

## Client Alert



July 2015

### New Ministry of Employment Regulation on Foreign Workers

On 29 June 2015 the Minister of Employment issued Regulation No. 16 of 2015 on the Procedure for the Utilization of Foreign Manpower ("**Regulation 16**"). Regulation 16 replaces the previous Regulation No. 12 of 2013 on the same matter.

#### Regulation 16

Regulation 16 governs the procedures for the use of foreign workers by employers in Indonesia, e.g., the procedure for an employer to obtain foreign manpower utilization plans (RPTKA) and work permits (IMTA) for foreigners to work in Indonesia.

Two new matters of importance regulated under Regulation 16 are:

1. a requirement for non-resident directors and commissioners to obtain a work permit; and
2. Indonesian to foreigner ratio requirements.

Regulation 16 also expands the type of work that can be conducted under a "temporary" work permit.

#### Work Permits - Non-Resident Directors and Commissioners

Article 37(2) of Regulation 16 refers to "foreign workers" who hold the position of:

- director of an Indonesian company
- commissioner of an Indonesian company
- member of the Patrons, the Management and the Supervisors of a Foundation (*Yayasan*)

and are "domiciled abroad" having to obtain a work permit sponsored by the relevant Indonesian entity.

In other words, it appears that under Article 37(2) even if a foreign director or commissioner of an Indonesian company lives outside Indonesia and has no intention to work in Indonesia he or she *may* need to obtain a work permit.

Article 37(2) contradicts other articles in Regulation 16, and in light of a number of the requirements to obtain work permits (among others a foreigner

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must have a residential address in Indonesia), there are arguments that it cannot be implemented.

It remains to be seen if, and how, Article 37(2) will be implemented. As is the case with many new regulations, we expect that a number of issues and questions will be raised with the Ministry of Employment.

Prior to the issuance of Regulation 16, we are aware of one local office of the Ministry of Employment requesting companies to get their non-resident directors to obtain work permits (or have the non-resident directors resign from the board of directors). The requests were as a result of "labor inspections" of the companies by officials of the local office of the Ministry of Employment. It is *possible* this is how Article 37(2) will be implemented but this is not yet known.

## Ratios

Regulation 16 requires an employer that employs 1 foreigner to have at least 10 Indonesian workers (Article 3(1)). This has been an unwritten policy for some time but has not previously been regulated.

The 10:1 ratio does not apply for foreigners who are:

- members of the Board of Directors or Board of Commissioners of an Indonesian company
- members of the Patrons, the Management and the Supervisors of a Foundation (*Yayasan*)
- employed for a job that is "emergency and urgent" in nature;
- employed for a temporary job
- employed for *impresariat* services - *see comment below*

"Impresariat" services are basically entertainment services (e.g. temporarily bringing in or sending back foreign workers in the field of arts and sports).

## Transition Period and Implementation

There is no "transition period" (i.e. a grace period for necessary adjustments to be made) under Regulation 16.

As mentioned above, we do not know how the requirement under Article 37(2) will be implemented (if at all). We expect that in the weeks after Idul Fitri there will be discussions on what kinds of adjustments are necessary (if any).

We are looking into the matter. As soon as additional information becomes available, another client alert will be issued.