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## In this issue





# Indonesia's Power Sector Update: Will the Lights Go Out?

**Agung Wiryawan/William Deertz**

## Executive Summary

In the last few years, there have been several initiatives to accelerate the development of additional power capacity in Indonesia. Despite these efforts the fact remains that a large number of Indonesian households do not having access to reliable and affordable electricity networks. This condition has mainly resulted from delays in the completion of several power generation initiatives, which was primarily caused by difficulties in obtaining financing for the projects.

As a large investment is required to overcome the electricity shortage in Indonesia, the Indonesian Government has invited private investors to participate in this sector, however, there have been many challenges with implementing this public-private mechanism. One of the primary inhibitors to realizing sufficient private investment are different perceptions between the Government and private investors on risk sharing.

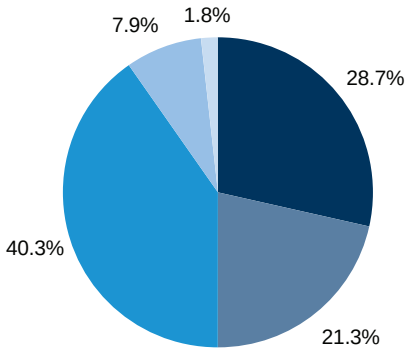
As part of the initiative to solve this issue, the Government recently issued the new Electricity Law. The law provides an opportunity for private investors (other than the national state-owned (PT Perusahaan Listrik Negara – "PLN")) to actively participate in the electricty sector. Will this new Law become the panacea for more transparent and competitive participation in the sector for private investors?

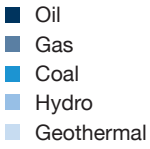
Before this question can be answered, an update on the power sector can be used as a reference point. This article covers the electricity development, including the key provisions in the new law.

## Indonesia's electricity landscape

### Current Position

Indonesia's current installed generating capacity is approximately 29 GW, which consists of different sources of energy, as depicted in the following chart.

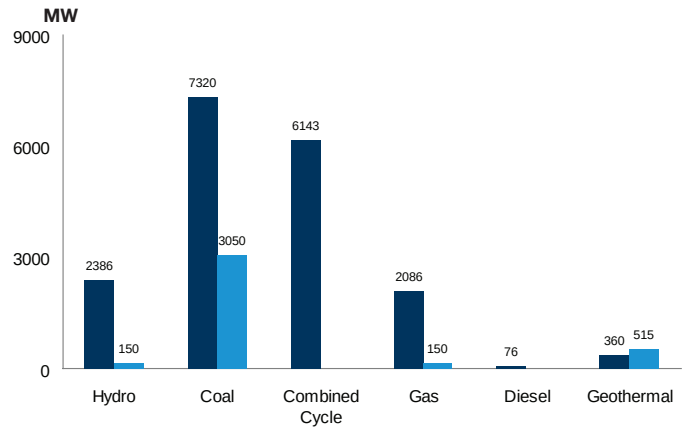



Source:
Indonesia Infrastructure Report – Q1 2010

From a total generating capacity of 29 GW, the vast majority or 76% (about 22 GW) is installed on the Java – Bali grid. Independent Power Producers ("IPP") contribute only about 4 GW on the Java-Bali grid, which mostly comes from coal-fired power plants.

Java-Bali System Capacity

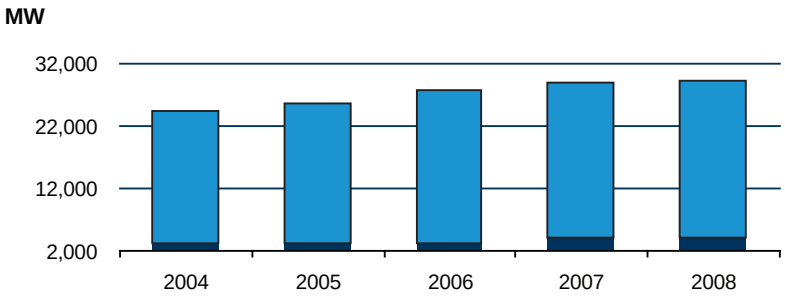



Source:
RUPTL PT PLN (persero)
2009 - 2018

Outside the Java - Bali grid, the total capacity is only about 7 GW, which covers the rest of the entire country, i.e. Sumatra, Kalimantan, Nusa Tenggara, Sulawesi, Maluku and Papua. Total electricity generation from IPP outside of the Java-Bali grid is less than 1 GW.

The development of the country's power supply has progressed slowly over the last five years. In 2004 total capacity was around 24 GW, consisting of 21 GW contributed from PLN and 3 GW from IPP. Hence, the additional capacity for the last five years is only 5 GW, or about 4.5% growth (compounded average growth rate – "CAGR"). The contribution of IPP to the total capacity from 2004 – 2008 averaged about 12% - 14%.

Power Supply 2004 - 2008

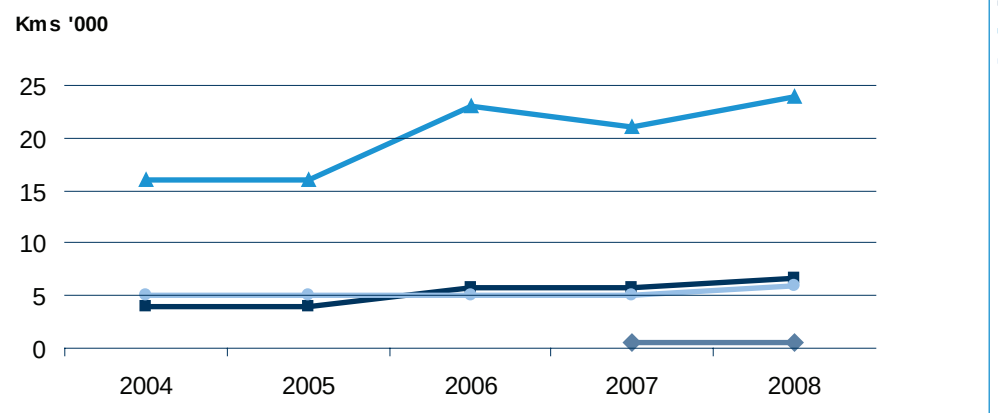



Source:
Electricity Development Policy, Ministry of Energy and Mineral Resources, as presented in Indonesia Electricity Policy and Outlook Conference, Jakarta 16 December 2009

The Indonesian electricity system consists of the interconnected Java – Bali grid and the Sumatra grid; whilst the remaining areas in Indonesia are still not interconnected. For the last five years, there has been little development in transmission infrastructure with growth limited to an additional 1,500 km of 500 Kv transmission lines in the Java-Bali grid and an additional 6,100 km of 150 Kv transmission lines primarily in the Sumatra grid (ie. CAGR of 9.2% and 7.7% respectively, contributed primarily from development outside the Java – Bali grid).

As a result of this development, the electrification ratio improved slightly over the last five years from 62% to 65% as per 2008.

Transmission line 2004 - 2008




Source:
RUPTL PT PLN (persero) 2009 – 2018 and Electricity Development Policy, Ministry of Energy and Mineral Resources, as presented in Indonesia Electricity Policy and Outlook Conference, Jakarta 16 December 2009

Although there have been some recent developments the fact remains that a large number of Indonesians do not have access to reliable and affordable electricity networks. Hence, the Indonesian Government's long-term plan is to provide a more reliable electricity supply to the population and achieve a 91% electrification ratio by 2019.

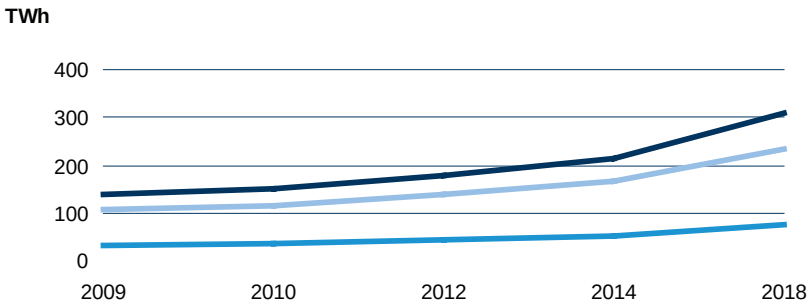
One of the key programs designed to achieve this target is the accelerated program to develop an additional 10,000 MW ("10,000 MW Phase 1") of capacity for Indonesia's electricity generating system. This program was launched by PLN in 2006, and covers 10 projects in the Java – Bali grid and 25 projects outside the Java – Bali grid. As of late 2009, the additional capacity coming into the system is estimated at 600 – 900 MW.
In 2010, further capacity resulting from the completion of power plants currently in the pipeline is expected to be around 3,000 MW; whilst the remaining projects will be completed in 2013. Private participation in the 10,000 MW Phase 1 project is primarily in the form of Engineering, Procurement and Construction ("EPC") contractors which is dominated mainly by Chinese Contractors.

IPP contribution is still minimal, at approximately 4 GW (about 14% of total installed generation capacity). Current installed IPP capacity comes from 19 projects which are mostly located in Java. Additional IPP capacity of 5.7 GW from 47 projects is currently in various stages of development.

## Demand growth

In line with the Indonesian Government's estimated economic growth rate of 6.2% p.a. and the target to reach an electrification ratio of 91% by 2019, electricity demand is predicted to grow by 9.2% p.a. through 2019, with 8.9% p.a. growth on the Java – Bali grid and 9.8% p.a. outside the Java – Bali grid. The electricity growth is mainly driven by a combination of industrial consumption and household growth as many households do not enjoy electricity yet.

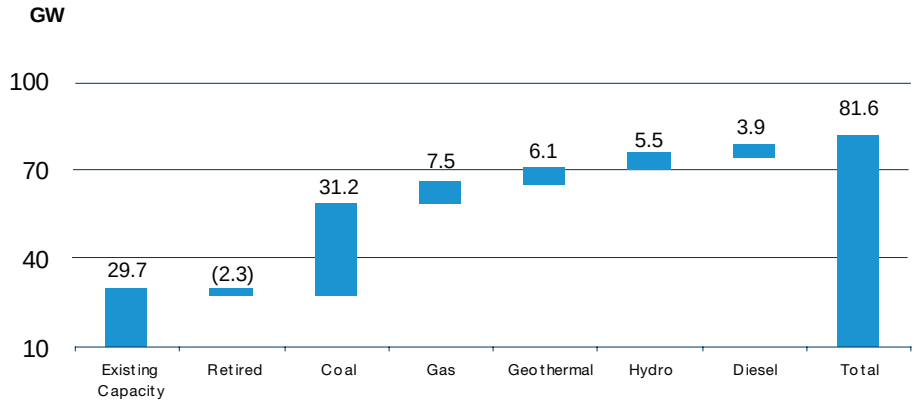
Electricity Demand 2010 - 2019




Source:
Strategi Pendanaan untuk Percepatan Pengembangan Ketenagalistrikan as presented in National Electricity Conference, 14 October 2009

Based on the estimated growth rate, total installed capacity is expected to reach 81.6 GW by 2019. The various sources of energy for the new capacity is as shown in the following graph:

Capacity Development Plan 2010 - 2019

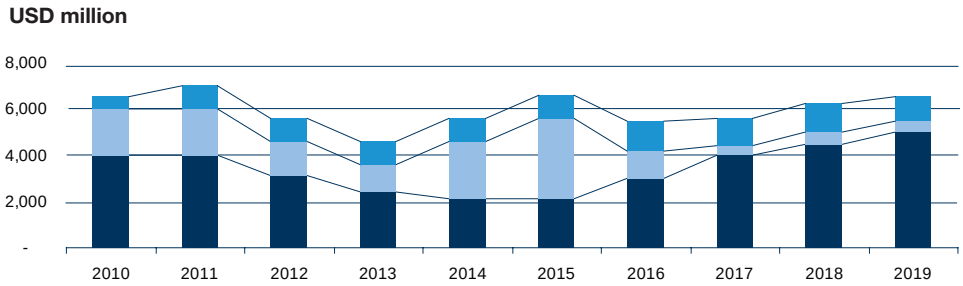



Source:
draft RUPLT 2010 -2019

Based on the 2010-2019 Plan, total new generation capacity will be 54 GW; hence average additional capacity will be around 5 GW per year. Of this total additional capacity, about 34 GW (around 63%) will be developed by PLN, and the remaining are planned to be developed by IPP projects.

Total investment to develop the electricity sector from 2010 – 2019 is estimated at around USD 66 billion or USD 6 billion per annum. For the next five years the investment will be comprised of USD 31.4 billion for generation, USD 7.3 billion for transmission and USD 5.3 billion for distribution, for a total planned investment of around USD 44 billion. According to the 2010-2019 Plan about 50% of the investment for generation will come from IPP investors; whilst the remaining will be developed by PLN.

Investment Requirement 2010-2019



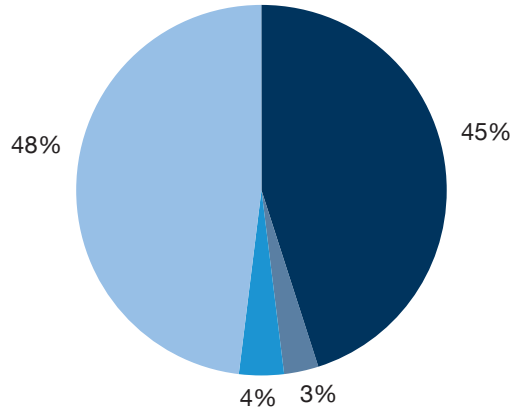

Generation
Transmission
Distribution

Source:
Mapping of Electricity Requirement and Role of IPP in PLN's Development Plan as presented in Seminar: Indonesian Electricity Policy and Outlook, 16 December 2009.

## 10,000 MW Phase 2

A second accelerated program for an additional 10,000 MW ("10,000 MW Phase 2") will be rolled out in 2010. This program is intended to balance the usage of renewable energy sources and fossil fuels. The 10,000 MW Phase 2 program will be offered to both IPP investors and PLN, with the following planned composition of energy sources:

10,000 MW Phase 2




Coal
Hydro
Combined cycle
Geothermal

Source:
The Decree of Ministry of Energy and Mineral Resources No. 2/2010

Total planned additional capacity from this initiative is about 10,043 MW, which consists of 5,118 MW under PLN projects and 4,925 MW under IPP projects. In terms of geography, 5,660 MW are in the Java – Bali grid and 4,383 MW for outside the Java – Bali grid. The 10,000 MW Phase 2 project is dominated by coal fired and geothermal power plants. This is in line with the Government's long-term policy under the National Energy Policy ("KEN") to optimise the use of coal (33% usage by 2025 from about 14% in 2005) and other renewable energy, and be less dependent on fuel oil.

Along with the generation projects, a transmission expansion plan exists under Decree No. 2/2010. The projects primarily come from the additional 1,600 km of 150 Kv transmission lines outside the Java - Bali grid and an additional 1,700 km of 150 Kv transmission lines contributed from the IPP projects.

## GR 4/2010

In addition, investors in the 10,000 MW Phase 2 program received positive news from the Government with the recent issuance of Government Regulation number 4/ 2010 ("GR-4"). This regulation which is intended to be the basis and umbrella regulation for the acceleration of the 10,000 MW Phase 2 program, contains a Government facility for import duty exemptions and other facilities for the implementation of the power plant development by PLN in cooperation with IPP. GR-4 provides that these facilities are regulated by the Minister of Finance.

Another important feature of GR-4 is that the Government will guarantee the credit worthiness of PLN in accordance with the prevailing laws and regulations. This is one of the issues that have been hampering negotiations between the Government and potential investors for the 10,000 MW Phase 2 program. Investors will definitely look forward to further details of this guarantee, which according to GR-4 will also be regulated by the Minister of Finance.

GR-4 also indicates that all the licenses related to environment implication analysis (AMDAL), clearance and compensation for transmission lines and land acquisition should be completed by the relevant agencies/ officers within 120 days of the first application.

Through GR-4 the Government has also confirmed its commitment to diversification of power generation from oil based to non-oil based energy, by assigning PLN to accelerate development of power plants that use renewable energy, and coal and gas, which are also required to use environmentally friendly technologies.

While an implementing regulation is still to be issued by the Minister of Finance, GR-4 is an important milestone for the 10,000 MW Phase 2 power developments.

## New Electricity Law

In addition to the previously discussed initiatives, the Government has issued the new electricity law, which aims to accelerate the development of the infrastructure and allow greater participation from private investors.

Law No. 30/2009 ("New Law") replaces Law No. 15/1985 ("Old Law") and appears to provide a greater role to regional authorities, mainly in (i) the licensing and (ii) stipulating electricity tariffs.

Under the Old Law, the electricity supply business in Indonesia was conducted by the State through PLN as the holder of Electricity Business Power license (Pemegang Kuasa Usaha Ketenagalistrikan – "PKUK"). The opportunity to take part in this business was also given to cooperatives, regional owned enterprises, private business entities, non-governmental entities, individuals and other state institutions.

Under the New Law, electricity supply is still controlled by the State, but conducted by the central and regional governments through state owned entities (i.e. PLN) and regional owned entities. The New Law also allows participation of cooperatives, private business entities and non-governmental entities in the electricity supply business. To highlight the State's control in the power sector in Indonesia, the New Law provides a first right of refusal to PLN by providing a first priority for conducting electricity business supply in an area before the Central Government or the Regional Governments can offer the electricity supply business opportunity to regional-owned entities, private entities or cooperatives.

Some key provisions under the New Law are as follow:

| Key Provisions | New Law | Old Law |
|---|---|---|
| Electricity Supply Authority | - PLN is merely the holder of an Electricity Business Supply License for Public Use ("IUPTL"). However, PLN also has first right of refusal for unserviced areas<br>- If private sector does not want to take up a business opportunity, the Central Government must instruct PLN to supply the area | - PLN is a "proxy" of the State in supplying electricity to the public (the Holder of Electricity Business Power – "PKUK")<br>- If private developers wants to develop an integrated supply business, they must demonstrate PLN does not reliably service the area, and have the Minister approve the grant of "business area" to the IPP |
| Role of regional autonomy | - Regional authority could do a Regional Electricity Plan, based on the National Electricity Plan<br>- Regional electricity development must comply with the Regional Electricity Plan<br>- Regional authority provides the license for power plants/ integrated generation – distribution projects, which are intra-regency and do not involve the sale of electricity to license holders who holds license issued by Central Government<br>- Central Government provides the license to PLN and IPPs selling to PLN | - National Electricity Plan set by the Central Government<br>- Electricity development must comply with the National Electricity Plan<br>- Regional authority provides the license for power plants/ integrated generation – distribution projects which are intra regency and non- National Transmission Grid connected.<br>- Central Government regulates PLN and provides licenses to Grid-connected IPPs. |

| Key Provisions | New Law | Old Law |
|---|---|---|
| Tariff | - Central Government approves all purchase prices for Central Government issued license holders (e.g. PLN and IPPs selling to PLN)<br>- Regional authority approves IPP selling to a non-PLN integrated utility<br>- Allows for different tariffs for different business areas | - Central Government approved all PPA tariffs selling to PLN<br>- Regional authority approved IPP selling to a non-PLN integrated utility<br>- Tariff uniform throughout Indonesia |
| Cross-border sale and purchase | - Cross border sale and purchase of electricity is possible by the holder of an IUPTL with a license from the Central Government, under certain circumstances. The conditions for cross-border purchase is possible if, mainly, there is still shortage of electricity supply; whilst for cross-border sales could be done, if domestic electricity needs have been fulfilled. | Not regulated |
| Direct sale of electricity to public | - The New Law does not relate electricity licensing with whether or not the electricity facilities are connected to the National Transmission Network.<br>- The New Law suggests that the holders of an IUPTL (which hold sale/ integrated licenses) can sell their electricity directly to the public, although the projects are not connected to the National Transmission Network or are not inter-province projects. | - The Old Law (through Decree of Ministry of Energy and Mineral Resources 10/ 2005) suggested that [for inter- province and National Transmission Network – connected projects], the holders of electricity generation licenses (e.g. private entities, regional owned entities) are allowed to generate power, but have to sell the electricity first to PLN; AND, for the holders of an inter-province distribution license (that is connected to the National Transmission Network) can sell the electricity directly to the public. |

Source: Law No. 30/ 2009 and Law No. 15/ 1985

The New Law offers some improvement in the regulatory framework in the electricity sector, in particular by providing a greater role for regional governments and other entities to participate in this business. However, many of the finer points concerning the New Law await implementing regulations (due within 1 year, of the effective date of the New Law). It will take some time to determine whether the New Law can achieve the objectives to overcome the shortage in electricity supply in Indonesia.

The regulatory framework also reflects, to a certain extent, the Government's view on the participation of the private sector in the business. It is known that since the first generation of IPP projects, there has been little progress in the development of significant new electricity capacity. It is worthwhile to understand the Government's position on the risk sharing between the Government and the private sector for IPP projects.

## Government's view on risk sharing

Private participation in Indonesia's power sector started in 1992. During the first generation of IPP tendering (i.e. IPP which signed Power Purchase Agreement ("PPA") before the Asian economic crisis in late 1997), the Government received proposals for 27 IPP projects. From the submitted proposals, 15 IPP projects were awarded (about 59% from total proposals). The key reasons for the relatively high realisation of the projects were (i) relatively high return (project IRR between 20 – 25%) and (ii) Government guarantee.

However, in late 1997, many of the projects were put on hold as part of a retrenchment program to cope with the Asian economic crisis. PLN, which was financially troubled by the crisis, asked to renegotiate the PPA, particularly the tariff. Renegotiations were completed in 2003 and IPP investors agreed to new PPA's which generally included lower tariffs than initially contemplated in the original PPA's.

During the period 1999 – 2004, there were no new power projects tendered, as Indonesia was still impacted by the economic crisis and the Government/ PLN was negotiating new PPA's with existing IPP investors.

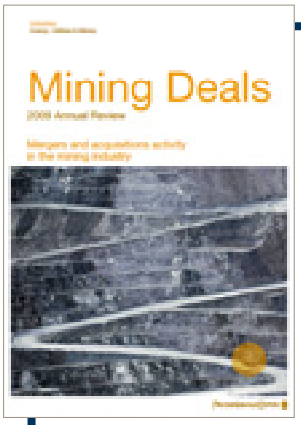
The second generation of IPP were signed during the period 2005 – 2008. During this period, the Government received 126 project proposals with only 18 projects being awarded. The low success ratio (14%) compared to the first generation of IPP was mainly due to (i) risk allocation which was not favourable to investors; (ii) the relatively low return (project IRR between 12 – 14%) and (iii) no Government guarantees.

The Government is now preparing the third generation of IPP (2009 – onward). Some of the key points which are expected to be addressed in the third generation scheme are:

(i) the Government is considering a Government guarantee for IPP projects with capacity > 50 MW. The form of the guarantee, however, is still not clear.

(ii) Some of the regulatory/ political risk is being shifted to the Government (please refer to table below for comparison between Generations 1, 2 and 3). This is to enhance the project finance-ability of the project.

Currently, the Government has prepared the Central Java 2 x 1000 MW project as the Model project under the third generation scheme. The PPA, however, has not been finalised yet, since this project is still in the tender stage.




## Mining Deals* 2009 Annual Review

**Sacha Winzenried**

We are pleased to announce that we have recently released our publication **Mining Deals* 2009 Annual Review**, Mergers and acquisitions activity within the global mining market.

Based on our report, 2009 mining M&A saw significant decreases in values and also changes in the characteristics of buyers and sellers. Sellers were acting largely through necessity to strengthen balance sheets for survival rather than seeking expansion and development capital.

Mining deals certainly felt the impact of the global economic downturn with significantly lower deal values driven by lower asset prices and an absence of 'mega deals' resulting in the total value of mining M&A activity halving from 2008 levels. While the number of deals increased by 16%, the average deal value plummeted from US$124m in 2008 to US$52m in 2009 as smaller deals were done to deleverage balance sheets. The biggest mining deal was Yanzhou Coal Mining's acquisition of Australian coal miner Felix Resources with a value of US$2.8 billion. The Asia-Pacific region proved more resilient to the downturn than most, particularly in the coal sector. This held true for Indonesia where a majority stake in PT Berau Coal was acquired by PT Recapital Advisors for US$1.5 billion.

The number of small deals (below US$250m) was significantly above the prior three years, with a total of 1,859 deals. This trend was driven by consolidation of smaller players and deals driven out of necessity for survival rather than opportunistic or strategic growth ambitions.

Please contact arfianti.syamsuddin@id.pwc.com or your usual PwC contact for a copy of the report.

## Government's view on risk sharing as reflected in each Generation of PPA

| Risk | Risk sharing mechanism | | |
|---|---|---|---|
| | Generation 1 (1992 – 1998) | Generation 2 (2005 – 2008) | Generation 3 (2009 – onwards) |
| Fuel Supply | IPP bears the risk of availability of fuel | | |
| Fuel cost | PLN bears the fuel cost (through tariff C component, which will be passed through from IPP to PLN) | | PLN will share the risk with Government |
| Site selection | IPP and PLN will share the risk | | |
| Capacity and energy price risk | PLN bears the capacity and energy risk | | PLN will share this risk with Government |
| Construction risk | IPP bears the construction risk | | |
| Operational risk | IPP bears the operational risk | | |
| Foreign exchange risk | PLN bears the foreign exchange risk | | PLN will share the risk with Government |
| Country/ regulatory risk | IPP bears the country/ regulatory risk | | PLN will share the risk with Government |

Source: Mapping of Electricity Requirement and Role of IPP in PLN's Development Plan as presented in Seminar: Indonesian Electricity Policy and Outlook, 16 December 2009 and PwC Analysis for Generation 1 Risk Sharing Mechanism.

The following are some of the challenges and opportunities within the Indonesia power sector that we believe potential investors should be aware.

## Challenges

- **Funding**

  Many IPP are in the financing phase and/or PPA negotiation phase. The potential for delay effects approximately 13 GW of planned capacity.

  Most of the second generation IPP projects (ie. those without government support) failed in getting the necessary financing. Meanwhile many of the projects in the construction phase are struggling with increases in project costs. In the financing stage, one of the biggest constraints is developers meeting lenders requirements due to lack of experience.

- **Law No. 30 Year 2009 still needs implementing regulations**

  The New Law offers some improvement in the regulatory framework in particular by providing a greater role for the regional government and other entities to participate in this business. However, many of the finer points concerning the New Law need to be stipulated in implementing regulations which are still forthcoming (due within 1 year, of the effective date of the New Law). It will take some time to determine whether the New Law can achieve the objectives to overcome the shortage in electricity supply in Indonesia.

## Opportunities

- **Increasing demand in electricity in the future**

  National electricity demand is estimated to grow at approximately 9% p.a. in the next 10 years. This growth rate is one of the highest in the region (Asia – Pacific), together with China (7%), India (5%), and Vietnam (8%). The average growth rate in the region is about 4.8%.

  In terms of relative consumption, Indonesia's annual electricity consumption per capita is relatively low (0.55 mWh) compared to other countries in the region, and in particular below Vietnam (0.70 mWh), Thailand (0.21 mWh), and the Philippines (0.64 mWh). The average annual electricity consumption per capita in the region is around 4.56 mWh.

  The shortage of power is also reflected in the current low electrification ratio, where only 65% of households in Indonesia have 24/7 utility provided electricity available. It is targeted that the percentage of households with electricity will grow to 91% by 2019. In this regard, additional capacity of 81 GW for generating plant, primary gate (*Gardu Induk*) of 100,000 MVA and transmission network of approximately 40,000 km is required. To realize the potential growth in electricity demand in the future, significant additional investment will be needed.

- **High required investment will create opportunity for investors**

  As previously mentioned, investment needs in the electricity sector for the next ten years are around USD 66 billion in total or USD 6 billion per annum. This will open a market opportunity for private investors in this sector.

  One of the examples is the PLN power plant project to support the Government's plan of 10,000 MW Phase 1. PLN has not yet obtained funding for its four power plants i.e. PLTU Tanjung Awar-Awar 2x350 MW (USD portion), PLTU 1 Riau 2x10 MW (Rp and USD portions), PLTU 2 Riau 2x7 MW (Rp and USD portion) and PLTU 1 West Kalimantan 2 x10 MW (Rp and USD portion). Currently, funding for these four projects is under negotiation.

- **The utilisation of renewable energy as part of primary energy for power generating plant**

  Under 10,000 MW Phase 2 accelerated program, the utilisation of coal and renewable energy is leveraged. The planned increase in utilisation of geothermal energy (48% from the total program) coupled with the vast amount of geothermal potential in Indonesia will be an opportunity for investors to participate in the geothermal sector.

## Concluding Remarks

Several initiatives have been started to overcome the shortage of electricity in Indonesia. Some progress has been made, but there are still many gaps that need to be improved. On the other hand, and in line with the forecasted economic growth, electricity demand growth should remain strong for the next 10 years (estimated at 9% p.a). A combination of strong demand and infrastructure gaps creates huge opportunities for private investors in Indonesia's power sector.

The Indonesian Government realises the importance of private investor participation to accelerate the country's electricy development. The Indonesian Government is also aware that private investor participation will ease its financial burden which has become the main hurdle for further Government investment. As such, the Indonesian Government is very keen to open-up the market to private investor participation. One of the key issues preventing sufficient private investor participation is the different perceptions between the Government and private investors in how risks should be allocted between the Government and private investors. Some initiatives have been launched, including the New Electricity Law, which creates a framework for future risk sharing (as stipulated in the PPA) between the Government and private investors.

Will this New Law be a panacea for the Indonesia's power sector woes? The New Law offers some hope for improvement by providing a greater role for private investors to participate in the sector. However, many of the finer points concerning the New Law need to be stipulated in the implementing regulations which are still forthcoming. It will take some time to determine whether the New Law can achieve the objectives to overcome the shortage in electricity supply in Indonesia. ■

# New Tax Treaty Rules - Relevance to Resource Sector

**Alexander Lukito/Tim Watson**

As most readers would now be aware the Tax Office recently issued a series of updated regulations (most importantly as DGT Decrees No.61 and No.62) on treaty use. These include a new Certificate of Domicile ("CoD") format which itself includes new non-resident taxpayer declarations in relation to the proper use of the relevant tax treaty and to the beneficial ownership of the treaty protected income. These new rules, which came into effect from 1 January 2010, allow an Indonesian resident payer of income to a non-resident to rely on the declarations made in the CoD for the purposes of fulfilling the Indonesian payer's "withholding" obligations.

The application of these new CoD arrangements in the resource sector could however have some unique twists. In the PSC space the focus would seem to be around the relevance of the new CoD to reductions in the Income Tax due on branch profits remittances ("BPRs"). It should be noted that the tax on BPRs is simply a tax on the after-tax profits of the relevant PSC entity's Indonesian branch. As such, this is a tax due by, and remitted by, the taxpayer itself and so not a tax being remitted pursuant to a "withholding" arrangement (i.e. where tax is withheld by one person against a payment to another person). The declarations made within the CoD are also effectively only being made by the relevant entity to itself. Nevertheless a recent BP Migas Letter suggests that a new format CoD is still expected to be produced by PSC entities.


For service entities (both for oil and gas and mining sectors) the new rules will be relevant especially around the following:-

a) dividend payments to foreign shareholders;

b) interest payments to foreign lenders;

c) management charges to foreign service providers; and

d) royalty and similar payments to foreign intellectual property holders.

For hybrid equity arrangements, especially any which may have been set up to create exposure to KP and similar mining concessions, a CoD may be relevant for ensuring protection against tax on any "value" deemed to have been created once formal equity is taken (e.g. on debt to equity conversations). ■

# The new Environment Law: Snapshot of "Environmental tax" provisions

**Simon McKenna/Anthony Anderson**

In October 2009, the Indonesian parliament passed the Environment Law (Law No. 32/2009). Article 42 of this law gives the Government the right to develop and implement "environmental economic instruments" which broadly include economic development planning and activities; economic funding and incentives and/or disincentives.

"Incentives and/or disincentives" can include (amongst others) the implementation of "environmental taxes, fees and subsidies". The concept of an "Environmental tax" is further elaborated on in the elucidation to Article 43(3)(b) which provides that this shall include a "fee collected by the Government and regional Government from anyone who utilizes natural resources, such as tax for the utilisation of underground water, fuel oil tax, and tax on swallow nest."

However, it would appear that the Environment Law is not actually intended to be an instrument for the imposition or collection of tax; rather any "environmental tax" shall be stipulated in a Government regulation (Article 43(4)). At this stage we are not aware of any Government Regulation imposing an "environmental tax" per se, however, one example of recent legislative development in this area would include the recently enacted Regional Tax and Levy Law (Law No. 28/2009) which provides for certain "environmental taxes" including:

- Fuel tax;
- Surface water tax;
- Underground water tax;
- Swallows nest tax.

Separately, there is provision for a “Levy for causing (environmental) disturbance" (Article 141). In the elucidation of Article 141(1) it states that a "levy for causing a disturbance" may be determined as a certain percentage of:

- the investment expenditure (including land and buildings);
- gross sales; or
- operating costs.

The relevant amounts of these enumerated items are apparently to be connected or reconciled with the frequency of supervision and control of the activities concerned. Clearly further regulatory guidance will be required. Note that just prior to the issuance of this newsletter the Minister of Energy and Mineral Resources has proposed that the Government postpone the implementation of this new environmental law for two years on fears it will severely hit oil and gas production. PwC Indonesia will provide more information on these regulatory developments as further details come to hand. ■

# Service Company Licensing Developments

**Adi Pratikto/Tim Watson**

Over the past month or so there has been some confusion over the current entitlement of BKPM (Indonesia’s Investment Licensing Body) to issue licenses for foreign owned service entities in both the oil and gas and mining sectors. Apparently the confusion had arisen from a recent Ministry of Mining and Energy Resources (“MMER”) directive to BKPM arising out of changes under the 2008 Mining Law in relation to mining service entities.

On 29 January 2010 the MMER issued Regulation No.5/2010 outlining the latest delegation of licensing authority arrangements. It would seem that MMER Regulation No.5/2010 has now reinstated BKPM’s licensing powers in relation to the mining, and oil and gas, service sectors (the position for the geothermal and electricity sectors remain less clear).

Unfortunately MMER Regulation No.5/2010 would not appear to provide BKPM with the much anticipated authority to issue PMA licences for entities which hold IUPs. ■

# Minister of Finance ("MoF") Regulation No. 24/ PMK.011/2000 – Import of Goods for Exploration in the Upstream Oil & Gas and Geothermal Sectors

**Tjen She Siung/Anthony Anderson**

MoF regulation No. 24/PMK.011/2010 relates to the VAT to be borne by Government on the import of goods for upstream oil and gas exploration activities and geothermal exploration activities for budget year 2010. The regulation is an extension to the previous MoF regulations No. 178/2007 and 242/2008 regarding the same facility for the budget years 2007 and 2008 respectively.

## Criteria

As for the previous regulations, the goods imported must meet certain criteria to be eligible for the facility, these are:

- the goods cannot be produced onshore;
- the goods are already produced onshore but have not fulfilled the required specifications; and
- the goods are already produced onshore but the quantity is not sufficient to meet the industry needs.

## Relevant PSC's and Geothermal Projects

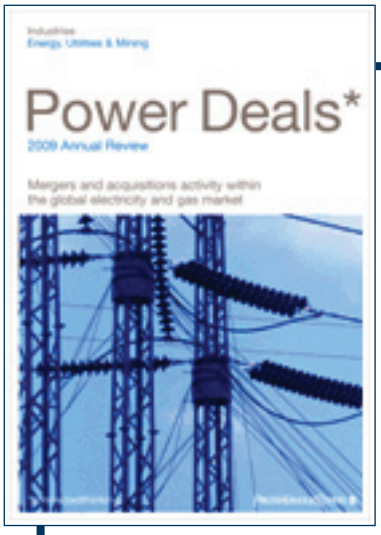
For upstream oil and gas, the facility is only available for cooperation contracts entered into after the enactment of Law No 22/2001 regarding Oil and Gas. Meanwhile, for the geothermal sector the facility is only available for contracts with the Government of Indonesia ("GoI") or Geothermal Mining Business License entered into or issued after 31 December 1994, or an entrepreneur in the geothermal sector that receives the assignment to perform a preliminary survey from the GoI.

The application for VAT borne by Government shall be submitted to the Director General of Customs and Excise by attaching the import plan validated by the Director General of Oil and Gas (for upstream oil and gas exploration) or Director General Mineral, Coal and Geothermal (for geothermal exploration).

Under the previous MoF regulations the VAT facility was available for one full year (from 1 January to 31 December). Regulation 24, however, stipulates that the facility is available from the date the regulation came into effect (29 January 2010) to 31 December 2010. As such, there appears to be no VAT facility available for the goods imported during the first 28 days in January 2010.

As a reminder an Import Duty exemption facility is also available for the same reciting the above criteria and for the same industries (upstream and geothermal) under the MoF regulation No.177/PMK.011/2007. No similar facility, however, is provided for income tax Article 22, which is due on the importation of goods.

Note that MoF regulation No.177/PMK.011/2007 is separate and distinct from the MoF regulation No.179/ PMK.011/2007 regarding the 0% Import Duty rate for drilling platforms or floating or submersible production. ■




# Power Deals* 2009 Annual Review

**William Deertz**

We are pleased to announce that we have released our thought leadership publication Power Deals* 2009 Annual Review. Mergers and acquisitions activity within the global electricity and gas market.

Economic and regulatory uncertainty combined with a continuing difficult funding environment took total 2009 power deal value back to levels last seen before the M&A boom of 2005-2008. However, the number of deals remained at relatively high levels as companies and investors continued to look for deal opportunities but at smaller deal levels.

## Small steps not giant strides are the order of the day

A still constrained funding environment combined with an uncertain regulatory climate, particularly in terms of carbon legislation, and reduced customer demand to create a tough deal environment in 2009. Only those companies with balance sheet strength were active players for bigger deals as small deals became the order of the day. Deal numbers dipped 10% but remained at relatively high levels. However, average power deal value (excl. renewables) plummeted from US$428 million in 2008 to US$259 million in 2009. Total deal value across the whole of the sector (including renewables) was barely half (56%) of its 2008 level and between a quarter and a third of the heights reached in the peak deal years of 2006 and 2007.

## China and South America power through as US and Australia Stall

Almost a fifth of worldwide power deal target value came from the Asia Pacific region in 2009, second only to Europe and eclipsing North America for the first time ever. The buoyancy in Asia Pacific deal-making came from China where the target value of all deals more than doubled -from US$7.7bn in 2008 to US$16bn in 2009 (or from US$4.5bn to US$8.9bn excl. renewables). South American bidder activity also shot up, rising year-on-year from US$5.4bn to US$13bn for all deals or more than fivefold from US$1.3bn to US$7.8bn excluding renewables. In contrast, North America's share of power deal activity fell sharply – down 61% from US$52bn in 2008 to US$20.1bn for all power deals in 2009. Australasia power deal activity also stalled – with a US$2.5bn 71% all power deals fall. Regulatory and policy uncertainty created a deal vacuum in both the US and Australia.

## Europe remains the big deal focus

For the second year running, Europe dominated the top 10 deal list. Seven out of the largest 10 transactions had European companies on both sides of the deal. European companies dominated power deal making in 2009 for the second year running, accounting for more than half (57%) of the value of all deals both by bidder and by target. European bidders featured in just under one in three of non-renewable electricity and gas deals and in over a third (36%) of all power deals including renewables.

## Outlook stays mixed

The coming year will be one of light and shade in power deal-making. Continuing uncertainty and reduced demand will continue to cloud short term deal outlook. Set against this, there are many positive deal drivers. Consolidation and network divestment will remain a key factor in central and eastern Europe. Chinese investor interest will bemaintained. We also see the possibility of a reawakening of wider international ambition by key players. The speculation surrounding GDF Suez and International Power shows the potential for major international M&A moves. Finally, the challenges of the major capital programmes required to deliver future clean generation will spur greater partnerships across industry boundaries and we would not rule out cross-industry stake-building.

Please contact arfianti.syamsuddin@id.pwc or your usual PwC contact for a copy of the report. ■

# NewsBytes

## PwC Indonesia to participate in the 34th Annual IPA Convention 18-20 May 2010

PwC Indonesia will be hosting a booth at the upcoming IPA Convention and Exhibition at the Jakarta Convention Center. Come stop by booth M-115 at the Main Lobby area for our latest industry publications and conversation with our people. We will have senior members of our Energy, Utilities and Mining team available to discuss industry issues etc.



## PwC Indonesia in the 16th Coaltrans Asia 2010 30 May - 2 June 2010

PwC Indonesia will be sponsoring the lounge at the 16th Coaltrans Asia 2010 at Bali International Convention Centre Indonesia. We will have senior members of our mining team available to discuss industry issues, and Ali Mardi will be chairing the Coal Mine Operations and Economics session on Day 2.

Hope to see you there !

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