

# NEWS

## FEBRUARY 2009

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## Foreword

### Dear our esteemed Clients & Friends,

We are already in the second month of 2009, and we are strong in our commitment to provide the best support and legal services for you. To ensure that our commitment will become a reality, we have continually strengthened the quality and performance of our lawyers and support staff.

We are steadfast in our conviction that we will be able to render the best service and present unrivaled quality amidst the ever-growing competition due to the current global financial crises.

As part of our dedication to you and your business, through this newsletter we are update you on a variety of current legal issues that may prove beneficial to the growth of your ventures.

For more details of our firm profile and our credentials, please kindly visit our website at: [www.baharandpartners.com](http://www.baharandpartners.com).

## Highlights on New Regulations on Minerals and Coal

After generating much controversy, the new law regulating mineral and coal resources, Law No. 4 of 2009 on Minerals and Coal, was passed by the Indonesian Parliament (DPR) on 16 December 2008 to replace Law No 11 of 1967 titled General Provisions on Mining. The new law is expected to take the national mining industry to a new direction.

Among the issues relating to the law that sparked controversies were the government's 'treatment' that was deemed to show favor on mining companies that are

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already operating under a Contract of Work and Work Contract for the Mining of Coal (PKB2B) prior to the passing of the new law.

A significant difference between the new law and its predecessor is the elimination of discriminatory treatment on investors in this field of business with regard to the procurement of mining area by shifting from a contract-based regime to a license-based framework.

Following the ratification of the new law, the government has plans to shortly issue four regulations as mandated by the law. The four regulations will govern domestic market obligations, mining zones, mining operation, and directive and supervision. One ministerial regulation will also be enacted to regulate business aspect and services pertaining to mining.

### Highlights on Revision of Aviation Law Number 15 of 1992

A revision of Law No. 15 of 1992 on Aviation has been ratified by the DPR on 17 December 2008 with the aim of enhancing safety and security of air travels. The revision was conducted at the behest of the

International Civil Aviation Organization (ICAO) and the European Union. Following the revision the law, which previously was made up of 14 chapters and 102 articles, now contained 24 chapters and 466 articles.

Through such revision, the government regulates the flight navigation systems (article 271) through the formation of a body that provides navigation services which answers to the relevant minister, in this case the Minister of Transportation.

In regards to provisions on flight safety set under its article 309, the law regulates safety related reporting system, data analysis and exchange of information pertaining to safety, investigation of accidents and flight related events and law enforcement. Additionally, the minister is made responsible for national air travel and is conferred with the authority to form a National Flight Safety Committee. Under the revised law, investigations are to be conducted by a national committee directly formed by and accountable to the President (article 357 paragraph 2).

The ratification of the revision to this law is also expected to expedite the decision to lift the EU's ban on Indonesian aircraft landing on EU nations.

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### Highlights on Pension Fund Investments

The Capital Market and Financial Institution Supervisory Agency (Bapepam – LK) issued a regulation relating to pension funds, i.e. regulation number PER-01/BL/2009 entitled

Basis for the Valuation of Types of Pension Fund Investments, on 15 January 2009.

This regulation is in furtherance of the requirement set under Article 17 of the Regulation of the Minister of Finance number 199/PMK.010/2008 dated 5 December 2008 on Pension Fund Investment.

With the enactment of this regulation, pension funds now has a reference by which to base its determination of the normal value of the investments it makes, including a valuation reference for newly permitted types of investments. Such assessments are necessary for the purpose of financial reporting, investment and financing calculations. Additionally, the regulation is aimed to streamline the regulatory structure and to effect transparency by applying reporting obligations on Pension Funds which transfers bonds listed at the stock exchange and government bonds into bonds

categorized as "held until maturity" to the parties concerned.

### Highlights on USD Repurchase Transaction Agreement with Bank Indonesia

In the effort to minimize the impact of the global financial crises on the liquidity of foreign currency in the domestic market, which has the potential of disrupting the stability of the Indonesian currency, the Indonesian central bank, Bank Indonesia (BI), attempts to encourage the availability of foreign currencies on the domestic market, among others by engaging in USD Repurchase Agreement (Repo) transactions as set out in BI Regulation Number: 11/4/PBI/2009 on USD Repurchase Transaction Agreement on with Bank Indonesia, which came into effect on 29 January this year.

Certainty of the availability of foreign currency on the domestic money market will contribute to BI's effort to maintain the stability of the Rupiah.

The BI Regulation prescribes several consensus with regard to USD Repo, among others:

1. Maximum tenor for USD Repo is one month.
2. Repo Rate is set to the Singapore Interbank Offered Rate (SIBOR) on the transaction date plus margin.

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3. Haircut is set according to the term of the Commercial Paper.
4. Commercial Paper Coupons during the term of the USD Repo constitute the right of the selling bank.

### Highlights on Regulatory Provisions on *Syariah* Public Banks

Indonesia's central bank, Bank Indonesia, recently passed new provisions relating to *Syariah* Public Banks in BI Regulation Number 11/3/PBI/2009, which entered into force last January.

The regulation includes provisions on regional sub-offices (Kanwil) that assist bank head offices in administrative affairs and coordinate branch offices in the regions. In addition to these sub-offices, functional offices are established to undertake operational and non-operational matters within a certain area of function, such as loan centers.

The newly enacted legislation also streamlines the reporting procedure for the opening of treasury offices and cash services, which now may be effected through the submission of a bank business plan report (RBB), rather than submitting a report

each time the bank intends to open such offices as required by the previous regulation.

Procedure for the upgrading/downgrading of office status has also been simplified, i.e. without having to undergo office establishment/closure procedures.

### Highlights on Provisions on the Imports of Certain Products

On 1 January this year, the government put into effect Regulation of the Minister of Trade Number 56/M-DAG/PER/12/2008 on the Provisions on the Imports of Certain Products to replace Ministerial Regulation Number 52/M-DAG/PER/12/2008 which amended Regulation Number 44/M-DAG/PER/10/2008 regarding the same subject.

Through the new regulation the government has tightened import restrictions on five commodities: footwear, clothes, children toys, food and drink, and electronic goods, effectively allowing imports of such goods to go through only five sea ports and airports with a few exceptions, including imports with a value below USD 1,500.

Import exemptions are also given to products that are necessary for upstream operations involving oil and gas, geothermal energy and minerals, as well as other resources within the energy sector. The regulation also

exempts products that are imported by manufacturer importers as capital goods or raw materials for certain products, which are categorized as temporary imports. Products that are process within the Berikat Zone and shipped out of the Berikat Zone into other customs areas are also subject to the exemption.

## Update on Recent Regulations

### Banking

- Bank Indonesia Regulation Number 11/3/PBI/2009 on Syariah Public Banks.
- Bank Indonesia Regulation Number: 11/4/PBI/2009 on USD Repurchase Transaction Agreement with Bank Indonesia.
- Government Regulation Number 66/2008 on the Amount of Depository Value Guaranteed by Depository Underwriter.

### Tax

- Regulation of the Minister of Finance Number 230/PMK.011/2008 on value added tax covered by the government on imports and/or delivery of certain taxed goods in certain sectors to overcome the global economic downturn and achieve recovery of the real sector for the fiscal year of 2009.

- Regulation of the Minister of Finance Number 231/PMK.011/2008 on value added tax covered by the government on domestic delivery of palm cooking oil for the fiscal year of 2009.
- Regulation of the Minister of Finance Number 198/PMK.07/2008 on the determination of definitive allocation for the central government's portion over property tax to be distributed to all districts and municipalities for the fiscal year of 2008.

### Mining

- Law Number 4/2009 on the Mining of Minerals and Coal.

### Export – Import

- Regulation of the Minister of Finance Number 233/PMK.011/2008 on Amendment to Regulation of the Minister of Finance Number 110/PMK.010/2006 on the establishment of a classification system of goods and imposition of tariff on imported goods.
- Regulation of the Minister of Finance Number 06/M-DAG/PER/1/2009 on the Determination of Export Price Index for Certain Exported Goods.
- Regulation of the Minister of Finance Number 56/M-DAG/PER/12/2008 on the Import of Certain Products.

### Investment

- Government Regulation Number 67/2008 on the Establishment of Enterprises Issuing State Syariah Commercial Papers.

### Capital Market

- Bapepam-LK Rule Number: PER-01/BL/2009 Basis for the Valuation of Types of Pension Fund Investments.

### General

- Regulation of the Minister of Finance Number 214/PMK.04/2008 on the Collection of Export Customs.
- Regulation of the Minister of Finance Number 200/PMK.04/2008 on the procedure for the granting, suspension, and cancellation of registration number of trader of taxed goods, applicable to factories and importers of tobacco derivative products.

- **The Asia Pacific Legal 500** (an internationally-recognized independent publication which provides reference on the leading commercial law firms in Asia and Australasia), in its 2008/2009 edition mentioned Bahar & Partners as a recommended firm in the field of banking & finance, capital market, corporate and M&A, projects and energy, real estate, and restructuring and insolvency.
- **IFLR1000** (an independent publication well-known globally for its review of the practice of international financial law), in its 2009 edition cited Bahar & Partners as a recommended firm in the field of banking, capital market, M&A, and finance project.

## WHAT'S ON BAHAR & PARTNERS

### International Network and Recognition

Our hard work and excellence over the years have earned the firm recognition in the international legal community through acknowledgements in selected fields of legal services in several law publications.

#### Disclaimer

Despite of every effort has been made to ensure that the information contained in this newsletter is correct and that there are no errors or omissions, no responsibility is accepted as to the accuracy or completeness of the statements, facts and examples included herein, and no liability is accepted whatsoever on the part of Bahar & Partners, or on the part of the Partners, Associates, Managers or Agents of Bahar & Partners for any loss or damage whatsoever, howsoever caused, arising from the use of this newsletter.

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