Investment and Taxation Guide
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Mining in Indonesia

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Photo source : PT Newmont Nusa Tenggara

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Preface

The 12th of January 2014 was the fifth anniversary of the issuance of the new Mining Law, which aims to maximise the benefits of the coal and minerals sectors for Indonesia. Various key implementing regulations, including related amendments, have been issued by the Government over these past five years to ensure that the ultimate goals of the Mining Law can be materialised.

However, over this period, stakeholders in the Indonesian mining industry have experienced various challenges in understanding and implementing the Mining Law and related regulations. This is the case for both Contract of Work ("CoW") and Coal Contract of Work ("CCoW") holders as well as IUP (ex-KP) holders. As we write, there are still various issues outstanding, some of which are proving challenging to deal with. Two examples of this are the protracted CoW/CCoW renegotiations and the newly implemented in-country processing/refining requirements.

Despite there being a requirement to renegotiate CoW/CCoW terms within one year of the effective date of the Mining Law, negotiations between the Government and Contractors are still ongoing after five years. There are some key fundamental disagreements between the negotiating parties, primarily surrounding the *lex specialis* status of the Contracts, and there seems to be no easy answer to this deadlock in sight. Some of the key issues being debated are changes to the applicable fiscal regime; in-country processing requirements; reductions in the size of the Contract area; and new foreign divestment requirements.

An urgent solution to the deadlock is paramount as CoW/CCoW companies still produce the majority of Indonesian coal and minerals, and some significant projects have been put on hold due to the renegotiation process, as investors become concerned with the uncertainty surrounding the ultimate outcome of the negotiations.

The ban on export of unprocessed (or not-sufficiently processed) minerals came into force on 12 January 2014. The Government issued various implementing regulations (some in the form of amendments to previously issued regulations) only one day before the ban became effective, with little or no consultation with industry. Despite the export ban being mandated under the Mining Law, the delay in issuing implementing regulations, and providing guidance on how the objectives of the Mining Law would be achieved, have left investors in a difficult position. Timely issuance and consistency in implementing regulations and transitional provisions are crucial to provide the necessary certainty to investors.

There has been significant debate between the Government and the mining sector since the regulations were issued around the viability of implementing these in-country processing requirements, including the imposition of the export duty. In particular, CoW holders have questioned the applicability of the regulations to them, given the *lex specialis* status of the CoWs. Questions have also been raised by the industry about the economic feasibility of processing certain types of minerals, given current and

Photo source : PT Berau Coal

forecast global and domestic demand and supply considerations; the inadequate supporting infrastructure in some areas of the country to support downstream processing facilities; and the quantum of the export levy and its impact on profitability.

The immediate impact of these regulations has been that some (if not most) smaller scale mineral miners have ceased operations and some large scale operations have reduced mining activities and exports. This has not only impacted the miners themselves, but has had a significant impact on Indonesia's export revenues.

During the last year, these investment concerns have been compounded by the introduction of new divestment rules that require earlier divestment of foreign interests whenever there is a change in the shareholders of a company holding an IUP; the 2014 presidential and parliamentary election process; and continuing low commodity prices.

These factors mean that the Indonesian mining investment environment will face continuing difficulties in the short-term. Many investors view Indonesia as having significant geological potential in its coal and mineral resources, but the regulatory uncertainties and, to a certain extent, its royalty and fiscal regime have become key deterrents to investment.

Particularly in this low commodity price environment, when mining companies are looking to improve operating efficiency and productivity, and limit capital spending, Indonesia will struggle to attract significant investment into its mining sector, given the perceived high-risk regulatory environment.

This handbook recognises that reforms are continuing and that some information will require updating as they proceed. This handbook is also not intended to be a comprehensive guide to all aspects of the mining industry in Indonesia, but rather a general guide to certain key considerations related to investment and taxation in the sector.

Companies intending to invest in Indonesia will need to carry out further research and obtain updated information on investment and operational requirements. They should also consider the social, political and economic developments in Indonesia, which can have a significant impact on the success of any investment.

PwC Indonesia recommends investors contact our specialist mining team, should they need further advice. Please see Appendix G for the contact details of the PwC Indonesia mining specialists.

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Overview of the Indonesian Mining Industry

Photo source : PT Bukit Asam (Persero) Tbk

Indonesia continues to be a significant player in the global mining industry with significant levels of production of coal, copper, gold, tin and nickel. In particular, Indonesia remains among the world's largest exporters of thermal coal.

Global mining companies consistently rank Indonesia highly in terms of coal and mineral prospects, however assessments of its mining policies and investment climate have not been so positive. As such, in recent years there have been limited levels of investment, particularly in greenfields projects, other than some activity in the coal sector.

It was hoped that the Law on Mineral and Coal Mining No.4 of 2009 (the "Mining Law") and its supporting framework of implementing regulations would provide investors with the necessary regulatory certainty to spur new investment, and cement Indonesia's position as a global mining force. However, after more than five years, despite there being some movement towards increasing the level of investment, there is still some way to go before Indonesia can fully realise its potential for mining investment, as confirmed in the results of our latest released survey on the state of the Indonesian mining sector *mineIndonesia 2013* (www.pwc.com/id/eum-publications), and the preliminary results of our 2014 survey.

Indonesia's long standing Contract of Work ("CoW") framework for foreign investment, and licensing system for Indonesian investors, was replaced under the Mining Law, with a new area-based system of licensing applicable for all investors, incorporating tendering procedures for granting licences, with involvement of local and provincial Governments, as well as the central Government.

Under the Mining Law, both national and regional Governments play a vital role in the mining industry by setting up national mining policies, standards, guidelines and criteria as well as deciding on mining authorisation procedures. Furthermore, the Government is actively involved in development, control, evaluation and conflict resolution in the sector.

The Mining Law was heralded as the beginning of an era of greater certainty for investment in the mining industry in Indonesia. However, it has become evident in the five years since its promulgation, that the Government has had a difficult task in balancing the interests of investors seeking to invest in Indonesia's highly prospective mining industry with the ultimate aim of ensuring that a fair proportion of the wealth derived from the exploitation of Indonesia's minerals is retained by Indonesians for the benefit of Indonesia.

Under the Mining Law, the Central Government determines areas that can be mined and, except under certain exceptional circumstances, regional Governments have the authority to grant mining business licences within this pre-determined area. Under this approach, it is expected that the Central Government

will have more control over determination of areas open for mining, and this may reduce the instances of overlapping mining concessions with areas reserved for other purposes, such as forestry. However the complexity in determining the competing claims of different land users has made this mapping exercise difficult, resulting in the delays in completing the process.

The implementing regulations which support the Mining Law also set up the framework for determining the annual domestic market obligation for producers, as the Indonesian Government seeks to ensure sufficient supply of natural resources to meet the expected growth in domestic demand as investment in infrastructure expands. So far, this domestic market obligation has only been applied for coal production.

Mining licence holders are also required to demonstrate a greater level of responsibility for operations, with the regulations requiring them to undertake some of their own mining activities rather than wholly subcontracting to third parties. In the circumstances where subcontracting is permitted, priority must be given to Indonesian owned companies. In addition, mineral licence holders have been required to carry out certain minimum levels of in-country mineral processing prior to export, since 12 January 2014. During the period from 12 January 2014 to 11 January 2017, exports of concentrates are still permitted, subject to fulfilling certain requirements, including a commitment to build a smelter and payment of a progressively increasing export duty.

This theme of ensuring that more of the benefits of Indonesia's mining activity are retained and reinvested in Indonesia has been reinforced in the implementing regulations for the Mining Law that have been issued over the last five years. Key implementing regulations which have been issued to date include:

- the requirement for divestment of up to 51% of Operation Production IUP ("IUP-OP") interests held by foreign investors by the end of the 10th year of production(with minimum domestic ownership requirements of 51% (for IUP-OP) and 25% (for Exploration IUPs) applicable whenever there is a change in shareholdings prior to this date);
- restrictions on the export of unprocessed mineral ore and the requirement for further in-country processing;
- imposing minimum domestic market obligations for coal;
- imposing a benchmark pricing framework for coal and mineral exports to set a minimum price for transactions in such commodities; and
- the draft regulation prohibiting the export of coal with a calorific value of less than 5,700 kCal and the associated processing/upgrading requirements for low rank coal.

While the Government regulations issued to date provide further detail on the implementation of the Mining Law, there is still a lack of clarity in relation to

some of the relatively new regulations issued to date, such as the divestment and in-country processing requirements. At present, there still appears to be some reluctance on the part of investors to make significant investment decisions due to these uncertainties and the potential for changes in Government policy as a result of the 2014 presidential and parliamentary elections.

Contribution to Indonesian economy

The mining industry benefits Indonesia in many ways. Perhaps of most significance is the development of many remote regions of Indonesia, which otherwise may not have occurred to such an extent, or at such a pace. Mining companies are in many cases the only significant employer in some of these remote areas.

In recent years, the mining industry has contributed approximately 5-6% to total Indonesian GDP, however the industry represents a much larger share of the regional economies of many provinces, including Papua, Bangka-Belitung, West Nusa Tenggara and East Kalimantan. The mining industry has also consistently contributed approximately 20% of total Indonesian export revenues.

The implementation of the ban on export of unprocessed (or not-sufficiently processed) minerals in January 2014 and the introduction of a significant (and progressively increasing) export duty on minerals concentrates, will likely result in a decline in mineral production over the next few years. This will in turn reduce the mining industry's contribution to total GDP, and in particular, export revenues. The Government, however, hopes that the total contribution of the minerals sector will increase once minerals processing and refining facilities are in place, generating higher value products.

Coal and mineral production profile 2000 – 2012

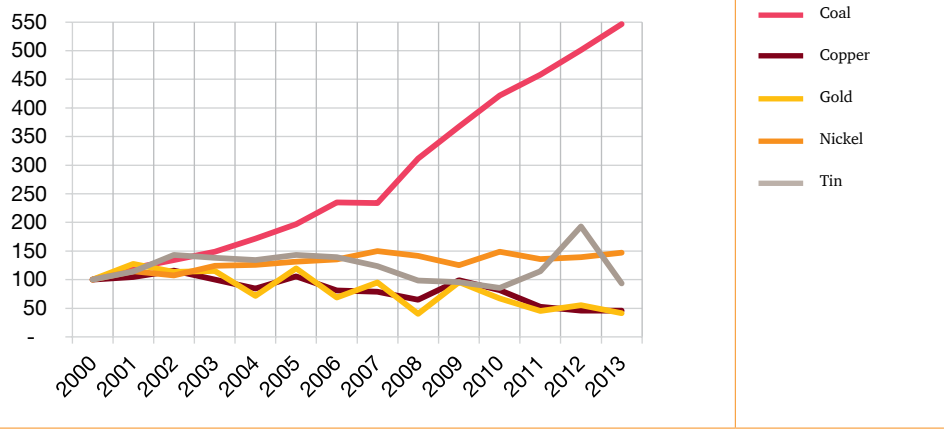
Despite the coal price decline during 2012 and 2013, Indonesia recorded increases in coal production during those years. Demand remained strong from coal-fired power plants around the world and especially from plants in China and India. In addition, a number of new power plants have come on-line since mid-2008, both in Indonesia and abroad. The Government aims to limit coal production increases in 2014, and there is reportedly a plan to increase the royalty rate for coal IUP-OPs. If this materialises, a decrease in 2014 coal production is likely, as marginal producers will find it difficult to generate adequate returns.

There were no significant changes in the production of gold, copper and nickel during 2012 and 2013. It is expected that the production of copper and nickel will decrease in 2014 with the enforcement of the ban on export of unprocessed minerals and the introduction of the export duty on mineral concentrates.

A sharp decrease in 2013 tin production was mainly attributable to the production decline of a major tin producer, and the new requirement to trade tin through the Indonesian Commodity and Derivatives Exchange since August 2013.

Historical Indonesian coal and minerals production trends are presented in the diagram below (indexed with base year 2000 = 100).

Coal and mineral production



Source: Minister of Energy and Mineral Resources & PwC analysis

Although Indonesia is well placed geologically to capitalise on the continuing global demand for commodities, the Indonesian Government, however, still needs to finalise the outstanding aspects of the Mining Law to give investors the certainty needed to commit investment funds to Indonesia.

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Mineral and Coal Mining Regulatory Framework

Photo source : PT Berau Coal

The Mining Law

Mineral and coal mining activities are governed under the Law on Mineral and Coal Mining No.4/2009 dated 12 January 2009 (the "Mining Law"). This Law replaces the predecessor Mining Law No.11/1967, which provided the framework for all of Indonesia's pre-2009 mining concessions including all of the existing CoWs and CCoWs. The Mining Law is dependent on a significant number of implementing regulations to provide detail on how it will be administered. Most of the fundamental implementing regulations have been issued, although some clarifications are still required.

The introduction of the Mining Law in 2009 represented a significant change to the previous Indonesian mining regulatory regime. Contractual-based concessions are no longer available for new mining projects. Both the well-regarded CoW/CCoW framework for foreign investors and *Kuasa Pertambangan* ("KP"), or mining rights, framework for Indonesian investors, were replaced by a single area-based licensing system based on specified mining areas.

The Mining Law provides for three categories of mining licence, depending upon the location and nature of the resource. The categories are as follows:

1. *Izin Usaha Pertambangan* (IUP or Mining Business Licence);
2. *Izin Usaha Pertambangan Khusus* (IUPK or Special Mining Business Licence); and
3. *Izin Pertambangan Rakyat* (IPR or People's Mining Licence).

Unlike the restriction on ownership of KP licences to Indonesian nationals, the IUP based licences are open to both Indonesian nationals and foreign investors who own Indonesian companies.

The Mining Law relies heavily on various implementing regulations. To date, six Government Regulations ("GR") have been issued in respect of:

- Mining Areas (GR 22);
- Mining Business Activities (GR 23, as amended by GR 24 in 2012, and further amended by GR 1 in 2014);
- Mineral and Coal Mining Direction and Supervision (GR 55); and
- Reclamation and Mine Closure (GR 78).

A number of Ministerial regulations have also been issued by the Minister of Energy and Mineral Resources ("MoEMR") in respect of:

- Mining Services (PerMen 28, as amended by PerMen 24);
- Domestic Market Obligation ("DMO") (PerMen 34);
- Benchmark Price (PerMen 17 as amended by PerMen 11);
- Mineral Processing Activities (PerMen 1, revoked by PerMen 7 and its amendments);

- Mine Reclamation & Closure (PerMen 7);
- IUP tender procedures (PerMen 28);
- Determination of mining areas (PerMen 37); and
- Detailed Procedures for Granting Operation Production IUPs and IUPKs (PerMen 32).

The Director General of Minerals and Coal ("DGoMC") has also issued regulations/circular letters in respect of:

- Royalty calculation;
- Benchmark price; and
- DMO Credits.

Furthermore, the Minister of Finance ("MoF") has also issued regulations to implement the GRs and PerMen above, such as the regulation applying the export duty on mineral concentrates (MoF Regulation 75 as amended by MoF Regulation 128 and MoF Regulation 6).

At the time of writing, the Government is reviewing some potential new regulations, and amendments to existing regulations, such as:

- changes to royalty rates for coal IUP companies;
- a new export duty on coal;
- amendments to the export duty on mineral concentrates;
- incentives for mineral processing/refining businesses; and
- changes to the coal DMO requirements.

The hierarchy of the current regulatory framework is illustrated in the diagram below:

Mining Regulatory Framework

Mining Law
Law No.4/2009 Ratified 12 January 2009

Government Regulations

Mining Areas GR 22/2010 1 Feb 2010	**Mining Business Activities GR 23/2010** 1 Feb 2010 (amended by GR 24 on 21 Feb 2012 and GR 1 on 11 Jan 2014)	**Mine Reclamation & Closure GR 78/2010** 20 December 2010	**Mineral and Coal Mining Direction and Supervision GR 55/2010** 5 July 2010

MoEMR Regulations

Mining Services PerMen 28/2009 30 September 2009 (amended by PerMen 24/2012 on 8 October 2012)	**DMO PerMen 34/2009** 31 December 2009	**Benchmark Pricing PerMen 17/2010** 23 September 2010	**Mineral Processing PerMen 1/2014** 11 Jan 2014 revoked PerMen 7/2012 and its amendments
Mine Reclamation and Closure PerMen 7/2014 28 Feb 2014	**IUP Tender Procedures PerMen 28/2013** 13 Sept 2013	**Determination of Mining Areas PerMen 37/2013** 24 Dec 2013	**Detailed Procedures for Granting Operation Production IUPs IUPKs PerMen 32/2013** 19 Nov 2013

DGoMC Circulars

Royalty calculation: 32.E/35/DJB/2009	DMO Credits 5055/30/DJB/2010
Benchmark Price: No.515.K/32/DJB/2011, No.999.K/30/DJB/2011 & No.644.k/30/DJB/2013	Affiliates 376.K/30/DJB/2010

Pending regulations:
Coal exports/processing, community development, procurement rules

Legal framework

Mining areas

Mining can only be conducted in areas designated by the Central Government as open for mining. As such, the Central Government is required to determine the mining areas (referred to in Bahasa Indonesia as *Wilayah Pertambangan* – WP). WPs are categorised as:

1. Commercial mining business areas (*Wilayah Usaha Pertambangan* – WUP), representing mining areas for larger scale mining;
2. State reserve areas (*Wilayah Pencadangan Negara* – WPN), representing areas reserved for the national strategic interest; and
3. People's mining areas (*Wilayah Pertambangan Rakyat* – WPR), representing mining areas for small-scale local mining.

In determining the WPs, the Central Government (with the assistance of provincial and regional Governments) has carried out a detailed mapping exercise and is preparing a map of areas open to mining. The areas identified as mining areas will not necessarily be available exclusively for mining, and therefore may include other uses, such as forestry. Under the regulation, the map may be updated every five years.

On 24 December 2013, the MoEMR issued Regulation No.37/2013 (PerMen 37) providing technical criteria to determine the WPs, as follows:

- having the spread of rock formation of the relevant mining product;
- the mining product indicative data is available;
- the mining product potential data is available; and
- there is mineral or coal reserve data.

At the time of writing, this mapping process was still in progress, and since the final map of designated areas must be approved by Parliament, this process may take some time.

It should be noted however, that one key positive step taken by the Government is the establishment of a "clean and clear" list of mining licence areas which have been verified by the DGoMC and declared to be valid and free of competing claims. This list can be accessed at the DGoMC website. At the time of writing, approximately 55% of the nearly 11,000 existing mining licences had been given clean and clear status.

Mining licences

Within the designated mining areas (or WPs), mining licences may be issued to one or more parties as follows:

- Mining Business Licence ("IUP") is a general licence for conducting mining business activities in a WUP area.
- Special Mining Business Licence ("IUPK") is a licence for conducting mining activities in a specific WPN area, in which mining business activities can be carried-out.
- People's Mining Licence ("IPR") is a licence for conducting mining business in a WPR area of limited size and investment. An IPR is not available to foreign investors.

The comments in this guide are directed primarily at IUPs and IUPKs. For further information on the IPR requirements, please contact one of our advisers.

Ownership of mining licences

An IUP may be issued to the following entities:

- a business entity (established under the laws of Indonesia);
- a cooperative; or
- an Indonesian individual (including a partnership).

The business entity must be an Indonesian legal entity, which includes both Indonesian companies wholly-owned by Indonesian nationals (i.e. a PT Biasa or PMDN company) and foreign-owned Indonesian companies (i.e. PMA companies). Under the previous Mining Law No.11/1967, a CoW/CCoW could be held by either foreign or domestic investors, whilst a KP could only be issued to domestic investors.

The Mining Law therefore removes some of the distinctions between Indonesian and foreign investors in the mining sector, and is consistent with the current Negative List on Foreign Investment (issued by the Indonesian Investment Coordination Board, or BKPM) which allows 100 percent foreign investment in the mining sector (but subject to the share divestment rules discussed below).

One mining licence per company

A key feature of the Mining Law is that a privately held company can only hold one licence (i.e. one IUP/IUPK). The Mining Law provides that only a company listed on the Indonesian stock exchange is entitled to hold more than one licence. However, amendments to GR 23 as set out in GR 24 seem to have relaxed this requirement and in certain circumstances an IUP or IUPK can be transferred to an IUP/IUPK holding entity, although details of the procedures for such transfers still require further clarification.

The transitional provisions in GR 23 provide that a privately held company which held multiple KPs may convert these to IUPs and continue to hold them within the one company. Any new licence applications will, however, need to be made through a separate company. It is thought the new transfer rules set out in GR 24 may be intended to facilitate the restructuring of companies holding multiple IUPs pursuant to the transitional provisions.

For further details of how this restructuring could be beneficial, please contact one of our advisers.

Exploration and Production licences

An IUP or IUPK is granted in two separate phases of mining activities, that is, for (i) Exploration; and (ii) Operation Production, as follows:

- an Exploration IUP/IUPK is granted for performing general survey, exploration and feasibility studies within a WUP/WPN area.
- an Operation Production IUP/IUPK is granted for performing construction, mining, processing, refining, hauling and selling within the WUP/WPN area.

Specific licences

Entities intending to engage solely in trading, processing and refining activities are still required to obtain a special IUP-OP. However, these licences are distinguished by the specific activities which they intend to perform:

- Transport and Sales IUP-OP (for companies engaging in the coal/ minerals transportation and trading business)
- Processing and/or Refining IUP-OP

Prior to the issuance of the Minister's Regulation No.32 on 19 November 2013 (PerMen 32), the transport/sale and processing/refining activities (for companies who did not themselves own a mine) were largely unregulated. PerMen 32 formalises the extensive requirements for those wishing to apply for these Transport and Sales and Processing and/or Refining IUP-OPs, and also imposes a number of new restrictions on these activities.

Licensing

Processing and/or Refining IUP-OPs involve a two-stage licensing process: firstly a Principle Licence in the first instance, followed by the final IUP-OP. Interestingly, obtaining the final Processing and/or Refining IUP-OP does not mean that commercial operations may commence. The relevant issuing authority must first evaluate and approve the feasible operation requirements prior to commercial production (although it is unclear in which form the approval will be issued).

The key restrictions, and rights and obligations of each IUP-OP are outlined below:

	Transport and Sales IUP-OP	Processing and/or Refining IUP-OP
Rights and Obligations	• any changes in source of supply or capacity requires a licence adjustment • submit annual work program and budget • submit monthly, quarterly and annual activity reports • comply with any onshore value adding requirements e.g. in-country processing • must sell coal/minerals with reference to Government benchmark prices	• any changes in source of supply, or capacity requires a licence adjustment • submit annual work program and budget • submit monthly, quarterly and annual activity reports • comply with any onshore value adding requirements e.g. in-country processing • must sell coal/minerals with reference to Government benchmark prices
Restrictions: ***Changes in shareholding***	• Prior approval of relevant issuing authority is required before any share transfer in IUP-OP holder occurs	• Prior approval of the relevant issuing authority is required before any share transfer in a IUP-OP holder occurs • However, it appears that no such approval is required for a share transfer when the company is holding only a Principle Licence
Limitations: ***Sourcing of raw commodities***	• Raw commodities can be sourced from: mines issued with a Clean and Clear certificate; another licenced trading company whose licence was issued by an authority other than the authority which issued the commodity buyer's licence. • Although the relevant list of potential suppliers does not include CoW/CCoW holders, the transitional provision of PerMen 32 allows the Transport and Sales IUP-OP holder to cooperate with CoW/CCoW holders provided that this is in line with the provisions in PerMen 32 – noting any existing agreement with a CoW/CCoW holder will need to be adjusted to be in line with the provisions in PerMen 32 by 18 November 2015.	• Raw commodities can be sourced from: IUP-OP mine holders, holders of other processing/refining licences, trading companies • Although the relevant list of potential suppliers does not include CoW/CCoW holders, the transitional provision of PerMen 32 allows the Processing and/or Refining IUP-OP holder to cooperate with CoW/CCoW holders provided that this is in line with the provisions in PerMen 32 – noting any existing agreement with a CoW/CCoW holder needs to be adjusted to be in line with the provisions in PerMen 32 by 18 November 2015

Furthermore, PerMen 32 recognises two types of temporary licences, see below for details.

Temporary Licences

To deal with situations where coal/minerals are mined ancillary to some other main activity, the following temporary licences are recognised:

a. **Temporary Transporting and Trading Licence:** granted to a mining company to allow the sale of coal/minerals extracted during exploration phase.
b. **Temporary IUP for Trading:** granted to a company which is not in the mining business (e.g. road construction), but excavates coal/minerals as part of its activities. This licence is required regardless of whether the company intends to sell or use the coal/minerals.

Both temporary licences have associated restrictions:

- The licence can be issued only once, cannot be extended, and is granted for a specific quantity of coal/minerals;
- The licence holder must pay production royalties on the coal/minerals sold; and
- The coal/minerals must be sold domestically.

The licences are granted by the relevant authority in accordance with the location from which the coal/minerals are excavated (see table below).

A number of Transport and Sales IUP-OPs and Processing and/or Refining IUP-OPs were issued prior to PerMen 32. Those licences must be adjusted in accordance with this regulation by 18 November 2015.

Authority to issue an IUP/IUP-OP/Specific Licence

An IUP may be issued by either a regional Government (Regent or Governor) or the central Government (represented by the Minister), depending on the location of the proposed mine and its associated infrastructure. For IUPs issued to foreign owned entities (i.e. PT PMA companies), the recent amendment to GR 23 (as set out in GR 24) provides that a licence may only be granted by the central Government. It is not clear how this will work in practice where the licensing process is conducted by a regional Government, or what this will mean for IUPs already granted by a regional Government. The amendment to GR 23 also clarifies that IUPs for converted CoWs/CCoWs should be granted by the central Government.

The issuance of Exploration IUPs is performed as follows:

Exploration IUP	
Grantor	**Project location**
Minister	where the area covers more than one province, or if the licence is issued to a foreign owned Indonesian company (i.e. a PT PMA company or converted CoWs/CCoWs).
Governor	where the area covers more than one regency, but is within one province.
Mayor/Regent	where the area is within one city or regency.

The authority to issue an IUP-OP follows the usual geographic distinctions (as per the table above) and depends upon the location of the mine infrastructure such as a processing plant, hauling road, stockpile and port facilities as well as the environmental impact of the project, as detailed in the table below:

IUP-OP		
Grantor	**Project location**	**Environmental impact**
Minister	where the mining area, processing and refining and port facilities extend across more than one province or for licences issued to PT PMA companies and converted CoWs/CCoWs.	where the environmental impact extends across more than one province (with the recommendation of the Mayor/ Regent and Governor) or for licences issued to PT PMA companies and converted CoWs/ CCoWs.
Governor	where the mining area, processing and refining and port facilities extend across more than one regency, but within one province.	where the environmental impact extends across more than one regency, but within one province (with the recommendation of the Mayor/Regent).
Mayor / Regent	where the mining area, processing and refining and port facilities are within one city or regency.	where the environmental impact is within one city or regency (with the recommendation of the Minister and Governor).

It is uncertain which test will prevail for the granting of an IUP-OP in circumstances where there are inconsistencies between the project location and the extent of its environmental impact. Since many mining projects will have mining, processing, hauling and port facilities within different regencies or even within different provinces, it can be expected that the Governors and Minister will have greater control on the issue and renewal of IUP-OPs than was the case under the previous KP licensing system.

Specific Licences (Transport and Sales IUP-OP and Processing and/or Refining IUP-OP)	
Grantor	Project location
Minister	Where transport & sales and processing & refining activities extend across more than one province or for licences issued to PT PMA companies. *For Processing & Refining IUP-OPs*: - if the raw commodities are imported - if the source and the refining facilities are located in different province - if the mining licence for the source mine supplying the raw commodities was itself issued by the Minister.
Governor	Where the transport & sales and processing & refining activities extend across more than one regency, but within one province. *For Processing & Refining IUP-OPs*: - if the source mine and the processing facilities are located in a different regencies - if the mining licence for the source mine supplying the raw commodities was itself issued by the Governor.
Mayor/ Regent	Where the transport & sales and processing & refining activities are within one city or regency. *For Processing & Refining IUP-OPs*: - if the mining licence for the source mine supplying the raw commodities was itself issued by the Regent/Mayor.

Authority to issue an IUPK

An IUPK should be issued by the central Government, regardless of the geographical coverage of the operations. State-owned companies are to be given first priority for the development of a WPN, after which the IUPK can be offered to private investors via a tender process.

Licence terms and extensions

The Mining Law and regulations provide for mining licences to be issued and extended as follows.

Exploration IUP and IUP-OP

	Exploration IUP	IUP-OP	Extensions
Coal	7 years	20 years	10 years x 2
Metallic minerals	8 years	20 years	10 years x 2
Non-metallic minerals	3 years	10 years*)	5 years x 2*)
Rocks	3 years	5 years	5 years x 2

Note:
*) Certain non-metallic minerals may be granted a 20 year Production IUP-OP extendable twice for a maximum of 10 years.

Specific Licence

	Principle Licence	IUP-OP	Extensions
Transport and Sales IUP-OP	Not Applicable	3-5 years	Maximum 3 years for each extension
Processing and/ or Refining IUP-OP	3 years (with one extension for 1 year)	Maximum 20 years (including 2 years construction)	Maximum 10 years for each extension

IUPK

	Exploration IUPK	Production IUPK	Extensions
Coal	7 years	20 years	10 years x 2
Metallic minerals	8 years	20 years	10 years x 2

Licence areas

A key aspect of GR 23 is that the size of the Exploration IUP for coal and metallic minerals must be reduced in size after three years of exploration (less for non-metallic minerals and rocks). The maximum area for the production phase is again reduced when the Production IUP/IUPK is issued.

Exploration IUP		Downsizing after 3 years of exploration (under GR 23)	Production IUP
Coal	5,000ha – 50,000ha	Must be reduced to a maximum of 25,000ha	Max 15,000ha
Metallic minerals	5,000ha –100,000ha	Must be reduced to a maximum of 50,000ha	Max 25,000ha
Non-metallic minerals	100ha – 25,000ha	12,500ha (applies after 2 years)	Max 5,000ha
Rocks	5ha to 5,000ha	2,500ha (applies after 1 year)	Max 1,000ha

Exploration IUPK		Downsizing after 3 years of exploration (under GR 23)	Production IUPK
Coal	Max 50,000ha	Must be reduced to a maximum of 25,000ha	Max 15,000ha
Metallic minerals	Max 100,000ha	Must be reduced to a maximum of 50,000ha	Max 25,000ha

An IUP or IUPK is issued for one type of mineral or coal. If other minerals are discovered, the relevant Government authority may issue further IUPs or IUPKs for those different minerals. The exploration IUP holder will be given priority to acquire a licence to mine the additional mineral(s) before the relevant Government authority grants a mining licence to another investor.

Tender requirements for new mining licences

New IUPs and IUPKs must be issued through a competitive tender process rather than direct appointment. Any of the entities discussed above may bid for an IUP, however, for IUPK licences, State-owned companies are to receive preference. The winner of a tender is then issued the exploration IUP or IUPK for the specific coal or mineral applied for. The tender process is intended to create transparency and fairness for all potential investors and represents a significant change from the system adopted under the old mining law, where the relevant Government authority could directly grant a KP upon application.

GR 23 (as amended by GR 24) specifies that the *Wilayah Izin Usaha Pertambangan* ("WIUP" or Mining Business Licence Area) and *Wilayah Izin Usaha Pertambangan Khusus* ("WIUPK" or Specific Mining Business Licence Area) tender process and selection criteria will be regulated by Ministerial Regulation.

On September 2013, the Minister issued Regulation No.28/2013 (PerMen 28) regarding the tender process for WIUPs and WIUPKs. In general, PerMen 28 sets out the process to establish a tender committee as well as for the requirements and the evaluation of bidders.

Tender procedures

A summary of the tender procedures based on PerMen 28 is as follows:

a. the tender must be announced at least three months prior to its commencement;
b. the tender should be conducted for all WIUPs, whilst WIUPKS are to be offered by the central Government to state-owned or district-owned enterprises. The tender process for WIUPKs will only be conducted when there is more than one state-owned or district-owned enterprise, or no state-owned or district-owned enterprises accepting the offer. The WIUPK is then to be offered via a tender process to state-owned or district-owned enterprises, or to national enterprises where there are no other bidders;
c. the tender process and the establishment of attender committee is to be managed by the Minister in the case of WIUPKs or by the Minister/governor/regent/mayor in the case of WIUPs, depending upon the location of the WIUP, PerMen 28 also stipulates the composition of the tender committee specifying the minimum number and level of competency of committee members and their level of competency along with the required representatives from certain Government agencies;
d. type of business entities allowed to participate in the WIUP tender process is based on the size of WIUP acreage, as follows:

WIUP			WIUPK
≤1,000 ha	1,001 – 5,000 ha	> 5,000 ha**	
• District-owned enterprise • (Local) national enterprise • Cooperation and individual (including firm and partnership)	• District-owned enterprise • State-owned enterprise • National enterprise* • Cooperation	• District-owned enterprise • State-owned enterprise • National enterprise* • Foreign held entities	• District-owned enterprise • State-owned enterprise • Private enterprise entities

Note:
*) A national enterprise is defined as a completely Indonesian-owned company
**) For WIUP exceeding 5,000 hectares, foreign investors wishing to bid in the tender process must use an Indonesian legal entity (i.e. a PT PMA)

e. the bidders are required to meet specified administrative, technical and financial conditions;
f. there are two stages being pre-qualification and the final tender;
   i. during the pre-qualification stage the evaluation of bidders is based on the administrative, technical and financial requirements;
   ii. every bidder who passes the pre-qualification stage then submits an offer price. The tender committee may visit the location of the WIUP being offered. The evaluation of bidders is based on weighted average results with 40% from the pre-qualification result and 60% from the offer price. The offer price should not be less than the compensation price (i.e. the compensation for mining/geological information and investment for each WIUP and WIUPK). The compensation price will be determined based on other regulations;
g. for three working days after the announcement of the winner the other bidders may submit an objection if they believe the tender process was not in accordance with the regulations or there was misconduct. The minister, governor or regent/mayor (as the case may be) should provide a response within five working days.

A bidder must also place a cash deposit with a state-owned bank at the time of application for up to 10% of the value of compensation for data and information for a new mining licence, or 10% of the total cost of the data or investment in the case of a licence which has expired. A successful bidder will be required to pay the tender value within five working days of being announced as the tender winner.

Domestic Market Obligation ("DMO")

The Mining Law and implementing regulations contain a framework for a DMO, where the Central Government has the authority to control production and export of each mining product. The Regional Government is obliged to comply with the production and export controls imposed by the Central Government. This policy is to guarantee the supply for increasing domestic demand, especially for coal.

Details of the DMO procedures were issued in PerMen 34 on 31 December 2009.

PerMen 34 provides that the DMO applies to all types of coal and minerals. Broadly, mining companies must comply with the DMO requirements by selling to domestic consumers of minerals/coal.

Neither PerMen 34 nor GR 23 provide for a specific DMO percentage, rather the decision for a particular year is to be made by the Minister upon the following procedures:

1. Domestic users submit their forecast requirements by no later than March of the preceding year;
2. The Minister reviews and calculates the domestic requirements submitted and the production plans of the mining companies;
3. The Minister must then issue a decree on the minimum DMO percentage by no later than June of the preceding year. The decree must also list the domestic users and their respective needs; and
4. The mining company must then submit its work program and budget for the relevant year to the authority that issued its licence (Minister, Governor or Mayor/Regent) and the DGoMC stating its commitment to the DMO percentage.

There are provisions for a minimum floor price for DMO sales which will be subject to Ministerial Regulation. However, PerMen 34 does provide that the minimum price will be subject to the same minimum price for exports (see comments on Coal and Mineral Price Benchmarking below).

PerMen 34 provides for a “cap and trade” system whereby Mining Companies that exceed their DMO obligations may sell/transfer DMO credits to a mining company that is unlikely to meet its DMO commitment. The pricing mechanism for DMO credits is to be determined on commercial terms. The mechanism for trading DMO credits has been clarified in Circular 5055/30/DJB/2010 (dated 29 November 2010) which provides that DMO credits can be transferred between mining companies with the approval of the DGoMC, including credits held by traders on behalf of a mining company.

At the date of writing, the Government has determined minimum coal DMO sales only for selected coal mining companies. In 2014, 85 coal mining companies are required to sell an aggregate of 95.55 million tonnes to the domestic market

(approximately 25.90% of forecast 2014 total production). Noting that the domestic coal demand has been increasing over recent years, it is expected that DMO coal sales will continue to increase in the coming years.

Coal and Mineral Price Benchmarking

GR 23 provides the framework which authorises the Minister to set the mineral and coal sales reference price. This requirement is further detailed in PerMen 17.

Broadly, the Minister, through the DGoMC, will be responsible for setting the Benchmark price for coal and metallic minerals. The Governor, and Regent or Mayor, will be responsible for setting the Benchmark for non-metallic minerals and rocks.

The Benchmark price is set at the FOB vessel point of sale. Accordingly, certain costs are accepted to adjust the Benchmark price if the delivery point takes place at a point other than FOB vessel (i.e. FOB barge or CIF). The allowable adjustments would include the costs of barging, surveyors, insurance, and transhipment (for metallic minerals, the type of costs allowable as adjustments to the Benchmark price extend to treatment costs and refinery costs).

The Benchmark price will serve as the floor price for the Government Royalty calculation. If the actual sales price is higher than the Benchmark price, then the Government Royalty will be based on the actual sales price. If actual sales are below the Benchmark price, the Government Royalty calculation should be performed based on the Benchmark price.

Specific coal types (e.g. fine coal, reject coal, and coal with specific impurities) and coal for specific purposes can be sold below the Benchmark price with the prior approval of the DGoMC.

The Benchmark price is applicable for spot sales and long term sales. For long term sales, PerMen 17 requires mining companies to adjust the sales price every 12 months. Specifically for coal, the long term coal sales price is determined based on the weighted coal Benchmark price for the preceding three months. A coal mining company is required to notify the DGoMC of the proposed sales price before signing long term sales agreements.

The Benchmark price will be updated monthly and determined in accordance with market prices (based on a basket of recognised global and Indonesian coal indices in the case of coal). Currently the available Benchmark price issued by the DGoMC is still limited to thermal coal. However, through Regulation No.515.K/32/DJB/2011 (recently amended by Regulation No.644.k/30/DJB/2013), the DGoMC has also issued the formula to calculate the Benchmark price for coking coal.

Divestment

The Mining Law provides that foreign shareholders must divest part of their interest in a mining concession company by the fifth year of production. Pursuant to the recent amendment of GR 23 by GR 24, foreign shareholders must hold no more than a 49% interest by the end of the 10th year of production, with intermediate divestment milestones commencing by the end of the 5th year of production until reaching 51% by the end of year 10 as follows:

Number of years after production commences	Minimum divestment requirement (at the end of that year)
6	20%
7	30%
8	37%
9	44%
10	51%

Divestment is to be made to (in order of preference) the Central Government, Provincial Government or Regency/Municipal Government, a state-owned company or a national private business entity.

On 13 September 2013, the Minister issued implementing regulation No.27/2013 (PerMen 27). The requirements under PerMen 27 are broadly similar to GR 24 but provide more detailed guidance on the divestment procedures including the timeline, divestment price, approval processes and the payment mechanism. However, there are certain provisions under PerMen 27 that appear to go beyond the Mining Law and GR 24.

While the divestment requirement does not *prima facie* apply to CoW/CCoW holders as this is being dealt with through CoW/CCoW re-negotiations, it is likely that the divestment requirement will become applicable once the contract term ends, and the contract is extended as an IUP (refer further in the section on Transitional Provisions below).

Additional requirement on conversion of capital investment status

PerMen 27 introduces a new requirement upon the conversion of a domestic investment (PMDN) company to a foreign investment (PMA) company or a change in the shareholders of a PMA company.

The new requirement is that foreign ownership in a company holding an Exploration IUP or an IUP-OP is limited to a maximum of 75% and 49% respectively.

PerMen 27 also states that changes from a PMDN company to a PMA company, or vice versa, will require approval from the Minister and that all IUP holders (including Transport & Sales IUP-OP and Processing and/or Refining IUP-OP) are prohibited from changing their investment status (with BKPM) prior to the Minister approval. This is discussed further below.

Divestment via IPO

PerMen 27 provides that divestment via the Indonesian capital market will not be treated as satisfying these divestment requirements. It also confirms that if at the end of the fifth year of production at least 51% of the shares are held by Indonesian investors then there is no requirement for further divestment.

Pricing of shares subject to divestment

PerMen 27 provides that the divestment price is to be based upon the "replacement cost" of the investment from the beginning of exploration up to the period of divestment less:

a. the accumulated depreciation/amortisation adjusted by inflation; and
b. the financial liabilities up to the end of the year of divestment.

The divestment price will be:

a. the maximum price to be offered to the central, provincial/regional Governments; or
b. the base price to be offered to state-owned enterprises, district-owned enterprises and Indonesian-owned companies.

PerMen 27 also stipulates that the divestment price can be calculated by an independent valuer.

This new pricing mechanism could be a significant concern for foreign investors given that it is likely to result in a price lower than market value (at least for IUPs holding mineable reserves/resources).

Change in capital investment

PerMen 27 also provides that any changes in the capital investment structure of an entity holding an IUP or an IUPK (including Transport & Sales IUP-OP and Processing and/or Refining IUP-OP) requires approval from the minister, governor or regent/mayor (in accordance with the level of the issuing authority for the IUP). Approval is required for changes in:

a. investment and financing sources;
b. entity status from PMA to PMDN or from PMDN to PMA;
c. the articles of association;
d. the board of directors or the board of commissioners; and
e. share ownership.

PerMen 27 provides the forms to be completed when requesting approval to change any of the items listed above.

Transitional provisions

PerMen 27 transitional provisions include:

a. that an IUP-OP company that has already converted to PMA status with more than 49% foreign ownership is still subject to the divestment requirements of PerMen 27. Further, foreign investors cannot increase ownership until the divestment obligation is satisfied. This could represent a significant obstacle to mine development as financing can arguably then only be sourced from Indonesian investors or financial institutions; and

b. that the divestment procedures and pricing of shares to be divested are applicable to CoW and CCoW companies. This will be an issue as most CoWs provide for divestment based on the market value of the shares. Irrespective of this, the CoW and CCoW companies are likely to argue that provisions in the CoW should override PerMen 27. The Government may however seek to include the new divestment pricing provisions in the CoW/CCoW re-negotiation process, or when the CoW/CCoW is extended as an IUP-OP.

Mandatory in-country processing and export duty

Under the Mining Law, holders of IUPs and IUPKs are required to carry out in-country processing and refining to increase the value of the relevant mineral or coal.

On 11 January 2014, Government Regulation No.1/2014 (GR 1/2014) was issued which amends GR 23/2010 and GR 24/2012. These regulations clarify that in respect of coal, "processing" covers the following activities:

- Coal crushing
- Coal washing
- Coal upgrading
- Coal briquetting
- Coal liquefaction
- Coal water mixing
- Coal blending
- Coal gasification

On the same day, 11 January 2014, in respect of minerals (metal-based, non-metal based and rocks), the Minister issued Regulation No.1/2014 ("PerMen 1" which revokes PerMen 7 and PerMen 20) and the Minister of Finance issued Regulation No.6/2014 ("MoF 6/2014"). These regulations address the requirements for in-country minerals processing (generally to the finished product stage, or near to it).

The key provisions of PerMen 1 are as follows:

1. There should be an increase in added value for the following classes of minerals: metallic minerals; non-metallic minerals; and rocks.
2. The increase in added value shall be carried out through the following activities:
   - Processing and refining for metallic minerals;
   - Processing for non-metallic minerals; or
   - Processing for rocks.
3. Processing is defined as activities to improve the quality of minerals or rocks without changing their physical and chemical properties, such as metallic mineral concentrates and polished rocks.
4. Refining is defined as activities to improve the quality of metallic minerals through an extraction process and increasing the purity of the mineral to produce a product with different physical and chemical properties from the original, such as metals and alloys.
5. The minimum levels of domestic processing and refining for metallic minerals, non-metallic minerals and rocks prior to export are listed by product in appendices I, II and III of PerMen 1 respectively (see Appendix A for the minimum processing and refining requirement prior to export applicable to metallic minerals).
6. PerMen 1 stipulates two types of minerals. Type 1 consists of copper, iron ore, manganese, lead, zinc, ilmenite and titanium. Type 1 minerals can be exported as concentrates at much lower minimum processing levels than previously required under earlier proposed regulations. However, this relaxation is valid for three years from the date of PerMen 1 (i.e. until 11 January 2017) and is subject to a progressive export duty (as well as commitments to build or cooperate with others building refining facilities). Type 2 minerals consist of nickel, bauxite, tin, gold, silver and chromium. Type 2 minerals must be refined to a much higher minimum level than Type 1 minerals prior to export. There is no export duty for Type 2 minerals.
7. Progressive rates of export duties and minimum processing requirements for Type 1 minerals are defined in MoF 6/2014 as follows:

No.	Mineral	Export duty tariff					
		2014		2015		2016	
		From 12 January to 30 June	From 1 July to 31 December	From 12 January to 30 June	From 1 July to 31 December	From 12 January to 30 June	From 1 July to 31 December
1	Copper concentrate (>=15% Cu)	25%	25%	35%	40%	50%	60%
2	Iron concentrate (>=62% Fe)	20%	20%	30%	40%	50%	60%
	Iron concentrate (>= 51% Fe and Al2O3+SiO2>=10%)	20%	20%	30%	40%	50%	60%
3	Manganese concentrate (>= 49% Mn)	20%	20%	30%	40%	50%	60%
4	Lead concentrate (>=57% Pb)	20%	20%	30%	40%	50%	60%
5	Zinc concentrate (>= 52% Zn)	20%	20%	30%	40%	50%	60%
6	Ilmenite concentrate (>= 58% iron sand and 56% pellet)	20%	20%	30%	40%	50%	60%
	Titanium concentrate (>= 58% iron sand and >= 56% pellet)	20%	20%	30%	40%	50%	60%

8. PerMen 1/2014 also requires certain administrative processes to be undertaken prior to export including obtaining a recommendation letter from the Director General of Energy and Mineral Resources on behalf of the Minister of Energy and Mineral Resources, which is reviewed on a six monthly basis, including consideration of progress in plans for refining the product. The recommendation is a prerequisite to obtaining an export permit from the Minister of Trade.
9. For the purpose of processing and refining activities, the holder of an IUP may cooperate with another IUP-OP holder for processing or refining activities, which may be in the form of:
   - trading of raw materials, ore or concentrate; or
   - collaboration to process and/or refine minerals, which requires approval from the Minister, Governor or Mayor/Regent depending on the location of the IUP-OP.

There has been significant debate between the Government and the mining sector since the regulations were issued around the viability of implementing these in-country processing requirements, including the imposition of the export duty. In particular, CoW holders have questioned the applicability of the regulations to them, given the *lex specialis* status of the CoWs. Questions have also been raised by the industry about the economic feasibility of processing certain types of minerals, given current and forecast global and domestic demand and supply considerations; the inadequate infrastructure in some areas of the country to support downstream processing facilities; and the quantum of the export levy and its impact on profitability.

Some key considerations for investors currently considering investment in processing/refining facilities, and associated infrastructure are:

a. whether it is favourable to include the processing/refining facilities and infrastructure within the company holding the IUP-OP (i.e. the mining company) or under a separate company holding a Processing and/or Refining IUP-OP?
b. if a separate company is to be established, what would be the arrangement with the mining company? Is a trading or a processing service arrangement better?
c. whether any tax facilities are available, such as an income tax holiday or import facilities.
d. what are the relevant tax considerations in relation to the Engineering, Procurement and Construction ("EPC") contract?
e. how can financing be arranged in the most tax efficient manner?
f. what is the right model for cooperation between shareholders (mining company, offtakers, financial investors, domestic, foreign, etc)?

PwC Indonesia recommends investors contact our specialist mining team, should they need further advice. Please see Appendix G for the contact details of the PwC Indonesia mining specialists.

Mineral Mining Production Limitation

Due to the non-renewable nature of coal and mineral resources, which is essential for national development, and to guarantee sufficient supplies to fulfill national needs, the Central Government considers it is important to limit national coal and mineral production where considered necessary. The Minister, governor, or head of regency will determine the policy for production limitation.

Sanctions apply for non-compliance, which include warnings, suspension of activities, or revocation of mining licences in extreme cases.

Mining support services

Mining service businesses are also governed by the Mining Law and PerMen 28 (as amended by PerMen 24). PerMen 28/24, provides that an IUP or IUPK holder can no longer contract out all activities, but must actually remove the coal/minerals ore from the ground itself. PerMen 28/24 provides a detailed list of the types of Mining Services Businesses and distinguishes between certain defined Mining Services Businesses and Non-Core Mining Services. Broadly, the requirements are directed at ensuring the use of local businesses and restricting the use of affiliate companies.

Pursuant to PerMen 28, an IUP/IUPK holder must carry out mining, processing and refining and can only engage a Mining Services Company for the purposes of consultation, planning and testing, overburden stripping and transportation. Under PerMen 24, an IUP holder may outsource construction of an underground mine to a mining service company specialising in tunnelling work and the IUP holder can also use equipment owned by a mining service company through a rental arrangement. A detailed list of Mining Services as defined is further detailed in the attachments to PerMen 28/24.

Classification of Mining Services and Mining Service Companies

Companies wishing to provide services to an IUP/IUPK holder must obtain the following licences:

Mining Service
Sub-categories and licensing requirements

Mining Service Business	**Non-Core Mining Service**
Expansive list in PerMen 28/24	Any service business other than a Mining Service Business that provides services in support of mining business activities.
Licence: Mining Services business Licence/*Izin Usaha Jasa Pertambangan* (IUJP)	Licence: Registration Letter/*Surat Keterangan Terdaftar* (SKT)

Mining Services must be provided by an Indonesian entity with a clear priority for the use of Local and/or National Companies. In this regard, PerMen 28/24 provides the following classifications for service providers:

Local Company	A wholly Indonesian owned company/entity which operates and is domiciled only in one regency/province.
National Company	An Indonesian legal entity where all shares are owned by Indonesian nationals and operates in Indonesia or offshore.
Other Company	An Indonesian legal entity where some/all of its shares are owned by a foreigner.

Further entrenching the domestic content theme is the requirement of the mining service company to use local goods, local subcontractors and local labour.

Restriction on the use of affiliates/subsidiaries

Further restrictions are placed on the ability to use subsidiaries and affiliates of the IUP/IUPK holder, namely the requirement to obtain approval from the DGoMC. Subsidiaries and affiliates are further defined (pursuant to the DGoMC Regulation No.376.k/30/DJB/2010, dated 10 May 2010) as an entity that has a direct ownership in the IUP/IUPK holder, i.e. where:

- the IUP/IUPK holder directly owns at least a 25% shareholding in the affiliated mining service company;
- the IUP/IUPK holder is a direct shareholder and owns a voting rights in the affiliated mining service company for more than 50% based on an agreement for direct financial and operation control; and/or
- the IUP/IUPK holder has the authority to appoint or replace financial and operational directors or others at similar level in the mining contractor company.

Approval will only be granted in circumstances where there are no other mining companies of the same kind in the Regency/Province, the IUP/IUPK holder has put the services to tender and no Local or National service providers have either the technical or financial capability required to carry out the service. The IUP/IUPK holder must provide a guarantee that pricing will be based on arm's length principles.

Prohibition on receiving fees from a mining services company

The IUP/IUPK holder is prohibited from receiving any fees from the mining services company. This appears to have been introduced to eliminate practices where the mining licence owner assigns all mining operations to a third party and receives compensation based on a share of profit or the quantity of coal/mineral produced.

Transitional provisions for existing Mining Services arrangements

Mining companies which had already engaged mining services companies before the enactment of PerMen 28 were required to comply with the regulation no later than three years from the effective date of PerMen 28 (i.e. 30 September 2012).

All existing IUPs will continue to be valid until their expiration but must comply with the provisions of PerMen 28/24.

Fiscal regime

There are no specific articles outlining the details of tax or other fiscal provisions in the Mining Law, however it does provide that tax facilities should be provided in accordance with prevailing laws, except as otherwise stated in the IUP/IUPK.

This appears to indicate that the *lex specialis* concept embedded in some CoWs/CCoWs may not be completely dead, if certain enduring fiscal terms can be agreed in the IUP/IUPK. There are however, no details on this at the time of writing this publication, so implementation remains unclear. The ability of a term in an IUP/IUPK to override a Tax Law would also seem to be problematic in practice, and likely to result in further uncertainty. It appears that all IUPs issued to date contain no specific tax concessions.

Refer to Section 4 for further details in relation to mining specific taxation issues.

Royalties

All IUP/IUPK holders are required to pay production royalties, the rates of which will vary depending on the mining scale, production level, and mining commodity price. Currently, a range of percentages of sale proceeds applies for the different types of coal and mineral mining, and it is expected that such an arrangement will continue under the Mining Law.

Holders of an IUPK will be required to pay an additional royalty of 10 percent of net profit. The Central Government is entitled to receive 40 percent of this additional royalty while the balance is to be shared between the relevant province and regencies. Since this additional royalty is determined based on net profit, it is expected that the Government will have a greater monitoring role over capital expenditure and mining operating costs in the case of IUPKs.

The current production royalty rates for a selection of key Indonesian commodities are set out in the following table. For rates applicable under a CoW/CCoW reference should be made to the relevant agreement (see Section 3 and Appendix E for further details on CoW/CCoW terms).

IUP Royalty Rates	
Commodity	Production royalty rate
Coal - Open Pit - Underground	 3% - 7% 2% - 6%
Nickel	4% - 5%
Zinc	3%
Tin	3%
Copper	4%
Iron	3%
Gold	3.75%
Silver	3.25%
Iron Sand	3.75%
Bauxite	3.75%

The Government is currently reviewing the production royalty rates for IUPs, in particular for coal as the current rates are significantly lower than that under a CCoW (i.e. a 13.5% production share).

Transfer restrictions

Under the Mining Law, the transfer of an IUP/IUPK to another party is prohibited. However, GR 24 has amended GR 23 to provide that IUP/IUPKs can be transferred provided the transferee is at least 51% held by a company which already holds an IUP/IPUK. It is not year clear whether this rule is intended for transfers to any IUP/IUPK holder, or whether it is limited to a minimum 51% owned subsidiary of the existing IUP/IUPK holder.

The intention of this rule may be to facilitate the reorganisation of IUP/IUPK interests by entities holding multiple IUP/IUPKs pursuant to the transitional rules in GR 23. Further information will be required on the full extent of this amendment. There is also some concern that it goes beyond the powers delegated under the Mining Law, which will require consideration.

The transfer of ownership and/or shares of an IUP/IUPK company on the Indonesia Stock Exchange can only be done after the commencement of a certain phase of the exploration activities (the relevant phase is yet to be further stipulated in a GR). The transfer is subject to a notification to the relevant Government authority and it should not contravene the provisions of prevailing legislation.

The Mining Law does not appear to regulate transfer of shares outside the Indonesia Stock Exchange.

Reclamation and mine closure guarantees

On 20 December 2010, the Government released Government Regulation No.78/2010 (GR 78) that deals with reclamation and post-mining activities for both IUP-Exploration and IUP-OP holders. This regulation updates Ministerial Regulation No.18/2008 issued by the Minister of Energy and Mineral Resources on 29 May 2008. On 29 February 2014, the Minister has issued Regulation No.7/2014 (PerMen 7) (as the implementing regulation of GR 78) detailing the requirements and guidelines for the preparation of reclamation and post-mining plans.

An Exploration IUP holder, among other requirements, must include a reclamation plan in its exploration work plan and budget and provide a reclamation guarantee in the form of a time deposit placed at a state-owned bank. The reclamation plan for the exploration phase is required to be prepared before undertaking any exploration activities. Upon submitting application for an IUP-OP, the reclamation plan for the production phase and the post mining plan shall also be prepared by the Exploration IUP/IUPK holder and this plan should cover a five-year period (or the remaining mine life, if shorter).

An IUP-OP holder, among other requirements, must provide:

1. a five-year reclamation plan;
2. a post-mining plan;
3. a *reclamation guarantee* which may be in the form of a joint account or time deposit placed at a state-owned bank, a bank guarantee, or (if meeting certain eligibility criteria) an accounting provision; and
4. a *post-mining guarantee* in the form of a time deposit at a state-owned bank

The requirement to provide reclamation and post-mining guarantees does not release the IUP holder from the requirement to perform the reclamation and post-mining activities.

PerMen 7 also provides the procedures for the preparation of the reclamation and post-mining activities report.

The transitional provisions in GR 78 and PerMen 7 make it clear that CoW/CCoW holders are also required to comply with this regulation.

The reclamation and mine closure guarantees may only be withdrawn upon approval from the Minister, the Governor, the Regent or the Mayor, as applicable.

Penal provisions

The Mining Law also regulates the consequences of infringement of the law by the IUP/ IUPK holder (e.g. an illegal miner), as well as the Regional Government.

A breach of the Law can be punished by both administrative and criminal sanctions, including revocation of an IUP/IUPK and prison terms.

Dispute resolution

Disputes regarding IUPs/IUPKs should be settled through court procedures and domestic arbitration in accordance with the prevailing laws and regulations.

Further implementing regulations

Although the Mining Law required all implementing regulations to be enacted by 11 January 2010, several necessary implementing regulations have not yet been issued. PwC Indonesia will issue further publications on the content of new implementing regulations once they have been finalised by the Government.

Transitional Provisions

Divestment

For details on the Transitional Provisions relating to Divestment rules, please refer to page 25.

KPs

All existing KPs were required to have been converted to IUPs by 30 April 2010 based on GR 23. There are no transitional provisions concerning the conversion of KPs in the Mining Law. Although the conversion itself is relatively straightforward, the impact of the implementing regulations, in particular PerMen 28, mean that a number of the historical mining services structuring arrangements are no longer permitted under the Mining Law regime.

GR 23 confirms that companies that held multiple KPs can continue to hold these under the Mining Law, upon conversion to IUPs.

CoWs/CCoWs/CCAs

All existing CoWs/CCoWs/CCAs (Contracts) will continue until their expiry date and may be extended without the need for a tender (where further extensions are still available under the Contract) however the extended licence will be granted

under the IUP system, rather than under the CoW framework. This has been confirmed by GR 24 as amended by GR 1.

Although the term of existing Contracts will be honoured, the Law specifically provides that holders of existing Contracts must, within five years of enactment of the Law, comply with the obligation under the Law to conduct onshore processing and refining of their ore.

Contract holders which have already commenced some form of activity are required, within one year of enactment of the Mining Law, to submit a mining activity plan for the entire contract area. If this requirement is not fulfilled, the contract area may be reduced to that allowed for IUPs under the Law.

Further, the Mining Law indicates that the provisions of existing Contracts must be amended within one year to conform with the provisions of the new Law, other than terms related to state revenue (which is not defined but presumably includes State Tax Revenue and Non-Tax State Revenue such as royalties). At the time of writing, more than five years after issuance of the Mining Law, the negotiation process between the Government and Contract holders for amendments to the Contracts, is still ongoing. It is not clear to which provisions of the Mining Law existing contracts must conform. The range of changes could include alignment with the Mining Law's provisions on divestment obligations, re-sizing of the mining areas, reduced production periods, prohibition on using affiliated mining contractors and the like. Many of these matters have been raised by the Government in contract renegotiations with the Contract holders.

The transitional provisions were one of the most controversial aspects of the Mining Law, with debate in Parliament continuing on this point right up to the final passage of the Law. Unfortunately, the outcome was two possibly conflicting provisions meaning that, state income treatment aside, it is not clear how completely existing Contract rights will be honoured. Resolution of this will obviously be of major interest to those investors holding Contracts, and is likely to be of continuing detriment to additional investment by existing contractors, until the Government's interpretation of these transitional clauses is clearly understood, and Contract renegotiation efforts are completed.

Whilst the Government has commenced discussions with most Contract holders, in an attempt to expedite the negotiations, Presidential Decree No.3/2012 was issued on 10 January 2012 to establish a team, headed by the Coordinating Minister for Economic Affairs and comprised of a number of ministers, to negotiate the terms of the contracts and bring them into line with the Mining Law. However, after the second anniversary of this Decree Contract renegotiations are still ongoing with most Contract holders. It is understood that the negotiations have been focusing on terms such as the size of the concession area, taxes and royalties, the use of mining service contractors, benchmark pricing, mine closure and reclamation, onshore processing and minimum divestment requirements.

Outlook

The above is a brief analysis of some of the key terms of the Mining Law likely to be of interest to investors. Through the enactment of the Mining Law, the Government has sought to create more certainty about Indonesia's mining framework. Five years on, the key implementing regulations have been issued but some of them are not entirely clear in addressing the issues, and further guidance is required. This may cause uncertainty for investors.

The terms of the Mining Law may be adequate to encourage some investors, both foreign and domestic investors, to take direct equity stakes in IUPs for relatively small-scale projects. This has had a positive impact on investment in this sector.

However, there is greater uncertainty around proposed large-scale projects as the Mining Law does not offer the long-term protection of the CoW system for large, long-life projects which require significant investment. The 51% divestment requirement by the 10th year of production (or potentially earlier when there is a change in shareholding structure) has been viewed by many as significantly reducing the economic viability for foreign investors participating in such projects, particularly when the divestment must be carried out at "replacement cost", which will almost definitely be lower than the fair market value. Investors will also be relying on the effective operation of the Indonesian legal system to protect their investments, without the specific terms generally provided in a CoW.

Another area of significant investor interest is the recent development around the in-country processing requirements. After the export ban became effective, some large concentrate producers were not immediately able to obtain export permits, and are very concerned with the level of the export levy, while most smaller scale ore exporters have ceased production altogether. The immediate impact in the short-term is that the country is likely to suffer a significant reduction in export revenues, as well as royalty and tax revenues from the minerals sector. The Government however hopes that in the long-term this will be more than offset by the improved revenues from higher value processed products. This will of course depend on the ability to attract investment in the mineral processing and refining sector, by providing the required investment certainty, infrastructure, and appropriate fiscal incentives – although many continue to question the economic viability of a "one size fits all" in-country processing requirement for the various types of minerals produced in Indonesia, given the differing demand and supply fundamentals for each mineral product, both in the domestic and global markets.

It is important for the Government to take a holistic view in policy setting to ensure that all of the mineral wealth of the country can be monetised for the optimum benefit of Indonesia.

PwC Indonesia will continue to provide periodic updates to its clients as the remaining implementing regulations and guidance for the Mining Law are issued by the Government.

3 Contracts of Work

Photo source : PT ANTAM (Persero) Tbk

General Overview and Commercial Terms

Contracts of Work ("CoW")

The CoW system for regulating mining operations has played a key role in the success of Indonesia's contemporary mining industry. The CoW system, which was introduced in 1967, has been gradually refined and modernised over the past forty years to reflect changing conditions in Indonesia and abroad. To date, there have been seven generations of CoWs. A comparison of the various generations of CoWs is provided in Appendix E.

As discussed earlier, the Mining Law does not provide for CoWs under the new licensing framework, however the transitional provisions state that existing CoWs will be honoured until the stipulated expiry date, but from that point can only be extended under the new IUP licensing framework. The following discussion, therefore, is only applicable to CoWs which existed prior to the Mining Law, and before any amendment following the Government's re-negotiation process to align CoWs with the Mining Law. Any new mining activity can only be conducted under the IUP framework of the Mining Law.

CoWs were regulated under the Minister's Decision Letter No.1614/2004. In essence, a CoW is a comprehensive contract between the Government of Indonesia and an Indonesian company. The company could be 100 percent foreign-owned. However, if the company was 100 percent foreign-owned, it may have been subject to divestment requirements at a later date. As a practical matter, most CoWs have some level of Indonesian ownership.

The CoW sets out the company's rights and obligations with respect to all phases of a mining operation, including exploration, pre-production development, production, and mine closure. A CoW applies to a specifically defined geographic area (the Contract Area).

The CoW company is the sole contractor for all mining in the CoW area, other than for oil and gas, coal and uranium. The CoW company has control, management and responsibility for all its activities, which include all aspects of mining from exploration, development, production, refining, processing, storage, transport and sale.

The CoW outlines a series of stages with defined terms:

Stage	Term (Years)	Available Extension[1]
General survey [1]	1	6 months – 1 year
General survey [1]	1	6 months – 1 year
Exploration [2]	3	1 – 2 years
Feasibility study	1	1
Construction	3	-
Production	30	20 or other period as approved by the Government

Note:
[1]) Depends on the CoW generation. For the detail, refer to Appendix E.
[2]) For first generation, the maximum period for general survey until feasibility study was 18 months and can be extended for a maximum of six months

Some of the important considerations that are covered by a CoW include: expenditure obligations; import and export facilities; marketing; fiscal obligations; reporting requirements; records, inspection, and work program; employment and training of Indonesian nationals; preference to Indonesian suppliers; environmental management and protection; regional cooperation in regard to infrastructure; provision for infrastructure for the use of local population and local business development. It is a tribute to the Government and to the industry that these important matters can be appropriately addressed in a concise legal contract.

The CoW covers all tax, royalty, and other fiscal charges, including: dead rent in the Contract Area; production royalties; income tax payable by the company; employees' personal income tax; withholding taxes on dividends, interest, rents, royalties, and similar payments; value added tax (VAT); stamp duty; import duty; and land and buildings tax.

Coal Co-Operation Agreements ("CCA") and Coal Contracts of Work ("CCoW")

CCoWs were regulated under MoEMR Decision Letter No.1614/2004. Since November 1997, coal mining was brought more in line with general mining through the CoW structure. There have been two generations of CCAs (first and second generation contracts) and one generation of CCoW, which is typically referred to as the third generation CCoW.

The first generation of CCA was regulated under the Presidential Decree No. 49/1981 dated 28 October 1981 regarding the Principle Regulation for Coal Co-operation Agreement between PT Tambang Batubara Bukit Asam (now PT Bukit Asam Tbk or PTBA), the state-owned mining company and the Contractor. The Presidential Decree No.49/1981 was replaced by Presidential Decree No.21/1993 dated 27 February 1993 which regulated the second generation of CCA. The third generation of CCoW was issued pursuant to Presidential Decree No.75/1996 dated 25 September 2006.

Coal Co-operation Agreements

The key difference between the CCA and the CoW system is that under a CCA, the foreign mining company acted as a contractor to the Indonesian state-owned coal mining company, PTBA. Legislation has since been enacted and CCAs amended to transfer the rights and obligations of PTBA in respect of CCAs to the Indonesian Government represented by the Minister of Energy and Mineral Resources.

Under the CCA, the coal contractor is entitled to an 86.5 percent share of the coal produced from the area, and the contractor bears all costs of mine exploration, development and production. The Indonesian Government (previously PTBA) retains entitlement to the remaining 13.5 percent of production. However, in accordance with Presidential Decree No.75/1996 dated 25 September 1996, the contractors pay the Government's share of production in cash, which represents 13.5 percent of sales after deduction of selling expenses.

For the first generation of CCA, equipment purchased by the coal contractor became the property of the Indonesian Government (previously PTBA), although the contractor has exclusive rights to use the assets and is entitled to claim depreciation. For the second and third generation of CCA and CCoW, the equipment purchased by the contractor remains the property of the contractor.

Foreign shareholders that own 100 percent ownership in a first generation CCA are required to offer shares to Indonesian nationals or companies so that, after ten years of operating, foreign ownership in the company is reduced to a maximum of 49 percent.

Coal Contracts of Work

Under the CCoW, the mining company is, in effect, entitled to 100 percent of the coal production, however, a royalty of 13.5 percent of sales revenue is paid to the Indonesian Government.

The CCA and CCoW outline a series of stages with defined terms:

Stage	Term (Years)	Available Extension (years)
General survey	1	1
Exploration	3	2 for third generation but not specifically mentioned in other generations
Feasibility study	1	1 for third generation but not specifically mentioned in other generations
Construction	3	-
Production	30	-

Fiscal regime under CoW, CCoW and CCAs

All generations of CoW, CCoW and CCA (collectively referred to hereafter as the Contract(s)) except for the second generation CCA are based on the taxation and other laws and regulations in place at the time the agreements were signed. In many circumstances, this means that the regulations affecting mining companies operating under such Contracts differ from current regulations, which often creates difficulties in interpreting the agreements as well as doing business with other companies. Potential investors in mining properties covered by earlier generation Contracts should seek professional assistance to examine such issues.

Many earlier generation Contracts also include divestment requirements for foreign shareholders.

Pre-Contract of Work Expenses

The shareholder of the Contract company would typically incur significant expenditure before the Contract company is incorporated the contract is signed. This pre-incorporation expenditure may be transferred from the shareholder to the Contract company as deferred pre-operating costs and will be amortised starting from the period in which production commences. These expenses are subject to be audited by a public accountant and approved by the Minister and the Director General of Taxation ("DGT").

Exploration and Development

The stages coincide with decision points for the relinquishment of part of the Contract Area. This section deals with the general survey, exploration, feasibility and construction stages.

Upon signing the Contract, the company is required to lodge a US Dollar security deposit (see Appendix E for details) into the Minister's bank account, which is released on completion of the following:

- Satisfactory completion of the General Survey period (50 percent); and
- On submission of a general geological map to the Ministry within 12 months of completion of the Exploration Stage (50 percent).

For the seventh generation of CoW or third generation of CCoW, the security deposit is released on completion of the following:

- Satisfactory completion of the General Survey period (25 percent);
- On the first year of exploration (25 percent); and
- On submission of a general geological map within 12 months of completion of the Exploration Stage (50 percent).

During the preproduction stage, all of the companies signing the Contract are required to submit detailed quarterly progress reports to the Minister. Under the contracts, the companies have responsibility for all financing requirements of the project and details are to be reported to the Minister.

For a company holding a Contract, obligations are imposed throughout the life of the contract with respect to environmental restoration, the employment and training of Indonesian nationals, preference to Indonesian suppliers, and the provision of infrastructure for the use of the local community.

The company also has the following obligations under the Contract:

Contracts of Work	Coal Co-operation Agreements/Coal Contracts of Work
• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the items and amount of expenditure and is required to relinquish at least 25 percent of the original Contract Area.	• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the items and amount of expenditure and is required to relinquish at least 25 percent of the original Contract Area for second and third generations and 40 percent for first generation.

Contracts of Work	Coal Co-operation Agreements/Coal Contracts of Work
• Exploration Stage In the Exploration stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual program and budget to the Minister. At the end of the Exploration stage, the company is required to file with the Minister: - A summary of its geological and metallurgical investigations and all data obtained; and - A general geological map of the Contract Area. On or before the second anniversary of the Exploration stage the company is required to have reduced the Contract Area to not more than 50 percent of the original Contract Area.	• Exploration Stage In the Exploration stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual program and budget to the Minister. At the end of the Exploration stage, the company is required to file with the Minister: - A copy of drill holes, pits and assay of the samples; and - A copy of geophysical or geological map of the Contract Area. On or before the second anniversary of the Exploration stage the third generation company is required to have reduced the Contract Area to not more than 25 percent of the original Contract Area. While first and second generation contractors are required to have reduced the Contract Area to not more than 20 to 40 percent of the original Contract Area.
• Feasibility Study Stage At the end of the Feasibility Study stage the company is required to submit a feasibility study, including environmental impact studies, to the Minister and to design the facilities. At the end of the Feasibility Study, the company is required to have reduced the Contract Area to not more than 25 percent of the original Contract Area.	• Feasibility Study Stage At the end of the Feasibility Study stage the company is required to submit a feasibility study, including environmental impact studies, to the Minister and to design the facilities. At the end of the Feasibility Study, the third generation CCoW company is required to have reduced the Contract Area to not more than 25,000 hectares.

Contracts of Work	Coal Co-operation Agreements/Coal Contracts of Work
• Construction Stage The company undertakes the construction of the facilities.	• Construction Stage The company undertakes the construction of the facilities.
• Dead Rent Throughout the life of the CoW, the company is required to pay dead rent. This is an annual amount based on the number of hectares in the CoW area and the stage of the CoW.	• Dead Rent Throughout the life of the contract, the company is required to pay dead rent. This is an annual amount based on the number of hectares in the approved area and the stage of the mining.

Production

During the production stage, the company is required to provide the following Exploitation reports to the Minister:

- Fortnightly statistical report;
- Monthly statistical report;
- Quarterly report concerning progress of operations;
- An annual report; and
- Other reports to various departments.

The company may export its production, but is encouraged to meet domestic demand first. Sales to associates are required to be at arm's length prices. Sales contracts exceeding three years are subject to Government approval.

The Contract also requires contractors to provide the following reports to the Minister:

- Monthly statistical report;
- Quarterly report concerning progress of operations; and
- An annual report for the third generation of CCoW.

The Contract company may choose to operate the mine itself or it may sub-contract operation of the mine, but outsourcing mining operations should now be considered in light of the rules contained in the Mining Law and PerMen 28/24, which may be applicable to Contracts.

Because a company can be party to only one contract (either CoW, CCA or CCoW), it is common for mining groups to have more than one company in Indonesia. Group overheads can be borne by yet another company formed to service the group Contract companies. This can provide operational efficiencies, but its tax implications should be considered further.

Other financial obligations

Royalties

Royalties are payable quarterly to the Government based on the actual volume of production or sales according to details set out in the Contract. The royalty is tax deductible.

Dead rent and land and building tax

The company is required to pay dead rent and land and building tax as set out in the Contract. Dead rent is an annual charge based on the number of hectares in the Mining Area. Both imposts are deductible for income tax.

Termination of the Contract

If at any time during the term of a Contract, the company believes the Contract Area is unworkable, it may terminate the contract. The procedures for terminating the contract may be summarised as follows (this matter is not specifically mentioned in first and second generation CCoWs):

1. Submit written notice to terminate the contract, attaching a closure plan, related documents, maps, plans, worksheets and other technical data and information.
2. Provided that the data and fulfilment of the company's obligations are considered acceptable to the Minister, the Minister will issue confirmation within six months from the date that the company submitted the notice. Otherwise, the contract is automatically considered terminated, and the company shall be relieved of its obligations.

A general summary of the implications of termination of the Contract at the various stages of the contract is set out below. All sales, removals or disposals of property will be subject to the tax rules as set out in the Contract.

a. General Survey and Exploration Periods
    - The company has a period of six months to sell or remove its property, otherwise the property becomes the property of the Government.

- The company is required to provide any information gained from the work it has performed to the Department of Mines and Energy.

b. Feasibility Study Period
    - The company is required to offer all property located in the Contract Area to the Government at market value.
    - The offer is valid for 30 days. If the Government accepts the offer, it is required to settle within 90 days.
    - If the Government does not accept the offer, the company then has six months to sell or remove its property, otherwise the property reverts to the Government without any compensation to the company.

c. Construction Period
    - The conditions are identical to those for the Feasibility period except that, if the Government does not accept the offer, the company has 12 months to remove or sell its property.

d. Operating Period or Expiration of the Contract
    - The company is required to offer all property located in the Contract Area to the Government at market value.
    - The offer is valid for 30 days. If the Government accepts the offer, it is required to settle within 90 days.
    - If the Government does not accept the offer, the company then has twelve months to sell or remove its property, otherwise the property reverts to the Government without any compensation to the company.

At the termination of the Contract, any property that is used for public purposes such as roads, schools and hospitals with associated equipment immediately becomes the property of the Government without any compensation to the company.

Transfer of Contracts

Purchase and sale of direct interests in the Contract

The Contract does not allow the CoW/CCA/CCoW companies to transfer or assign all or part of its interest in the contract without prior written consent of the Government. On such a transfer, the company is not relieved of any of its obligations under the contract, except to the extent that the transferee or assignee assumes and performs such obligations.

Purchase and sale of shares in a Contract Company

Due to the difficulties involved in transferring a direct interest in a Contract, it is common for such interests to be transferred indirectly through the transfer of shares in the company holding the Contract, or through transferring shares of holding companies above the company holding the Contract.

However, the shareholders of the Contract company can not transfer shares prior to the commencement of the operating period, without written consent of the Government.

The shareholders in the Contract company also require the prior written consent of the MoEMR for a transfer of shares of the Contract company after the commencement of the operating period. Under the terms of the Contract, such consent shall not be unreasonably withheld or delayed.

Consent is not required in the case of a transfer of shares to:

- Indonesian Participants (as defined); or
- An affiliate or subsidiary of the shareholder.

Unincorporated joint ventures

As alluded to above, transfers of partial interests in Contracts are rare events, and require some degree of negotiation with the Minister. For this reason, joint venture ownership and operation is equally unusual. The Contract and the income tax legislation of general application are silent as to the tax treatment of joint ventures. The tax treatment of a joint venture is one of a number of matters to be negotiated with the Minister in conjunction with the transfer of an interest in the Contract that creates the joint venture.

Farm-ins

The Contract and the income tax legislation of general application do not address farm-ins per se. As a commercial matter, a typical farm-in to a mineral property involves an eventual transfer of an interest in the property. Accordingly, the farm-in arrangement, and the tax treatment thereof, will be considered by the Minister in conjunction with his consideration of approval of the transfer. A farm-in can usually be effected more easily by a transfer of shares in the offshore investing company.

CoW and CCoW renegotiation

As discussed above, pursuant to the Mining Law of 2009, it is intended that the terms of existing mining contracts (CoWs and CCoWs) be brought into line with the provisions of the Mining Law. Accordingly, the Government has approached many (if not all) CoW and CCoW holders to commence negotiations to amend the terms of contracts. We understand that to date a number of negotiations have been concluded, or are close to conclusion, and some CoW and CCoW holders have agreed with certain amendments. It is not clear, however, whether the revised contracts have been formally signed. A number of contracts remain in the renegotiation process.

The key areas which the Government is seeking to negotiate on are:

1. the size of mining areas
2. contract extensions
3. the amount of royalties
4. obligations to process raw materials in Indonesia
5. divestment
6. utilization of local goods and services
7. tax provisions (except for corporate income tax rate).

Although all amendments were to be concluded within one year of the Mining Law becoming effective, as at April 2014, we understand that negotiations for the amendment of only six CoWs and twenty-two CCoWs had been completed. A total of 109 outstanding CoW and CCoW negotiations are still to be concluded, with the Government targeting negotiations for nine CCoWs to be concluded in 2014.

Given that contracts are specific to each contract holder, the outcomes from the negotiation will vary, however one of the key sticking points has been the inability for the Government to agree to any change which would reduce the amount of State Revenue collected under the contract. Accordingly, the holders of earlier generation CoWs and CCoWs, which lock in a higher rate of tax, are reluctant to agree to any significant changes if the tax and royalty rates cannot be reduced. Similarly, the maximum mining areas under the Mining Law are significantly smaller than some CoWs and CCoWs which is also proving a hurdle in aligning existing contracts with the Mining Law.

4

Tax Regimes for the Indonesian Mining Sector

Photo source : PT Newmont Nusa Tenggara

General Overview of Indonesian Tax Systems

On an annual basis, PwC Indonesia publishes the Indonesian Pocket Tax Book. This publication provides a general guide of the prevailing Indonesian tax laws and regulations, and is available on PwC Indonesia's website (www.pwc.com/id).

Tax Regime for an IUP/IUPK Company

General

The Mining Law stipulates that any tax facilities for a mining project should be provided in accordance with the prevailing laws, except as otherwise stated in the IUP/IUPK. This indicates that tax concessions outside of the prevailing tax law/regulations may still be available.

However, it appears that there is a strong intention of the Government to apply the prevailing tax laws/regulations on the IUP/IUPK holders. Therefore in practice, special tax provisions with overriding status (*lex specialis*) status may not be available for an IUP/IUPK, which is the case for already issued IUPs.

A company holding an IUP/IUPK is required to register for tax and obtain a tax registration number. The tax registration number is called *Nomor Pokok Wajib Pajak* ("NPWP"). The IUP/IUPK company is also required to register for tax at the local tax office where the mine operates, which includes the obligations for VAT (if applicable and not centralised in the head office) and Withholding Tax ("WHT").

Corporate Income Tax

Under the prevailing Income Tax Law No.36/2008 (Tax Law), the Government may issue a Government Regulation (*Peraturan Pemerintah*) governing taxation of mining business. As at the date of this publication, a Government Regulation on mining taxation has not been issued.

Below are some of the main tax considerations which will be relevant to a mining investor.

Corporate Income Tax Rate

Under the prevailing Tax Law/regulations a company is subject to corporate income tax on its net taxable profit. Net taxable profit is calculated based on gross income minus allowable expenditure.

The prevailing corporate tax rate for 2010 and onward is a flat rate of 25% of net taxable profit. A 5% income tax reduction is applicable for a company listed on the Indonesia Stock Exchange, subject to meeting certain requirements.

Income

Gross income usually represents sales of mining products and any other income earned by the mining company.

General expenses

Broadly, deductible expenses are those incurred to generate, maintain and collect taxable income and generally include an amount paid or accrued for all expenditure attributable to the company's operations in a year which typically have a useful life of less than one year.

Certain expenditure may not be tax deductible under the prevailing Income Tax law, e.g. certain donations and benefits-in-kind provided to employees. Some types of benefits-in-kind provided at the mining site may be deductible if the mine is located in a remote area (which is usually the case) and an approval from the DGT is obtained.

Specific operating expenses of a mining operation may include supplies, contracted services, insurance, royalties on intellectual property, processing expenses, repairs and maintenance, etc. They should deductible in the year incurred.

Selling, general and administrative expenses are generally tax deductible and should be deductible in the year incurred.

Exploration and development expenses

Exploration and development expenses may include camp construction, drilling, access road, project communication facilities, etc.

On-site exploration expenses are generally deductible in the year the expenses are incurred provided the expenses meet the general deductibility criteria. Exploration and mine development expenses should generally be capitalised and amortised upon spending rather than production.

Depreciation of fixed assets

Fixed assets are categorised into four categories, depending on the nature of the asset and its expected useful life. The rate at which the asset can be depreciated

will depend upon the category of the asset. Assets are generally depreciated over 4, 8, 16 or 20 years and taxpayers may apply a diminishing balance or straight line approach to depreciation.

Amortisation of intangible assets

Intangible assets may include pre-operating costs, patents, rights, licences, etc. Intangible assets can be amortised over an effective life of either 4, 8, 16 or 20 years, using either a diminishing balance or straight line approach.

Specifically for costs incurred in the acquisition of mining rights with a beneficial life of more than one year, these costs should be amortised based on a production unit method, not exceeding 20% per annum.

Carried forward tax losses

Tax losses can be carried forward for up to five years under the Tax Law and are normally recouped on a first-in-first-out basis. Tax losses cannot be carried back.

Reclamation reserve

For accounting purposes, a mining company is usually required to maintain a reclamation reserve in its accounts for environmental management and reclamation work during the contract period and at the end of the life of the mine. During the exploration stage the reclamation reserve should be in the form of a time deposit with a local bank.

The reclamation reserve amount should be tax deductible provided that it is calculated in accordance with the prevailing energy/mineral resources sector laws/regulations. If the actual cost exceeds the reserve, the balance is generally tax deductible.

Mine closure

The prevailing tax laws/regulations are not clear on whether a provision for mine closure (e.g. mine infrastructure demobilisation costs) is deductible. Since mine closure costs are usually spent in the later stages of a mine's life when the company is earning little or no income, proper tax planning is crucial to ensure utilisation of deductions from these costs. The current regulation on reclamation reserves is silent on the matter of mine closure reserves, therefore mine closure reserves are unlikely to be deductible.

Interest expense

There is currently no thin capitalisation limit (i.e. limitation of interest cost based on a pre-determined maximum debt to equity ratio) in the Tax Law. However the DGT is considering introducing such a rule in the near future.

It is generally prudent to ensure that any interest on intercompany loans does not exceed commercially available rates, as excessive rates can be challenged by the DGT based on transfer pricing principles.

It is a general practice for a shareholder not to charge interest on its loans to a subsidiary during the exploration and development stage. However, care should be taken to structure the loan terms and conditions to ensure that the transfer pricing rules are observed. Non-interest bearing loans from Shareholders are only allowed if certain requirements are met.

Transactions with related parties

Payments to parent companies or affiliates may be deductible if they are reasonable and directly attributable to the mining operations. The amount of the deduction is limited to the amount that would have been paid to a non-related party for the same service (i.e. transfer pricing rules must be observed).

The Indonesian Tax Office (ITO) has increased its audit focus on related party transactions. Taxpayers must disclose a significant amount of detail in their Corporate Income Tax Return (CITR) regarding the level of transfer pricing documentation that exists and must also be able to justify the use of a particular transfer pricing methodology. The ITO has recently commenced performing transfer pricing specific audits, which it has not done in the past. As a result, taxpayers that have related party transactions must carefully consider their transfer pricing position.

The application of the mineral/coal benchmark price to related party transactions for tax purposes is unclear. The benchmark pricing regulation currently only applies for the basis of performing the Government Royalty calculation, it does not technically apply to the corporate income tax calculation, nor does it necessarily compel the mining company to contract at the benchmark price. However, given the major coal indices are used as the basis for setting the benchmark price, it is highly likely that this price would be used as the reference point for the ITO in determining the arm's length price. Accordingly, for tax purposes, in practice the benchmark price could be the minimum acceptable price from a transfer pricing perspective.

Bookkeeping in US Dollars

For tax purposes, a PT PMA company (i.e. an Indonesian incorporated company with foreign shareholders) may request to maintain bookkeeping in US Dollars and in English. The company must request approval from the DGT for US dollar bookkeeping, no later than three months after the establishment of the PT PMA company or three months before the commencement of the US dollar accounting year for an established company.

Following the recent Indonesian adoption of new accounting standards concerning the use of an appropriate functional currency (consistent with International Financial Reporting Standards), wholly-Indonesian owned entities, in addition to PT PMAs, can now elect to use US Dollars rather than Indonesian Rupiah as their bookkeeping currency for tax purposes where they use a currency other than Rupiah as their functional currency under Indonesian accounting standards (noting the three month advance application period referred to above).

We note that for tax purposes US Dollars are the only alternative to Indonesian Rupiah, therefore if the accounting standards resulted in the use of a different functional currency, this would result in an additional administrative burden for taxpayers in maintaining tax records in a different currency to their accounting records.

Tax Incentives and Tax Holidays

The Government recently updated the list of businesses eligible to apply for income tax incentives, across a wide range of industry sectors and geographic regions.

In relation to the mining sector, tax incentives are available, subject to the satisfaction of certain criteria, for:

- basic iron and steel manufacturing;
- gold and silver processing;
- certain brass, iron ore, uranium, thorium, tin, lead, copper, aluminium, zinc, manganese and nickel processing activities;
- coal gasification in the mine area; and
- the use of coal for energy liquefaction.

However these income tax incentives are generally only applicable to the relevant activities undertaken outside Java.

The tax incentives available consist of:

- a 30% investment credit;
- accelerated depreciation and amortisation;

- reduced withholding taxes on dividends; and
- an increased loss carry forward period from 5 years to a maximum of 10 years.

The Government also introduced a tax holiday which exempts eligible taxpayers in pioneer industries from income tax for up to 10 years. For the mining sector, the tax holiday is available for the base metals industry, however further implementing regulations are still required to provide detailed guidance on which specific industries are eligible. The tax holiday incentive is applicable to the relevant pioneer industry taxpayers licenced after 15 August 2011 which have new capital investment plans of at least IDR 1 trillion.

Please contact a PwC tax consultant if you would like further information on the availability of income tax incentives or the tax holiday.

Value Added Tax ("VAT")

Delivery of goods and services in Indonesia is generally subject to VAT, except for delivery of certain pre-determined types of goods and services. The current VAT rate is 10%.

The prevailing VAT Law stipulates that supplies of gold bars, coal and natural resources taken directly from source are not subject to VAT. This VAT position may change according to the level of processing of the mining product in question. In respect of coal, there are a number of private rulings from the DGT indicating that washing or crushing activities do not constitute processing (although briquetting activities do). Further issues may arise in this respect once the detailed requirements of the Mining Law in respect of in-country processing are stipulated.

In the event that a company delivers a non-VAT-able mining product, e.g. gold bars and coal, any Input VAT incurred on the import and/or domestic purchase of goods/services will not be creditable/refundable, effectively becoming an additional cost, which should be deductible for corporate income tax purposes.

During the pre-production stage, the company will not have any Output VAT due to there being no delivery of mining product at that point. Therefore, VAT overpayment is likely as the company should pay its Input VAT to vendors for purchase of taxable goods/services.

For most companies, a VAT refund is only available at the end of the year. However, companies that incur VAT during the pre-production stage may still apply for refunds in respect of capital goods only on a monthly basis (note:

Input VAT on services during the pre-production stage is neither creditable nor refundable). If they fail to reach production (which is defined as the delivery of VATable goods/services) within three years (may be extended to five years) from the date they have credited the Input VAT, they must repay the refund by the end of the month following the failure to enter production. This timing requirement obviously presents a problem for long-term mining projects which may take several years to enter into production.

Withholding Tax ("WHT")

Taxpayers, including mining companies, are obliged to withhold tax on payments for dividends, interest, royalties and most types of services.

WHT is payable on dividends, interest and royalties paid to Indonesian companies at the rate of 15%. However, in the case of dividends, provided that the dividend is sourced from retained earnings and the Indonesian corporate shareholder owns at least 25% of the mining company's shares, the dividend will not be subject to income tax, including WHT.

A 2% WHT is applicable on payments for most types of services made to Indonesian resident entities.

If the payments are made to a non-resident, the current WHT rate is 20%. A tax treaty may provide relief from the WHT on payment of services and reduce the WHT rate on payments of dividends, interest, and royalties (generally to 10% or 15%). The DGT has introduced procedures to be followed to access the benefits of a tax treaty, including a pre-determined disclosure form, and measures to prevent tax treaty abuse. These requirements should be considered when structuring an investment in Indonesian entities by foreign investors.

Land & Building Tax (*Pajak Bumi dan Bangunan* or PBB)

The DGT issued Regulation No.PER-32/PJ/2012 (PER-32) regarding PBB for the mining industry, which revoked the previous regulation from 1998. PER-32 is dated and has effect from 28 December 2012.

The PBB objects in the mining industry cover land and/or buildings located in mining areas, including locations in the mining licence area and locations outside the mining licence area which are used for mining activities. It is applicable to both onshore and offshore activities.

The PBB rate is specified at 0.5% of the taxable sale value of the PBB object. The taxable sale value is stipulated as being a proportion of the sale value of the PBB object at either 20% of the sale value for PBB objects valued up to Rp 1 billion, or 40% of the sale value for PBB objects valued above Rp 1 billion.

The sale value of the PBB objects are determined by the DGT on behalf of the MoF and are updated periodically depending on the economic development of the Region in question.

Specifically for land and buildings used for mining, the sale value should also take into account the net income of the mining activity (gross income less production costs). PER-32 provides a detailed explanation of how this calculation should be performed.

Tax Regime for a CoW/CCoW/CCA Company

One of the key features of a CoW/CCoW/CCA (Contract) is its *lex specialis* status – that is, the terms in the contract override the general law. For example, when certain specific tax rules are set out in a Contract, these tax rules generally take precedence over the prevailing tax laws.

Generally, the tax rules in a Contract reflect those that are in force at the time the contract is signed, although there may be some exceptions. Typically, a Contract fixes the tax rules for the duration of the contract (with the exception of second generation Contracts where they generally follow the prevailing tax regulations). Taxation matters that are not governed in the Contract should follow the prevailing tax laws and regulations (as discussed above).

The advantage of having *lex specialis* tax rules in a Contract includes tax stability throughout the life of the project or at least up to the end of the Contract term.

The disadvantage of the *lex specialis* status of a Contract is that the mining company may not always be able to access favourable changes in the tax law, such as reduction of income tax rates or introduction of tax incentives. Despite this, the *lex specialis* tax rules have historically been favoured by investors, in particular for big long-life mining projects because it provides stability in various aspects of mining operations, including tax.

The mining tax regime included in a Contract is relatively straight forward. However, in some cases, the language in the Contract may be interpreted widely which can result in disputes between the mining company and the ITO.

The transitional provisions of the Mining Law (Article 169) provide that the existing contracts will remain effective until the expiration date. However, the

contracts should be adjusted within one year to conform with the Mining Law, except provisions on state revenue (note that the exception is not applicable if there is an effort to increase the state revenue). Currently the circumstances where the Government can seek to amend the tax/non-tax state revenue provisions in a Contract remain unclear. It is understood the Government has been involved in negotiations with individual Contract companies regarding revision of the Contract terms, but as yet there has not been any wholesale changes to Contracts. Rather, any changes have been made on a case by case basis, if at all. At present, there is still no guidance on how Article 169 of the Mining Law will be implemented, although it is understood that the Government tends to require the CoW/CCoW companies to follow the prevailing tax law, except for the corporate income tax rate (which may be higher than the prevailing rate).

There has been some developments in the past twelve months on the tax obligations of CoW/CCoW companies where the MoF has issued two regulations to implement the Sales Tax of Generation 1 CCoW companies (MoF Regulation No.194/PMK.03/2012 or PMK 194/2013) and to require CoW and CCoW companies to apply the prevailing WHT rates on certain payments to vendors (MoF Regulation No.39/PMK.011/2013 or PMK 39/2013).

Note that the tax treatments described in this booklet are generic and so deviation may exist between the various generations of Contracts. Appendix E summarises the typical tax treatments in the particular generations of Contract. Not all generations of Contract have specific tax rules, as such those contacts may simply require the tax treatments to follow the prevailing tax laws. In assessing the applicable tax regime, detailed review of the Contract is necessary because different rules may exist between two Contracts of the same generation.

Tax administration of a CoW/CCoW/CCA company

Tax registration

A company holding a Contract is also required to register for tax and obtain a NPWP.

The Contract company should also register for tax at the local tax office where the mine operates. These include the obligations for VAT (if applicable and not centralised at head office) and WHT.

Bookkeeping in US Dollars

For tax purposes, a Contract company may opt to apply bookkeeping in US Dollars and in English. The company only needs to notify the DGT for the US dollar bookkeeping, no later than a month before the commencement of the US dollar accounting year.

Irrespective of the currency and the language used, the company may settle their corporate income tax liabilities in Rupiah or US Dollars, and file tax returns in Indonesian language. With respect to Corporate Income Tax, relevant tax returns should be presented in US Dollars side by side with Rupiah in the annual Corporate Income Tax return.

Income Tax

Similar to an IUP/IUPK company, a Contract company is subject to income tax on its net taxable profit. In the Contract, the expenditure described below is normally allowed to be deducted from the gross income.

The mineral CoWs typically have *lex specialis* corporate income tax rules. In respect of a CCA/CCoW, the first and most of the third generation contracts include *lex specialis* corporate income tax provisions whilst the second and remaining third generation CCoWs do not. Where *lex specialis* tax rules do not apply the company must follow the prevailing income tax rules for the Income Tax calculation.

Income tax rate

Where a Contract includes a specific income tax rate, these Contract companies may not be entitled to the reduced 25% corporate tax rate, which is applicable from the 2010 income year onwards (the rate was reduced from 30% in 2008). Some generations of Contracts have unclear language as to whether the reduced rate is accessible. In this case, tax advice should be sought before applying the reduced tax rate.

Operating expenses

Generally the same as under the prevailing law.

Exploration and development expenses

On-site exploration expenses are generally deductible in the year the expenses are incurred provided the expenses relate to the Contracts Area.

Mine development expenses should generally be capitalised and amortised in accordance with the amortisation rules in the Contract.

Reclamation reserve

As per the prevailing tax rules, however, some generations of Contracts may require reference to the previous Income Tax Law and/or a deposit in a state-owned bank in order for the reclamation provision to be deductible.

Selling, general and administration expenses

Generally as per the prevailing law.

Asset revaluation

A Contract company that maintains its books in US Dollars is not allowed to revalue its assets for fiscal purposes.

Employee benefits/facilities

The Contracts normally provide concessional tax treatment on benefits provided to employees who reside in the Contract Area. The cost of most benefits provided to employees located in the Contract Area is deductible to the company, but is not taxed in the hands of the employees.

Pre-Contract expenses

The shareholder(s) of the Contract company may incur relatively significant expenditure before the Contract company is incorporated and the respective mining contract is signed.

A Contract normally allows these pre-incorporation expenses to be transferred from the shareholder(s) to the Contract company. The pre-incorporation expenses are recognised as deferred pre-operating costs and may be claimed as tax deductions in the calculation of the Contract company's Corporate Income Tax by way of amortisation starting from the period when production commences.

Most Contracts require these pre-incorporation expenses to be audited by a public accountant and approved by the DGT. The implementation of this rule is not entirely clear.

There are also a number of transactional tax issues to be addressed in relation to the transfer of pre-incorporation expenses from the shareholder(s) to the company, in particular the VAT and WHT obligations (although VAT may be exempt under the Contract).

Depreciation of fixed assets

Fixed assets are generally deductible through depreciation. Different generations of Contracts regulate different depreciation rules (but most of them are at an accelerated rate).

Mining infrastructure assets such as buildings, roads, bridges and ports are depreciable. Public infrastructure such as roads, schools, and hospitals are usually deductible through depreciation under the Contract's rules.

Fixed assets should be classified into several different categories based on their useful life. Accelerated depreciation rates may be available for fixed assets located in the Contract Area. Earlier generations of CCoW/CCA usually provide an investment allowance deduction (i.e. hypothetical depreciation) and have a fixed depreciation rate under a straight line method, irrespective of the type of assets.

For certain Contracts, if the mine life is shorter than the asset's fiscal useful life, the remaining book value may be fully depreciated at the end of mine life.

Amortisation of intangible assets

Intangible assets may include pre-operating costs, patents, rights, licences, etc.

Expenses incurred prior to production (with a useful life greater than one year – some Contracts do not require this) may be capitalised and amortised once production commences. These expenses may also include expenses incurred by the Contract company's shareholder(s) prior to the formation of the company (i.e. pre-incorporation expenses).

Interest expense

Most Contracts provide that interest expense paid on loans is deductible as long as the arm's length principle is observed and the debt to equity ratio does not exceed that specified in the Contract.

As per the prevailing tax laws, interest on intercompany loans should not exceed commercially available rates.

Some Contracts also require the authorised capital to be fully paid in order to claim an interest deduction.

Carried forward tax losses

Under a Contract, tax losses can be carried forward for the period stipulated in the Contract. This may be more or less than the five years carry forward allowed under the prevailing tax law. Tax losses cannot be carried back.

VAT

Some Contracts may adopt a VAT regime different than the prevailing VAT regulations. For example, there may be provision that Input VAT may be creditable/refundable despite the fact that coal or gold bars are being produced.

During the pre-production stage of the Contract, the company will not have any Output VAT due to there being no delivery of mining product at that point. Therefore, VAT overpayment is likely as the company should pay its Input VAT to vendors for purchases of taxable goods/services.

Until 2004, mining companies were designated as VAT Collectors under the tax regulations prevailing at that time. This means that the mining company should collect and pay VAT charged by its vendors (i.e. Input VAT) directly to the State Treasury, rather than to the respective vendors. Some Contract companies continue to act as a VAT collector as required by the relevant Contract.

Subject to the tax rules in the Contract, the company may claim a refund on the Input VAT paid. In order to receive a refund the company must undergo a tax audit.

Currently there are several outstanding disputes in respect of VAT refunds due to different interpretations of the provisions in the Contract. Therefore, care should be taken before proceeding with the VAT refund claim to ensure that the risk of dispute is managed.

One of those disputes, the long running VAT/Royalty offset issue for Generation 1 CCoWs, has recently been resolved (prospectively at least) with the issuance of PMK 194/2012 which provides that from 1 January 2013 VAT on supplies made to Generation 1 CCoWs will be not collected by the CCoW company. Accordingly, the historic practice of offsetting the VAT receivable against the Government Royalty payments will no longer be necessary. However, this does not resolve the historical offset position, which still remains unclear. As part of the resolution of that issue, the regulation also provided that Generation 1 CCoWs would be liable for Sales Tax (which was repealed with the introduction of the VAT) on certain services (and goods for one contractor), payable on a self-remittance basis similar to WHT.

All VAT payments are denominated in Rupiah. As the company may keep its books in US Dollars, outstanding VAT receivable balances would give rise to a foreign exchange gain/loss risk.

WHT

The Contract company is obliged to withhold tax from payments of dividends, interest, royalties and most types of services. The WHT rate will depend on the tax rules stipulated in the Contract, type of service and whether the service provider is a resident or non-resident. PMK 39/2013 requires the CoW/CCoW companies to apply the prevailing WHT rates on certain services. Care should be taken in implementing this regulation to ensure compliance with the contract. There may be WHT concessions on dividends paid to non-resident founder shareholder(s) (the WHT rate under the prevailing tax law is 20%, before tax treaty relief). Some Contracts may provide a reduced WHT rate of nil or 7.5%. This rate is less than most tax treaty rates.

Land & Building Tax

CoW and CCoW Land & Building Tax obligations are usually specifically governed under the contract.

Import of Capital Equipment

Most Contracts provide exemptions from duties, VAT and income tax on the importation of capital equipment up to a certain year after commencement of commercial production (known as the masterlist facility). Some generations of Contracts however do not provide any import facility.

If no import facility is available under a Contract or IUP/IUPK, relief or exemptions may be available under the general law (e.g. exemption from import duties and import VAT, subject to meeting certain criteria).

Non-Tax State Revenue

Royalties

Royalties are payable to the Government based on actual volume of production or sales price. For CoW/CCoW holders, this is based on the terms of the Contract and is payable quarterly. IUP/IUPK holders must pay royalties at the latest one month after shipment. The royalty is deductible for corporate income tax purposes.

The prevailing royalty rates applicable to IUP/IUPK holders is set out in Section 2.

Dead Rent

Throughout the life of the Contract or IUP/IUPK, the company is required to pay dead rent. This is due annually and the amount is normally calculated based on the number of hectares in the contract/licence area and the stage of the mining operations (e.g. different rates for general survey, exploration, and exploitation stage).

Regional Tax

A mining company may be liable to a number of Regional Taxes and Retributions. The rates range from 1.5% to 35% of a wide number of reference values determined by the relevant regional Government. Contracts may limit additional types and rates of the Regional Tax introduced after the signing date of the contract. A summary of the types of regional taxes that may apply is included at Appendix B.

Transfer of Mineral Interests

Purchase and sale of mining interests

The direct transfer of a Contract is subject to a number of restrictions, which make such transfers uncommon. As set out below, an assignment of a Contract would create a number of difficult tax issues. The transfer of ownership (in whole or in part) is therefore generally achieved through the disposal of an interest in the company holding the Contract or IUP/IUPK.

The 2008 Income Tax Law stipulates that gains arising from transfer of a mining interest, financing participation or capital investment in a mining company are subject to Income Tax.

The 2008 Income Tax Law also stipulates that the Government will issue a separate Government Regulation on the calculation of Income Tax for mining sectors. The Government Regulation may cover the Income Tax on the transfer of a mining interest, however to date, no mining sector specific Government Regulation has been issued in respect of the calculation of Income Tax. Technically, the transferor might include the proceeds of sale of the mining interest as income for Income Tax purposes, whilst the transferee is entitled to deduct the purchase price in accordance with the rules for deducting the cost of intangible assets.

There are several tax issues which need to be resolved in respect of assignment of a Contract. This includes the tax implications of transfer of the tangible assets (such as mine infrastructure equipment, etc.) and intangible assets (such as Deferred Exploration Expenditure) to the buyer without creating any additional tax costs. Therefore, specific advice should be sought on the tax impacts arising from the sale of mining rights.

Purchase and sale of shares in an IUP/IUPK or Contract company

This approach is common in the acquisition of mine properties in Indonesia.

The sale of shares is a taxable event. For a domestic seller, the Income Tax is imposed on the profits earned from the sale. For a non-tax resident seller, a 5% income tax on gross proceeds is due unless relief is available under a tax treaty or the company being sold is a listed company in Indonesia (in this case, a 0.1% final tax is due on the sale proceeds).

The 2008 Income Tax Law provides for a long-arm capital gains tax provision. The ITO can treat the sale of a conduit or special purpose company established in a tax haven country which has an Indonesian PE or subsidiary as the sale of an interest in an Indonesian (PT) company. In this case, the ITO can impose a 5% final income tax on the gross sale proceeds.

The implementation and further development of this new rule should continue to be closely monitored, since to date there is still no clear definition of what will constitute a tax haven, or what the implications will be if the indirect ultimate shareholder of the tax haven company is resident in a jurisdiction with which Indonesia has a tax treaty.

Investment Structuring

As a general rule of thumb, a tax efficient investment structure would create significant tax saving for the life of mine, which will in turn increase the economic value of the mine. A favourable structure would also be effective for project financing purposes. Care must therefore be taken in structuring the initial investment in the mining industry. Some relevant Contract and IUP/IUPK issues to be aware of include:

- A company can only hold one Contract or one IUP/IUPK. This ring fencing rule, together with the fact that there is no group relief for Income Tax purposes, requires careful planning, particularly for the use of service companies within one group, inter-company charges, inter-company borrowings, etc;

- The use of a tax efficient shareholding structure to maximise profit repatriation/dividends would enhance the project feasibility (note that under some tax treaties the WHT on dividends may be reduced from 20% to 15% or 10%);
- Sale of shares in Contract or IUP/IUPK companies that are not listed on the Indonesia Stock Exchange by foreign Investor is taxed at 5% income tax on gross proceeds, unless protected by a tax treaty. The investment may be structured to reduce the tax on exit;
- A typical concession in some of the Contracts of a reduced WHT rate for dividend tax payments to founder foreign shareholder(s);
- The use of tax efficient project financing strategies or intra-group financing considering the thin capitalisation rules and the fact that debt forgiveness is subject to tax in Indonesia (this issue is common in unsuccessful exploration projects); and
- The best investment structure and arrangements for mineral processing and refining business (refer to page 28).

Professional advice should be obtained at an early stage of the investment process. This includes the investment structuring considerations and financial/tax due diligence on the target mining company.

5 Additional Regulatory Considerations for Mining Investment


Photo source : PT Timah (Persero) Tbk

Investment Law

Law No.25 of 2007 (Investment Law) is the most recent investment law which introduces an integrated one-stop service to simplify business licensing. Under the Investment Law, the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or "BKPM") is given the power of coordinating the implementation of the investment policy.

Obligations for Limited Liability (PT) companies are set out in the Investment Law No.25 and include such things as:

- prioritising the use of Indonesian citizen manpower;
- creating a safe and healthy working environment;
- implementing corporate social responsibility; and
- preserving environmental conservation.

Investors exploiting non-renewable natural resources must also allocate funds for site restoration that fulfill the standards of an environmental feasibility. Sanctions for non-compliance with certain aspects of the Investment Law, (which includes corporate social responsibility) include restriction, freezing or revocation of business activities/licences.

The Central Government provides protection from nationalisation unless such nationalisation is required by law. In this case, the Central Government will provide compensation based on the market value. In addition, investors are also given the right to freely transfer and repatriate foreign currency in the form of, amongst others, royalties, dividends, loan repayment, sale of investment and management and technical service fee.

Forestry Law

Geographically, Indonesia is located in a resource-rich soil, which includes forest resources. The use of forest resources is therefore strictly governed by the Central Government, especially protected forests. It is common that mining concession areas overlap with forestry areas (either a protected or productive forest), which means that mining activities will be impacted by the rules applicable to such forests.

Law No.41 of 1999 (Forestry Law) as amended by Law No.19 of 2004 allows 13 open-pit mines in protected forests, as long as the mining companies had contracts prior to the introduction of the Forestry Law (as governed under Presidential Decree No.41/2004).

Under Government Regulation No.24 of 2010 as lastly amended by Government Regulation No.61 of 2012 and the recently issued Minister of Forestry Regulation

No.P18/Menhut-II/2011 dated 30 March 2011, as lastly amended by Minister of Forestry Regulation No.P14/Menhut-II/2013 dated 20 February 2013, the utilisation of Forest Areas for non-forestry activities is permitted in both Production forest areas and Protected forest areas, on obtaining a "borrow–and-use" permit from the Minster of Forestry.

"Protected forest" areas are open for mining activities provided that mining is performed through underground mining (not an open pit), subject to a number of conditions. For areas designated as "Production forest" areas, underground and open pit mining may be permitted. Mining is prohibited in areas designated as "Conservation forests".

Use of a forest area for mining will require compensation to be made, by way of either land compensation or compensation payments. No compensation is payable for certain limited survey and exploration activities (unless for a trial purpose to determine a mine's economic feasibility). The borrow-and-use permit holder will also be required to pay certain non-tax State Revenues and undertake reforestation activities upon ceasing its use of the land.

Approval for use of forestry areas is generally granted by the Minister of Forestry. However, approval for use of forestry areas for mining operations in a WPN that have a significant impact, cover a significant area, and have strategic value, can only be granted by the Minister of Forestry after initial approval is obtained from the Parliament.

Environmental Laws and Regulations

There is a difficult balance between protecting the environment and preserving natural resources, and maintaining a viable mining industry. Environmental protection in Indonesia is governed by various laws, regulations and decrees, and non-compliance may result in fines and penalties and revocation of licences and/or permits in extreme cases.

The environmental law was recently updated in Law No.32 of 2009 (Environmental Law). It requires the Central Government and Regional Governments to prepare a strategic environmental analysis and ensure that the principles of sustainable development have been integrated into the development of a particular region.

Both the Mining Law and the Environmental Law in conjunction require mining companies conducting exploitation of natural resources that have an environmental or social impact to obtain and maintain an environmental impact planning document (*Analisa Mengenai Dampak Lingkungan* or "AMDAL"), which consists of an environmental impact assessment, an environmental management

plan and an environmental monitoring plan. An environmental management effort document, *Upaya Pengelolaan Lingkungan* ("UPL") and *Upaya Pengawasan Lingkungan* ("UKL") generally need to be prepared in any situation where the AMDAL document is not required.

Sanctions applied in respect of breaches of the Environmental Law range from three to 15 years of imprisonment and/or a fine of Rp 100 million to Rp 750 million. The Environmental Law also stipulates minimum penalties which apply, depending on the nature of the breach.

The environmental quality requirements (which concern emissions and waste water temperature levels) have been the subject of recent industry concerns due to the time lag required in implementing new process technologies and increased production costs.

Energy Law

Given the importance of energy resources, the Central Government's involvement in composing an energy management plan to fulfill the national energy needs in the long run is necessary. According to Law No.30 of 2007, a National Energy Council is a Government body that is established to design and formulate the national energy policy, to determine the national energy general plan, to determine the steps to be taken in an energy crisis and in emergency conditions, and to monitor the implementation of policy in energy fields with cross-sectoral characteristics.

Other Regulations Related to Mining Operations

Other relevant regulations applicable to Indonesian mining operations include regulations regarding the use of groundwater, technical guidelines to control air pollution from immovable sources, water quality and pollution, used oil regulations and storage of production chemicals. Failure to comply may lead to fines, penalties and in extreme cases, revocation of the licence/permit.

Service Providers to the Mining Industry

Mining companies typically have four phases of operations - exploration and evaluation, development, production, and closure and rehabilitation. PerMen 24 allows certain activities to be carried out by external parties which may include:

- exploratory drilling and sampling
- infrastructure construction
- contract mining and overburden removal
- hauling and barging

Under the Mining Law and PerMen 28/24, only Indonesian incorporated entities may provide services to mining licence holders in Indonesia.

We outline below some of the guidance associated with the most significant mining services described above:

	Exploratory drilling and sampling company	Construction company	Contract mining and overburden removal company	Hauling and barging company
Regulation	Law 25/2007 Presidential Regulation 39/2014 Law 4/2009 PerMen 28 PerMen 24	Law 25/2007 Presidential Regulation 39/2014 Law 4/2009 PerMen 28 PerMen 24	Law 25/2007 Presidential Regulation 39/2014 Law 4/2009 PerMen 28 PerMen 24	Law 25/2007 Presidential Regulation 39/2014 Law 4/2009 PerMen 28 PerMen 24
Investment licence issuer	Investment Coordinating Board	Investment Coordinating Board	Investment Coordinating Board	Investment Coordinating Board
Business licence issuer	Minister of Energy and Mineral Resources	• Construction Services Development Agency • Investment Coordinating Board • Minister of Energy and Mineral Resources	Minister of Energy and Mineral Resources	• Minister of Transport • Minister of Energy and • Mineral Resources or governor or city mayor (depending on service area)
Period of Business licence	3 years and extendable	• Unlimited from the Investment Coordinating Board • 3 years and extendable from Minister of Energy and Mineral Resources	3 years and extendable	• Unlimited from Minister of Transportation • 3 years and extendable from Minister of Energy and • Mineral Resources

	Exploratory drilling and sampling company	Construction company	Contract mining and overburden removal company	Hauling and barging company
Maximum foreign ownership	Up to 100%	• Engineering procurement construction services (67%) • Non small scale construction contracting and consulting (55%) • Small and medium scale construction contracting and consulting (only for local small scale company) • A construction company can be in the form of a representative office. In this case, joint operation with local construction company is required.	• Up to 100% • Small and medium scale excavating and earth moving work and site preparation for mining (only for local small scale company).	• Ferry, river and lake transport and transport facilities (49%) • Special goods, cargo and heavy equipment transport (49%) • Support business in terminals (49%) • Domestic and international sea transport (49%) • Land transport rental (local investor only) • Up to 100 %, if it is formed as a general mining service company.
Tax	Prevailing tax laws	Prevailing tax laws (with a final deemed profit tax regime)	Prevailing tax laws	Prevailing tax laws

Corporate Social Responsibilities

Contractors are required to comply with relevant laws and regulations on Corporate Social Responsibility ("CSR") and Community Development ("CD").

Under Corporations Law ("UU PT") No.40/2007 article 74, PT companies that have a resource business must implement CSR which must be budgeted for in the companies' expenditure plans. The details of such responsibilities will be further regulated under Government regulations. As of the date of writing, no Government regulation had been issued.

Processing

Under the Mining Law, mining companies will be required to process their minerals within Indonesia (refer to Section 2 – Mandatory in county processing for further discussion).

	Downstream processing
Regulation	Law 25/2007, Presidential Regulation 39/2014, Law 4/2009, PerMen 1
Investment licence issuer	Investment Coordinating Board
Business licence issuer	MoEMR/Governor/Mayor depending on the location
Maximum foreign ownership	Up to 100 percent
Tax	Prevailing tax laws

Mining Infrastructure

The establishment of a greenfields mining project is capital intensive and in the case of Indonesia often involves substantial investment in mine infrastructure (access/haulage roads, potentially railways, conveyors, captive power plants, camp and recreation facilities, washing and crushing facilities and ship loaders) given the often remote locations and distance from water/transshipment facilities.

We outline below some of the investment guidance associated with the most significant infrastructure described above:

As a separate business

	Port	Road	Power Plant	Railways
Regulation	Law 17/2008 Law 25/2007 Presidential Regulation No. 39/2014 Government Regulation No. 61/2009	Law 38/2004 GR 34/2006 GR 15/2005 GR No.43/2013 Law 25/2007 Presidential Regulation No. 39/2014	Law 30/2009 GR 3/2005 GR 10/1989 GR 26/2006 Law 25/2007 Presidential Regulation No. 39/2014	Law 23/2007 Government Regulation No. 56/2009 Law 25/2007 Presidential Regulation No. 39/2014
Investment licence issuer	Investment Coordinating Board Port business will be performed by the company by entering into concession right or agreement with Port Authority	Investment Coordinating Board	Investment Coordinating Board	Investment Coordinating Board
Business licence issuer	Port Operating Licence is granted to Port Authority which is formed by the Ministry of Transportation not to the company itself. Sea Port Operating Licence is issued by : • Minister for Main Port and Hub Port • Governor or Mayor/Regent for Feeder Port Lake/River Port Operating Licence is issued by Mayor/ Regent	Minister of Public Works Based on concession right agreement with the Government	Ministry of Energy and Mineral Resources, Governor or Mayor depending on the business/ transmission area and electricity facility location	Ministry of Transportation, Governor or Mayor depending on the railways coverage

	Port	Road	Power Plant	Railways
Period of business licence	Based on concession right or agreement with Port Authority	Based on concession right agreement with the Ministry	No specific regulation limiting period of operating licence	• Railways Infrastructure operational licence: based on concession on the agreement with Ministry, Governor or Mayor • Railways Facility operational licence : 5 years and extendable
Transferable licence?	No	Yes, based on agreement with the Ministry	Not regulated	Not regulated
Maximum foreign ownership	• Supply of harbor facilities (49%) • Loading / unloading (49%) • Supply of reception facilities (49%) • Supply & business of sea harbor (no max foreign ownership, but it may be max 49% in a proposed Government Regulation)	• Toll road 95%	• Development & installation of electricity supply (49%) • Development & installation of electricity utilisation (95%) • Maintenance and operation of electricity equipment (95%) • Development of electricity equipment technology (100%) • Electricity consulting (95%) • Nuclear power plant (100%) • Electricity transmission and electricity distribution (95%)	• Rail transport Not specified (100%)

	Port	Road	Power Plant	Railways
Maximum foreign ownership *(continued)*			• Power plant below 1MW is closed for investment • Power plant between 1 - 10MW (49%)	
Land rights	Land right is given to Port Authority. The company performs business based on concession right or agreement with Port Authority	Based on concession right given by the Government	Legal title transferred to company in form of *Hak Guna Bangunan* (Right to Use Land for Erecting Building) for a total period of 80 years	Depend on concession right given by the Government
Fee to Government	Stipulated in the concession right agreement	Not stipulated in the regulation	Non tax state revenue collected from electricity transmission and distribution facility	Not stipulated in the regulation
Tax	Prevailing tax laws	Prevailing tax laws	Prevailing tax laws	Prevailing tax laws
Other issues	Law 17/2008 stipulates that implementing regulation will be more defined in GR. No specific regulation on port operation in place to date	Only able to engage in toll road business	Further GR is yet to be issued	Implementation is waiting for further Ministry Regulation

As part of mining business

	Special Port/ Terminal	Road	Power Plant	Railways
Regulation	Law 17/2008 Law 4/2009 Presidential Regulation No. 61/2009	Law 38/2004 GR 34/2006 GR 8/1990 GR 40/2001 GR 15/2005 Law 4/2009	Law 30/2009 GR 3/2005 GR 10/1989 Law 4/2009	Law 23/2007 Government Regulation No. 56/2009 Law 4/2009
Business licence issuer	Minister of Transport	• Mayor/ Regent if within a regency • Governor if cross regency within a province • Minister of Energy and Mineral Resources if cross province	• Mayor/ Regent for transmission within a regency • Governor for transmission inter regency within a province • Ministry for national transmission	Ministry, Governor or Mayor depending on the railways coverage
Period of business licence	Five years and extendable	No specific regulation limiting period of operating licence	No specific regulation limiting period of operating licence	Will be stipulated further in Ministry Regulation
Land rights	Right to Use	Right to Use	Right to Use	Right to Use
Other issues	Allowed only if the nearest available port can not assume the special port activities	None	None	Implementation is waiting for further Ministry Regulation

6 Appendices

Photo source : PT Indo Tambangraya Megah Tbk

Minimum processing and refining requirements prior to export

No	Commodity		Processing and/or Refining	Products	Minimum Limit
	Ore	Mineral			
1.	Copper (smelting process)	a. Chalcopyrite b. Borite c. Cuprite d. Covelitte	Processing	Copper Concentrates	≥15% Cu
			Refining	a. Copper Cathodes	Cu Metal ≥ 99% Cu
				b. Anode Slime	a. Metal Au ≥ 99%; b. Metal Ag ≥ 99%; c. Bullion Pb ≥ 90%; d. Metal Pd ≥ 99%; e. Metal Pt ≥ 99%; f. Metal Se ≥ 99%; g. Metal Tc ≥ 99%; h. PbO ≥ 98%; i. PbO2 ≥ 98%; j. SeO2 ≥ 98%; and/or k. Rare metals and rare soil (refer to the requirement for rare metal soil for tin).
				c. Telluride Copper	a. Cu Metal ≥ 99%; b. Metal Te ≥ 9%; c. TeO2 ≥ 98%; d. Te (OH)4 ≥ 98%.
	Copper (leaching process)	a. Chalcopyrite b. Digenit c. Bornite d. Cuprite e. Covelitte	Refining	Metal	a. Metal Cu ≥ 99%; b. Metal Ag ≥ 99%; c. Metal Ag ≥ 99%; d. Metal Pd ≥ 99%; e. Metal Pt ≥ 99%; f. Metal Se ≥ 99%; g. Metal Te ≥ 99%; and/or k. Rare metals and rare soil (refer to the requirement for rare metal soil for tin).

No	Commodity		Processing and/or Refining	Products	Minimum Limit
	Ore	Mineral			
2.	Nickel and/or cobalt (smelting process) a. Saprolite b. Limonite	a. Pentlandite b. Garnerite c. Serpentinite d. Karolite e. Pyrite f. Goethite	Refining	Nickel Matte, Metal Alloys and Nickel Meta	a. Ni Mate ≥ 70% Ni; b. FeNi ≥ 10%Ni; c. Nickel Pig Iron (NPI) ≥ 4% Ni; d. Ni Metal ≥ 93%; e. Fe Metal ≥ 93%; and/or f. NiO ≥ 70% Ni.
	Nickel and/or cobalt (leaching process) Limonite			Metal, Metal Oxide, Metal Sulfide, mix hydroxide/sulfide precipitate, and hydroxide nickel carbonate	a. Metal Ni ≥ 93%; b. Mix Hydroxide precipitate (MHP) ≥ 25% Ni c. Mix sulphide precipitate (MSP) ≥ 45% Ni; d. Hydroxide Nickel Carbonate (HNC) ≥ 40% Ni; e. NiS ≥ 40% Ni; and/or f. Co Metal ≥ 93% g. CoS ≥ 40% Co; h. Metal Cr ≥ 99%; i. Cr2O3 ≥ 40%; and/or j. MnO2 contains Mn ≥15%.
	Nickel and/or cobalt (reduction process) a. Saprolit b. Limonit		Refining	Metal Alloys	a. FeNispon (Sponge FeNi) ≥ 4% Ni; b. Luppen FeNi ≥ 4% Ni; and/or c. Nugget FeNi ≥ 4% Ni.
3.	Bauxite	a. Gibbsite b. Diaspora c. Boehmite	Refining	Metal Oxide / Hydroxide and metal	a. Smelter grade alumina ≥ 98% Al2O3 b. Chemical grade alumina ≥ 99% Al2O3 ≥ 99% Al(OH)3 c. Metal Al ≥ 99%

No	Commodity		Processing and/or Refining	Products	Minimum Limit
	Ore	Mineral			
4.	Iron ore	a. Hematite b. Magnetite c. Pyrite	Processing	Iron concentrate	≥ 62% Fe
		Goethite/ laterite	Processing	Iron concentrate laterite	≥ 51% Fe Rate (Al2O3 + SiO2) ≥ 10%
			Refining	Sponge, metal and metal alloys	Sponge iron ≥ 75% Fe Pig iron ≥ 90% Fe; and/or Metal alloys ≥ 88% Fe
5.	Iron sand	a. Titanomagnetit b. Ilmenite	Processing	Iron sand concentrate Pellet	≥ 58% Fe; and/or ≥ 56% Fe.
			Refining	Metal	a. Sponge iron ≥ 75% Fe; and/or b. Pig iron ≥ 90% Fe;
				Slag	a. TiO2 ≥ 90%; b. TiCl4 ≥ 98%; c. Metal Alloys ≥ 65% Ti d. V2O5 ≥ 90% e. Metal Alloys ≥ 65% V; and/or f. Rare metals and rare soil (refer to the requirement for rare metal soil for tin).

No	Commodity		Processing and/or Refining	Products	Minimum Limit
	Ore	Mineral			
6.	Tin	Cassiterite	Processing	By product concentrate zircon, ilmenite and rutile	Refer to the requirements for zircon, ilmenite, rutile in zircon non metal mineral.
				Concentrate monazite and xenotime	a. Metal oxide rare soil (REO) ≥ 99%; b. Metal hydroxide rare soil (REOH) ≥ 99%; c. Metal rare soil (REO) ≥ 99%;
			Refining	Metal	Metal Sn ≥ 99.90%
				Slag	a. W ≥ 90% b. Ta2O5 ≥ 90% c. Nb2O5 ≥ 90% d. Sb2O5 ≥ 90%
7.	Manganese	a. Pirolusit b. Psilomelan c. Braunit d. Manganit	Processing	Manganese Concentrate	≥ 49% Mn
			Refining	Metal, Metal alloys and Manganese Chemical	a. Ferro Manganese (FeMn), Mn ≥ 60% b. Silica Manganese (SiMn), Mn ≥ 60% c. Manganese Monoxide (MnO), Mn ≥ 47.5% MnO2 ≤ 4%; d. Manganese Sulfide (MnSO4) ≥ 90%; e. Manganese Chloride (MnCl2) ≥ 90% f. Manganese Carbonate Synthetic (MnCO2) ≥ 90%; g. Kalium Per,amhanat (KMnO4) ≥ 90%; h. Manganese Oxide (Mn3O4) ≥ 90%; i. Manganese Dioxide Synthetic (MnO2) ≥ 98%; and/or j. Manganese Sponge (Direct Reduced k. Manganese) MN ≥ 49% MnO2≤4%.

No	Commodity		Processing and/or Refining	Products	Minimum Limit
	Ore	Mineral			
8.	Lead and Zinc	a. Galena b. Spalerite c. Smithsonite d. Hemimorphite (calamide)	Processing	Zinc Concentrate	≥ 52% Zn
				Lead Concentrate	≥ 57% Pb
			Refining	Metal, Metal oxide/ hydroxide	a. Bullion ≥ 90% Pb; b. PbO ≥ 98%; c. Pb(OH)2 ≥ 98%; d. PbO2 ≥ 98%; e. Bullion ≥ 90% Zn; f. ZnO ≥ 98%; g. ZnO2 ≥ 98%; h. Zn (OH)2 ≥ 98%; i. Metal Au ≥ 99%; j. Metal Ag ≥ 99%.
9.	Gold	a. Native b. Associated minerals	Refining	Precious metal	a. Metal Au ≥ 99% b. Metal Au ≥ 99%
10.	Silver	a. Native b. Associated minerals	Refining	Precious metal	a. Metal Ag ≥ 99% b. Metal Ag ≥ 99%
11.	Chromium	Chromite	Refining	Metal and alloys	a. Metal Cr ≥ 99% b. Metal Alloys ≥ 60% Cr

Regional Taxes

This table represents a selection of the various regional taxes relevant to the mining industry.

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
A. Provincial Taxes				
1	Taxes on motor vehicle and heavy equipment	10%	Non-public vehicles	
			1%-2% for the first vehicle owned	Calculated by reference to sales value and a weight factor (size, fuel, type, etc.). Government table will be published annualy to enable calculation.
			2% - 10% for the second and more vehicle owned	
			0.5% - 1% for public vehicles	
			0.1% - 0.2% for heavy equipment vehicle	
2	Title transfer fees on motor vehicle, above-water vessels and heavy equipment	20%	Motor vehicle	
			20% on first title transfer	
			1% on second or more title transfer	
			Heavy equipment	
			0.75% on first title transfer	
			0.075% on second or subsequent title transfer	
3	Tax on motor vehicle fuel	10%	Public vehicles: at least 50% lower than tax on non-public vehicle fuel (depending each region)	Sales price of fuel (gasoline, diesel fuel and gas fuel)
4	Tax on the collection and utilisation of underground water and surface water	10%	Tariff on surface water only	Purchase value of water (determined by applying a number of factors).

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
B. Regency and Municipal Taxes				
5	Tax on street lighting	10%	3% utilisation by industry	Sales on electricity
			1.5% personal use	
6	Tax on non-metal mineral and rock (formerly C-Category mined substance collection)	25%	Set by region	
7	Tax on groundwater	20%	Set by region	Purchase Value
8	Land and building tax	0.3%	Set by region	Only on certain types of land and buildings
9	Duty on the acquisition of land and building rights	5%	Set by region	Land and building sale value

Ministry of Energy and Mineral Resources

Indonesian Mining Association ("IMA")

IMA is a non-Governmental, non-political, and not-for-profit national mining organisation, established in Jakarta on 29 May 1975.

Membership is open to both organisations and individuals actively participating in the Indonesian mining industry.

The association serves as a link between Government and the mining industry; organising lectures, seminars and training activities for the members; organising periodic conferences on mining in Indonesia; publishes proceedings and mining information; and represents the Indonesian mining industry at national and international meetings.

IMA is a founding member of the Asean Federation of Mining Associations (AFMA) and currently provides the secretariat for the Federation. The aims and objectives of IMA are to support the Government in its policies to encourage mining industry development, and to disseminate non-confidential and non-proprietary information to promote the exploration, mining, beneficiation and metallurgical aspects in Indonesia through:

a. fostering mining development;
b. facilitating professional and business exchange of know-how and experience of experts active in the industry;
c. cooperation with similar organisations all over the world in promoting mining business and technology.

The association has more than 100 company members.

ASOSIASI PERTAMBANGAN
BATUBARA INDONESIA
INDONESIAN COAL
MINING ASSOCIATION

Indonesian Coal Mining Association ("ICMA")

Founded on 20 September 1989 as a response to the challenges of the coal mining industry in Indonesia.

The APBI-ICMA is a non-Government, non-profit and non-political organization that embraces both upstream (exploration and exploitation) and downstream (marketing and distribution, utilization and mining services) aspects of the coal industry in Indonesia.

The Association aims at creating an environment for its members to discuss common concerns, exchange ideas and works towards a common goal for the coal mining industry.

The APBI-ICMA also acts as a partner to relevant Government Institutions and provides the industry's views on how to encourage a favourable environment for investment and competition.

The APBI-ICMA works collaboratively with all stakeholders to enhance investment in the economic health of the coal mining industry to deliver greater benefit to Government, investors, communities, employees, customers and the environment.

APBI-ICMA members are comprised of 122 companies, as follows:
Coal producers: 78 companies
Coal mining service providers: 44 companies
Our members produce about 80% of total national coal production.

Summary of CCoW generations

No	Item			First Generation	Second Generation	Third Generation	Remarks
1	**Deadrent – in US$ per hectare per annum except stated otherwise**						
	a. General Survey			0.01 – 0.03	0.05 – 0.10	0.025 – 0.05	Second Generation's deadrent follows the prevailing deadrent tariff
	b. Exploration			0.08 – 0.20	0.20 – 0.70	0.10 – 0.35	
	c. Feasibility			0.20	1.00	0.50	
	d. Construction			0.20	1.00	0.50	
	e. Operation			1.00	2.00 - 4.00	1.50 – 3.00	
2	**Production royalty rate (%)**			13.5%	13.5%	13.5%	Calculated from coal sales price minus certain marketing/ selling expenses
3	**CIT**						
	a. Tax Rates			35% for the first ten years of Operating Period; 45% thereafter	Follows the prevailing tax rates. The rate is reduced to 28% in 2009 and to 25% from 2010 onwards.	Maximum rate of 30% (tax rate reduction subject to a Government Regulation)	
	b. Depreciation rates						
		Non-building assets:					
		i.	Straight line	12.5%	Follows the prevailing tax depreciation rates	10% -50%	For Third Generation, the tax depreciation rates only apply to tangible assets located in the Contract Area. Otherwise, provision under the Income Tax Law Year 1994 should prevail.
		ii.	Double declining	Not Applicable		20% - 100%	
		Building assets:					
		i.	Straight line	12.5%	Follows the prevailing tax depreciation rates	10% -20%	
		ii.	Double declining	Not Applicable		Not Applicable	

No	Item			First Generation	Second Generation	Third Generation	Remarks
	c. Amortization rates (%)						
		a. Straight line		12.5%	Follows the prevailing tax amortisation rates	10% -50%	Under most CCoWs costs incurred prior to commercial operation may be deferred and amortised
		b. Double declining		Not applicable		20% - 100%	
	d. Accelerated Depreciation						
		Non-building assets:		25%	Not Applicable	Not Applicable	Accelerated depreciation can be claimed only within any one of the first four years of the life of the assets
		Building assets:		10%	Not Applicable	Not Applicable	
	e. Investment allowance			20% of total investment	Not Applicable	Not Applicable	At the rate of 5% a year
	f. Deductible expenses:						
		Operating Expenses:					
		i.	Cost of materials, supplies, equipment and utilities	✓	✓	✓	
		ii.	Expenses for contracted services	✓	✓	✓	
		iii.	Premiums for insurance	✓	✓	✓	
		iv.	Damage/losses not compensate for insurance	✓	✓	✓	
		v.	Payments of royalties or other payments in respect of patent, design, technical information and services	✓	✓	✓	
		vi.	Losses from obsolescence or destruction of inventory	✓	✓	✓	Provision is not deductible
		vii.	Rentals	✓	✓	✓	

No	Item			First Generation	Second Generation	Third Generation	Remarks
		viii.	Deadrent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	
		ix.	Sales tax	✓	✓	Silent	
		x.	Uncredited VAT	Silent	✓	✓	
		xi.	Expenses for treating, processing, repairs and maintenance, handling, storing, transporting and shipping	✓	✓	✓	
		xii.	Expenses for commissions and discounts	✓	✓	✓	
		xiii.	Expenses for environment/ reclamation	Silent	✓	✓	
		xiv.	Expenses incurred prior to the establishment of the company and expended by a shareholder	Silent	x	✓	For the third generation, it is deductible provided the expenditures have been audited by independent auditor and approval from the DGT has been obtained
		Sales, General & Administation					
		i.	Salaries and wages	✓	✓	✓	
		ii.	Costs of specified benefits-in-kind in the contract area	✓	x	✓	For the second generation, not deductible unless it obtains remote area approval from the DGT
		iii.	Research expenses	✓	✓	✓	For the second generation, should be performed in Indonesia
		iv.	Travel expenses	✓	✓	✓	Only for business purposes
		v.	Technical fees	✓	✓	✓	

No	Item			First Generation	Second Generation	Third Generation	Remarks
		vi.	Management fees and other fees for services performed abroad	✓	✓	✓	
		vii.	Communication and office expenses	✓	✓	✓	
		viii.	Dues and subscriptions	✓	✓	✓	
		ix.	Advertising and other selling expenses, public relations, marketing expenses	✓	✓	✓	
		x.	Legal and auditing expenses	✓	✓	✓	
		xi.	General overhead expenses	✓	✓	✓	
		xii.	Exploration expense	✓	✓	✓	
		xiii.	Other relevant expenses	✓	✓	✓	
		xiv.	Reserve for reclamation	Silent	✓	✓	For the third generation, subject to a deposit placed in a State Owned bank, audited by a public accountant and approved by the DGT
	g. Interest deductibility						
			Maximum debt to equity ratio	1.5 to 1	Silent	Not Applicable	At the time of writing, the DGT is drafting a Government Regulation on Mining Taxation, which may include thin capitalisation rule
			Maximum debt to equity ratio for Investment <US$200m	Not Applicable	Silent	5 to 1	
			Maximum debt to equity ratio for Investment >US$200m	Not Applicable	Silent	8 to 1	

No	Item			First Generation	Second Generation	Third Generation	Remarks
	h. Tax loss carried forward			Four years (loss before the fifth anniversary of the Operating Period can be utilised in any years)	Five years	Eight years	Second generation follows the prevailing tax loss carried forward period
4	**Withholding Tax**						
		i.	Dividends, interest and royalties	10%	20%	20%	- Third generation WHT obligations are grandfathered to 1994 Income Tax Law
		ii.	Dividends (founder shareholder)	10%	Silent	7.5%	- Reduced tax rate is available under a tax treaty
		iii.	Rentals, technical, management fees and other service fees	10%	2% to 20%	1.5% to 20%	
		iv.	Employee income tax	Applicable	Applicable	Applicable	- Second generation follows the prevailing employee income tax regulations
5	**Value Added Tax rate**						
		i.	VAT on coal sales	Not Applicable	Exempted	10% on domestic sales; 0% on export sales	- Third generation CCoW VAT obligations are grandfathered to the 1994 VAT Law. VAT paid should be creditable/refundable
		ii.	VAT on domestic purchases	Not Applicable	10% paid to vendor	10% collected by the mining company	- Input VAT cannot be credited/refunded by second generation CCoW, but this is deductible for corporate income tax purposes.
		iii.	VAT on import	Not Applicable	10% paid to Custom Office	Exempted up to the tenth anniversary of Operating Period	- Second Generation follows the prevailing VAT Law

No	Item			First Generation	Second Generation	Third Generation	Remarks
		iv.	VAT on offshore services	Not Applicable	10% on self assessment basis	10% on self assessment basis	
				note: remittance is required but will get reimbursement			
6	**Sales Tax rates**			5% on domestic services	Not Applicable	Not Applicable	Sales tax was repealed in 1984, when VAT was introduced.
7	**Import Duty on capital goods**			Exempted	Exempted/ reduced rates up to the tenth anniversary of Operating Period, in accordance with prevailing regulations	Exempted/ reduced rates up to the tenth anniversary of Operating Period, in accordance with prevailing regulations	Exemption of import duty is subject to BKPM Master List approval
8	**Other taxes & levies**						
	a. Regional taxes (e.g. motor vehicles and street lighting levy)			Regional Development Tax (IPEDA): maximum of US$100,000 a year	Applicable	Follows the prevailing Regional Tax Law at the rate not exceeding the prevailing rate at the signing date	Second Generation follows the prevailing laws and regulations
	b. Land and building tax			Silent	Applicable	Applicable	Second Generation follows the prevailing law and regulations

Summary of Mineral CoW generations

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
1	**Deadrent – in US$ per hectare per annum except stated otherwise**						
	a. General Survey	0.01 - 0.03	0.025 - 0.05	0.025 - 0.05	0.025 - 0.05	0.025 - 0.05	
	b. Exploration	0.08 - 0.2	0.1 - 0.35	0.1 - 0.35	0.1 - 0.35	0.1 - 0.35	
	c. Feasibility	0.2	0.5	0.5	0.5	0.5	
	d. Construction	0.2	0.5	0.5	0.5	0.5	
	e. Operation	1.00 - 2.00	1.50 - 3.00	1.50 - 3.00	1.50 - 3.00	1.50 - 3.00	
2	**Production royalty rate (%)**	Annex E	Annex F	Annex F	Annex F	Annex F	Annex F of the CoW usually provides details of the royalty rates.
3	**Corporate Income Tax**						
	a. Tax Rates	Follows the prevailing laws, but not higher than: - 35% for the first five years of Operating Period; - 40% for the second five years of Operating Period; - 45% thereafter.	Maximum 35%	Maximum 35%	Maximum 30% (potential tax rate reduction is available subject to a Government Regulation)	Maximum 30% (potential tax rate reduction is available subject to a Government Regulation)	
	b. Depreciation rates						
	Non-building assets:						
	i. Straight line	12.5%	Not Applicable	Group 1 & 2 follows ITL 1984 Group 3: 12.5%	10% -50%	10% -50%	For the fifth generation, the tax depreciation rates only apply to tangible assets located in the Contract Area. Otherwise, provision under the 1984 Income Tax Law should prevail.
	ii. Double declining	Not Applicable	25%	Group 1 & 2 follows ITL 1984	20% - 100%	20% - 100%	For the sixth and seventh generations, the tax depreciation rates only apply to tangible assets located in the Contract Area. Otherwise, provision under the 1994 Income Tax Law should prevail.
	Building assets:						
	i. Straight line	12.50%	25%	12.50%	10% -20%	10% -20%	
	ii. Double declining	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	
	c. Amortisation rates (%)						
	a. Straight line	12.5%	Not Applicable	25.0%	10% -50%	10% -50%	Under most CoWs, costs incurred prior to commercial operation may be deferred and amortised
	b. Double declining	Not Applicable	25%	Not Applicable	20% - 100%	20% - 100%	

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	d. Accelerated Depreciation						
	Non-building assets:	25%	Not Applicable	Not Applicable	Not Applicable	Not Applicable	For the third generation, accelerated depreciation can only be claimed within any one of the first four years of the life of the assets
	Building assets:	10%	Not Applicable	Not Applicable	Not Applicable	Not Applicable	
	e. Investment credits	20% of total investment	Not Applicable	Not Applicable	Not Applicable	Not Applicable	At the rate of 5% a year
	f. Deductible expenses:						
	Operating Expenses:						
	i. Cost of materials, supplies, equipment and utilities	✓	✓	✓	✓	✓	
	ii. Expenses for contracted services	✓	✓	✓	✓	✓	
	iii. Premiums for insurance	✓	✓	✓	✓	✓	
	iv. Damage/losses not compensate for insurance	✓	✓	✓	✓	✓	
	v. Payments of royalties or other payments in respect of patent, design, technical information and services	✓	✓	✓	✓	✓	Third Generation - payment to affiliates is subject to approval from the DGT
	vi. Losses from obsolescence or destruction of inventory	✓	✓	✓	✓	✓	
	vii. Rentals	✓	✓	✓	✓	✓	
	viii. Deadrent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	✓	✓	
	ix. Sales tax	✓	Silent	Silent	Silent	Silent	
	x. Uncredited VAT	Silent	✓	✓	✓	✓	
	xi. Expenses for treating, processing, repairs and maintenance, handling, storing, transporting and shipping	✓	✓	✓	✓	✓	
	xii. Expenses for commissions and discounts	✓	✓	✓	✓	✓	
	xiii. Expenses for environment	Silent	Silent	Silent	✓	✓	
	xiv. Expenses incurred prior to the establishment of the company and expended by a shareholder	✓	✓	✓	✓	✓	It is deductible provided the expenditures have been audited by independent auditor and approval from the DGT has been obtained.

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	Sales, General & Administration						
	i. Salaries and wages	✓	✓	✓	✓	✓	
	ii. Costs of specified BIKs in the contract area	✓	✓	✓	✓	✓	
	iii. Research expenses	✓	✓	✓	✓	✓	
	iv. Travel expenses	✓	✓	✓	✓	✓	Only for business purposes
	v. Technical fees	✓	✓	✓	✓	✓	
	vi. Management fees and other fees for services performed abroad	✓	✓	✓	✓	✓	
	vii. Communication and office expenses	✓	✓	✓	✓	✓	
	viii. Dues and subscriptions	✓	✓	✓	✓	✓	
	ix. Advertising and other selling expenses, public relations, marketing expenses	✓	✓	✓	✓	✓	
	x. Legal and auditing expenses	✓	✓	✓	✓	✓	
	xi. General overhead expenses	✓	✓	✓	✓		
	xii. Exploration costs	✓	✓	✓	✓	✓	
	xiii. Other relevant expenses	✓	✓	✓	✓	✓	
	xiv. Reserve for reclamation	Silent	Silent	Silent	✓	✓	Subject to a deposit placed in a State Owned bank, audited by a public accountant and approval from the DGT
	g. Interest deductibility						
	Maximum debt to equity ratio	1.5 to 1	3 to 1	Not Applicable	Not Applicable	Not Applicable	
	Maximum debt to equity ratio for Investment <US$200m	Not Applicable	Not Applicable	5 to 1	5 to 1	5 to 1	
	Maximum debt to equity ratio for Investment >US$200m	Not Applicable	Not Applicable	8 to 1	8 to 1	8 to 1	
	h. Tax loss carried forward	Four years (loss before the fifth anniversary of the Operating period can be utilised in any years)	Eight years	Five to eight years	Eight years	Eight years	
4	**Withholding Tax**						
	i. Dividends, interest and royalties	10%	15% for domestic tax payer 20% for foreign tax payer	15% for domestic tax payer 20% for foreign tax payer	0% to 20%	0% to 20%	
	ii. Dividends (founder shareholder)	See above	See above	See above	0% to 7.5%	0% to 7.5%	

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	iii. Technical, management fees and others	Prevailing law	2% to 20%	9% for domestic tax payer 20% for foreign tax payer	15% to 20%	15% to 20%	
	iv. Rentals	Prevailing law	15% for domestic tax payer 20% for foreign tax payer	15% for domestic tax payer 20% for foreign tax payer	15% to 20%	15% to 20%	
	v. Employee income tax	Applicable	Applicable	Applicable	Applicable	Applicable	
5	**Value Added Tax rate**						
	i. VAT on sales	Silent	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	The fifth generation VAT obligations are grandfathered to the 1984 VAT Law
	ii. VAT on domestic purchases	Silent	10% paid to vendor	10% collected by the mining company	10% paid to vendor	10% paid to vendor	The sixth and seventh generations VAT obligations are grandfathered to the 1994 VAT Law
	iii. VAT on import	Silent	Deferred up to the 10th anniversary of Operating Period	Deferred up to the 10th anniversary of Operating Period	Exempted up to the 10th anniversary of Operating Period	Exempted up to the 10th anniversary of Operating Period	
	iv. VAT on offshore services	Silent	10% on self assessment basis	10% on self assessment basis	10% on self assessment basis	10% on self assessment basis	VAT paid should be creditable/ refundable
6	**Sales Taxes rate**	Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Sales tax was repealed in 1984, when VAT was introduced
7	**Import Duty on capital goods**	Exempted up to the 10th anniversary of commercial production	Exempted/reduced rates up to the 10th anniversary of Operating Period	Exempted/reduced rates up to the 10th anniversary of Operating Period	Exempted/reduced rates up to the 10th anniversary of Operating Period	Exempted/reduced rates up to the 10th anniversary of Operating Period	Exemption of import duty is subject to BKPM Master List approval
8	**Other taxes & levies**						
	a. Regional taxes (e.g. motor vehicle and street lighting levy)	- Regional charges - Regional Development Tax ("IPEDA"): amount equal to deadrent and an amount based on non-public area	Applicable	Applicable	Applicable	Applicable	Generally capped at the rate not exceeding the rate prevailing at the CoW signing date
	b. Land and building tax	Silent	Applicable	Applicable	Applicable	Applicable	

Glossary

Term	Definition
AMDAL	*Analisis Mengenai Dampak Lingkungan* (Environmental Impact Assessment)
BI	Bank of Indonesia
BKPM	*Badan Koordinasi Penanaman Modal* (Indonesia's Investment Coordinating Board)
CCA	Coal Co-operation Agreement
CIT	Corporate Income Tax
CoW	Contract of Work
CCoW	Coal Contract of Work
CD	Community Development
Contracts	CoW/CCoW/CCA
CSR	Corporate Social Responsibility
DGoMC	Director General of Minerals and Coal
DGT	Director General of Taxation
DMO	Domestic Market Obligation
EPC	Engineering, Procurement, and Construction
Forestry Law	Law No.41 of 1999 as amended by Law No.19 of 2004
GDP	Gross Domestic Product
GoI/ Government	Government of Indonesia
GR	Government Regulation
GR 1	Government Regulation No.1 of 2014
GR 22	Government Regulation No.22 of 2010 dated 1 February 2010
GR 23	Government Regulation No.23 of 2010 dated 1 February 2010
GR 24	Government Regulation No.24 of 2012 dated 21 February 2012
GR 55	Government Regulation No.55 of 2010 dated 5 July 2010
GR 78	Government Regulation No.78 of 2010 dated 20 December 2010
ha	Hectare
IPR	*Izin Pertambangan Rakyat* (People's Mining Licence)

Term	Definition
ITO	Indonesian Tax Office
IUJP	*Izin Usaha Jasa Pertambangan* (Mining Services Business Licence)
IUP	*Izin Usaha Pertambangan* (Mining Business Licence)
IUPK	*Izin Usaha Pertambangan Khusus* (Special Mining Business Licence)
IUP-OP	*Izin Usaha Pertambangan Operasi Produksi* (Production Operation Mining Business Licence)
KP	*Kuasa Pertambangan* (Mining Right)
Minister	Minister of the MoEMR
Mining Law	Law on Mineral and Coal Mining No.4 of 2009
MoEMR	Ministry of Energy and Mineral Resources
MoF	Minister of Finance
NEP	National Energy Policy
NPWP	*Nomor Pokok Wajib Pajak* (Tax Payer Identification Number)
PBB	*Pajak Bumi dan Bangunan* (Land & Building Tax)
PE	Permanent Establishment
PER	*Peraturan Direktur Jenderal Pajak* (Director General of Taxation Regulation)
PerMen 1	Regulation of MoEMR No.1/2014
PerMen 7	Regulation of MoEMR No.7/2012
PerMen 7	Regulation of MoEMR No.7/2014
PerMen 11	Regulation of the MoEMR No.11/2012, dated 16 May 2012
PerMen 17	Regulation of the MoEMR No.17/2010, dated 23 September 2010
PerMen 24	Regulation of the MoEMR No.24/2012, dated 8 October 2012
PerMen 28	Regulation of the MoEMR No.28/2009, dated 30 September 2009
PerMen 28	Regulation of MoEMR No.28/2013
PerMen 32	Regulation of MoEMR No.32/2013
PerMen 34	Regulation of the MoEMR No.34/2009, dated 31 December 2009
PerMen 37	Regulation of MoEMR No. 37/2013

Term	Definition
PMA	*Penanaman Modal Asing* (Foreign Investment Company)
PMDN	*Penanaman Modal Dalam Negeri*
PMK	*Peraturan Menteri Keuangan* (Minister of Finance Regulation)
PMK 39/2013	Regulation of MoF No.39/PMK.011/2013, dated 27 February 2013
PMK 194/2013	Regulation of MoF No.194/PMK.03/2012, dated 6 December 2012
PR	*Peraturan Presiden* (Presidential Regulation)
PT	*Perseroan Terbatas (*Limited Liability Company)
PTBA	PT Tambang Batubara Bukit Asam (Persero) Tbk
PwC	PwC refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity
SKT	*Surat Keterangan Terdaftar* (Registration Letter for non-core mining services business)
UU PT	*Undang Undang Perseroan Terbatas* (Corporations Law)
VAT	Value Added Tax
WIUP	*Wilayah Izin Usaha Pertambangan* (Mining Business Licence Area)
WIUPK	*Wilayan Izin Usaha Pertambangan Khusus* (Specific Mining Business Licence Area)
WHT	Withholding Tax
WP	*Wilayah Pertambangan* (Mining Area)
WPN	*Wilayah Pencadangan Negara* (State Reserve Area)
WPR	*Wilayah Pertambangan Rakyat* (People's Mining Area)
WUP	*Wilayah Usaha Pertambangan* (Commercial Mining Business Area)

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- Consider listing eligibility issues
- General planning and preparation.


Photo source : PT Newmont Nusa Tenggara

For companies operating in the Indonesian mining sector, there are some compelling reasons to choose PwC Indonesia as your professional services firm:

The PwC network is the leading adviser to the mining industry, both globally and in Indonesia, working with more explorers, producers and related service providers than any other professional services firm.

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Our commitment to the mining industry is unmatched and demonstrated by our active participation in industry associations around the world and our thought leadership on the issues affecting the industry. Through our involvement with the Indonesian Mining Association, Indonesian Coal Mining Association and Indonesian mining companies, we help shape the future of the industry.

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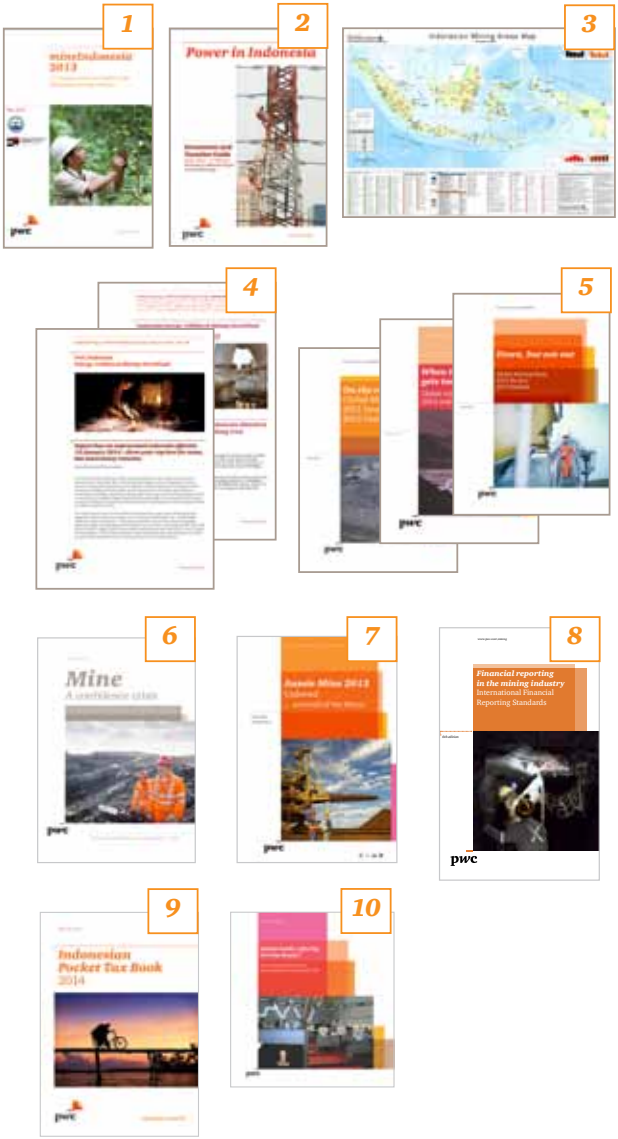

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