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Government Responds Quickly to BP Migas Dissolution

The Government reacted quickly to the Constitutional Court's ruling on 13 November 2012 that the Upstream Oil and Gas Regulator (BP Migas) was unconstitutional on the grounds that its establishment violated Article 33(3) of the Constitution in that it failed to reflect full state control over natural resources "so as to provide maximum benefit to the people."

Presidential Regulation No. 95 of 2012, dated 13 November 2012, the same date as the Constitutional Court's decision, transfers on an interim basis all of the operational assets, duties and functions of BP Migas to the Minister of Energy and Mineral Resources ("MEMR") until such time as new legislation can be issued. The Regulation expressly states that all contracts entered into by BP Migas shall continue to be valid until they run their course.

Presidential Regulation No. 95 was quickly followed by the issuance of MEMR Decree No. 3135 K/08/MEM/2012, also dated 13 November 2012, which stipulates the transfer of the operational structure, duties and functions of BP Migas to a new body, subordinate to the MEMR, to be known as the Interim Upstream Oil and Gas Line Unit.

Decree No. 3135 states that all BP Migas personnel are transferred with immediate effect to the new work unit, as are also all of the assets and funding resources of BP Migas. In addition, all nomenclature and operational procedures applied by BP Migas shall be applied by the new body.

At the same time, the Minister of Energy and Mineral Resources issued Decree No. 3136 K/73/MEM/2012, which transfers senior officials of BP Migas to the Interim Upstream Oil and Gas Line Unit under the same terms and conditions of employment as they enjoyed at BP Migas.

Neither the Presidential Regulation nor the Ministerial Decrees make specific mention of whether the technical processes applied by BP Migas vis-à-vis third parties should also be applied by the new line unit. Such technical processes include the approval of production-sharing contractors' annual work programs and budget plans (WPNB) and approvals for major PSC expenditures (both of which are necessary in order for PSCs to be able to recover their costs), as well as the application of BP Migas operational procedures (PTK).

However, we note that Article 3 of Presidential Regulation No. 95/2012 provides that the management processes applied by BP Migas will also be applied by the MEMR, while Paragraph 1 of MEMR Decree No. 3135 stipulates that the duties, functions and organizational structure of BP Migas are to be transferred to the new body. When we consider that Article 11 of Government Regulation No. 42/2002 (on the establishment of BP Migas) gives BP Migas the authority, among other things, to approve contractors' work programs and budgets, it may be concluded that this authority has now been vested in the new

body. However, we consider that matters as important as this need to be spelled out with greater clarity so as to avoid the possibility of confusion or conflicting interpretation.

Taken together, the Presidential Decree and Ministerial Regulations mean that the potential for a legal vacuum has been averted and that essentially very little has changed in operational terms as a result of the Constitutional Court's decision. However, the prospect of further uncertainty in Indonesia's oil and gas sector has not disappeared entirely given that it is unclear as yet as to whether the Government and the National Legislature (DPR) will now embark on the framing of new oil and gas legislation, as recommended by the Constitutional Court.

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