

Client Alert

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Customs office now requires work permit for all foreign directors for NIK applications

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Under a regulation issued by the Director General of Customs and Excise ("**DGCE**") which became effective on 1 March 2017 (New Regulation as defined below), all importers and exporters operating in Indonesia that intend to apply for, amend or renew their Customs Registration Number/ *Nomor Identitas Kepabeanan* ("**NIK**") now need to:

1. ensure that their foreign directors have work permits ("**IMTA**"); and
2. provide a copy of the IMTA to DGCE with the NIK application.

Key change

Old Regulation

Under Minister of Trade Regulation No. 70/M-DAG/PER/9/2015 on Importer Identification Number ("**API**"), importers are only required to provide identification for the signatories of the API application and documents. This approach was adopted by the Customs Office under DGCE Regulation No. PER-10/BC/2014 (as amended by DGCE Regulation No. PER-06/BC/2016) on Customs Registration Implementation Guideline ("**Old Regulation**") on NIK applications, ie, the Customs Office only required identification for the signatory of the NIK application.

New Regulation

However, under the new DGCE Regulation No. PER-04/BC/2017 on Customs Registration Implementation Guidelines ("**New Regulation**"), for NIK applications importers must now provide a copy of the IMTA of every foreigner who:

1. is on the board of directors of the company
2. holds a leadership role in the company

even if they do not reside in Indonesia.

In addition, importers must also provide a copy of the passport of every foreigner who:

1. is on the board of commissioners
2. owns shares in the company



This approach is very different from what was required under the Old Regulation.

Implication for importers/exporters

This change affects both new and existing importers and exporters operating in Indonesia as the requirement will be implemented for new NIK applications as well as amendments and renewals of existing NIKs.

Importers and exporters operating in Indonesia should note that under the New Regulation they must now submit the following supporting documents:

- a. Deed of establishment and approval
- b. Latest amendment to articles of association and approval/ notification receipt from the Minister of Law and Human Rights
- c. Evidence of ownership of work venue
- d. Import Identification Number (API)
- e. Identity of individuals responsible for the company, in the form of:
 1. National Identification Card (KTP) for Indonesian Citizens who:
 - i. are on the board of directors of the company
 - ii. are on the, board of commissioners of the company
 - iii. hold a leadership role in the company
 - iv. own shares in the company
 2. IMTA for foreigners who:
 - i. are on the board of directors of the company
 - ii. hold a leadership role in the company
 3. Passports for foreigners who:
 - i. are on the board of commissioners of the company
 - ii. own shares in the company
- f. Tax Payer Identification Number (NPWP)
- g. Evidence of ownership of all accounts under the company's name
- h. NIK application statement letter according to the format found in Attachment II, which is an inseparable part of the New Regulation



- i. Power of attorney with sufficient stamp duty according to prevailing laws, if the application for registration is submitted by someone other than the board of directors or company leadership

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Issues on consistency and what the law says

Although the New Regulation came into effect on 1 March 2017, it is still being implemented. We are aware of some companies that have successfully submitted NIK applications over the last month without having to provide copies of IMTA's for foreign directors etc..

However, our contacts at the Customs Office have indicated that the Customs Office intends to enforce the policy, ie, require copies of IMTAs for foreign directors whether or not they not reside in Indonesia. Recently a number of clients have also been asked for such documentation.

Options to consider

- Remove (or replace) foreigners who are members of the board of directors and do not reside in Indonesia.
- Obtain IMTAs for foreigners who are on the board of directors but who do not reside in Indonesia. However, this may have tax implications for the foreigner.

Conclusion

We understand that a lot of importers and exporters have complained about this change. We will continue to closely monitor the implementation of the New Regulation. However in the meantime, importers and exporters that are applying for a NIK or renewing or amending an existing NIK need to consider the nationality and residency of the members of their board of directors and take note of this new requirement.