



## INDONESIA'S 2019 REGULATION FOR CONSTRUCTION BUSINESSES: IMPORTANT NEWS FOR FOREIGN INVESTORS

The June 2019 implementation of Indonesia's Regulation No. 09/PRT/M/2019 (the 2019 Regulation) seeks to provide additional guidance for foreign stakeholders in the Indonesian construction industry, further to 2017's Construction Law No. 2<sup>1</sup>. We explore the scope of the 2019 Regulation – along with concerns about its possible impact on foreign investment into Indonesia.

<sup>1</sup> See our earlier article on this topic at <http://www.hfw.com/downloads/00864-HFW-Indonesia-in-depth-2019-industry-outlook.pdf>.

# “An effective construction licence will last for three years for representative offices.”

## Background to the 2019 Regulation

Indonesia's Construction Law 2 of 2017 required foreign investors to establish either a representative office in cooperation with an Indonesian construction company (representative office), or incorporate a legal entity in a joint venture (JV) with an Indonesian construction company in order to perform construction services in Indonesia.

In June 2019, a little more than two years after Construction Law No. 2's implementation, the Minister of Public Works and Public Housing implemented the 2019 Regulation, providing further guidance to foreign investors providing construction services. The main points to note are as follows<sup>2</sup>:

### 1. Construction licence

Regardless of whether a foreign investor has established a representative office or a JV, the 2019 Regulation requires the relevant entity to register an “Online Single Submission” and obtain a “Single Business Number”. Thereafter, it will be granted an interim construction licence valid for 30 working days.

An interim construction licence will be converted into an effective construction licence after 30 working days if the representative office or JV

fulfils certain commitments. For example, it must obtain a Business Entity Certificate from the National Construction Development Institution.

An effective construction licence will last for three years for representative offices. There is no limit on the construction licence for JVs provided they carry out at least one project every three years.

### 2. Reporting requirements

During the period of a construction licence, the licensee is required to submit regular reports to the Minister of Public Works and Housing on their construction projects in Indonesia (amongst other matters). Failure to provide regular reports will lead to sanctions (see below).

### 3. Employment

The Construction Law requires representative offices and JVs to employ Indonesian nationals in management positions, including – in the case of a representative office – the head of that office.

The 2019 Regulation appears to allow representative offices to employ foreigners as heads of the offices provided that Indonesians are employed as “Technical Persons in Charge”.

However, it is unclear how this will work in practice given that the Construction Law requires the head of the office to be an Indonesian national without exception.

### 4. Sanctions

Foreign investors should be aware of the strict sanctions for breach of the 2019 Regulation. These include being “blacklisted” from providing construction services for three years.

For a JV, this will mean it will lose its construction licence, since it is a condition of that requirement that it carries out at least one construction project every three years.

The same applies to representative offices since the duration of a representative office licence is three years. Once lost, a construction licence can only be re-obtained after five years.

### Criticisms

Since its issuance, the 2019 Regulation has been criticised by some stakeholders in the Indonesian construction industry, due to concerns that the introduced measures will discourage foreign investment in the sector.

<sup>2</sup> The 2019 Regulation revokes two prior regulations regarding representative offices and JVs in the construction sector: Regulation No. 10/PRT/M/2014 and Regulation No. 03/PRT/M/2016 as amended.



This has led the Ministry of Public Works and Public Housing to consider reviewing the 2019 Regulation. They have circulated letters to the construction community asking for their input. It is not known when this review will be completed or what the results might be.

#### **Key takeaways for foreign businesses investing into Indonesia**

- Foreign investors must carefully prepare to ensure that they can satisfy the commitments to obtain an effective construction license within 30 working days of registering an “Online Single Submission”.
- Whilst the 2019 Regulation appears to allow the head of a foreign investor’s representative office to be a foreign national, there is a strict requirement to the contrary in the Construction Law. It is not clear which will take priority.
- Foreign investors should be aware of the risk of being blacklisted under the 2019 Regulation for failing to comply with the provisions of the 2019 Regulation. This sanction would seriously undermine the efforts of any foreign investor.

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