

Sharing is the New Normal for the Telecommunications Sector



The eighth edition of “**Omnibus Law 2020: Overview Series**” will highlight changes in the **telecommunications** sector. This is the first alert on telecommunications and broadcasting.

One of the main themes of the Omnibus Law (Law No. 11 of 2020 on Job Creation) is efficiency. This theme can be seen, among others, in the streamlining of licenses and their application. In the telecommunications sector, the Omnibus Law amends the Telecommunications Law (Law No. 36 of 1999) and the Broadcasting Law (Law No. 32 of 2002), by introducing efficiency through sharing of radio frequency spectrum, transfer of radio frequency spectrum, and sharing of infrastructure.

Keen observers were quick to identify that the relaxation in the sharing and transfer of radio frequency spectrum will indeed significantly impact the telecommunication industry. Further, the Omnibus Law obliges owners of telecommunication infrastructures to share passive network infrastructures, which was previously left to the discretion of the owners. These three topics will be discussed in detail below. We will also touch on the draft implementing regulation to the Omnibus Law on the telecommunication sector (“**draft government regulation**”).

Sharing of Radio Frequency Spectrum

Holders of radio frequency spectrum license can collaborate with another telecommunication network operator for the joint use of its radio frequency spectrum to implement new technology. The determining factor on whether collaboration or sharing can occur is ‘new technology.’ Pundits were quick to suggest that the new technology on the drafters’ mind is the 5G technology. Effective use of 5G technology does require a radio frequency spectrum that is wider than the existing allocation for the current license holders. Consequently, this situation necessitates sharing and joint use. However, some are sceptical of the development of 5G technology and felt that the limitation of ‘new technology’ to just 5G technology would be restrictive and negates other opportunities presented by radio frequency spectrum sharing.

In direct response to the above concerns, the draft government regulation clarifies that 'new technology' is any telecommunication technology implemented in Indonesia *after* the effective date of the Omnibus Law. This means that it will not be limited to 5G technology. On the other hand, it would appear to still restrict and exclude current technologies (e.g. 3G and 4G) from possible benefits of radio frequency spectrum sharing.

In the draft government regulation, radio frequency spectrum sharing can be done for the following objectives:

1. optimising usage of radio frequency spectrum;
2. reducing the construction cost of telecommunication infrastructure that utilises radio frequency spectrum;
3. expanding the territorial reach of the telecommunication network;
4. improving the quality of telecommunication services;
5. providing new telecommunication services;
6. ensuring the affordability of telecommunication services for the general public; and/or
7. safeguarding the national interest.

It is clear from the foregoing that optimising or getting more out of the current allocation of radio frequency spectrum is clearly the primary objective for radio frequency spectrum sharing.

The draft government regulation further details three possible scenarios on how radio frequency spectrum sharing will be implemented. First, a party can jointly use the radio frequency spectrum that has been allocated to another telecommunication network operator. Second, parties can jointly use the combined radio frequency spectrum that are allocated to two or more telecommunication network operators. Finally, the draft opens the possibility of any other forms of joint use, which will be determined by the Minister of Communication and Informatics based on technological development. The guidance provided is useful as it clarifies the question of whether parties can pool users (the first form of sharing) in addition to the more traditional pooling of resources (the second form of sharing).

Transfer of Radio Frequency Spectrum

The Omnibus Law only allows the transfer of radio frequency spectrum to another telecommunication network operator. This is consistent with the optimisation objective noted above, as it consolidates radio frequency spectrums and does not invite new players to the already crowded pool. It is also consistent with the provisions on radio frequency spectrum sharing.

The draft government regulation allows two types of transfer:

1. a straightforward transfer from the holder of the radio frequency spectrum right to another telecommunication network operator; or
2. an exchange of radio frequency spectrum rights between two or more holders.

The draft further states that either transfer must ensure the optimisation of the utilisation of the radio frequency spectrum, and/or improvement in the performance of the telecommunications sector. We should note that the first type of transfer will result in the revocation of the transferor's right to use the radio frequency spectrum for the benefit of the transferee as the new right holder.

The draft also allows the transfer of right to use of radio frequency spectrum in conjunction with a consolidation and/or merger of the transferor into the transferee. Here, approval for the transfer will be given for the entire radio frequency spectrum of the transferring/merging entity. It seems that the reference to consolidation or merger is included to address past ambiguities in transactions involving the consolidation of telecommunication network operators who each hold right to use radio frequency spectrum.

Sharing of Passive Infrastructure

The Omnibus Law categorised telecommunication infrastructure into active and passive infrastructure. Active infrastructure is the radio frequency spectrum discussed above. Meanwhile, passive infrastructure includes ducting, towers, poles, and other infrastructures utilised in rolling out a telecommunication network.

The new norm for passive infrastructure is that it is now mandatory for telecommunication network operators that own passive telecommunications infrastructure to provide access to such infrastructure to other telecommunication network operators. The draft government regulation confirms this principle. What is interesting to note is that the section on sharing of passive infrastructure includes a provision that seems to be out of place as it discusses active infrastructure. Article 22(2) of the draft government regulation states that access to active infrastructure can be provided to either telecommunication network operators or broadcasting operators. There are no further elaborations on this provision.

While the sharing of active infrastructure to broadcasting operators is certainly consistent with efficiency, sharing across sectors is a new concept. Telecommunication and broadcasting activities are different from one another. Hence, their radio frequency spectrum allocation is completely different. It certainly raises questions of whether the Minister would like to see more convergent of the two sectors. Here, it seems that the government is recognising the blurring of the traditional divide and, again, the importance of optimising the utilisation of a scarce resource.

Key Takeaways

The exclusivity of radio frequency spectrum allocation, which was once held sacred, is no longer the case. Access to radio frequency spectrum as a scarce resource is now possible through joint use resulting from the 'sharing' and 'transfer' of radio frequency spectrum. Given the 'new technology' restriction, it remains to be seen whether the proposition of efficiency from joint use can be achieved.

Meanwhile, the Omnibus Law provides a pathway for the convergence between the telecommunication and broadcasting sectors, which have been discussed for some time, through the joint use of radio frequency spectrum. It would be interesting to see whether there is indeed an appetite for the collaboration and sharing of resources between the two industries.

Today, the commotion surrounding the enactment of the Omnibus Law has grown quiet as the public shifts their focus to the drafts of the implementing regulations. So far, the government has published 44 drafts in total, consisting of 40 government regulations and 4 presidential regulations. As detailed above, the draft government regulation for the telecommunications sector, for the most part, is likely to be received favourably as it brings not only clarification but also major reforms.

The Indonesian government enacted Law No. 11 of 2020 on Job Creation on 2 November 2020. In anticipation of the questions that will arise, we are monitoring this evolving situation, with various teams currently examining the law to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find our alerts on the Omnibus Law [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

Contacts



[Zacky Zainal Husein](#)
Partner

D +62 21 2555 9956
F +62 21 2555 7899
zacky.husein@ahp.id



[Muhammad Iqsan Sirie](#)
Senior Associate

D +62 21 2555 7805
F +62 21 2555 7899
iqsan.sirie@ahp.id

Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

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

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

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

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

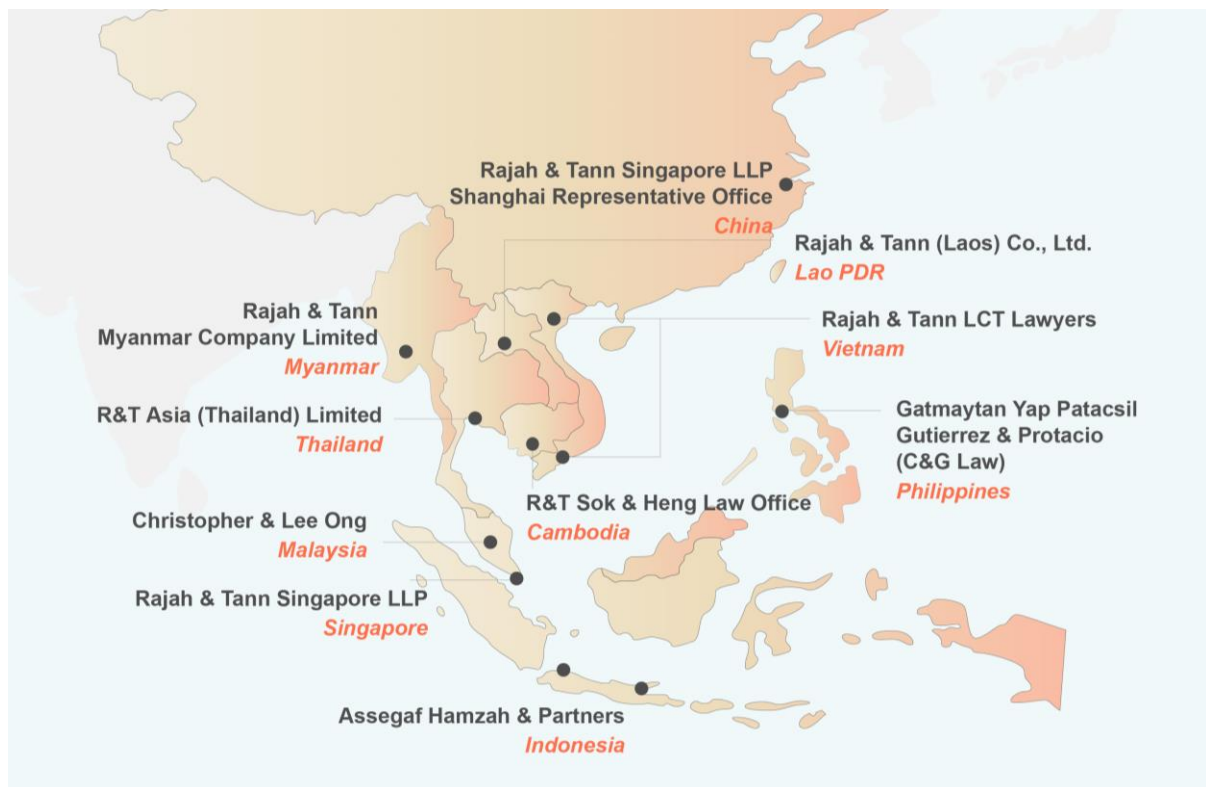
Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Based in Indonesia, 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, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, 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.