

Refresher on Government Regulation for IP-Based Financing Scheme



As highlighted back in 2022 (click [here](#) to read our previous client alert on the same topic), the government had enacted Government Regulation No. 24 of 2022 on the Implementing Regulation of Law No. 24 of 2019 on Creative Economy (“**Regulation**”). The Regulation confirmed that intellectual property (“**IP**”) assets can be pledged as a security to obtain financing from banks and non-bank financial institutions. While the concept of taking security over IP is not new, the Regulation is a significant step in Indonesia’s IP regime, besides also stimulating the creative economy ecosystem in Indonesia.

From a regulatory standpoint, Law No. 42 of 1999 on Fiducia Security (“**Fiducia Law**”) stipulates that fiducia can be established on any movable intangible object that can be owned and transferred, regardless of whether it is registered or unregistered. Furthermore, Law No. 28 of 2014 on Copyright (“**Copyright Law**”) and Law No. 13 of 2016 on Patent (“**Patent Law**”) explicitly stipulate that copyrights and patents can serve as objects of fiducia security. In practice, we have seen IP assets, mostly trademarks, being used as security objects to secure a loan or financing transaction. Although theoretically, IP assets can be encumbered through a pledge, as mentioned above, we have only seen these IP assets being encumbered by way of a fiducia security and subsequently registered at the Fiducia Office.

In light of the Regulation finally coming into effect on 12 July 2023, below is a highlight of some of the key steps that need to be taken by all the parties involved.

Government

As of now, the government or the relevant authority has not enacted any other implementing regulations pertaining to the Regulation. Nonetheless, the government has taken some measures to facilitate the effective enforcement of the Regulation, including the development of training modules for the competence of IP valuers/appraisers and the revision of the Indonesian Valuation Standard (*Standar Penilaian Indonesia* or SPI), the official standard for asset valuation in Indonesia, to incorporate standards to value IP assets.

Even so, there are still several key issues that need to be addressed to support the effective implementation of the Regulation:

1. Establishment of a public database

It is necessary that the Directorate General of Intellectual Property (“**DGIP**”) establishes and maintains a public database of encumbered IP assets. In our perspective, this database should integrate the data that was previously maintained by the Fiducia Office into the DGIP’s IP database. This integration would streamline the process of establishing, releasing, and/or enforcing fiducia security over registered or recorded IP assets.

Once this database and the system at the DGIP are available and working properly, it will undoubtedly increase stakeholders’ trust and reliability in IP assets as security objects. Besides ensuring the effective enforcement of fiducia security, registering encumbered IP assets in the DGIP’s database will also prevent the unauthorised transfer or the re-encumbrance of the same IP asset to another party.

2. Clarity on enforcement

Because the Regulation itself does not detail the procedure to enforce encumbered IP assets, it is important for the government to establish clear rules governing this aspect.

3. Recording of financing facilities

The Ministry of Tourism and creative economy should also develop a system for recording the financing facilities provided to Creative Economy entrepreneurs by financial institutions, especially IP-based financing. The Regulation establishes this requirement to facilitate easier government supervision and to serve as a material consideration for providing additional financing facilities.

In addition, it is imperative for the OJK, Indonesia’s Financial Services Authority to establish standardized guidelines for financial institutions regarding IP-based financing to address the technical aspects of the Regulation.

Business Owners

Business owners who seek to utilise their IP as security to obtain financing from financial institutions need to make necessary preparations. Aside from preparing a business/financing proposal, they should also initiate an IP audit.

An IP audit is a crucial step for business owners who consider their IP as the main asset of their business. By accurately identifying each IP they possess, they can also estimate the value of each IP and determine which IPs hold sufficient value to be encumbered as security objects.

The next steps would be to register or record these IPs with the DGIP and develop a commercialisation strategy for such IPs. If feasible, business owners should also start the commercialisation of their current IP assets. The Regulation stipulates that IP assets eligible for collateral are those that have been:

1. recorded or registered at the DGIP; and
2. commercialised, e.g., generating revenue or royalties.

We believe that the above requirements are not overly restrictive. In other words, IP assets that do not fulfil the above requirements can still be encumbered with fiducia security, and such security will remain valid. These requirements primarily serve to establish that IP assets meeting these requirements provide conclusive evidence of ownership and hold tangible value that can be used to settle the borrower's obligations to the lender.

Lenders/Financial Institutions

Lastly, lenders or financial institutions should also start preparing for when business owners start applying proposals for IP-based financing. One of the initial steps for financial institutions is to establish procedures and allocate resources to handle applications for IP-based financing from business owners.

Financial institutions or lenders should ensure that their relevant human resources possess the necessary expertise and knowledge in IP and IP valuation. This can be achieved by enrolling them in competency training or courses for IP valuation. Furthermore, financial institutions or lenders should also establish an internal standard operating procedure for receiving, processing and granting or rejecting IP-based financing proposals from business owners.

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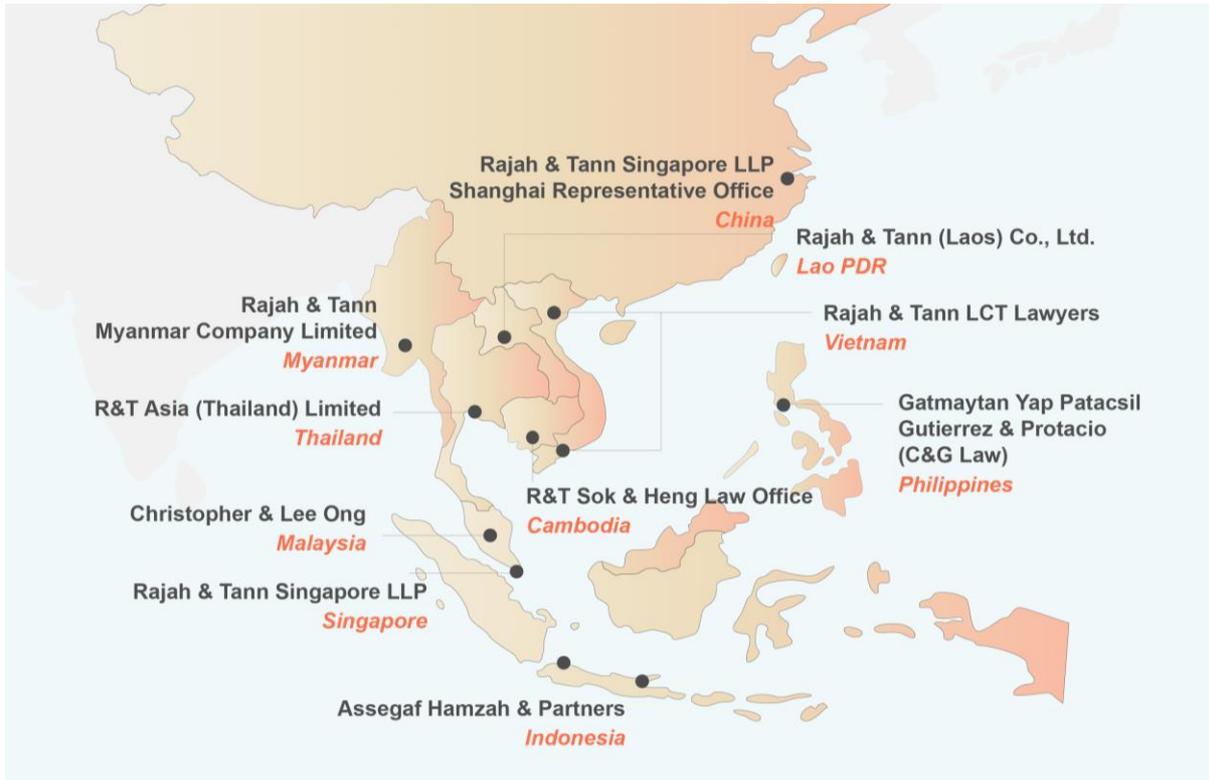
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