



## Area Of Practice

ABNR is principally engaged in the provision of legal services to foreign companies, banks and international institutions operating or setting up operations in Indonesia as well as to Indonesian enterprises contracting with foreign companies and institutions or with other Indonesian companies. ABNR specializes in the handling of commercial, corporate and financial legal matters. Such matters include financial and corporate restructurings, project finance, banking and financial transaction, mergers and acquisitions, joint venture arrangements, licensing arrangements, petroleum and energy sector operations, capital market transactions, mining operations, construction, shipping, aviation, labor matters and intellectual property matters. ABNR has a comprehensive database of all applicable Indonesian laws, regulation and administrative procedure.

ABNR does not generally handle litigation but will, if so requested, undertake cases in which it has particular competence. Otherwise, ABNR firm will advise clients as to the choice of Indonesian litigators and coordinate and supervise the conduct of court proceedings.

## Ali Budiardjo, Nugroho, Reksodiputro - Counsellors at Law

This Newsletter is meant to keep our clients and friends informed of the recent regulations in Indonesia, which we feel may be interesting to them. You will, therefore, not find all recent legislations in this Newsletter and the selected items are also not dealt with in length. You will find that the articles contain only the general information about such recent regulations. If further information or a deeper analysis of the topics published in the Newsletter is needed, please contact us at the address or telephone and e-mail address indicated.

## REGULATION ON PROPERTY AGENTS

The fast growth of Indonesia's property sector has prompted the Minister of Trade to issue Regulation No. 33/MDAG/PER/8/2008 regarding Property Agent Companies (the "Regulation"). The Minister's other consideration for the issue of the Regulation is the necessity to provide legal certainty, sound business environment and consumer protection, and to prevent unhealthy business competition among the country's property agents.

Under the Regulation, the activities of a property agent includes services in property sale, purchase and lease as well as research, review and consultation; and in property marketing as well as dissemination of information. The most important feature of the regulation is the stipulation in its Article 8 that the activities of a property agent are within the exclusive domain of local companies. However, a local property agent company may work in cooperation with a foreign property agent that is operating in Indonesia under a franchise arrangement.

The remaining provisions of the Regulation among others concern the requirement for all property agents to have the so-called *SIU-P4*, which is the operation permit for property agent companies. The Regulation also allows property agents to receive a minimum commission of 2% of the transaction value for their services.

The Regulation was issued on 21 August 2008, but will come into effect only one year as of the date of its issue. (hmb)

## ACTIVITIES OF SUPPORT INDUSTRIES FOR THE OIL AND GAS INDUSTRY

The Minister of Energy and Mineral Resources on 22 August 2008 issued his Regulation No. 27/2008 regarding Activities of Support Businesses for the Oil and Gas Industry (the “Regulation”). The Regulation revoked the old minister decree on the same matter that was issued more than thirty years ago.

The Regulation covers both upstream and downstream business activities and includes manufacturing, construction and non construction activities related to oil and gas operations. Essentially, the Regulation requires that all companies or individuals engaging in the oil and gas support business possess a Certificate of Registration. Exception to this obligation is afforded only to oil and gas support business entities that are users of oil and gas.

The remaining provisions of the Regulation pertain to, among others, the procedure for the processing of the required Certificate of Registration with the respective Directorate General in the Department of Energy and Mineral Resources. Under the Regulation, the Director General is to issue a decision on the application within 10 days as of the submission of the application. There are also provisions with respect to the formation and establishment of professional and business associations within the oil and gas support industry.

The Regulation has been in force since 22 August 2008. (hmb)

## CONDUCT OF CREDIT AND SURETYSHIP INSURANCE BUSINESS

The Minister of Finance on 3 September 2008 issued her Regulation No. 124/PMK.010/2008 regarding Conduct of Credit and Suretyship Insurance Business (the “Regulation”), which replaces Decision of the Minister of Finance Decision No.422/KMK.06/2003 on the same subject matter. The Regulation states that the consideration for the issue is the need for a better regulatory framework which reflects the current developments and practices in the insurance industry and which provides stakeholders with better protection.

Under the Regulation, a general insurance company engaging in the provision of credit and suretyship insurance is required to:

- i. meet the solvency and liquidity ratio requirement stipulated for insurance and re-insurance companies;
- ii. have personnel who have expertise in the field and accredited by the Indonesian Insurance Expert Management Association (AAMAI);
- iii. have an underwriting manual for every credit and suretyship insurance product being offered;
- iv. have an information system that allows interested parties to verify the accuracy of the issued credit and suretyship insurance; and
- v. establish education and training programs in the management of credit and suretyship insurance.

In addition, a general insurance company operating in the credit or suretyship insurance business is also required to:

- have a minimum capital of IDR 250 billion.
- set a service fee rate that includes risk, administration, acquisition, and profit costs.
- honor its payment obligations to buyers of its products without any precondition.

Finally, the Regulation requires that all insurers that have offered credit or suretyship insurance products will have made their adjustments for compliance with the provisions of the Regulation at the latest 6 months after the promulgation of the Regulation.

The Regulation became effective on the day of its issue, i.e. 3 September 2008. (hmb)

## INDONESIAN PARLIAMENT PASSES THE NEW INCOME TAX LAW

The Indonesian parliament finally approved the income tax bill proposed by the government. This law, Number 36 of 2008 regarding Fourth Amendment to Law Number 7 of 1983 on Income Tax, will come into force at the beginning of the 2009 fiscal year. A potential tax revenue decrease of up to IDR 40 trillion is expected as a result.

The following are the major changes from the previous law:

- 1) Reduction of the Income Tax rates, in line with the income tax rates prevailing in adjacent countries.

## a. Individual Taxpayers

The former 5 tiers of the progressive income tax rates for individual taxpayers have been reduced to 4 tiers:

Annual Taxable Income	Income Tax Rate
IDR 1 up to IDR 50 Million	5%
IDR 50 Million up to IDR 250 Million	15%
IDR 250 Million up to IDR 500 Million	25%
Above IDR 500 Million	30%

Income from dividends which was subject to progressive income tax rates of up to 35% is now taxed at 10% final tax rate. Income tax installments for certain individual taxpayers is reduced from 2% to 0,75%.

## b. Corporate Taxpayers

The income tax rates for corporate taxpayers are lowered from the current 30 % to 28% in 2009 and 25% in 2010.

Corporate taxpayers that become public companies get a 5% reduction from the normal rate if they have a diversified public ownership of at least 40 percent. Small and Medium Enterprises and Cooperatives will receive 50% reduction of the normal income tax rate. The withholding tax on any taxable service provided by corporate taxpayers is reduced from 15% of the estimated net income to 2% of the gross amount.

The requirement to have active business operations for a corporate taxpayer that wishes to have an income tax exemption over the dividends it receives is no longer applicable.

2. Increase of the nontaxable income amount from IDR 13.2 million to IDR 15.84 million for an individual, and from IDR 1.2 million to IDR 1.32 million for a maximum of three dependent family members. Where a taxpayer's spouse earns a taxable income and the couple files a combined income, an additional IDR 13.2 million of nontaxable income is allowed.
3. Exit tax exemption for individual taxpayers who have a Taxpayer Identification Number, when traveling overseas. The exit tax payment requirement will be completely abolished at the beginning of the 2011

fiscal year. Currently the exit tax amounts of IDR 500.000 or IDR 1.000.000 constitutes an advance payment of the individual's income tax.

4. Imposition of 20% to 100% higher withholding tax rates on taxpayers who have no Taxpayer Registration Number (*NPWP*).
5. Expansion of the types of deductible expenses relating to the donation, to include
  - contributions for national disasters and social infrastructure;
  - contributions for scholarships and research and development in Indonesia;
  - contributions for development of sports;
  - mandatory religious donations.
6. Expansion of the types of exempted taxable incomes, to include
  - excess income earned by non-profit institutions or organizations engaging in the field of education and or research and development, if it is re-invested within no more than 4 years as from the time it is generated;
  - scholarships;
  - proceeds received from Workers' Social Security Programs.
7. Confirmation that Central Bank (Bank Indonesia)'s surplus, gains from mining concession transfers, earnings from syariah based businesses and income from derivative transactions are taxable objects.
8. Possible tax deduction for forestry companies for their reserves for reforestation; Waste Water Treatment companies are allowed to claim tax deduction for the use of their reserves for the closure and maintenance of the waste water treatment.
9. Imposition of withholding tax on swap premium and other derivative transactions, and on gains from the haircut granted to non-residents.
10. Introduction of the profit split method and the transactional net margin method for transfer pricing calculations.
11. Introduction of the "look through" principle for the usage of a special purpose vehicle to purchase assets in Indonesia if the parties involved are related in a certain way.

12. Clarification regarding the determination of the beneficial owner of a non-resident corporate taxpayer. More than just a resident certificate is required.
13. Clarification regarding the determination of a corporate taxpayer's resident country. The resident country shall be the country of the shareholders who (jointly or severally) hold 50% or more of the shares, or the country where the effective management is conducted from. (fk)

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