

# Energy, Utilities & Mining NewsFlash\* - Special Edition

## 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.

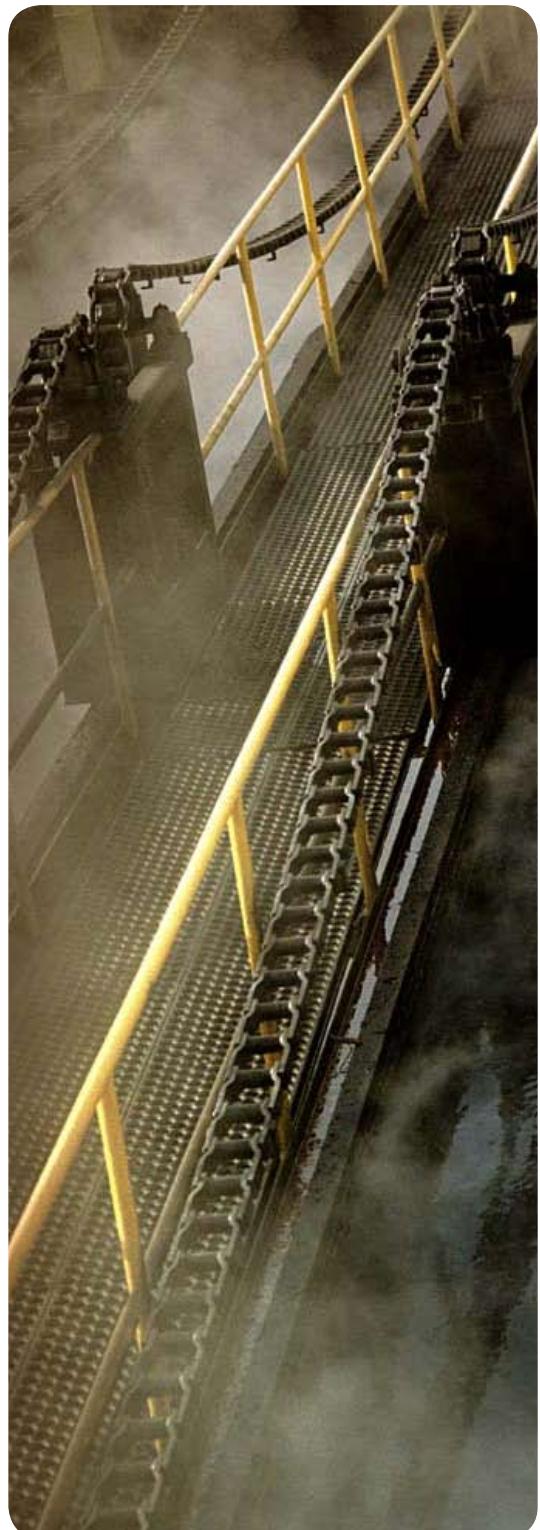
In summary, the Circular states that:

- 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.

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in the publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, KAP Haryanto Sahari & Rekan, PT Prima Wahana Caraka or PT PricewaterhouseCoopers FAS, as appropriate (PricewaterhouseCoopers), its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2009 PricewaterhouseCoopers. All rights reserved. “PricewaterhouseCoopers” refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. “connectedthinking is a trademark of PricewaterhouseCoopers LLP (US).

PricewaterhouseCoopers Indonesia is comprised of KAP Haryanto Sahari & Rekan, PT PricewaterhouseCoopers FAS, PT Prima Wahana Caraka, and PT Penila Wahana Caraka, each of which is a separate legal entity and all of which together constitute the Indonesian member firm of the PricewaterhouseCoopers global network, which is collectively referred to as PricewaterhouseCoopers Indonesia.



- 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.

For further information on how PricewaterhouseCoopers Indonesia can assist you, please contact one of the following specialists based in our Jakarta office:



**Sacha Winzenried**  
sacha.winzenried@id.pwc.com  
Ph: +62 21 528 90968



**Ali Mardi**  
ali.mardi@id.pwc.com  
Ph: +62 21 528 90622

PricewaterhouseCoopers Indonesia  
Jl. H.R. Rasuna Said Kav. X-7 No.6  
Jakarta 12940 - Indonesia  
Tel: +62 21 5212901  
Fax: +62 21 5290 5555/52905050

Visit our website at  
[www.pwc.com/id](http://www.pwc.com/id)

## Code of conduct The way we do business\*

Putting our values in action

### Excellence

Delivering what we promise and adding value beyond what is expected.

We achieve excellence through innovation, learning and agility.

### Teamwork

The best solutions come from working together with colleagues and clients.

Effective teamwork requires relationships, respects and sharing.

### Leadership

Leading with clients, leading with people and thought leadership.

Leadership demands courage, vision and integrity.

This summary is not intended as professional advice. It is suggested to always consult with your usual PwC contact.

If you would like to be removed from this mailing list, please reply with history to this email and write UNSUBSCRIBE in the subject line or send email to [maria.purwaningsih@id.pwc.com](mailto:maria.purwaningsih@id.pwc.com).