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The LEGAL 500 ASIA PACIFIC LEADING FIRM 2017

NEWSLETTER Issue 41 MARCH 2017

Second Amendment to the Minister of Trade Regulation on Company Registration

by Eivan Hadhy Prabowo

On February 17th 2017, the Minister of Trade ("**MOT**") promulgated MOT Regulation No. 08/M-DAG/PER/2/2017 on the Second Amendment to the MOT Regulation No. 37/M-DAG/PER/9/2007 concerning the Implementation of Company Registration ("**Permendag No. 08/2017**"). In order to facilitate ease of business in Indonesia, it was deemed necessary to amend several provisions, specifically related to the renewal of the Certificate of Company Registration (*Tanda Daftar Perusahaan* or "**TDP**") regulated under MOT Regulation No. 37/M-DAG/PER/9/2007 as amended by MOT Regulation No. 116/M-DAG/PER/12/2015 ("**Permendag No. 37/2007**").

With the issuance of Permendag No. 08/2017, several provisions stipulated in Article 9 and Article 27 of Permendag No. 37/2007 have been amended. The provision relating to the renewal of the TDP which was regulated by Article 9 of Permendag No. 37/2007, will now be regulated by Article 9A, placed between Articles 9 and 10.

Pursuant to Article 9A, the renewal of the TDP should be done by submitting the notification letter manually or electronically using the format as attached in Appendix VA of Permendag No. 08/2017, to the Head of Company Registration Office regarding the end of the term of the TDP, by attaching a scanned copy of the existing TDP. The Head of Company Registration Office will then issue the TDP 3 (three) working days at the latest after the acceptance of such a notification letter. If within 3 (three) working days the TDP is not issued, the old TDP will be deemed to remain valid and updated.

Furthermore, Article 9A also stipulates that the renewal of TDP will be free of charge, thereby revoking and invalidating Article 23 of Permendag No. 37/2007. In order to adjust the abovementioned provision, Article 27 which previously regulated sanctions will also be amended.

The Permendag No. 08/2017 came into force on 22 February 2017.

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New Regulation of the Procedures and Requirements for the Issuance of Recommendations to Export Processed and Refined Minerals

by Alfons Emanuel Moller

On January 11th 2017, the Minister of Energy and Mineral Resources ("**MOEMR**") issued Regulation No. 06 of 2017 on Procedures and Requirements of the Granting of Recommendations to Export Processed and Refined Minerals ("**Regulation 2017**"). Previously, this matter was regulated under MOEMR Regulation No. 5 of 2016 ("**Regulation 2016**").

Generally, any metal minerals and non-metal/metal minerals which have been processed with the minimum processing threshold ("**Minerals**") can be exported by the following parties after securing approval ("**Approval**") from Director General of Foreign Trade at the Ministry of Trade:

1. holder of Production Operation Mining-Business Permit (Izin Usaha Pertambangan Operasi Produksi or "**IUP OP**");
2. holder of Special Production Operation Mining-Business Permit (*Izin Usaha Pertambangan Khusus Operasi Produksi* or "**IUPK OP**");
3. holder of IUP OP specifically for processing and refinement;
4. holder of IUP OP specifically for transportation and sales; or
5. parties to Mining-Working Contracts (*Kontrak Karya* or "**KK**").

However, such approval does not apply to the holder of an IUP OP specifically for transportation and sales, and the parties to KK, since Regulation 2017 does not further regulates these parties. Further, the Approval must also be secured by the following parties:

1. holder of IUP OP and IUPK OP who are intending to export nickel with less than 1.7% grade ("**Nickel**") or washed bauxite of A1203 > 42% grade ("**Bauxite**"); or
2. parties who are intending to export anode mud ("**Anode Mud**") which is the residue of copper mining refinement processes;

(hereinafter, the parties intending to export Minerals, Nickel, Bauxite and Anode Mud referred to as the "**Applicant**".)

As a prerequisite for the issuance of Approval, the Applicant must first secure a recommendation ("**Recommendation**") from the Director General of Minerals and Coal ("**Director General**") on behalf of MOEMR.

Obtaining a Recommendation

In order to obtain a Recommendation, the Applicant must submit an application ("**Application**") to the Director General along with supporting documents as stated in Article 5 (2) of Regulation 2017 for the holder of an IUP OP, IUPK OP and IUP OP specifically for processing and refinement, or Article 5 (3) of Regulation 2017 for parties who are intending to export Anode Mud.

In light of the above, there are 3 (three) documents which are required for both parties:

1. statement letter from the applicant stating the validity of all documents submitted to the Director General;
2. integrity pact to construct domestic refinery; and
3. export plan.

The submitted Application will be reviewed by the Director General, and within 14 (fourteen) working days, the Director General must decide whether to issue or reject such a Recommendation; while previously under the Regulation 2016, the timeframe for the issuance of a Recommendation was 20 (twenty) working days.

The Recommendation is valid for 1 (one) year and can be extended for another 1 (one) year for each time extension. The application for the extension of a Recommendation must be submitted to the Director General no later than 14 (fourteen) calendar days prior to the expiry date of the Recommendation.

Government Supervision

The Director General has the obligation to, periodically every 6 (six) months or at any time deemed necessary, supervise the following matters:

1. export activity of Minerals, Nickel, Bauxite and Anode Mud as regulated under Regulation 2017; and
2. progress of the construction of refinery facilities ("**Construction**").

The Government requires that the physical progress of Construction reach at least 90% ("**Progress**") of its pre-determined plan. In case the aforementioned Progress cannot be reached by the Applicant, the Director General will issue a recommendation to the Director General of Foreign Trade at the Ministry of Trade, to revoke the Recommendation.

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New Regulation of Kinds of Taxable Luxury Goods other than Motor Vehicles which are Charged in Sales Tax on Luxury Goods

by Megawati

On 1st March 2017, the Minister of Finance promulgated Minister Regulation No. 35/ PMK.010/2017 on Kinds of Taxable Luxury Goods other than Motor Vehicles which are Charged in Sales Tax on Luxury Goods ("**PMK No. 35/2017**").

This new Regulation revokes and invalidates Ministerial Regulation No. 106/ PMK.010/2015 ("**PMK No. 106/ 2015**") which was amended by Ministerial Regulation No. 206/PMK.010/2015 ("**PMK No. 206/2015**").

In effect, the entire content of PMK No. 35/2017 is a combination of PMK No. 106/2015 and PMK No. 206/2015, so there is no new or different kinds of taxable luxury goods other than motor vehicle which are charged in Sales Tax on Luxury Goods other than which was promulgated in PMK No. 106/2015 and PMK No. 206/2015. Therefore, people who have such goods do not need to be concerned.

Kinds of taxable luxury goods other than motor vehicles which are charged 20% in Sales Tax on Luxury Goods are:

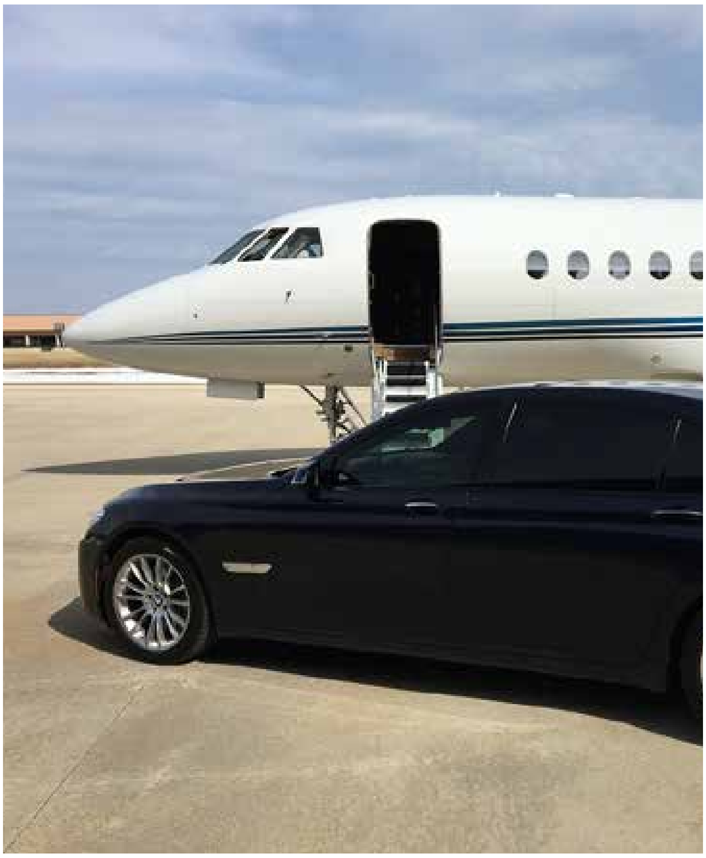
1. non-strata title houses and town houses with a selling price of Rp20.000.000.000 (twenty billion rupiah) or more;
2. strata title apartments, condominiums, town houses, and their kind with a selling price of Rp10.000.000.000 (ten billion rupiah) or more.

Kinds of taxable luxury goods other than motor vehicles which are charged 40% in Sales Tax on Luxury Goods are:

1. the group of air balloons and air balloons which can be steered, other aircraft without locomotion;
2. the group of firearm bullets and other firearms, except for state utilities: bullets and their parts, not including air rifle bullets.

Kinds of taxable luxury goods other than motor vehicles which are charged 50% in Sales Tax on Luxury Goods are:

1. helicopters, except for state utilities;
2. airplanes and other air vehicles, other than helicopters;



3. the group of firearms and other firearms, except for state utilities: artillery arms, revolvers and guns, firearms (other than artillery arms, revolvers and guns) and the kind of equipment which operates with explosive shooting.

Kinds of taxable luxury goods other than motor vehicles which are charged 75% in Sales Tax on Luxury Goods are:

1. cruises, excursion boats, and these kinds of water vehicles especially those designed for person transportation, all kinds of ferry, except for state utilities or public transportation;
2. yachts, except for state utilities or public transportation.

For the implementation of Sales Tax on Luxury Goods payment, one must refer to the Director General of Taxation's Regulation.

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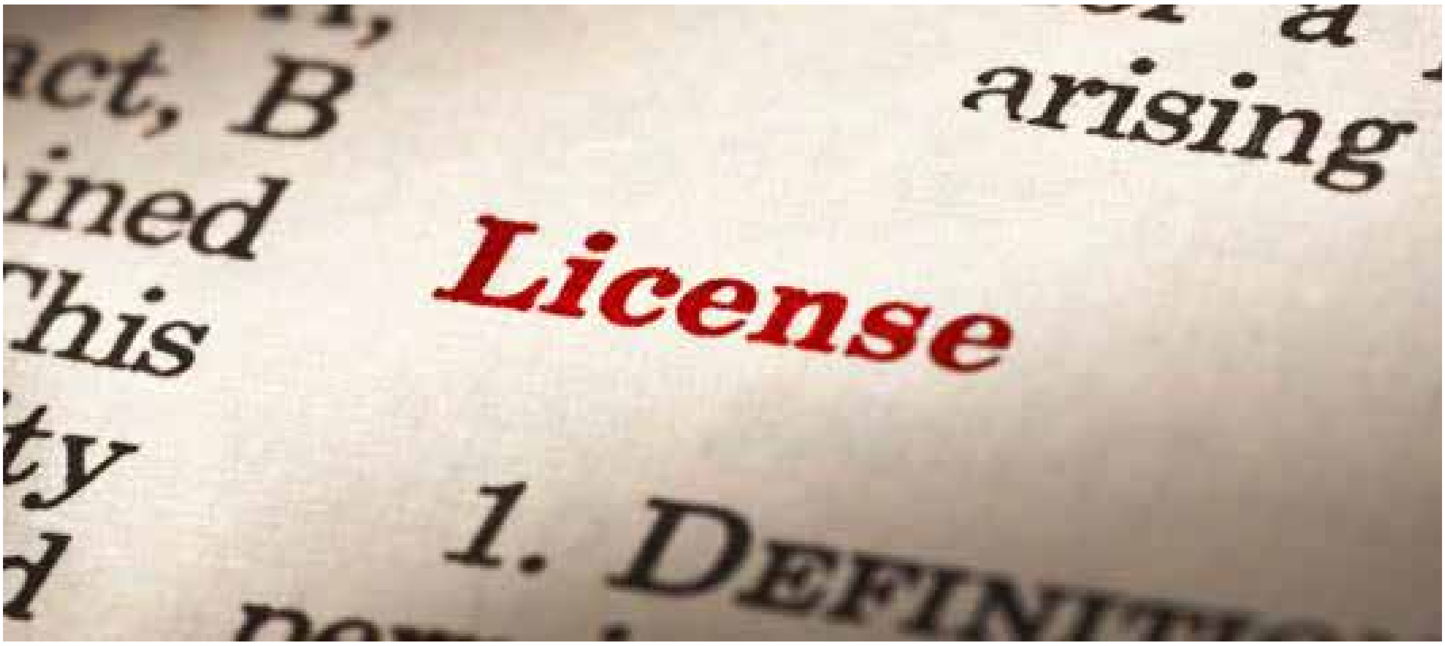
Removal of Trading Business License (SIUP) Re-Registration

by Auraylius Christian



On 22 February 2017, the Ministry of Trade ("**MoT**") promulgated Regulation No. 7/M-DAG/PER/2/2017 ("**Regulation No. 7/M-DAG/PER/2/2017**") on the Third Amendment to Ministry Regulation No. 36/M-DAG/PER/9/2007 on the Issuance of Trading Business Licenses. Previously, Ministry Regulation No. 36/M-DAG/PER/9/2007 had also been amended by Ministry Regulation No. 46/M-DAG/PER/9/2009 and Ministry Regulation No. 39/M-DAG/PER/12/2011 (the "**Previous Regulation")**.

In order to simplify the regulation of the trading sector and to support business entities, the MoT has removed the requirement to re-register Trading Business Licenses (*Surat Izin Usaha Perdagangan* "**SIUP**").

A SIUP is a license for a business entity to conduct trade or business activities, i.e the sale and purchase of goods or services, or any transaction involving ownership transfer over goods or services. As stipulated in the Previous Regulation, such a business entity had to re-register its SIUP every 5 (five) years, but this requirement has been removed by Regulation No. 7/M-DAG/PER/2/2017. Hence, once an entity obtains a SIUP, it will remain valid as long as the entity engages in trade activities.

Besides the provisions above, in compliance with Regulation No. 7/M-DAG/PER/2/2017, Article 16 regulates that every business entity applying for a new SIUP, the replacement of a lost or damaged SIUP, and the amendment or change of items in the SIUP, is not subject to penalties.

Furthermore, another important point that is stipulated in Regulation No. 7/M-DAG/PER/2/2017 is in regard to breach of the provisions stipulated in Article 13 paragraph 1, Article 14, Article 17, and Article 18 paragraph 1, which, when comitted by the holder of a SIUP, Regulation No. 7/M-DAG/PER/2/2017 stipulates that such a violation shall be subject to written warnings issued by the authority. Regulation No. 7/M-DAG/PER/2/2017 came into force on the date of promulgation.

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