

CLIENT ALERT 2015 FEBRUARY 25

Energy and Mineral Resources Ministry Delegates New Power Sector Licensing Authority to BKPM

If the Government's plan to install an additional 35,000 megawatts of power generation capacity during the 2015 – 2019 period is to have any chance of success, a comprehensive one-stop integrated service to facilitate the licensing process will be essential.

An earlier attempt to streamline the licensing process had been made by the Minister of Energy and Mineral Resources (“MEMR”) through Regulation No. 05 of 2010 (“MEMR No. 5/2010”) which delegated a limited amount of licensing authority in the energy and mineral resources sectors to the Investment Coordinating Board (“BKPM”). However, this regulation was revoked on 24 December 2014, in so far as it refers to the electrical power sector, by MEMR Regulation No. 35/2014 (the “New Regulation”), which entered into effect on its date of issuance. While the New Regulation sees the BKPM lose the (limited) power-sector licensing authority it was granted by MEMR No. 5/2010, such loss is more than offset by the significant new licensing authority in the power sector granted to the BKPM by the New Regulation.

Revocation of MEMR No. 5/2010

As a result of the revocation of MEMR No. 5/2010, the BKPM is no longer authorized to issue the following licenses in the electrical power sector:

1. Interim electrical power licenses for public purposes;
2. Interim electrical power licenses for private purposes;
3. Customs approvals for the importation of machinery/equipment; and
4. Operating permits for captive power plants operating on a cross-provincial basis.

BKPM's Licensing Authority under the New Regulation

Under the New Regulation, the BKPM, acting on behalf of the MEMR, is granted the authority to issue 10 (ten) types of license/approval, namely:

1. Electrical Power Supply Licenses / *Izin Usaha Penyediaan Tenaga Listrik*;
2. Operating Licenses / *Izin Operasi*;
3. Work Area Determinations / *Penetapan Wilayah Usaha*;
4. Power Support Service Licenses / *Izin Usaha Jasa Penunjang Tenaga Listrik*;
5. Cross-border Power Purchase & Sale Licenses / *Izin Jual Beli Tenaga Listrik Lintas Negara*;
6. Power Network Utilization for Telecommunications, Multimedia and Informatics/*Izin Pemanfaatan Jaringan Tenaga Listrik Untuk Kepentingan Telekomunikasi, Multimedia dan Informatika*;
7. Geothermal Preliminary Survey Assignments / *Penugasan Survei Pendahuluan Panas Bumi*;
8. Geothermal Licenses / *Izin Panas Bumi*;
9. Geothermal Support Service Approvals / *Persetujuan Usaha Penunjang Panas Bumi*; and
10. Explosives Storage Licenses for the Geothermal Industry / *Izin Penggunaan Gudang Bahan Peledak Panas Bumi*.

The procedures for submitting license/approval applications and the required supporting documents are unaffected by the New Regulation. For instance, an application for an Electrical Power Supply License continues to be governed by the procedures and documents set out in MEMR Regulation No. 35 of 2013. An applicant may keep track of the progress of its application through an online monitoring system that is accessible to registered applicants. Currently, the computerized application system is still being rolled out, but it is expected that in the future all applications will be capable of being handled online.

In order to facilitate the application process, the MEMR has seconded a number of its officials to the BKPM so as to assist with the processing of applications. The MEMR liaison officers also have the authority to provide technical recommendations and/or issue operating licenses, if required.

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Applications in Process

The New Regulation does not clearly spell out what happens to an application that has been submitted to the MEMR prior to the issuance of the New Regulation. According to a liaison officer at the BKPM whom we spoke to, where an application has been submitted prior to the issuance of the New Regulation and its processing is almost completed, the license will be issued by the MEMR. However, if such application is incomplete and further documents and/or information are required, the process will be transferred to the BKPM, which will then be responsible for issuing the license.

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