

# New regulation for biomass and biogas power projects in Indonesia

*(MEMR Regulation 21 of 2016)*



## Speed read

Shortly after the issuance of a new regulation for the development of solar power projects in Indonesia, the Government of Indonesia is now introducing a new regulation on the purchase of electricity by PLN from biomass and biogas power projects (Minister of Energy and Mineral Resources Regulation No. 21 of 2016 – **Reg 21/2016**). These are the key features of the new regulation:

- Biomass and biogas power projects are to be awarded on the basis of a direct appointment process;
- Feed-in tariffs (**FITs**) available both for conventional IPP projects and projects which involve the sale of excess electricity to PLN;
- No more restriction on the capacity of biomass and biogas power projects that can be developed and benefit from the FITs;
- A standard power purchase agreement (**PPA**) to be issued by PLN and which will need to be signed within 30 days from award of the relevant project by MEMR.

Reg 21/2016 has been in force since 4 August 2016 but PLN has yet to issue the model PPA to be used for biomass and biogas projects.

Clearly, this new regime is another effort to boost the development of electricity generation in order to achieve the ambitious objectives set by the Government of Indonesia which include the 35GW programme and specific targets to increase the share of renewables in the energy mix.

Reg 21/2016, which revokes the previous MEMR Regulation No. 27 of 2014 (**Reg 27/2014**) on the same matter, introduces improved Feed-in-Tariffs (**FITs**) which are now denominated in US Dollar as well as simplified requirements applicable to independent power producers (**IPPs**) wishing to sell all or part of the output of biomass of biogas power projects to PLN.

We set out below the key features of the new regulation including the process to apply for and develop biogas and biomass projects. In addition, you can find a detailed chart setting out the process for the award and development of biomass and biogas projects as well as the new applicable FITs and differences with Reg 27/2014 in separate schedules by clicking on this [link](#).

## 1. Procedure for the purchase by PLN of electricity from biomass and biogas power plants

Reg 21/2016 contemplates a system by which biomass and biogas IPP projects are awarded to interested developers on the basis of a **direct appointment** and through a **two-step process** consisting of (i) a candidacy phase where an interested party submits an application to become a selected developer (**Developer**) and (ii) a development phase which goes from the signing of a PPA with PLN to the commercial operation date (**COD**) of the relevant project. Please refer to the timeline appended in Schedule 1 for an overview of the process.

### 1.1 Candidacy phase

The candidacy phase includes (a) the submission to the Directorate General of Renewable Energy and Conservation of Energy at MEMR (Direktorat Jenderal Energi Baru Terbarukan dan Konservasi Energi or **EBTKE**) of an application to become a Developer, (b) the verification of applications by EBTKE, and (c) the appointment as a Developer by the MEMR.

**(a) Application to become a Developer:** The application has to be in accordance with the template included in schedule III to Reg 21/2016 and needs to contain the following documents:

- (i) Profile of the applicant;

- (ii) Feasibility study which has been verified by PLN (within 30 working days from submission by the applicant) and which has to contain among others:
  - (A) An estimate of the total investment required for the development of the project;
  - (B) The construction schedule up to COD; and
  - (C) The interconnection study to PLN's network;
- (iii) A statement on the prioritisation of the use of local goods and/or services together with supporting data in accordance with Minister of Industry Regulation No. 54 of 2012 which sets out the applicable minimum levels of goods and services which have to be sourced locally for the development of power projects; and
- (iv) Evidence of financial capability.

**(b) Verification of applications by EBTKE:** EBTKE will then verify and assess the application<sup>1</sup> and report its findings and conclusions to the MEMR within 7 working days from the complete submission of the application.

**(c) Appointment of Developers:** Where EBTKE approves an application, the MEMR will then issue to the applicant its appointment as Developer (**MEMR Approval Decree**) within 7 working days from receiving the recommendation from EBTKE.

**(d) Only Indonesian entities may become a Developer**

Reg 21/2016 provides that to become a Developer, Applicants need to be Indonesian incorporated entities that engage in the supply of electricity as (one of) their business activity(/ies). Such legal entities may be in the form of a foreign investment company (PT PMA), provided that the following foreign ownership restrictions applicable under Government Regulation No. 44/2016 on the List of Business Fields Which Are Closed and Conditionally Open to Investment (**Negative List**) are complied with:

- For projects with a capacity of more than 10MW: the maximum foreign ownership is 95%;
- For projects with a capacity of 10MW or less: the maximum foreign ownership is 49%.

<sup>1</sup> According to Art. 7 para. (2) and (3) of Reg 21/2016, the evaluation will be carried out by an evaluation team consisting of a representative from the EBTKE, the Directorate General of Electricity, the Secretariat General of Energy and Mineral Resources as well as other relevant institutions, who will carry out an administrative, technical, and financial evaluation of the application.

## 1.2 Development phase

Reg 21/2016 further sets out the following steps that need to be undertaken after the appointment as a Developer: (a) PPA signing, (b) financial close, (c) obtention of IUPTL, (d) report on construction progress and (e) commercial operation date (COD).

**(a) PPA signing:** Reg 21/2016 provides that a power purchase agreement (PPA) must be signed with PLN within one month from the appointment as a Developer. The PPA shall have a term of 20 years from COD and can be extended. Should the signing of the PPA be delayed for any reason, EBTKE will engage with PLN and the Developer to facilitate the signing of the PPA. A copy of the signed PPA must be submitted to EBTKE.

Reg 21/2016 provides that a model PPA will be provided by PLN to EBTKE within 30 working days from its issuance (i.e. by 15 September 2016).

**(b) Financial Close:** A Developer must achieve financial close for a given project within 12 months from the execution of the relevant PPA and provide to EBTKE the proof of financial close having occurred. If financial close is not achieved within this timeframe, the appointment as Developer will be revoked.

**(c) IUPTL:** After the above steps have been completed, the Developer has to apply to obtain an Electricity Supply Business License (Izin Usaha Penyediaan Tenaga Listrik or IUPTL), which should, in principle, be issued within three working days as of the complete submission of the required documents<sup>2</sup>.

The Developer must then submit a copy of the IUPTL to EBTKE and PLN within three working days from issuance.

**(d) Report on Construction Progress:** The Developer must submit a report to EBTKE on the construction progress of the project every 6 months from the date of the MEMR Approval Decree up to COD.

**(e) COD:** COD must take place within 36 months from the execution of the PPA. If COD is not achieved within this timeframe, PLN will reduce the applicable FIT progressively and up to 8% depending on the duration of the delay, and if such delay is in excess of

12 months, the appointment as Developer will be revoked. Further, should such revocation occur, the relevant Developer will be prohibited from applying to become a Developer for a period of two years from the revocation date.

## 2. Feed-in tariffs and project capacity

The FITs set out in Reg 21/2016:

- Include the interconnection costs (i.e. the transmission line from the power plant to PLN's network);
- Cannot be negotiated nor escalated and are as stated in the PPA;
- Will be paid in Rupiah using the Jakarta Interbank Spot Dollar Rate (JISDOR) agreed in the PPA as a reference;
- Involve a certain multiplying factor ("F factor") depending on the location of the project (for example, if a biomass or biogas project is to be developed in Riau, the applicable FIT will be 1.6 times that applicable for projects in Java).

Please refer to Schedule 2 and Schedule 3 for an overview of the FITs respectively for biomass and biogas projects. We understand that the proposed FITs for both biomass and biogas projects are in the upper range of FITs applicable to similar projects across the region and, when applying the multiplying factor, the FITs applicable to projects developed in Indonesia's outlying islands appear to be fairly attractive.

Further, it is worth noting that the capacity of biomass and biogas projects is no longer limited as it used to be under Reg 27/2014, but instead, the FIT regime is now split between projects with a (i) capacity of up to 20 MW (which are split further into low voltage and medium-to-high-voltage projects); (ii) capacity ranging from 20 MW to 50 MW; and (iii) capacity above 50 MW with the FIT applicable to smaller projects being up to 50% higher (without the multiplying factor) than that applicable to large scale projects. For example, the FIT for a low voltage biomass power project of less than 20MW to be developed in Java has a FIT of USD 16,00 cent/kWh whereas a high voltage biomass power project of more than 50MW on the same island will have a FIT of USD 10,80 cent/kWh.

<sup>2</sup> Presidential Regulation No. 4/2016 on Acceleration of Power Infrastructure Development, Article 19(3).

### 3. Excess power

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Reg 21/2016 also regulates the purchase by PLN of excess electricity from biomass and biogas power plants including applicable FITs (please refer to Schedule 4 and Schedule 5 for an overview of the applicable FITs). The only difference with the FITs applicable to traditional IPPs where the entire output of the plant is sold to PLN is that there is no multiplying factor applicable to the FITs for the purchase of excess electricity.

Reg 21/2016 also specifically provides that PLN can negotiate a lower tariff than the applicable FIT for the purchase of excess power if PLN and the relevant developer agree on such lower tariff. In such case, PLN will report the agreed tariff to EBTKE and no further approval is required from the MEMR.

The term of excess power PPAs will be determined based on an agreement between PLN and the relevant developer which holds an operating licence for the power plant which will sell excess power to PLN. Typically, PPAs for excess power have a substantially shorter term than that of PPAs applicable to traditional IPPs.

### 4. Implementation and transitional provisions

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#### 4.1 Implementation

Reg 21/2016 has entered into force since its issuance on 4 August 2016 and does not require further implementation measures.

#### 4.2 Transitional provisions

The transitional provisions of Reg 21/2016 provide that:

- For Developers that have obtained an IUPTL, signed a PPA and started operations, the tariff under the PPA can be adjusted to become 85% of the relevant applicable FIT under Reg 21/2016.
- For Developers that have obtained an IUPTL, signed a PPA, but have not yet started operations, the tariff under the PPA can be adjusted to become the relevant applicable FIT under Reg 21/2016.

- For Developers that have obtained an IUPTL but have not yet signed a PPA nor started operations, the tariff will be in accordance with the relevant applicable FIT under Reg 21/2016.

In each case, the adjusted tariff will be reflected in the PPA without possibility of negotiation or escalation and is non-retroactive. Such adjustments do not require an approval from the MEMR and will be valid up to the end of the term of the PPA.

### 5. Closing remarks

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Reg 21/2016 marks another step in the right direction to provide a comprehensive framework for the development of renewable energy projects in Indonesia (including appropriate FITs) to accelerate the development of such projects and attempt to meet the ambitious objective which has been set by the Government to increase the share of renewables in the energy mix from about 10% currently to 23% by 2025.

PLN will have an important role to play in the implementation of Reg 21/2016 and, eventually, in the shaping and ultimate success of the new regime given that the project award process which is contemplated by Reg 21/2016 is based on direct appointment and that PLN will have to review and, in practice, sign off on the feasibility study of any project which constitutes the key part of the application to become a Developer. Further, the terms of the model PPA to be issued by PLN will also very much determine whether the new framework, including the level of the various FITs, is bankable and can constitute a suitable platform for the development of a wider stream of biomass and biogas projects in Indonesia.

From our discussion with officials from EBTKE, we understand that Reg 21/2016 will gradually be socialised until the end of the year but interested developers may approach EBTKE at any time to solicit projects based on the process and regime enacted by the new regulation.

## Contact information

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