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Indonesia – New Regulations Create Challenges for Foreign Workers, Directors

by KPMG Advisory, Indonesia (a KPMG International member firm)

In this GMS *Flash Alert*, we highlight key changes to the Indonesia Ministry of Manpower Regulation (Manpower Regulation No 16 Year 2015), concerning the procedures and requirements for domestic companies employing foreign employees, including nonresident Directors and Commissioners.[1] Some of the significant changes are:

- a ratio increase of national employees to foreign employees;
- a requirement for nonresident Directors and Commissioners to obtain work permits (known as "IMTA"); and
- a requirement for short-term business visitors to obtain temporary work permits.

Why This Matters

Global mobility professionals, immigration advisers, and cross-border workers should make sure they understand the new rules and are in compliance.

Indonesian-based employers may face greater difficulties hiring foreign workers in light of the new policies. Moreover, short-term business visitors engaging in certain activities may face some more administrative hurdles and fees in light of the need to obtain a temporary work permit when engaging in such activities. In addition, foreign nationals serving on Indonesian Boards will similarly face more administrative hurdles and fees.

Employers should be aware that the Ministry of Manpower will be more closely scrutinizing their hiring policies and practices for purposes of hiring employees for particular positions and moving short-term business visitors into Indonesia for business.

Ratio Increase of National Employees to Foreign Employees

In order to employ one expatriate employee, an employer or a sponsoring company must employ 10 Indonesian counterparts, unless the expatriate employee is:

a. A member of the Board of Directors or Board of Commissioners, a mentor, a manager, or a supervisor;

b. Employed for a job which is for an emergency and/or an urgent circumstance;

c. Temporarily employed;

d. Employed for temporary entertainment/athletic services in the arts or sports.

Requirement for Nonresident Directors and Commissioners to Obtain IMTA

A foreign member of the Board of Directors and Commissioners, a mentor, a manager, or a supervisor domiciled overseas is required to obtain an IMTA.

One of the documents required to be attached to the IMTA application for Directors and/or Commissioners is a copy of the Deed of Establishment.

The regulation states that IMTAs for Directors and /or Commissioners are valid for a maximum of two years and can be extended. However, in practice, it is likely that IMTAs have to be extended annually. A tax identification number (NPWP) and proof of participation in the local social security programs (BPJS) are now required for an IMTA extension.

KPMG Note

- Despite living outside Indonesia and having no intention to "work" in Indonesia, a foreign Director or Commissioner is now required to obtain an IMTA. The Ministry of Manpower is now treating foreign Directors and Commissioners the same way as resident Directors and Commissioners.
- Based on current practice, an IMTA for a Director /Commissioner position is usually issued for a 12-month period and is extendable.
- Under domestic income tax law, expatriate employees residing in Indonesia for more than six months must register for an NPWP.
- IMTA and KITAS (a stay permit) are normally processed as "one package," meaning that once a foreigner applies for a work permit, he/she will be granted both a stay permit (KITAS) and work permit (IMTA). However, if a foreign Director/Commissioner is in fact not residing in Indonesia, he/she is not required to obtain a KITAS (Temporary Stay Permit), and a NPWP is also not needed.
- It is unclear if a foreign Director or Commissioner having an IMTA, but not an NPWP and not registered in the BPJS programs, will face any difficulty when it comes to his/her IMTA renewal.
- There are "tie-breaker" rules stipulated in most of the double taxation treaties signed between various countries and Indonesia. This allows the taxing right granted to the country where an individual is a "true" resident of the country. Therefore, a review on the exact facts of these nonresident Directors and Commissioners on their residency is required.
- It is a mandatory requirement to provide the NPWP of all Directors and/or Commissioners in all corporate annual income tax returns. Currently, nonresident Directors and/or Commissioners do not have an NPWP and thus it is clear that they do not reside in Indonesia. Going forward, companies would need to provide the nonresident Directors and/or Commissioners' resident addresses in the annual income return as evidence of their nonresident status. The KPMG International member firm in Indonesia suggests that companies maintain copies of the passports of their nonresident Directors and Commissioners to substantiate their days of presence in Indonesia in the event of a tax audit.

Requirement for Short-Term Business Visitors to Obtain Temporary Work Permits

A temporary work permit is required for the following activities:

a. Providing guidance, counseling, and/or training in the application and innovation of industrial technology to improve the quality and design of industrial products, as well as cooperation with overseas marketing for Indonesia;

b. Producing commercial films that have acquired permission from the competent authority;

c. Providing lectures;

d. Attending meetings with the Head Office or a representative office in Indonesia;

e. Conducting audit, production quality control and/or inspection at a company branch in Indonesia;

f. Undergoing work ability testing;

g. A one-time job;

h. Work in relation to the installation of machinery, electrical systems, after sales service, and/or products on business trials.

A temporary work permit may be provided for a maximum period of one month, except for activities mentioned in items b, g, and h, which can be for a maximum of six months and are non-extendable.

KPMG Note

In the past, obtaining a business visit visa was sufficient for expatriates providing lectures, training, and/or attending business meetings in Indonesia. With this new regulation, care must be taken with regards to the individual's activities. Typically, if the individual attends a meeting solely for promotional or sales purposes, a simple business visa should still be allowed.

KPMG Note: Next Steps

The KPMG International member firm in Indonesia is expecting further implementing regulations to be issued clarifying the procedures.

Footnote:

1 Manpower Regulation No. 16 Year 2015.

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http://www.kpmg.com/ID/en/IssuesAndInsights/ArticlesPublications/Documents/GMS%20Bulletin-August%202015%20Vol2.pdf

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A New GMS Video Ready to View: Global Mobility Trends Uncovered by KPMG's 2015 Global Assignment Policies and Practices Survey

KPMG's Global Assignment Policies and Practices ("GAPP") survey report for 2015 was recently released by KPMG's Global Mobility Services practice (GMS). The report on the GAPP survey serves as a valuable resource in the global mobility arena, providing much valuable information for program managers. The GAPP survey allows program managers to benchmark their organization's global mobility program in relation to other survey participants.

This 4-1/2 minute video offers highlights of the survey report. To view the video, click here.

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