

INDONESIA: WHAT'S NEW?

REGULATORY DEVELOPMENT IN THE INDONESIA MINING SECTOR



The Indonesian government has promulgated the following new mining regulations:

- Government Regulation No 1 of 2017 regarding the Fourth Amendment to Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities.
- Regulation of the Minister of Energy and Mineral Resources (MEMR) Number 5 of 2017 on Increasing Added Value Through Domestic Processing and Refining of Minerals.
- Regulation of the MEMR Number 6 of 2017 on Procedures and Requirements to Obtain Recommendations for Export Sale of Mineral Resulting from Processing and Refining.

Certain regulations had been promulgated in 2014 (2014 Regulations) under Law No. 4 of 2009 on Mineral and Coal Mining (Mining Law 2009) and these regulations provided that minerals exploited by miners must be processed domestically. The objective of 2014 Regulations was to encourage mining companies to construct smelters and other infrastructure to refine and add value to the minerals before export.

Impact of these new regulations

The impact of these new regulations is twofold:

- First, there has been an apparent relaxation on the ban on the export of unprocessed minerals imposed by virtue of the 2014 Regulations.
- Second, that all foreign investors must divest their majority stake in Indonesian mines by the end of the tenth year of production.

Export permits

The new regulations provide that local miners can now apply to the MEMR for permission to export unrefined mineral concentrates (copper), washed ore (bauxite) and low grade ore (nickel) provided that they:

- Convert their existing "Contract of Work" (a form of mining concession granted prior to the Mining Law 2009) into a Special Mining Business Permit (Izin Usaha Pertambangan Khusus (IUPK)) under the Mining Law 2009.



- Seek approval to export from the Ministry of Trade on an annual basis.
- Fulfill their domestic supply obligations to local refineries and processing plants.

The MEMR has already indicated that the policy intent of these new regulations was to stay faithful to the objectives of the Mining Law 2009. Accordingly, permission to export unrefined mineral concentrates will only be granted to those mining companies that hold an IUPK (or a Mining Business Permit/Izin Usaha Pertambangan (IUP)) and that can demonstrate that they have made progress on the development of their refineries and processing infrastructure.

The MEMR has also indicated that these export permits will be reviewed every six months and these permits will be revoked if it is deemed that the miner has made insufficient progress with its development activities.

Divestment obligations

Before the new regulations were issued, foreign investor holders of IUP or IUPK could apply for exemptions to the divestment obligations requiring divestment down to a 49% stake/shares by the end of the tenth year of production if they were engaged in underground mining (in which case they could retain up to 70% stake) or if they conducted smelting activities of their product (in which case they could retain up to 60% stake). Further, it was generally understood that the divestment timeline commenced five years after the start of actual production.

This is no longer the case. Under the new regulations, all foreign investors

must divest their majority stake by year 10 of production and the divestment timeline starts no later than 90 calendar days, after the expiration of a period of five years from the date of issuance of the IUP or IUPK.

The new regulations also provide that the divestment requires the divested stakes to be offered to Indonesian parties in the following order but does not specify a time limit for each stage of offer:

- The Indonesian government, or in this case the central government.
- Provincial/regional governments.
- State-owned companies and regional-owned companies.
- Private Indonesian entities.
- If shares are not divested by this process divestment may be carried out through an IPO on the Indonesian stock exchange.
- The new regulations also provide that the price at which the shares must be divested this will be determined based on fair market value of those shares excluding the value of coal or mineral reserves.

How HFW can help

It is apparent that the Indonesian government is committed in taking a more dominant role in the development of the energy resources sector in Indonesia. Some new challenges in the mining sector have emerged during the last couple of years and foreign investors investing in Indonesia are strongly recommended to seek professional legal advice from advisors who are familiar with the Indonesian mining sector with on the ground Indonesian experience.

HFW has Indonesian qualified and international lawyers who have worked on complex transactions involving Indonesian mining assets for over 20 years. We can advise and assist you further on structuring your investment in this sector. We can also direct you further on the detail regulatory conditions and requirements under the Indonesia mining legislation, in order to secure your investment that is also compliant with the Indonesian legislation.

Related publications

You may also be interested in the following briefings:

Indonesia: what's new? Indonesia extends the timeline for foreign vessels to operate in its waters

<http://www.hfw.com/Indonesia-extends-the-timeline-for-foreign-vessels-to-operate-in-its-waters-November-2016>

Indonesia: what's new? The Indonesia 2016 Negative List – foreign investment opportunities remain?

<http://www.hfw.com/Indonesia-whats-new-Negative-List-June-2016>

Indonesia: what's new?

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

Proposed joint ventures in Indonesia

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