MANDATORY USE OF L/C FOR EXPORTING MINING AND ENERGY PRODUCTS

On 5 January 2015, the Minister of Trade issued Regulation No. 4/M-DAG/PER/1/2015 of 2015 on Provisions to Use a Letter of Credit for Exporting Certain Commodities ("MOT Regulation 4"). One of the goals of MOT Regulation 4 is to provide a clear and verifiable record of prices actually paid by foreign buyers for exported natural resource products. Under MOT Regulation 4, an L/C is the only method of payment allowed for exporting the following commodities listed in Attachment 1 of MOT Regulation 4:

1. mineral products, e.g. iron concentrate, nickel, silver, gold, bronze, and tin;
2. coal products, e.g. briquettes, agglomerated coal, and lignite;
3. oil and gas products, e.g. crude oil and liquified natural gas (LNG); and
4. crude palm oil, including crude palm kernel oil.

(hereinafter referred to as "**Commodities**")

In general, an L/C is a guaranty of payment issued by a bank on behalf of an importer for the benefit of the party which receives the L/C (exporter), provided that the exporter submits the documents required for an L/C to be issued by the bank. The amount stated in the L/C must be at least equal to the global market price for the Commodity exported. The proceeds from the L/C must be received through a foreign exchange bank in Indonesia, which can be an Indonesian branch of a foreign bank.

MOT Regulation 4 requires domestic exporters to use L/Cs when exporting Commodities, and for compliance the L/C must be stated in the export notification (pemberitahuan ekspor barang – PEB). Exporters cannot export Commodities unless they comply with this requirement.

To monitor exporter compliance with MOT Regulation 4, the Minister will appoint a surveyor to review the L/C documents. Following the review, the surveyor will issue a report stating that the exporter has complied with the obligation to use an L/C to export the Commodities. MOT Regulation 4 came into effect on 1 April 2015. Therefore, after 1 April 2015, all payments for exports of Commodities must be by way of an L/C.

On 30 March 2015, however, the Minister of Trade further issued Regulation No. 26/M-

DAG/PER/2015 of 2015 on Specific Provisions on the Implementation of Using a Letter of Credit for Exporting Certain Commodities (“MOT Regulation 26”). Under MOT Regulation 26, exporters may be exempt from the requirement to use an L/C with the Minister’s approval. The Minister will issue such approval after receiving an application from the respective exporter and evaluation of the following documents:

1. Agreement/contract between the exporter and foreign buyer of the Commodities which has been concluded before MOT Regulation No. 4 and sets out another payment method(s) for the export;
2. Commitment of the exporter to adjust the payment method to L/C payment; and
3. Duty-stamped statement letter guarantying point a. and point b.

The Minister will then establish a team to organize a post-audit, to evaluate the export activities and abovementioned documents for an exemption. The L/C exemption may be revoked if the post-audit reveals that the documents submitted are inaccurate or the export activities are conducted improperly. In the case of such violations, the exporter may also be subject to other sanctions under other applicable laws and regulations.

MOT Regulation 26 also further regulates that in addition through a foreign exchange bank in Indonesia, the proceeds from the L/C can also be received through the Indonesian Export Fund Agency established by the government. MOT Regulation 26 has been in force since 1 April 2015.