

Omnibus Law on Job Creation

World Bank Comments on Draft Implementing Regulations on National Strategic Projects

The efforts in this section to facilitate delivery of PSN projects, in particular project preparation, are extremely important. Please find the following comments on the Draft Implementing Regulations:

Art 6: The current approach to assignment of projects to SOEs without a clear strategy for funding is creating huge fiscal and financial risks for the SOEs and for Government. Rather than reinforce this approach, this GR would be an excellent opportunity to resolve some of these constraints and improve the ability of SOEs to deliver PSN projects.

Art. 9 and 25: Land acquisition remains one of the most difficult constraints to project implementation. Article 9 does not appear to do much to resolve land issues. Might there be an opportunity here to improve coordination, in particular between local and national authorities? Art 25(2) allows procurement of PSN projects once land has been identified. This is far too early, to avoid GoI liabilities and delay, projects should not go to procurement until land is acquired.

Art 22(3)(s): This section might be interpreted to require all PSN dispute resolution to be in Indonesia. Access to international arbitration is critical to the success of the PSN program, would it be possible to clarify this provision?

Art 19 and 28 allow for beauty contests and Art 29 allows unsolicited proposals with swiss challenge, neither process is defined. Despite best intentions, these mechanisms rarely result in faster procurement, most often they result in slower procurement and selection of lower quality bidders at worse terms for the GoI, as there is limited ability to compare proposals received against other options. These mechanisms can work well in wealthy, sophisticated countries, but it is too early for Indonesia to adopt these approaches.

Art 30 requires financial close within 90 days of contract signature, with a maximum of 30 days extension by the Minister. This provision will require bidders to have underwritten bids which is far more expensive for each bidder, will increase the cost of projects, reduce the number of bidders and further advantage SOEs (with SOE bank financing). While some countries such as Canada achieve such speeds, this was only achieved after creating a project development and procurement process of great efficiency and a market for local investors/banks able and willing to incur these costs and deliver such projects. Indonesia does not have this level of bidders yet, and therefore this requirement is likely to undermine the progress made by KPPIP to date. Art 31 allows for partial loan draw to count as financial close. This will result in further advantages for SOE financiers (who are protected from political risk), and will make projects more expensive and complex (as bidders seek to meet these requirements while protecting themselves from delays that occur after the commencement of the first section of construction).

Art 31-33 allows for Government Guarantees for PSN projects issued by the "Minister in charge of government affairs in the field of state finances". Asking different Ministries to provide guarantees for different project risks (eg Investment Guarantees) will add to the coordination challenges of PSN projects, and is likely to make such approving entities even more risk averse.

Art 40(2)(a) allows direct procurement of high value consultants. It will be difficult for GoI staff to make such direct procurement without claims of corruption. It would help to have clear rules for selection, to help protect staff from such accusations.

Art 43 provides for the creation of a Business Entity Panel. However, each project (and sector) will require different types and skills from the relevant Business Entity. Even with 17 maximum members of the panel, this is likely to deprive the PSN of selecting a Business Entity with the right skills and experience. This Panel and the Panel of financiers under Art 47 are likely to require much effort and expense to create, but will have little impact on the actual selection of Business Entities or Financiers for PSN projects.