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A Spatial Plan Conformity Confirmation under the Amended Spatial Planning Law and Government Regulation No. 21 of 2021

Following the enactment of Law No. 11 of 2020 on Job Creation (“**Omnibus Law**”) on 2 November 2020 amending Law No. 26 of 2007 on Spatial Planning (as amended, “**Spatial Planning Law**”), the Government issued one of the implementing regulations on spatial planning, Government Regulation Number 21 of 2021 (“**Regulation 21/2021**”). Regulation 21/2021 replaces previous Government Regulation No. 15 of 2010.

The Omnibus Law requires the Regional Government to prepare and provide a digital version of the regency/city level Detailed Spatial Plan (*Rencana Detail Tata Ruang* or “**RDTR**”) to later be integrated into the Online Single Submission (“**OSS**”) system by the Central Government to make it easily accessible to the public. Regulation 21/2021 sets the rules for preparing the RDTR at the

national, provincial, regency, and municipality levels. The Omnibus Law and Regulation 21/2021 also impose a new licensing requirement for businesses, the Spatial Plan Conformity Confirmation (“**SPCC**”) requirement which replaces the spatial utilization permit requirement. Before the Spatial Planning Law was amended by the Omnibus Law, businesses were required to obtain a spatial utilization permit which was previously called a Location Permit or any other

permit that the Regional Government required (eg in Badung Regency, Bali it is called Spatial Information). Therefore, now a Location Permit is no longer required but replaced with the SPCC. It seems that the Omnibus Law wants to make uniform and centralize the licensing requirement so that businesses are only required to obtain an SPCC through the OSS system.

This advisory only highlights the Spatial Plan Conformity Confirmation requirement that applies to business actors under Regulation 21/2021, a new license that businesses require before they can obtain a business license and engage in their business activities.

Under Regulation 21/2021, business actors (except for micro and small-scale business actors) are required to obtain an SPCC through the OSS system before they can apply for a business license and operate commercially. This SPCC requirement also applies to businesses located in coastal water or water areas. Obtaining an SPCC means that the intended business activities conform to the RDTR of the relevant location. Unfortunately, Regulation 21/2021 is silent on whether existing businesses are also required to obtain an SPCC. However, assuming that existing businesses have obtained a Location Permit and valid business license from the government and neither their activities nor their location stated in their current permit/license have changed, it may not be necessary to obtain an SPCC.

An SPCC will be issued if the intended activities and location conform to the RDTR. In brief, the procedure under Regulation 21/2021 for an SPCC to be issued through the OSS system consists of the following steps:

1. registration, which includes the submission of some information including the location geographical coordinates, total land area, control/ownership over the land, the intended business, the planned number of floors and area of the building;
2. an assessment of the intended activities; and
3. the issuance of the SPCC.

The SPCC will be issued through the OSS system within 1 business day of registration or after payment of the non-tax state revenue and will be valid for 3 years. If the OSS System still cannot issue the SPCC, the registration and issuance of the SPCC can be conducted offline by the Ministry of Agrarian Affairs and Spatial Planning.

Micro and small-scale businesses are exempt from this SPCC requirement and are only required to submit a written statement regarding the conformity of their business activities to the Spatial Plan (*Rencana Tata Ruang* or “RTR”) to the OSS system.

Further, under Regulation 21/2021, if the RDTR for the intended location of the business is not yet available, the business actor must obtain a spatial plan conformity approval instead of an SPCC (“**Approval**”). Registration for an Approval application is also conducted through the OSS system.

The authority will supervise the business' spatial utilization to ensure its compliance with the SPCC both during the construction/development of the project and after the construction has been completed. In addition, if the authority finds that the SPCC was issued without completing the correct and valid procedure, the authority can declare the SPCC null and void; or if the SPCC is found to be no longer in line with the RTR due to an amendment to the RTR, the authority may cancel the SPCC. In which case, the business actor whose SPCC is cancelled can ask for compensation from the institution that issued the SPCC. This will be regulated further under a Presidential Regulation.

Regulation 21/2021 imposes various administrative sanctions for violations of the RTR requirement such as engaging in spatial utilization activities which are not in line with the SPCC or without an SPCC. The administrative sanctions range from written warnings, to a fine, a temporary suspension of the activities, the revocation of the SPCC, to the demolition of the building. These administrative sanctions will be imposed according to the following criteria:

- a. the impact of the violation;
- b. the benefits of the imposition of a fine; and
- c. the public loss suffered due to the violation.

In addition to the above administrative sanctions, the amended Spatial Planning Law increases the criminal sanctions under the Spatial Planning Law. Under the amended Spatial Planning Law, anyone who does business without having the required spatial conformity approval which causes a change to the spatial function can be sentenced to prison for up to 3 years and fined IDR 1 billion. If the violation causes a loss or damage to someone's property, the prison sentence will be up to 4 years and the fine will be IDR 2.5 billion. Meanwhile, if the violation causes the death of a person, the prison sentence will be up to 15 years and the fine will be IDR 8 billion. Meanwhile, anyone who fails to comply with the requirements under the SPCC and thereby causes a change to the spatial function, will be liable to imprisonment for up to 3 years and a fine of IDR 1 billion.

If a company commits any of the above violations, in addition to the imprisonment of its management, the fine can be increased by up to 1/3 of the original fine. The company may also have its business license or legal entity status revoked.



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