



# NEWSLETTER

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## UPDATE ON INDONESIAN CABOTAGE RULES

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The Minister of Communication Regulation No. 46 of 2019 (“**Regulation 46/2019**”), which amended the Minister of Communication Regulation No. 92 of 2018, became effective on July 30, 2019. Regulation 46/2019 provides that the foreign flag vessels which are listed in Attachment I may, if no suitable Indonesian flag vessels are available and upon obtaining the necessary approval, carry out certain activities in Indonesian waters until the end of December, 2020.

### **Background – Indonesian Flag**

Indonesia has a “closed” ship registry, so Indonesian flag vessels can only be owned by Indonesian individuals or Indonesian legal entities including foreign capital investment (or “**PMA**”) companies. The registration of vessels under Indonesian flag can be conducted at the head office of the Directorate General of Sea Communication of the Ministry of Communication (“**Seacom**”) in Jakarta or at the Harbour Master’s Office at any one of 51 ports located throughout Indonesia.

With regard to the establishment of a PMA shipping company, the Government of Indonesia periodically issues what is known as the Negative List of Investments (the “**DNI**”) which lists those areas in which investments are prohibited or restricted. Pursuant to the current DNI, as set out in Presidential Regulation No. 44 of 2016, foreigners may only own up to 49% of the shares of a PMA shipping company. There is an additional requirement that a PMA shipping company must own at least one Indonesian flag vessel of minimum GT 5000.

### Indonesian Cabotage Rules

Pursuant to Indonesian cabotage rules, foreign flag vessels are prohibited from operating in Indonesian waters. However, as stated above, Regulation 46/2019 provides that the foreign flag vessels which are listed in Attachment I may, if no suitable Indonesian flag vessels are available and upon obtaining the necessary approval, carry out certain activities in Indonesian waters until the end of December, 2020. The approval for operating a foreign flag vessel will, generally, be valid for a period of up to six months (the approval may, however, be extended based on the result of an evaluation conducted by an evaluation team appointed by Seacom) although Regulation 46/2019 provides that, for floating power plants (*kapal pembangkit listrik*), the approval may be valid for longer than six months. The activities which may be carried out in Indonesian waters until the end of December, 2020, and the types of vessels which may carry out such activities, are set out in the table below :-

<u>Activities</u>	<u>Vessel Types</u>
1. Drilling works	Jack up rigs, jack up barges, self-elevating drilling units, semi-submersible rigs, deep water drill ships and tender assist rigs
2. Offshore construction works	Derricks / cranes, pipe laying / lifting ships / vessels, piling barges, diving support vessels and semi-submersible accommodation barges
3. Oil and gas surveys	Vessels used for seismic, geophysical and geotechnical surveys
4. Dredging works	Cutter suction dredgers and trailing suction hopper dredgers
5. Salvage and underwater works	Floating cranes, cable ships, cable barges and diving support vessels
6. Offshore supporting works	Anchor handling tug supply vessels
7. Power plants	Floating power plants

8. Jetty construction works	Concrete deep mixing barges, concrete pipe mixing pneumatic pumping barges, concrete pipe mixing cement supply barges, concrete pipe mixing cement placing barges and concrete pipe mixing anchor boats
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Regulation 46/2019 also provides that foreign flag vessels with contracts of longer than 2 years (except for vessels conducting drilling activities) should be reflagged to Indonesian flag.

Pursuant to the Ministry of Trade Regulation No. 82 of 2017 (“**Regulation 82/2017**”) as amended, exporters who export coal and/or crude palm oil, and importers who import rice and/or goods for government procurement, should, as from May 1, 2020, use vessels which are controlled by Indonesian shipping companies. It is, however, unclear whether, in order to comply with the provisions of Regulation 82/2017 as amended, the relevant vessels should be Indonesian flagged. In addition, such exporters and importers have, as from June 1, 2019, been required to take out insurance with Indonesian insurance companies.

### **Hypothec Deeds – Practical Considerations**

Hypothec deeds over Indonesian flag vessels will be signed in the Indonesian language before Seacom officials or officials of the relevant Harbour Master Office (as the case may be). Lenders intending to take hypothec deeds over Indonesian flag vessels should be aware of the following :-

- (a) hypothec deeds can only be executed before Seacom officials or officials of the relevant Harbour Master’s Office (as the case may be) after the relevant vessel registration deed (*Grosse Akta Pandaftaran Kapal*) has been issued, so there will be a security gap in the case of hypothec deeds over vessels which are transferring to Indonesian flag from a foreign flag;
- (b) the procedures which have, in practice, been adopted for the enforcement of hypothec deeds over Indonesian flag vessels

in Indonesia are based on a 1941 pre-independence regulation (although there has been some discussion as to whether or not Articles 222 and 223 of Law No. 17 on Shipping have created “*in rem*” jurisdiction); and

(c) in any proceedings for enforcement of hypothec deeds over Indonesian flag vessels in Indonesia, the following claims will have priority over a hypothec deed :-

- costs and expenses incurred as a consequence of the sale of the vessel;
- seamen’s wages and master’s wages;
- costs and expenses incurred in connection with any death or bodily injury arising out of the operation of the vessel;
- salvage costs;
- pilotage and harbour dues; and
- collision damage and other claims arising out of the operation of the vessel.

If you wish to discuss any issues relating to Indonesian cabotage rules, please contact any of the following MKK attorneys :-

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