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**Law Firm.**

# 11 Things You Need to Know

**Data Centers in Indonesia**

**Resilience  
Recovery  
Renewal**



# Foreword

What began as a health scare in a single province in China has morphed into a global pandemic that has spread to every country in the world. Covid-19 has unleashed a global supply chain crisis across a huge number of organizations, stemming from a lack of understanding of their global supply chains and a lack of diversification in their sourcing strategies. There are three stages to the current crisis, i.e., resilience, recovery and renewal stages.

As many industries and countries have gone through the resilience stage, which was managing the immediate crisis in 2020, we are now starting or have started to enter the recovery stage, where operations have stabilized. In the recovery stage, strategic risk assessments, restructuring, distressed investments and accelerated digitalization are the main drivers of operational stability.

Looking specifically at digitalization, we are pleased to share with you our first in a series of publications highlighting the key points that should be considered in structuring your companies' operations. In this publication, we will be looking at investing into, and operating, data centers in Indonesia.





# 01 Tax Holiday on data processing, data hosting and related activities

Under Minister of Finance Regulation No. 130/PMK.010/200 (“**MoF Regulation 130**”), taxpayers making new investments in pioneer industries in Indonesia may be entitled to a corporate income tax reduction. The reduction may be up to 100%; the term of the incentive depends on the amount of the new investment.

The digital economy, which includes data processing, data hosting and the related activities, is one of these pioneer industries.

The period of the facility depends on the amount of investment. Further details are set out below:

Investment (IDR)	Income Tax Reduction	Facility Period
100 billion - <500 billion	100%	5 years
500 billion - <1 trillion		5 years
1 trillion - <5 trillion		7 years
5 trillion - <15 trillion		10 years
15 trillion - <30 trillion		15 years
≥30 trillion		20 years



# 02 Recent Customs Compliance Trends

The Directorate General of Customs and Excise (“**DGCE**”) has the general authority to re-assess the compliance level of importers within 30 days of the date of importation, or within two years of the date of importation.

One of the most common assessments by the DGCE is in relation to the classification of parts of the data centers such as the “ikea racks” or server racks, the SSDs, the routers and the optical modules. It is not unusual for the DGCE to re-classify these imported goods to another HS Code that is subject to higher import duties. A change of classification does not lead to a penalty.

Another common assessment by the DGCE is the customs value, where the DGCE reviews, among other things, the customs value of the goods declared and the payment of freight, and does a comparison between the import declaration and General Ledgers. Underpayment of the customs value may lead to the levying of a penalty in addition to the additional customs value assessment.

Importers are encouraged to implement customs planning as early as possible to avoid hiccups during importation, and to be prepared for re-assessments by the DGCE.





## 03 Zoning Conformity

Investors need to check whether or not the area where the data center will be located is suitable for data center activities from a zoning perspective.

Based on Government Regulation No. 21 of 2021 on Administration of Spatial Planning, such assurance can be obtained by applying for a Space Utilization Confirmation (*Kesesuaian Kegiatan Pemanfaatan Ruang* - "**KKPR**") through the integrated electronic licensing system of the Indonesian Investment Coordinating Board ("**OSS**") (or manually while waiting for the online infrastructure for the KKPR to be up and running).

Once ready, the OSS system will include a centralized database of detailed spatial plans prepared by regional governments to facilitate investment licensing.

The KKPR can take three different forms:

1. **Confirmation:** If the proposed use of land is already in line with the detailed spatial plan for the relevant area.
2. **Approval:** If the regional government has yet to issue a detailed spatial plan, then the central government - through the OSS system - will issue an approval based on the higher level (non-detailed) spatial plans (e.g., city or district spatial plan, regional spatial plan or national spatial plan).
3. **Recommendation:** If the proposed use of land has not been regulated in any existing spatial plan and is deemed as "nationally strategic" in nature.

Based on the Risk-Based Online Single Submission (OSS) System, data centers must be located in areas zoned as industrial.



## 04 Land Ownership

The most appropriate land title for data centers that investors can hold is a right to build (*Hak Guna Bangunan* - "**HGB**") land title.

A HGB title give a right to establish and construct (buildings) on land. It is a leasehold title that can be registered under the name of Indonesian individuals and Indonesian companies (including foreign investment limited liability companies).

A HGB title is granted for an initial term of a maximum of 30 years, which can be extended for a maximum of 20 years, and can then be renewed for a maximum of 30 years. The validity term of a HGB title cannot be granted for an automatic fixed period of 80 years; however, a registered owner of HGB land can apply for further extensions and renewals of the HGB title to maintain its registered ownership for 80 years (or more), subject to approvals from the relevant Land Office.

An extension or renewal of the HGB title can immediately be applied for once the land has been used in accordance with its designated purpose. The extension or renewal of HGB land will be granted if the following conditions are met:

- A. The HGB land is being properly used in accordance with the situation, nature and objective based on which the title was issued.
- B. The requirements for the issuance of the HGB title are met by the title holder.
- C. The title holder still meets the requirements as a HGB land title holder (e.g., maintaining its status as an Indonesian company (which includes foreign investment limited liability companies)).
- D. The HGB land is still used in accordance with the spatial planning or zoning for the relevant area.
- E. The HGB land is not used for, and there is no plan to use it for, public purposes.





## 05 Building Permits

Once the land is acquired, a Building Approval (*Persetujuan Bangunan Gedung*) must be obtained prior to the start of construction.

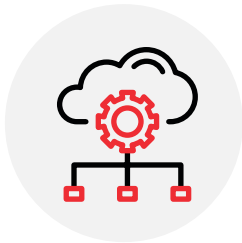
Based on Government Regulation No. 16 of 2021 on Implementing Regulations of Law No. 28 of 2020 on Buildings, a Building Approval has replaced the Building Permit (*Izin Mendirikan Bangunan*) as a prerequisite for the construction of a building. This should be applied for before any construction activity begins.

Previously a land owner had to rely on different committees of government officials to inspect and confirm the technical requirements of a building. This has now been replaced by a simpler consultation process. After the submission of the relevant application documents through the online Building Information Management System (*Sistem Informasi Manajemen Bangunan Gedung* - "**SIMBG**"), the relevant regional government appoints a Professional Experts Team to check the fulfillment of the building technical requirements. Under the regulation, the consultation process and the review of the application documents must be completed within 28 working days.

Apart from processing the Building Approval, the SIMBG is also used for various other building license purposes, such as applying for the Building Worthiness Certificate (SLF), Building Ownership Letter (*Surat Bukti Kepemilikan Bangunan Gedung* - "**SBKBG**") and building layout plans.

After the building is constructed, the building owner must apply for a Building Worthiness Certificate (*Sertifikat Laik Fungsi* - "**SLF**") before the building operates. This process has also been simplified by way of, among other things, the introduction of certified external Technical Reviewers, who are granted the authority to conduct a review of the technical worthiness of a building, and whose confirmation of the completeness of the building worthiness technical requirements forms the basis for the issuance of the SLF.

Together with the issuance of the SLF, the building owner can also obtain a Building Ownership Certificate (*Surat Bukti Kepemilikan Bangunan Gedung*), which certifies the ownership of the building, in addition to the land certificate that is issued to the land owner.



## 06 Concept of Data Center and Choice of Business Line

The interpretation of a data center business in Indonesia, from a business line perspective, is somewhat different from what may be familiar to many foreign companies.

In Indonesia, there is a data hosting business line. However, the nature of the data hosting business line is providing a data hosting system, rather than providing data center infrastructure/area to be leased by companies.

Currently, there is no specific business line for companies to provide data center infrastructure to be leased, without providing a data hosting system. Therefore, in general this kind of business activity will fall under the real estate business line.

We set out below a summary of the business lines.

Business Line	KBLI Code	Maximum Foreign Investment	Nature of Activities
Data hosting	63112	Up to 100%	Services that are related to hosting infrastructure, data processing, and hosting related activities, such as web-hosting and hosting applications.  This business line also includes data storage through cloud computing systems.
Real estate that is owned or leased	68111	Up to 100%	Leasing and operation of real estate that is owned or leased, which can also cover lease of an area within data center infrastructure.





## 07 Registration for Private Electronic System Operators and Data Access

Companies that operate an electronic system in Indonesia and offer that system to the public will need to register as electronic system operators with the Ministry of Communication and Informatics ("MOCI") ("ESO Registration").

As such, companies that offer data hosting storage systems will be captured by this ESO Registration requirement.

Companies that only lease data center areas without providing any data hosting system to the public will not be required to fulfill the ESO Registration requirement.

This ESO Registration also applies to foreign private ESOs:

1. that provide their services in Indonesia
2. that conduct business activities in Indonesia
3. whose electronic systems are used and/or offered in Indonesia

In addition to the ESO Registration requirement above, private ESOs are also obliged to provide access to data and/or electronic systems based on formal requests from government authorities and/or law enforcers.

For monitoring and law enforcement purposes, relevant government authorities or law enforcers can submit access requests, in a written form, to private ESOs.



## 08 Personal Data Protection and Data Localization

The personal data protection regulation in Indonesia is not yet as sophisticated as in some other jurisdictions. That said, the Indonesian Government is currently finalizing a new data privacy law.

Once this data privacy law is issued, it will regulate extensive areas of data privacy practice in Indonesia and introduce some concepts that are currently being implemented in the European Union through their General Data Protection Regulation (GDPR).

Under the existing regime, the main requirement is consent. Any use of personal data must be based on prior consent from data owners.

Consent must be in writing, which effectively means express and opt-in consent, and in the Indonesian language. In addition, consent should only be obtained after the ESO gives a detailed explanation to the data owner about the intended use of the personal data.

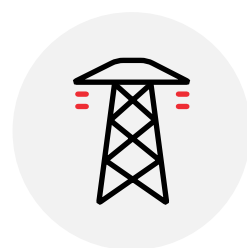
In terms of data localization, the requirement has been somewhat "relaxed" by the Indonesian Government.

The current regime categorizes ESOs into two groups, i.e., public ESOs and private ESOs. Public ESOs are government authorities and their appointed parties, while private ESOs include companies.

Currently, only public ESOs are required to process and store data in Indonesia.

Private ESOs are allowed to process and store data offshore, provided that they maintain the effectiveness of legal monitoring and enforcement in Indonesia (e.g., by complying with data requests from government authorities and law enforcers).





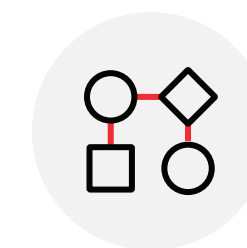
## 09 Powering Data Centers

As a general rule, the whole territory of the Republic of Indonesia is the business area of the state utility PT Perusahaan Listrik Negara (Persero) (PLN), except for a number of areas that have been carved out from PLN's business area and given to other electricity suppliers. In a handful of cases where the Government has carved out areas from PLN's business area and granted them to other electricity suppliers, they are typically given in the context of development of industrial estate parks, large manufacturing facilities, or power supply for remote areas (e.g., off-grid mining sites). Given this, except for data centers located in an industrial zone where the developer holds the "business area" designation from the Government, the data centers will most likely need to become customers of PLN.

Although Indonesia's electricity laws and regulations explicitly allow electricity consumers to have "captive" power plants and transmission/distribution assets for their own use, "captive power project" is narrowly defined in the regulations. Data centers as consumers will be required to hold an electricity license (known as *izin operasi* or operational license) for the captive project. Accordingly, data centers seeking to generate electricity for their own use from private developers by entering into corporate power purchase agreements (PPA) will have to deal with the requirement as if they were developing the power plants themselves.

Because of the inflexible regulatory restrictions in the Indonesian electricity sector, trying to adopt the same corporate PPA model as the one used in most liberalized countries (where a buyer and an electricity supplier can enter into business-to-business negotiations to purchase electricity) does not really work. However, there are ways to implement other structures in Indonesia with results similar to those of a corporate PPA. The most common structure involves the lease or rental of a power generation plant, with a lease payment scheme tied to the amount of electricity generated. This structure is most commonly implemented for behind-the-meter solar projects.

Data centers that are customers of PLN with an industrial tariff classification, or that are located in an industrial zone where the developer holds the business area designation, but at the same time have a captive solar project, will face additional requirements. Under Minister of Energy and Mineral Resources Regulation No. 26 of 2021 (Read our Client Alert on this [here](#)) those data centers will need to obtain an approval from PLN or the business area designation holder for the design before constructing the plant, and will be subject to a monthly capacity charge prescribed under that regulation.



## 10 Supply Chain of Data Center

Most of the components and equipment for data centers are usually procured from home office or from specific regions, for reasons of intellectual property and confidentiality. When a company wants to establish a data center company in Indonesia and then import the equipment for the data center to Indonesia, the supply chain of those goods may need to be carefully structured.

First of all, to reduce costs and expenses, an importer needs to identify if any of the components or equipment are subject to certain customs/fiscal facilities, e.g., exemptions from import duty. This may be the case if the exporting and the importing countries are parties to certain free trade agreements or economic agreements. If they are, the importer can ask the exporter to issue a certificate of origin for the purpose of exemption from import duty.

Secondly, there are particular rules that need to be met in the shipment of goods that are subject to exemption from import duty, for example consignment criteria. Each free trade agreement has its own rules of consignment criteria. Failure to meet the criteria may lead to revocation of the customs facility by the Directorate General of Customs and Excise.

Last but not least, the status of the importer in the importing country plays a key role. Each importer will have its own status, which shows the lane of importation. If an importer has a green lane status, the imported goods will not be subject to physical examination. This importation lane element has become very important, particularly because intellectual property and confidentiality are key elements of data center components and equipment. Physical examination means the customs authorities will open the containers and seals of the imported goods to check them manually for conformity with the import documents. If the seals and containers are opened, there will be exposure to the components, giving rise to the risk of a confidentiality breach, and an increased possibility of the components being damaged.





## 11 Business Licensing

Government Regulation No. 5 of 2021 on Risk-Based Criteria Business Licensing (“**GR No. 5**”) revokes Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services (the underlying regulation for the issuance of the OSS system, the current Indonesian licensing system). Following the issuance of GR 5, the new OSS system was launched. This new OSS system is called the Risk-Based Online Single Submission (OSS) System. The Risk-Based OSS System initially was expected to be launched on 2 June. After several delays, it was finally launched on 4 August.

There is a substantial mindset change with the new licensing regime and system. Rather than the government issuing licensing in advance, but subject to certain commitments to be fulfilled, the concept is back to the old licensing process where requirements/conditions need to be fulfilled before licenses are issued. However, the licenses and requirements/conditions only need to be processed through the OSS. This will apply to the licensing of data centers in Indonesia.

Under this new licensing regime and system, the risk level of the data hosting business activity (i.e., KBLI No 63112) for large-scale (or foreign investment) companies is medium-high. This means that at the moment every foreign investment company with a data hosting business line must obtain a business identity number (Nomor Induk Berusaha, commonly known as “NIB”) and verified standard certification. The Risk-Based Online OSS system will first issue an NIB and unverified standard certification to a company. With an NIB and unverified standard certification, the company can only conduct preparation activities for the business. It can only operate or conduct commercial activities once its unverified standard certification is certified by the relevant authorities, thus becoming verified standard certification.

## Key Contacts

For any further inquiries in relation to the above, or any other questions you might have about data centers in Indonesia, please contact:



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