

Interim circular on KP “conversion”

Following the issuance of the new Law on Mineral and Coal Mining No. 4/2009 on 12 January 2009, the Director General of Minerals, Coal and Geothermal (“DGMCG”) recently issued Circular No. 03.E/31/DJB/2009.

As highlighted in our Special Edition NewsFlash on the new Mining Law in December 2008, one of the key concerns of investors with the New Law was the absence of specific transitional provisions on existing Mining Authorisations (*Kuasa Pertambangan* or “KPs”).

This Circular appears to be an attempt to provide interim guidance on mining licensing, particularly for KPs, until the implementing Government Regulations (*Peraturan Pemerintah*) for the new Mining Law are issued.

In summary, the Circular states that:

- a. KPs in force at the time the new Mining Law was enacted will remain valid until the expiration of the KP and must be converted to a Mining Business Permit (*Izin Usaha Pertambangan* or “IUP” – the mining license under the new Mining Law) by 11 January 2010 at the latest.
- b. Any KPs issued after 12 January 2009 (i.e. the effective date of the new Mining Law) are deemed to be void and invalid.
- c. The procedures for IUP issuance will be issued by the DGMCG (presumably through the upcoming implementing regulations for Law No. 4/2009).
- d. All existing exploration and exploitation KP holders are required to deliver an activities plan for the whole KP area covering the period until expiration of the KP term, at the latest within six months of the enactment of the new Mining Law, i.e. by 11 July 2009.

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- e. The regional government should coordinate with the DGMCG on applications for KP extension or operational stage conversion/upgrade. This is to ensure that those applications are processed in accordance with the new Mining Law.
- f. Companies that have filed applications for a new Contract of Work or Coal Contract of Work within one year prior to the enactment of the new Mining Law are required to establish an Indonesian incorporated entity at the latest within six months after the effective date of the new Mining Law. This is required as part of the process of obtaining an IUP under the new Law.

In our view, there are several issues that need to be managed properly and timely in respect of KP “conversion”. These include:

- a. The Government Regulation on KP conversion should be issued sooner rather than later to provide legal certainty to existing KP holders. The regulation should also address how to bridge key differences in features between a KP and an IUP, for example the size of the mining area under a KP versus an IUP, and the ability for foreign investors to take a direct interest in the converted KP.
- b. The debate over whether the Government can issue a Government Regulation governing KP conversion/ transition whilst the new Mining Law is silent on this issue should be cleared as there appears to be two schools of thought in respect of this issue.
- c. Can the KP holder legally carry out mining activities prior to the conversion to an IUP? This is due to the lack of transitional provisions on KPs under the new Mining Law which may give rise to an argument that the existing KPs are invalid until they are “converted” to IUPs.
- d. What if a KP holder fails to provide the mining activities plan for the whole KP area within six months of the enactment of the new Mining Law? Will the KP be terminated or suspended?

There is much hope that these issues will soon be addressed by the Government in the implementing regulations for the new Mining Law, with inputs from stakeholders in the mining industry.

PricewaterhouseCoopers Indonesia intends to issue further NewsFlashes to its clients on any developments in regard to the new Mining Law. Please contact our mining specialists below with any queries.

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