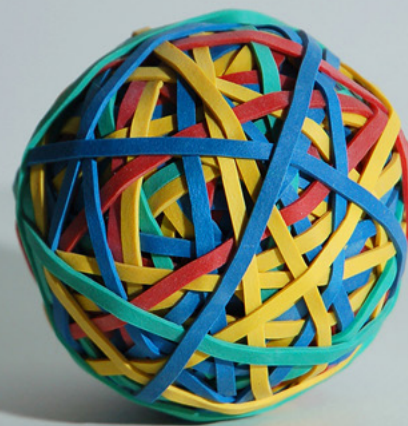


Indonesia Regulatory Update

February 2017



Regulatory Highlights

This publication sets out to highlight at summary level, some of the key current regulatory changes in Indonesia. These important changes have implications for industry, covering a wide range of industries and within these, specific and complex business processes. For further details on any of the items covered, a listing of KPMG Contact Points for further discussion is included at the end of the document. Hyperlinks to the source documentation (Bahasa Indonesia for most items) are provided as appropriate.

Regulatory updates covered in this publication are as follows:

- Procedures for Share Divestment and Mechanism for the Determination of the Price of Divested Shares in Mineral and Coal Mining Business Activities.
- The Use of Natural Gas for Power Plants.
- Utilization of the Renewable Energy Sources for the Supply of Electricity.
- Implementation of Risk-Management Measures by Banks Engaged in Mutual-Fund Related Activities.
- Construction Services.
- Company Registration and Trading Business License.

Energy and Natural Resources

[Procedures for Share Divestment and Mechanism for the Determination of the Price of Divested Shares in Mineral and Coal Mining Business Activities](#)

Ministry of Energy and Mineral Resources ("MEMR") Regulation No.9 of 2017 repeals [MEMR Regulation No 27 of 2013](#) on Procedures for Divestment, Share Pricing and Changes to Investment for Minerals and Coal-Mining Businesses. This Regulation has come

into effect as of 20 January 2017. This Regulation requires foreign companies which are holding shares in coal mining company under the Production Operation Mining Business Permits ("*Izin Usaha Pertambangan Operasi Produksi*" – "IUP OP") or Special Production Operation Mining Business Permits ("*Izin Usaha Pertambangan Khusus Operasi Produksi*" – "IUPK OP") to gradually divest at least 51% of their total shares to Indonesian parties within five years, starting from the fifth year after entering the commercial production stage, to Indonesian parties in the following order: Central government; Regional governments (at the provincial or regional/municipal levels); State-owned enterprises and regionally owned enterprises; and National private business entities.

The timeframe for such gradual divestment schemes is as follows: sixth year of production: 20%; seventh year of production: 30%; eighth year of production: 37%; ninth year of production: 44%; and tenth year of production: 51%. Foreign companies currently holding shares in IUP OPs which specifically cover processing and/or refining and foreign mining companies which already have 51% of their shares owned by domestic investors are not obligated to conduct divestment.

Holders of IUP OPs and IUPK OPs which will conduct divestments are prohibited from giving loan for divestment to Indonesian party, or hypothecating the shares which are obligated to be divested. The price of any divested shares is to be determined based on fair market value and should not take a divesting company's mineral or coal reserves into account. The payment and transfer of any divested shares must be completed within 12 months after the sale and purchase deed has been signed by both parties. The divesting company must then submit a divestment report to the MEMR (via the Director General for Minerals and Coal).

(Issued regulation in Bahasa: [MEMR Regulation No.9 of 2017](#))

The Use of Natural Gas for Power Plants

MEMR Regulation No.11 of 2017 has come into effect as of 30 January 2017.

The Regulation sets out that State Power Company ("PT Perusahaan Listrik Negara" or "PLN") and businesses which run power plants and are bound by power purchase agreements with PLN ("Independent Power Producer" or "IPPs") must ensure the availability of natural gas for their power plants over the next 20 years. Such supplies may be purchased from Production Sharing Contract companies ("PSC" or "Contractors") or from parties who possess business licenses for natural gas trading ("Natural Gas Traders"). Prior to supplying any gas to PLN and IPPs, Contractors or Natural Gas Traders are required to guarantee the availability of natural gas in accordance with the agreed sales purchase agreement ("SPA"). The SPA must encompass at least the following information: source of supplies; volume and specification; price; contract period; price review; distribution mechanism; as well as rights and obligations of the parties.

The Regulation provide further detail regarding the procurement of gas supplies for any power plants which are located at wellheads, which can be undertaken through either:

1. **Direct appointment method:** under the condition where the maximum price of the natural gas is 8% of the Indonesian Crude Price ("ICP") per Million British Thermal Units ("MMBTU") at the power plant gate; or
2. **Open tender:** under the condition where the price of natural gas is higher than 8% of ICP/MMBTU.

MEMR is required to determine the price of natural gas for power plants by taking into account the following aspects: the economic value of the gas field; the domestic and international natural-gas price; the purchasing powers of domestic consumers; and the added value relating to domestic natural-gas utilization. The Regulation also sets out a number of scenarios relating to the determination of natural-gas pricing which is higher than 8% and maximum 11.5% of ICP/MMBTU (Article 8 and 9).

Other provisions in this Regulation include the natural-gas distribution tariffs, which are applicable for natural gas distributed through piped or non-piped channels (e.g. through the use of vessels, barges, trucks or other transportation methods).

(Issued Regulation in Bahasa: [MEMR Regulation No. 11 of 2017](#))

Utilization of the Renewable Energy Sources for the Supply of Electricity

MEMR Regulation No.12 of 2017 updates provisions which related to the utilization of renewable energy

for the Procurement of Electrical Power. MEMR Regulation No.12 of 2017 repeals a number of specific provisions related to the maximum electrical-power purchase prices, which were originally stipulated under the Appendix of [MEMR Regulation No 3 of 2015](#). This Regulation has come into effect as of 30 January 2017.

Under this Regulation, PLN is obliged to purchase electrical power generated by IPP which utilize various sources of renewable energy, specifically: photovoltaic solar power plants; biogas solar power plants; hydroelectric power plants; biomass power plants; wind power plants; waste power plants; and geothermal power plants.

This Regulation requires electrical power from power plants which utilize advanced technology, are of varied efficiency and which are highly dependable upon local weather to be purchased by PLN via auction system based on capacity quotas. Electrical power which is generated by other power plants which do not meet the abovementioned criteria is required to be purchased through the use of benchmark pricing or through a direct appointment mechanism. Prior to the purchase of any electrical power from an IPP, PLN is required to undertake a due-diligence process which takes into account both the technical and financial capabilities of the IPP in question. Such due-diligence process can be undertaken by a procurement agent appointed by PLN.

This Regulation sets out a different basis, system and price caps for the purchase of electrical power generated by power plants. In the event that the local Basic Production Price ("*Biaya Pokok Penyediaan Pembangkitan*" – "BPP") is higher than the average national BPP, then the maximum electrical-power purchase price should be amounting to 85% of the local BPP. Meanwhile, if the local BPP is equal to or lower than the average national BPP, then the purchase price should be equivalent to the local BPP. This provision, however, is not applicable for the purchase of electrical power generated by waste-fueled power plants and geothermal power plants.

(Issued Regulation in Bahasa: [MEMR Regulation No. 12 of 2017](#))

Financial Services

Implementation of Risk-Management Measures by Banks Engaged in Mutual-Fund Related Activities

Indonesian Financial Services Authority ("*Otoritas Jasa Keuangan*" – "OJK") Circular Letter No. 4/SEOJK.03/2017 dated 16 January 2017 is the implementation of [OJK Regulation No 18/POJK.03/2016](#) on the Implementation of Risk Management in Commercial Banks as well as [OJK Regulation No. 65/POJK.03/2016](#) on the Implementation of Risk Management in Sharia Commercial Banks. This Circular Letter will come into effect on 1 March 2017.

This Circular Letter also sets out in detail the actions to be taken by banks in implementing activities related to mutual fund, either as Investors, as Mutual Fund Selling Agents, or as Custodian Banks. Banks acting as Mutual Fund Selling Agents are required to apply transparency of product information by providing information, both in writing and verbally, in order to protect the customers' interest.

The implementation of risk-management measures by banks which engaged in mutual-fund related activities should include: ensuring that the investment manager has secured a license from the OJK; ensuring that any mutual funds have been declared "effective" by the OJK; and identifying, overseeing and controlling any risks that may arise through the management of mutual funds.

In relation to the application of the prudential principles, Banks are not allowed to take any action, either directly or indirectly, that may cause the mutual fund to have the characteristics of Bank's products, such as savings or time deposits. The prohibited actions include: providing guarantee for the redemption of mutual fund, making commitment to become the standby buyer for the underlying assets of mutual fund, or intervening with the management of mutual fund securities portfolio which was conducted by the investment manager.

The Circular Letter also sets out the requirement for banks conducting activities as mutual fund selling agent or custodian banks to prepare and submit to OJK the banks' business plans as well as the realization reports and periodic reports on the implementation of activities as mutual fund selling agents or custodian banks.

(Issued Regulation in Bahasa: [OJK Circular Letter No. 4/SEOJK.03/2017](#))

Infrastructure

Construction Services

Law No. 2 of 2017 on Construction Services revokes [Law No.18 of 1999](#), and has come into effect as of 12 January 2017. Some of the noteworthy provisions covered in Law No. 2 of 2017 are, among others:

- 1) Stipulate the general and specialist classification and the scope of business activities of each type of construction business.
- 2) Provide assessment to determine construction business scale (e.g. annual sales, financial capability, number of construction workers employed).
- 3) Sets out the requirements which must be met by foreign-construction businesses.
- 4) Introduce new methods to appoint construction-service businesses.

- 5) Sets out additional mandatory clauses which must be incorporated in the construction working contract.
- 6) Requirement for construction service provider to provide collateral to the construction service user.
- 7) Introduction of the construction-service business and building procurement business.
- 8) Classification of construction workers based on their area of specialization, namely: operational, technician or analyst, and expert. All construction workers are required to possess working competency certification issued by a professional certification agency.

(Issued Regulation in Bahasa: [Law No. 2 of 2017](#))

General Corporate

Company Registration and Trading Business License

During February 2017, Ministry of Trade ("MoT") issued two regulations related to Company Registration and Trading Business License. These Regulations have come into effect as of 22 February 2017.

[MoT Regulation No. 07/M-DAG/PER/2/2017](#) is the third amendment to [MoT Regulation No. 36/MDAG/PER/9/2007](#) regarding the Issuance of Trading Business License ("Surat Izin Usaha Perdagangan" or "SIUP"). The noteworthy amendments set out in the regulation include:

1. Deleting the provision related to mandatory re-registration for trading companies every 5 years.
2. No charges will be imposed on the applications for the new Trading Business License as well as the amendment or replacement of the Trading Business License.

[MoT Regulation No. 08/M-DAG/PER/2/2017](#) is the second amendment to [MoT Regulation No. 37/MDAG/PER/9/2007](#) on the Organization of Company Registration ("Tanda Daftar Perusahaan" or "TDP"). The noteworthy amendments set out in the regulation include:

1. Business looking to re-register its TDP is allowed to submit notification letter either manually or online to the Head of the Company Registration Office ("Kantor Pendaftaran Perusahaan" – "KPP") at the regency/city level using the format which is set out in Appendix V.A of the Regulation.
2. If the head of the KPP fails to issue a new TDP within three business days, then the business' current TDP will still be deemed as valid and will automatically be re-registered.
3. The re-registration of TDP is free of charge.

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