THE HOTEL AND TIMESHARE BUSINESS IN INDONESIA: WHAT FOREIGN INVESTORS SHOULD KNOW

1. What are the legal or regulatory limitations for an investor who wishes to establish a timeshare or hotel business in Indonesia?

   In Indonesia, there is no legislation which is specific to the timeshare business. The timeshare regulations that did exist were revoked in 2000 under which, providing timeshare accommodation is inseparable from the underlying business activity and does not need to be regulated separately. As a result, an enterprise which provides intermediary services related to timeshares is considered a general trading company and must follow the relevant legal regime for such businesses. Meanwhile, an enterprise which provides timeshare accommodation in properties it owns or manages is subject to the regulations on the category of accommodation that it owns or manages. Today in most cases in Indonesia, the type of accommodation that uses a timeshare arrangement as its marketing strategy is a hotel that requires a hotel business license. It does not need a separate license for the timeshare arrangement.

   The hotel business in Indonesia is primarily regulated under Law No. 10 of 2009 on Tourism ("**Tourism Law**") which classifies hotels as accommodation services. Under the Tourism Law, accommodation services are defined as the business of providing accommodation services as well as other tourism services. An accommodation business may provide accommodation in hotels, villas, cottages, camps and caravans for tourism purposes.

   A foreign investor who wishes to establish or invest in a hotel business in Indonesia needs to establish or acquire an Indonesian limited liability company (*perseroan terbatas).* A limited liability company with foreign investment is usually called a foreign investment company or 'PMA Company'. Not all business fields are open for foreign direct investment and, therefore, PMA Company is subject to the Negative List which currently is provided under Presidential Regulation No. 44 of 2016.

   For hotel business, the current Negative List limits foreign investment in one-star, two-star, non-star and budget hotel (*Hotel Melati*) and other accommodation (motel and lodging) services businesses to 67%. Meanwhile, three, four, and five-star hotel businesses and hotel management businesses are not included in the Negative List, so they are open for 100% foreign investment.

   In addition to the Negative List, it is also important to check whether the regional government where the hotel will be located has specific or different regulations or policies on tourism in its jurisdiction. An investor especially needs to check the zoning where the hotel will be located. Information regarding regional government regulations and policies is not usually available to the public. Therefore, the relevant regional government should be consulted to confirm what specific requirements, if any, apply in its area.

2. What license needed for a hotel and what institution issue such license?

   The main license for a hotel is a business license, now called a Tourism Business Registration Number (*Tanda Daftar Usaha Pariwisata* / **TDUP**). A

PMA Company engaged in the hotel business should apply for a TDUP before operating the hotel commercially through the OSS System (Online Single Submission System).

Some requirements must be satisfied to obtain a TDUP, including to obtain the pre-requisite licenses, i.e. an Environmental License, Building Permit (IMB) and Building Worthiness Certificate (S*ertifikat Laik Fungsi* / SLF).

In addition to this TDUP, a hotel also needs an operating/technical license depending on the activities engaged in and the equipment installed in the hotel, including among others, a permit to sell liquor, to install and use elevators, a generator, a fire alarm system, etc. Hotels must also meet certain liquid waste quality standards required by the Minister of the Environment as well as the Governor where the hotel is located (if any).

3. How can a hotel obtain a status as a three, four, and five-star hotel that is open 100% for foreign investment?

The star rating is determined after the hotel obtains its business license (TDUP) and is assessed by a Tourism Business Certification Body recognized by the Ministry of Tourism. The assessment will be made based on the criteria under Regulation of the Minister of Tourism and the Creative Economy No. PM.53/HM.001/MPEK/2013 on Hotel Business Standards. According to this regulation, every hotel in Indonesia must obtain a star rating certificate to show the hotel's star classification, as a one, two, three, four, or five-star hotel. The following 3 (three) main aspects determine the star rating of a hotel:

a) products;
b) management;
c) services

Each of the above aspects has further detailed criteria which a hotel must meet to achieve a certain star rating. In order to be classified as a 5-star hotel, a hotel must obtain a certain cumulative score for all of the above aspects determined under the Hotel Standard Regulation.

4. Are there any legal or regulatory rules regarding the amount of service charge a hotel can collect?

Under Regulation of the Minister of Manpower No. 7 of 2016 on Service Charges for Hotels and Restaurant Businesses in Hotels, all hotels and restaurants in hotels may collect a service charge from their customers. This service charge, if collected, must then be provided to the hotel or restaurant employees. The service charge is additional money paid by the customers of the hotel or restaurant in appreciation of the services provided to them. Before being provided to the employees, the service charge must be managed by the management of the hotel or restaurant separately from the revenue derived from the operation of the hotel or restaurant.

Every month, the employer must provide a written statement to the employees of the total amount collected from the service charge for the

relevant month and distribute the service charge among the employees. The funds derived from the service charge are to be used as follows:

a. 3% to cover the employer's risk of breakage and loss of equipment used in the hotel or restaurant for guest services;
b. 2% for the development of human resources; and
c. 95% for the employees, 50% of which must be distributed equally among the employees while the rest may be distributed based on the seniority and performance of each employee.

The service charge received by the employees is not a part of the employees' salary but is subject to income tax payable by the employees.

5. Can a hotel provider quote and charge for the rates of the rooms is USD or other foreign currency?

For sales and marketing in Indonesia, the rates of the hotel rooms must be quoted and charged in Indonesian Rupiah (IDR). This is to comply with the Bank Indonesia Regulation No. 17/3/PBI/2015 on The Mandatory Use of Rupiah in the Territory of the Republic of Indonesia. In brief, the requirement to use IDR and quote prices in IDR applies to any transaction conducted within Indonesian territory. This also applies to charges for services provided in Indonesia. Certain exceptions are allowed under the regulation, including for among other things, international trading or cross border transactions in which one of the parties is located outside Indonesia.

6. Are there any specific legal or regulatory rules regarding the protection of customers data in Indonesia? Can a hotel provider transfer its customers data abroad for marketing purpose?

We know that it is not uncommon for hotels, especially ones managed by international chain hotel management companies, to collect and keep customer data for marketing purposes or promoting hotels in the same chain nationally and internationally. In general, subject to our explanation below, customer data may be transferred electronically to the hotel chain affiliates abroad.

Indonesia may not have a consolidated law or regulation on data protection. However, several regulations do protect personal data in electronic systems ("**Data Protection Regulations[1]**"). Under MOCI Reg 20/2016, the use of any information through electronic media that involves personal data (including receiving, collecting, processing, analyzing, storing, displaying, publishing, disclosing, transferring and deleting any personal data through an electronic system) requires the written consent (given either manually or electronically in the Indonesian language) of the data owner. Personal data is defined as 'certain individual data' that is stored, maintained, and its veracity is sustained, the confidentiality of which must be protected. While 'certain

[1]Law No. 11 of 2008 on Electronic Information and Transactions (as amended); Government Regulation No. 82 of 2012 on Electronic Systems and Transaction Operations ("**GR 82/2012**"); Minister of Communication and Informatics Regulation No. 36 of 2014 on the Registration Procedure for Electronic System Operators ("**MOCI 36/2014**"); and Minister of Communication and Informatics Regulation No. 20 of 2016 on The Protection of Personal Data in Electronic Systems ("**MOCI Reg. 20/2016**").

individual data' is further defined as any correct and actual information that relates to any individual and is identifiable, either directly or indirectly, with each individual, the use of which must comply with the prevailing laws and regulations.

MOCI Reg 20/2016 also requires any cross-border transmission of personal data to be coordinated with the Minister of Communication and Informatics ("**MOCI**") and comply with the prevailing rules and regulations on the cross-border transmission of personal data. The cross-border transmission of personal data is to be coordinated through:

1. providing a plan for the transmission of personal data containing at least the clear name of the receiving country, the recipient, the transmission date and the purpose for which the personal data is being transmitted;
2. requesting an advice from the authorized minister or official, if necessary; and
3. submitting a report on the cross-border transmission of the personal data to the minister.

So far, no specific implementing regulation on the above requirements has been issued. However, in practice, the electronic system provider must submit a letter accompanied by an implementation and planning report to the MOCI. This report must at least include:

1. the name of the destination country ((i) where the data will be sent for the planning report or (ii) where the data has been sent for the implementation report);
2. the name of the party who has received or will receive the data;
3. the date of the transfer or the proposed date of the transfer; and
4. the reason for or purpose of the transfer.

The above reports, i.e. the implementation and planning reports are expected to be submitted to the MOCI every year. However, the MOCI has not set any deadline for their submission i.e. whether it must be by a specific date such as by 31 December or a later date.

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