

Client Alert – 21 August 2017

Indonesia tightens control over changes in shareholding and boards of oil and gas, power, geothermal and mining companies (updated Client Alert)



Speed read

Less than three weeks after its issue, the Minister of Energy and Mineral Resources (**MEMR**) has revoked Regulation No. 42 of 2017 on Supervision of Business Activities in the Energy and Natural Resources Sector (**Reg. 42/2017**) and replaced it with Regulation 48 of 2017 on the same topic (**Reg. 48/2017**).

The revocation of Reg. 42/2017 and its replacement appears to be a direct response to the reaction of various market participants and the direct intervention by the Indonesian President's office. Reg. 48/2017 unwinds some (but not all) of the more controversial requirements and restrictions promulgated under Reg. 42/2017.

Reg. 42/2017 introduced far-reaching restrictions on the transfer of shareholding interests or changes to the board of directors (**BOD**) and board of commissioners (**BOC**) of companies established to invest in the oil and gas, power generation and mining sectors. If implemented, Reg. 42/2017 was expected to have profound consequences for investment in these sectors in Indonesia.

Reg. 48/2017 has been effective from the date of its promulgation (ie 3 August 2017) and any proceedings initiated in accordance with Reg. 42/2017 will now be processed in accordance with Reg. 48/2017.

This publication is an update to our previous note on this legislation, which can be found [here](#).

MEMR approval no longer required for share transfers in downstream oil and gas companies and IPP companies

Whereas Reg. 42/2017 imposed an MEMR consent requirement on the transfer of shares in energy and mining companies under a wide set of circumstances, Reg. 48/2017 now only imposes an MEMR consent obligation with respect to transfers of shares in (a) upstream oil and gas contractors where there is a direct change of control, (b) geothermal companies that are conducted on the Indonesia stock exchange and, (c) mining companies.

In the specific case of IPP companies, sponsors wishing to transfer their shares prior to commercial operation date (COD) will still need to obtain PLN's prior approval and transfers of shares may only be made to a more than 90% directly owned affiliate of the transferring sponsor. In the case of transfers of shares in an IPP company after COD, Reg. 48/2017 removes the requirement to obtain MEMR and PLN approval and also revokes the provisions of MEMR Regulation 10/2017 requiring similar restrictions to be included in power purchase agreements (PPAs) with PLN in relation to transfer of shares in IPP companies. As a result, transfers of shares in IPP companies after COD are no longer regulated and sponsors should, in principle, be free to transfer their shareholdings, subject to any contractual limitations agreed in any PPA negotiations with PLN.

All other share transfer scenarios previously requiring MEMR consent under Reg. 42/2017 (which included transfers of shares in downstream oil and gas companies and IPP companies at all times) now only require notification to MEMR.

Some ambiguities with respect to Reg. 42/2017 (and now also Reg. 48/2017) remain, namely the impact of the proposed share transfer restrictions on lender security interests (ie where transfer restrictions apply, no clear exemption is included for enforcement procedures under lender share security). These issues and the impact on investors' exit strategies are discussed in more detail in our previous Client Alert, referenced above.

Transfer of shares in geothermal companies

Whereas Reg. 42/2017 seemed only to regulate the transfer of shares in IPB companies (ie companies holding a geothermal licence), Reg. 48/2017 now also refers to

companies holding (a) a geothermal operation authorisation, (b) a joint operation contract, or (c) a geothermal operation licence (together **Geothermal Companies**). Reg. 48/2017 now also distinguishes between (i) transfers of shares in Geothermal Companies on the Indonesia stock exchange, which require prior approval from MEMR and can only be made after the end of the exploration stage of the given project including in the case of an Initial Public Offering (IPO), and (ii) other forms of transfers of shares (ie by private companies outside the Indonesian stock exchange) which only require notification to the MEMR. This difference in treatment and the more restrictive regime for transfers of shares on the Indonesia stock exchange is somewhat paradoxical given the typical fluidity of trading on stock exchanges, and it is not clear how the MEMR consent requirement is intended to apply in practice.

Latest shareholding and board composition of IUPTL companies to be reported to MEMR

Reg. 48/2017 requires IPP and Geothermal Companies to report their latest shareholding and BOD and BOC composition within three months of Reg. 48/2017 coming into effect, if they have made changes to their shareholding and/or board memberships since incorporation. Reg. 48/2017 does not, however, provide for any sanctions in case of breach of this requirement.

Most changes to board memberships no longer require MEMR approval

Reg. 48/2017 largely turns back the requirement to obtain MEMR's prior approval for any change in a company's BOD and BOC membership, which had been a feature of Reg. 42/2017 and had been the target of much criticism, given the administrative burden it would have imposed on the thousands of energy and mining companies operating across the archipelago. Instead, changes to the BODs and BOCs of Indonesian energy companies now only need to be reported to MEMR within five days from the relevant approval of such change by the Ministry of Law and Human Rights. An exception to this, however, is that changes to the board membership of mining companies must still first be approved by MEMR.

Closing remarks

Although Reg. 48/2017 overturns some of the more controversial requirements brought by Reg. 42/2017, it still prescribes a number of requirements which are either unclear or seemingly impractical (for example, the requirement to obtain MEMR's prior approval in case of transfer of shares in publicly listed Geothermal Companies). Notwithstanding the relaxation of some of the most restrictive elements of Reg. 42/2017, the new Reg. 48/2017 also still imposes a raft of measures that may have a dampening effect on private investment (domestic and foreign) in the energy and mining sectors in Indonesia, a result that seems at odds with the Government of Indonesia's stated policy objective of trying to encourage such investment.

If you have any questions on the issues raised above, please contact:



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