Procurement

# The New Public Procurement Rules: More Details Still to Come

On 22 March 2018, the Government of the Republic of Indonesia issued the new public procurement rules, i.e., Presidential Regulation No. 16 of 2018 on the Public Procurement of Goods and Services ("**Regulation 16/2018**") and replaced the previous rules under Presidential Regulation No. 54 of 2010 on the Government Procurement of Goods and Services, which was amended several times, most recently through Presidential Regulation No. 4 of 2015 ("**Regulation 54/2010**"). Regulation 16/2018 regulates the procurement of goods/services by government agencies (i.e. Ministries/Institutions/Regional Government Agencies) that are wholly or partially financed through the state/regional budget, including the procurement of goods/services that are wholly or partially financed by domestic or offshore loans or grants that are received by the government/ministries.

Regulation 16/2018 will come into effect on 1 July 2018, so before that, Regulation 54/2010 continues to apply.

Regulation 16/2018 tries to simplify the procurement rules by putting details of the procurement procedures as much as possible in the implementing regulations, e.g., the Head of Public Procurement of Goods/Services Agency (*Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah* - "**LKPP**") Regulation. The Head of LKPP Regulation is easier to amend and, therefore, it is expected to change more easily with developments in business practice. The downside of moving the procedures to the implementing regulations, however, is that we currently do not know how the new rules will be applied in practice until the implementing regulations are issued.

There are many interesting new features in the new procurement rules, but their details are not known yet. For example, actions are exempted from the public procurement rules if the procurement is carried out in accordance with established business practices. Only after the implementing regulation is issued we will know what is meant by "established business practices."

Among all the revisions to the procurement rules, we set out below a few items that may be most interesting for businesses. Businesses should consider waiting for the issuance of the implementing regulations prior to undertaking the actions below.

| Provision | Regulation 54/2010 | Regulation 16/2018 |
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| **Limitations on direct procurement of consultation services** | Consultation services up to IDR 50 million. (see **Article 45 paragraph (1)**). | Consultation services up to IDR 100 million.<br>(see **Article 41 para (3)**). |
| **Emergency procurement** | Not specifically mentioned. | Emergency procurement can be carried out for emergency circumstances, i.e., natural disasters, social disasters, etc. (see **Article 59**). |
| **International tenders** | International tenders can be open for foreign companies under the following conditions:<br>1. Procurement of Construction | International tenders can be open for foreign companies under the following conditions:<br>1. Procurement of Construction |

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| | Work with a value above IDR 100 billion (*vide* **Article 104 paragraph (1a)**);<br>2. Procurement of Other Goods/Services with a value above IDR 20 billion or below IDR 20 billion if domestic providers cannot supply them (*vide* **Article 104 paragraph (1b) and (3)**); and<br>3. Procurement of Consultation Services with a value above IDR 10 billion or below IDR 10 billion if domestic providers cannot provide them (see **Article 104 paragraph (1c) and (4)**). | Works with a value above IDR 1 trillion;<br>2. Procurement of Other Goods/Services with a value above IDR 50 billion;<br>3. Procurement of Consultation Services with a value above IDR 25 billion;<br>4. Procurement of Goods/Services funded by Export Credit Insurance Institutions or Foreign Private Creditors.<br><br>International tenders can be open below those values if there are no qualified domestic providers. (see **Article 63**). |
| **Integrated works** | Not regulated. | Regulation 16/2018 provides that the procurement of goods, construction projects, consultation services, and non-consultation services can be conducted in an integrated manner. (see **Article 3 paragraph (2)**). |
| **Procurement consolidation** | Not regulated. | Procurement consolidation is a procurement strategy to consolidate/merge several packages of similar procurements at the following stages: procurement planning, procurement preparation through providers, and/or preparation for providers selection. (see **Article 1 paragraph (51) and Article 21**). |
| **Repeat orders** | Not possible. | Regulation 16/2018 allows direct appointment by way of repeating order from the same Consultant Services Provider. This direct appointment is limited to two times. (see **Article 41 paragraph (5d) and (6)**). |
| **E-reverse auctions** | Not regulated. | Regulation 16/2018 regulates that an e-reverse auction may now be implemented for bid offering to select providers. (see **Article 50 paragraph (11)**). |
| **Exemption of certain** | Not regulated. | Regulation 16/2018 explicitly |

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| **procurements from the Regulation 54/2010** | | excludes the following type of procurements:<br>a. Procurements by Public Service Agencies (*Badan Layanan Umum*);<br>b. Procurements based on generally published tariffs;<br>c. Procurements based on established business practices; and/or<br>d. Procurements regulated under other laws and regulations.<br>(see **Article 61**). |
| **Research** | Falls under procurement of consultation services. | Research can be carried out by individuals or a group of individuals of civil servant/non-civil servants, the relevant government institutions, universities, mass organizations, or business actors. Research is decided upon competition or assignment.<br>(see **Article 1 paragraph (34) and Article 62**). |
| **Procurement using e-marketplace** | Limited to e-auction and e-purchasing (e-catalogue). | E-marketplace consists of e-catalogue, online shops, and providers selection. (see **Article 1 paragraph (20) and Article 70**) |
| **Dispute-resolution mechanism** | Not possible. | Regulation 16/2018 allows LKPP to act as a settlement body for contractual disputes between the tenderers and the providers (see **Article 85**) |

We will keep you updated on this matter..

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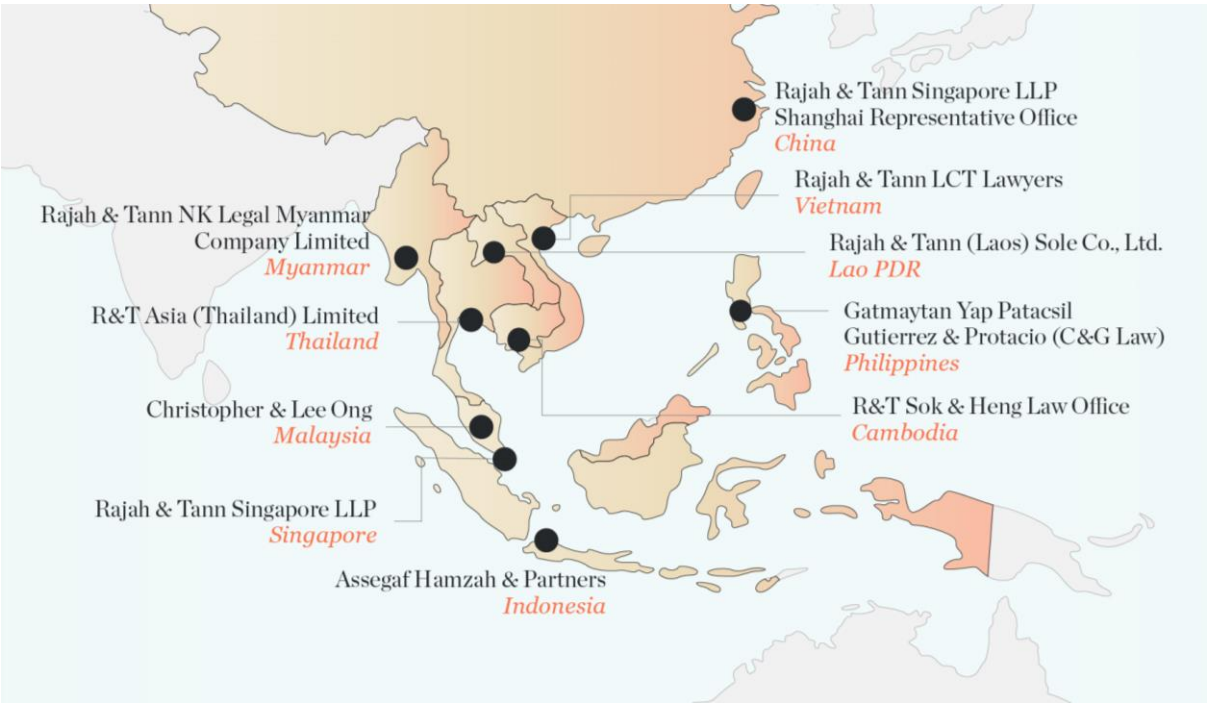


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