



New Indonesian Regulation requiring prior Government notification and approval of transfers of interests in the Energy and Natural Resources Sector

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Sudden Issuance of Regulation 42/2017 and its Revocation

On 17 July 2017, the Indonesian Minister of Energy and Mineral Resources (the “MEMR”) suddenly issued Regulation No. 42 of 2017 on the Supervision of Business Activities in the Sector of Energy and Mineral Resources (“Regulation 42/2017”). Regulation 42/2017 took effect immediately and increased the supervision of companies engaging in the energy and mineral resources sector by expanding the activities that require prior approval from or notification to the MEMR. In general, Regulation 42/2017 regulated the requirement to notify or obtain prior approval from the MEMR for:

- (i) the transfer of participating interests of upstream oil and gas contractors;
- (ii) the transfer of shares and change of composition of board of directors (“BOD”) and/or board of commissioners (“BOC”) of energy and mineral resources companies such as:
 - a. upstream oil and gas contractors;
 - b. downstream oil and gas business entities;
 - c. business entities holding electricity supply business licenses; and
 - d. business entities holding mining business licenses.

However, in response to the strong criticism of Regulation 42/2017 from relevant industries, on August 3, 2017, the MEMR issued a new Regulation No. 48 of 2017 on the Supervision of Business Activities in the Sector of Energy and Mineral Resources (“Regulation 48/2017”) that revoked and replaced Regulation 42/2017. Regulation 48/2017 relaxed some requirements for regulatory

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supervision of the energy and mineral resources sector as explained below.

Supervision of Upstream Oil and Gas Contractors under Regulation 48/2017

1. Transfer of Participating Interests

Consistent with the terms of most production sharing contracts (“PSC”) between the Indonesian government and the interest holders under a PSC (“PSC Contractors”), Regulation 48/2017 requires PSC Contractors to obtain the prior MEMR approval for the transfer of any participating interest in a PSC, similarly to Regulation 42/2017.

A PSC Contractor is required to submit a written application to the MEMR through SKK Migas¹ with the following application documents:

	Application Documents	Note
(a)	a copy of an agreement between the transferor and the interest transferee company (“ Interest Transferee ”) on any transfers of interest (deed of assignment)	This document should be prepared in the form of a deed of assignment and be separate from the SPA ((g) below)
(b)	a copy of the deed of establishment of the Interest Transferee	
(c)	a copy of the register of shareholders of the Interest Transferee	
(d)	a company profile of the Interest Transferee and a company profile of the holding company of the Interest Transferee (if any)	
(e)	the last 3 years’ financial statements (audited by a public accountant) of: (i) the Interest Transferee; or (ii) the holding company of the Interest Transferee (where the Interest Transferee has been incorporated within the last 3 years)	
(f)	a report on the quantitative equivalent value of the percentage of interest transferred and signed by the transferor and the Interest Transferee	This document should clearly state the agreement of both parties on the purchase price.
(g)	the Sales and Purchase Agreement (“ SPA ”) or a similar document detailing the interest-transfer transaction	A Bahasa Indonesia translation is required if the SPA is entered into in a foreign language.
(h)	a license for utilizing data	
(i)	a non-disclosure agreement	
(j)	the organizational structure of the Interest Transferee	
(k)	the Taxpayer Identification Numbers of the Interest Transferee and its members of management	

¹ SKK Migas was established by the Government of the Republic of Indonesia through Presidential Regulation No. 9 of 2013 regarding “The Implementation on Management of Upstream Oil and Gas Business Activities”. SKK Migas is a special task force that manages upstream oil and gas business activities with the oversight, coordination and supervision of the Minister of Energy and Mineral Resources.

The PSC Contractor shall submit the application to the Head of SKK Migas for its consideration. The Head of SKK Migas is required to give its consideration to the MEMR within 14 working days from the acceptance of the complete and correct application, and the MEMR shall approve or reject the application within 14 working days from the receipt of the letter of consideration from the Head of SKK Migas.

Non-operators that wish to transfer their PSC interests should bear in mind that, due to the existing regulatory practice in SKK Migas, SKK Migas may require such applications to be made to it by the operator of the project (not by the individual PSC Contractor wishing to transfer the interest).

2. Change of Control of PSC Contractors

Many PSCs do not expressly require the MEMR approval for the change of control of PSC Contractors. However, Regulation 48/2017, similarly to Regulation 42/2017, expressly requires a PSC Contractor to obtain prior approval from the MEMR for a transfer of shares in any of the PSC Contractors that results in a change of “Direct Control” of a PSC Contractor. It is important to note that this approval requirement applies to all existing as well as new PSCs. “Direct Control” is defined as “direct ownership by a parent company that is one level above through ownership of a majority of voting shares”. Because Regulation 48/2017 is silent about transfer of shares to affiliates of the PSC Contractor, if strictly interpreted, even a transfer of shares to the affiliates of a PSC Contractor (i.e., restructuring in group companies) that results in a change of Direct Control may require the MEMR’s prior approval.

A PSC Contractor is required to submit a written application to the MEMR through the Head of SKK Migas with the following application documents:

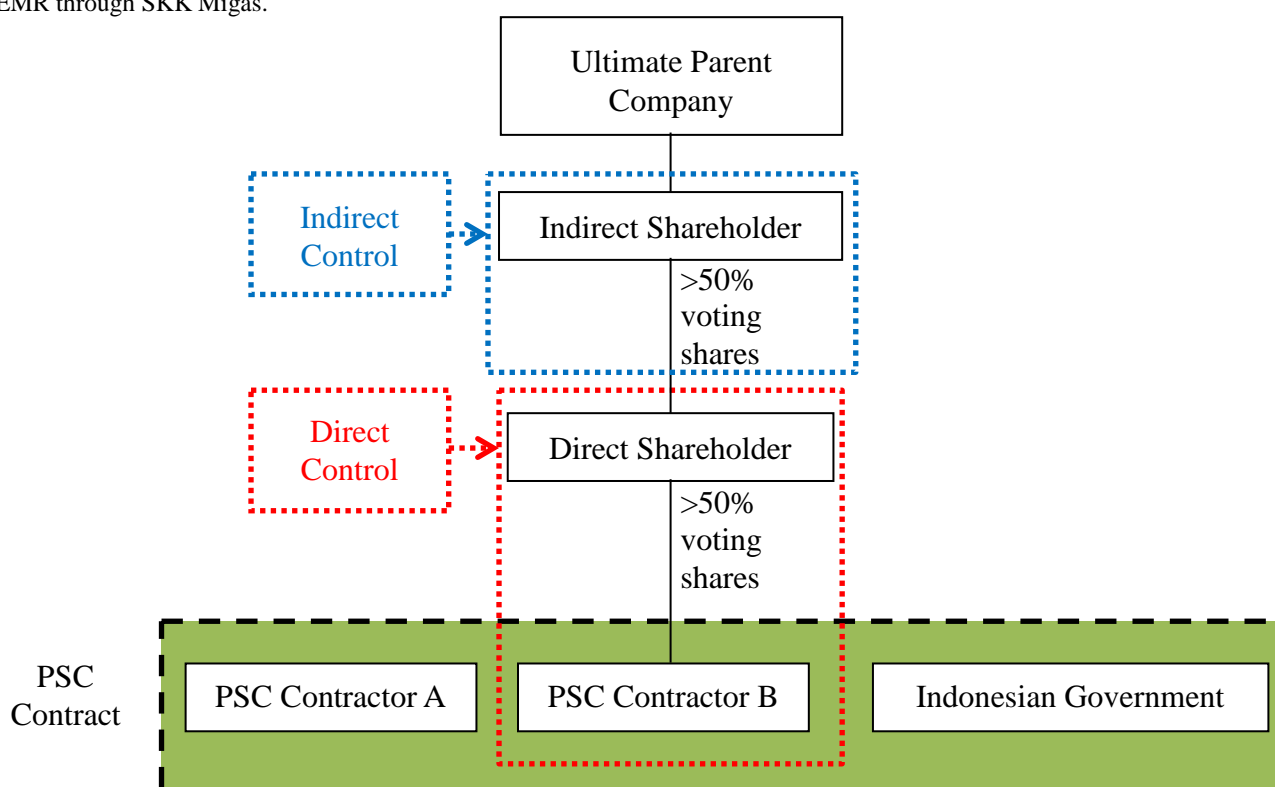
	Application Documents	Note
(a)	a copy of an agreement between the transferor and the transferee on any transfers of interest that result in change of control (deed of assignment)	This document should be prepared in the form of a deed of assignment and be separate from the SPA ((g) below)
(b)	a copy of the deed of establishment of the new controlling company	
(c)	a copy of the register of shareholders of the new controlling company that encompasses: 1. registered shareholders; and 2. ultimate shareholders	
(d)	a company profile of the new controlling company and a company profile of the holding company of the new controlling company (if any)	
(e)	the last 3 years’ financial statements (audited by a public accountant) of: (i) the new controlling company; or (ii) the holding company of the new controlling company (where the new controlling company has been incorporated within the last 3 years)	
(f)	a report on the quantitative equivalent value of the percentage of interest transferred and signed by both the transferor and the	This document should clearly state the agreement of both parties on the

	transferee	purchase price.
(g)	the SPA or a similar document detailing the interest-transfer transaction	A Bahasa Indonesian translation is required if the SPA is entered into in a foreign language.
(h)	the organizational structure of the new controlling company	
(i)	the Taxpayer Identification Number of the new controlling company and its members of management	

As in the case of the transfer of a participating interest, the PSC Contractor is required to submit an application to the Head of SKK Migas and the Head of SKK Migas is obligated to provide its consideration to the MEMR within 14 working days from the acceptance of the complete and correct application. The MEMR shall approve or reject the application within 14 working days from the receipt of the letter of consideration from SKK Migas.

Again, SKK Migas may in practice require that a non-operator PSC Contractor make such application through the operator.

As regards a transfer of shares that results in a change of “indirect” control (such as a transfer of shares in a “parent” company above the level of the immediate shareholder of the PSC Contractor), the PSC Contractor is required to submit a written report to the MEMR through SKK Migas.



3. Changes to BOD and BOC

Regulation 42/2017 required any change to the BOD or BOC of a PSC Contractor to be subject to the MEMR’s prior approval; however, Regulation 48/2017 relaxed this requirement by only requiring such changes to be reported to the MEMR through the Directorate General of Oil and Gas (the “DGOG”).

Supervision of Other Energy and Mineral Resources Industries

In addition to supervision of the upstream oil and gas industry mentioned above, Regulation 48/2017 also relaxed some approval requirements in the downstream oil and gas industry, electricity industry, geothermal industry and mining industry. For example, Regulation 42/2017 required prior MEMR approval for any transfer of majority shares in, or any changes to the BOD or BOC composition of, the holder of downstream oil and gas licenses. However, under Regulation 48/2017, such actions are only required to be reported to the MEMR through the DGOG.

Conclusion

When a PSC Contractor intends to transfer all or part of its participating interest, the PSC Contractor should bear in mind that the MEMR's prior approval is required and should address this in the transaction agreement (e.g. by including the obtaining of MEMR approval as condition precedent to the transfer).

PSC Contractors and their shareholders also need to be aware of the requirement for approval of a change in the Direct Control of PSC Contractor and anticipate this in the transfer documentation (e.g., by including a condition precedent).

PSC Contractors should be vigilant for other transactions and corporate actions that require notification to the MEMR (rather than prior approval) and ensure that these filings are promptly made.

Although Regulation 48/2017 clarified some of the ambiguity and simplified some of the processes in Regulation 42/2017, it should be noted that the approval process (including prior consultation process) may still take time because ambiguities exist in the language of Regulation 48 and neither the MEMR nor SKK Migas have yet established a practice for the application process.

History has shown that the regulatory regime in the energy and mineral resources sector in Indonesia can dramatically and suddenly change, so foreign investors need to carefully monitor the regime and seek appropriate legal advice.



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*Please note that we are not engaged in a Gaikokuho Kyodo Jigyo (the operation of a foreign law joint enterprise).



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