

Indonesia official clarifies 10:1 foreign worker ratio requirement

Hong Kong Trade Development Council: Indonesia

With Indonesia looking to require companies to employ at least 10 local workers for every one overseas employee, the head of the Work Permit section of the country's Manpower Ministry has offered some clarification on the regulations. Speaking at a seminar largely attended by representatives of foreign businesses, Ruwiyono Septy Priharso suggested that the specified ratio could be achieved by employing a surfeit of low-paid office juniors and drivers.

Priharso's comments came at a time when Indonesia has been seen as sending out contradictory messages to overseas businesses. On one hand, it has been keen to encourage increased FDI, while at the same time it has imposed ever more restrictive visa requirements on incoming workers.

Source: <http://economist-pick-research.hktdc.com/business-news/article/Regulatory-Alert-ASEAN/Indonesia-Official-Clarifies-10-1-Foreign-Worker-Ratio-Requirement/raascan/en/1/1X000000/1X0A3YUC.htm#sthash.1.2C3lp8d.dpuf>

Lippo Group to inject millions into new Indonesia data center

Indonesia-Japan joint venture will be one of the world's largest data centers

The Lippo Group is looking to capitalize on the increased demand for data centers in Indonesia by building what could be one of the largest data center complexes in the world, according to a report on the Jakarta Globe. Located in the Cikarang district, about 30km east of Jakarta, the data center complex will be run by Graha Teknologi Nusantara (GTN), which is a joint venture between Lippo subsidiary Multipolar Technology, Japan's Mitsui & Co and subsidiary Mitsui Knowledge Industry. Multipolar has a 65 percent stake in GTN, while Mitsui and Mitsui Knowledge hold 25 percent and 10 percent respectively. The master plan calls for GTN to eventually put up three buildings with a total floor space of 40,000 sq m (some 400,000 sq ft) and 20,000 racks. The first stage of development will see 8,000 server racks in the first data center building that is currently being built, and will require an estimated investment of between \$25 million and \$30 million.

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Construction on the first building is understood to have started last week, with operations expected to start by April next year. However, the company has not decided when it will start building the second data center building. “Anticipating high demand from the market, especially in the financial and industrial sectors, we’ve prepared as many as 20,000 server racks, which will make us one of the biggest collocation data centers in the world,” said Richard Kartawijaya, the president director of GTN to the *Globe* last Friday.

Kartawijaya was referring to Government Regulation No. 82, which came into force in October 2012. The law prohibits financial data from being kept outside the country unless prior approval is obtained, and has resulted in Indonesia banks scrambling to build up their local infrastructure to comply with the new data sovereignty requirements. The target of 20,000 racks will not be available overnight though, but is projected to be built over the span of five years. “We hope to reach 20,000 racks in less than five years,” said Kartawijaya, “But it really depends on [Indonesia’s] economic growth and the demand for IT in the country. Developing countries tend to see faster growth [for IT spending].”

Other significant challenges remain. As we reported in “The challenges with operating in Indonesia”, there are weaknesses in the network and power supply in Indonesia. The latter means that it may be necessary to rely on a separate power generating plant for reliable power, such as what the PT Data Center Infrastructure Indonesia’s (PT DCI) did with its Indonesia data center.

Source: <http://www.greendatacenternews.org/articles/share/817220/>



IFCCI Forum: New Regulation on Foreign Manpower

Made Barata, S.H. (with research by Miranda Mamahit, S.H.)

On June 29, 2015, the Ministry of Manpower issued Regulation of the Minister of Manpower No. 16 of 2015, regarding the Procedures for Foreign Employment that sets out separate categories for foreigners to work in Indonesia, namely as (i) investors or (ii) skilled workers brought into the country with the aim of transferring knowledge to their subordinates. With regard to management or top-level positions, i.e. Directors and Commissioners, the regulation eases certain rules, such as the need to train a local apprentice, and there is no longer the need for a specific competence or academic background for a given position as long as the work period is limited in scope.

At this forum group discussion held at the Niaga Financial Club on September 23, the speakers were Mr. Ruwiyono Septy Priharso, Section Head for Foreigners' Work Permits in Industrial Sectors from PPTKA (Foreign Worker Employment Service) and Mr. Umar Kasim, Section Head of Legal Research and International Convention from the Legal Bureau of the Manpower Ministry of the Republic of Indonesia. In addition, the Moderator was Mr. Made Barata, S.H. from Mochtar Karuwin Komar law firm, and Mr. Christopher Johnston acted as the interpreter.

One of the salient points was the explanation of the policy reasoning behind the implementation of the new 1:10 ratio between foreign and local employees, which has been perceived as a rather extreme measure. The expectation is that through this ratio there will be a multiplier effect in terms of opening up more job opportunities for Indonesians, which would help alleviate unemployment as well as provide a more efficient transfer of knowledge from the foreign workers.

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Another point that was brought forward was the requirement for businessmen or artistic performers who wish to come to Indonesia to attend meetings, give lectures or training, or to attend performances, to obtain a temporary Work Permit (IMTA), whereas previously a business visa would have sufficed.

This new requirement could hamper business activity, but the government officials expressed the hope that once the technical guidelines to implement the regulation were in place, there would be more clarity. In addition to the above, the government requires a foreigner who works more than six months in Indonesia to obtain a Taxpayer Identification Number (NPWP) and register as a participant of the National Social Security (BPJS) scheme. However, the government has removed the mandatory requirement of Indonesian Language proficiency for expatriate workers.

With regard to the policy (beleid), the Minister of Manpower, Hanif Dhakiri, listed a number of requirements that must be met by each foreign worker. The requirements include the following:

1. Educational background in accordance with the position
2. A certificate of competency or work experience in accordance with the position which will be occupied by the foreign worker
3. A statement letter regarding the skills assignment to Indonesian Supporting Workers with evidence of an implementation report on education and training.
4. A Taxpayer Identification Number (NPWP) for a Foreign Worker who works for more than six months.
5. An insurance policy issued by an Indonesian insurance entity.
6. Participation in the National Social Security (BPJS) scheme for foreign workers who work more than six months.

The Section Head (Kasi) for Institutional Cooperation of the Ministry of Manpower (Kemenaker), Rosinna Simanulang, said that Minister of Manpower Regulation Number 16 of 2015 must demonstrate a benefit for the Indonesian people. Therefore, the policy reasoning is that the presence of foreign workers should create opportunities for local general workers.

Q&A with Made Barata, S.H. on expatriate commissioners

Made Barata, S.H.

Pursuant to the new Minister of Manpower Regulation No. 16 of 2015 dated June 29, 2015 on the Procedures to Employ Expatriates (“MOM Regulation”), there is an obligation to obtain a permit to employ expatriate Directors and non-resident Commissioners. The MOM Regulation is new and the rules are new, not only concerning the subject of non-resident Commissioner/absentee Directors, but also certain other subjects. Made Barata took a few moments to answer questions on this subject.

Do expatriate commissioners not residing in Indonesia require a work permit?

Pursuant to Article 37 of MOM Regulation, all expatriates, including foreign national members of the BOD and BOC (even if the relevant BOC members do not reside in Indonesia), must obtain a work permit. As to the English terminology, i.e. “work permit”, it is misleading, as it suggests that this permit will be held by the relevant expatriate while the expatriate is working in Indonesia. Thus, it leads to an incorrect interpretation, i.e., if the relevant expatriate is actually working abroad for an Indonesian company, a “work permit” is not necessary. Under the Indonesian Manpower Law (Law No. 13 of 2003) the obligation lies with the company which intends to employ the expatriate to hold a certain position in the company. The company must have the permit to employ the expatriate. As to commissioners, the Ministry of Manpower considers this as a position in the company, which has a supervisory function. As such, the company is obliged to have the permit to employ an expatriate commissioner (even if the relevant expatriate does not reside in Indonesia).

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What does the MoM regulation specifically require?

The requirement under the MOM Regulation is for the company (employer) to apply for and to hold a “permit to employ an expatriate foreign national” (Izin Mempekerjakan Tenaga Kerja Asing or “IMTA”) for each Commissioner who is a foreign national and domiciled abroad. What is still unclear is, where the company pursues an IMTA, whether it will also result in the requiring as well for a residency visa or a tax number in respect of the person concerned. As to an expatriate Director, since the function of the BOD is the day-to-day management of the company, IMTA and KITAS (and subsequently a tax number) must be applied for.

It is common for non-resident Commissioners or Directors to receive no salary or remuneration from the company considering that they reside abroad?

For non-resident Commissioners, in practice, it is common that they do not receive salary or remuneration (unless the Articles of Association decide otherwise).

Do they require a KITAS (stay permit) even if they do not reside in Indonesia?

The general practice so far is the applying for an IMTA goes hand in hand with the applying for a stay visa (temporary residency visa) – which if issued, then leads to reporting with the police (for the *tanda lapor*), registration with the civil population registry and carding with Immigration for the Stay Visa Card (KITAS). However, based on recent confirmation from a Ministry of Manpower official, for a non-resident commissioner, a KITAS is not strictly necessary.



Data Centers: definition of public service companies

Oka Anantajaya, S.H. LL.M. (research by Miranda Mamahit, S.H.)

In this short note we would like to address the question of whether the data center requirement is applicable to all public service companies. This has caused uncertainty, particularly among the business community; after all, logically it would seem on a surface reading that only government bodies or agencies qualify as ‘public service companies’. ‘Public services’ is defined under Law No. 25 of 2009 on Public Services (“Law 25”) and stipulates that government institutions or SOEs that provide services fall under this category. This would seem to exclude the domestic and international insurance and banking industry. However, in the elucidation of Article 5.7 (b) of Law 25 this definition is extended to non-governmental institutions; here is the letter of the law:

“Tindakan administratif nonpemerintah merupakan pelayanan pemberian dokumen oleh instansi di luar pemerintah, antara lain urusan perbankan, asuransi, kesehatan, keamanan, pengelolaan kawasan industry dan pengelolaan kegiatan sosial.”

“Non-governmental administrative action is the provision of documents and service by agencies outside the government, among others, banking, insurance, health, safety, security, industrial park management and management of social activities.”

It thus follows that the government fully intends to hold banking and insurance companies to the requirement to build data centers. The new Draft Reg on Protection of Personal Data stipulates:

Article 17

(1) The Pusat Data (data center) and disaster recovery center (disaster recovery center) and the Organizer Electronic System for public service used to process the Personal Data protection as defined in Article 3 shall be placed in the territory of the Republic of Indonesia.

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(2) The Pusat Data (data center) as referred to in paragraph (1) is a facility that is used to place the Electronic System and its related components for the purposes of placement, storage, and data processing.

(3) The disaster recovery center as referred to in paragraph (1) is a facility that is used to restore data or information and important functions and Electronic Systems impaired or damaged by disasters caused by natural and/or human events,

The OJK has yet to issue guidance in this regard; In the interim, we can turn to the Ministry of Communications which has set out basic guidelines: a data center must be designed and established using best international practices; there must be a disaster recovery plan to account for any possible crisis or force majeure that may occur; operating procedures must be put into place in line with best practices; the server room must be built in a safe location, out of sunlight, minimizing heat and away from potential flooding, safe from plumbing accidents; windows must not look out into direct sunlight; the area must have a loading zone to bring in and out equipment and supplies (*Source: Kepala Pusat Informasa dan Humas Kementerian Kominfo*).