

# Amendment to cabotage law



**By Jonathan Streifer**

The Government of Indonesia recently amended regulations to permit foreign flagged vessels to operate in Indonesia under certain circumstances to support the oil and gas industry.

The genesis of Indonesia’s cabotage regulations is the *Shipping Law of 2008* (Law No. 17 of 2008 regarding Shipping). Article 8 of the *Shipping Law* provides that only Indonesian flagged vessels owned by Indonesian shipping companies can engage in domestic sea transportation. Regulations pursuant to the *Shipping Law* further provide that foreign share ownership in an Indonesian shipping company is limited to 49 percent. The *Shipping Law* has been broadly interpreted to include not only vessels commercially engaged in domestic sea transportation of goods and persons, but also various types of floating platforms, vessels used to provide services including technical and repair services and vessels used by companies for their own purposes ancillary to their core business. This has subjected companies that arguably do not engage in domestic sea transportation as a business to the above conditions, which many companies view as onerous. The cabotage provisions became broadly effective as of May 7, 2011, and it is now well settled that all vessels operating for domestic purposes in Indonesian waters are subject to them.

The oil and gas industry has been particularly affected due to lack of supply of vessels meeting the above conditions. The reasons for the shortage are varied including, among others, the financial and technical capability of Indonesian companies to acquire and operate such vessels which can involve substantial capital investment.

To alleviate the expected negative effect of the *Shipping Law* on the country’s oil and gas industry, the Government recently approved *Government Regulation No. 22 of 2011 on the Amendment of Government Regulation No. 20 of 2010 on Water Transportation* (the Amendment).

The Amendment is intended to broaden the rules on use of foreign flagged vessels through definitional changes and to exclude

certain vessels from the cabotage requirements that do not provide domestic sea transportation services of goods or persons.

The activities for which foreign flag dispensation can be obtained with a permit from the Minister of Transportation (the MOT) include (a) oil and gas survey, (b) drilling, (c) offshore construction, (d) supporting offshore operations, (e) dredging, and (f) salvage and underwater works.

The MOT has also issued *MOT Regulation No. 48 of 2011* (the MOT Regulation) regarding the procedures to obtain a permit to use foreign flagged vessels. The MOT Regulation is the implementing regulation of the Amendment, and clearly provides that the permit is only available if “Indonesian-flagged vessels are not available or are not sufficiently available.”

The MOT Regulation also specifically describes the types of activities falling under each category of activities set forth in the Amendment. For example, oil and gas survey covers seismic survey, geophysics survey and geotechnical survey.

The MOT Regulation stipulates the requirements to obtain the permit. The required information includes a work plan with the schedule and location of the activities marked with geographical coordinates. A national sea transportation company, or shipping agent, must operate the foreign flagged vessel through a charter party arrangement with the owner of the foreign vessel.

Prior to obtaining the permit, a tender must be conducted which fails to produce a winning bidder. The permit is issued for a maximum period of three months and may be extended after evaluation to determine whether Indonesian flagged vessels are available.

The regulations are still very restrictive on the use of foreign flagged vessels, particularly the limited time period of the permit of three months, which in the case of many contracts may not be sufficient to fulfill the contract.

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