

*Client Alert – 21 August 2017*

## Indonesia power sector: Updated regulation on power purchase agreements



### Speed read

- The Ministry of Energy and Mineral Resources (**MEMR**) has recently issued Regulation No. 49 of 2017 (**Reg. 49/2017**) amending Regulation No. 10 of 2017 on Principles of Power Purchase Agreements (**Reg. 10/2017**) in Indonesia.
- Reg. 49/2017 resolves one of the concerns raised by Reg. 10/2017 previously voiced by market participants, leaving other concerns unresolved, particularly in relation to force majeure risks affecting PLN's grid.

In response to widespread concerns amongst market participants, the **MEMR** recently issued Regulation No. 49 of 2017 (**Reg. 49/2017**) amending Regulation No. 10 of 2017 on Principles of Power Purchase Agreements (**Reg. 10/2017**). Reg. 10/2017 was issued in January 2017 and was widely criticised by market participants in the Indonesian power sector for legislating with respect to the allocation of certain project risks in a manner that was (a) inconsistent with Indonesian precedent, and (b) widely viewed as being un-bankable. The specifics of these changes were highlighted in our previous publication on Reg. 10/2017, which you can find [here](#).

The new legislation will come as a disappointment to critics of Reg. 10/2017, as it only addresses one of the controversial elements raised by the regulation. Under precedent Indonesian power purchase agreements (**PPAs**), PLN has generally assumed the risk for changes in government policy that impacted performance under such PPA. With the introduction of Reg. 10/2017, this risk was allocated to both PLN and IPPs by providing that both parties would simply be released from their performance under the PPA should a change in government policy affect a power project, which does not represent much of a remedy for an IPP trying to make debt repayments to its lenders. The new regulation now removes all references to this principle from Reg. 10/2017. As a result, PLN and IPPs are now free to negotiate the allocation of this risk and, for future projects, it is hoped PLN will follow the bankable risk allocation on this issue, as agreed under precedent PPAs.

Some concerns raised by market participants still remain, especially with respect to the allocation of the risk of force majeure affecting PLN's grid to IPPs (which is one of the most troubling aspects of Reg. 10/2017, but not the only one). We understand that PLN is yet to issue a revised model PPA reflecting the risk allocation imposed under Reg. 10/2017. As we had highlighted in our previous alert on this topic, it will only be possible to form a definitive view of the bankability of Indonesian IPP projects in the future when such new model PPA(s) can be read together with Reg. 10/2017 (as amended by Reg. 49/2017) and the extent of any risk re-allocation can be properly quantified.

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