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Ali Budiardjo, Nugroho, Reksodiputro was established in Jakarta in 1967 and is one of the largest independent full-service law firms in Indonesia, and the sole Indonesia member of the world's largest law firm association, Lex Mundi. ABNR has played a major role in the financing of most significant Indonesian power projects. It has advised on project finance aspects, including financing structures

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1. General Structure and Ownership of the Power Industry

1.1 Principal Laws Governing the Structure and Ownership of the Power Industry

The electricity industry in Indonesia is governed by Law Number 30 of 2009 concerning Electricity (the "Electricity Law"), which revokes the previous law (Law Number 15 of 1985 – "Law 15/1985").

Under Law 15/1985, PLN held the sole right to provide electricity in Indonesia. This was based on Article 33 of Indonesia's 1945 Constitution, which provides that the State must control all natural resources and production sectors deemed essential for the welfare of the people. Under Law 15/1985, PLN monopolised the electricity sector in Indonesia.

Under the Electricity Law, a company that has an Electricity Supply Business Licence (*Izin Usaha Penyediaan Tenaga Listrik* or "IUPTL") can supply electricity for the public interest. PLN is granted 'first priority position' to do business in supplying electricity for the public interest, but other companies holding an IUPTL can also supply electricity for the public interest. Furthermore, with the issuance of Government Regulation No. 14 of 2012 concerning the Electricity Supply Business, as amended by Government Regulation No. 23 of 2014 ("GR 14/2012 as amended"), and its implementing minister regulations – namely Minister of Energy and Mineral Resources Regulation No. 35 of 2013 concerning Procedures for Obtaining Permits for Electricity Business, as amended by Minister of Energy and Mineral Resources Regulation No. 12 of 2016 ("MEMR Reg. 35/2013 as amended") – private companies are permitted to sell electricity to the public or directly to consumers, subject to obtaining an Electricity Business Area Stipulation based on Minister of

Energy and Mineral Resources Regulation No. 28 of 2012 concerning Application Procedures for Electricity Business Areas to Supply Electricity for the Public Interest, as amended by Minister of Energy and Mineral Resources Regulation No. 7 of 2016.

The electricity supply business for the public interest in Indonesia consists of power generation, transmission, distribution, or power sales.

Furthermore, the Electricity Law and GR 14/2012 as amended stipulate that a (private) power company may carry out all of the above activities in an integrated manner. However, the undertaking of the foregoing types of electricity supply business under the Electricity Law is subject to Constitutional Court Decision No. 111/PUU-XIII/2015, dated December 14, 2016 (“Constitutional Court Decision”), which ruled that the concept of “unbundling” is unconstitutional. It is understood that the Government of Indonesia (“GoI”), through the Ministry of Energy and Mineral Resources (“MEMR”), generally interprets the unbundling concept referred to in the Constitutional Court Decision as meaning the business of providing or supplying electrical power directly to end consumers (vertical unbundling). It should be noted that this view has never been tested by the court, as there have been no subsequent challenges to the way in which the power business is currently carried out by GoI/MEMR, PLN and private electricity developers, nor to its compliance with the Constitutional Court Decision. In current practice, the power industry in Indonesia consists of the following:

- disaggregated entities for each of generation, transmission, distribution and sale, with most – if not all – of them engaging in the power generation activities with PLN as the off-taker; or
- private power companies that carry out all of the above electricity supply operations (power generation, transmission and distribution) in an integrated manner and within one single entity to supply or sell to end consumers (bundled) (“Integrated Power Company”). Most, if not all, Integrated Power Companies in Indonesia supply electricity to industrial areas that are identified in their Business Area Directives, which are issued by the Online Single Submission (“OSS”) on behalf of MEMR as stipulated under Minister of Energy and Mineral Resources Regulation No. 39 of 2018 concerning Electronically Integrated Business Licensing Service in The Electricity Sector (“MEMR Reg. 39/2018”) (<https://jdih.esdm.go.id/peraturan/PM%20ESDM%20NO.%2039%20TAHUN%202018.pdf>) (Integrated Power Company holding a Stipulation of Business Area hereinafter referred to as private power utility company (“PPU”).

1.2 Principal State-owned or Investor-owned Entities

PLN is currently the sole state-owned company that owns and operates power generation, transmission and distribution facilities in Indonesia in order to fulfill the main purpose of its establishment – ie, providing electricity to the public. Other state-owned companies in the energy sector, such as PT Pertamina (Persero) and PT Geothermal Nusantara (Persero), own and operate power generation facilities and sell the electricity produced to PLN as an off-taker.

Investor-owned companies or Independent Power Producers (“IPPs”) in Indonesia mostly engage solely in power generation activity. By and large, these IPPs own and operate power generation facilities for a limited duration only – ie, for the duration of the power purchase agreement (“PPA”) with PLN – since almost all IPP projects with PLN as off-taker are developed under the build, own, operate and transfer (“BOOT”) scheme, except for a handful of power projects (with relatively small to medium size capacity) developed under build, operate and owned (“BOO”) schemes with PLN that existed before the enactment of Minister of Energy and Mineral Resources Regulation No. 10 of 2017 concerning Principles of Power Purchase Agreements as amended by Minister of Energy and Mineral Resources Regulation No. 49 of 2017 and Minister of Energy and Mineral Resources Regulation No. 10 of 2018 (collectively “MEMR Reg. 10/2017 as amended”), which requires PPAs with PLN to be based on the BOOT scheme. There are hundreds of (power generation) IPPs in Indonesia but PT Paiton Energy, PT Cirebon Electric Power, PT Jawa Power and PT Central Java Power are currently the four largest IPPs in Indonesia that supply electricity to PLN. The list will soon be expanded to include PT Bhimasena Power Indonesia, PT Bhumi Jati Power and PT Cirebon Energy Prasarana, among others, once their respective power projects have reached commercial operation.

In addition to IPPs, there are also PPU in Indonesia that sell electricity to end-use consumers in industrial areas, with the largest being PT Cikarang Listrindo Tbk.

1.3 Foreign Investment Review Process

Foreign direct investment in Indonesia is subject to Presidential Regulation Number 44 of 2016 regarding Business Fields that are Closed or Conditionally Open for Investment, or what is known as the “Negative List”. Under the Negative List, certain lines of business are closed or are subject to maximum foreign shareholdings for foreign investment limited liability companies in Indonesia (known locally as “PT PMA”). A power generation activity with capacity below 1MW is closed for foreign investment, which is allowed for power plants with a capacity above 1MW, with small-scale power plants (1-10MW) being open for maximum 49% foreign shareholding and those projects above 10MW being open for maximum 95% foreign shareholding (with an

exemption for projects developed under Public Private Partnerships (“PPPs”), in which the maximum foreign shareholding is 100% during the concession period). A maximum of 95% foreign shareholding (and the exemption for PPP projects) is also applicable for power plant transmission and distribution business activities.

PT PMA are generally treated the same as domestic investment or local limited liability companies, with their rights and protections regulated principally under Law No. 25 of 2007 concerning Capital Investment (“Investment Law”). The Investment Law is silent on protection against seizure and confiscation but, in general, seizure and confiscation can only be conducted based upon a court decision. In respect of expropriation, the term used in the Investment Law is the nationalisation or takeover of property rights of the investor. Under the Investment Law, the GoI shall not conduct the nationalisation or takeover of property rights of the investor, unless by law. If the GoI does nationalise a PT PMA or acquire the property rights of the investor, it must compensate the investor in an amount based on market prices.

In the event of a dispute between the GoI and the foreign investor, the Investment Law provides that the parties can resolve the dispute through international arbitration to be agreed by the parties. Please note that Indonesia is a party to the ICSID (International Centre for the Settlement of Investment Disputes) Convention.

To encourage foreign investment, various facilities may be provided by the GoI for power sector investors, namely:

- income tax relief through a reduction of net income to a specified extent of the total investments made within a defined period;
- exemptions or relief on import duty for production capital goods, machines, or equipment not yet produced domestically in Indonesia;
- exemptions or relief on import duty for production raw materials or components for a defined period, subject to specified requirements;
- exemptions or deferment of Value-Added Tax for a defined period in relation to the importation of production capital goods or machines or equipment not yet produced domestically; and
- accelerated depreciation or amortisation.

1.4 Principal Laws Governing the Sale of Power Industry Assets

Generally, there are no restrictions on the sale of power industry assets or businesses for pure private power projects (not involving PLN as the off-taker), save for general restrictions and requirements that are applicable to all PT PMA that wish to sell their businesses, or conduct amalgamations (the Company Law does not recognise the term amalgamation – the closest term in the Company Law is

consolidation) and mergers. The procedures for selling a company assets or business, consolidations and mergers are regulated under Law No. 40 of 2007 concerning Limited Liability Companies (“Company Law”). In general, any plans for mergers/consolidations must initially be announced in a newspaper with national circulation and to the employees at least 30 days before the General Meeting of Shareholders (“GMS”) to approve the merger/consolidation, and the deed of merger/consolidation must be submitted to the Ministry of Law and Human Rights (“MOLHR”) for approval and to obtain further approval from the Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal* or “BKPM”), and notified to MEMR; the surviving or new company must also make a post-merger/post-consolidation announcement. The shareholding composition after these processes must take into consideration the Negative List applicable to each power business activity. The process normally takes around three to six months to complete. The selling of assets that constitute more than 50% of the net assets of the company based on the book value as per the latest balance sheet adopted by the GMS must be approved by the GMS with at least three quarters of the total shares having voting rights being present or represented at the GMS, and a resolution shall be valid if it is approved by at least three quarters of the total votes cast, unless the articles of association provide for a greater quorum for attendance and/or for the requirements for adoption of a resolution of the GMS.

For power projects with PLN acting as the off-taker, the sale of generation, transmission and distribution assets and the amalgamation or merger of power industry entities are restricted contractually and by regulations. In PPAs under the BOO scheme, the restrictions are normally contractual, whereby the IPP must obtain prior approval from PLN before it can sell the generation, transmission and distribution assets or conduct an amalgamation or merger. In PPAs under the BOOT scheme, the general rule is that power industry entities are not allowed to sell the power generation facilities, unless for the enforcement of securities held by the senior lenders of the project and with prior written consent from PLN, given that the power generation facilities are owned by the IPP only for the duration of the PPA and must be transferred to PLN at the end of the PPA. The transmission facilities or assets all belong to PLN. Furthermore, in a BOOT scheme power project with PLN, in order to ring-fence the assets before they are transferred to PLN at the end of the PPA, PLN would normally require the sponsors to establish a special purpose company to act as the project company that directly owns and operates the project. A standard PPA with PLN will normally have the following provisions:

“Except as otherwise provided in this Agreement, SELLER shall not (a) engage in any business activity other than as reasonably required to perform its obligations and enjoy its rights under the Project Documents to which it is a party, or (b) enter

into any agreement of merger, consolidation or amalgamation with any entity, or (c) except as may otherwise be required by the Finance Parties for the purpose of enforcing SELLER's payment obligation to the Finance Parties, dispose of all or substantially all of its assets."

In addition, any transfer of shares in IPPs under a BOOT scheme with PLN is subject to restriction as set out under Minister of Energy and Mineral Resources Regulation No. 48 of 2017 concerning the Supervision of Business Activities in Energy and Mineral Resources Sector ("MEMR Reg. 48/2017") (<https://jdih.esdm.go.id/peraturan/Permen%20ESDM%20Nomor%2048%20Tahun%202017.pdf>). In this regard, MEMR Reg. 48/2017 differentiates between transfers of shares for non-geothermal IPPs and for geothermal IPPs.

For non-geothermal IPPs, written approval must be obtained from PLN for a transfer of shares prior to the Commercial Operation Date ("COD"), with such transfers in any case only being allowed where the transfer is to affiliated parties whose shares are more than 90% owned by an equity financier or sponsor of the IPP which is an Indonesian legal entity that carries out permanent and continuous business activities in Indonesia. In other words, the transfer of shares to non-affiliated parties is not permitted even with approval from PLN. Subsequently, after the transfer of shares, the non-geothermal IPP must notify MEMR no later than five business days from the date the MOLHR provided its receipt of notification of the change of shareholding.

For geothermal IPPs, MEMR Reg. 48/2017 distinguishes between a public and private sale of shares, and provides that geothermal IPPs may transfer shares on the stock exchange once the exploration phase is complete, subject to the Minister's approval prior to the initial public offering ("IPO"), or before the transfer of share ownership is recorded on the stock exchange. Discussions with the Director General of New Renewable Energy and Energy Conservation ("EBTKE") have clarified that the Minister's approval will be required both prior to a geothermal IPP's IPO and before the transfer of ownership is recorded on the stock exchange for all secondary offerings and rights issuances. MEMR will issue its approval or rejection of a geothermal IPP for the transfer of shares through public trade within 14 business days of receiving all required documentation.

It is unclear whether the prohibition on the transfer of shares during the exploration phase applies to private sales. However, it is understood that the current applicable view from EBTKE is that a geothermal IPP can privately transfer its shares during the exploration phase and the exploitation phase. Geothermal IPPs must notify MEMR of the transfer within five business days of providing notice to and/or obtaining approval from the MOLHR.

1.5 Central Planning Authority

MEMR – in particular the Directorate General of Electricity ("DGE") – generally oversees and administers the electricity supply and development of transmission facilities. The ownership and operation of transmission and distribution facilities for public interest are currently monopolised by PLN. Independent or privately owned and operated transmission lines are limited to those in industrial areas where the supply of electricity is provided by a PPU, instead of PLN.

PLN is responsible for preparing the long-term power supply business plan (*Rencana Usaha Penyediaan Tenaga Listrik* or RUPTL), which includes generation and transmission planning and development within the Indonesian territory to make sure there is an adequate supply of electricity for public interest. The RUPTL is periodically updated by PLN, and such updates have to be approved by MEMR. The business of providing electricity for public interest is carried out in accordance with the RUPTL as approved by MEMR, and also the National General Plan of Electricity (*Rencana Umum Ketenagalistrikan Nasional* or "RUKN") prepared by MEMR and approved by the House of Representative.

As the regulator, and through various regulations, MEMR/DGE sets out and enforces the system reliability standards and safety for all kinds of power facilities, including generation, transmission and distribution.

1.6 Recent Material Changes in Law or Regulation

The most significant change to the laws and regulations over the past year is the issuance of MEMR Reg. 39/2018, which states that all business licences in the field of electricity will be issued in the form of electronic documents via the OSS system.

After the issuance of MEMR Reg. 39/2018, Temporary Electricity Supply Business Licences (*Izin Usaha Penyediaan Tenaga Listrik Sementara* or "IUPTLS") will no longer be issued. Moreover, based on MEMR Reg. 39/2018, any business operator in the field of electricity is required to obtain a Business Licence and a Commercial or Operational Licence. The process of obtaining these licences will be further explained in **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities**.

1.7 Announcements Regarding New Policies

Instead of a policy, the material changes in the Indonesian power industry are due to the recent implementation of a regulation issued in 2016: Presidential Regulation No. 4 of 2016 concerning Acceleration of Electricity Infrastructure Development as amended by Presidential Regulation No. 14 of 2017 ("PR 4/2016"). Under PR 4/2016, power projects are developed through a joint venture with PLN, through its subsidiary, and a private power developer, with PLN's subsidiary holding a minimum of 51% shares in the joint ven-

ture company. The joint venture company acts as the project company and enters into a power purchase agreement with PLN. Currently, the mechanism under which PR 4/2016 is implemented is limited to coal and gas power plants. However, the possibility that PLN will apply PR 4/2016 in the procurement of renewable energy-based power plants cannot be ruled out.

1.8 Unique Aspects of the Power Industry

The power industry in Indonesia is heavily regulated by the GoI, including as regards licensing, power purchase agreements with PLN, and electricity prices and tariffs for power generation, transmission, distribution and sale to end consumers. The reason for this is found in the 1945 Constitution (“Constitution”), which generally provides that the utilisation and management of mineral resources (including electricity) shall be under the control of the GoI and shall be used to promote the welfare of the Indonesian people to the maximum extent possible.

2. Market Structure, Supply and Pricing

2.1 Structure of the Wholesale Electricity Market

The wholesale price of electricity is regulated under the Electricity Law and GR 14/2012 as amended, and is set by price regulation and subject to initial approval being obtained from MEMR if sold to PLN, or from the Governor/Regent (according to its authority) if the electricity produced is sold to another IUPTL holder whose licence is issued by the Governor/Regent.

The power industry in Indonesia is based on the capacity market, with almost all electricity produced by power generation companies being sold to PLN, which has the obligation to provide electricity to all Indonesian people and which naturally monopolises the sale of electricity to end consumers. Only a very small percentage of electricity is produced, distributed and sold directly to end consumers by PPUs in industrial areas so it is not known whether it can be considered an energy market, considering as well that the electricity price to the end consumer in such an arrangement is subject to price regulation as it must be approved by the Governor/Regent (according to its authority).

In respect of the electricity purchase price for IPP projects with PLN, the GoI does not determine the exact electricity purchase price, instead providing benchmarks for electricity purchase prices based on the primary cost of power generation by PLN (*Biaya Pokok Penyediaan Pembangunan PLN* or “PLN BPP”) in the local and national electricity systems. PLN BPP is prepared by PLN annually, to be further approved and published by MEMR. The PLN BPP that is used to determine electricity purchase prices is determined by MEMR in the previous year. The final agreed electricity purchase price must be approved by MEMR before PLN and

the IPP sign the PPA. The benchmark formula for electricity purchase prices is regulated under several MEMR Regulations, namely:

- Minister of Energy and Mineral Resources Regulation No. 50 of 2017 concerning Utilisation of Renewable Energy for the Supply of Electricity Power, as amended by Minister of Energy and Mineral Resources Regulation No. 53 of 2018 (“MEMR Reg. 50/2017 as amended”) for electricity produced by new and renewable power plants;
- Minister of Energy and Mineral Resources Regulation No. 19 of 2017 concerning Utilisation of Coal for Power Plant and Purchase of Excess Power (“MEMR Reg. 19/2017”) for coal-fired power plants (both mine mouth and non-mine mouth); and
- Minister of Energy and Mineral Resources Regulation No. 45 of 2017 concerning Utilisation of Natural Gas for Power Plant (“MEMR Reg. 45/2017”) for gas-fired power plants.

2.2 Imports and Exports of Electricity

The Electricity Law opens up the possibility for the export and import of electricity to and from other jurisdictions. Government Regulation No. 42 of 2012 concerning Cross-country Sales and Purchases of Electricity (“GR No. 42/2012”) provides that the export or sale of electricity to another jurisdiction or country may be conducted on the following conditions:

- that the need for electricity in the local and the surrounding areas has been met;
- that the selling price of electricity does not contain any subsidy; and
- that it will not disturb the quality and reliability of the local electricity supply.

Given that Indonesia still suffers from an electricity shortage overall, it is unlikely that the country will export electricity in the near future.

The import or purchase of electricity from other jurisdictions or countries may be conducted on the following conditions:

- local demand for electricity has not been fulfilled (with the benchmark being that the reserve capacity is less than 30% of peak load);
- it is only to support the fulfillment of local needs for electricity (meaning that the import of electricity shall not be the main source of supply to fulfill the local needs for electricity);
- it does not harm the interests of the state and the nation related to sovereignty, security and economic development;
- it is intended to improve the quality and reliability of the local electricity supply;

- it does not neglect the development of domestic electricity supply capability; and
- it does not cause dependence on electricity supply from abroad so that if such supply is cut off, the local power system can still be functionalised to provide the electricity.

As far as is known, there are no IPPs that engage in the import of electricity, given the conditions above that must be met cumulatively. If the business of the export and import of electricity does take off in Indonesia, the electricity purchase price for the import and the electricity selling price for the export must be approved by the MEMR.

2.3 Supply Mix for the Entire Market

Based on RUKN draft of 2018–2037, to support the plan to increase the portion of new and renewable energy, it is expected that, by 2025, the composition of the fuel mix of power generation in Indonesia will be 50% from coal, 26% from gas, 23% from renewable energy and 1% from diesel fuel. Furthermore, by 2037, it is expected that the portion of renewable energy will increase, which will make the composition of the fuel mix of power generation 48% from coal, 24.5% from gas, 27% from renewable energy and 0.5% from diesel fuel.

2.4 Principal Laws Governing Market Concentration Limits

Electricity supply in Indonesia is essentially controlled by PLN and MEMR. Every supply of electricity in Indonesia must be based on PLN's RUPTL and RUKN. If there is a limit to electricity supply in Indonesia, it is not due to lack of demand in the market but more to the inability of PLN to absorb all of the electricity supplied by power generation IPPs due to deficiencies in transmission and distribution facilities to distribute and sell the electricity to end consumers.

2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour

The Electricity Law provides the opportunity for the private sector to participate in the power supply business in Indonesia, including wholesale supply to PLN through a certain procurement mechanism (tender, direct selection or direct appointment). PLN generally still holds the monopoly for the supply to end consumers, and the market itself is heavily regulated for the reason mentioned in **1.8 Unique Aspects of the Power Industry**. The Constitution does not allow the GoI to create a fully competitive market in the electricity sector, as seen from the fact that the electricity purchase price and electricity tariff charged to end consumers must be approved by the GoI and the House of Representative.

The competitive market in Indonesia is supervised by the Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha* or "KPPU"). Pursuant to Law No. 5 of

1999 concerning the Ban on Monopolistic Practices and Unfair Business Competition, KPPU acts as the agency that conducts surveillance of the market, which has the authority to determine whether or not there is an unfair business competition.

3. Climate Change Laws and Alternative Energy

3.1 Principal Climate Change Laws and/or Policies

Currently there are no specific laws or policies that regulate climate change in relation to the power industry. Prior to ratifying the Paris Agreement by virtue of Law No. 16 of 2016 regarding the Ratification of Paris Agreement to the United Nations Framework Convention on Climate Change, the GoI attempted to raise awareness of the climate change issue by issuing Minister of Environmental and Forestry Affairs Regulation No. P.39/Menlhk-Setjen/2015 on the environmental programme for 2015-2019, including but not limited to a programme to reduce the area of forest fires that occurred during 2015, and the "Kampung Iklim" programme, as further described below.

Although the GoI has also not yet enacted the carbon tax or a cap-and-trade system, Indonesia has taken several steps to cut carbon emissions, including the establishment of the Peatland Special Taskforce to reduce and mitigate peatland fires and to restore the function of peatland, energy conservation in the industrial sector, and the "Kampung Iklim" programme, which was initiated in 2012 in order to recognise the active participation of local communities in implementing actions of climate change mitigation and adaptation.

3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-based Generation

Despite the GoI's effort to increase the use of alternative energies, fossil fuels still play a major role in energy production, particularly coal. Based on the Presidential Regulation No. 22 of 2017 concerning the National Energy General Plan ("PR 22/2017"), an important factor is that the technology to develop renewable resources as alternative sources of energy is much more expensive than is the case for fossil fuels. This has retarded the development and utilisation of renewable energy and made it less attractive than fossil fuels. As such, until now power generation in Indonesia has been dependent on fossil fuels, and there are currently no specific programmes that encourage or require the early retirement of carbon-based generation.

3.3 Principal Law and/or Policies to Encourage the Development of Alternative Energy Sources

In the power sector, one of the ways in which the GoI encourages the development of alternative energy resources is to provide a special portion of 25% of the total capacity to

be developed in the ambitious 35,000 MW programme for renewable energy. One of the implementing programmes for the 35,000 MW project in boosting clean energy is “Indonesia Terang” (Bright Indonesia), which aims to provide electricity in rural villages and areas that is generated from clean energy, such as mini-hydro, solar and wind power plants.

The GoI also continuously encourages the utilisation of renewable energy resources as an alternative option to coal, by issuing MEMR Reg. 50/2017 as amended, which sets clearer grounds for renewable energy resources utilisation for power supply and contains provisions relating to, among other things, the procurement and pricing formulas. By issuing this regulation, the GoI hopes that renewable energy will attract more interest from potential power developers, rather than coal. The types of energy governed under MEMR Reg. 50/2017 as amended are solar, wind, biomass, biogas, waste, geothermal, seawater (by utilising movements and difference in the temperature of sea layers) and vegetable oil.

Based on Government Regulation No. 79 of 2014 on National Energy Policy (“GR 79/2014”), the GoI and regional governments provide fiscal and non-fiscal incentives to encourage the development of renewable energy. The incentives are provided for the development, management and utilisation of renewable energy, especially for small-scale projects that are located in remote areas, so that its economic value can compete with conventional energy.

Furthermore, under Presidential Regulation No. 4 of 2016 on Accelerating the Development of Electricity Infrastructure, as amended by Presidential Regulation No. 14 of 2017 (“PR No. 4/2016 as amended”), the GoI may provide support by providing fiscal incentives, easy processes for licences and permits, subsidies and prioritisation of land procurement.

Under Ministry of Finance Regulation No. 130/PMK.08/2016 (“MoF Regulation 130/2016”) GoI provides 2 (two) forms of government guarantee or government support, being a Loan Guarantee and a Business Viability Guarantee Letter (“BVGL”). The Loan Guarantee is a guarantee provided by GoI in relation to construction of power plants by PLN, while a BVGL is a guarantee issued in favour of an IPP by providing assurance to support PLN in connection with certain payment obligations of PLN to the IPP under the PPA.

The fiscal facilities provided by GoI for renewable energy business are income tax facilities (eg, reduction of 30% of net income (for 6 years), escalated depreciation and amortisation, and compensation for loss occurring for more than 5 years but not more than 10 years tax holiday), tax holiday (eg, exemption from tax from 5 – 10 years as of the commercial production and 50% reduction of tax from outstanding income tax for 2 years), VAT exemption and exemption of import duty.

4. Generation

4.1 Principal Laws Governing the Construction and Operation of Generation Facilities

The principal laws governing the construction and operation of generation facilities are as follows:

- the Electricity Law, GR 14/2012 as amended and MEMR Reg. 35/2013 as amended; and
- Law No. 32 of 2009 on Environmental Protection and Management (“Environmental Law”) and Government Regulation No. 27 of 2012 concerning Environmental Licence (“GR 27/2012”).

To avoid confusion, in Indonesia construction and operations in the civil works field are regulated by the Minister of Public Works and Housing (“MPWH”), while construction and operations in the power generation field are regulated by MEMR. Should the appointed construction company perform both civil works and power generation works, then such construction company is required to obtain all major licences, as listed below. If the appointed construction company will only perform the construction and operation of power generation works, such company only needs to obtain the major licences for electricity works. Please note that an owner of power generation facilities is required to obtain an Environmental Permit and Building Construction Permit before the construction of the power generation facilities can commence or be operated.

An EPC contractor in the power industry is subject to Law No. 2 of 2017 concerning Construction and its implementing regulations, as well as additional requirements under the foregoing electricity regulations (including local content requirement as stipulated in Minister of Industry Regulation No. 54/M-IND/PER/3/2012 as amended by Minister of Industry Regulation No. 05/M-IND/PER/2/2017).

For civil works, the major licences are as follows:

- Certification of Business Entity (*Sertifikasi Badan Usaha* – “SBU”) issued by LPJK in co-ordination with the registered construction company association;
- Construction Business Licences (*Izin Usaha Jasa Konstruksi* – “IUK”) issued by OSS on behalf of MPWH or its relevant agency; and
- Permit for Representative of Foreign Construction Business Entity (*Izin Perwakilan Badan Usaha Jasa Konstruksi Asing* – “IPBUJKA”), which is required by a foreign construction business entity that does not wish to establish a limited liability company under Indonesian Law. Nonetheless, in order to undertake construction services, an IPBUJKA holder is required to enter into a joint operation agreement with a local construction company.

For electricity works, the major licences are the SBU issued by the Directorate General of Electricity of the MEMR or a registered certification institution, and the Supporting Electricity Business Licence (*Izin Usaha Jasa Penunjang Tenaga Listrik – “IUJPTL”*).

It is common practice in Indonesia for the construction and operation of power generation facilities to be conducted by separate companies that are appointed by the project company. If the project company does not independently construct and operate the power generation facility, it is not required to obtain the above licences. The major licences for a project company are the Electricity Supply Business Licences (*Izin Usaha Penyediaan Tenaga Listrik – “IUPTL”*).

4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities

Currently most if not all approvals necessary to construct and operate a generation facility are applied for and obtained through OSS. A brief description of the process for obtaining major licences to construct and operate a generation facility (including approvals of the EPC contractor) is set out below.

Location Permit

In order to obtain or acquire land for the project, the relevant project company must first obtain a permit for land acquisition – the so-called Location Permit (*Izin Lokasi*). A Location Permit is not evidence of an entitlement to land, but merely constitutes the right for its holder to acquire the land area as stipulated in the Location Permit in accordance with the prevailing laws and regulations. The holder of a Location Permit is permitted to procure plots of land as indicated in the Location Permit in the following manners:

- if the plots of land are owned by existing third parties: on the basis of an agreement with the owners of the lands by way of a selling-buying transaction; or
- if the plots of land are owned by the State: on the basis of the submission of an application to the State (in which a certain contribution will need to be paid to the State).

The holder of a Location Permit has priority, but not an exclusive right to acquire the land in the designated area as stated in the Location Permit. In principle, the original land owner still has the freedom to sell his/her land to any other interested party.

The applicant for a Location Permit is required to submit their application to register the Location Permit electronically through the OSS system by providing, among other things, the business identification number (*Nomor Induk Berusaha – “NIB”*) and a sketch or map of the land, including co-ordinates of the requested location.

Environmental Permit and Environmental Impact Analysis (AMDAL)

Pursuant to Regulation of the Minister of Environmental Affairs and Forestry No. P.22/MENLHK/SETJEN/KUM.1/7/2018 concerning Norm, Standard, Procedure and Criteria of the Electronically Integrated Business Licensing Service Within the Ministry of Environmental Affairs and Forestry (“Regulation 22/2018”), the application shall be accompanied by a document affirming the suitability of the project, with the spatial planning.

The Environmental Permit issued by the OSS system is subject to a commitment from the company to prepare and obtain approval of AMDAL Documents. Only after obtaining such approval can the (provisional) Environmental Permit generated by the system be updated into a valid and effective Environmental Permit by the OSS.

Generally, the process to obtain the AMDAL Documents approval is as follows:

- the applicant must prepare the AMDAL Documents based on a previously approved Framework of Environmental Impact Analysis;
- the AMDAL Documents shall be evaluated by the technical team of the AMDAL Assessment Commission;
- the AMDAL Assessment Commission will submit the recommendation assessment result of the AMDAL Documents to the Minister of Environmental Affairs/Governor/Regent for consideration; and
- based on the above recommendation, the Minister of Environmental Affairs/Governor/Regent will issue AMDAL Approval to the project proposed by the project initiator/applicant.

Business Licence and Commercial or Operational Licence

An IPP is required to obtain a Business Licence (ie, IUPTL) and a Commercial or Operational Licence (ie, Certificate of Operation Installation Worthiness – *Sertifikat Laik Operasi*). To obtain these licences, the applicant must fulfil certain administrative and technical requirements under MEMR Reg. 39/2018 and submit the application through OSS. The process to obtain each licence can take up to 30 business days after all completed documents have been submitted and accepted.

IMB

Any company or person that constructs buildings must obtain approval to construct such buildings, in the form of a Building Construction Permit or IMB. The general procedures for obtaining an IMB are based on Regulation of Minister of Home Affairs No. 32 of 2010 regarding the Guidance of Building Permit Grant. A company can apply for the IMB through the OSS system. The IMB issued by the OSS system is normally a provisional IMB, the effectiveness of

which depends on the fulfillment of commitments made by the company when applying for the IMB through the OSS system. Such commitments consist of evidence of land right/ownership or a land utilisation agreement, providing information regarding the owner of the relevant building/structure, and providing a technical plan of the building/structure, including structural drawings, utility system drawings, architecture drawings, etc.

The above documents must be submitted to the Building Management Information System (*Sistem Informasi Manajemen Bangunan* – “SIMBG”) no later than five business days after the issuance of the (provisional) IMB through the OSS system. The above documents will be examined and assessed by the Building Expert Team (*Tim Ahli Bangunan Gedung* – “TABG”), which will provide its recommendation to the relevant local government through the SIMBG. The recommendation will become the basis upon which to determine whether the IMB issued through the OSS system is cancelled or becomes effective.

Contractor’s Major Licences

SBU

According to LPJK Regulation No. 1/2015 concerning Registration of Foreign Construction Service Business Entity, a BUJKA can only be given with an SBU for a “large” qualification, specifically large 2 (B2) for the implementation and integrated of construction work and large (B) for the planning and supervision of construction.

The qualification of BUJKA is determined by several factors, namely net assets, experience and manpower. To obtain an SBU, BUJKA must become a member of a construction association (“Association”) that is acknowledged by LPJK. As a technical matter, in the application for an SBU, BUJKA must submit the required documents to LPJK through the Association, which will then conduct a preliminary verification upon the required documents before it will send them to LPJK.

Business Licence and Commercial or Operational Licence

Pursuant to Government Regulation No. 62 of 2012 regarding Supporting Businesses in the Electricity Sector in conjunction with MEMR Reg. No. 35 of 2013 and MEMR Reg. 39/2018, a company that conducts electricity supporting business services, including construction of a power plant, is required to obtain a Business Licence (ie, IUJPTL) and a Commercial or Operational Licence (ie, SBU). To obtain these licences, an application must be submitted to OSS, accompanied by the administrative and technical requirements as stipulated in the regulation. A Business Licence will be issued by MEMR and/or the Governor according to their authority via OSS, while a Commercial or Operational Licence will be issued by OSS after the issuance of a certificate by an accredited registrar.

Based on the regulation, the process of obtaining a Business Licence (ie, IUJPTL) shall take up to 60 business days after all completed documents have been submitted and accepted, while the process of obtaining a Commercial or Operational Licence (ie, SBU) shall take up to 40 business days after all completed documents have been submitted and accepted.

The time required from the early development of a project up to the starting of construction may be one to two years.

4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities

It is quite difficult to generalise the terms and conditions imposed in all the approvals, since the coverage and purpose of issuance of each approval are different, thus creating different obligations in each approval. However, usually each approval will commit the holder to do the following, among others:

- submit a periodic report on its activity to the issuing authority of the approval holder;
- seek approval and/or report to the issuing authority if there are any changes in the project or the project company;
- conduct its activity only within the approved area; and
- utilise domestic goods in accordance with the applicable regulations.

4.4 Proponent’s Eminent Domain, Condemnation or Expropriation Rights

The acquisition of land for public interest is regulated under Law No. 2 of 2012 (“Law 2/2012”) and its implementing regulations, namely Presidential Regulation No. 71 of 2012 on the Implementation of Acquisition of Land for Development for Public Interest as amended by Presidential Regulations No. 40 of 2014, No. 99 of 2014, No. 30 of 2015 and No. 148/2015 (“Regulation 71/2012, as amended”). Electricity infrastructure falls under the category of development of public interest-related matters as described under this law.

To implement the acquisition, the GoI or appointed state-owned entities (PLN in the power sector) shall provide compensation to the land owner in the form of:

- cash payment;
- replacement land;
- resettlement;
- shares ownership; or
- another form as agreed by the parties.

In practice, the most common form of compensation is cash payment.

BPN issued the implementing regulation for Regulation No. 71/2012, as amended – namely, Head of BPN Regulation No. 5 of 2012 as amended by Head of BPN Regulation

No. 6 of 2015 and No. 22/2015 (“Regulation No. 5/2012, as amended”). In accordance with Regulation No. 5/2012, as amended, the entity acquiring the land can be granted a right to manage (*Hak Pengelolaan* – “HPL”), a right to build on (*Hak Guna Bangunan* – “HGB”), or a right to use (*Hak Pakai* – “HP”) the land. PLN can obtain either HPL, HGB or HP.

In general, the procedure for the acquisition of land for public interest consists of planning, preparation, implementation, and hand-over of the land certificate to PLN.

During the preparation stage, the government must conduct a public consultation between its Preparation Team and the land owners and the local community in order for the relevant local government to issue a location stipulation.

Once the parties reach an agreement on the location for a planned development, minutes of the agreement will be made. PLN will then apply for a location stipulation to the Governor, who will issue a decision letter on the location stipulation (“Location Stipulation”).

If there is an objection or disagreement from the land owners or the community, a second public consultation must be held. If there is still an objection during the second public consultation, PLN will report the objection to the provincial Governor through the Preparation Team. The Governor will then form an Appeal Assessment Team to assess the objection. Based on the recommendation from the Appeal Assessment Team, the Governor will issue a letter of acceptance or rejection of the objection. If the Governor accepts the appeal, PLN must cancel the development plan or move the location of the development elsewhere.

The Governor and PLN will announce the Location Stipulation for development in public interest.

4.5 Requirements for Decommissioning

Most power projects are established based on the BOOT scheme, so there is no decommissioning obligation for a power company as the power generation facilities will be transferred to PLN (a state-owned enterprise) after the end of the PPA. Furthermore, there is no specific regulation with respect to the decommissioning of a generation facility, although any activities (including decommissioning) that may have an impact on the environment are supervised by the Ministry of Environmental and Forestry Affairs and its regional offices.

5. Transmission

5.1 Regulation of Construction and Operation of Transmission Lines and Associated Facilities

5.1.1 Principal Laws Governing the Construction and Operation of Transmission Facilities

In addition to the laws listed in **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**, the construction and operation of transmission lines are also subject to technical regulations issued by MEMR.

5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission Facilities

For the regulatory process, please see **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities**, as the licences/approvals required for transmission lines are generally the same as for power generation facilities. From the EPC contractor’s perspective, the major approvals for the construction of transmission lines are SBU and IUJPTL, with the main difference being the description and list of competencies under the SBU and IUJPTL.

5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities

Please see **4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities** for the obligations that apply to an IUJPTL holder. The operation of transmission lines and associated facilities in Indonesia is currently monopolised by PLN (save for in an industrial area where the electricity is supplied by PPU) and thus, as far as is known, no IUPTL Transmission has ever been issued to private power entities.

5.1.4 Proponent’s Eminent Domain, Condemnation or Expropriation Rights

Please see **4.4 Proponent’s Eminent Domain, Condemnation or Expropriation Rights**.

Specifically, for the compensation of land, buildings or plants in the area under the transmission lines, the transmission entity is not required to obtain the land title; however, it is necessary to provide compensation for the economic loss to the owner of the land, building and/or plant.

The calculation of the compensation amount shall take into account the total land area under the transmission lines, and the total area of the building and plants or vegetation below the transmission lines. Specifically for land and buildings below the transmission lines, the regulation provides that compensation is in the amount of 15% of the total land area

multiplied by market value, where the market value is determined by independent public appraisal.

5.1.5 Transmission Service Monopoly Rights

The prevailing regulations are silent on whether the provider of a transmission service has monopoly rights in certain territory. In general, private sector involvement in the electricity sector in Indonesia has mainly been limited to power generation, where an IPP enters into a PPA with either PLN or PPU, which directly supplies or sells electricity to an end consumer in an industrial area where PLN voluntarily “releases” its first priority position.

The transmission network, on the other hand, remains under the de facto monopoly of PLN, notwithstanding that under the Electricity Law the private sector is legally permitted to access the transmission network and grid assets. Private sector involvement in the transmission network is currently limited (but not ‘legally restricted’) to the following:

- the construction of transmission lines by an IPP in order to connect the new power plant to the closest PLN sub-station, which will be immediately transferred to PLN on the completion of construction; and
- the construction and maintenance of the transmission lines/network in an industrial area in which power generation and the supply of electricity is conducted by a PPU, in which case the PPU has monopoly rights to generate, transmit and supply the electricity within its concession area granted under the Stipulation of Business Area.

5.2 Regulation of Transmission Service, Charges and Terms of Service

5.2.1 Principal Laws Governing the Provision of Transmission Service, Regulation of Transmission Charges and Terms of Service

MEMR Reg. No. 01 of 2015 regarding Joint Co-operation in the Provision of Electricity and Joint Utilisation of Electricity Network (“MEMR Reg. 1/2015”) allows IPPs and PPUs to use the existing transmission and distribution network of other PPUs, the holder of a power transmission business licence or PLN, by entering into a power wheeling agreement with the PPU/IUPTL Transmission holder or PLN.

5.2.2 Establishment of Transmission Charges and Terms of Service

Under MEMR Reg. 1/2015, the transmission charges and terms of service are determined based on negotiation and agreement between the transmission entity and the users. Nonetheless, the agreed price must be approved by the MEMR or the Governor (as relevant), who will issue approval of the lease price no later than 30 business days after the

submission of the proposed lease price by the transmission entity.

The current applicable regulations are silent on whether there is a right of appeal to challenge the decision of the regulator in setting rates of service. However, the decision of authority can generally be challenged or appealed to the Administrative Court. Furthermore, MEMR Reg. 1/2015 stipulates that the relevant parties are allowed to conduct re-negotiation if MEMR or the Governor rejects the agreed price.

5.2.3 Open-access Transmission Service

Principally, transmission service shall be provided on a non-discriminatory basis. Under MEMR Reg. 1/2015, any potential users of transmission services can submit an application to use transmission facilities to the transmission entity, providing a carbon copy to MEMR. The owner of transmission networks must approve or reject such application no later than five business days after the submission has been completely received by the transmission entity.

If the transmission entity approves the application, it can enter into negotiation with the applicant, which shall be completed no later than 30 business days after the approval date. If the transmission entity rejects the application, it must provide a written explanation.

6. Distribution

6.1 Regulation of Construction and Operation of Electricity Distribution Facilities

6.1.1 Principal Laws Governing the Construction and Operation of Electricity Distribution Facilities

Please see **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities.**

6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities

Please see **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities.**

6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

Please see **4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities** for the obligations that apply to IUPTL and IUJPTL holders. The operation of distribution facilities in Indonesia is currently monopolised by PLN (save for in an industrial area

where the electricity is supplied by PPU) and thus, as far as is known, no IUPTL Distribution has ever been issued to private power entities.

6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

Please see **Proponent's Eminent Domain, Condemnation or Expropriation Rights**.

6.1.5 Distribution Service Monopoly Rights

Based on GR 14/2012 as amended, in addition to the requirement to have or hold IUPTL Distribution, electricity distribution entities must also obtain a Stipulation of Business Area (for distribution) from MEMR. The electricity distribution entities shall have a monopoly right to provide a distribution service within its concession area as stated in its Stipulation of Business Area.

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6.2 Regulation of Distribution Service, Charges and Terms of Service

6.2.1 Principal Laws Governing the Provision of Distribution Service, Regulation of Distribution Charges and Terms of Service

GR 14/2012 as amended and MEMR Reg. 1/2015 provides that IPPs and PPUs are allowed to use existing transmission and distribution networks of other PPUs, the holder of an electricity distribution business licence (IUPTL Distribution) or PLN, by entering into a power wheeling agreement with the PPU/IUPTL Distribution holder or PLN. The terms of service shall be based on the agreement between the parties, and the system charge or lease/wheeling price must be approved by MEMR.

6.2.2 Establishment of Distribution Charges and Terms of Service

The terms of service shall be based on the agreement between the parties. The system charge/price must be approved by MEMR or the Governor (in accordance with its authority). The regulation does not provide any guidelines on determining the system charge submitted to MEMR/the Governor to be approved. In principle, a distribution service shall be provided on a non-discriminatory basis. The approved system charge is a non-discriminatory rate and shall be applicable for all services provided under the same or similar terms and conditions within the Business Area of the IUPTL Distribution holder as well as in a joint/shared used distribution system of the IUPTL Distribution holder by other IUPTL holders. The current applicable regulations are silent on whether there is a right of appeal to challenge the decision of the regulator in setting the rates of service, but the decision of the authority can generally be challenged or appealed to the Administrative Court.