

Indonesia: MEMR Regulation No.5 of 2025: Challenges and Insights for New Renewable PPAs in Indonesia

In brief

On 27 February 2025, the Minister of Energy and Mineral Resources ("**MEMR**") issued Regulation No. 5 of 2025 on Guidelines for Renewable PPAs ("**MEMR 5/2025**"). That comes eight years after the MEMR issued the first regulation that in a material way sought to impose certain requirements for provisions in non-renewable power purchase agreements (PPAs) (i.e., MEMR Regulation No. 10 of 2017 on Principles of PPAs, which has been amended several times – "**MEMR 10/2017**").

We set out our analysis of MEMR 5/2025 in this alert.

In this issue

[What power projects are covered by MEMR 5/2025?](#)

[What is regulated under MEMR 5/2025?](#)

[Closing](#)

What power projects are covered by MEMR 5/2025?

The regulation applies specifically to renewable power projects, whether intermittent (e.g., wind and solar) or otherwise (e.g., geothermal, hydro, biomass), and with or without battery energy storage systems. This regulation fills the gap left by MEMR 10/2017, which, although it was intended to apply to all power plants including geothermal, hydro and biomass, indicated that a separate MEMR regulation would govern PPAs for intermittent, biogas, <10MW hydro, and waste-based power plants.

Additionally, the transitional provisions of the regulation provide that this regulation will not impact existing PPAs that were signed prior to the regulation being issued (unless the PPAs are extended, when they will need to comply with MEMR 5/2025). MEMR 5/2025 will apply for projects that are currently in a tender process up to the submission of proposals stage. Accordingly, we suspect that PLN will soon be issuing extension notices for ongoing bid processes, to give PLN enough time to adapt the model PPAs contained within those bid packages to the requirements of MEMR 5/2025.

What is regulated under MEMR 5/2025?

While there are various significant matters regulated under MEMR 5/2025, we will focus only on some of the key issues.

#1. Is it principally a guideline or a mandatory requirement? Contrary to MEMR 10/2017, which included a stern wording that the purpose of the regulation was to *regulate* the principles of a PPA, MEMR 5/2025 repeatedly states that it is a *guideline*. While the repeated use of this term gives the impression that MEMR 5/2025 is not meant to dictate how provisions in PPAs must be drafted, in a public socialization of MEMR 5/2025 held by the MEMR, two officials gave different answers when asked if this regulation is intended to be 'just a guideline', which would allow parties to agree to other matters, or if all PPAs must abide by this regulation. Regardless of whether MEMR 5/2025 is a guideline or a regulation, PLN RFPs typically restrict major deviations from the draft PPA rolled out in the RFP. During the negotiation process, PLN has been quite conservative in interpreting MEMR 10/2017 – so it remains to be seen whether PLN would be willing to be more flexible given the guideline nature of MEMR 5/2025.

#2. Force majeure events – will this create bankability concerns? MEMR 5/2025 indicates that only three types of events can be considered as force majeure events, i.e., (i) war, (ii) natural disasters (floods, earthquakes, and any other natural events outside of human control), and/or (iii) archeological or dangerous findings at the project site. Any of these three events can only be considered as a force majeure event if there is a determination from the relevant authority. Therefore, there is a risk that a disastrous but localized event outside of human control (e.g., a fire at a PLN or IPP facility caused by a lightning strike) may not be determined by a government authority as a force majeure event, and will not excuse any failure to take (or deliver) electricity.

Furthermore, it appears from the provisions in MEMR 5/2025 that there is no room to include any other event as a force majeure event, even if PLN and the IPP wish to include them, *unless* the MEMR approves that inclusion. The wording in Article 35(4) of MEMR 5/2025 creates an ambiguity. Does it mean each time there is a typical force majeure event other than the above (e.g., industrial action, strikes, boycott, explosions, contractors/subcontractors strike), the parties must seek approval from the MEMR? Or does this require the parties in a PPA negotiation to seek approval in advance to include those events as a force majeure event in the draft PPA being negotiated – thus limiting freedom of contract?

This new concept potentially takes away the parties' freedom to determine what events should be considered as force majeure events, and directly involves the government in the implementation of a 'private' contractual arrangement, which may result in significant bankability concerns. Query also whether, given that MEMR 5/2025 is a guideline, the MEMR approval is not mandatory.

#3. Are parties still free to agree on events that give rise to deemed dispatch and deemed commissioning payments?

MEMR 5/2025 indicates that PLN will not be obliged to pay for deemed commissioning or deemed dispatch if there is a force majeure event – whether affecting PLN or the IPP. In the past, bankable PPAs always recognized various events entitling IPPs to deemed commissioning (and deemed dispatch), including force majeure events affecting PLN and IPP, subject to certain conditions. Although MEMR 5/2025 allows the PPA term to be extended in a force majeure event affecting PLN, this will not fully address lenders' concerns due to the impact of revenue loss on the ability to service the debt.

However, while on a first reading it may appear that MEMR 5/2025 is looking to curb events that give rise to deemed commissioning and deemed dispatch payments, it is important to note that Article 1 of MEMR 5/2025 actually allows PLN and IPPs to determine events that give rise to deemed dispatch and deemed commissioning in each PPA. As such, we think PLN and IPPs can still agree and ensure that provisions regarding deemed commissioning and deemed dispatch will keep their PPAs bankable. In addition to the parties' freedom of contract, MEMR 5/2025 also sets out certain events guaranteeing deemed dispatch payments, such as in case of PLN's curtailment (whether due to a maintenance or an emergency situation), as long as the curtailment is not caused by the IPP's breach of PLN's grid code and distribution code.

On another note, with the limitation of force majeure events (which is usually a deemed dispatch event given a certain grace period), there will be more limited events that can form a basis for IPPs to claim deemed dispatch and this can become a real bankability concern. The restrictive provision in Article 14 (1) and (4) of MEMR 5/2025 may be used to argue (also in line with the removal of FM events from risk allocations under Article 9 of MEMR 5/2025) that PLN will be completely excused from performance in case of a force majeure event, including being excused from the requirement to pay deemed commissioning and deemed dispatch.

#4. Shares in IPP can be transferred to 90% direct subsidiaries, or to lenders exercising their step-in rights.

While transfers of shares in IPP to 90% direct subsidiaries are not new, we find the provision regarding transfer of shares '*to lenders* exercising their step-in right' quite difficult to comprehend. The step-in right in power projects is never about a lender becoming the shareholder of an IPP. The step-in right is instead to allow the lender to call in a third party to take over the management of the project to rectify any breach or potential breach of the PPA, the project documents and/or loan agreement in order to avoid the IPP breaching these agreements. In typical project finance

arrangements for IPPs in Indonesia, the step-in right is not meant to transfer the shares in the IPP to anyone (especially not to lenders). Also, the sponsors' shares in the IPP are normally pledged as security to the lenders, and lenders may lack the expertise to run the IPP, and it might be also challenging to quickly find a capable party to run the IPP.

It is also important to note that under Indonesian laws, pledged shares cannot be owned by the pledgee in case of enforcement of security. Instead, any pledged object must be auctioned when a pledgee exercises a pledge and the pledgee would be entitled to get the proceeds of the auction. Therefore, we do not see how this provision regarding the transfer of shares to lenders exercising their step-in right would be relevant to address lenders' concerns in connection with enforcement of security, i.e., where the lenders need to sell the shares in the IPPs to interested parties in case of default by the IPPs and have the ability to do so without being restricted or requiring prior approval from any party, including the MEMR or PLN.

#5. Different types of purchase of excess power? MEMR 5/2025 states that where PLN purchases power above contracted energy (CE) or availability factor (AF), then the following conditions must be met:

1. The excess power is capped at unit rate capacity (URC).
2. The price is capped at 80% of purchase price.
3. The purchase is in line with the demand in the local electricity system.

On the other hand, MEMR 5/2025 also states that where a power plant can produce more electricity than the URC, to optimize the plant, PLN can purchase electricity from the plant provided that:

1. The purchase is done at the lowest purchase price.
2. The purchase is capped at 30% of CE or AF.
3. The purchase is in line with the demand in the local electricity system.

It is not entirely clear what the difference is between the 'regular' purchase of excess power and a purchase for optimization of the power plant. At what point will the purchase be considered a 'regular' purchase or an 'optimization' purchase? The two types of purchase entail different pricing mechanisms and opposite caps.

In any event, it has been common practice lately that purchase of excess power is limited – whether in pricing or in capacity. It remains to be seen how PLN will form its PPA template for future intermittent power projects based on this regulation.

Closing

MEMR 5/2025 attempts to set new guidelines and rules for PPAs for intermittent power plants and shift some of the balance of the risk allocations between PLN and IPPs. Nevertheless, while it is merely a guideline for the PPAs, the practical implications of this regulation will unfold once PLN issues its model PPA in future power procurements. Only then will we see to what extent there will be any flexibility in interpreting the guidelines. It remains to be seen how the guidelines under MEMR 5/2025 will play out and what positions the industry will adopt to adapt to the new and emerging challenges created by MEMR 5/2025.

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