

UPDATES ON FORCE MAJEURE PROVISIONS UNDER THE POWER PURCHASE AGREEMENTS

On 12 February 2018, the Minister of Energy and Mineral Resources (the “MEMR”) issued Regulation Number 10 of 2018 on The Second Amendment to Minister of Energy and Mineral Resources Regulation Number 10 of 2017 on the Principles of Power Purchase Agreements (“MEMR Reg 10/2018”) which came into effect on 13 February 2018. As a brief background, Minister of Energy and Mineral Resources Regulation Number 10 of 2017 on the Principles of Power Purchase Agreements (“MEMR Reg 10/2017”) sets out the principles of power purchase agreements (“PPA”) between PT PLN (Persero) (“PLN”) as the purchaser and Independent Power Producers (“IPP”) as the seller in the electric power system. This regulation covers the commercial aspects of every type of IPP power plant, which previously depended on negotiations between the parties, save for certain requirements under the prevailing laws and regulations (eg the electric power purchase price). MEMR Reg 10/2017 was amended previously by Minister of Energy and Mineral Resources Regulation Number 49 of 2017 on An Amendment to Minister of Energy and Mineral Resources Regulation Number 10 of 2017 on the Principles of Power Purchase Agreements (“MEMR Reg 49/2017”).

MEMR Reg 10/2018 aims to provide legal certainty in the power supply business by revising provisions on force majeure under PPAs by deleting the reference to change in law as the force majeure conditions. Given this, under MEMR Reg 10/2018, it can be concluded that political force majeure (ie any changes in law as well as government policy as previously revoked by MEMR Reg 49/2017) does not relieve the parties from their obligations under the PPA and the parties’ obligations will then be subject to the negotiation of the PPA between the parties.

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