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PLN appointing renewable energy developers for direct selection panel

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Overview

PLN is currently in the process of appointing developers to a newly constituted panel to develop solar PV, wind, hydro, biomass, biogas, municipal waste and tidal projects in Indonesia. Renewable energy projects will be awarded among the appointed developers through a direct selection process.

A second round of panel appointments will take place mid-2018 (no date has been confirmed yet) in which additional developers can be appointed to the panel. The 2017 panel appointment process has been closed for developers that have not yet showed interest.

All renewable energy projects shall be allocated to developers appointed to the panel. This implies that direct appointment to developers that propose to develop their own project is not permitted.

Below is a recap of recent regulations relevant to renewable energy projects in Indonesia.

MEMR Regulation 50/2017 on renewable energy

In January 2017 the Ministry of Energy and Mineral Resources (“MEMR”) issued Regulation No. 12/2017 on the Utilization of Renewable Energy Sources for Electric Supply. This has been amended in August 2017 through MEMR Regulation No. 50/2017 (“**Regulation 50/2017**”).

Regulation 50/2017 applies to solar PV, wind, hydro, biomass, biogas, municipal waste, geothermal and tidal projects, and in summary provides the following:

- (i) **BOOT** – All projects shall be based on a build, own, operate and transfer (BOOT) scheme (except municipal waste, which is not regulated in this respect).¹
- (ii) **Calculation of tariff** (please refer to Appendix 1 for an overview)
 - a. Where the average cost of energy production of the local grid (“**Local BPP**”) is higher than the average cost of energy production of the national grid (“**National BPP**”), a maximum tariff applies (for municipal waste, hydro and geothermal 100%, and for other sources 85% of the Local BPP);²
 - b. The tariff shall be mutually agreed between the developer and PLN:
 - i. Where the Local BPP is lower than the National BPP – for 2017 this only applies to the Jawa-Bali grid; and
 - ii. For hydro, municipal waste and geothermal projects for the Sumatera grid;
 - c. The National BPP for 2017 was set at USD 0,0739/kWh and shall be adjusted annually. This 2017 BPP applies until a new BPP has been issued – we understand that MEMR may issue a new BPP in March 2018; and
 - d. The tariff for each project is subject to MEMR approval.
- (iii) **Procurement process** (please refer to Appendix 1 for an overview)
 - a. Municipal waste and geothermal projects shall be procured through direct appointment;
 - b. Solar PV and wind projects shall be procured through direct selection based on capacity quota; and
 - c. Hydro, biomass, biogas and tidal projects shall be procured through direct selection.

¹ Presidential Regulation No. 44/2016 - Establishment of a new foreign direct investment company must be approved by the Indonesian Coordinating Board (BKPM) and comply with the “Indonesian Negative List”. Under the current Indonesian Negative List, foreign ownership limitations in respect of power investment are as follows: maximum 95% for power project above 10MW, maximum 49% for power project between 1MW and 10MW, power plants below 1MW are closed for foreign investment, maximum 67% for geothermal projects below 10MW. No foreign ownership restrictions are in place during the concession period for power plants (including renewable energy) with a capacity over 10MW that are within the PPP scheme.

² The 2017 National BPP and Local BPPs can be found in MEMR Decree No. 1404 K/20/MEM/2017.

- (iv) **Local content requirements** – PLN shall prioritize IPPs using local content in compliance with laws and regulations (please refer to Appendix 2 for minimum local content requirements). We note that exemption is possible where (i) the necessary goods cannot be produced in Indonesia, (ii) the technical specifications cannot be met, or (iii) there is insufficient production of necessary goods in Indonesia.³
- (v) **Template PPA** – PLN shall provide a template PPA for each type of renewable energy project when procuring such projects. We note that the much discussed MEMR Regulation No. 10/2017 (as amended by MEMR Regulation No. 49/2017) containing certain PPA requirements explicitly applies to geothermal, hydro and biomass projects. This regulation may impose several bankability issues which have been widely commented on in other publications. It remains to be seen how these regulations will be translated over to the renewable energy PPA templates.

MEMR Regulation 48/2017 on requirements for changes in shareholding and boards

MEMR Regulation No. 42/2017 on the Supervision of Operations of Business Activities in the Energy and Mineral Resources Sector came into effect on 17 July 2017, and was replaced by MEMR Regulation No. 48/2017 (“Regulation 48/2017”). Regulation 48/2017 applies to licensed entities operating in the upstream and downstream oil and gas, mining, power (including renewable energy), and geothermal sectors and has aims of strengthening MEMR oversight over the sectors. Regulation 48/2017 imposes certain approval requirements and reporting obligations in relation to changes in shareholding and boards (please refer to Appendix 3 for an overview of provisions relevant to renewable energy projects).

BKPM Regulation 13/2017 on guidelines and procedures on foreign investment

BKPM Regulation No. 13 of 2017 (“Regulation 13/2017”) was issued on 11 December 2017 and took effect on 2 January 2018 for all applications processed at the Indonesian Investment Coordinating Board (“BKPM”) One-Stop Integrated Services Department (“PTSP”). Regulation 13/2017 revokes several previous BKPM regulations.⁵

This Regulation 13/2017 is currently untested and we understand that it is still being discussed within BKPM. BKPM is in the process of planning meetings with market parties to socialize this new regulation.

The regulation aims at simplifying and speeding up the process of doing business in Indonesia. One feature is particularly of interest for (foreign) investors in the electricity generation and electricity transmission sectors (“Foreign Investor”). A Foreign Investor planning to incorporate a foreign direct investment company in Indonesia, whose investments are over IDR 100 billion and/or will employ over 1,000 individuals, may make use of PTSP’s 3 hour licensing service to obtain the Investment Registration Certificate, establishment of the Indonesian entity⁶ and basic licenses⁷.

Then the Director of the Indonesian entity may apply for a Temporary Business License as an Electricity Provider (Izin Usaha Penyediaan Tenaga Listrik Sementara, “Licence”) through PTSP’s 3 hour licensing service⁸.

Upon delivery to PTSP of a completed application form⁹ (which can be found in Regulation 13/2017) and supporting documents illustrating the investor’s administrative and technical capabilities¹⁰, the License will be issued within 3 hours by PTSP. The License may be valid for 2, 3 or 4 years, depending on the type of project.

⁵ BKPM Regulation No. 8 of 2015, BKPM Regulation No. 13 of 2015, BKPM Regulation No. 14 of 2015, BKPM Regulation No. 15 of 2015, and BKPM Regulation No. 16 of 2015.

⁶ Notarized Deed of Establishment along with the Ministry of Law and Human Rights’ approval.

⁷ taxpayer identity card (NPWP); company registration certificate (TDP); expatriate utilization plan and license (RPTKA and IMTA); importer number (API-P); and customs number (NIK).

⁸ Articles 111 and 112 of Regulation 13/2017.

⁹ Information required includes the planned company’s name, shareholder structure, board composition, address, applicable 5-digit Indonesia Standard Industrial Classification, project location, annual production, annual export, total asset value, total number of employees and financial resources.

¹⁰ Supporting documents include evidence of applicant’s identity, profile, taxpayer identity card, pre-feasibility study and appointment letter from an entity licensed as a power supplier who shall act as electricity buyer or power network lessee (PT PLN pursuant to the standard form License) (“PLN Appointment Letter”).

If the supporting documents cannot be provided at the time of the application, the investor may instead produce a statement letter stating that investor will provide the supporting documents within 60 calendar days from the issuance of the License¹¹. In addition to the aforementioned, the Indonesian entity must at least provide information concerning (i) type of development; (ii) energy source; (iii) installed capacity; and (iv) contract capacity, of the project for PTSP to issue the License.

After issuance of the License and upon submission of all required supporting documents, BKPM shall issue a certificate of completeness. If the supporting documents are not provided within the specified time period, BKPM has the power to revoke the License.

Appendix 1 – Overview of Regulation 50/2017 – Procurement process and tariff calculation

Energy type	Procurement process	Tariff	
		Local grid BPP > National BPP	Local grid BPP ≤ National BPP
Solar PV	Direct Selection	Maximum 85% x local grid BPP	Mutual agreement
Wind	Direct Selection	Maximum 85% x local grid BPP	Mutual agreement
Hydro	Direct Selection	Maximum 100% of local grid BPP	Mutual agreement
Biomass	Direct Selection	Maximum 85% x local grid BPP	Mutual agreement
Biogas	Direct Selection	Maximum 85% x local grid BPP	Mutual agreement
Municipal Waste	Direct Appointment	Maximum 100% of local grid BPP	Mutual agreement
Geothermal	Direct Appointment	Maximum 100% of local grid BPP	Mutual agreement
Tidal	Direct Selection	Maximum 85% x local grid BPP	Mutual agreement

¹¹ However, this does not apply to the PLN Appointment Letter which is mandatory to obtain the License.

³ Article 3 of Ministry of Industry Regulation No. 54/2012.

⁴ Most notably: lack of deemed commissioning /dispatch payments.

Appendix 2 – Overview of Ministry of Industry Regulation No. 54/2012 and No. 05/2017 – Minimum local content requirements⁵

Power Source	Minimum Local Content %		Services	Example	Goods and Services
	Goods	Example			
Solar Stand Alone	39.87%	Solar module (40%), battery (40%), battery control unit (10%), module buffer (42.40%) and cable (90%)	100%	Delivery and installation	45.90%
Solar Off-Grid	37.47%	Solar module (40%), DC combiner box (20%), distribution panel (40%), battery (40%) cable (90%), protection system (20%), module buffer (42.40%), and energy limiter (40%)	100%	Delivery, installation and construction	43.72%
Solar On-Grid	34.09%	Solar module (40%), DC combiner box (20%), distribution panel (40%), travo (40%), cable (90%), protection system (20%), and module buffer (42.40%)	100%	Delivery, installation and construction	40.68%

Power Source	Capacity	Minimum Local Content %		Services	Example	Goods and Services
		Goods	Example			
Hydro	Up to 15MW	64.20%	Steam turbine, boiler, generator, electrical, control equipment, civil and steel structure	86.06%	Consultation (feasibility study), construction (engineering, procurement and construction), examination, inspection, certification and support	70.76%
	15MW up to 50MW	49.84%		55.54%		51.60%
	50MW up to 150MW	48.11%		51.10%		49.00%
	More than 150MW	47.82%		46.98%		47.60%
Geothermal	Up to 5MW	31.30%	Civil and metalwork equipment, turbine, generator, electrical equipment, and control equipment	89.18%	Consultation (feasibility study), construction (engineering, procurement and construction), examination, inspection, certification and support	42.00%
	5MW to 10MW	21.00%		82.30%		40.45%
	10MW to 60MW	15.70%		74.10%		33.24%
	60MW to 110MW	16.30%		60.10%		29.21%
	More than 110MW	16.00%		58.40%		28.95%
Biomass	Up to 15MW	64.20%	Steam turbine, boiler, generator, electrical and control equipment, civil and steel structure	86.06%	Consultation (feasibility study), construction (engineering, procurement and construction), examination, inspection, certification and support	70.76%
	15MW up to 50MW	49.84%		55.54%		51.60%
	50MW up to 150MW	48.11%		51.10%		49.00%
	More than 150MW	47.82%		46.98%		47.60%

⁵ Not applicable to wind projects.



Appendix 3 – Regulation 48/2017 – Change of shareholding and board member requirements

Power sector (including renewable energy)

- Transfer of shares prior to Commercial Operation Date ("**COD**") is only allowed to an affiliate in which the sponsor holds at least 90% of the shares [No change from Regulation 42/2017];
- Mandatory reporting to MEMR for transfer of shares prior to and after COD, and prior approval from buyers of electricity under the PPA; and
- Mandatory reporting to MEMR for changes to members of the board of directors and board of commissioners [Regulation 42/2017 required prior approval from MEMR and a recommendation from the buyers of electricity].

Geothermal sector

- Mandatory reporting to MEMR for share transfer in privately held entities holding a Geothermal license [Reg 42/2017 required prior approval]; and
- Prior approval from MEMR for (i) IPO's, and (ii) changes in shareholding of registered shares [Not regulated under Reg 42/2017].



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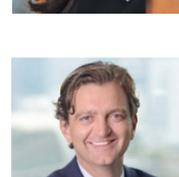
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