

New Manpower Regulations on the Requirements for Using Foreign Employees in Indonesia

Introduction

On 29 June 2015, the Government through the Ministry of Manpower (“**MOM**”) issued Regulation No. 16 of 2015 on the Procedure for the Use of Foreign Employees (“**MOM Reg 16/2015**”). MOM Reg 16/2015 revokes the previous regulation No. 12 of 2013 on the same issue. MOM Reg 16/2015 contains a number of provisions which have a significant impact on the use of foreign employees in Indonesia, especially due to MOM Reg 16/2015 sets a number of controversial requirements for using foreign employees in Indonesia. The following are the controversial requirements under MOM Reg 16/2015: (i) mandatory obligation to obtain work permits for non-resident directors and commissioners of Indonesian companies; (ii) a 10:1 ratio of local to foreign employees; and (iii) expansion of the type of work requiring a temporary expatriate manpower utilization plan (“**RPTKA**”) and a temporary work permit.

It was not until even 4 months from the date of issuance and implementation of MOM Reg 16/2015, on 23 October 2015, the MOM issued another Regulation No. 35 of 2015 (“**MOM Reg 35/2015**”) revising a number of controversial provisions of MOM Reg 16/2015.

The following are key revisions made under MOM Reg 16/2015 in relation to the use of foreign employees in Indonesia:

1. Work Permits Requirement for Non-Resident Directors and Commissioners of Indonesian Companies

Previously, MOM Reg 16/2015 extends the work permit (“**IMTA**”) requirement to include foreigners holding position as non-resident (i) directors/commissioners in Indonesian companies or (ii) patron, management and supervisor in Indonesian foundations.

Now, this IMTA requirement is no longer required under MOM Reg 35/2015.

2. 10:1 Ratio of Local to Foreign Employees

Previously, MOM Reg 16/2015 governs that at least 10 Indonesian employees must be hired for every foreign employee that will be employed. Now, this 10:1 ratio is eliminated by MOM Reg 35/2015.

3. Temporary Work and its Permits

Under Regulation No. 12 of 2013, the type of work requiring temporary RPTKAs and IMTAs are only (i) one-time work and (ii) work related to machinery installation, electrical, after-sales service, or product testing during business development stage.

MOM Reg 16/2015 has expanded the type of work requiring a temporary work permit to include:

- i. providing guidance, counseling, and courses in the implementation and innovation of industrial technology to improve the quality and design of industrial products as well as cooperation in marketing for Indonesia abroad;
- ii. making a commercial movie which has a prior permit from the relevant authority;
- iii. giving a lecture;
- iv. attending meetings held by at the principal office or representative office in Indonesia;
- v. performing audits, production quality control, or inspections of Indonesian branch offices;
- vi. performing probation work/job;
- vii. performing one-time work; and
- viii. performing any work related to machinery installation, electrical, after sales service, and product testing during business development stage.

MOM Reg 35/2015 is now **reducing again** the type of work that requires to obtain a temporary work permit to become as follows:

- (i) making a commercial movie which has a prior permit from the relevant authority;
- (ii) performing audits, production quality control, or inspections of Indonesian branch offices for more than 1 month; and
- (iii) performing any work related to machinery installation, electrical, after sales service, and product testing during business development stage.

IMTA for temporary work is granted for a maximum of 6 months and cannot be extended.

4. Transition Period and Implementation

This MOM Reg 35/2015 becomes effective as of 23 October 2015. The transition provision of MOM Reg 35/2015 only governs that the compensation fund payments for using foreign employees (*DKP-TKA*) which has been made during the enforceability of MOM Reg 16/2015 cannot be withdrawn again.

For further information, please contact:

Yogie Sugiharto

Partner

(+62 21818 177 866, yogie.sugiharto@adcolaw.com)

Estafirani Kamahayani

Associate

(+62 21 52903034, estafirani.kamahayani@adcolaw.com)

ADCO Attorneys at Law

Setiabudi Building 2,

6th Floor – Suite 605C

Jl. H.R. Rasuna Said Kav. 62

Jakarta 12920, Indonesia

@2015 ADCO Attorneys at Law.

All rights reserved.

This publication have been prepared for general informational purposes only to provide clients with information on recent legal developments and are not intended as legal advice or opinion.