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The Ministry of Public Works and Housing Revokes the Regulation on Guidelines on Licensing Services for Foreign Construction Business Entities

As part of President Jokowi Widodo's plan to issue "investment friendly" regulations, the Ministry of Public Works and Housing ("MPW") revoked MPW Regulation No. 09/PRT/M/2019 on Guidelines on Licensing Services for Foreign Construction Business Entities ("MPW Reg 9/2019") on 18 November 2019 under MPW Regulation 17/PRT/M/2019 ("MPW Reg 17/2019").

In order to fill the vacuum created by the revocation of MPW Reg 9/2019, the MPW has issued Circular Letter No. 22/SE/M/2019 on Guidelines on Licensing the Businesses of Foreign Construction Business Entities ("Circular Letter No. 22/2019"). In general, Circular Letter No. 22/2019 provides the procedures for applying for, extending and revoking the Licenses of Foreign Construction Representative Offices ("BUJKA-RO") (*Izin Perwakilan Badan Usaha Jasa Konstruksi Asing*, "BUJKA-RO License") and Business Licenses of Foreign Investment Construction Companies ("PMA Company") (*Izin Usaha Jasa Konstruksi*, "PMA License").

Although, most of the provisions related to the procedures for applying for a BUJKA-RO License and PMA License remain the same, Circular Letter No. 22/2019 simplifies the commitment for the BUJKA-RO License and PMA License, which are outlined as below:

A. Commitment for BUJKA-RO License

Similar with MPW Reg 9/2019, under Circular Letter No. 22/2019, the application for a BUJKA-RO License is submitted through the Online Single Submission ("OSS") system.

The steps in the procedure for the new issuance and extension of a BUJKA-RO License remain the same as MPW Reg 9/2019.

However, under Circular Letter No. 22/2019, the new application and extension of BUJKA-RO License could be effective after it has obtained a large qualification Business Registration Certificate ("SBU").

Previously under MPW Reg 9/2019, in addition to large qualification of SBU, a BUJKA-RO is required to provide evidence that it has undertaken at least 1 (one) construction service project for the extension of a BUJKA-RO License.

B. Commitment for PMA License

Circular Letter No. 22/2019 also requires a PMA License to be applied for through the OSS system.

The steps in the procedure for obtaining a PMA License remain the same with the MPW Reg 9/2019.

However, under Circular Letter No. 22/2019 the commitment for a PMA License is only to obtain a large qualification SBU. Previously, in addition to a large qualification SBU, MPW 9/2019 also required, among other things, the foreign shareholder(s) of the company to have the same business line (and large qualification) as the local shareholder(s).

C. Unaddressed Issues under Circular Letter No. 22/2019

Although the issuance of Circular Letter No. 22/2019 is intended to simplify the administrative procedure for a BUKA-RO License and PMA License, several issues remain unaddressed. For instance, among others, the following:

I. Shareholders of the PMA Company

In relation to the shareholders of the PMA Company, it is not clear whether the local shareholder(s) and foreign shareholder(s) of a PMA Company are still required to be construction companies as previously required under MPW 9/2019.

II. Work Percentage under Joint Operation

It is also not clear how the joint operation between a BUJKA-RO and a local construction company should be implemented, especially regarding the work percentages. Previously, for construction work services and construction integrated services, at least 50% of the total construction value had to be performed onshore. This has not been addressed under the Circular Letter No. 22/2019.

According to an MPW official in our informal discussion, the Circular Letter No. 22/2019 is a temporary attempt to fill the vacuum regarding the procedures for obtaining a BUJKA-RO License and a PMA License. The above issues may be addressed in future regulations. Therefore, how MPW will respond regarding the unaddressed issues remains to be seen.

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