



New PPP Regulations Recognise Foreign Participation in Oil Refinery Projects

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Pertamina Refinery Director Rachmad Hardadi views crude oil refining capacity as a critical part of the Indonesian government's plan to reduce reliance on the importation of refined product.

Strategically, expanding downstream capacity carries a clear public benefit. However, the costs involved in building new oil refineries are significant. If executed to plan, it has been reported that Indonesia's Refinery Development Masterplan ("RDMP") could cost up to US\$70 billion over the next 10 years. The RDMP envisages both upgrading existing infrastructure plus the Bontang and Tuban greenfield refinery opportunities.

Given the enormous costs involved, PPPs could help Indonesia deliver the critical infrastructure gap by paving the way for private sector funding and participation alongside the public sector. However, a successful PPP with a foreign investor depends on the appropriate allocation and mitigation of risks such as foreign exchange passport controls, negative list restrictions and political instability at a central and regional level. Engineering and operational complexities must be considered too.

The Indonesian government's commitment to involving the private sector in PPPs includes offering fiscal support throughout the PPP process. Under Regulation No. 265/PMK.08/2015 (the "**2015 Regulation**"), the Indonesian Ministry of Finance may fund early-stage project development costs such as the preparation of pre-feasibility studies and bid documents. Regulation No. 129/PMK.08/2016 (the "**Amending Regulation**"), effective from 24 August 2016, now recognises the role of international organisations when it comes to oil refinery projects.

2015 Regulation

The 2015 Regulations provide that the Ministry of Finance may grant early-stage funding for PPP preparation or

development to the relevant contracting agency (*penanggung jawab proyek kerjasama*), such as SKK Migas or the Ministry of Energy and Mineral Resources.

Priority projects are eligible for funding, together with other projects which have attracted sufficient investor interest pursuant to a market sounding exercise. In each case, government funding needs to be documented by way of a main agreement which sets out the terms on which the funding will be advanced.

Amending Regulation

The Amending Regulation expressly allows the Director General of Financing and Risk Management (the "**D-GFRM**") to co-operate with international organisations in providing PPP funding. This is subject to the Amending Regulation's broader purpose of supporting national energy security, guaranteeing national fuel availability and reducing Indonesia's dependence on imported fuel.

The D-GFRM may appoint an Indonesian SOE to be a "facilities executor". However, the facilities executor may co-operate with an international organisation in relation to the facilities execution.

SOEs may also assist with the PPP funding scheme, with compensation for such assistance being settled using funds from loan drawdown under the relevant appointment agreement (*perjanjian penugasan*).

Analysis

The Amending Regulation has the potential to improve the efficiency of early-stage PPP public sector financial support by enabling the D-GFRM to seek international co-operation and expertise, which has been recognised as important for large projects such as oil refineries where involvement of the private sector is contemplated. Project development facilities are one tool which can be used by the Indonesian government to kick-start PPP

projects during the critical planning and pre-feasibility stage.

There is currently no indication that the Amending Regulation will be expanded to cover other types of infrastructure. However, if successful, similar amendments may be considered for other priority infrastructure such as toll roads, power plants or ports in line with the scope of the underlying 2015 Regulation.

For further information, please contact:



Marius Toime
Partner
Singapore
T: +65 6571 6603
Marius.toime@blplaw.com



Katherine Frederick
Associate
Singapore
T: +65 6571 6605
Katherine.frederick@blplaw.com