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PRATT'S

# ENERGY LAW

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## **Hydraulic Fracturing Developments**

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# Indonesia Introduces New Solar Power Regime

*By Luke Devine, Kirana Sastrawijaya, Martin David, and Kim Hock Ang\**

*The Indonesian government recently issued Minister of Energy and Mineral Resources Regulation No. 19 of 2016 on Purchase of Power by PLN from Solar Photovoltaic. The authors of this article discuss the regulation and the high expectation that there will be significant levels of new investment in solar photovoltaic projects in Indonesia.*

In 2013, the Indonesian government first introduced a solar power regulatory regime, which required the government to publish solar power quota allocations for various parts of Indonesia, with interest developers then submitting competing bids to supply the solar power to the State utility, PLN, at the lowest tariff (with the maximum tariff which could be bid being subject to a cap of US\$0.25 per kWh (where no locally sourced equipment was used) and US\$0.30 per kWh (where a prescribed minimum amount of local content was used). However, the Indonesian Supreme Court struck down this 2013 framework as being inconsistent with prevailing regulations, primarily on the basis that any regulatory framework put forward by the government should oblige the interested developers to use a certain amount of local content for their projects (and not give the developers the option to opt-out of local content requirements).

The Indonesian government has now filled the regulatory void left by that Supreme Court decision through the issuance of Minister of Energy and Mineral Resources Regulation No. 19 of 2016 on Purchase of Power by PLN from Solar Photovoltaic (“Reg. 19”).

The major changes introduced under Reg. 19 which differ from its 2013 predecessor are:

- a requirement that every solar power development must utilize a prescribed minimum of local content in its good and services;
- the selection of solar power plant developers is no longer done through a competitive tender process, but instead through a prequalification and first-come, first-served system administered by the Ministry of Energy

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and Mineral Resources (“MEMR”); and

- the introduction of new fixed feed-in-tariffs which vary depending on the location of the projects, and can be adjusted by the MEMR in each capacity quota offering.

## **NEW POWER PURCHASE PROCEDURES**

Reg. 19 provides a two-stage process for the appointment of a developer to construct and operate solar photovoltaic (“PV”) power plants:

- 1) The developer first pre-qualifies to become an approved developer candidate for any of the future quota allocation processes initiated by the MEMR.
- 2) As and when the MEMR issues a quota allocation setting out the required solar capacity on offer for various regions throughout Indonesia, the approved developer candidates are able to apply on a first-come firstserved basis for being allocated the relevant quota and then become a “solar photovoltaic (PV) developer” in respect of the relevant quota allocated to it.

Following the designation as a “solar PV developer,” that developer will then proceed to execute a Power Purchase Agreement (“PPA”) with PLN, and thereafter finance, construct, and operate the solar PV project.

### **An Interested Developer Becoming an Approved Developer Candidate**

Where the government intends to commence a process of seeking developers for solar PV projects, the government, through the Directorate General of New and Renewable Energy and Energy Conservation (“EBTKE”) of the MEMR, will call for interested developers to apply for registration. The call for registrations will be made one month prior to the registration window being opened.

Once the registration window is opened, interested developers will have seven days to lodge the required documents, and EBTKE will take a further six days to determine whether the interested developer satisfies the administrative and financial requirements.

The documents required to be submitted by an interested developer during this period are in the nature of pre-qualification documents, and are not project or site specific. The information to be submitted includes the corporate profile, financial capability, corporate establishment documents, Indonesian tax registration number and any foreign investment principle permits.

### **An Approved Developer Candidate Becoming a Solar PV Developer**

As and when EBTKE is ready to offer solar projects in certain regions of the

country, the following process is follows:

- the EBKTE publishes the quota allocation for the various regions (setting out the MW capacity requirements in different regions of the country) and calls for Approved Developer Candidates to apply to take up those quotas;
- EBTKE then opens the online application window, and Approved Developer Candidates apply to take up the quota which they are interested in, submitting project-specific documentation such as feasibility studies and interconnection studies;
- A team of representatives from EBTKE, Directorate General of Electricity and PLN then review the applications;
- Once the review team approves the submission of an Approved Developer Candidate, that Approved Developer Candidate is deemed to be a “Solar PV Developer” and thereafter proceeds to sign a PPA with PLN.

### **Development Timetable for a Solar PV Developer**

An aggressive development timetable takes effect upon being designated as a Solar PV Developer in respect of a specific quota allocation. The successful developer must:

- sign a PPA with PLN within one month;
- achieve financial close within six months of signing the PPA;
- obtain its electricity generating license (“IUPTL”);
- achieve commercial operation within 12 months of obtaining the IUPTL for projects with a capacity up to 10 MW or within 24 months of obtaining IUPTL for projects with a capacity of more than 10 MW.

The timeline for an interested developer becoming an Approved Developer Candidate is set out in Appendix A. Appendix B sets out the timeline for (i) an Approved Developer Candidate being designated a Solar PV Developer, and (ii) the development timetable for a Solar PV Developer.

## **KEY FEATURES OF THE REGULATION 19 REGIME**

### **Can a Foreign Entity Register as an Approved Developer Candidate?**

To register as an Approved Developer Candidate, Reg. 19 requires applicants to submit among other things, its Indonesian taxpayer registration number (known by its Indonesian acronym NPWP) and the principle investment license.

Similarly, the Reg. 19 process provides that upon an Approved Developer

Candidate becoming designated as a Solar PV Developer, then that same entity must sign a PPA with PLN (i.e. there is no provision made for a new project company to be formed at that time to sign the PPA). Under the applicable regulations, the only entities entitled to sign PPAs with PLN are Indonesian-established entities (whether domestic or foreign owned).

All of these requirements suggest that only Indonesian-established legal entities (which includes foreign-owned Indonesian companies) can register as an Approved Developer Candidate. EBTKE officials have confirmed this fact. That said, there have been similar regulations in other renewables sectors (e.g. geothermal) which have suggested (by the nature of the documents required to be lodged as part of the application process) that only Indonesian-established entities are able to participate, yet when the detailed application/bid documentation has been subsequently issued, that documentation has allowed foreign companies to participate in consortium with an Indonesian-established entity.

Under the applicable negative list of investment, maximum foreign ownership in power projects with a capacity of more than 10 MW is 95 percent (unless the project is formally designated a PPP project (which is unlikely, due to the relatively small scale of solar projects) where 100 percent foreign ownership is permitted). For projects with a capacity of 10 MW or less, foreign ownership is limited to 49 percent.

### **How is the Allocation of the Capacity Quota Determined between Competing Solar PV Developers?**

The previous 2013 regime provided for qualified developers to vie for the capacity quotas on offer through a competitive tender process, with the lowest electricity tariff offered winning the quota allocation. However, under Reg. 19, capacity quota is not tendered out to developers. Instead, the MEMR will offer the capacity quota to the qualified developers (i.e. the Approved Developer Candidates), and these developers then submit an application on the size of capacity quota they are willing to develop to the MEMR, and the MEMR will then verify the capacity quota application—on a first-come, first-served basis. Based on this verification, the MEMR will later decide whether or not it approves the capacity quota size as proposed by the developer.

To avoid a monopoly situation where a single developer applies for all the capacity on offer, there are limits imposed on how much of the capacity quota on offer can be granted to a particular Solar PV Developer:

- *Maximum Capacity Quota a Developer Can Propose*

Limitations on the capacity quota a developer can propose depend on the offered capacity quota in a region, as follows:



Offered Capacity Quota in a Region	Maximum Capacity Quota which can be Proposed by an Approved Developer Candidate
Above 100 MW	20 MW
10 MW—100 MW	20 percent of the offered capacity quota
Less than 10 MW	Unlimited

- *Maximum Capacity Quota Approval a Developer Can Obtain*

Reg. 19 also states that in each stage of capacity quota offering, applicants may only obtain a maximum three capacity quota approvals for capacity quotas in any one region. Therefore, a developer may obtain up to three capacity quota approvals in each stage in a region provided that the total quota it obtains in such stage and region does not exceed the limit explained above.

Reg. 19 however also provides that if after the capacity quota has been offered for one month there is still available capacity quota, the Approved Developer Candidates that have obtained three capacity quota approvals may apply for another capacity quota for the remaining available capacity quota. But it is not clear whether the limitation on maximum capacity as stipulated above will still be applicable for this additional capacity quota application.

#### **How are the Tranches of Capacity Quota Offering Determined?**

Reg. 19 defines capacity quota as the total maximum capacity of solar PV power plants offered to developers within a period with a determined feed-in tariff.

The capacity quota per region will be determined by the MEMR based on PLN's power network system with a minimum capacity quota of 5,000 MW, which will be offered in stages. EBTKE has indicated in the media that the government's target is to offer this minimum 5,000 MW capacity quota by 2018.

The first of the capacity quota offers is laid out in Reg. 19 itself. Attachment I of Reg. 19 sets out a total capacity quota for each relevant region, including the applicable feed in tariffs for the capacity quota offering in the first stage. In this first stage offering, the government has offered 250MW<sub>p</sub> to interested developers. Appendix C shows the first stage capacity quota offering for each region in Indonesia.

#### **What are the Criteria Used for Determining Whether an Approved Developer Candidate Receives a Quota Allocation?**

The capacity quota will be offered online for a maximum of two months for each offering—preceded by an announcement of the offering plan at the latest

four months before the capacity quota offering. The next capacity quota offering can only be done after the lapse of this two-month period, or after 80 percent of the offered capacity quota is taken up.

Applications for capacity quota must be submitted online and must be supplemented with the following documents:

- self-assessment of local content level calculation (“TKDN”) for the whole system of solar power plant;
- certification of the solar module and inverter;
- feasibility study; and
- interconnection study.

Reg. 19 provides the forms for the reports of the feasibility study and interconnection study. The feasibility study reports will need to include among other things benefits of the projects, description of the technology used, installed capacity, ownership, local content requirements, location, preliminary geotechnical analysis, environmental analysis, costs, risk mitigation, and warranty service. The interconnection study report will need to cover among other things, initial identification of voltage limit violations, analysis of distribution system, and interconnection facilities between the connecting point and the solar power plant.

There is no express requirement under Reg. 19 for PLN to support and provide assistance to the candidate developers to prepare the interconnection study report, although from coverage of the interconnection reports we suspect data and information from PLN, in particular PLN relevant regional office where the proposed power plant is located, will be required. Accordingly, this requirement for an interconnection study may in fact become a de-facto method for PLN to pre-approve solar projects before the EBTKE quota allocation process even begins.

### **Can PLN Procure a Solar Power Project Outside the Capacity Quota Offering as Stipulated under Regulation 19?**

Reg. 19 provides that for projects which have been negotiated with PLN on a business-to-business basis and for which the developers and PLN have not signed the PPA, Reg. 19 states that the procurement process can be continued and the developers can sign the PPA with PLN (without having to follow the new rules under Reg. 19). There are no details of how this business-to-business relationship has to be evidenced, but it is expected that parties that have, prior to July 12, 2016, signed Memorandum of Understanding, or letters of intent or the like with PLN will be able to use this exception.

The position for new projects is less clear—i.e. is there a way for developers

to develop new solar PV projects with PLN on a business-to-business basis. The fact that Reg. 19 contains a specific exemption for pre-existing business-to-business relationships does suggest that any new projects must follow the Reg. 19 system (i.e. if the intent was to allow both pre-existing and future business-to-business developments to proceed outside the Reg. 19 regime, then the relevant exception written into Reg. 19 would not have been expressly limited to pre-existing business-to-business relationships with PLN).

However, from a discussion with the officials at the EBTKE, we understand that PLN may still appoint solar PV developer outside the capacity quota offered under Reg. 19 on a business-to-business basis. The procedures for the appointment of the developer will refer to PLN's procurement guidelines.

### **What Tariff Applies?**

Reg. 19 stipulates fixed feed-in tariffs for each region within each capacity offering tranche, where the tariffs can differ from time to time for each capacity quota offering based on the discretion of the MEMR.

For this first stage capacity quota offering, the tariff ranges from cent US\$14.5/kWh (for Java area) to cent US\$25.0/kWh (for Papua area). Please see Appendix C for the feed-in-tariffs for the first capacity quota offering stipulated in Reg. 19.

Further, Reg. 19 also provides that the tariffs:

- are not negotiable;
- vary depending on location of the projects;
- include connection costs from the power plant to PLN's grid;
- are flat tariffs (without escalation to reflect inflation) for the 20-year period of the PPA; and
- are in US\$ (US\$ cent/kWh) but the payment of the invoice by PLN will be made in Indonesian Rupiah based on Jakarta Interbank Spot Dollar Rate ("JISDOR") on a date agreed in the PPA.

### **What are the Local Content Requirements for Solar PV Projects?**

Reg. 19 requires solar power plant developers to fully comply with the local content requirement for solar power plants as set out in the regulation issued by the Ministry of Industry ("MOI"). The prevailing MOI regulation on the local content level requirement for the development of power plants is MOI Regulation No. 54/M-IND/PER/3/2012 of 2012 ("Reg. 54").

The local content level requirement for solar power plants under Reg. 54 is as follows:

*For Communal Power Plants:*

<b>Requirement</b>	<b>Minimum Percentage</b>
Local content level for goods	25.63 percent
Local content level for services	100 percent
Local content level for goods and services	43.85 percent

Reg. 54 does not provide a definition on what constitutes a “communal power plant.” However, “communal power plants” should refer to any solar power plants which sell the power produced to PLN or directly to end customers.

Solar power plant developers must verify their self-assessment of local content level by appointing an official verifier approved by the MOI. The verification results must be submitted to the EBTKE at the latest 30 days before the commercial operation date. If the verification results do not meet the requirements set out under Reg. 54, the developers must replace the goods/services to meet the minimum percentage requirement within 60 days. However, Reg. 19 further states that if a developer fails to submit verification results, a sanction will be imposed in the form of a decrease of power purchase tariff in the amount of the percentage difference between the verified local content level and the required local content level under Reg. 54. That is, if the total local content of the project is only 40 percent instead of the required 43.85 percent, there will be a 3.85 percent decrease in the tariff. The decrease will be stated in the PPA.

Although Reg. 19 states that the sanction will be applied for failure to submit local content verification results, it is expected that EBTKE will also apply it where the verification results have been submitted, but the required level of local content has not been achieved.

**What are the Consequences of Not Meeting the Development Milestones?**

Reg. 19 sets out the following mandatory milestones with regard to the execution of PPA:

- PPA must be signed no later than one month after the stipulation of the power plant developer. If the PPA is not signed by that deadline, the MEMR through EBTKE will facilitate the execution of the PPA. Reg. 19 does not provide any express sanction for the failure to execute the PPA within the required timeframe.
- Financial close must be achieved no later than six months after the signing of the PPA, failing which the stipulation as a solar power plant

developer will be revoked. It is expected that, pursuant to the terms of the PPA, the sanction on the developer for termination of the PPA for failing to reach financial close will be the loss of a performance security (i.e. bank guarantee) provided to PLN.

- After achieving financial close, the developers are required to apply for an Electricity Business License (“IUPTL”) in accordance with the prevailing laws and regulations.
- The commercial operation date must occur within 12 months after the issuance of the IUPTL for solar power plants with a capacity up to 10 MW and 24 months after the issuance of IUPTL for solar power plants with a capacity above 10 MW.

The failure to meet the deadline for the commercial operation date will lead to a reduction in the power purchase price applicable under the PPA in the amount of three percent for a delay of up to three months, five percent for a delay between three and six months, and eight percent for a delay between six and 12 months. The amount of the decrease is calculated based on the decrease of tariff due to the failure to meet the local content level requirement, if any.

If the commercial operation date is delayed for more than 12 months, the stipulation as a solar power plant developer will be revoked. Again, it is expected that the sanction under the PPA for termination of the PPA in these circumstances will be the loss of any performance security provided to PLN. Appendix B provides details on the above timeline.

### **What is the Status of Solar Projects Awarded under 2013 Regime?**

Reg. 19 requires the winning bidders of the capacity quota of solar photovoltaic power plants under the now-revoked 2013 regime to sign a PPA within three months after the promulgation of Reg. 19 (i.e., at the latest on October 12, 2016). If they do not do so, their winning bidder determinations will be revoked.

### **CLOSING**

Reg. 19—which removes tender requirements and sets the feed-in-tariffs—is another positive signal to the market on the seriousness of the government to accelerate development of the power sector to achieve the aggressive five-years 35 GW program and the aggressive renewable energy targets through to 2025.

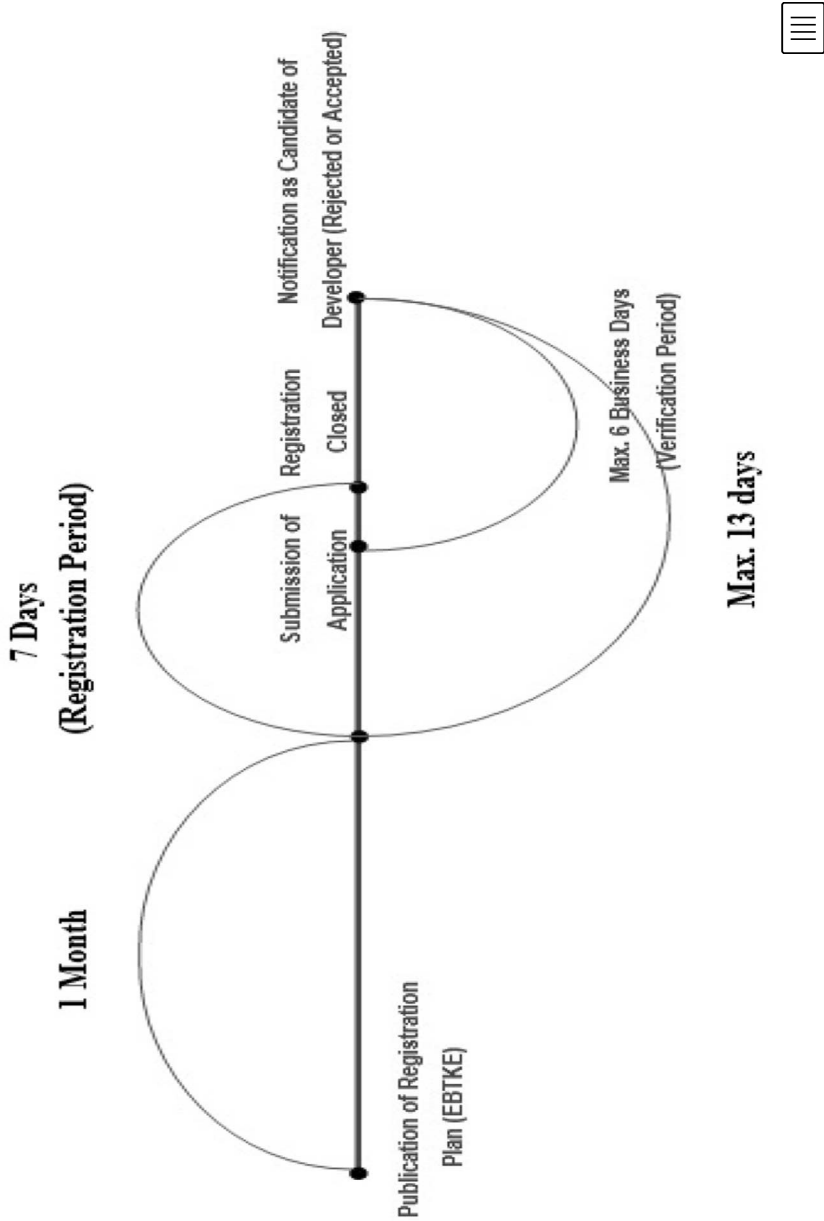
However, to complete the picture on solar project reforms, the focus will now shift to:

- the manner in which the government implements this first-come first served system; and

- the revised model PPA which under Reg. 19 must be issued within 30 working days after the issuance of Reg. 19.

If the new model PPA does represent a bankable document, there is high expectation that there will be significant levels of new investment in solar photovoltaic projects in Indonesia.

**APPENDIX A: REGISTRATION AS CANDIDATE OF SOLAR POWER PLANT DEVELOPER**



## **Stages in the Registration Process to Become a Candidate for Solar Power Plant Developer**

- 1) *Announcement of registration to become the candidate for solar power plant developer*

EBTKE will publish a registration plan no later than one month before the announcement of registration. The publication will be made in the website of EBTKE and/or national newspapers. The announcement of registration will be made online.

- 2) *Online registration of business entities to become capacity quota applicant*

The registration will be open for seven days. Business entities submitting their registration will be required to upload their company profile, which includes corporate documents, principle investment license, taxpayer registration number, and experience in the development of solar photovoltaic power plants (if any) and financial capability certified by a financial appraiser or a financial auditor.

- 3) *Verification of the business entities' required documents*

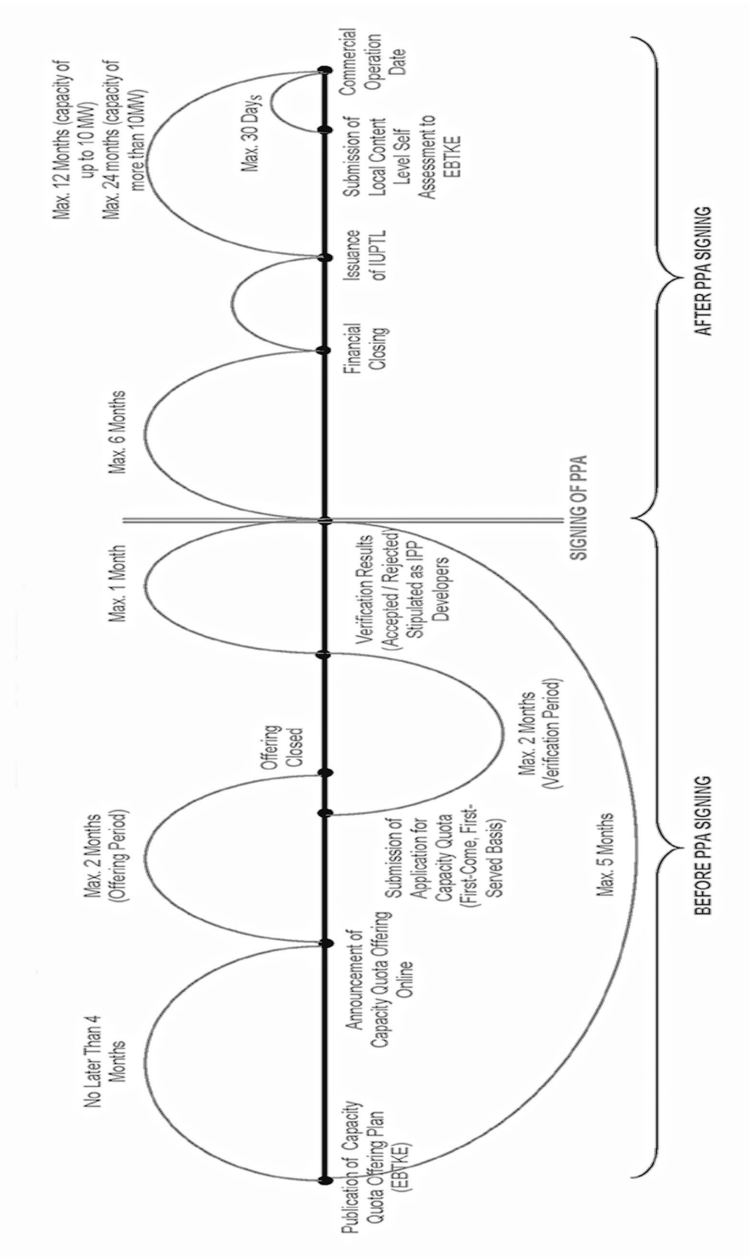
EBTKE will then verify the documents submitted by the business entities. The verification process will take six business days after the registration date.

- 4) *Announcement and notification of the business entities entitled to apply for capacity quota (as the candidate for solar power plant developer)*

Based on the verification result, the MEMR through EBTKE will notify the business entities with regard to their rejection or acceptance as the candidate for solar power plant developer online. EBTKE will also publish the list of business entities accepted as the developer candidates. The developer candidates will receive a username and password as their identity. The list of the developer candidates will apply for all regions and for any stages of capacity quota offering.



**APPENDIX B: CAPACITY QUOTA OFFERING AND PPA MANDATORY TIMELINE**



### **Stages in the Capacity Quota Offering**

- 1) *Capacity quota offering to the business entities accepted as developer candidates*

The capacity quota offering plan will be notified to the developer candidates no later than four months before the offering of capacity quota in the website of EBTKE and/or national newspapers. The offering will be effective for up to two months as of the commencement of the offering.

- 2) *Application for capacity quota*

Applications for capacity quota will be made online. Applications will be completed with (i) self-assessment recapitulation of local component for the whole system of solar power plant; (ii) certification of the solar module; (iii) feasibility study; and (iv) interconnection study.

- 3) *Verification of the application*

The application will be verified by an integrated team formed by the MEMR. The team will consist of the representatives of EBTKE, Directorate General of Electricity, and PLN. The verification will be conducted on a first-come, first-served basis.

- 4) *Determination and stipulation of the solar power plant developer for each region*

The result of verification will be submitted by the team to the MEMR through EBTKE online. Notification of the approval or rejection of the application will be served to the applicants no later than two months after the application date recorded in the system. If the application is rejected, EBTKE will provide the reason.

**APPENDIX C: FIRST STAGE CAPACITY QUOTA OFFERING  
AND FEED-IN TARIFF**

<b>No.</b>	<b>Region</b>	<b>Purchase Price (cent USD/kWh)</b>	<b>Capacity Quota (MWp)</b>
1.	DKI Jakarta and Tangerang	14.5	150
2.	West Java and Banten		
3.	Central Java and Yogya- karta		
4.	East Java		
5.	Bali	16	5
6.	Lampung	15	5
7.	South Sumatra, Jambi and Bengkulu	15	10
8.	Aceh	17	5
9.	North Sumatra	16	25
10.	West Sumatra	15.5	5
11.	Riau and Riau Islands	17	4
12.	Bangka Belitung	17	5
13.	West Kalimantan	17	5
14.	South Kalimantan and Central Kalimantan	16	4
15.	East Kalimantan and North Kalimantan	16.5	3
16.	North Sulawesi, Central Sulawesi and Gorontalo	17	5
17.	South Sulawesi, South East Sulawesi and West Sulawesi	16	5
18.	West Nusa Tenggara	18	5
19.	East Nusa Tenggara	23	3.5
20.	Maluku and North Maluku	23	3
21.	Papua and West Papua	25	2.5

