan-keuangan-tanpa-kantor-dalam-rangka-keuangan-inklusif-laku-pandai

Guidelines on the Provision
of Information in the Marketing of Consumer Products and/or Financial Services

by Athalia Devina

The Indonesian Financial Services Authority ("**OJK**") enacted its Circular Letter No. 12/SEOJK.07/2014 entitled Submission of Information for the Marketing of Products and/or Financial Services ("**Circular Letter of OJK No. 12/SEOJK.07/2014**"). This is as mandated in OJK Regulation No. 1/POJK.07/2013 regarding Consumer Protection in the Financial Services Sector. Circular Letter No. 12/SEOJK.07/2014 regulates (i) consumers' good will, (ii) principles of the regulation of information about products and/or services, (iii) provision of information published in media advertising (iv) information provision by financial services businesses ("**PUJK**"), (v) drafting of summary information on products and/or services, and (vi) third parties who act for the benefit of the PUJK.

One of the provisions highlighted concerns principles of the regulation of information pertaining to products and/or services. As set out in Section III of OJK Circular Letter No. 12/SEOJK.07/2014, the PUJK is obliged to provide and/or convey information regarding products and/or services in accordance with the following criteria: (i) accuracy, based on clarity of references used by the PUJK when delivering quantitative and qualitative information on products and/or services , (ii) honesty, based on actual information about the benefits, costs, and risks of each product and/or service, (ii) clarity, based on complete information about the benefits, costs, and risks including confirmation to consumers and/or the community of explanations given, and (iv) no misleading statements, so as to avoid differences of interpretation between the consumer and/or the community and the PUJK concerning provisions contained in the agreement.

In summary, the PUJK is obliged to provide and/or convey information regarding products and/or services that is accurate, honest, clear and not misleading in its advertising in various media. The information must address the following compulsory aspects:

1. Language:
   Advertisements must be formulated in a language easily understood by consumers and/or the community. Advertisers are prohibited from using superlative words unless it can be substantiated with evidence or sources that can be vouched for. It is also prohibited to use the word "free" or other words that have the same meaning, when consumers still pay other fees.
2. The promise of refunds:
   If an advertisement promises refunds to consumers upon the purchase of a product and/or use of the service, the terms and period of the refund must be stated clearly and completely, among other conditions that must be met.
3. Consumers' testimony and suggestions:
   Testimony and suggestions can only be given on behalf of individuals. A consumer's testimony is compulsory evidenced by a written statement signed by the consumer, and is supported by the identity and address of the testifier.
4. The availability of prizes:
   It is prohibited to use the phrase "while supplies last" or others word with the same meaning. The amount of any prize and or the time period should be stipulated by the PUJK.
5. The process in accordance with procedure, and offers that are not misleading:
   Advertisements that promise a quick and instant process must take into consideration, and comply with, the applicable provisions and procedures. Advertisements must indicate clearly when products and/or services with certain benefits offered stand alone and can not be simultaneously procured.
6. Past performance and projected performance:
   Advertisements that include details of past performance must declare that this past performance is not intended to guarantee projected performance. The information related to projected performance may only be used in advertisements if it is relevant and there is a strong foundation, so as not to mislead. It must include the disclaimer that the achievement of projections is not guaranteed.
7. The usage of research data:
   Research data should not be processed in such a way or manipulated so that the advertisement could mislead consumers and/or the community. Advertisements that include research data should reference its sources.

The OJK hopes that consumers will be better protected with the enactment of Circular Letter No. 12/SEOJK.07/2014. The provisions as set out in Circular Letter No. 12/SEOJK.07/2014 are valid from August 6, 2014.

Supervision and Control of The Cigarette Industry

by Ignatia Oktavia Simorangkir

The Indonesian cigarette industry is one of the strategic sectors in encouraging the growth of the national economy because of its multiplier effects, such as the significant contribution to state revenues, providing sources of employment and business opportunities, and stimulating related services industries. The primacy of the sector is also demonstrated by Indonesia's position as possessing the third highest number of cigarette smokers in the world, following China and India, as reported by the World Health Organization in its Report on the Global Tobacco Epidemic Year 2008. Indonesia has become a market with huge potential for domestic and foreign investors dominating the tobacco industry. A need for enhanced scrutiny and control of the tobacco industry has therefore been recognized.

One strategic endeavor of the Industry Ministry to control the cigarette industry in Indonesia was to issue Industry Minister Regulation No. 64/M-IND/PER/7/2014 entitled the Supervision and Control of Cigarette Industry Businesses ("***Regulation No. 64/M-IND/PER/7/2014***"). This regulation has been in force since July 10th, 2014.

Regulation No. 64/M-IND/PER/7/2014 classified the cigarette industry into three sectors, namely, the 'kretek' cigarette industry (KBLI 12011), the 'white' cigarette industry (KBLI 12012), and the 'other' cigarette industry (KBLI 12019). Investors wishing to conduct business activities in the tobacco industry must possess an Industry Business License issued with reference to the prevailing Negative Investment List. The Industry Business License for foreign investors is issued by Central One Stop Services, while for domestic investors it is issued by Regional One Stop Services.

Referring to Regulation No. 64/M-IND/PER/7/2014, the Cigarette Industry Business License shall only be granted to small and medium industries going into partnership with large scale industry. These partnerships may be made through sub-contracting, profit sharing, operational cooperation and/or joint ventures. Before the investors make their proposals in respect of an Industry Business License application, investors must first obtain recommendation from the General Director of Agro Industry. This recommendation must also be obtained by investors wishing to apply for an Expansion License and Industry Registration Certificate, or any changes to the same. A cigarette company changing its business must modify its Industry Business License. If a company changes its address or factory location, it must notify the change in writing to the issuing officer of the Industry Business License no later than 30 (thirty) business days from the acceptance of the change stipulated. However, if the company makes changes to the name of the company, factory location, ownership status, or intends to expand in order to increase production capacity, or intends to enter into a merger/consolidation/acquisition, the company must first obtain recommendation from the General Director of Agro Industry through Central Public Services Unit.

New Rules On Coal Products And Export

by Rio Rahmat Hidayat

The Ministry of Trade has issued the Minister of Trade Regulation No.39/M-DAG/PER/ 7/2014 regarding Coal Products and Export ("**Regulation**"), which was promulgated 15 July 2014 and will come into effect on 1 September 2014.

The purpose of this Regulation is to prevent the occurrence of excessive exploitation, securing the availability of domestic coal products, increase the traceability of coal mining products, enforcing the obligation to pay dues/ royalties, as well as to create business and legal certainty for mining businesses.

This Regulation's provisions are summarised as follows:

According to Article 3 of the Regulation, the export of coal and coal products can only be undertaken by a company that has gained recognition as a Registered Exporter of Coal ("**ET-Batubara**") from the Director General of Foreign Trade ("**the Director General**") on behalf of the Minister of Trade.

To be recognized as ET-Batubara, a company must submit a written request to the Director General by enclosing items such as:

1. a photocopy of the of Production Operation IUP, Production Operation IUPK, Special Production Operation IUP for transportation and sale or special Operation IUP for processing and/or refining;
2. a photocopy of the of Taxpayer Registration Number (NPWP);
3. a photocopy of the of Company Registration Certificate (TDP); and
4. the original recommendation from the Director General of Mineral and Coal Mining.

Recognition as ET-Batubara will be issued no later than 5 (five) working days upon receipt of a complete request and is valid for 3 (three) years. It is only given to companies that have a Coal Contract of Work with the government (PKP2B) and a Mining License as mentioned above.

Every export of mining products must be verified by the surveyors assigned by the Director General by a formal request for verification to the surveyor and must include proof of payment of production fees/royalties in the document verification.

ET-Batubara must submit a written report on coal products and export activities, whether or not undertaken periodically, every month no later than the 15th (fifteenth) of the following month to the Director General (Director of Export of Industrial and Mining).

Recognition as ET-Batubara will be revoked by the Director General if:

1. the document given to obtain recognition as ET-Coal is proved to be incorrect;
2. the applicant fails to submit a report on its export activities for three (3) times;
3. there is a modification, add and/or replacement of the content in the ET-Batubara certification document;
4. there is export of coal and coal products of the wrong type or amount than stated in the export documents;
5. there is declaration of guilt by the court for an offense related to the abuse as ET-Batubara.

Towards such revocation, a company can regain official recognition as ET-Batubara by filing an application 1 (one) year on from the date of revocation.

This Regulation will replace the Minister of Trade Regulation No.14/M-DAG/PER/5/2008 regarding Verification or Technical Investigation on Certain Export Mining Products.

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