

Procurement

The New Public Procurement Rules: More Details Still to Come

On 22 March 2018, the Government of the Republic of Indonesia issued the new public procurement rules, i.e., Presidential Regulation No. 16 of 2018 on the Public Procurement of Goods and Services ("**Regulation 16/2018**") and replaced the previous rules under Presidential Regulation No. 54 of 2010 on the Government Procurement of Goods and Services, which was amended several times, most recently through Presidential Regulation No. 4 of 2015 ("**Regulation 54/2010**"). Regulation 16/2018 regulates the procurement of goods/services by government agencies (i.e. Ministries/Institutions/Regional Government Agencies) that are wholly or partially financed through the state/regional budget, including the procurement of goods/services that are wholly or partially financed by domestic or offshore loans or grants that are received by the government/ministries.

Regulation 16/2018 will come into effect on 1 July 2018, so before that, Regulation 54/2010 continues to apply.

Regulation 16/2018 tries to simplify the procurement rules by putting details of the procurement procedures as much as possible in the implementing regulations, e.g., the Head of Public Procurement of Goods/Services Agency (*Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah* - "**LKPP**") Regulation. The Head of LKPP Regulation is easier to amend and, therefore, it is expected to change more easily with developments in business practice. The downside of moving the procedures to the implementing regulations, however, is that we currently do not know how the new rules will be applied in practice until the implementing regulations are issued.

There are many interesting new features in the new procurement rules, but their details are not known yet. For example, actions are exempted from the public procurement rules if the procurement is carried out in accordance with established business practices. Only after the implementing regulation is issued we will know what is meant by "established business practices."

Among all the revisions to the procurement rules, we set out below a few items that may be most interesting for businesses. Businesses should consider waiting for the issuance of the implementing regulations prior to undertaking the actions below.

Provision	Regulation 54/2010	Regulation 16/2018
Limitations on direct procurement of consultation services	Consultation services up to IDR 50 million. (see Article 45 paragraph (1)).	Consultation services up to IDR 100 million. (see Article 41 para (3)).
Emergency procurement	Not specifically mentioned.	Emergency procurement can be carried out for emergency circumstances, i.e., natural disasters, social disasters, etc. (see Article 59).
International tenders	International tenders can be open for foreign companies under the following conditions: 1. Procurement of Construction	International tenders can be open for foreign companies under the following conditions: 1. Procurement of Construction

Procurement

	<p>Work with a value above IDR 100 billion (<i>vide</i> Article 104 paragraph (1a));</p> <p>2. Procurement of Other Goods/Services with a value above IDR 20 billion or below IDR 20 billion if domestic providers cannot supply them (<i>vide</i> Article 104 paragraph (1b) and (3)); and</p> <p>3. Procurement of Consultation Services with a value above IDR 10 billion or below IDR 10 billion if domestic providers cannot provide them (see Article 104 paragraph (1c) and (4)).</p>	<p>Works with a value above IDR 1 trillion;</p> <p>2. Procurement of Other Goods/Services with a value above IDR 50 billion;</p> <p>3. Procurement of Consultation Services with a value above IDR 25 billion;</p> <p>4. Procurement of Goods/Services funded by Export Credit Insurance Institutions or Foreign Private Creditors.</p> <p>International tenders can be open below those values if there are no qualified domestic providers. (see Article 63).</p>
Integrated works	Not regulated.	Regulation 16/2018 provides that the procurement of goods, construction projects, consultation services, and non-consultation services can be conducted in an integrated manner. (see Article 3 paragraph (2)).
Procurement consolidation	Not regulated.	Procurement consolidation is a procurement strategy to consolidate/merge several packages of similar procurements at the following stages: procurement planning, procurement preparation through providers, and/or preparation for providers selection. (see Article 1 paragraph (51) and Article 21).
Repeat orders	Not possible.	Regulation 16/2018 allows direct appointment by way of repeating order from the same Consultant Services Provider. This direct appointment is limited to two times. (see Article 41 paragraph (5d) and (6)).
E-reverse auctions	Not regulated.	Regulation 16/2018 regulates that an e-reverse auction may now be implemented for bid offering to select providers. (see Article 50 paragraph (11)).
Exemption of certain	Not regulated.	Regulation 16/2018 explicitly

Procurement

procurements from the Regulation 54/2010		excludes the following type of procurements: a. Procurements by Public Service Agencies (<i>Badan Layanan Umum</i>); b. Procurements based on generally published tariffs; c. Procurements based on established business practices; and/or d. Procurements regulated under other laws and regulations. (see Article 61).
Research	Falls under procurement of consultation services.	Research can be carried out by individuals or a group of individuals of civil servant/non-civil servants, the relevant government institutions, universities, mass organizations, or business actors. Research is decided upon competition or assignment. (see Article 1 paragraph (34) and Article 62).
Procurement using e-marketplace	Limited to e-auction and e-purchasing (e-catalogue).	E-marketplace consists of e-catalogue, online shops, and providers selection. (see Article 1 paragraph (20) and Article 70)
Dispute-resolution mechanism	Not possible.	Regulation 16/2018 allows LKPP to act as a settlement body for contractual disputes between the tenderers and the providers (see Article 85)

We will keep you updated on this matter..

Assegaf Hamzah & Partners

Contacts



Chandra M. Hamzah
Partner
Competition

D +62 21 2555 9999
F +62 21 2555 7899
chandra.hamzah@ahp.id



Yogi Sudrajat Marsono
Partner
Litigation

D +62 21 2555 7812
F +62 21 2555 7899
yogi.marsono@ahp.id



Vovo Iswanto
Of Counsel
Competition

D +62 21 2555 9938
F +62 21 2555 7899
vovo.iswanto@ahp.id



Farid Fauzi Nasution
Senior Associate
Competition

D +62 21 2555 9998
F +62 21 2555 7899
farid.nasution@ahp.id



Albert Boy Situmorang
Senior Associate
Competition

D +62 21 2555 9955
F +62 21 2555 7899
albert.situmorang@ahp.id



Anastasia Pritahayu R.D.
Senior Associate
Competition

D +62 21 2555 9934
F +62 21 2555 7899
anastasia.pritahayu@ahp.id

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.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 NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.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

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.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 | *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

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

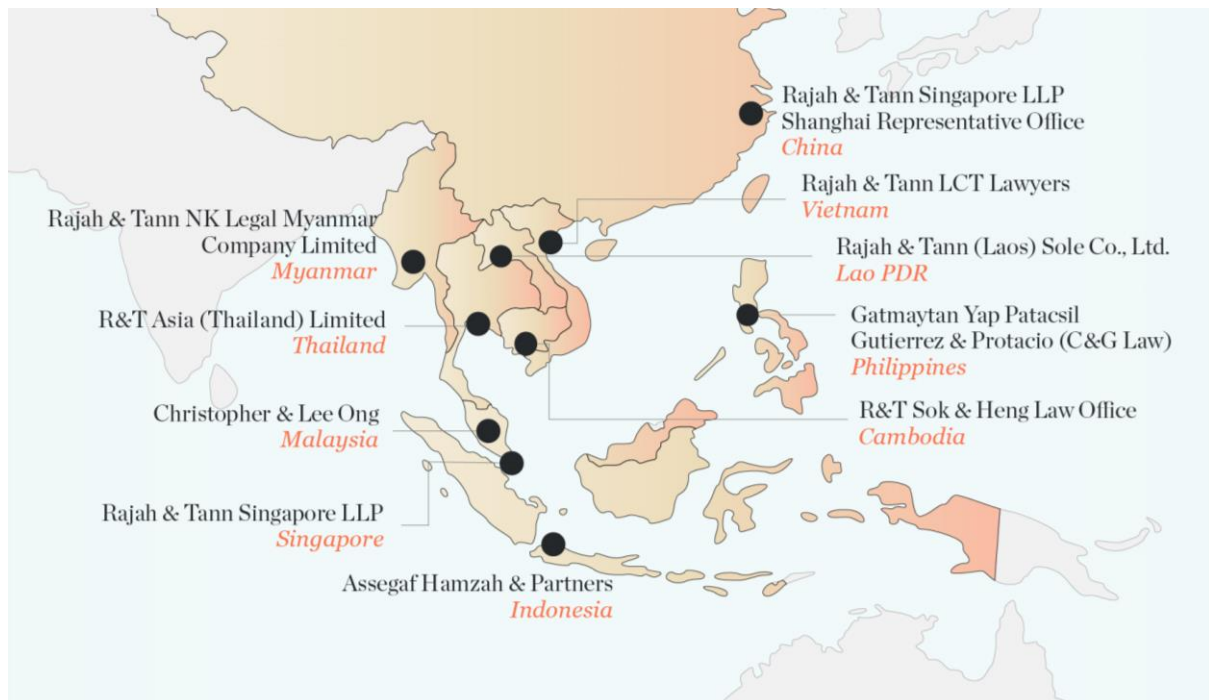
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

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

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

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, Philippines, Thailand and Vietnam. Our Asian network also includes 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.