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The International Comparative Legal Guide to:
Gas Regulation 2009

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Indonesia

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1 Overview of Natural Gas Sector

1.1 A brief outline of the country's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; importation and exportation of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Indonesia has proven and probable natural gas reserves of 187.89 trillion cubic feet (Tcf), of which 93.95 Tcf is proven (P1) and 93.14 Tcf is probable (P2); and has the eleventh largest gas reserves in the world.

Indonesia is one of the world's leading LNG exporters. The majority of natural gas produced in Indonesia is exported as LNG (1,176,288,000 MMBTU). LNG represents around 43% of total gas production. Major LNG plants include the Bontang plant, off Kalimantan, and the Arun plant in Aceh. The Tangguh project is currently developing a further major plant in Papua. Currently, an LNG plant is being developed by Pertamina, Medco, and Mitsubishi in Sulawesi.

Indonesia lacks its own extensive town gas network due to the fact that its major natural gas reserves are located in remote areas of Indonesia (Sumatra, East Kalimantan and Papua), away from the major population centres of Java and Bali. In order to transport gas from these remote sources, the Government has set a Master Plan for the National Network for Gas Transmission and Distribution (the "**Masterplan**"). The network currently comprises a total length of approximately, 8877.45 kilometres.

The major domestic users of natural gas in Indonesia are fertiliser and petrochemical plants, followed by power generators. The Government is targeting to increase gas usage to more than 30% by 2025, while oil consumption is targeted to drop from 51.66% at present to less than 20% in 2025.

The downstream natural gas industries in Indonesia have been liberalised fairly recently. Prior to November 2001, the State, directly or indirectly, had a monopoly over gas sales and distribution. This monopoly has now been removed, and there should be an increasing market for commodity sales and trading.

Indonesia's first Coal Bed Methane ("CBM") production sharing contracts have been awarded. Indonesia is estimated to hold 453 Tcf of CBM, with reserves located in Sumatera, Kalimantan, Sulawesi and Java.

1.2 To what extent are the country's energy requirements met using natural gas (including LNG)?

About 17% of the country's total final energy requirements are met using natural gas (including LNG).

1.3 To what extent are the country's natural gas requirements met through domestic natural gas production?

Indonesia's gas requirements are met solely by its domestic gas production, although there have been instances where spot cargoes of LNG have been imported.

1.4 To what extent is the country's natural gas production exported (pipeline or LNG)?

Indonesia exports around 55% of its annual gas production of around 3 trillion cubic feet. Of this, the majority goes to Japan, South Korea, and Taiwan as LNG. Around 5.33% of Indonesia's natural gas is also exported, via pipeline, to Singapore and Malaysia. It should be noted that current Government policy is to prioritise domestic consumers.

2 Development of Natural Gas

2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

Regulation of natural gas exploration and production is based on Law No. 22 of 2001 (the "Law") and its implementing regulations (in particular, Government Regulation 35 of 2004). Following the enactment of the Law, the State oil and gas company, Pertamina, which previously had also been responsible for regulating upstream oil and gas activities, lost its regulatory role. This has now been assumed by BPMIGAS, a State agency, and the Ministry of Energy and Mineral Resources. Downstream activities (which include processing, transportation, storage and trading) are the responsibility of BPH Migas.

Under the 1945 Constitution, the Republic of Indonesia owns all oil and gas rights within its territory. Private sector companies participate in oil and gas activities through Production Sharing

Contracts, entered into with BPMIGAS. Under the Production Sharing Contract, a contractor is entitled to a certain percentage of oil and/or gas production. Traditionally, for gas, the production split has been 40% up to 70% for upstream contractors, subject to final tax on profits after deduction of corporate tax. In exchange, contractors are required to finance all exploration, production and development costs in the contract areas, and are entitled to recover operating, exploration and development costs from the oil and gas produced.

Downstream gas activities, must be carried out by an Indonesian legal entity. In practice, this means that a foreign company must establish a local subsidiary and obtain a downstream licence from the Government.

In recent years, the Government has offered more attractive production splits and other fiscal terms for new gas blocks and marginal gas fields to try to attract more investment in the development of natural gas reserves.

A new energy law has also been enacted in 2007, with the aim of co-ordinating the Government's energy policy. It is expected that, for the time being, it will not have a very significant impact on the oil and gas sector. However, the new energy law does re-cast the Government's policy on pricing (this should not be simply based on market price, but on economic equity), maximisation of domestic content, prioritisation to be given to domestic, and regional markets within Indonesia, and energy companies' community obligations.

2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. license, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Investors conduct upstream oil and gas activities under a Production-Sharing Contract (referred to in the Law as a "cooperation contract") with BPMIGAS. Pursuant to the Production Sharing Contract, the upstream contractor is entitled to a certain percentage of natural gas production from the point of export or point of domestic sale. In some instances, upstream contractors may also be able to enter into a petroleum contract ("KSO") with Pertamina, which is, in essence, a sub-contract to the Production Sharing Contract entered into by BPMIGAS and Pertamina. The Production Sharing Contract is a legally binding contract governed by, and enforceable in accordance with, Indonesian law.

2.3 If different authorisations are issued in respect of different stages of development (e.g. exploration or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The Production Sharing Contract covers all stages of upstream activities, from exploration through to commercial production. The term of the contract is 30 years (extendable for a further 20 years). During the first six years of the contract, the contractor carries out exploration work, and is required to commit to minimum levels of expenditure. The exploration term is extendable for a further four years.

During the exploration term, the contractor is also required to relinquish parts of its work area, so that ultimately it will retain only 20% of the original work area.

Significant control over operations is exercised by BPMIGAS through the annual work programme and budget for the contract

area, which must be approved by BPMIGAS (the initial work programme and budget must also be approved by the Minister of Energy and Mineral Resources or "Minister").

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

The terms of the Production Sharing Contracts recognise the Indonesian law principle that the State owns all of the natural gas reserves in Indonesia. Accordingly, title to the upstream contractor's share of gas passes to the upstream contractor only at the point of export or point of domestic sale. Upstream contractors are also permitted to recover their operating costs and investment costs from production. All remaining gas remains with the State.

Additionally, the terms of the Production Sharing Contract require upstream contractors to offer a 10% participating interest in the Production Sharing Contract to an Indonesian Regional Government-owned company ("BUMD") upon first approval of a Plan of Development. Further opportunities are given to national companies (either State or Regionally-owned or private) to participate in the development of natural gas reserves by giving the State a right of first refusal over the sale of any interests under the cooperation contract. In the latest Production Sharing Contract tender rounds, Pertamina has been given the right to acquire a 15% Participating Interest over the tendered working area on business-to-business terms with the winners of such tenders.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

State revenues comprise tax and non-tax revenues. The tax revenues include the applicable corporate and withholding taxes. Non-tax revenues include the State's production entitlement and other revenues in the form of exploration fees and other bonuses (e.g. production bonuses).

2.6 Are there any restrictions on the export of production?

Yes - upstream contractors are required to make at least 25% of their natural gas entitlement available for the domestic market (restricting them from exporting 100% of their production entitlement should the Government require gas to be supplied to the domestic market). The gas will be sold at the market price in Indonesia, which is currently between one-half to two-thirds of international gas prices. The current trend is to try to limit exports, and not extend contracts that will shortly expire, as part of the government's policy to increase domestic gas consumption.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

There are no such restrictions.

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

The cooperation contract provides that there shall be no transfer of a majority participating interest for the first three years of the contract. This restriction does not apply to transfers to affiliates. Transfers of interests will require the approval of BPMIGAS and

the Minister. It should be noted, that under the 2008 Production-Sharing Contract, BPMIGAS and Minister approval is required for changes in control of a company holding a Production Sharing Contract.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

In the latest round of Production Sharing Contracts, Contractors are required to provide a performance bond to cover their seismic shooting commitments during the first three years of the exploration phase. The bond should be valid for three years from the effective date of the Production Sharing Contract and the Director General will be entitled to draw it down at any time if the participant cannot fulfil its seismic obligations during this 3-year period.

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

Under Indonesian law, for effective security to be taken over the Production Sharing Contract, BPMIGAS needs to acknowledge that such security is being given. BPMIGAS will not provide such acknowledgment. Accordingly, no security can be granted over the Production Sharing Contract.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

In general, the operator of the upstream block will need to carry out an environmental monitoring/management assessment (UKL/UPL), and in some circumstances, will need to carry out an environmental impact assessment (AMDAL) in relation to the proposed development, which should then be approved by the relevant government authorities (at either the State or Regional level). Thereafter, the Contractor should monitor and submit regular reports on its compliance with the UKL/UPL or AMDAL.

All contractors are required to comply with occupational health and safety regulations issued by BPMIGAS and the Ministry of Manpower.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

Upon the termination of the Production Sharing Contract, or the relinquishment or abandonment of any field or exploratory well, contractors must remove all equipment in a manner acceptable to BPMIGAS and the Minister, and must perform all necessary site restoration activities. Additionally, the contractor must perform an environmental assessment when it commences activities; and its Work Programme and Budget must provide an estimate of decommissioning costs, for BPMIGAS' approval. Upon approval, these amounts will be cost recoverable. Such cost must be deposited in a special account controlled by BPMIGAS and contractor, or otherwise they will not be cost recoverable.

3 Importation / Exportation

3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

As set out above, the Production Sharing Contract requires the upstream contractor to supply 25% of its natural gas to the Government of Indonesia.

In relation to the balance of production, the Production Sharing Contract recognises the independent ownership of the upstream contractors of their share of natural gas production. In practice, however, the upstream contractors usually sell the entire production (i.e. including the State's share) from the contract area. BPMIGAS will appoint the upstream contractors (or, more rarely, a third party) to act as the seller of the State's share. The terms of the appointment require that the Government give its prior approval to any sales contracts which are signed.

4 Transportation

4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Under the Law and the relevant regulation (Government Regulation 36 of 2004), Gas transportation (if this is intended to be a profit centre) is considered a downstream oil and gas activity. As such, it must be carried out by an Indonesian legal entity (which may be domestically or foreign-owned). Foreign-incorporated companies may only conduct downstream activities if these form part of their upstream activities.

A separate downstream general business licence from the Minister is required in order to carry out each type of downstream activity, e.g. for transportation, a Transportation Business License is required. However, if a company performs downstream activities that overlap with other downstream activities, the company will only be required to obtain a single business licence.

In addition to the general business licence issued by the Minister, gas transportation through a section of transmission pipelines or through a gas distribution network requires an additional Special Right issued by BPH Migas. The Special Right is granted for the term of the transportation business licence or for a maximum of 20 years if no term is stated in that licence. The Special Right is issued through a tender process conducted by BPH Migas, which will evaluate the bids submitted by the bidders based on their administrative, technical and financial qualifications. A single Special Right will be issued to a company for an area of a transmission segment or a distribution network.

The Government has awarded Special Rights for three Transmission Line pipeline projects: (i) from Cirebon to Semarang (Java); (ii) from Gresik to Semarang (Java); and (iii) from Bontang (East Kalimantan) to Semarang (Central Java). The transmission lines are estimated to be completed simultaneously in April 2009. BPH Migas is also tendering another transmission line, from Cirebon to Muara Bekasi.

4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

As mentioned above, a general downstream business licence from the Minister and a Special Right from BPH Migas is required to construct and operate a natural gas transportation pipeline.

Further, the prevailing laws and regulations also require the legal entity conducting gas transportation activities to preserve the environment, ensure work safety and develop the local community. It is unclear how the “preservation of the environment” is to be applied under the Law and the regulations. However, in practice this would seem to involve the preparation of an environmental monitoring/management assessment (UKL/UPL), and under some specific conditions, an Analysis of Environmental Impact (AMDAL) study, which must be approved by the relevant government agency, together with the submission of periodical reports on the implementation of such study.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

Generally, the related legal entity will need to procure the land by entering into agreements with (and paying compensation to) the landowners or, if the land is owned by the State, through a long-term lease agreement. This is a time-consuming process, both for commercial reasons, and because not all land is certified/registered land. There are no special rights of compulsory purchase for gas pipeline projects.

4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

BPH Migas is authorised to oversee and supervise the organisation of gas pipelines and associated infrastructure (as identified in the Masterplan, which is reviewed annually). The relevant licence-holders are also required to submit periodical reports to the Minister (copied to BPH Migas) regarding the planning and realisation of their business plans. See question 4.6 below for further details.

4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Although there is an absence of much specific direction on how this will work in practice, the intention is to establish a national integrated gas pipeline system based on the Masterplan. Currently however, gas transmission is not nationally integrated.

4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

The regulations provide that a holder of the Special Right must

allow third-party access to its natural gas transportation facilities under specific terms to be agreed by the owner of the gas transportation pipeline and the third party.

If a Special Right holder refuses to give third-party access to its gas transportation pipeline, it will need to justify the reasons for its decision to BPH Migas. If BPH Migas determines that the Special Right Holder is acting unreasonably, it may revoke the Special Right.

If the holder of a Special Right for gas distribution has no more capacity, and there is a gas supply shortage, then it may ask BPH Migas's approval to expand its capacity or, if the Special Right holder cannot satisfy the market's demand for gas supply, BPH Migas will open a new segment in the same line for tender. In this case, the holder of special rights over the existing segment will still continue to have the Special Right over its own segment.

4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

BPH Migas has the power to set the tariff that will be charged by the operator of a gas transportation pipeline. The operator may charge the same tariff for customers at any delivery point within an area or a variable tariff for every point of delivery depending on the distance from the source of the natural gas to the customer.

In order to fix the tariff, the operator will submit the proposed tariff to BPH Migas together with its justification for the tariff. The operator's proposed tariff should take account of: (i) its direct cost to construct the pipelines; (ii) its projected income, based on the anticipated gas to be transported; (iii) its operational and maintenance costs; and (iv) its depreciation. Prior to fixing the tariff, BPH Migas will hold a hearing with the transportation company, the pipeline users, and the buyer of the gas to determine its reasonableness.

5 Transmission / Distribution

5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

As part of the Government's Masterplan to encourage the greater use of natural gas in Indonesia, BPH Migas has started to open up ownership of the pipeline transmission system to the private sector. For the foreseeable future, however, the natural gas transmission network will remain largely owned by the majority State-owned gas company, PT PGN and its subsidiary, PT Transgasindo. There are a small number of privately-owned pipelines supplying natural gas to Singapore and Malaysia.

5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Similar to transportation pipelines, in addition to the general transportation business licence issued by the Minister, a Special Right issued by BPH Migas is needed to operate a section of a gas distribution area. A separate Special Right will be required for each section of gas distribution area.

5.3 How is access to the natural gas distribution network organised?

As mentioned above, a Special Right to operate a section of a gas

transmission segment or a section of a gas distribution area will be granted through a tender process carried out by BPH Migas. Government Regulation No. 36 year 2004 requires the Special Right holder to give third parties access to its distribution network. The third-party access will be regulated based on an agreement between the Special Right holder and the user, under the supervision of BPH Migas.

5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

This is not specifically provided for under the regulations; however, the operator of a gas pipeline may ask BPH Migas to revise its Special Right to enable it to increase the capacity of its facilities and equipment.

5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Special Rights holders are required to pay a monthly tariff to BPH Migas, based on the amount of natural gas transported multiplied by a percentage of the transportation tariff per thousand cubic feet. The percentage to be applied to the transportation tariff varies among the segments. If the Special Rights holders do not apply the tariff stipulated by BPH Migas, following the issue of a summons, BPH Migas may revoke the Special Rights and advise the Minister to revoke the general business licence.

In addition to the monthly tariff, Special Rights holders may be liable to pay a Special Rights fee to BPH Migas. To date, the amount of this fee has not been set.

5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Special Rights to operate a section of the gas transmission network or a section of the gas distribution area are not directly transferable. However, indirect transfers of interest will not trigger the related governmental approval mechanism.

6 Natural Gas Trading

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The existing laws and regulations provide that gas trading requires a trading licence from the Minister. For natural gas trading, the licensed legal entity must, among others, ensure a continued supply of natural gas through pipelines in its trading distribution network and maintain adequate trading facilities. In carrying out its activities, the related business entity must submit a monthly activity report to the Minister, with a copy delivered to BPH Migas.

6.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e. the natural gas commodity and the distribution thereof) be traded?

The regulations do not specify which range of natural gas

commodities can be traded. However, the requirements set out in question 6.1 above would seem to imply that only bundled products can be traded.

7 Liquefied Natural Gas

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

LNG facilities may either be operated as upstream, non-profit operations, or downstream profit centres. Downstream, the existing Law and the regulations set out only general provisions on LNG. Under these, the operator requires a processing business licence from the Minister.

7.2 What Governmental authorisations are required to construct and operate LNG facilities?

As mentioned above, a downstream legal entity operating the processing facilities must be an Indonesian legal entity (wholly-owned by Indonesians or an Indonesian company with foreign investors (a “PT PMA”). In the case of a PT PMA, an investment licence from the Capital Investment Coordinating Board (BKPM) is required.

To construct LNG facilities, the operating company will need to purchase the land (and obtain/register title on it) and obtain a location permit and licence to construct the facilities from the relevant regional government. A number of other operational licences, such as a licence to extract water and environmental approvals, will also be needed.

7.3 Is there any regulation of the price or terms of service in the LNG sector?

Effectively yes, as the State’s entitlement to natural gas production from a field supplying an LNG plant will be sold along with the production sharing contractor’s entitlement. Accordingly, the Government has an effective right to approve the sale price. If LNG processing is independent from upstream activities, the price is to be determined solely by seller and buyer.

8 Competition

8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

The Business Competition Supervision Commission (the KPPU).

8.2 What criteria does the regulator have in determining whether conduct is anti-competitive?

The primary legislation governing competition in Indonesia is Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition (the “AML”), which came into effect on 5 March 2000.

The AML adopts the approach taken by the US’s anti-trust laws, in dividing its prohibitions into those which are applicable without qualification, and those which are applicable if certain qualifications are met. The main qualifications are the occurrence or potential occurrence of:

- monopolistic practices; essentially, control over the relevant

market by a business to such an extent that it is able to set prices and harm the public interest; or

- unfair competition; essentially, adverse competitive conditions which bar competition or which are unlawful or fraudulent.

8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The KPPU has the discretion to decide whether to take action; the law does not require it to take action in all cases. The sanctions open to the KPPU include imposing fines (of up to 25 billion Rupiah i.e. about 2.6 million US Dollars), voiding contracts, ordering specific actions, and undoing mergers and acquisitions.

8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Under the latest round Production-Sharing Contract, changes in control in the upstream sector need to be approved by BPMIGAS and the Minister. Further, any transfer of a participating interest in a Production-Sharing Contract requires an approval from BPMIGAS and the Minister. The approval process can take 4 - 8 weeks or longer.

In the downstream sector, changes in control do not need to be approved by BPH Migas. However as mentioned above, a Special Right is not transferable, so a company seeking to directly acquire gas pipeline transportation infrastructure must apply for the Special Right from BPH Migas.

The KPPU is authorised to review mergers and acquisitions above certain thresholds. This authority is not yet in force as the thresholds are yet to be stipulated by the government (however, the draft regulation proposes the threshold in excess of Rp 100 billion (US\$ 10,700) for assets and Rp 500 billion (US\$53,500) for turn over). KPPU has circulated a government regulation draft on this and has stated its aim to have the regulation issued in 2008.

9 Foreign Investment and International Obligations

9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

Investment in the upstream sector can be carried out directly by a foreign company, without having to establish a PT PMA first.

However, involvement in the downstream natural gas sector (such as trading, transportation, distribution and processing) must be done through an Indonesian legal entity (which includes PT PMAs for foreign investors). If a foreign company intends to acquire an interest in this sector through the purchase of shares in an existing Indonesian company that has not been formerly established as a PT PMA, then the status of the target will need to be changed to a PT PMA. The approval of the Capital Investment Coordination Board will need to be obtained for this. There is no foreign shareholding limitation in the downstream natural gas sector.

Pursuant to the new investment law, there will be no differentiation between a PT PMA, a domestic investment company ("PT PMDN"), and an ordinary company ("PT Biasa"). However, implementing regulations regarding this move are still pending. For the time being, foreign investors continue to invest in Indonesia using a PT PMA vehicle.

9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

The impact of international treaties on regulatory policy is muted, however, on 5 July 2002, Indonesia signed a memorandum of understanding with a number of ASEAN (Association of South East Asian Nation) members to develop an inter-ASEAN natural gas pipeline network. The participating countries are Brunei, Malaysia, Philippines, Singapore, Thailand and Vietnam.

10 Dispute Resolution

10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

There are no compulsory dispute resolution procedures applying to the natural gas sector. The dispute resolution forum is normally specified in the relevant contract. Under Indonesian law, the parties are free to select the forum they wish to use. This means that the parties are free to submit their claims either to Indonesian or to non-Indonesian courts, or to arbitration. It should be noted that foreign court decisions are not enforceable in the courts of Indonesia and at best will be persuasive only. Accordingly, for commercial contracts involving foreign parties, arbitration is favoured over Indonesian courts (see question 10.2 below).

Although no particular type of local counterparty enjoys specific legal immunity, contracts with State-owned companies should include waivers of sovereign immunity. Additionally, they should specify that they are entered into on a commercial basis.

10.2 Is the country a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Indonesia is a signatory to the NY Convention, ratified by Presidential Decree No. 34/1981. The provisions of the NY Convention are also adopted under Law No. 30/1999 on arbitration and alternative dispute resolution. Under this Law, foreign arbitral awards are recognised and enforceable in Indonesia as long as they satisfy the following conditions:

- the award must be granted by an arbitration tribunal from a country which has entered into either a bilateral agreement with Indonesia regarding the recognition of arbitral awards, or a country which, together with Indonesia, is also a signatory to an international convention regarding the

recognition and enforcement of international arbitration awards (such as the NY convention);

- the award arises out of a dispute which is “commercial” in nature;
- the award does not contravene public order; and
- the award may be enforced only after a writ of execution is obtained from the Chairman of the District Court of Central Jakarta (in cases where one of the parties is the State of Indonesia, the writ of execution must be obtained from the Supreme Court).

The application for enforcement must be accompanied by several supporting documents (including the original/ authentic duplicate of the award and the related agreements and the official translation thereof), together with a statement from the Indonesian diplomatic representative in the country where the award was rendered on the treaty obligations between such country and Indonesia regarding the recognition and enforcement of international arbitration awards.

Indonesia is also a signatory to the ICSID convention.

10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

As mentioned above, there is no particular type of local counterparty which enjoys specific legal immunity. There have been cases where the Government has been sued before the local courts. This notwithstanding, where possible, waivers of immunity should be specified in any contract with State-owned companies or State organs (including BPMIGAS).

10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

None that we are aware of. However, there have been foreign arbitrations which have been successful against State-owned companies, such as the case of Pertamina and Karaha Bodas Company.

11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Indonesia.

The key trend currently shaping government policy with regards to natural gas is the increasing priority being placed on satisfying national demand. This is reflected in the government’s relaxation of domestic gas prices, to encourage more suppliers to provide gas, and in efforts to encourage the appraisal and development of Coal Bed Methane.

Allied with the emphasis being placed on domestic consumption, is the risk of increasing resource nationalism. This may be being exacerbated by the forthcoming Presidential elections next year. It is reflected in, for example, accusations of abuse of the cost-recovery system by oil and gas companies (and new regulations designed to tighten this up). It may also be reflected in attempts to renegotiate the Tangguh LNG price in respect of some existing contracts.

Despite this, however, Indonesia still remains remarkably open for foreign investment and development in the natural gas upstream and downstream sectors.

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