

OVERVIEW ON THE NEW MINISTER REGULATION CONCERNING THE USAGE OF FOREIGN FLAGGED VESSEL



Maritime industry plays an important and strategic role in the national development in any country, including in Indonesia. As the Indonesian Maritime Law required any domestic sea transportation activities must be performed by national sea transportation companies using Indonesian flagged vessels and crewed by Indonesian citizens, however, the Government of the Republic of Indonesia (“GOI”) provides a possibility for certain foreign flagged vessel to sail in Indonesian water since 2014 and renewed every year, lastly amended by PM 115/2017.

What’s New

The new PM 115/2017 is issued to amend and restate several clauses which previously are stipulated in PM 100/2016, particularly on the extension of the Exempted Vessel which is exempted to use Indonesian flag (details as below). In our general review, in addition to the above provision, the new PM 115/2017 governs the new terms of Project Owner, which is having the meaning that company which has obtained performance contract from government or business entity whose scope of works is for other activities excluding passengers and/or goods transportation in domestic maritime transportation activities.

Types of Exempted Vessel

By the end of 2017, the Ministry of Transportation of the Republic of Indonesia (“Minister”) has enacted the new PM 115/2017 wherein mainly governs the extension period for certain types of vessel which may apply foreign flag in Indonesia waters. In general, the following are the types of vessel (“Exempted Vessels”) which are exempted to use Indonesian flag:

Type of Activities / Vessels	Validity (PM 115/2017)	Validity (PM 100/2016)
Drilling		
Jack up rig/jack up barge/ self elevating drilling unit;	End of Dec 2018	End of Dec 2017
Semi submersible rig;	End of Dec 2018	End of Dec 2017
Deep water drill ship	End of Dec 2018	End of Dec 2017

In addition, pursuant to Article 7 of PM 115/2017, the Minister (on his sole discretion) raises an opportunity to any types of a vessel to be exempted to use an Indonesian flagged vessel (“Other Exempted Vessels”), by taking into the following consideration:

- type and technical specification of vessel which is being applied is unavailable or inadequate for Indonesian flagged vessel which is evident with result of team discussion which is written in official report;
- activities which are conducted to support national interest which is supported by recommendation from relevant Ministry or Agency; and
- license is granted with very limited period of time.

Other Shipping Activities

Basically, an Exempted Vessel may transport any other shipping activities which scope of work is for other activities other than transporting of passengers and/or goods transportation. As reflected in PM 100/2016, the other activities are covering, Oil and natural gas survey, drilling, offshore construction, supporting of offshore operation, dredging, and salvage & underwater work.

Further, as provided in Article 7 of PM 115/2017, any other activities (aside from the abovementioned) are welcome to use Other Exempted Vessel by taking into account any provisions stipulated therein, such as type and technical specification.

Permit to Use Foreign Flagged Vessel (“Permit”)

In order to use a foreign flagged vessel in Indonesian waters, an Indonesian marine company may file an application to have the Permit. Article 4 of PM 115/2017 provides the following documents to be attached upon submitting to the Directorate General of Sea Communication, among others:

- a. work plan which covers activities schedule, scope of works, and working area which is marked with geographic coordinates; and
- b. charter party between national maritime transportation company with the owner of foreign vessel and performance contracts and/or Letter of Intent (LoI) from employer.

Under the new PM 115/2017, the utilization of foreign flagged vessel (either Exempted Vessel or Other Exempted Vessel) must be conducted after 1 (one) attempt to procure Indonesian flagged vessel by institution/Project Owner party (in previous regulation was stated institution/owner party and/or contractor) in accordance with type and technical specification of required vessel by evidencing of a procurement announcement or other proof of procurement within 5 (five) working days at the latest before submitting application to use a foreign flagged vessel.

Prioritize to Use Foreign Flagged Vessel in Indonesia Waters

In principle, the procurement of a vessel in Indonesia must prioritize the Indonesian flagged vessel. If the Indonesian flagged vessel is unavailable or inadequate, the procurement of a foreign flagged vessel (either Exempted Vessel or Other Exempted Vessel) must be conducted by prioritizing:

- a. Foreign flagged vessel which has not been operated in Indonesia and will be changed to Indonesian flag and is owned by Indonesian legal entity which the majority of its shares are owned by Indonesian Citizen and is equipped with statement letter of commitment of changing to Indonesian flag; or
- b. Foreign flagged vessel which is purchased by Indonesian Citizen or Indonesian Legal Entity which the majority of its shares are owned by Indonesian Citizen and/or its subsidiary which the majority of its shares are owned by Indonesian Citizen, and is financed by leasing company by enclosing the following documents:
 1. Leasing agreement with leasing company;
 2. Deed of establishment of the subsidiary; and
 3. Statement letter regarding the commitment of the owner to convert the vessel into Indonesian flagged vessel by the end of leasing period.

Given the above, the procurement of a foreign flagged vessel is quite difficult and complicated as there are some requirements and stages must be fulfilled and complied by the applicant before bringing the vessel into Indonesian waters. According to official of the Minister, such provision is made to stimulate and advance the Indonesian shipping industry and would not longer depend on foreign country/vessel. HPRP, as one the experienced law firm in shipping industry can give any general advice on the above shipping services including obtaining the permit to use a foreign flagged vessel.

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