



BAGUS ENRICO & PARTNERS
COUNSELLORS AT LAW



OMNIBUS LAW SERIES

CHAPTER III: CONSTRUCTION LAW

Omnibus Series: Construction Law

In February 2021, The Government of Republic Indonesia has enacted Government Regulation No. 14 of 2021 on the Amendment of Government Regulation No. 22 of 2020 on the Implementation Regulation of Law No. 2 of 2017 on Construction Service (“**GR 14/2021**”), following the enforcement of Law No. 11 of 2020 on Job Creation (“**Omnibus Law**”). GR 14/2021 has brought several amendments to the provisions under Government Regulation No. 22 of 2020 as the Implementation Regulation of Law No. 2 of 2017 on Construction Service in order to reflect the construction sector’s efforts to serve the purposes and objectives of the Omnibus Law.

Some of the major changes in construction are relating to the capital requirement, licensing and sustainable construction. Under the Government Regulation No. 5 of 2021 on Implementation of Risk-Based Business Licensing (“**GR 5/2021**”), the capitalization of construction companies has been adjusted, subject to the types of business activities. Within GR 14/2021, the most notable change is regarding the Business Entity Certificate (“**SBU**”) and Construction Work Competency Certificate (“**SKKK**”), which will no longer be issued by the Construction Service Development Board (“**LPJK**”). Furthermore, GR 14/2021 contained an improved provision on Foreign Construction Manpower and the implementation of technology transfer, where the Ministry of Public Works and Public Housing (“**MPW**”) along with the Ministry of Manpower and Transmigration (“**MoM**”) will supervise and evaluate the utilization of Foreign Construction Manpower.

Foreign Investment Company (“**PT PMA**”) and Representative Office

Capital structure for PT PMA in construction sector remains limited to a maximum 67% for Non-ASEAN foreign ownership and 70% maximum for ASEAN foreign ownership. However, there is a clearer condition now on the arrangement of Joint Operations with domestic construction companies. It is stipulated that for Construction Work and Integrated Construction projects, the local party of the Joint Operation shall take up minimum 30% of the construction work value. On the other hand, for Construction Consultation Service works, the domestic party shall take up a minimum 50% of the construction work value.

Moreover, the government has limited the number of companies in one Joint Operation. For a non-complex construction, maximum 3 companies can participate in one Joint Operation. As for complex construction, the government allows maximum 5 companies in one Joint Operation.

Capital Requirements

GR 5/2021 has made several adjustments in regards to the capital requirements in construction sector. For clarification, please find the below a table comparing the capital requirements stipulated within LPJK Regulation No. 3 of 2017 on Certification and Registration of Construction Work Service (“**LPJK Regulation 3/2017**”) and GR 5/2021.

Subject	LPJK Regulation 3/2017	GR 5/2021
Small Qualification	<ul style="list-style-type: none"> K1 IDR 50.000.000 (fifty million Rupiah) to IDR 500.000.000 (five hundred million Rupiah) 	<ul style="list-style-type: none"> General Construction Consultation Service Minimum IDR 100.000.000 (one hundred million Rupiah)

	<ul style="list-style-type: none"> • K2 IDR 200.000.000 (two hundred million Rupiah) to IDR 500.000.000 (five hundred million Rupiah) • K3 IDR 350.000.000 (three hundred and fifty million Rupiah) to IDR 500.000.000 (five hundred million Rupiah) 	<ul style="list-style-type: none"> • General Construction Work Minimum IDR 300.000.000 (three hundred million Rupiah)
Medium Qualification	<ul style="list-style-type: none"> • M1 Minimum IDR 500.000.000 (five hundred million Rupiah) • M2 Minimum IDR 2.000.000.000 (two billion Rupiah) 	<ul style="list-style-type: none"> • General Construction Consultation Service Minimum IDR 250.000.000 (two hundred and fifty million Rupiah) • General Construction Work Minimum IDR 2.000.000.000 (two billion Rupiah)
Large Qualification	<ul style="list-style-type: none"> • B1 Minimum IDR 10.000.000.000 (ten billion Rupiah) • B2 Minimum IDR 50.000.000.000 (fifty billion Rupiah) 	<ul style="list-style-type: none"> • General Construction Consultation Service Minimum IDR 500.000.000 (five hundred million Rupiah) • General Construction Work Minimum IDR 25.000.000.000 (twenty-five billion Rupiah) • General Integrated Construction Minimum IDR 25.000.000.000 (twenty-five billion Rupiah)
Representative Office	Minimum IDR 50.000.000.000 (fifty billion Rupiah)	<ul style="list-style-type: none"> • General Construction Consultation Service Minimum IDR 2.000.000.000 (two billion Rupiah) • General Construction Work Minimum IDR 35.000.000.000 (thirty-five billion Rupiah) • General Integrated Construction Minimum IDR 35.000.000.000 (thirty-five billion Rupiah)

SBU and SKKK

Prior to the enactment of GR 14/2021, LPJK is responsible for issuing SBU and SKKK. According to GR 14/2021, henceforward SBU will be issued by the Business Entity Certification Bodies (“**LSBU**”) formed by accredited Business Entity Association (“**Association**”). SKKK will be issued by Professional Certification Bodies (“**LSP**”), formed by Association and work training and educational institutions (“**Institution**”) according to the existing regulation. The role LPJK will have for this matter is limited to issuing license for LSBU and licensing recommendation for LSP. There will also be new SBU classifications and sub-classifications which will replace the existing construction classifications.

Pending to the issuance of guidelines for LSBU licensing and LSP licensing recommendation, the aforementioned provision cannot be applied yet, although it has come into force. MPW aimed to complete the guidelines no later than December 2021, along with the registration of LSBU and LSP which has obtained the respective license and licensing recommendation.

During the transitional period, SBU will be carried out by LPJK by forming Business Entity Certification Organizing Team. SKKK can be carried out by the LSP created by Association and registered Institution, provided that they have obtained licenses from an independent institution that carries out work competency certification. In the event that LSP is unable to carry out SKKK, LPJK will form a Work Competency Certification Organizing Team.

Foreign Construction Manpower and Technology Transfer

After the enactment of GR 14/2021, MPW, along with MoM shall supervise and evaluate the utilization of Foreign Construction Manpower. Such supervision and evaluation will be conducted based on: (a) the suitability of the determination of Qualification, Classification and Sub-Classification as a result of equalization of Foreign Construction Manpower’s competency in certain positions that he/she holds; (b) the utilization of the domestic manpower counterpart; and (c) the implementation of knowledge transfer and technology transfer.

GR 14/2021 also governs the implementation of technology transfer, which shall be conducted according to the following, and must be included in the construction contract.:

- a. Prepare a profile of the use, utilization, and development of the technology, which shall be conveyed to the partner of the partnership and/or the owner of the project, in Bahasa Indonesia and in English;
- b. Conduct a training, in expertise and managerial, for the Indonesian domestic manpower counterpart and/or the Indonesian skilled manpower, at least once for every project; and
- c. Facilitate Indonesian citizen to conduct research, practical work, and/or academic research in the project carried out by the business entity.

Other than the above, GR 14/2021 also stipulated that business entity shall utilize more of Indonesian manpower than foreign manpower for the expert position.

Sustainable Construction

The sustainable development idea is also incorporated in GR 14/2021. The new regulation introduces the concept of Sustainable Construction, where it aims to increase the prosperity of the people, maintain the sustainability of the environment, and reduce the social disparity of the people. Sustainable Construction is expected to be implemented in every stage of construction, starting from general planning until the demolition or the re-building phase. For example, in general planning, contractors are expected to take several matters into account, namely the utilization of natural resources, the contribution to the development of the area where the construction take place, and also considering the gender, disability, and marginalized group issues. According to the new regulation, the principles of Sustainable Development must be applied in exercising construction service business. Such principles include:

- resemblance in purpose, comprehension, and action plan;
- compliance to security, safety, health, and sustainability standard (*Standar Keamanan, Keselamatan, Kesehatan, dan Keberlanjutan*);
- reduce the utilization of resources, including land, material, water, natural resources, as well as human resource;
- reduce physical and non-physic waste;
- reusing the used resources;
- utilization of recycled resources;
- protection and management of the environment through conservation efforts; and
- risk mitigation of safety, health, climate change, and disaster.

According to the Public Consultation held by Directorate General Construction on 19 March 2021, MPW will further enact three (3) regulations as a mandate from GR 14/2021, namely: (i) MPW Regulation on Guidelines of the Exercise of Sustainable Construction; (ii) MPW Regulation on Guidelines on Construction Safety Management System; and (iii) Expert Appraiser, Building Default, and Appraisal on Building Default. Aside from that, we are also expecting MPW to enact the MPW Regulation on Business and Product Standard on the Exercise of Risk-Based Business Licensing in Public Works and Housing Sector as a response to the enactment of GR 5/2021.

Continuous development of the MPW demonstrates the government's efforts to properly and effectively enforce the objective of the Omnibus Law. In light of the newly introduced compliance of "Sustainable Construction", this in turn aims to increase the imperativeness of empowering the local construction services whilst ensuring the increasing of people's prosperity, maintain the sustainability of the environment, and reduce the social disparity of the people. We are anticipating the officialization of the three further regulations as a mandate for GR 14/2021 which will provide much needed clarification as to the efficient enforcement of this newly enacted regulation.