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Establishment of Foreign Construction Service Companies in Indonesia

A. Legal Basis

1. Law No. 2 of 2017 on Construction Services ("**Construction Law**");
2. Law No. 25 of 2007 on Investment ("**Investment Law**");
3. Law No. 40 of 2007 on Limited Liability Company ("**Company Law**");
4. Law No. 13 of 2003 on Manpower ("**Employment Law**");
5. Government Regulation No. 4 of 2010 on Second Revision of Government Regulation No. 28 of 2000 on Business and Community Role on Construction Services ("**Regulation 4/2010**");
6. Government Regulation No. 29 of 2000 on Construction Services Implementation ("**Regulation 29/2000**");
7. Presidential Regulation of the Republic of Indonesia No. 44 of 2016 on List of Closed Business Fields and Open Business Fields with Requirements in the Field of Investment ("**Negative List of Investment**");
8. Regulation of the Minister of Public Work and Housing 09/PRT/M/2019 on Guidelines and Requirements for Foreign Construction Services Business Entity Representative ("**MoPWH Regulation 9/2019**");
9. Regulation of the Minister of Public Work and Housing No. 19/PRT/M/2014 on Revision of Regulation No. 08/PRT/M/2011 on Sub-classification and Sub-qualification Construction Services Business ("**MoPWH Regulation 8/2011**");
10. Regulation of the Investment Coordinating Board No. 7 of 2018 on Guidelines and Procedures for Control of Investment Implementation ("**BKPM Regulation 7/2018**");
11. Regulation of the Minister of Manpower No. 10 of 2018 on Utilization of Foreign Workers ("**MoM Regulation 10/2018**");
12. Regulation of the National Construction Services Development Board No. 11 of 2006 on Registration of Construction Services Provider Business ("**LPJK Regulation 11/2006**");
13. Regulation of the National Construction Services Development Board No. 3 of 2017 on Certification and Registration of Construction Services Provider Business ("**LPJK Regulation 3/2017**"); and
14. Decree of the Minister of Manpower and Transmigration No. 40 of 2012 on Specific Positions which are prohibited from being occupied by Foreign Workers ("**MoM Decree 40/2012**").

B. Types of Construction Services

Under the Construction Law, Construction Services consist of:

1. construction consultancy services;
2. construction work services; and
3. integrated services between construction, consultancy and work services.

Construction Services are divided into general and specialist activities. General and specialist activities determine the types of works that may be subcontracted by construction services providers as explained in the following table:

1. Construction Consultancy Services

	Classifications	Activities	
<u>General Business classification:</u>	(1) Architecture;	(1) Assessments;	
	(2) Engineering;	(2) Planning;	
	(3) Integrated engineering; and	(3) Drafting;	
	(4) Landscape architecture and spatial planning	(4) Supervision; and/or (5) Management of construction organizations.	-
<u>Specialist Business classification:</u>	(1) Scientific and technical consultancy;	(1) Survey; (2) Technical examinations; and/or	Allowed to be sub-contracted
	(2) Technical examination and analysis	(3) Analysis activities.	

2. Construction Work Services

	Classifications	Activities	
<u>General Business classification:</u>	(1) Buildings; and	(1) Construction;	
	(2) Civil construction.	(2) Maintenance;	
		(3) Demolition; and/or	-
		(4) Reconstruction.	
<u>Specialist Business classification:</u>	(1) Installation;	Includes the construction work activities relating to certain parts of buildings or the construction of other physical forms.	Allowed to be sub-contracted
	(2) Special construction;		
	(3) Pre-fabricated construction;		
	(4) Building finishing; and		
	(5) Equipment rental.		

3. Integrated Services between Construction Consultancy and Work Services

Business Classifications	Activities
(1) Buildings; and	(1) Design; and
(2) Civil construction.	(2) Engineering, Procurement and Construction.

C. Forms of Foreign Construction Business Entities

Construction Services can be provided by an individual or a business entity. However, for foreign construction services companies, there are some limitations to establishing their business. Foreign construction services company can only operate in Indonesia as:

- **Representative Office (BUJKA)** BUJKA is limited to only providing construction services in high-risk, high-tech, and high-cost market segments including consultations (engineering/design) and/or supervision and monitoring services. BUJKA must be led by an Indonesian citizen and must have the required certificates. BUJKA must also establish a joint operation with certified national business entities.
- **Foreign Investment Company (PT PMA).** PT PMA is limited to classification B which stands for planning, and B2 for project implementer or large businesses with project values above 250 billion. The company must be formed as a Limited Liability Company (PT) with a maximum foreign share ownership of about 67%.

D. Required Licences

To operate its business in Indonesia, a foreign construction company must meet several requirements as set out in the MoPWH Regulation 9/2019. A foreign construction company operating as **BUJKA must obtain a Representative License**. Meanwhile, **PT PMA must obtain a PMA Licence**. Both licenses are issued by the OSS for and on behalf of the Minister.

In addition, both BUJKA and PT PMA should obtain: (1) Certificate of competence/expertise (Sertifikat Keahlian Kerja/SKA or Sertifikat Keterampilan Kerja/SKT); (2) Business Entity Certificate (Sertifikat Badan Usaha/SBU); and (3) Construction Services Business License (Surat Ijin Usaha Jasa Konstruksi/SIUJK).

E. Documents Required to Get the Necessary Licenses

The Indonesian Construction Law provides details of licenses and certificates that must be owned by foreign construction services companies, namely:

- Deed of Company Establishment from Notary
- Company Registration Certificate (Tanda Daftar Perusahaan/TDP)
- Taxpayer Registration Number (Nomor Pokok Wajib Pajak/NPWP)
- Domicile Letter from the Local sub-district
- Work Permit (Kartu Izin Tinggal Terbatas/KITAS)
- Business and Principle License from BKPM
- Declaration of Environmental Management and Monitoring Capability (Surat Pernyataan Pengelolaan Lingkungan/SPPL)
- Certificate of Expertise (SKA)
- Certificate of Competence (SKT)
- Construction Association Membership (Kartu Tanda Anggota/KTA)
- Business Entity Certificate (SBU)
- Construction Services Business License (Izin Usaha Jasa Konstruksi/IUJK)

ADCO Law earns the trust to represent clients from multinational companies to emerging entities across a wide range of industries to achieve their business objectives in Indonesia

By combining commercial sensibilities and legal expertise, ADCO Law assists the clients to structure, organize and implement their business ventures and investments, including structuring, financing and securing investments as well as establishing new foreign companies in Indonesia. Should you have more queries regarding this matter, please do not hesitate to contact us.

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