



**Makarim & Taira S.**  
Summitmas I, 16<sup>th</sup> & 17<sup>th</sup> Fls.  
Jl. Jend. Sudirman Kav. 61-62  
Jakarta 12190  
Indonesia  
P: (62-21) 5080 8300, 252 1272  
F: (62-21) 252 2750, 252 2751  
[www.makarim.com](http://www.makarim.com)

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## **New Regulation on Foreign Construction Representative Offices and Construction Foreign Investment Companies**

On 13 June 2019, the Minister of Public Works and Public Housing ("MPW") issued Regulation No. 09/PRT/M/2019 on Guidelines on Licensing Services for Foreign Construction Business Entities ("**Reg No. 9/2019**") replacing: (i) MPW Regulation No. 10/PRT/M/2014 on Guidelines on Issuing Licenses to Representatives of Foreign Construction Service Corporate Bodies ("**Reg No. 10/2014**"); and (ii) MPW Regulation No. 03/PRT/M/2016 on Technical Guidelines on Issuing Construction Service Business Licenses to Foreign Investment Construction Service Enterprises as amended by MPW Regulation No. 30/PRT/M/2016 ("**Reg No. 3/2016**"). Reg No. 10/2014 and Reg No. 3/2016 are collectively referred to as "**Old Regulations**".

Reg No. 9 /2019 provides more details than the Old Regulations. Although, most of the provisions under Reg No. 9/2019 are the same as those of the Old Regulations, Reg No. 9/2019 introduces some significant changes to the provisions related to Foreign Construction Representative Offices ("**BUJKA-RO**") and construction foreign investment companies ("**PMA Construction Company**") which are outlined as below:

### **A. The licensing procedure for a BUJKA-RO License**

Reg No. 9/2019 finally addresses the issues in the procedures for applying for a license for a BUJKA-RO ("**BUJKA RO License**") and for PMA Construction Company ("**PMA License**") through the Online Single Submission ("**OSS**") system. Under Reg No. 9/2019, a conditional BUJKA RO Licenses and conditional PMA License will be issued by OSS before the issuance of the business entity certificate ("**SBU**").

A BUJKA-RO License will only become effective after it has obtained the SBU. On the other hand, a PMA License will only become effective after several commitments, such as SBU, completion of investment requirement and shareholding requirements, have been completed.

### **B. Shareholders Requirements for a PMA Construction Company**

Reg No. 9/2019 provides a more stringent requirement on the foreign shareholders of a PMA Construction Company, as Reg No. 9/2019 now requires them to have a large qualification. However, it remains to be seen how the MPW determines the large qualification of the foreign shareholder.

### **C. Partners for Joint Operations for BUJKA-RO**

Reg No. 09/2019 no longer allows for a BUJKA RO to form a joint operation with a foreign investment construction company. Previously, under Reg No. 10/202014 a BUJKA RO may form a joint operation with a foreign investment company (subject to the fulfilment of several conditions and has been approved by MPW).

## **D. Requirements for the Person in Charge of the BUJKA-RO**

Under Law No. 2 of 2017 on Construction and Reg No. 9/2019 Person in Charge of the Business Entity ("PJB") of BUJKA RO must be an Indonesian national.

Reg No. 9/2019 provides that if the Indonesian citizen does not meet the criteria for a PJB, the Indonesian citizen's position can be that of the Technical Person in Charge of the Business Entity (*Penanggung Jawab Teknis Badan Usaha* – **PJTBU**). The criteria for a PJB will be regulated further under a separate MPW regulation which has not been issued yet.

## **E. Foreign Manpower Restriction**

Reg No. 9/2019 now imposes a more stringent manpower requirements for BUJKA RO as BUJKA RO is now required to employ more Indonesian experts than foreign experts. This provision has not been expressly governed under the previous regulation.

## **F. Requirements to Engage in Construction Services**

Reg No. 9/2019 now requires a BUJKA-RO to engage in at least 1 (one) construction service during the term of the BUJKA RO License, otherwise its license will be revoked.

Reg No. 9/2019 also requires a PMA Construction Companies to engage in at least 1 (one) construction service during the term of the SBU, otherwise its license will be revoked.

Note that under Reg No. 9/2019, if BUJKA RO License/ PMA License is revoked it can only be reapplied at least 5 (five) years after the original license was revoked.

## **G. Requirements for an extension of a BUJKA-RO License**

BUJKA-RO now must extend its license before the license expire, otherwise, the BUJKA-RO will have the following progressive sanctions imposed on it, ie. written warning, being blacklisted and eventually having its license revoked.

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### **Contacts:**

|                        |  |
|------------------------|--|
| Heru Mardijarto        | - <a href="mailto:heru.mardijarto@makarim.com">heru.mardijarto@makarim.com</a>       |
| Dirgantara Adi Nugroho | - <a href="mailto:dirgantara.nugroho@makarim.com">dirgantara.nugroho@makarim.com</a> |
| Stephen Sim            | - <a href="mailto:stephen.sim@makarim.com">stephen.sim@makarim.com</a>               |