

Intellectual Property

Indonesian Customs Recordation: Ready for Implementation

The Minister of Finance has issued Regulation No. 40/PMK.04/2018 regarding Customs Recordation, Preventive Measure, Guarantee, Suspension, Monitoring and Evaluation on import and export control of Goods suspected of infringing Intellectual Property Rights ("**MFR No. 40/2018**"). MFR No. 40/2018 is the implementing regulation of Government Regulation No. 20 of 2017 on Import and Export control for Goods suspected of infringing Intellectual Property Rights ("**GR No. 20/2017**").

MFR No. 40/2018, which comes into force this month, contains specific provisions on 1) the recordation of intellectual property at the Directorate General of Customs and Excise ("**Customs Office**"), 2) the preventive measure, 3) the guarantee, and 4) the customs suspension order.

Below are the key points of MFR No. 40/2018:

1. Recordation by the Customs Office

Under MFR No. 40/2018, an application for intellectual property recordation at the Customs Office only applies to trademarks and copyrights, which are regulated under Indonesian Trademark Law and Copyright Law respectively. This limited customs recordation is set to comply with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). This law aims to provide a legal protection to intellectual property right holders that have solid grounds for suspecting that an importation of counterfeit trademark or pirated copyright goods may take place.

The recordation application comprises of two phases: (i) formality examination and (ii) substantive examination. The Customs Office ought to issue a letter of approval or refusal within 30 (thirty) days after the reception of the recordation application. An approved recordation will be valid for 1 (one) year and can be renewal.

Two important requirements to note: the applicant must (i) be domiciled in Indonesia and (ii) appoint an examiner.

a. The applicant domicile in Indonesia

It is mandatory for the applicant to be domiciled in Indonesia. This rule is set for the ease of communication between the right holder and the Customs Office. An Indonesian subsidiary of the right holder, a licensee and an authorized distributor can apply for the Customs recordation on behalf of the right holder on condition that they can provide a solid evidence proving their relationship with the right holder. However, this procedure is still untested.

b. The applicant must appoint an examiner

The applicant is required to appoint an examiner who is not an officer of the Customs Office. The examiner will assist the Customs Office in identifying the exported/imported goods suspected of infringing trademarks or copyrights of the recorded goods. The name and identity of the examiner should be stated in the application form. The appointed examiner ought to meet the following criteria:

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- With respect to trademarks, the examiner must understand the product authenticity, such as the logo, product, trademark, display, packaging, distribution and marketing route, and quantity of products being marketed in the territory;
- With respect to copyrights, the examiner must understand the authenticity or specification of the creation in the field of science, art, literature, or related rights.

To simplify the process of customs recordation, the Customs Office has set up an electronic filing system, called “CEISA” (<https://customer.beacukai.go.id/>).

2. Preventive measure

With the Customs recordation database, the Customs Office can take a preventive measure against any import and export of goods which are suspected of resulting or originating from infringement of intellectual property rights of the recorded goods. The preventive measure is to timely give a written notice (“**Notice**”) to the right holder of any suspicious goods being shipped to or from Indonesia. The Notice must contain sufficient detail of such potential illegal activities.

After being notified, If the right holder intends to file a request for a customs suspension, the right holder must undertake the steps below within the following 4 (four) business days:

- a. Filing a request for customs suspension order to the Commercial Court;
- b. Submitting a copy of the filing receipt from the Commercial Court to the Customs Office; and
- c. Making a deposit of IDR 100 million in the form of a bank/insurance guarantee (“**Guarantee**”).

3. Guarantee

Guarantee issued by banks/insurance companies is an obligatory part of the customs suspension request. MFR No. 40/2018 specifies the procedure for handover and claiming of the Guarantee.

a. Handover of the Guarantee

GR No. 20/2017 requires the right holder to provide a Guarantee to the Customs Office in order to carry out the customs suspension request. After the Guarantee is handed over, the Customs Office will act as follows:

- (i) Examine by the Customs Office upon the issued Guarantee, such as examining the amount and validity period of the issued Guarantee;
- (ii) Request a confirmation of the Guarantee by the Customs Office to the issuing bank, in which the issuing bank is required to confirm the Guarantee within 2 (two) working days as of the requested date;

Based on the result of the above actions, the Customs Office would then decide to accept or not the Guarantee. If accepted, the Customs Office will issue a Guarantee receipt to the right holder.

b. Guarantee claim

The required Guarantee is intended to cover any operational costs incurred during the preventive measure and the enforcement of suspension order.

Please note that upon the request of the importer/exporter, the Customs Office may claim the Guarantee to the issuing bank for the following purposes (i) to pay the operational cost for examination and suspension of Infringing goods or (ii) to pay any insufficient payment of the operational cost generated by

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the right holder. Further, the issuing bank will disburse the Guarantee within 5 (five) working days upon the receipt of claim made by the Customs Office.

4. The Suspension Order

As indicated above, the right holder must file a request for customs suspension order to the Commercial Court (“**Suspension Order**”). In this case, MFR No. 40/2018 provides that the Commercial Court must render its decision within 2 (two) business days as of the filing date.

In the event that the Commercial Court issues the suspension order, the Customs Office should enforce such Suspension Order within 10 (ten) working days as of the receipt of the Suspension Order, which can be extended for another 10 (ten) working days.

To enforce the Suspension Order, the Customs Officers will (i) send the Suspension Order to the exporter, importer or the owner of goods; to the right holder of the recorded goods and to the Directorate General of Intellectual Property, (ii) conduct physical examinations upon suspected counterfeit goods according to the specified schedule as proposed by the right holder of the recorded goods.

MFR No. 40/2018 also entitles the right holder of the recorded goods to appoint an examiner to attend and examine the suspected counterfeit goods during the physical examinations of the Customs Office.

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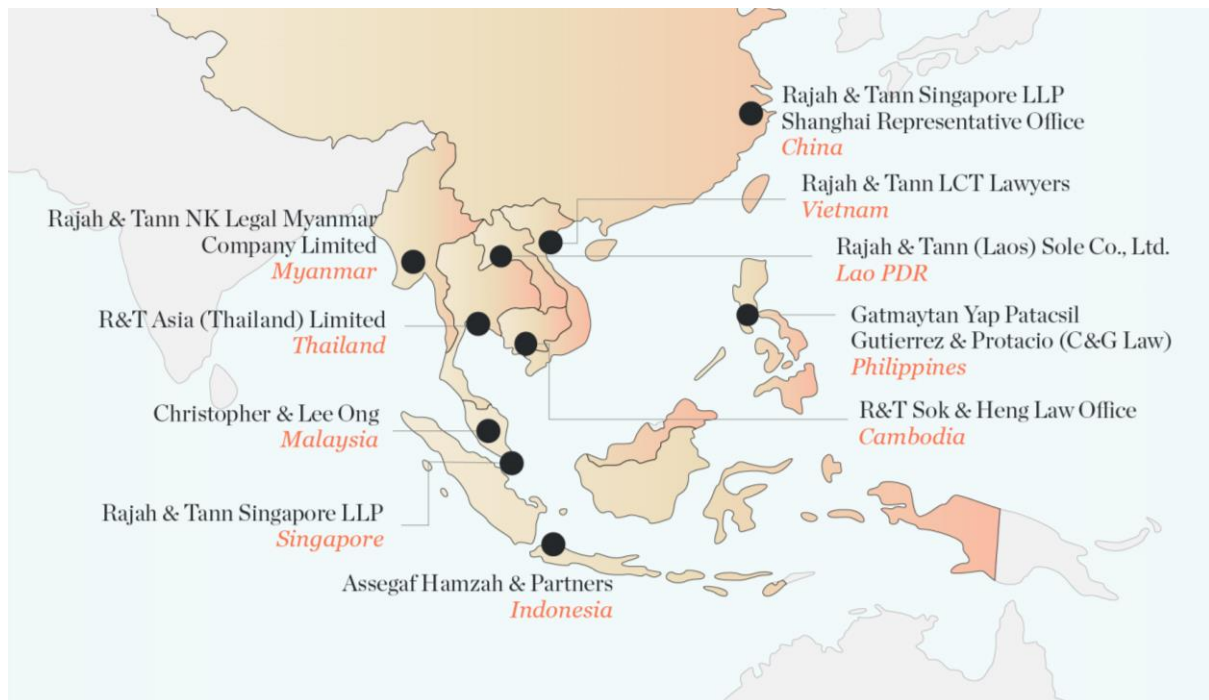
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