

# WATSON FARLEY & WILLIAMS

## BRIEFING

# OWNERSHIP, CABOTAGE AND FLAG ISSUES RELATING TO INDONESIAN MARITIME ASSETS (PART I)

SEPTEMBER 2016

- BE AWARE OF INDONESIAN CABOTAGE REQUIREMENTS
- THE REGISTRATION PROCESS CAN BE LENGTHY
- IS BAREBOAT REGISTRATION POSSIBLE?
- MORTGAGE ISSUES.



This Briefing seeks to address the first hurdles that prospective maritime asset owners are likely to encounter in Indonesia, namely: asset ownership, cabotage and flag.

### **A global maritime axis**

In his inaugural speech as president of Indonesia in October 2014, President Joko Widodo revealed his vision to turn Indonesia into a global maritime axis. Almost two years later, how far is the country from fulfilling that vision? Numerous pitfalls and restrictions certainly still remain and owning and/or operating Indonesian maritime assets remains a difficult business, particularly for the unwary.

Watson Farley & Williams has advised numerous clients with the structuring, owning, operating and financing of Indonesian maritime assets, including conventional vessels, OSVs and floating production units. This Briefing aims to highlight key Indonesian cabotage and flag issues of which owners/operators of maritime assets should be aware. It is the first of a series of client Briefings relating to the key Indonesian issues connected to the owning and operating of maritime assets in Indonesia.

### **The first hurdle: cabotage and SIUPAL**

Parties wanting to own and operate maritime assets in Indonesia will need to satisfy Indonesian cabotage requirements relating to flag and crewing and hold a Marine Transport Business Permit, known as SIUPAL (*Surat Izin Usaha Perusahaan Angkutan Laut*). Indonesian cabotage and SIUPAL requirements generally apply to offshore

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drilling rigs and floating production units (e.g. FPSOs, FSRUs and OSVs) as well, unless a foreign flag exemption applies.

Indonesia’s cabotage laws, which are set out in Law No. 17/2008 (“Cabotage Laws”) and which came into force in May 2011, generally limit domestic sea transportation to Indonesian-flagged vessel. In order for a vessel to register under the Indonesian flag, the vessel has to be, among other things:

- at least 7 GRT; and
- owned by: (i) an Indonesian individual; (ii) a wholly Indonesian-owned company; or (iii) an Indonesian joint venture foreign investment company (i.e. a Penanaman Modal Asing or PMA company) that is itself majority owned by an Indonesian individual or wholly Indonesian-owned company.

The Indonesian authorities may look beyond the immediate parent of the Indonesian vessel owner when assessing if the above ownership requirement has been met and obvious nominee structures are increasingly being scrutinised.

In addition, all operators of maritime assets in Indonesian waters – including assets that are not used for transportation purposes – will need to obtain a SIUPAL. Each SIUPAL is issued to a company and not to a particular vessel. A SIUPAL will be issued to a PMA company only if it has at least one Indonesian-flagged vessel that is at least 5,000 GRT.

In addition, a question remains about whether the vessel used to obtain the SIUPAL must be self-propelled. Various officials in the Indonesian Directorate General of Sea Transportation (“DGST”) have taken the view that this is required, although exemptions have been granted in the past.

#### Foreign flag exemptions

When the Cabotage Laws were first introduced, a number of limited exemptions were made for foreign flagged vessels/assets used in specific oil and gas activities. The expiry date for most of these exemptions has now passed. At present, the only remaining exemption (as set out in the Indonesian Ministry of Transport’s Regulation No. PM 200 of 2015) relates to certain drilling assets (including jack ups, semi subs and drill ships). This remaining exemption will expire at the end of 2016 unless it is extended. Parties that want to obtain the above exemption have to get a Foreign Vessel Utilisation Permit (IPKA) from the Indonesian department of transport. Each IPKA will be valid for up to a year.

#### Crewing

The Cabotage Laws also require all Indonesian vessels to be crewed by Indonesian nationals, but exemptions may be granted, particularly for Masters and Chief Engineers. The Indonesian Ministry of Manpower maintains a regulation listing the positions open to non-Indonesians.

#### Registration of title

The DGST maintains the Indonesian ship registry (which records both the title and mortgages placed on a vessel). The central registry of ships is in Jakarta and contains the registration information of all Indonesian-flagged ships. Local ships registries are also maintained at local DGST offices, but they contain only information about ships registered with those offices.

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The owner of the vessel may choose to register the vessel at the central ship registry or a local ship registry in Indonesia. Title and legal ownership of an Indonesian-flagged vessel is evidenced by a registration deed issued by the central or local DGST office.

It is important to note that the Indonesian vessel registration process can be time consuming. Even if a vessel is eligible to be registered as an Indonesian-flagged vessel, the registration process can be lengthy.

### **Mortgages**

Indonesian vessel owners/operators should be aware of mortgage requirements for Indonesian maritime assets, particularly if they intend to finance those assets through third-party debt.

A statutory short form of mortgage deed is provided for in the Minister of Transportation Regulation No. PM 13 of 2012. Parties may enter into a separate deed of covenant to supplement this mortgage, but this deed of covenant will not be registered with the DGST. In practice, parties sometimes seek to register their own long form mortgage (hypotheque) instead of the statutory mortgage, but the Indonesian ship registry may refuse such registration on the basis that the form of the long form mortgage is not the same as the statutory mortgage.

An Indonesian ship mortgage will be perfected only upon registration of the mortgage with the DGST.

### **Bareboat registration**

Bareboat "chartering-out" of Indonesian vessels are effectively prohibited by sections 160 and 167 of the Indonesian Law No. 17 of 2008 on Shipping.

### **Closing thoughts.**

Indonesian cabotage regulations are by no means straightforward. Numerous hurdles exist for foreign ship owners/operators looking to own and operate maritime assets in Indonesia. This Briefing provides a short summary of ownership, cabotage and flag issues that, in most instances, will be the first hurdle to owning/operating Indonesian maritime asset.

A further Briefing on practical and commercial considerations relating to Indonesian maritime assets will follow.

*DISCLAIMER: This Briefing was prepared for general information and should not be used as a basis for making business decisions nor as a substitute for professional legal advice in any jurisdiction. While it may direct attention to and comments on aspects of law, we are not advising on Indonesian law and it is not intended to provide specific legal advice on the subject matter. Advice should be sought before acting on the information conveyed in this Briefing.*

## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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