

# INDONESIA: WHAT'S NEW?

## INDONESIA EXTENDS THE TIMELINE FOR FOREIGN VESSELS TO OPERATE IN ITS WATERS



**The application of Indonesia's cabotage law has been put under the spotlight since it was first implemented in 2008. Being the world's largest archipelago nation, the Indonesian government has been trying to empower the national shipping industry.**

The government sought to achieve this by only allowing Indonesian flagged vessels to operate in Indonesian waters, subject to certain exemptions. This naturally caused concern with foreign owners and charterers, who were already carrying on significant business in Indonesia.

After almost a decade, the results of this implementation are varied. The availability of Indonesian flagged vessels that are able to carry out offshore activities, especially in the oil and gas sector, is limited and as a result the government has to support the business by allowing certain foreign vessels to operate in Indonesian waters.

This has required a careful evaluation of the existing cabotage laws, resulting in a further extension of the period in which certain types of vessels are exempted. Although still fully committed to the implementation of the cabotage principle, the Indonesian government has recognised that it would be beneficial for all stakeholders having an interest in the shipping and oil and gas sector to extend the exemption period, particularly while these sectors are facing economic challenges of their own.

### **Further exemption on cabotage rule**

The Indonesian Minister of Transportation (MOT) recently issued regulation No. PM 100 of 2016 concerning procedures and requirements to grant permits to use foreign vessels for domestic sea transportation - activities other than the transportation of passengers and/or goods (PM 100/2016).



PM 100/2016 extends the exemptions on the usage of foreign flagged vessels that were previously governed under the MOT regulations No. PM 10 of 2014 and PM 200 of 2015. The current exemptions for offshore drilling vessels (including jack-up rigs, semi submersible rigs and deepwater drilling vessels) are now extended until December 2017.

Under PM 100/2016, foreign flagged vessels are permitted to carry out offshore activities in Indonesian waters provided that:

1. Indonesian flagged vessels are not available or not sufficiently available to cover domestic requirements.
2. The foreign flagged vessel is to be used for national interest projects based on a recommendation of the relevant government institutions.
3. Such vessels must be operated by an Indonesian shipping company that holds a valid sea transport business licence.
4. The vessels will only be utilised for a very limited period of time.

Offshore activities stipulated under PM 100/2016 cover oil and gas survey, drilling, offshore construction, dredging, salvage and underwater works.

### Process of obtaining a permit

In order to secure a permit (known as Izin Penggunaan Kapal Asing or IPKA) to use foreign flagged vessels for offshore activities, the Indonesian shipping company must submit an application to the MOT along with various supporting documents as set out in PM 100/2016.

Before submitting the application, the applicant is required to conduct

at least one procurement or tender process to ascertain the availability of an Indonesian flagged vessel of the same type and specification. The procurement process prioritizes Indonesian flagged vessels, foreign vessels which are to be reflagged as Indonesian flagged and foreign flagged vessels purchased by Indonesian nationals or entities under leasing schemes.

The applicant should notify and provide evidence to the regulators that an attempt has been made to procure an Indonesian flagged vessel without success. The regulators will further assess the situation and evaluate the application before granting the IPKA.

An IPKA is valid for a very limited time (generally it is up to one year) and may be extended subject to the discretion of the regulators. To extend an IPKA the applicant must conduct another procurement process to ascertain if any Indonesian flagged vessels are available.

### How HFW can assist?

Despite legal and political challenges in Indonesia, foreign investors still view positive opportunities in investing in the Indonesia shipping sector.

Given the above, it is important that foreign investors are guided throughout the entire investment realisation process in Indonesia, from structuring the investment, incorporating the correct investment vehicles in Indonesia and other jurisdictions, and obtaining the mandatory permits to producing the necessary investment documentation.

HFW can assist you in structuring and restructuring your investment in Indonesia. We have Indonesian lawyers and lawyers who have advised on

complex investment and joint venture structures in this sector. We can also direct you further on the detailed regulatory conditions and requirements under the Indonesia shipping legislation, including PM 100/2016, in order to secure investment that is also compliant with the Indonesian legislation.

## Related publications

You may also be interested in the following briefings:

### The new Indonesia Investment Negative List

<http://www.hfw.com/The-New-Indonesia-Investment-Negative-List>

### Indonesia: what's new?

<http://www.hfw.com/Indonesia-whats-new-April-2016>

### Proposed joint ventures in Indonesia

<http://www.hfw.com/Proposed-joint-venture-in-Indonesia-October-2014>



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