Dear Members, dear Readers,

Within the issuance of this 6th edition of Newsletter of Law and Taxes, we would like to proudly inform you that Indonesian Government efforts to deregulate the economy has caught global investors’ attention as Indonesia’s ranking in the World Bank’s List Ease of Doing Business index for 2017 has climbed 15 places to 91, from the previous rank of 106. World Bank Indonesia country director Rodrigo Chaves highlighted seven key areas that Indonesia had undertaken reforms in, including the ease to establish a business, access to electricity, registering property, acquiring finance, paying taxes, cross-border trade and establishing contracts.

Meanwhile from the macro economy view, the Indonesian economy expanded 5.02 percent year-on-year in the third quarter of 2016, compared to an upwardly revised 5.19 percent growth in the June quarter while market estimated a 5.04 percent expansion. While private consumption and investment slowed, government spending and exports declined.

Further on the government’s effort to increase the state budget, as of Wednesday, 19 October 2016, the Tax Amnesty’s ransom based on pajak.go.id sites has reached IDR 93.7 trillion from the target of IDR 165 trillion (approximate 57%). This is obviously very encouraging for the Indonesia because the program, which was inaugurated 01 July 2016, albeit the slow start, is now considered successful and well received by the public. The program also declared as one of the world’s most successful tax amnesty project, forecasting that up to 2,000 trillion rupiah of assets would be declared.

We would also emphasize on the result of EU-Indonesia Business Dialogue (EIBD) held on 08 November 2016 in Jakarta with the topic “CEPA - Enhancing the EU - Indonesia Partnership: A New Framework for Trade and Investment Relations”. EIBD strengthen the CEPA talks between the countries and it is projected to be implemented in 2030.

We again asked our partners, the high profile and expert law firms and tax consultants, to share their insights on this edition of EKONID’s Newsletter Law & Taxes ranging from Construction Representative Office, Compliance, Labor, Banking and Finance, Liquidation, Corporate Governance, M&A, Tax Amnesty, International Tax law, Foreign Trade, Renewable Energies, Investment, Arbitration to Litigation issues.

The Network Law & Taxes will not be completed without your highly regarded expertise and contribution. To end this exciting year we thank our partners for providing their valuable expertise and wish you and our readers all the best for the new one.

Cassandra S. Paulira
Head of Corporate Services
New Provisions on Business Activities of Commercial Banks

With effect from 14 July 2016 the Financial Services Authority (OJK) has issued Circular No. 27/SEOJK.03/2016 dealing with the Business Activities of Commercial Banks based on their Core Capital Levels. The new provisions replace the Bank Indonesia Circular No. 15/6/DPNP of 2013.

While the new circular mainly sets out similar provisions to the previous Circular, the new Circular also contains two major changes: it is no longer allowed for banks to organize fund transfers and to issue traveler’s cheques. In addition, the competent authority changed.

The new Circular divides the business activities of commercial banks into ten different activities, e.g. collection of funds and trade finance.

The scope of the permitted activities for commercial banks depend upon their core-capital levels. The general rule is: the higher the core-capital level, the wider their scope of business activities.

Without the approval from the OJK, banks may offer basic products / services according to their core-capital designation. However, OJK approval is required, if a commercial bank plans to offer anything with a higher complexity.

To obtain the approval, the bank has to submit an application and relevant supporting documents to the OJK within 60 days of the issuance or implementation of the new product or service. In the past, such applications had to be submitted to the BI while now it must be submitted to the OJK. After receiving a complete application, the OJK has 60 days to render either an approval or a rejection.

Once an approval has been rendered, the bank must start the new product or service within six months. Otherwise, the approval automatically becomes invalid.

Additionally, commercial banks are required to submit realization reports to the OJK within seven days after any new product or service has been issued or implemented and made available to the customers.

New Classifications for Industrial Businesses

Taking effect from 27 July 2016 the Minister of Industry has issued Regulation No. 64/M-IND/PER/7/2016 on Total Employee Numbers and Investment Values for the Classification of Industrial Scale.

The current Industrial Law states that every industrial business has to acquire an industrial license from the competent Minister or another competent authority. This industrial license is to be granted to a business based on its business classification. Therefore, the implementation of a corresponding classification system became necessary. The new regulation provides three different classifications: small, medium or large businesses. Two components are relevant for the classification of a business: the total number of Employees and the Investment Value.

Please note that the above mentioned classifications are not equivalent to the classifications for small-scale and medium-scale enterprises according to the Law on Micro-, Small-, and Medium-Scale Enterprises (MSME Law). The new Regulation applies to businesses working in industrial sectors while, on the contrary, the MSME Law applies to enterprises working in non-industrial sectors.

Another important change coming with the new Regulation is that it is now required specifically for small-scale industrial businesses that any owner of such business runs his business activities from the same location he lives in.

Additionally, it has to be pointed out that the Industrial Law generally reserves certain types of industrial business activities for Indonesian citizens. This concerns small-scale industrial businesses, unique industrial businesses which are considered integral to the country’s national heritage and certain medium-scale industrial businesses. The President determines which businesses belong to the first and second group.

<table>
<thead>
<tr>
<th>Investment Value</th>
<th>&lt; IDR 1 Billion</th>
<th>IDR 1 Billion - IDR 15 Billion</th>
<th>&gt; IDR 15 Billion</th>
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<tbody>
<tr>
<td>Number of Employees</td>
<td>1 - 19 Employees</td>
<td>Small - Scale Industry (Not Including land and buildings)</td>
<td>Medium - Scale Industry</td>
</tr>
<tr>
<td></td>
<td>&gt; 20 Employees</td>
<td>-</td>
<td>Medium - Scale Industry</td>
</tr>
</tbody>
</table>

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Suspensions regarding Employers Access to Public Services

With effect from 12 July 2016 the Minister of Employment has recently issued Regulation No. 23 of 2016 dealing with Procedures for the Imposition and Revocation of Sanctions in the Form of Suspensions of Access to certain Public Services by Non-State Employers excluding state officials. The regulation was issued with the purpose to increase the level of mandatory participation in the various social-security programs.

The new regulation sets out guidelines which limit the access to public services by non state employers who fail to comply with the provisions on mandatory participation in the social security program for workers containing life insurance, work-accident insurance, the pension program and the old age benefits program.

In case any Employer violates these new guidelines, a sanction system with four different levels will be imposed. On the first level, a first written warning is sent to the Employer. If the violation persists, a second written warning is sent to the Employer within 10 business days after the issuance of the first written warning. In case the violation still persists, a fine is imposed within 10 business days after the issuance of the second written warning. On the fourth and last level, the competent governmental officials will suspend access for the Employer to certain public services. This means for the Employer that he can’t obtain any business permits, licenses for participation in a procurement tender, foreign-workers permits, worker-provider permits or building-construction permits.

As the measure with the strongest impact on the Employer, the suspension of access to public services can only be imposed after a corresponding recommendation from the competent authorities.

Any suspension regarding the access to public services will be revoked after the Employer in question has complied with his obligations. But this revocation requires a corresponding recommendation from the competent authorities as well.

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Schulz Noack Bärwinkel

Schulz Noack Bärwinkel (SNB) is a German law firm based in Hamburg, which was established in 1929. Over the years we developed a strong focus on the Asian markets, especially China, Vietnam and Indonesia. Today SNB maintains offices in China and Southeast Asia with an international team led by highly experienced German attorneys. Through our partnership with a leading Indonesian commercial and corporate law firm, we provide our clients with high quality legal services. Our team consists of German-speaking attorneys with substantial Asia experience and language skills, combined with a thorough understanding of the Indonesian business environment.

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Overview of New Regulation on Foreign Construction Business Entity Representative Office (BUJKA)

The construction business in Indonesia is expected to grow strongly with the availability of many Indonesian Government-supported infrastructure projects. The government is very optimistic that Indonesia’s future infrastructure effort would achieve the highest target since this industry has already attracted a large number of investors. In order to support this effort, the government has facilitated foreign investor, particularly to set up businesses in the construction industry without the need to establish a formal Indonesian entity. Foreign investors may decide to apply for a foreign construction business entity representative offices (BUJKA) license and thereby further stimulating interest to set up BUJKA in this country. In fact, for the past ten years, the number of BUJKA in Indonesia has risen significantly.

Despite government efforts to make it easier for investors to set up BUJKA, however difficulties still remain. Under the Regulation of the National Construction Development Board (LPJK) Number 01/2015 concerning Registration of Foreign Construction Business Entity Representative Office (LPJK Regulation 01/2015), BUJKA must first obtain a Business Entity Certificate (SBU) issued by the LPJKN through the construction association prior to obtaining a BUJKA license. To obtain an SBU, BUJKA needs to present a construction permit issued by competent authority in the originating country, where not all countries have the requisite construction license.

Based on our experience, it was difficult to convince the authorities that not all countries have same system as Indonesia. For example, we were informed that under the jurisdiction of the Federal Republic of Germany, construction business does not require a specific business license (e.g. construction license). As a solution, we recommended our client to provide a statement letter from German Embassy in Jakarta and/or legal opinion from German legal expert confirming the said circumstances for the comfort of the authorities.

Compliance

Procedures for Implementing Bookkeeping Using Foreign Language and Currency

In order to maintain bookkeeping in foreign language and currency, a tax subject must first be approved by the Minister of Finance (MoF). In order to provide guidance for tax subjects to apply for MoF’s approval to use foreign language and currency for bookkeeping, MoF has issued Regulation No. 196/PMK.03/2007 of 2007 as lastly amended by Regulation No. 1/PMK.03/2015, and the Director General of Taxation Regulation No. PER-23/PJ/2015 of 2015 as implementing regulation.

Not all tax subjects are eligible to use foreign language and currency in maintaining bookkeeping. Those who are eligible to maintain bookkeeping in foreign language and currency are tax subjects who are in context of: (i) foreign Investments; (ii) contracts of work with the Indonesian Government; (iii) contractors of cooperative contract; (iv) permanent establishments; (v) having registered its stocks in foreign stock exchanges; (vi) collective investment contracts (KIK) issuing U.S. Dollar denominated mutual funds; (vii) having direct affiliation with overseas parent companies; and (viii) having presenting U.S. Dollar-denominated in accordance with accounting standards applicable in Indonesia.

To apply for the said approval, the tax subject should submit written application to tax office where the tax subject is registered. The application should be submitted 3 months (i) before the start of the financial year using the foreign language and currency or (ii) after the establishment of the tax subject. Upon obtaining the approval, the tax subject should commence to maintain bookkeeping in foreign language and currency at the earliest 5 years as of the date of the approval.

Currently, the approval only applies for maintaining bookkeeping in English and in US Dollar denomination. In addition, MoF has also allowed parties to joint operation to use foreign language and currency in maintaining bookkeeping with the same requirements as mentioned above.
Compliance

Small Scale Domestic Oil Refineries as The Solution of Depriving State’ Dependency on Importing of Oil Fuel

When introducing the Economic Policy Package Chapter VIII, it is still linger in everyone’s mind that the President of the Republic of Indonesia, Mr. Joko Widodo, has promised to boost domestic oil production by accelerating the construction of domestic oil refineries in Indonesia. One of the purposes of this economic policy package is to encourage domestic or foreign business entities to process crude oil in Indonesia with a view to reduce state dependency on imported fuel oil, which seems to be one of the problems in the oil and gas sector these days.

To support such policy, the Ministry of Energy and Mineral Resources (MoEMR), being the institution authorized to regulate policy in the oil and gas sector, has issued Regulation Number 22 of 2016 concerning the Construction of Small-Scale Domestic Oil Refineries (MoEMR 22/2016) that provides guidelines for the construction of small-scale domestic oil refineries. In sum, the regulation governs that small-scale domestic oil refineries shall be constructed inside or outside a Working Area with a maximum production capacity of 20,000 Barrels of Oil per Day.

Further, MoEMR 22/2016 states that the parties that have the right to construct and conduct business in small-scale domestic oil refineries are:

(i) the Government through the assignment to PT Pertamina (Persero) or

(ii) business entities holding Processing Business Licenses through selection.

In addition, it is worth noting that one of the provisions introduced under this regulation is that the price of crude, as raw material for producing fuel oil, will be formulated by MoEMR based on the crude oil specifications, the efficiency of upstream and/or downstream activities and the economic price base at the delivery point (well point).

The latest development now is that the Government of Indonesia has announced a tender for the construction of small-scale oil refineries for 7 (seven) clusters, and is preparing the auctioning procedures for tender of clusters.

Office presentation

LUBIS, SANTOSA & MARAMIS Law Firm

LUBIS, SANTOSA & MARAMIS Law Firm, founded in 1986, focuses nearly every major legal concentration including intellectual property rights, commercial, corporate, investment, banking, finance, capital market & securities, trade, manufacturing, distribution, insurance, telecommunications, energy, natural resources, environment, maritime, aviation, tourism, real estate, construction, infrastructure, labor relations, government affairs, taxation, sports & entertainment, arbitration, and litigation. Our practice is dedicated to the provision of prompt, effective and pragmatic legal, business planning risk management advisory services to clients seeking insightful solutions to sophisticated business development, operations and dispute resolutions concerns. We are committed to providing responsive attorneys, efficiently managed cases and transactions, and alternative billing options that succinctly meet the needs of our clients.

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The Liquidation of a PT

Multinational corporations commonly face the situation of having to end their engagement in a certain country, be it due to consolidation or other strategic considerations. While the Indonesian Law on Limited Liability Company (Law 40/2007) sets forth the procedures described below, there are further considerations to be taken into account when liquidating a limited liability company (PT) in Indonesia.

This article shall concentrate on the voluntary liquidation of a PT while there are further ways in which a liquidation may be initiated (e.g. court order or expiry).

The liquidation procedure is initiated by a resolution of the General Meeting of Shareholders (GMS) that decides on the liquidation itself and preferably a liquidation date and the appointment of a liquidator. If no liquidation date is set, the date of the GMS serves as the liquidation date. The Board of Directors of the PT shall serve as the Liquidator in the absence of a specific appointment.

The Liquidator is solely authorized to perform legal actions on behalf of the PT following the liquidation date.

Within 30 days of the liquidation date, the Liquidator must publish the liquidation by formally announcing it in a national newspaper and the State Gazette as well as to the Ministry of Law and Human Rights (MLHR) (1st Announcement). Creditors of the PT may file claims and objections to the liquidation to the Liquidator within 60 days following the 1st Announcement. The Liquidator shall then announce a plan for the sale of assets and division of the proceeds to creditors and shareholders in the same mode as the 1st Announcement (2nd Announcement). During a 90 day period following the 2nd Announcement the Liquidator must sell off all assets of the PT and divide the proceeds according to the plan. The respective final report of the Liquidator must be adopted by the GMS and is to be submitted to the MLHR as well to be announced in the way of the previous announcements. The MLHR will subsequently issue a confirmation of the liquidation.

For shareholders willing to liquidate a PT, potential tax risks should be taken into consideration and eliminated by performing a so-called tax health check. Tax authorities will mostly conduct an audit on liquidated PTs and respective issues may be addressed beforehand.

Corporate Governance

Corporate Governance (CG) is a topic often discussed in public yet rarely fully implemented in the subsidiaries of multinational SMEs. SMEs often do not have centralized CG and/or compliance departments in their HQ for various reasons. While the separation of management responsibility from ownership in the legal structure of a limited liability company does prove beneficial with regard to commercial management, shareholders’ rights and interests are not always in line with those of the management when it comes to fast and complete access to corporate documents and information as well as compliance. The resulting potential for a lack of transparency and incomplete documentation is particularly high in countries with medium to high complexity of regulations and low enforcement rates such as Indonesia. When CG and other compliance requirements are not adhered to without serious consequences for ongoing operations, it is considerably harder and more time consuming to achieve changes on a corporate level such as share capital increases, share transfers or changes to the board of directors or board of commissioners.

These transactions and operations can only be performed based on complete documentation. Limited liability companies with foreign shareholders (PT PMAs) have to abide by more extensive and more regular reporting requirements towards the Investment Coordinating Body (BKPM) and these have to be met in order to obtain BKPM’s necessary approval of changes in shareholding or share capital. Any due diligence by external financiers will typically take the company’s CG situation into account.

One way to implement CG standards and compliance guidelines is to appoint independent directors and/or commissioners to the respective boards who are in charge of CG and compliance and report directly to the shareholders or stakeholders respectively. In their formal position as board members, these individuals have access to records and meetings while not depending on a network inside the company or - in the case of directors - on the commercial success of the operation to maintain their position.

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Untapped M&A Potential in the Buzzing Fintech Industry

Financial technology or fintech is creating a buzz in Indonesia. According to the Financial Services Authority (OJK), there are currently around 70 fintech startups in Indonesia. They provide various services in the financial industry including pawn shops, online financial advisory, peer to peer lending, crowdfunding and payment gateways.

These startups are estimated to have processed Rp 40 trillion worth of transactions in the last 2 years. Such growth is partly due to the increasing amount of internet users in the country. According to the Association of Indonesian Internet Service Provider, in 2015 there were 88 million internet users in Indonesia, 85% of them accessing the internet via their smartphones. The availability of cheap smartphones had helped in pushing the growth.

The fintech startups are valuable as they are helping to tap the unbanked population in Indonesia. According to the World Bank, only 52% of the Indonesian population use formal financial services, and 79% of the low income population do not have access to formal financial services.

Despite its growth and importance, the Indonesian fintech industry still lacks funding. There has not been any major investment made in the industry despite millions of US Dollars being invested in the local e-commerce industry; Tokopedia and Gojek being the frontrunners.

This may be due to several reasons; economic uncertainty, dominance of banks, and lack of suitable startups to invest in. Another reason is absence of clear regulations. Partly as a response to this, Bank Indonesia on 14 November 2016 issued a new fintech regulation setting out the requirements applicable to fintech companies involved in processing payments. It also establishes a Fintech Office as a think-tank for development and providing a one-stop-service for the industry. OJK had also stated its plan to issue a regulation on fintech, promised to oversee the industry in a balanced manner, not too restrictive to hinder growth but not too loosely to compromise consumer protection. Greater clarity in the law will hopefully support the growth of the industry and help achieve financial inclusion in Indonesia.

Luther LLP in collaboration with Maqdir Ismail & Partners

Luther LLP is one of the largest continental European lawfirms in Singapore. With our further lawfirms in Yangon and Shanghai as well as our corporate services offices in Kuala Lumpur, Delhi-Gurgaon, Shanghai and Singapore, we offer a comprehensive range of services to our clients. In Indonesia we have formed a strong collaboration with Maqdir Ismail & Partners in order to service our clients in their ventures in this interesting market. Maqdir Ismail & Partners are highly regarded for their expertise particularly in litigation, corporate law as well as in mergers and acquisitions.
Magic Potion for PT PMA’s?

Since July 1, 2016 the Tax Amnesty Law is in force. Although the start was quite slow, the amnesty program seems to become a reasonable success. According to the Law, tax amnesty is a waiver of (i) the tax due, (ii) administrative sanctions and (iii) criminal sanctions by way of declaring previously undeclared assets and paying a so-called Clearance Levy on these assets.

The tax amnesty is granted on tax obligations which have not been paid or fully settled by taxpayers up to fiscal years ending in 2016 (31 December 2016 at the latest). The tax amnesty covers Income Tax, Value Added Tax (VAT) and Luxury-goods Sales Tax (LST). The Declaration period runs from 1 July 2016 until 31 March 2017. It is important to note that not only individuals can make use of the amnesty. The tax amnesty is also open to companies (including PT PMA’s). In practice, several companies have joined the program. One of the benefits of the amnesty is that tax audits will not be conducted up to the last tax year. Also the Clearance Levy rates are significantly lower than the normal corporate tax rate of 25%. In order to apply for the amnesty a taxpayer should file a so-called Assets Declaration Letter for Tax Amnesty (“Declaration Letter”). The Tax amnesty is granted for all non-declared net-assets (assets minus liabilities) in- or outside Indonesia, which are declared in the Declaration Letter. As mentioned above, on the non-declared assets Clearance Levy must be paid. The Clearance Levy rate is based on various variables (e.g., whether offshore based funds or Indonesia based funds, period of declaration, etc.). The rates vary from 2% to 10%. The “taxable” base of the Clearance Levy is calculated based on the Net Asset Value of the non-declared assets.

On October 25, 2016, the European Commission published legislative proposals to relaunch its Common Consolidated Corporate Tax Base (CCCTB) initiative. In 2011 the Commission already launched such a proposal. This envisaged an optional system for companies to apply a common set of rules to compute taxable profits, including the ability to form a consolidated group, wherever they were based in the EU. Its main objective was to facilitate cross-border business activity within the EU. In 2011 there was not sufficient support among the Member States to adopt the proposal.

The relaunched proposals consist of two separate draft directives, one for a CCTB (without the consolidation element) and one for a CCCTB (with the consolidation element). If approved by all Member States the CCTB proposals would apply from 2019 and the CCCTB from 2021. Under the new proposals the attention has moved from facilitating cross-border business activity within the EU. In 2011 there wasn’t sufficient support among the Member States to adopt the proposal.

The draft directives contain provisions which are intended to mirror the measures that were included in the Anti-Tax avoidance Directive that was adopted in July 2016. Unlike the 2011 proposal, the new rules would be mandatory for large corporate groups and optional for other companies. The rules would be limited to EU-resident companies and permanent establishments in the EU. The CCTB proposal provides rules for calculating the corporate tax base, including anti-avoidance rules. However, taxpayers would continue to fall under their national administrative procedures. The CCCTB proposal lays down the conditions for the formation of a consolidated tax group and sets out the mechanism for allocating the consolidated tax base to the respective Member States (‘formulary apportionment’). Consolidated groups will deal with one tax administration in the EU (‘one-stop-shop’), which would be in the Member State where the group’s parent is tax resident.
International Tax

German Tax Treaty Override

The German Federal Tax Court ("BFH") ruled in its decision of May 25, 2016 that the national treaty override rules are also applicable where a tax treaty was introduced later in time than the national rule. Consequently, a tax treaty concluded later in time does not override national law. In the case at issue, a resident taxpayer in Germany received wages from another state which pursuant to the tax treaty had to be exempt from taxation in Germany. The German tax office denied the exemption, referring to German national law. Under national law the exemption shall only be granted where the taxpayer proves that the wages were actually taxed in the other state. However, no such proof was furnished in the case at hand.

The taxpayer reasoned that the tax treaty should override national law, since the tax treaty was concluded after the introduction of the national law provision. The tax treaty did not contain a so-called subject-to-tax clause. According to the taxpayer national law was superseded by the tax treaty which was enacted later. The German lower court ruled in favor of the taxpayer. The BFH overruled that decision. It argued that the national rule expresses clearly that tax treaty law should be overridden. A time restriction regarding existing tax treaties is not recognizable.

The decision is to be relevant beyond the case at hand for all treaty override rules anchored in German domestic law. These will be applicable to all tax treaties irrespective of the date they were concluded. The BFH decision leaves the German legislator vast leeway regarding the override of treaty law provisions by domestic law. It should be noted that the Indonesian tax practice also contains elements of tax treaty override.

KPMG Advisory Indonesia

KPMG Advisory Indonesia (KAI) has been providing business advisory services focusing on taxation and related business issues since 1957. KAI is one of the largest practices in the country, providing services to multinational corporations, joint ventures and domestic companies operating in a wide range of business sectors. Our experienced tax professionals are drawn from a wide number of countries and backgrounds. Industry specialization, service line expertise and international exposure, together with continuous advanced training, equips them to work with our clients and to be their professional tax advisors in a wide spectrum of business matters.

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**Tax Amnesty for Foreigners**

After lengthy and controversial debates in the parliament, the long-awaited Tax Amnesty Law No. 11/2016 became effective as of 1 July 2016. The law aims to increase tax revenues, set a broader tax base and accelerate economic growth for Indonesia. The tax amnesty provides significant benefits, such as a waiver of tax due, administrative sanctions and tax criminal sanctions up to 31.12.2015 which are granted for reporting undeclared assets and paying a redemption amount. The redemption amount is also significantly lower than normal tax rates; the lowest being 2% compared to normal tax rate of 25% for corporations or 30% for individuals. The tax amnesty program will be in effect until 31.03.2017. Given the benefits and consequences of the program, taxpayers need to consider their own situation before joining the program.

Based on Indonesian Income Tax Law, a foreign individual who stays in Indonesia more than 183 days in a 12 months period, or has the intention to stay in Indonesia, is considered as Indonesia tax resident. Indonesian tax laws adopt the “world-wide concept” for tax residents to declare income, assets and liabilities in their Indonesia tax returns. Under the OECD initiative concerning Automatic Exchange of Information in 2018, Indonesian tax authorities expect to have easier access to information concerning world-wide income, assets and liabilities of Indonesian tax residents, particularly individual tax residents. Hence, individual taxpayers, who have not reported their world-wide income, assets and liabilities up to 2015 tax returns, may consider joining this program in view of the risk that any assets discovered by tax authority, which have not been declared in tax returns, will be considered as additional income upon expiry of the tax amnesty period. This additional income will be subject to normal income tax rate (currently maximum 30% for individual taxpayers), plus applicable penalties.

All taxpayers including foreigners are eligible to participate in the tax amnesty program. Joining the program can bring benefits for foreign persons in Indonesia in mitigating tax risks up to 31 December 2015. Attention should be given to the declaration of assets located outside of Indonesia under the tax amnesty as the tax authorities expects such overseas assets to generate income which is taxable in Indonesia. Related risks should be individually assessed prior to joining the program.

**CEPA Negotiations in First Round**

On 18 July 2016, the EU Trade Commissioner and the Indonesian Minister of Trade announced to officially launch the negotiations for a Comprehensive Economic Partnership Agreement between the European Union and Indonesia (CEPA), with completion targeted for 2019. The announcement followed the same day’s decision by the EU Council to give green light to the European Commission to open negotiations. The first negotiating round took place in Brussels from 20-21 September 2016. The EU negotiating team was led by Ms Helena König, Director for Asia and Latin America, while the Indonesian team was led by Pak Iman Pambagyo, Director General for International Trade Negotiations at the Indonesian Ministry of Trade. Negotiations will be conducted in the light of the EU-Indonesian Partnership and Cooperation Agreement (PCA), which came into force on 1st May, 2014. According to Article 2 PCA, the Parties undertake to hold a comprehensive dialogue and promote further cooperation between them on all sectors of mutual interest with a view to strengthening their bilateral relationship. Aims of cooperation provided by PCA include, among others, developing trade and investment between the Parties to their mutual advantage as well as establishing cooperation in all trade and investment-related areas of mutual interest, in order to facilitate trade and investment flows and to prevent and remove obstacles to trade and investment.

Accordingly, CEPA shall generally simplify trade and investment processes and also cover a broad range of trade related issues. Investment shall be fostered through the development of an attractive and stable administrative mechanism for reciprocal investment, which requires a transparent, open and non-discriminatory regulatory framework. The first negotiation round included discussions concerning trade in goods, rules of origin, sanitary and phytosanitary measures, technical barriers to trade, customs and trade facilitation, government procurement, services and investment, intellectual property rights (including geographical indications), competition, trade and sustainable development, trade remedies, dispute settlement, and economic cooperation. In respect to trade in goods the parties discussed key concepts and provisions to consider and had an initial discussion on exchange of trade and tariff data to be used for negotiations on market access. Work shall be done inter sessionally in order to swiftly arrange an exchange of trade and tariff data and exchange relevant data in advance of the second round of negotiations. Regarding rules of origin the EU indicated that the text should be coherent to the extent possible with its FTA negotiations concluded with other ASEAN Member States (Singapore, Vietnam), with appropriate updating to take into account the recent improvements in the EU preferential rules of origin. As an example, the EU indicated that it aims to propose a system of self-certification. No further details have been revealed so far.

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Renewable Energies

New Regulation concerning Biomass and Biogas Power Purchase

On 4 August 2016, Ministry of Energy and Mineral Resources (MEMR) issued Regulation 21 of 2016 concerning power purchase of electricity generated from biomass and biogas power plant as replacement of Regulation 27 of 2014. Set below are some key features of the Regulation 21. Under Regulation 21 PT PLN shall purchase electricity from power plants at the following tariff:

- **Biomass PP**

<table>
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<td>Medium or High Voltage</td>
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<tr>
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<td>16.00 x F</td>
<td>13.50 x F</td>
<td>11.48 x F</td>
</tr>
<tr>
<td>4</td>
<td>Kalimantan</td>
<td>16.00 x F</td>
<td>13.50 x F</td>
<td>11.48 x F</td>
</tr>
<tr>
<td>5</td>
<td>Bali,Bangka Belitung, Lombok</td>
<td>16.00 x F</td>
<td>13.50 x F</td>
<td>11.48 x F</td>
</tr>
<tr>
<td>6</td>
<td>Riau, Nusa Tenggara &amp; Other Island</td>
<td>16.00 x F</td>
<td>13.50 x F</td>
<td>11.48 x F</td>
</tr>
<tr>
<td>7</td>
<td>Maluku &amp; Papua</td>
<td>16.00 x F</td>
<td>13.50 x F</td>
<td>11.48 x F</td>
</tr>
</tbody>
</table>

- **Biogas PP**

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Capacity up to 20 MW</th>
<th>20 MW - 50 MW</th>
<th>Above 50 MW</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Low Voltage</td>
<td>Medium or High Voltage</td>
<td>High Voltage</td>
</tr>
<tr>
<td>1</td>
<td>Java</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
<tr>
<td>2</td>
<td>Sumatra</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
<tr>
<td>3</td>
<td>Sulawesi</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
<tr>
<td>4</td>
<td>Kalimantan</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
<tr>
<td>5</td>
<td>Bali,Bangka Belitung, Lombok</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
<tr>
<td>6</td>
<td>Riau, Nusa Tenggara &amp; Other Island</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
<tr>
<td>7</td>
<td>Maluku &amp; Papua</td>
<td>13.14 x F</td>
<td>10.64 x F</td>
<td>9.05 x F</td>
</tr>
</tbody>
</table>

State and regional government owned companies as well as private companies with Indonesian/for investment (PMA) legal entity status can file an application with MEMR to obtain the stipulation needed for development and operation of power plants.

Documentation required for the application dossier include a profile of the business entity and feasibility study documents verified by PT PLN consisting among others of estimated total investment, construction schedule until commercial operation date (COD), statement and supporting documents declaring prioritization of local goods and services and funding capability.

After obtaining the stipulation a power purchase agreement (PPA) needs to be signed with PT PLN. In case of failure an explanation to MEMR shall be provided. Evidence of financial close within 12 months after signing the PPA shall be submitted to MEMR. In case of failure the stipulation will be revoked. After signing the PPA and achieving financial close an electricity generation license (IUPTL) will be obtained. If the power plant is not ready for COD latest 36 months after signing of PPA, the tariff will be subject to the following deductions:

<table>
<thead>
<tr>
<th>Delay</th>
<th>Deduction up to</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 3 Month</td>
<td>3 %</td>
</tr>
<tr>
<td>3 - 6 Month</td>
<td>5 %</td>
</tr>
<tr>
<td>6 - 12 Month</td>
<td>8 %</td>
</tr>
<tr>
<td>&gt; 12 Month</td>
<td>Stipulation Revoked</td>
</tr>
</tbody>
</table>

Office presentation

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Foreign Investment on e-commerce Under 2016 Negative Investment List

Indonesia is one of the most populous countries with over 250 million of population. With the growth of internet access and networks to almost all of the layers of society, Indonesia’s e-commerce market is expected to continue growing at a steady rate, which would be a promising opportunity for investors. In relation to the possibility of conducting foreign investment in the e-commerce business sector, earlier this year on 18 May 2016 the Indonesian Government passed the 2016 Negative List of Investment ("2016 Negative List") pursuant to the Presidential Regulation Number 44 of 2016 which revokes and replaces the previous 2014 Negative List. The Negative List specifies whether a business activity is closed to foreign investment or open to foreign investment with certain restrictions.

In respect of e-commerce business, the 2016 Negative List regulates 2 types of e-commerce businesses:

1. Operator of trade transaction through Electronic System (platform-based market place, daily deals, price grabber, online classified advertisements); and
2. Retail trade of certain products via mail order or via internet.

For the first type of e-commerce business, the 2016 Negative List allows 100% foreign investment when the investment value is more than Rp100 billion. If the investment value is less than Rp. 100 billion, foreign investment is allowed up to 49% shares ownership. On the retail trade of certain products or the second type, foreign investors are allowed to have 100% shares provided that the company enters into partnership with micro, small and medium enterprise or cooperatives. The partnership can be in the form of plasma core scheme, subcontract, agency, franchise or other partnership schemes.

Recognition and Enforcement of International/Foreign Arbitral Awards in Indonesia

Before Indonesia ratified the 1958 United Nations Convention on The Recognition and Enforcement of Foreign Arbitral Award ("New York Convention 1958") by Presidential Decree of the Republic of Indonesia No. 34 of 1981, none of the decisions of any foreign arbitral awards could be recognized and enforced in Indonesia. The reason was the principle of sovereignty as contained in Article 463 (RV) Rechtsvoordering Reglement which provides that a foreign court decision could not be enforced in Indonesia. It is assumed that the same thing should be applied to Foreign Arbitral Award.

To ratify the New York Convention 1958 means Indonesia shall be bound to enforce the Foreign Arbitral Awards. Such recognition and enforcement of the Foreign Arbitral Award is currently also accommodated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

The Foreign Arbitral Awards may be recognized and enforced in Indonesia if it meets the following requirements:

(i) the awards must have been rendered by an arbitrator or arbitration tribunal in a country which, together with the Republic of Indonesia, is a party to a bilateral or multilateral treaty on the recognition and enforcement of Foreign Arbitral Awards.

(ii) the awards are limited to awards which, under the provisions of Indonesian law, fall within the scope of commercial law.

(iii) the awards may only be enforced in Indonesia if they do not violate public order.

For the recognition and enforcement of the awards, the awards must be first registered with the Central Jakarta District Court (CJDC) and have exequatur order from the CJDC. With the exequatur order, the successful party in arbitration may further process the enforcement by requesting to the appropriate court to issue aanmaning (warning/reminder) to the losing party to comply with the awards.

Arbitration

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Key Provisions on New Mediation Procedures in Courts

The Supreme Court of Indonesia issued the Regulation No. 1 of 2016 concerning Mediation Procedures in Courts (“SCR 1/2016”) repealing the Supreme Court Regulation No. 1 of 2008 (“SCR 1/2008”). The SCR 1/2016 incorporates three key provisions which includes shortening the period of mediation process, the obligations for the disputing parties to attend mediation process in person and to carry out the mediation process in good faith.

The mediation process is now shorter than as regulated before. SCR 1/2016 provides that mediations must be concluded within 30 days after the disputing parties agree on the selection of a mediator and the costs. The disputing parties must reach such agreement in 2 days since the panel of judges issued a mediation order. The mediation process may be extended for a further 30 (thirty) business days, if it is agreed by disputing parties.

SCR 1/2016 also introduces a new essential provision, i.e., that the disputing parties must attend the mediation process in person, whether with or without its legal counsel. The parties are allowed to attend the mediation through a long distance video-conference. However, parties are not required to attend the mediation if they have a valid excuse, such as health condition, being put under conservatorship, having domicile abroad, and carrying out state duties or have professional commitments or important work.

The other key provision of SCR 1/2016 is that parties have to act in good faith in mediation and sanctions for those who act otherwise. Unfortunately, the particular meaning of ‘good faith’ is not defined in SCR 1/2016. However it is stated that a party is not having acted in good faith, among others, if they not attend a mediation session after having been properly summoned for two consecutive times without giving a valid excuse, or constantly absent without giving a valid excuse, attend the session but do not file or respond to the Case Resume from other parties; and/or do not to sign the agreed draft of Settlement Agreement without giving a valid excuse.

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Office-in-Office

Market Entry | Sales Support | Customer Dialogues | Preparation of the Own Representative Office or Corporation in Indonesia

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The program constitutes a cost-effective alternative to establishing an own representative or founding a company. It enables estimating the actual market potential, preparing the market entry, developing a proper strategy for the market launch and organizing a quality management on-site.

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- No costs for paying a share capital, corporate taxes or renting office premises
- No need to establish an own staff management and financial accounting
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