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MANDATORY *HALAL* CERTIFICATION REQUIREMENT

インドネシアでは 2014 年にハラール製品保証法が制定され、2019 年 5 月に同法に関する施行令が制定された。同法に基づき食料品、飲料品、化粧品等に対して、本年 10 月以降、ハラール認証の取得が義務づけられることになる。実務対応に時間がかかるということで 5 年間の期間の猶予が与えられることになったものの、イスラム教徒が人口の 90% 近くを占めるインドネシアにおいてはハラール認証の取得は商業的にも重要な意味を有している。そこで本稿では、この新たに導入されたハラール認証の取得義務について概説する。

The government of Republic of Indonesia has issued Law No. 33 of 2014 on Halal Product Assurance (“**Halal Law**”) and Government Regulation No. 31 of 2019 on the Implementation Regulation of Halal Law (“**GR 31/2019**”) which have been enforced since 17 October 2014 and 3 May 2019, respectively.

As the biggest Moslem country in the world, the government of Republic of Indonesia intends to provide assurance for Indonesian Moslem that all products which are imported, distributed, and sold in Indonesia are *halal*. The *halal* status is evidenced by *halal* certificate issued by the authorized institution.

The Halal Law and GR 31/2019 regulate some important aspects which the relevant business entrepreneur must take into consideration, among others:

1. Definition of Halal Product

The Halal Law defines *halal* products as the products which have obtained *halal* status in accordance with Islamic sharia laws.

2. Scope of Halal Certification Requirement

Products that are required to obtain *halal* certificate are not limited to goods, but also certain services. GR 31/2019 sets out the list of goods and services which are subject to *halal* certification requirement, namely:

Goods:

- a. Food;
- b. Beverages;
- c. Drugs;

- d. Cosmetics;
- e. Chemical products, to the extent they are related with food, beverages, drugs, and cosmetics;
- f. Biological products, to the extent they are related with food, beverages, drugs, and cosmetics;
- g. Genetic engineering products, to the extent they are related with food, beverages, drugs, and cosmetics; and
- h. Worn, used, or utilized goods from animal sources. For example: clothes, accessories, head cover, household equipment, food and beverage packaging, stationery and office equipment.

Services:

- a. Animal slaughtering service;
- b. Processing service;
- c. Storage service;
- d. Packaging service;
- e. Logistic service;
- f. Selling service; and
- g. Presentation service.

3. Implementation of Halal Certification Requirement

According to the Halal Law, requirement to obtain *halal* certificate shall be effective within five years after the enactment of the Law, which in this case is 17 October 2019. However, after several discussions and consultations with relevant stakeholders, the government has agreed to implement this requirement in stages taking into consideration (i) readiness of business entrepreneurs; (ii) readiness of *halal* auditors; and (iii) type of products.

The government determined that the process to obtain *halal* certificate for food and beverages products will start from 17 October 2019 until 17 October 2024. While for products other than food and beverages, the certification starts from 17 October 2019 until 17 October 2026.

4. Non-Halal Products

Products which contain *haram* materials, i.e. materials which are prohibited under Islamic sharia law, such as: pork, lard, and alcoholic beverages, are exempted from *halal* certification requirement. However, such products must be marked with “non-halal” label in their packaging. Such label must be clearly written and easy to read by the customers.

5. Authorized Institution in Halal Assurance Implementation

Halal Law stipulates that there are three major institutions which will be responsible for the implementation of *halal* assurance in Indonesia, namely BPJPH, LPH, and MUI.

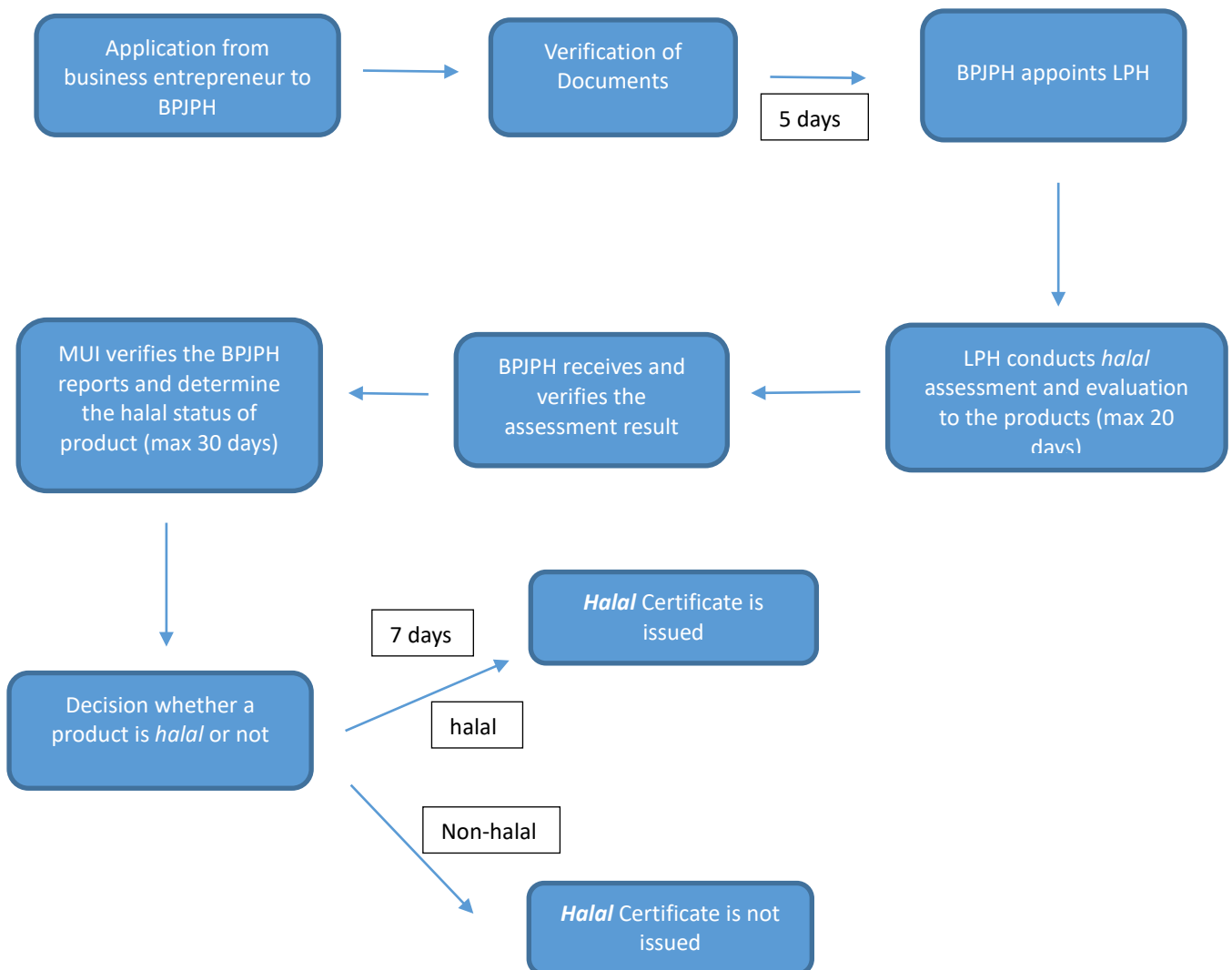
BPJPH is the institution under the Ministry of Religious Affairs, which is responsible to supervise the implementation of *halal* assurance in Indonesia. The main function of BPJPH is issuing or revoking *halal* certificates for products in Indonesia. BPJPH is entitled to organize accreditation process for LPH and cooperate with relevant institutions in foreign countries for the development of *halal* assurance program in Indonesia. One of the form of cooperation is to mutually acknowledge *halal* certificate issued by each party in both countries.

LPH is an entity established by the government and/or public for the purpose of assessment and examination of *halal* requirements of products. LPH must own an office and obtain the accreditation from BPJPH. In order to be accredited, an LPH shall have at least three *halal* auditors who have obtained certification from BPJPH.

MUI is the Indonesian Council of Ulama, namely the organization of Islamic scholars, Islamic leaders, and Islamic intellectuals in Indonesia. The Halal Law stipulates that the MUI is responsible to declare the *halal* status of products based on the examination report prepared by LPH and BPJPH.

6. How to Obtain *Halal* Certificate?

The following chart describes the process to obtain *halal* certificate from BPJPH:



7. *Halal* Certificate Issued by Foreign Institution

According to GR 31/2019, products which have obtained *halal* certificate from foreign institutions that cooperate with BPJPH are exempted to obtain *halal* certificate from BPJPH. However, such products must still be registered with BPJPH before they are distributed in Indonesia.

In order to be acknowledged by BPJPH, such foreign institutions must be an entity established by government or Moslem Board in the originating country. Furthermore, there must be an agreement between BPJPH and the foreign institution that the acknowledgment of *halal* certificate shall be applicable in both ways, meaning that the *halal* certificate issued by BPJPH will also be acknowledged in such foreign country.

This mutual acknowledgment purports to simplify the requirements for imported products as the foreign manufacturers may choose whether they wish to apply for the *halal* certificate in their own country or in Indonesia through BPJPH.

Conclusion

Japanese companies engaged in the manufacturing and distribution of products, specifically food and beverages and cosmetics, in Indonesia will now have to ensure that they obtain appropriate *halal* certification before such products

are sold in Indonesia. Until a corresponding foreign institution is established, the products will need to be certified by the BPJPH.

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Malaysia

FIRST SUBSTANTIAL AMENDMENT TO THE COMPANIES ACT 2016

マレーシアの会社法は、2016年に大きな改正がなされたが、今般その会社法の一部規定をさらに改正する動きが進んでいる。2019年7月の段階で既に議会では可決されて改正法案自体は成立しており、近日中に官報において施行日が通知されることになっている。本稿では今回の改正点のうち実務上重要な点を中心に概観する。

The Companies Amendment Bill 2019 (“**Bill**”) was passed by the Dewan Rakyat (i.e. House of Representative) on July 10th, 2019 and by the Dewan Negara (i.e. Senate) on July 31st, 2019. The Bill seeks to amend the Companies Act 2016 (“**Act**”) and will come into operation on a date to be notified in the Gazette.

The key amendments to the Act introduced by Bill are set out below:

1. Clarification on documents for execution

Section 66 of the Act provides for the formalities of executing documents by a company, that is:

- (a) by way of the affixing of a common seal; or
- (b) signature of at least 2 authorized officers, one of whom must be a director.

When the Act first came into force, there was confusion as to the extent of application of Section 66, given that “documents” was widely defined as having the meaning assigned to it in the Evidence Act 1950. This could have included documents such as an invoice or a delivery note falling within the ambit of Section 66, thus requiring the execution of either of the foregoing documents by way of affixing of the common seal or signature of at least 2 authorized officers.

The Bill now clarifies that the formalities above only apply to documents which are required to be executed by any written law, resolution, agreement or constitution. Contracts, letters, invoices, delivery notes, notices and similar documents to be issued by a company are therefore not subjected to the stricter execution formalities of Section 66 and can be executed by any employee empowered to do so within the organization.

2. Redemption of preference shares from the company’s capital

Section 72(4) of the Act states that preference shares shall be redeemable if such shares have been fully paid up and the redemption shall be out of (a) profits, (b) fresh issue of shares, or (c) capital of the company.

Pursuant to Section 72(5), where redemption of preference shares is **out of profits** or **capital of the company**, the company would be required to **transfer, out of profits, an amount equal to the amount of shares being redeemed into the share capital of the company.**

The Bill seeks to amend Section 72(5) to make it clear that the requirement to transfer an equivalent amount of distributable profits to the share capital account upon the redemption of preference shares **only applies when preference shares are redeemed out of profits.** Where preference shares are redeemed out of capital, there is no longer a requirement to transfer profits to share capital accounts.

3. Power to alter share capital

Section 84(1) of the Act will be amended so that the power of a company to alter its share capital in the manner specified in the said Section, particularly by:

- (a) consolidating and dividing all or any share capital on the basis that the proportion between the amount paid and the amount, if any, unpaid on each subdivided share remains the same as it was in the case of the share from which the subdivided share is derived;
- (b) converting all or any paid-up shares into stock and vice versa; or
- (c) subdividing its shares or any of its shares, whatever is in the subdivision, on the basis that the proportion between the amount paid and the amount, if any, unpaid on each subdivided share remains the same as it was in the case of the share from which the subdivided share is derived,

unless otherwise provided in the company's constitution, may be **effected by an ordinary resolution instead of a special resolution.**

4. Application for disallowance of variation of class rights

Section 93(2) of the Act is to be amended to rectify the inconsistency between Section 93(1) and 93(2)(b) of the Act by making it clear that where there is an application to the court to disallow the variation of class rights, it may be made on behalf of the shareholders representing at least ten per centum (10%) of the total voting rights in the class by any shareholder appointed in writing.

5. Dismissals of applications for judicial management order

The Act had introduced a judicial management mechanism which allows a company, its directors or a creditor, to apply to court to place the management of the company in the hands of a judicial manager (i.e. a qualified insolvency practitioner). The role of the judicial manager is to prepare and table a restructuring plan for the approval of the company's creditors and once approved, to oversee its implementation.

Currently, Section 409 of the Act provides that the court can dismiss an application if:

- (a) a receiver or receiver and manager of substantially all the assets of the company has been appointed, **and**
- (b) the making of the judicial management order is opposed by a secured creditor.

The Bill proposes to **amend the word "and" in Section 409 to "or"**. Effectively, it will be easier for the court to refuse a grant of a judicial management order as an opposition by any secured creditor would defeat the judicial management application, rendering the requirement relating to the appointment of receiver or receiver and manager redundant.

The amendment may however be seen as providing protection to secured creditors.

6. Company to provide sufficient security for costs

The Bill introduces a new Section 580A to provide that the company, acting as plaintiff in any action or proceedings, is required to provide sufficient security for costs where there is credible testimony that the company is unable to pay

the costs to the defendant in the event the defendant is successful in his defense. The court is also empowered to stay proceedings until such security is given.

This provision is substantially similar to Section 351 of the repealed Companies Act 1965 and is reintroduced by the Bill to prevent frivolous claims and abuse of process by parties seeking to initiate legal proceedings.

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Vietnam

ANTI-CORRUPTION LAW UPDATE

2019年7月1日に施行された新しい汚職防止法の施行細則となる政令第59/2019/ND-CP号が同日付で成立し、本年8月15日に施行された。旧汚職防止法では、国家公務員や国営企業の職員等のみならず公務員が適用対象となっていたが、新しい汚職防止法制の下では、民間企業の職員も適用対象となり、公開会社や金融機関に関しては所定の汚職防止規制が定められているなど、日系企業にも一定の影響があるように思われる。本記事では、こうした日系企業にとって実務的に関心が高いと思われる点についてご紹介する。

Introduction

On 20 November 2018, the National Assembly of Vietnam passed a Law on Anti-corruption to replace the law issued in 2005 (and amended in 2007 and 2012). This law which came into effect from 1 July 2019 provides regulations regarding the prevention and detection of corruption and actions against corruption.

Recently, on 1 July 2019, the Government of Vietnam issued Decree 59/2019/ND-CP to provide guidance on a number of issues on the Law on Anti-Corruption. This decree came into force from 15 August 2019.

This article discusses certain material issues in the anti-corruption framework under the Law on Anti-corruption and its implementing decree (collectively, the “**Anti-corruption Regulations**”)

Scope of Application

Unlike the previous anti-corruption regulations which applied to state organizations (including state owned enterprises) and persons having position and power in these state organizations, the Anti-corruption Regulations extend the scope of application to non-state organizations. However, they do not set out any specific activities that non-state organizations (except for public companies and non-state credit institutions) must carry out in order to prevent or detect corruption as they do for state organizations and state officials or public employees. They simply list what would constitute corrupt activities in relation to non-state organizations: (i) embezzlement and (ii) bribery (including both offering bribes and receiving bribes). With respect to public companies and non-state credit institutions, the Anti-corruption Regulations require them to comply with certain specific regulations set out in the Anti-corruption Regulations. For instance, these entities are required to comply with the regulations regarding control of conflict of interest (as discussed below) and heads and deputy heads of the entities which have corruption activities will have responsibilities similar to those applicable state organizations having corruption activities.

Declaration of Assets and Income

The Anti-corruption Regulations expand the scope of persons who are required to declare their assets and income. In particular, under the old law, only (i) officials having positions of deputy heads of departments of people's committee at district level (or equivalent) or having higher position (ii) officials directly managing assets and funds of state organizations or officials being directly involved in resolving the organizations' affairs and (iii) nominees for the National Assembly delegates and the People's Councils delegates were required to declare their assets and income. Under the Anti-corruption Regulations, (i) all cadres and public servants, (ii) police and military forces officers and (iii) persons holding positions of deputy managers or higher in public service agencies and state-owned enterprises and (iv) appointed representatives of state capital in enterprises are required to declare their income and assets.

Depending on the position of the declarant, he/she will be required to declare annually or upon the change of the assets having the value of VND300 million (approximately USD22,500) in a year. The Law on Anti-corruption also sets out the consequence of incorrect declarations. Accordingly, depending on the position of the declarant, he/she may be removed from the list of candidates to be nominees for the National Assembly delegates and the People's Councils delegates, not be appointed (or re-appointed) to a position or subject to disciplinary measures.

Guidelines on receiving gifts

Under the previous regulations¹, the State organizations and individuals having position and power² in these organizations were prohibited from receiving gifts if such gift giving was related to public duties of the recipient or did not have a "clear purpose". They were permitted to receive (without notification to their direct supervisors) gifts with the value of less than VND500,000 (approx. USD22) on traditional events or when they are sick, provided that such gifts were not related to their public duties. On the other hand, under the current regulations, such State officials must not by any means receive gifts from others being involved in their work or under their management. The exception under the previous regulation has been deleted. It is unclear as to whether the State officials will not be permitted to receive any gifts (even ones having value of less than VND500,000) or they will be permitted to receive gifts regardless of value as long as the gift giving is not related to their works or from persons under their management.

The entities or individuals being offered gifts must reject gifts given in breach of the law. If they are unable to reject, they must report this issue and hand over the gifts to the relevant department for disposal.

Depending on the nature and seriousness of the violations, the heads of the entities violating the regulations and the relevant individuals may be imposed with relevant consequences (e.g. disciplinary measures).

Conflict of Interest

A person having position and power in State organizations is considered having conflict of interest when there is evidence indicating that he/she falls or will fall into any of the following cases:

- (i) Receiving money, property or other benefits from others being involved in his/her work or under his/her management;
- (ii) Establishing, managing, operating sole proprietorship, limited liability companies, joint-stock companies, partnerships or cooperatives unless specified otherwise;
- (iii) Consulting domestic or foreign enterprises, organizations or individuals about matters regarding State secrets, secrets of business within his/her management or involvement;
- (iv) Using information being obtained from his/her position to gain benefit for himself/herself or for others;
- (v) Appointing spouses, parents, children, siblings to hold positions of human resources, accounting managers, treasurers or warehouse-keepers in the agencies, organizations, units in which he/she is the head or deputy head or in entities trading goods or services for the entities in which he/she is the head or deputy head;

¹ Decision 64/2007/QĐ-TTg dated 10 May 2007 of the Prime Minister.

² This person is defined to mean those who are assigned through appointment, election, contract or other arrangements, with or without salaries, to perform certain tasks or public duties and have certain powers while performing such tasks or public duties.

- (vi) Contributing capital to enterprises within the fields, specialities directly under his/her state management or allowing spouses, parents or children to do business within the fields, specialities directly under his/her state management;
- (vii) Signing contracts with enterprises owned by spouses, parents, children, siblings or allowing enterprises owned by spouses, parents, children, siblings to participate in tender of his/her agencies, organizations, units when he/she is assigned to be in charge of such contracts or tender;
- (viii) Having spouses, parents, children, siblings directly benefiting from his/her assignment; or
- (ix) Interfering or negatively impacting the operation of competent agencies, organizations, units or individuals for personal gain.

Such person who recognizes or is supposed to recognize any of the conflicts of interest, is required by the Anti-corruption Regulations, to report to his/her direct supervisor. If there is evidence suggesting the individual having conflict of interest will not ensure objectivity and transparency in the operation of the agencies, organizations or units when doing the assignment or holding the position, he/she then must be suspended or re-assigned.

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