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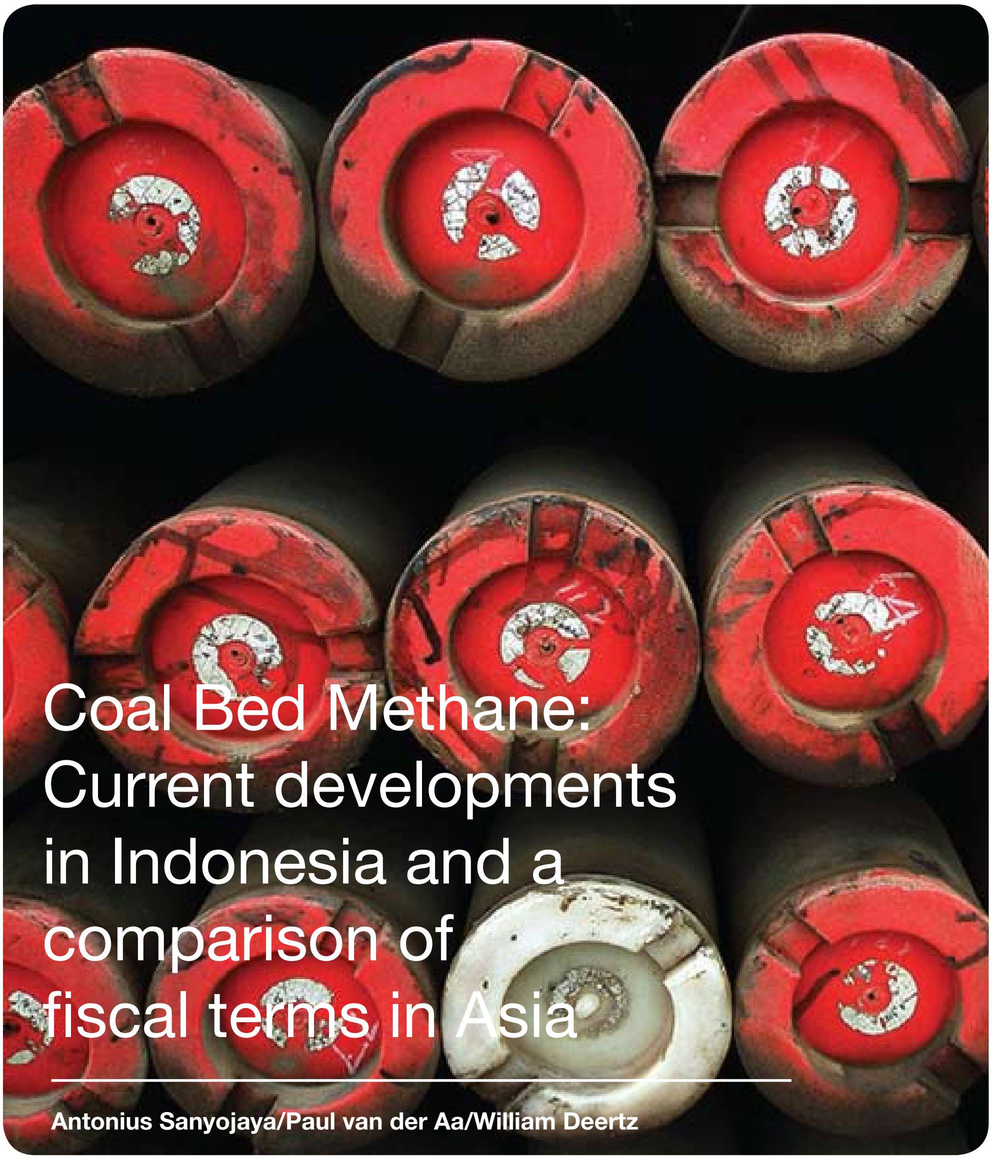


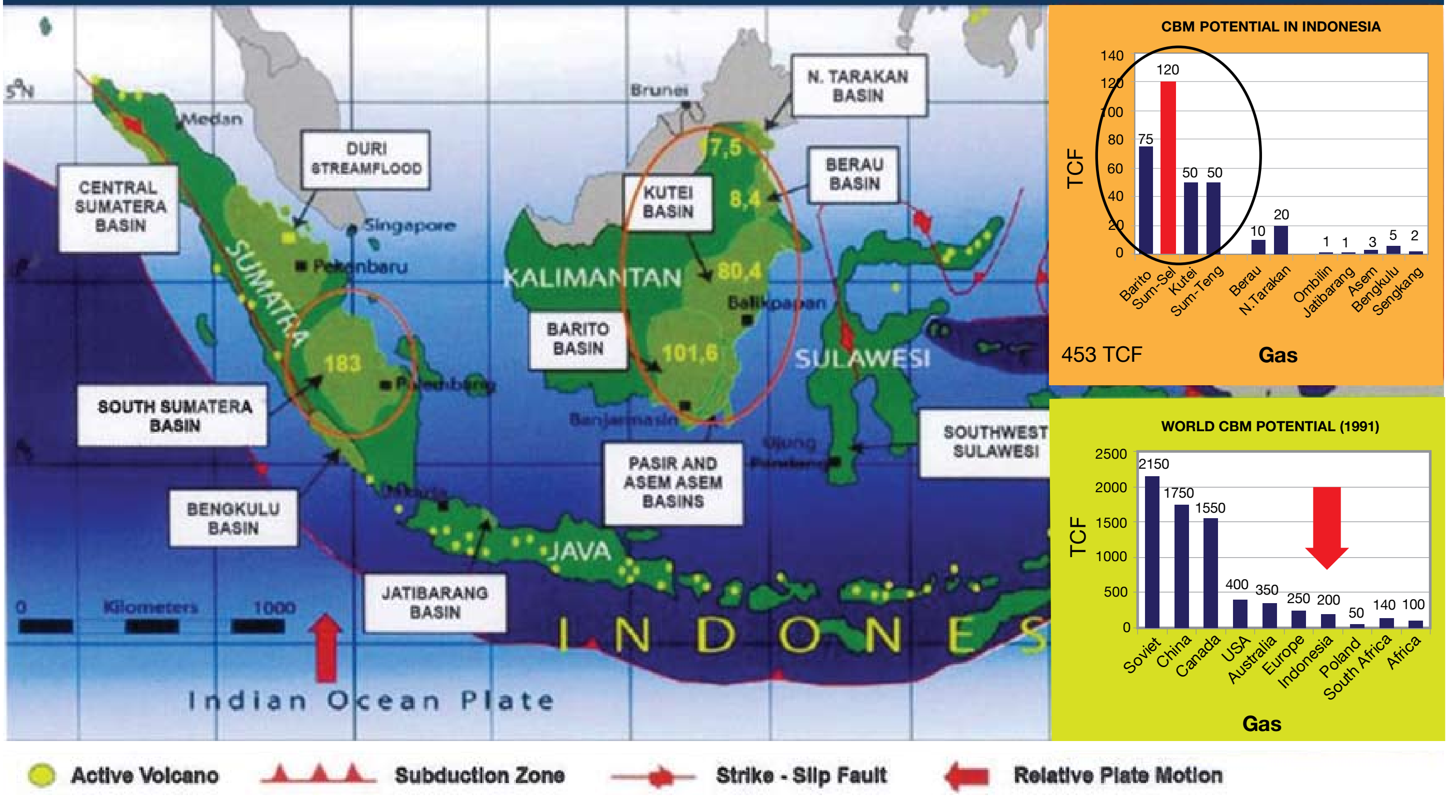
Coal Bed Methane: Current developments in Indonesia and a comparison of fiscal terms in Asia

Antonius Sanyojaya/Paul van der Aa/William Deertz

Simply put, Coal Bed Methane ("CBM") is natural gas stored in coal seams. CBM is generated either through a biological process as a result of microbial action or from a thermal process as a result of increasing heat within the depths of the coal. Often a coal seam is saturated with water, with the methane being held in the coal by the water pressure. In order to produce CBM, water is pumped out of the coal seams, therefore reducing the pressure and allowing the gas to leave the coal and migrate through fracture systems into the well.

Indonesia is estimated to have 453 Tcf of CBM resources. The CBM resource is higher than Indonesia's estimated natural gas resource of 350 Tcf. This would make the Indonesian CBM resources potentially one of the largest in the world. The CBM resources are spread around the archipelago but are predominantly located in South Sumatera, South Kalimantan and East Kalimantan.

CBM BASINS IN INDONESIA



Source : Pertamina, Indogas 2009 Conference

Indonesia has actively promoted the potential of CBM. Thus far, seven Production Sharing Contracts ("PSCs") have been signed by the Indonesian Government (please see the table below for details), mainly with local players and representing a total funding commitment of USD34 million for the first three years by the contractors.
A relevant Ministerial Regulation has also been issued to support the CBM operations (discussed in a separate section of this EU&M Newsflash).

Indonesian CBM PSCs

No.	PSC Date Signing	Contractor(s)	Split (Government : Contractor)	Location	First 3 years funding commitment (USD)
1	27-May-08	- PT Medco CBM Sekayu (Op) - South Sumatra Energy (Ephindo)	55:45	Sekayu Block South Sumatra	1mn
2	26-Jun-08	PT Samantaka Mineral Prima and its Consortium	60:40	Indragiri Hulu Block Riau	13mn
3	26-Jun-08	- PT Ridlatama Mining Utama (30%) - Churchill Mining Plc (70%)	55:45	Bentian Besar Block East Kalimantan	
4	13-Nov-08	- PT Pertamina Hulu Energi Mentana Kalimantan A - Sangatta West CBM Inc. (Ephindo)	55:45	Sangata 1 Block East Kalimantan	7.7mn
5	13-Nov-08	- Newton Energy Capital Limited - Kutai West CBM Inc. (Ephindo)	55:45	Kutai Block East Kalimantan	6.6mn
6	13-Nov-08	PT Indobarambai Gas Methan	55:45	Barito Banjar 1 Block South Kalimantan	3mn
7	13-Nov-08	PT Barito Basin Gas	55:45	Barito Banjar 2 Block South Kalimantan	3mn
					34.3mn

Sources: company' w ebsites and various media publications

The contract awards are a positive indication of the industry's appetite to develop the CBM resources. Nevertheless, there are some commercial and technical issues to be solved before this sector can really take off.

Based on the Indogas 2009 conference recently held in Jakarta, typical issues associated with CBM in Indonesia include:-

– CBM operating costs are typically higher than with conventional natural gas. Fiscal incentives may be required to improve the competitiveness of the production of CBM gas;

– Whether adequate experience is available in the local market to exploit CBM. CBM is neither Oil and Gas nor Coal operation;

– The CBM reserves are often buried more than 1km which results in poor permeability and a lengthy (i.e. costly) dewatering stage;

– A lack of infrastructure (e.g. pipelines) and difficult terrain hampers access to the CBM reserves, particularly in Kalimantan;

– There is a potential mismatch of supply and demand for domestic use, particularly in South Sumatera;

– Land ownership/access are an issue in remote areas. Environmental and water disposal is also a concern; and

– There is an uncertain Fiscal regime for the CBM PSC framework e.g. FTP, tax incentives, BP Migas approval process, etc.

We have compiled a regional comparison summarizing the various Asian CBM initiatives and their fiscal regimes. As the table illustrates the selected countries all adopted the PSC framework for CBM operations, particularly for foreign investors.

Regional Comparison
Resource and Investments

Country	Resources (Tcf)	Regulatory Framework	No. of contracts signed	Stage of Operation	Investment
Indonesia	450	PSC	7	Exploration and Feasibility Study	USD 34M (commitment, 2009-2011)
China	1,000	PSC	29	First Production in November 2005	USD 342M (actual, up to 2007)
India	300	PSC	26	First Production in July 2007	USD 150M (commitment)
Vietnam	17	PSC	2	Exploration and Feasibility Study	USD 1.5M (commitment, 1 PSC only)

Country	CIT Rate	Tax Holiday	Import Duties For Capital Goods	VAT			Pricing	Royalties	Equity Split (Government : Contractor)
				CBM	Import of Capital Goods	Domestic Consumption			
Indonesia	28%	No tax holiday	No exemption	Not subject	10%	10%. Refundable upon production	Market price	N/A	Generally 55 % : 45 %
China	33% (possible reduced to 25%)	No tax holiday *	Possible exemption (until 2010)	5%	Exempted	Subject to VAT	Market price	Up to 12.5% (pay in kind)	Generally 85 % : 15 %
India	35% for Indian Companies and 48% for foreign Companies	7 year tax holiday from the date of commencement of commercial production	Exempted	4%/12.5%, specific to state of sale	No VAT	4%/12.5%, specific to state of sale	Market price	N/A	50% : 50%
Vietnam	28% up to 50% (specific rate will be decided based on production & business situation)	Potential 1 year tax holiday and 50% reduction for 1 or 2 years	Exempted	- 0% for export - 10% for domestic	Exempted	Subject to VAT. Refundable upon production	Predetermine price based on negotiation with Petrovietnam	0% to 10%	Sliding scale from 15% to 30% in favor of Government

Sources: Various media publication, internal PwC sources, and public seminar materials.

* Tax holiday of tax exemption for first 2 years and 50% tax reduction for the following next 3 years is only aplicable for Foreign Investment Enterprise (FIE). Whilst FIE might not allowed to enter into a PSC for CBM.

The current stage of CBM development in Indonesia, global economic conditions and Indonesia's competitiveness amongst the Asian countries, raises questions about whether fiscal incentives are required to support the growth of CBM in Indonesia, for instance would a higher Contractor production share be sufficient to incentivize contractors to sign up for new CBM PSCs?

It is noted that the success of proven CBM developments in the USA and Australia did not occur without incentives including for tax. ■

Requirement to use National General Banks for goods/services payments

Yudhanto Aribowo/William Deertz

On 24 December 2008, BP Migas issued decision letter KEP-0066/BP00000/2008/S0 ("KEP 0066") to amend a number of provisions in the Working Guidelines No.007/PTK/VI/2004 on the Supply Chain Management of Production Sharing Contractors, especially in respect of the payment to goods/services providers. The amendment is entitled "Prioritizing the use of National General Bank services in performing payment to Goods/Services Providers, in terms of both payer's account and receiver's account"

Indonesia currently has approximately 50 contractors to run more than 150 Production Sharing Contracts ("PSCs") with annual capital and operating expenditures of approximately USD 14 billion. Most of the contractors are foreign investors who utilize a centralized treasury function with foreign banks overseas to effect payments.

With the recent global financial crisis, it appears one of the Government's strategies is to force PSC contractors to use a National General Bank thereby increasing national liquidity and giving increased benefits to the national banking industry.
The Government believes this will have a multiplier effect on the Indonesian economy.

Most readers will be aware of the recent ministerial decision No. 22/2008, which required PSC contractors to place funds for abandonment and site restoration in

Government banks in order to claim cost recovery. The decision of KEP 0066 represents an expansion of the Government's intention. However, the macro economic benefits of requiring payment processing through a National General Bank are questionable. Under the PSC terms all proceeds from the sale of oil and gas belong to the home office so any changes would presumably only relate to payments for goods/ services.

National General Bank ("Bank Umum Nasional") has not been defined

There has been no clarification from the Government regarding the definition of a National General Bank, in particular whether it is restricted to Government Banks or not. In a recent forum held by a foreign banks group there was a general consensus that foreign-owned banks with legal entities in Indonesia should be included in the definition of a National General Bank. PSC contractors need more clarification regarding the above definition. We understand that the head of BP Migas made public comments at a recent industry forum indicating that international banks operating in Indonesia would meet the definition of a National General Bank. Furthermore it is our understanding that the Indonesia Petroleum Association ("IPA") recently issued a letter to BP Migas requesting formal confirmation regarding the definition of a National General Bank. Support and clarification could also be obtained from the Bank of Indonesia, to get confirmation as to whether payments through foreign-owned banks meet the requirements of KEP 0066.

Are any cost inefficiencies subject to cost recovery?

Most foreign PSC contractors have a centralized treasury function using global/multinational banks as counterparts. Requiring PSC contractors to use National General Banks (if the definition doesn't include foreign banks operating in Indonesia) for processing payments may require more resources to perform the treasury function and also additional bank administration fees, or in other words, there will most likely be cost inefficiencies. With recent pressure from parliament/NGOs to reduce the cost recovery balance, there is an issue as to whether such inefficiency is subject to cost recovery.

Are vendors ready?

The decree also ruled that the vendor/service providers or receiver's account must also use the National General Bank. The main issue concerns vendors who are the local authorized agents for foreign vendors ("principal"), since usually the customer ("PSC contractor") pays directly to the principal using a foreign bank account, and this is a part of the control of the principal to avoid any pricing mark-ups by local authorized agents.

What next?

Despite the need for further clarification of the above matters, some PSC contractors have already started to implement the regulation by consulting with their home office and assessing the qualifications of National General Banks. However, it appears that the Government is trying to implement the instruction as early as possible. We have heard that one PSC contractor experienced a delay in VAT reimbursement because of this matter. Stay tuned as we will report on developments in a future newsletter. ■

New Minister Regulation No.36/2008 on CBM – A closer look

Antonius Sanyojaya/Paul van der Aa/William Deertz

On 12 November 2008, the Minister of Energy and Mineral Resources ("MEMR") issued Regulation No.36/2008 ("Regulation No.36") on Coal Bed Methane ("CBM") operations. This regulation revokes MEMR Regulation No.33/2006 ("Regulation No.33"). Apparently, Regulation No.36 is perceived to be providing a better business environment for contractors than Regulation No. 33, as 4 CBM Production Sharing Contracts ("PSCs") were signed one day after the regulation was issued.

Changes

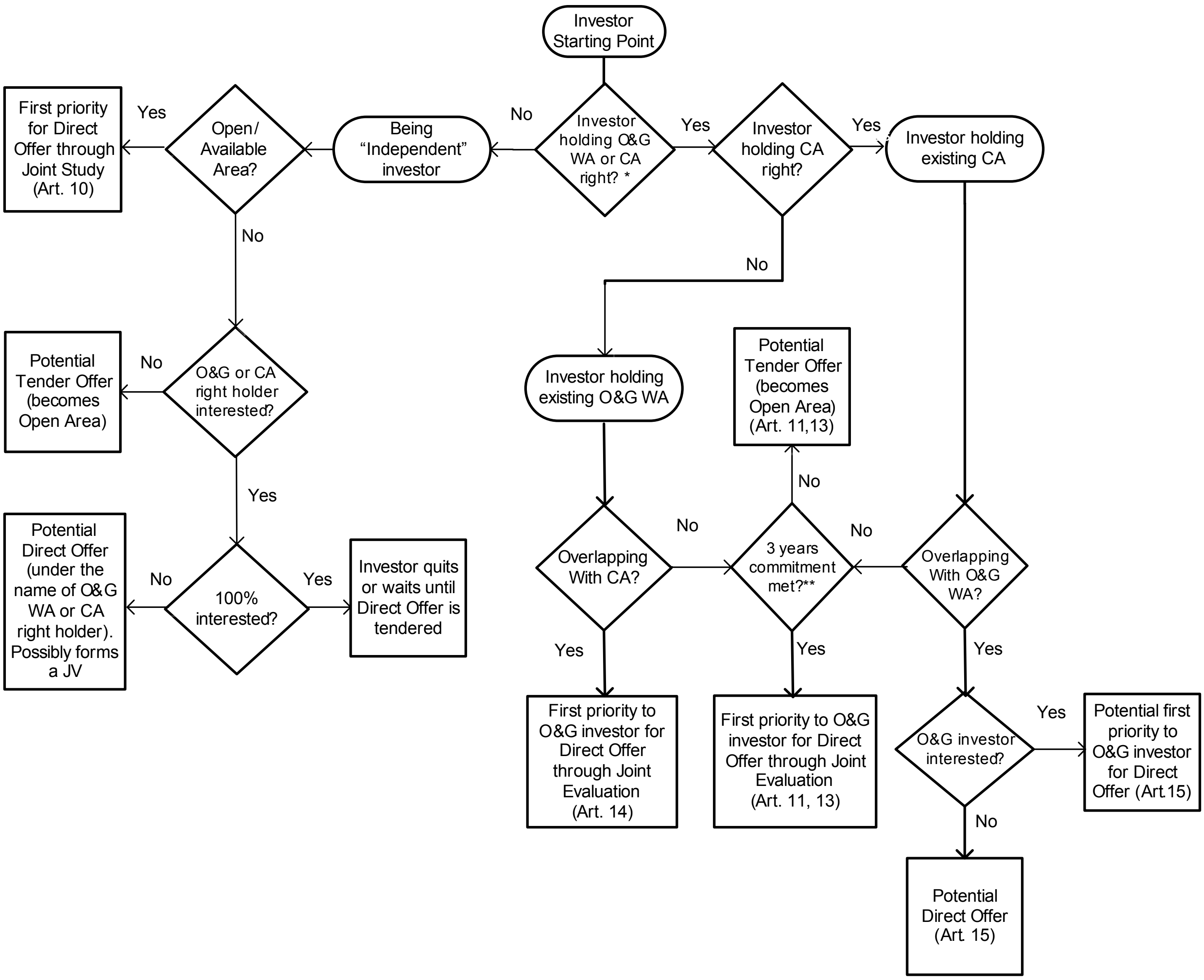
The main difference between Regulation No.36 and Regulation No.33, is that Regulation No. 36 focuses on the clarity of Direct Offer procedures. A summary of key changes are outlined below.

Comparison of Key Changes

Item	Regulation No.33	Regulation No.36
Offering Process	- Direct Appointment process - No distinguishment for first priority (i.e. equal position between Oil & Gas ("O&G") company, Coal Contract of Work ("CCoW") company or KP company for overlapping areas)	- Introduced Direct Offer, Tender Offer and Joint Study and Joint Evaluation process. These are to be in line with MEMR Regulation No.35/2008 on the offering of Oil and Gas Working Areas procedures
Cooperation Contract provisions	- Follow Article 26 of Government Regulation ("GR") No.35/2004 on Upstream Oil and Gas ("GR No.35")	- Extended GR No.35 now to include provisions for Dewatering and Pilot Project - A PSC contract should include the "cost recovery" arrangement
Areas for CBM Operation and Working Areas size	- In CBM Open Areas - Size is not regulated	- In CBM Open Areas, O&G Working Areas, CCoW Areas, and/or KP Areas - Maximum area of 3,000km^2 (300,000 Ha)

Item	Regulation No.33	Regulation No.36
Privilege right and offering process (also see flowchart for the Direct Offer)	- For non overlapping areas, each O&G company, CCoW company or KP company is entitled to being a first priority party to operate the CBM prospect in the areas located within their respective concession areas - The MEMR can directly appoint (i.e. approve) the companies (without tender process). MEMR should first stipulate the areas as CBM Working Areas - For overlapping areas, no privilege is given to certain companies to operate the CBM project. Those overlapping companies should cooperate together (i.e. enter into a written agreement)	*Joint Study* - Investors can apply by Direct Offer through a Joint Study for the CBM prospects found in Open Areas or Available Working Areas (i.e. not in the existing O&G, CCoW or KP areas) *Joint Evaluation* - Qualified O&G company, CCoW company or KP company is given the first priority to apply Direct Offer through a Joint Evaluation for the CBM prospects located within each respective concession area - For overlapping areas, O&G companies, being the first priority party, can apply by Direct Offer through Joint Evaluation on the CBM prospect - CCoW/KP company can only apply by Direct Offer through Joint Evaluation for the CBM prospect after the O&G company rejects to engage the CBM prospect (i.e. give away its priority privilege) - The Government of Indonesia (“GoI”) can carry out Tender Offer for the CBM to pubic for CBM prospects located in the Open Areas, Non-overlapping areas and Overlapping areas (which are not interested by the existing concession holders) - Before Joint Evaluation is commercialised, the Direct Offer will be tendered to the public. A party who undertakes the Joint Evaluation has the “right to match” - Each investor should deposit USD1 million as part of the Joint Evaluation process. The deposit is not refundable if the investor withdraws the Joint Evaluation process or fails to meet the requirements for the Direct Offer
Joint Evaluation timeframe	Not regulated	The joint evaluation should be carried out within 6 months and is extendable for another period of 4 months
Cost and risk in the execution of the Joint Evaluation	Not regulated	All costs (and risks) related to the joint evaluation shall be borne by the investor and should not be charged as operational costs under the cooperation contract
DMO	Not regulated	Supply to domestic market should be prioritised
Confidentiality of data resulted from Joint Evaluation	Not regulated	Regulated

Flowchart for Direct Offer
Articles 11-15 of Regulation No. 36/2008



* O&G WA : Oil & Gas Working Area
* CA : Coal Contract of Work Area or *Kuasa Pertambangan* ("KP") Area
** O&G Investor requires 3 years exploration commitment whilst for CCoW/KP investor requires 3 years exploitation period

The above flowchart is prepared based on PwC Indonesia understanding of the Regulation No.36/2008

First Priority Rules

A new feature of Regulation No.36 is the first priority principle provided to certain companies holding existing oil and gas or coal concession areas.

In this case, the first priority for Direct Offer would be given to:-

a) PSC company:- if the CBM prospect is located within the PSC working area of the particular PSC company and provided the PSC company has met the first 3 years exploration commitment (Article 11);

b) PSC company:- if the CBM prospect is located in overlapping areas within PSC working area and Coal Contract of Work ("CCoW") or Kuasa Pertambangan ("KP") area (Article 14); and
c) CCoW company or KP company:- if the CBM prospect is located within the CCoW or KP areas and these companies have met the first 3 years coal exploitation (Article 13).

The above first priority right of the PSC company might be withdrawn in the following cases:-

a) the cooperation contract is signed after the Joint Study is performed (by other investors) (Article 12(1));
b) the Oil and Gas ("O&G") working area is determined after a Joint Evaluation has been carried out by CCoW or KP company (Article 12(2));
c) the first 3 years exploration commitments have not been met (Article 11);
d) the company does not commence CBM undertakings within 6 months after notification from the Director General of Oil and Gas ("DG") on the CBM undertaking plan by CCoW or KP company (Article 15(3)); and
e) the company does not propose Direct Offer (through Joint Evaluation) within 60 days after DG notification on the Government plan to develop CBM in the non-overlapping areas and overlapping areas (Articles 18(3) and 19(3)).

Please note that for a CCoW or KP company, the first priority right might also be withdrawn if the company fails to meet the 3 years coal exploitation period (Article 13).

Transitional rules

Regulation No.36 provides transitional rules, whereby to some extent the old regulation can still be operative. These include:-

a) Joint Evaluation or Joint Study that is properly applied before 11 November 2008 will be processed /approved based on Regulation No.33; and
b) Joint Evaluation for overlapping areas (between O&G and CCoW or KP areas) that has not reached an agreement on the shares of working interest amongst the investors will be processed/approved based on Regulation No.33.

Challenges

Although Regulation No. 36 is a step in the right direction, we believe that there still remain a number of questions that require further clarification. These include:-

a) How does Regulation No. 36 deal with the new Mining Law No. 4/2009? KP and CCoW have been replaced by *Izin Usaha Pertambangan Khusus* ("IUP(K)") licensing system;

b) Regulation No. 36 is an implementing regulation of Oil and Gas Law No. 22/2001. Does this mean that companies holding KP and CCoW (or now IUP(K)) will rely on Regulation No. 36?;

c) Significant land size coverage. Potential multiple KPs/IUPs areas to be dealt with;

d) Does the 3 years commitment rule apply for overlapping areas? Regulation No.36 only stipulates the 3 years commitment for non-overlapping areas;

e) Will the first priority right only be given to wholly owned oil and gas companies or coal companies holding the existing concession areas? Will a JV structure formed by such companies lose the first priority right?; and

f) How does the domestic supply priority operate?

We believe that Regulation No.36 has provided much clearer rules for the CBM investor. The investors should monitor how Regulation No.36 is implemented in practice.

We will cover the taxation aspects of the CBM operations (under the PSC framework) in our next newsletter. ■

Minister of Trade Regulation of the Republic of Indonesia Concerning Goods Export Requiring Letter of Credit

Paul van der Aa/William Deertz

On 5 January 2009 the Minister of Trade of the Republic of Indonesia issued Regulation No. 01/M-DAG/PER/1/2009 regarding Export of Goods Requiring Letters of Credit.

Under the new regulation, Indonesian exporters are required to use a Letter of Credit (“L/C”) issued by domestic foreign exchange saving banks. (Note that initially after this regulation was issued there was some uncertainty if foreign banks operating domestically would be eligible to issue the L/C however this matter appears to have been clarified by the Minister of Trade (“MOT”) at a recent public forum where it was confirmed that foreign banks operating domestically would be eligible to issue the L/C. Both L/C payments and receipt of proceeds need to be routed through a domestic foreign exchange saving bank.

The regulation is applicable for the following goods:

- Coffee;
- Palm oil;
- Cocoa beans;
- Iron ore and its concentrate;
- Copper ore and its concentrate;
- Nickel ore and its concentrate;
- Aluminium ore and its concentrate;
- Coal;
- Natural rubber; and
- Lead

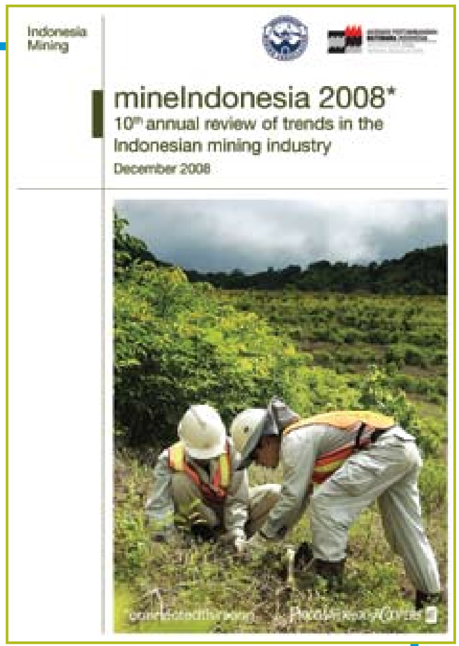
In order to enforce the new regulation, exporters of the above goods have to mention the L/C number in the Declaration of Exported Goods (“PEB”) starting from 5 March 2009 onwards. Goods not requiring a PEB are excluded from this new regulation. Indonesian exporters of the above mentioned goods are also required to submit a quarterly export realization report to the Minister of Trade (i.e. the Director General of Foreign Trade).

We believe that although the monetary impact may not necessarily be significant, it will certainly increase the administrative burden put on Indonesian exporters. In addition, Indonesian companies may now be forced to redesign their funding structure, as they are no longer allowed to receive their export proceeds into bank accounts outside of Indonesia.

At a recent industry forum the MOT clarified that one of the primary objectives of this new regulation was to better control and monitor certain key exports. Any policy which inhibits exports cannot be viewed favorably particularly in the current economic environment and it seems that the stated objectives could have been achieved without requiring the use of L/C's. Hopefully the additional costs and administrative burdens will not lead to an unnecessary decline in exports. ■

2009: a commodity crunch for the Indonesian mining industry?

Fandy Adhitya/Sacha Winzenried



PricewaterhouseCoopers Indonesia ("PwC") recently released its tenth annual survey of the Indonesian mining sector, "mineIndonesia 2008* - tenth annual review of trends in the Indonesian mining industry". The report highlights that the mining industry, both in Indonesia and globally, continued to reap the benefits of the surge in commodity prices in 2007 driving significant growth in revenue and profits, but fell back significantly in 2008. PwC's survey of more than 70 companies, representing more than 90% of the Indonesian mining industry, shows that the industry achieved a massive increase in net profits resulting in a new record level of profits in 2007. This directly led to a surge in government revenues from royalties and taxes, which, again, reached a new record in 2007. Investor confidence in the mining sector was strong in Indonesia, and around the globe, as witnessed by a year of significant growth in the market capitalization of mining companies on both international bourses and the Indonesian exchange. From mid-2008 commodity prices began to weaken, falling dramatically in the third quarter of 2008 when the full extent of the global economic difficulties became evident. This saw a massive sell-off of equities around the globe, across all sectors, with the mining sector heavily impacted. In line with the fall off in prices of commodities across the board, the results for listed mining companies showed a significant decrease in revenues and profitability in 2008.

Survey respondents show that the mining industry continued to be an important contributor to the Indonesian economy. In 2007, the mining sector contributed approximately 4% of total Indonesian GDP and more than 20% of export revenues. The industry also continues to make significant contributions to regional and community development, evident by the significant increase in spending for these activities during 2007.

The report also notes that, consistent with previous years, the high commodity prices during 2007 were not enough incentive to boost investment in the mining sector in Indonesia. 2007 and previous years saw some growth in investment spending, but exploration spending is still very low considering the geological attractiveness of Indonesia compared with exploration spending globally. This condition will likely continue into the near term, especially given the current global economic difficulties, as even the largest global mining companies are being forced to rethink their investment plans. Consistent with previous survey reports, investment conditions continue to receive poor reports from survey respondents.
Survey respondents still have concerns on the regulatory climates for the Indonesian mining industry, with the top issues noted being:

i) conflict between mining operations and forestry regulations;
ii) duplication and contradictions between central and regional government regulations;
iii) need for inclusion in the new mining law of a mining agreement similar to a contact of work system;
iv) lack of fairness in divestment of foreign mining interests and mine closures;
v) uncertainty in Contract of Work system and other mining regulations;
vi) taxation issues (tax incentives, VAT on gold and coal, corporate tax rate);
vii) illegal mining;
viii) delay in finalization of the new mining law; and
ix) lack of coordination between new investment law and mining regulations.

As noted in our last EU&M Newsflash, the new Law on Mineral and Coal Mining was approved by the President on 12 January 2009, becoming Law No. 4/2009. This Law is the biggest change in the mining regulatory framework in Indonesia for more than 40 years. The new law was an opportunity to address many of the issues noted above, which have hampered investment in the Indonesian mining sector for a number of years. Unfortunately, initial reactions to the new law have not been overwhelmingly favorable, and there is a risk that, particularly in the current global economic climate, it will not provide the necessary impetus for investment in the large-scale long life projects which are needed to strengthen the Indonesian mining industry. This report lists the Top 12 issues and challenges from this new Law as ranked by the survey respondents:

1. Contradictory transitional provisions for existing Contracts of Work and Coal Contracts of Work - to what extent will the terms of existing CoWs and CCoWs be grandfathered?
2. Requirement for existing producing CoWs to conduct onshore processing of ore within five years of enactment of the new Law.
3. Requirement for existing Contract of Work ("CoW")/CCoW holders to submit a mining activity plan for the entire contract area, within one year of enactment of the new Law, or face relinquishment of parts of the contract area.
4. Lack of clarity in the process for the conversion of existing Kuasa Pertambangan ("KPs" or "Mining Rights") to Izin Usaha Pertambangan ("IUPs") under the new Law.
5. Potential delays in issuing implementing regulations to regulate provisions of the new Law.
6. Divestment requirement for foreign interests in IUPs within five years of production commencing.
7. In-country processing requirement for all IUP holders.
8. Restrictions on IUP holders using affiliates to provide mining support services.
9. Dealing with regional/local government officials to obtain IUPs.
10. Restricted size of exploration and exploitation IUPs, which may hamper large-scale projects.
11. Reduced legal certainty compared to provisions of existing CoWs/CCoWs.
12. Absence of a form of agreement/contract for large projects above a certain investment threshold.

These, and other matters remain to be clarified in implementing regulations, which are required to be issued within one year. The implementing regulations are expected to provide clearer guidance on the new law. It is hope that the speedy issuance of implementing regulations will resolve some of the uncertainties in the provisions of the new law and together with the expected upturn in commodities markets, prevent Indonesia from suffering a long-term commodity crunch. ■

Contact:
For further information on the Indonesian mining sector or to obtain a copy of mineIndonesia 2008* please contact sacha.winzenried@id.pwc.com or fandy.adhitya@id.pwc.com

Draft Electricity Law currently being debated

Simon McKenna/Anthony J Anderson

On 15 December 2004, the Constitutional Court annulled Electricity Law No.20/2002 ("the 2002 Law") on the basis that the law contravened Article 33 of the Indonesian Constitution by permitting full competition in the electricity business (see EU&M NewsFlash - April 2005, No. 23/2005).

The Court reinstated the defunct Electricity Law No. 15/1985 ("the 1985 Law"). However, any contracts entered into by the Government under the 2002 law remained in effect. In a bid to overcome issues with the Court's reinstatement of the 1985 Law, the Government issued Government Regulation No.3/2005 (GR3/2005).

Since the annulment of the Electricity Law No. 20/2002, the legal framework for the electricity and power sector has been in a state of uncertainty. The Government intends to overcome this situation with its proposed draft electricity law ("the Draft Law"), released on 3 February 2009.

The Draft Law is currently being discussed in the People's Representative Council ("DPR"), the lower house of the Indonesian legislature. We will update readers on the progress of the Draft Law in our next EU&M NewsFlash. ■

The Use of Conduit or Special Purpose Companies in Tax Haven Countries Post 1 January 2009

Simon McKenna/Anthony J Anderson

The new Law No.36/2008 ("the 2008 Income Tax Law") falls short of instituting any general anti avoidance tax rules. However, Section 18 of the Law dealing with related party transactions has been revisited.

Where an investor uses a conduit company or special purpose company ("SPC") established or domiciled in a tax haven country to either:

(a) own shares in an Indonesian company; or
(b) hold a permanent establishment in Indonesia (e.g. an Indonesian branch of the foreign company holding a PSC working interest)

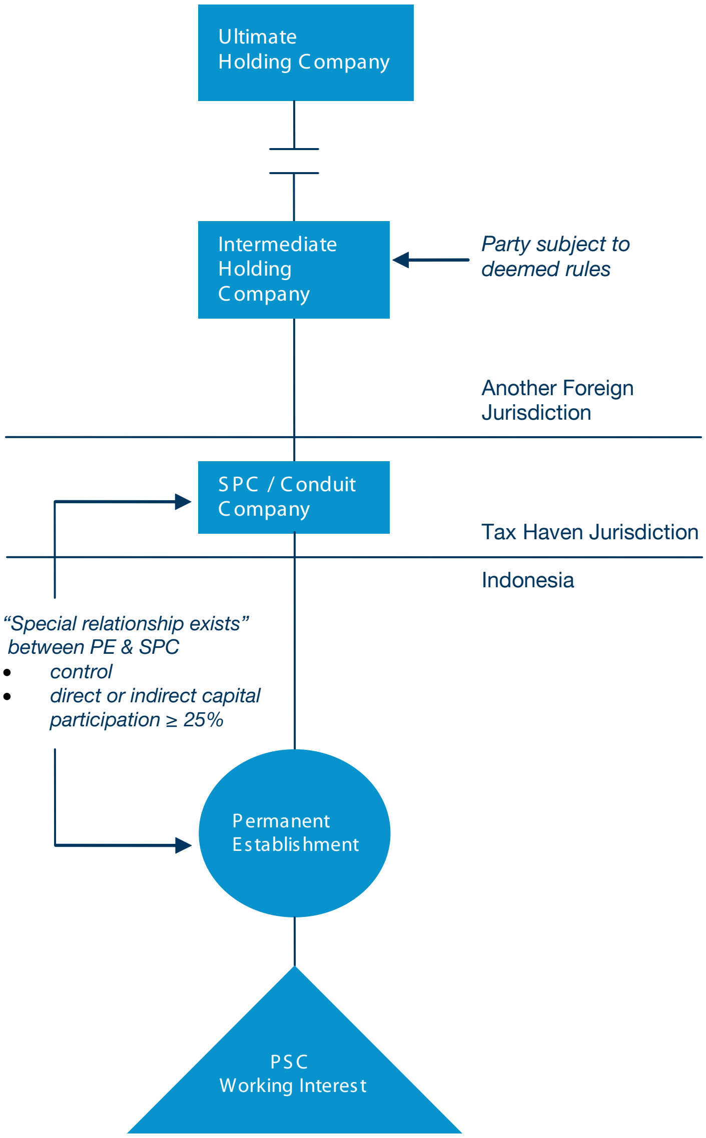
then the 2008 Income Tax Law deems that investor to be the actual owner of the shares in the Indonesian company or the owner of the permanent establishment ("PE") in Indonesia.

Consequently, if that party sells or transfers the shares in the SPC, the 2008 Income Tax Law deems a sale or transfer of the underlying shares in the Indonesian company or the underlying interest in the PE (Article 18(3c)). This sale or transfer will be subject to income tax at a rate of 20% of the estimated net income ("ENI") (Article 26(2a)).

On 31 December 2008, the Finance Minister issued Reg. 258/PMK.03/2008 ("the Regulation") as an implementing regulation on this matter. The key points of the Regulation are as follows:

- The ENI is specified to be 25% of the selling price, meaning that the effective tax rate is 5% (20% of 25%). The meaning of "selling price" is not clearly defined and arguably, it may mean a market price.
- In the situation where a transfer transaction would be subject to a tax treaty, the rule should apply only if the taxation right belongs to Indonesia.
- If the purchaser is an Indonesian taxpayer, the purchaser is responsible for the withholding and settlement of the tax.
- If the purchaser is a non-resident taxpayer, the Indonesian company (or presumably the branch) concerned is held responsible for collecting the tax due and settling it with the State Treasury.
- The tax withheld or collected must be settled with the State Treasury no later than the 10th of the month following the month of the transaction. Tax reporting should be made no later than the 20th of the same month.
- The Indonesian company concerned is held responsible for "recording the act of share right transfer in respect of the shares sold". There is no explanation of this matter.
- The Regulation is effective from 1 January 2009. The impact of these rules will need to be taken into account in transactions, in particular for the Oil and Gas sector in Farm In Farm Out deals, reorganizations or outright sales. In some cases tax treaty protection may provide relief, depending on the tax residence of the vendor investor.

Potential Application of Section 18(3)(c) of the 2008 Income Tax Law for Indonesian Branches holding PSC working interests



Renewables Deals 2008
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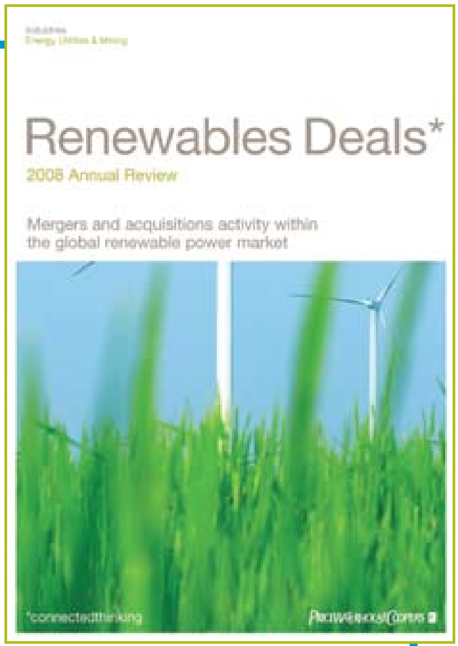
Yudhanto Aribowo/William Deertz



PricewaterhouseCoopers ("PwC") recently released our report "Renewable Deals 2008 Annual Review - Mergers and acquisition activity within the global renewable power market". This is the first edition of mergers and acquisitions activity within the global renewable power market. This report augments our three well established deals reports - Power Deals, Oil and Gas Deals and Mining Deals which examine trends and the outlook for mergers and acquisition ("M&A") activity in the energy, utilities and mining sectors. Together the quartet provide a comprehensive analysis of M&A activity across the extractive and power industries worldwide.

The renewable energy sector is an increasingly important arena for deal-making as companies and investors respond to the growing role of renewable sources in meeting global energy demands and the challenge of climate change. Security of supply, energy diversification, technological breakthroughs and climate change regulations all play a part in driving the growth of the sector.

In the report, Renewable energy accounts for around a tenth of M&A value in the wider power sector. During 2007 and 2008, 441 renewables deals were announced with reported value totaling USD 70.3 billion. Compared to 2007, although 2008 deal numbers held up, the value of deals dropped dramatically in the second half of 2008 compared to the same period in 2007 (deal values shrunk by more than half) which is likely due to the global financial crisis.

In terms of sectors, wind power continues to be the principal focus of deal activity (57% of the deals) followed by solar (20% of the deal), Hydro (16%), Biofuels (6%) and Geothermal (1%)

Asia Pacific's year on year renewables deal activity increased with deal numbers rising 21% from 2007 to 2008. However, the region's share of worldwide renewables deals fell dramatically – from 16% to 6.5% - as transactions became more concentrated on smaller deal values. It is noted that Indonesia had a small portion of renewable deals (1.4% of Asia Pacific with total value of USD 26 million in 2008) however the prospects for further growth particularly in geothermal are compelling.

In the report, PwC analyzes that 2009 will be a watershed year for the sector with the first year of the Obama presidency and the December 2009 UN Climate Summit in Copenhagen having a vital bearing on the future growth. In addition, falling energy prices are casting doubt about the viability of some renewable energy schemes.

Indonesia has good potential to further develop renewable energy, especially in Biofuels and Geothermal, particularly considering the growing need for power in the country. It has been estimated that Indonesia has a geothermal resource potential of approximately 20,000 megawatts versus a current installed geothermal base of around 1,000 megawatts. This resource base along with the Government of Indonesia's stated policy to diversify its energy mix to more than 5% each for both geothermal and biofuel by 2020 will hopefully spur further activity in these sub-sectors. The report has shown that with recent falling energy prices and the global financial crisis, governments will need to have attractive frameworks for the industry in order to get more investment in the sector. ■

To obtain a copy of the report and find a more detailed summary, please visit of our website at www.pwc.com

Claiming the Fiscal Tax Exemption

Paul Raman/Anthony J Anderson

Recently, there have been quite a few changes brought about by the amended income tax law that was signed by the President on 23 September 2008. Besides the changes to the income tax rates, tax brackets and the personal relief amounts, the amended tax law also introduced changes to the fiscal exit tax payable at the exit points in the country. The new law says that taxpayers with a valid tax ID will be exempt from paying the fiscal exit tax for both the taxpayer and family. Further clarifications were later introduced on the procedure for claiming exit tax exemption, as well as on the fiscal exit tax payable by those taxpayers without a valid tax ID.

Effective from 1 January 2009, for those taxpayers without a valid tax ID, the fiscal exit tax amount has increased to IDR 2,500,000 from the previous IDR 1,000,000 for each exit from Indonesia by air. For exit by ship, the fiscal exit has gone up from IDR 500,000 to IDR 1,000,000. Taxpayers who have a valid tax ID number ("NPWP") are now exempt from paying the fiscal exit tax. To claim the exemption, a taxpayer should provide the following documents to the tax office counter at the point of departure (airport/seaport):

1. A copy of NPWP card or letter of registration or letter of temporary registration.

2. A copy of the family card to claim exemption for spouse. Under the new policy, children below the age of 21 are automatically exempt from paying the fiscal exit tax. Under the old policy, only children below the age of 12 were granted exemption from paying the fiscal exit tax.

Expatriates in Indonesia are not issued with a family card. It is now accepted that, in place of the family card, expatriates should carry with them the Expatriate Family List Statement letter (*Surat Keterangan Susunan Keluarga Pendatang* as known by the Bahasa acronym "SKSKP") issued to the expatriates by the local municipal government (Kantor Kelurahan). Providing a copy of the SKSKP will ensure that spouses of expatriates will also be exempt from paying the fiscal exit tax at the point of departure from Indonesia.

In the event a spouse travels without the tax ID card holder, in order to claim the exemption from paying the exit tax, the spouse should also provide the above documents (1) and (2) to the tax officer at the departure point.

After cross-checking the tax ID number with the Director General of Taxation (DGT's) database to confirm its validity, the tax officer will place a stamp on the boarding pass to confirm that the individual is exempt from paying the fiscal exit tax. ■

NewsBytes

New Upstream Tax Regulations?

Article 31D of the new 2008 Income Tax Law allows the Government to issue regulations in relation to a number of specific industries including oil and gas. It is our understanding that policy on specific tax regulations for upstream activities is well advanced and that a regulation may not be far off. Whilst details have not been made public it should be noted that this would be the first major tax development in this upstream sector since the introduction of the uniformity principle in the early 1980s. Of particular interest will be the ongoing acceptance of uniformity and the proposed treatment of income not directly arising from liftings such as on PSC transfers. Hopefully more details can be provided in the next edition.

PwC Indonesia to participate in the 33rd Annual IPA Convention 5-7 May 2009

PwC Indonesia will be hosting a booth at the upcoming IPA Convention and Exhibition at the Jakarta Convention Center. Come stop by booth M-114 and 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.
We hope to see you there.

Code of conduct The way we do business*

Putting our values in action

Excellence

Delivering what we promise and adding value beyond what is expected.

We achieve excellence through **innovation, learning and agility.**

Teamwork

The best solutions come from working together with colleagues and clients.

Effective teamwork requires **relationships, respects and sharing.**

Leadership

Leading with clients, leading with people and thought leadership.

Leadership demands **courage, vision and integrity.**

This summary is not intended as professional advice. It is suggested to always consult with your usual PwC contact.

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