

CLIENT UPDATE

14 SEPTEMBER 2017

New Regulation on Customs Recordation

Introduction

On 30 May 2017, the President of the Republic of Indonesia enacted Government Regulation No. 20 of 2017 on the Control of Import and Export of Goods Allegedly Constituting or Deriving from Intellectual Property Infringement (“**GR No. 20/2017**”). GR No. 20/2017 is essentially the implementing regulation of Law No. 10 of 1995 on Customs as amended by Law No. 17 of 2006 (“**Customs Law**”).

GR No. 20/2017 contains a more comprehensive mechanism in dealing with the flow of imported and exported goods allegedly infringing the intellectual property right by the Directorate General of Customs and Excise (“**Customs Office**”). This mechanism is aimed to provide preventive-type of measures as well as procedures for the officers of Customs Office (“**Customs Officers**”) in handling any suspected counterfeit goods shipped into or outside Indonesia by way of identification and verification against information on any relevant trademarks and/or copyrights recorded in their recordation database.

Below are the highlights of GR No. 20/2017:

Recordation System

Under GR No.20/2017, the owner or the right holder of trademarks and/or copyrights can file for recordation with the Customs Office. The requirements for filing the application for the recordation are as follows:

- a. Evidence of trademark and/or ownership;
- b. Information on the characteristics of the originality of products and/or the specification of copyrighted products; and
- c. Statement from the owner or right holder with respect to any consequences arising from the recordation.

The Customs Office will issue an approval or rejection letter to such application within 30 days upon receipt of such application. If it is approved, the trademark and/or copyright recordation will be valid for one year and is extendable.

Preventive Measure by the Customs Office

As a consequence of trademark and/or copyright recordation at the Customs Office, the Customs Officers should now be able to exercise their powers on their own initiative to take a preventive measure with respect to any import and export of goods suspected of infringing a certain intellectual property right. The preventive measure taken is, essentially, to notify the owner or right holder recorded in the Customs recordation database of any suspected counterfeit goods being shipped into or outside Indonesia together with sufficient evidence thereof if the Customs Officers identify such potential illegal activities.

Upon receipt of such notice, the relevant owner and/or right holder must give their response confirming their intention to seek for a suspension order (“**Confirmation**”) to the Commercial Court. Such response must be sent within two days as of the date of notice given by the Customs Office.

If the relevant owner and/or right holder opts to file a petition for a suspension order (“**Suspension Order**”), they must file it within four business days as of the delivery of Confirmation to the competent Commercial Court and pay bond in the amount of Rp. 100 million to the Customs Office.

CLIENT UPDATE

14 SEPTEMBER 2017

Enforcement of the Suspension Order by the Customs Office

In addition to the preventive measure as mentioned above, GR No. 20/2017 sets out the mechanism for the Customs Office to exercise its powers in relation to the enforcement of Suspension Order issued by the Commercial Court.

If the Commercial Court issues the Suspension Order, which is to be rendered within two business days as of the filing date, the Customs Office should enforce such Suspension Order at the latest within ten business days as of the receipt of the Suspension Order, which can be extended for another ten business days. In enforcing the Suspension Order, the Customs Officers will (i) send the notice of Suspension Order to the exporter, importer or the owner of goods, the owner or right holder of the recorded trademark and/or copyright and the Directorate General of Intellectual Property (“**DGIP**”) and (ii) hold a physical examination upon suspected counterfeit goods according to the specified schedule as proposed earlier by the recorded trademark and/or copyright owner or right holder. In examining the suspected counterfeit goods, the Customs Officers will be accompanied by the recorded trademark and/or copyright owner or right holder, the representative of the Court and the representative of the DGIP, with or without the presence of the exporter, importer or the owner of goods.

Suspension Termination

The Customs Office is required to terminate the suspension upon (i) the expiry of suspension period; (ii) the expiry of extended suspension period; (iii) the issuance of order from the Commercial Court to terminate the suspension; and (iv) the initiation of other legal actions upon such alleged intellectual property infringement.

Upon the termination of suspension, the suspended goods will be handled under the applicable laws and regulations, and the bonds will be drawn to reimburse any operational costs incurred by the Customs Office in taking the Preventive Measure and enforcing the Suspension Order.

Exclusion

The provisions on suspension will not apply to (i) passenger’s belonging, (ii) transportation crew, (iii) border crossers, (iv) shipment through postal or courier service, all of which are not intended for commercial purpose.

GR No. 20/2017 came into effect on 30 August 2017. The implementation of the regulation is still untested and yet it will provide broadened protection against the intellectual property infringement.

Contacts



Chandra M. Hamzah
Partner

D (62) 21 2555 9999
F (62) 21 2555 7899
chandra.hamzah@ahp.co.id

ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

Our regional presence



Our regional contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600 F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113 F +855 963 116
kh.rajahtannasia.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
Shanghai 200021, People's Republic of China
T +86 21 6120 8818 F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited
Myanmar Centre Tower 1, Floor 07, Unit 08,
192 Kaba Aye Pagoda Road, Bahan Township,
Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia***Assegaf Hamzah & Partners**

Jakarta Office
Capital Place, Level 36 & 37
Jalan Jenderal Gatot Subroto Kav. 18
Jakarta 12710, Indonesia
T +62 21 2555 7800 F +62 21 2555 7899
www.ahp.co.id

Surabaya Office
Pakuwon Center, Superblok Tunjungan City
Lantai 11, Unit 08
Jalan Embong Malang No. 1, 3, 5, Surabaya 60261, Indonesia
T +62 31 5116 4550 F +62 31 5116 4560

** Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
Level 22, Axiata Tower, No. 9 Jalan Stesen Sentral 5,
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia
T +60 3 2273 1919 F +60 3 2273 8310
www.christopherleeong.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN | *Thailand*

Rajah & Tann (Thailand) Limited
973 President Tower, 12th Floor, Units 12A-12F
Ploenchit Road, Lumpini, Pathumwan
Bangkok 10330, Thailand
T +66 2 656 1991 F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.
Phonexay Village, 23 Singha Road, House Number 046/2
Unit 4, Saysettha District, Vientiane Capital, Lao PDR
T +856 21 454 239 F +856 21 285 261
la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam***Rajah & Tann LCT Lawyers**

Ho Chi Minh City Office
Saigon Centre, Level 13, Unit 2&3
65 Le Loi Boulevard, District 1, HCMC, Vietnam
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

Hanoi Office
Lotte Center Hanoi - East Tower, Level 30, Unit 3003,
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam
T +84 4 3267 6127 F +84 4 3267 6128
www.rajahtannlct.com

Based in Jakarta, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally, and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam. Our Asian network also includes Singapore-based regional desks focused on Japan and South Asia.

The contents of this Update are owned by Assegaf Hamzah & Partners and subject to copyright protection under the laws of Indonesia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Assegaf Hamzah & Partners.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Assegaf Hamzah & Partners.