



## The New Regulation on the Procurement of Goods and Services in the State-Owned Enterprises Sector

On 12 December 2019, the new Minister of State Owned Enterprises, Erick Thohir, issued new Ministry of State Owned Enterprises Regulation No. PER-08/MBU/12/2019 on General Guidelines on the Implementation by State Owned Enterprises of the Procurement of Goods and Services (“**MSOE Reg 8/2019**”), which came into force on 16 December 2019. This regulation replaces the previous regulation, MSOE Regulation No. PER-05/MBU/2008 as amended by MSOE Regulation No. PER-15/MBU/2012 on General Guidelines on the Implementation by State Owned Enterprises of the Procurement of Goods and Services (“**MSOE Reg 5/2008**”).

This new regulation introduces several new important provisions, including among others:

### 1. Price Preference for Local Content

MSOE Reg 9/2019 now allows State-Owned Enterprises (“**SOE**”) to apply a price preference for local products with a local content component value equal to or more than 25%.

The price preference for goods given can be up to 25% and for construction services up to 7.5%.

The local content requirements for procurement will be determined by the Local Content Team (*Tim Tingkat Komponen Dalam Negeri*) formed by the Board of Directors of the SOE.

### 2. Changes to the Definition of a Subsidiary and an Affiliated Company of a State-Owned Enterprise

Under MSOE Reg 5/2008, a subsidiary was defined as a company at least 90% of the shares of which are owned by the SOE. MSOE Reg 5/2008 further defined an affiliated company of an SOE as a company at least 90% of the shares of which are owned by a subsidiary, joint subsidiary, or joint subsidiaries of the SOE.

Under the new regulation, the subsidiary of an SOE is a company more than 50% of the shares of which are owned by the SOE. MSOE Reg 9/2019 defines an affiliated company as a company more than 50% of the shares of which are owned by a subsidiary, joint subsidiary, or joint subsidiaries of the SOE.

### 3. Procurement for a Subsidiary or Affiliate of an SOE

Under the previous regulation, the procurement regulations for SOEs should also apply to their subsidiaries and affiliates. Now, under the current regulation, their subsidiaries and affiliates may opt to follow the

#### **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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procurement rules under MSOE Reg 8/2019. The General Meeting of Shareholders must be held by the subsidiary or affiliate of the SOE to confirm its application of the procurement rules under MSOE Reg 8/2019.

#### 4. The Conditions for a Direct Appointment

The conditions for a direct appointment under MSOE Reg 8/2019 are mainly still the same as under MSOE Reg 5/2008. However, MSOE Reg 9/2019 introduces 2 (two) new conditions for a direct appointment, which are: (i) the goods and services are to be procured in a certain amount and at a certain price determined by the Board of Directors of the SOE which has been approved by the Board of Commissioners; and/or (ii) the consultants are needed the procurement of which was not planned in advance to face certain issues which cannot be postponed and require an immediate response.

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#### Contacts:

Stephen Sim	- <a href="mailto:stephen.sim@makarim.com">stephen.sim@makarim.com</a>
Annisa Tharian	- <a href="mailto:annisa.tharian@makarim.com">annisa.tharian@makarim.com</a>
Heru Mardijarto	- <a href="mailto:heru.mardijarto@makarim.com">heru.mardijarto@makarim.com</a>