Mining in Indonesia

Investment and Taxation Guide

June 2019, 11th Edition

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Photo source: PT Bukit Asam Tbk

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Regulatory information is current to 30 April 2019.

Contents

Glossary

Term	Definition
AMDAL	*Analisis Mengenai Dampak Lingkungan* (Environmental impact assessment)
BKPM	*Badan Koordinasi Penanaman Modal* (Indonesia's Investment Coordinating Board)
BI	Bank Indonesia
BIKs	Benefits-In-Kind
BUMN	*Badan Usaha Milik Negara* (National State-Owned Companies)
BUMD	*Badan Usaha Milik Daerah* (Regional State-Owned Companies)
CbCR	Country-by-Country Reporting
CCA	Coal Co-operation Agreement
CCoW	Coal Contract of Work
CIF	Cost Insurance and Freight
CIT	Corporate Income Tax
Corporation Law	Law No. 40/2007
CoW	Contract of Work
Contracts	CoW/CCoW/CCA
CSR	Corporate Social Responsibility
DER	Debt-to-Equity Ratio
DHE	Export Proceeds (*Devisa Hasil Eskpor*)
DPR	*Dewan Perwakilan Rakyat* (House of Representatives)
DGoFT	Directorate General of Foreign Trade
DGoMC	Directorate General of Minerals and Coal
DGT	Directorate General of Taxation
DMO	Domestic Market Obligation
E&E	Exploration and Evaluation

Term	Definition
EBIT	Earnings Before Interest and Tax
EBITDA	Earnings Before Interest, Tax, Depreciation, and Amortisation
Energy Law	Law No. 30/2007
Environmental Law	Law No. 32/2009
ET	*Eksportir Terdaftar* (Registered Exporters)
FOB	Free on Board
Forestry Law	Law No. 41/1999, as amended by Law No. 19/2004
Government	Government of Indonesia
GR 22/2010	Government Regulation [Reference Number]/[Issuance Year]
GAR	Gross as Received
GDP	Gross Domestic Product
ha	Hectare
HBA	*Harga Batubara Acuan* (Coal Reference Price)
HMA	*Harga Mineral Acuan* (Mineral Reference Price)
IDX	Indonesia Stock Exchange
IFRS	International Financial Reporting Standard
Investment Law	Law No. 25/2007
IPO	Initial Public Offering
IPR	*Izin Pertambangan Rakyat* (Peoples' Mining Licence)
ITL	Law No. 36/2008 (the prevailing Indonesian Income Tax Law)
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)

Term	Definition
IUP-OP	*Izin Usaha Pertambangan Operasi Produksi* (Operation Production Mining Business Licence)
IUPK-OP	*Izin Usaha Pertambangan Khusus Operasi Produksi* (Operation Production Special Mining Business Licence)
KepMen 1798/2018	MoEMR Decree [Reference Number]/[Issuance Year]
KP	*Kuasa Pertambangan* (Mining Rights)
L/C	Letter of Credit
LST	Luxury Sales Tax
Mining Law	Law on Mineral and Coal Mining No. 4 of 2009
MoEMR	Minister of Energy and Mineral Resources
MoF	Minister of Finance
MoT	Minister of Trade
mt	Metric Tonne
MW	Megawatt
NPWP	*Nomor Pokok Wajib Pajak* (Tax Registration Number)
PBB	*Pajak Bumi dan Bangunan* (Land and Building Tax)
PER 47/2015	*Peraturan Direktur Jenderal Pajak* (DGT Regulation) [Reference Number]/[Issuance Year]
PerMen 28/2009	MoEMR Regulation [Reference Number]/[Issuance Year]
PerMenDag 4/2015	*Peraturan Menteri Perdagangan* (MoT Regulation) [Reference Number]/[Issuance Year]
PLN	PT Perusahaan Listrik Negara (Persero) (State-Owned Electricity Company)
PMA	*Penanaman Modal Asing* (Foreign Investment)
PMDN	*Penanaman Modal Dalam Negeri* (Domestic Investment)
PMK	*Peraturan Menteri Keuangan* (MoF Regulation)
PNBP	*Penerimaan Negara Bukan Pajak (*Non-Tax State Revenue)
PSAK	*Pernyataan Standar Akuntansi Keuangan* (Statement of Financial Accounting Standard/SFAS)

Term	Definition
PTBA	PT Bukit Asam Tbk. (State-Owned Coal Mining Company)
PwC	PwC refers to the network of member firms of PricewaterhouseCoopers International Limited, and/or one of its member firms, each of which is a separate legal entity
RKAB	*Rencana Kerja dan Anggaran Biaya* (Work Plan and Budget)
SFAS	Statement of Financial Accounting Standard
VAT	Value Added Tax
WIUP	*Wilayah Izin Usaha Pertambangan* (Mining Business Licence Area)
WIUPK	*Wilayah Izin Usaha Pertambangan Khusus* (Special Mining Business Licence Area)
WUP	*Wilayah Usaha Pertambangan* (Mining Business Area)
WHT	Withholding Tax
WP	*Wilayah Pertambangan* (Mining Area)
WPN	*Wilayah Pencadangan Negara* (State Reserve Area)
WPR	*Wilayah Pertambangan Rakyat* (Peoples' Mining Area)
WUPK	*Wilayah Usaha Pertambangan Khusus* (Special Mining Business Area)

Foreword

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Welcome to the eleventh edition of PwC Indonesia’s ***Mining in Indonesia: Investment and Taxation Guide.***

Since the Law on Mineral and Coal Mining No. 4 of 2009 (the “Mining Law”) was promulgated, various implementing regulations, including a number of amendments, have been issued by the Government in pursuing the goals of the Mining Law. Many challenges however still remain.

These challenges apply to the holders of Contracts of Work (“CoWs”) and Coal Contracts of Work (“CCoWs”) that were issued under the pre-2009 mining regime, as well as to the holders of Mining Business Licences (*Izin Usaha Pertambangan*, or “IUPs”) that have been issued under the new regime.

These challenges include but are not limited to:

- Difficulties in dealing with the downstream in-country processing requirements under the Mining Law;
- Foreign shareholder divestment requirements;
- Lack of coordination between the central, provincial, and regional governments;
- Conflicts between mining operations and forestry regulations;
- Community relations and labour regulations; and
- Corruption, collusion, and nepotism.

While there has been some progress in finalising long-outstanding matters, such as renegotiation of CoW and CCoW amendments, some recent regulatory activity has raised investor concerns.

At the beginning of March 2018, the Government issued a number of regulations providing guidance on the determination of the coal price for electricity that is supplied in the public interest. These regulations include Government Regulation (*Peraturan Pemerintah*, or “GR”) No. 8/2018, Ministry of Energy and Mineral Resources Regulation (*Peraturan Menteri Energi dan Sumber Daya Mineral* or “PerMen”) No. 19/2018, and Ministry of Energy and Mineral Resources Decree No. 1395 K/30/MEM/2018. The essence of these regulations is that the Minister of Energy and Mineral Resources (“MoEMR”) has the authority to determine a special selling price for coal that is supplied specifically for the fulfilment of domestic needs (i.e. the domestic procurement of coal for electricity generation). Based on this authority, and through MoEMR Decree No. 1395 K/30/MEM/2018, the MoEMR has set the selling price of coal that is procured for electricity generation for public use at a maximum of US$ 70 per metric tonne (“mt”), Free on Board Vessel, for coal that meets certain specifications (i.e. coal with a calorific value of 6,322 kcal/kg Gross as Received (“GAR”), a total moisture of 8%, etc.).

The Government has stated that these regulations were determined by considering the purchasing power of the community, with a view to increasing the industry competitiveness with respect to electricity prices. Many commentators also note that this has assisted PT Perusahaan Listrik Negara (Persero) ("PLN", the state-owned electricity company) in improving its operating position. These regulations clearly do not help in attracting more investment in thermal coal mining in Indonesia, although the Government has attempted to offset the impact through the issuance of MoEMR Decree No. 1925 K/30/MEM/2018 which allows an increase in the coal production volume for export to certain qualified holders of operation production mining business licences (*Izin Usaha Pertambangan Operasi Produksi - "*IUP-OPs"), operation production special mining business licences (*Izin Usaha Pertambangan Khusus Operasi Produksi* - "IUPK-OPs"), and CCoWs.

In late October 2017, Ministry of Trade Regulation (*Peraturan Menteri Perdagangan* or "PerMenDag") No. 82/2017 was issued, with the aim of boosting the national shipping and insurance industries. This regulation effectively requires coal exporters to use Indonesian-owned sea transportation companies, and similarly to use insurance from Indonesian-owned insurance companies, with the only exceptions being when no national provider is available, or when an exemption has been approved by the Minister of Trade ("MoT"). Although the objectives of this regulation may be admirable, the concerns over the readiness of the national shipping and insurance industries to support the implementation of this regulation have prompted long debates between the various stakeholders. Many have concerns that this regulation will have a significant negative impact on the country's coal industry. Coal buyers may look elsewhere, rather than be forced to pay more for insurance and freight from Indonesia, particularly as most coal is exported free-on-board ("FOB") with the buyer bearing the cost of insurance and freight. Following strong negative reaction from the coal industry to this regulation, the Government announced that it would postpone the requirement to export coal using national vessels for another year (i.e. May 2020), while the requirement to use national insurance providers was postponed up to 31 May 2019. There is still a question on the readiness of the insurance industry as of the date of writing.

Since the ban on the export of unprocessed (or insufficiently processed) mineral ores came into force on 12 January 2014, the Government has issued various implementing regulations to allow mining companies to continue exporting certain types of concentrates, provided that those mining companies have paid export levies up to January 2017 (the end of the three-year transition period) and that they have committed to building or supporting the development of processing or refining facilities in Indonesia.

In January 2017, GR 1/2017 (the fourth amendment to GR 23/2010) was issued, allowing mining companies to continue exporting semi-processed products for a period of five years, from 11 January 2017, provided that they pay export duties under the applicable laws and regulations and that they fulfil the minimum domestic processing and refining requirements. The regulations also relax the export ban on low-grade nickel ore and washed bauxite, as these commodities can now be exported, provided that certain requirements that are set out in the regulations are met.

Questions remain about the economic feasibility of domestic processing of certain types of minerals, especially given the current and forecasted global and domestic supply and demand projections and commodity price considerations. Another key concern is the inadequate supporting infrastructure (such as power, rail, roads, and ports) for supporting the downstream processing facilities in many areas of the country – meaning that for a miner to develop processing facilities, they may also need to develop (or fund) much of the supporting infrastructure, which may not be economically feasible in some cases. At the same time, the significant reduction in export of unprocessed ores has meant that cash flows have not been generated to support investment in downstream processing.

Despite the good intention of developing a value-added downstream sector in Indonesia, the timing may not be right, given the current global supply and demand considerations for some minerals. The impact of these regulations to date has therefore been that some smaller-scale mineral miners have suspended operations, while some larger-scale operations have reduced their mining activities and exports, with some mining companies leaving Indonesia altogether while still investing elsewhere. This has not only impacted the industry, but has also had a significant impact on Indonesia's export revenues, tax, and royalty returns, as well as its domestic economic development.

The Government continues to work on stimulating the development of in-country processing facilities, by providing lower export levies for mining companies that are willing to commit to developing processing or refining facilities. While this is welcome, other more tailored incentives to investors could be of benefit. It is also noteworthy that pioneer industry tax holidays have been extended to many sectors and should be available for minerals processing facilities, which is important for these highly capital-intensive businesses, which require sizable up-front investment and have a long payback period.

These investor concerns have been compounded by numerous changes in foreign ownership divestment rules since the enactment of the Mining Law. In their current form, as set out in GR 1/2017 and PerMen 9/2017 (as amended by PerMen 43/2018), the foreign divestment requirement has now reverted back to the stringent position whereby foreign shareholders must divest their interest in stages, commencing from the fifth year of production, so that foreign shareholders have a maximum shareholding of 49% by the tenth year of production.

Regulatory uncertainty means that the investment environment for the Indonesian mining industry will continue to be challenging. However, as investors view Indonesia as still having significant geological potential, in terms of both coal and mineral resources, there is a real opportunity to attract more investment to drive an increase in this sector's contribution to the economy. This is what all stakeholders should be focused on.

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Photo source: PT Timah Tbk

The guide

This guide is not intended to be a comprehensive study of all aspects of the mining industry in Indonesia but rather a general guide to certain key considerations relating to investment and taxation in the sector. Readers should note that information will require updating as regulations change.

Companies intending to invest in Indonesia will need to carry out further research and obtain updated information about the 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 that investors contact our specialist mining team as they consider investment opportunities. Please see Appendix F for the contact details of PwC Indonesia's mining specialists.

1 The Industry in Perspective

Room for Improvement in Mining Regulatory Environment

Indonesia continues to be a significant player in the global mining industry, with significant production of coal, copper, gold, tin, bauxite, and nickel. Indonesia also continues to be one of the world's largest exporters of thermal coal.

Global mining companies consistently rank Indonesia highly in terms of its coal and mineral prospects, yet assessments of the mining policy regime and the investment climate have not been so positive. There has been limited investment in mining in recent years, and particularly limited investment in greenfield projects.

It was hoped that the Mining Law and its supporting framework of implementing regulations would provide investors with the necessary regulatory certainty to spur new investment and strengthen Indonesia's position as a key player in the mining sector. However, after a decade, there is still a long way to go before Indonesia can fully realise its mining industry potential.

Indonesia's long-standing CoW framework for foreign investment was replaced under the 2009 Mining Law with a new area-based licensing system that is applicable to both foreign and domestic investors and incorporates tendering procedures for granting licences, with the involvement of local and provincial governments, as well as the Central Government.

Both the central and regional governments play vital roles in the mining industry, by setting 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.


Photo source: PT Adaro EnergyTbk

Under the Mining Law, the Central Government determines the areas that can be mined and, except in certain exceptional circumstances, regional governments then have the authority to grant mining business licences within these pre-determined areas. Under this approach, the Central Government has more control over the determination of the areas that are open for mining, which has reduced the impact of the historical issue of mining concessions overlapping with each other and with areas that have been reserved for other purposes, such as forestry. However, the complexity of adjudicating the competing claims of the different land users has made this mapping exercise difficult and drawn out.

Mining licence holders are also required to demonstrate a greater level of responsibility for their operations, with the regulations requiring them to undertake some of their own mining activities, rather than subcontracting them entirely to third parties. In circumstances where subcontracting is permitted, priority must be given to Indonesian-owned companies.

The Mining Law was heralded as the beginning of an era of greater certainty for investors in the mining industry in Indonesia. However, it has become evident in a decade since its promulgation that inconsistent policies and regulations in the Indonesian mining sector continue to hamper investment with several changes in the requirement for foreign owners to divest their shares over this period, introduction of domestic processing and refining requirements, and export restrictions on unprocessed minerals becoming areas of concern.

PerMenDag 82/2017 issued by the Ministry of Trade has also been heavily criticised. This regulation obliges coal exporters to use national shipping and insurance companies in order to support the growth of these industries; but the lack of preparation and consultation prior to its release makes this policy seem rushed. Implementation has been delayed until May 2019 for insurance and May 2020 for shipping, and it is yet to be seen whether the national insurance and shipping industries are ready and able to support the policy.

Regulatory certainty took another hit with the issuance of GR 8/2018, PerMen 19/2018, and MoEMR Decree No. 1395 K/30/MEM/2018 (“KepMen 1395/2018”) at the beginning of March 2018, which are seen as the Government’s attempt to protect the interests of PLN.

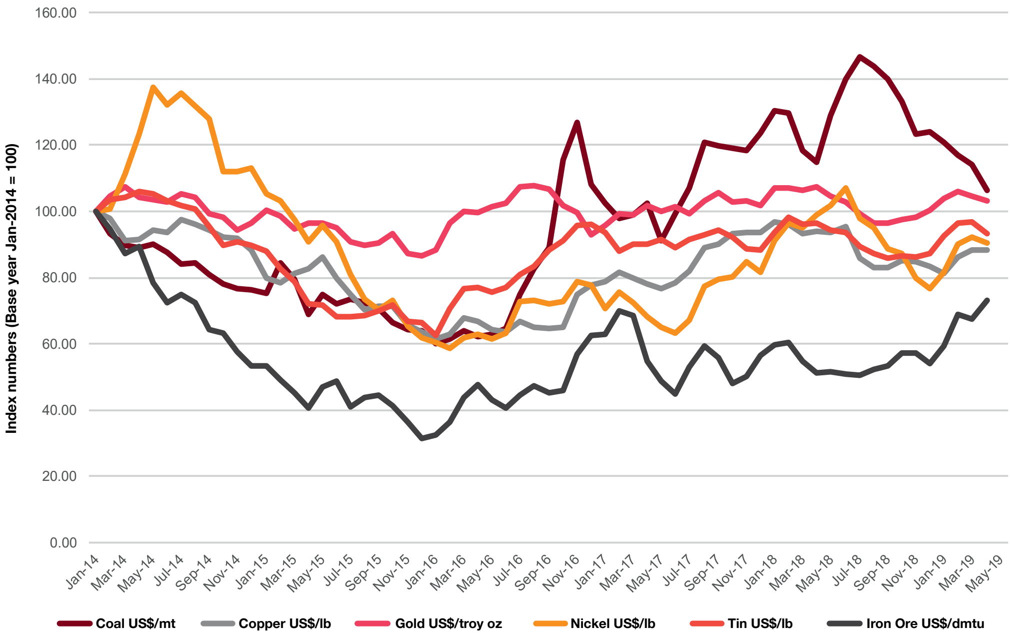
These policy uncertainties, along with the rising sentiment of resource nationalism, have resulted in a number of foreign miners selling their operations in Indonesia to local stakeholders in recent years, and have also deterred new foreign investment. This means less capital has been available for development of the industry, particularly exploration spending. In general, it has become evident that the Government has had a difficult task in balancing the interests of investors with the aim of retaining a fair proportion of the wealth that is generated for the benefit of Indonesia.

However, despite these concerns, some positives can also be seen. Early 2018 saw efforts by the Government to reduce bureaucracy in the mining sector to improve the economic competitiveness of Indonesia. Up to March 2018, 32 regulations and 64 requirements for certifications, recommendations, and permits were revoked to reduce duplication, lessen bureaucracy, and simplify business activities. The issuance of PerMen 11/2018 also evidenced the Government’s attempt to remove an obstacle to foreign investment, by allowing foreign investors to participate in tenders for Mining Business Licence Areas (*Wilayah Izin Usaha Pertambangan*, or “WIUP”) of over 500 hectares (“ha”). Under the previous PerMen 28/2013, foreign investors could only participate in tenders for WIUP of over 5,000 ha. This regulation was then followed by PerMen 25/2018 in May 2018 which comprehensively covers both upstream and downstream sectors of mining. This regulation was an attempt to improve the mining investment climate while the long-awaited revision of the Mining Law is finalised.

The remainder of 2018 and early 2019 were relatively quiet on the regulatory front, perhaps with an eye to the presidential and parliamentary elections in April 2019.

Clearly there is still much room for improvement in the Indonesian mining regulatory environment, if Indonesia is to realise the full potential of its mineral resources. A lack of coordination and consultation on new policy initiatives – such as the MoT regulation on use of national shipping companies and insurers for coal exports – is not helpful in attracting new investment. It is hoped that reported discussions by legislators on a new Mining Law consider a cohesive national mining policy aimed at attracting more investment in the sector, particularly in exploration – which is the lifeblood of a strong mining sector. The current rise in commodity prices may provide a platform for successful change, but the forthcoming amendments to the Mining Law will play a vital role in shaping the Indonesian mining industry.

Mineral and Coal Prices in the Latter Half of 2018 Were Generally Weaker Than the First



Source: World Bank, PwC Analysis

Mineral and coal prices have bounced back from their low points in the 2015-2016 period, with 2018 showing a stronger performance than the previous year. Compared to 2017, iron ore is the only major mineral with a decrease in average price, and only 3% at that. Meanwhile, the average prices of coal, copper, and nickel rose year-on-year by 21%, 6%, and 26%, respectively, in 2018. However, commodity prices in the second half of 2018 tended to be lower than the first half, with this softening generally continuing into 2019, again, other than for iron ore, after some increases in the first quarter.

During the first quarter of 2019, the prices of commodities except for coal and copper showed signs of recovery due to several factors such as political dynamics between the US and China (refined fiscal stimulus and trade negotiations) as well as commodity-specific supply concerns. The dynamics in the automotive sector around growing demand for electric vehicles will continue to support the demand for nickel and tin, as major components of battery and electronic production. Global nickel supply is however likely to see an increase with the ongoing Indonesian nickel refinery projects and the restoration of permits for previously suspended nickel mines in the Philippines. Tin is seeing price recovery as a result of raw material scarcity, leading to the shutdown of several Chinese smelters, because of Indonesia's consistency in enforcing its export restrictions and also the depletion of major tin mines in Myanmar.

Subsequent months however have seen softening in commodity prices from the first quarter levels, other than for iron ore which continues its strong run, with pricing at the end of May more than 40% above year end 2018.

The thermal coal price reached its peak early in the second half of 2018, the highest since 2012, due to unexpected hot weather across Asia and Europe that resulted in higher electricity consumption for air conditioning. Total coal consumption in China and India are estimated to be around two-thirds of global consumption and are predicted to remain the major coal consumers until 2023. The coal price has declined throughout the second half of 2018 up to the end of the year due to expectations of stricter Chinese import controls for imported seaborne thermal coal, which were implemented in November 2018. This resulted in excess supply in the second half of 2018 and downward pressure on pricing.

In 2019, China's domestic coal supply is expected to increase since the country has allowed new coal mines to ramp up their production capacity, together with a plan to increase Chinese rail capacity for transporting coal. From a demand perspective, there is a noted global preference to shift towards higher energy-density and lower sulphur-content coal

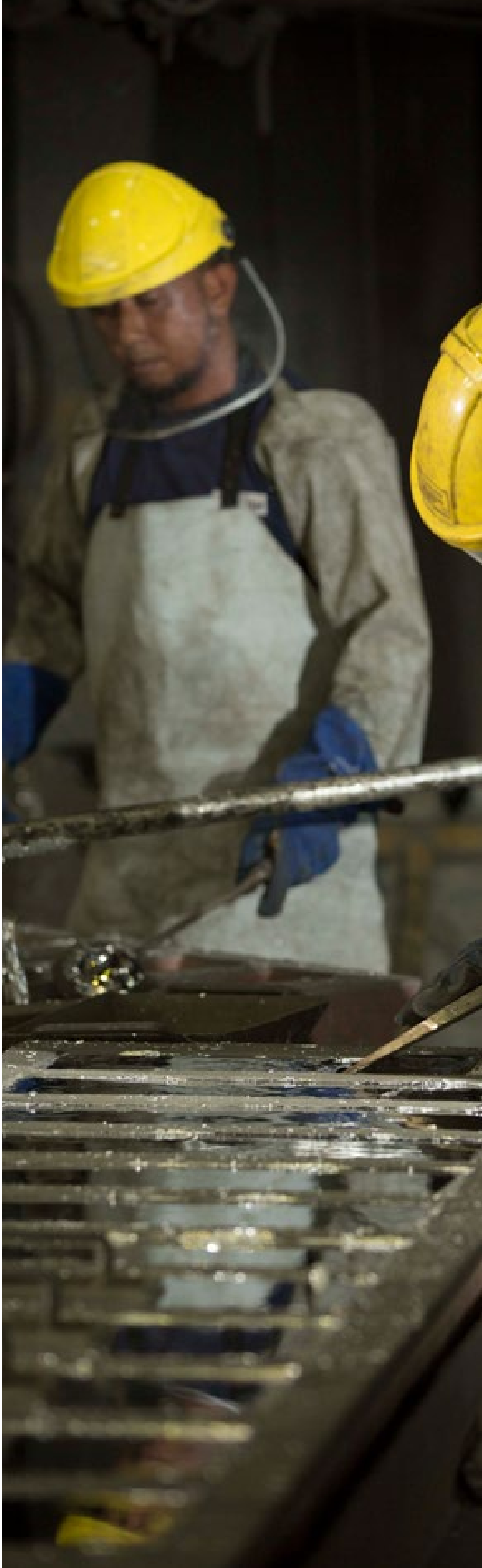


Photo source: PT Timah Tbk

as part of the strategy to reduce greenhouse gas emissions. Environmental policies for air pollution reduction in several countries, especially China and India, are beginning to see a shift from coal to renewable energy in electricity generation, which is expected to continue. These factors are all likely to exert downward pressure on coal prices, which does not bode well for coal producers in 2019. In Indonesia specifically, the coal price outlook is also impacted by the Government's high Domestic Market Obligation ("DMO") requirement (at 25% of national production capacity) and the cap on sales price to PLN (which limits the upside from any price increase that may occur).

Global trade tensions involving China, are a major influence on both global trade in commodities and the levels of consumption, which will result in speculative pressure on both demand and price of commodities. While global geopolitical issues significantly influence mineral and coal price volatility, changing environmental policies are also a major factor in coal and mineral prices. For instance, China's "blue sky plan" led to numerous inspections across China's mills, smelters, and other industrial users of many commodities, especially related to coal, in its new 2018-2020 action plan, which implies shifting to higher-grade or more environmentally-friendly raw materials. The recent slowdown of the Chinese property market and the decrease in Chinese steel demand raise further uncertainty in demand for metals, especially for construction, and, in a macro context, the global outlook for economic growth. In a recent survey, China's slowdown was seen to be more concerning than the global trade tension, for the mining and metals market.

Indonesian Production of Coal And Minerals

Despite the decline in the coal price during 2012 and 2013, Indonesia recorded increases in coal production during those years. Demand was strong from coal-fired power plants around the world, especially from plants in China and India during that period. In addition, a number of new power plants have come on-line since mid-2008, both in Indonesia and abroad. In 2014, thermal coal production decreased only slightly, to 458 million tonnes, despite some attempts by the Government to limit production increases. In 2015, Indonesia saw a significant reduction in its thermal coal production for the first time in many years, with the Government's official figures showing a decrease of 14%, to 392 million tonnes.

In 2016, the Government targeted an increase in thermal coal production, to 419 million tonnes, expecting more demand from newly constructed coal-fired power plants. The actual result exceeded this target by 3.6%, due to the significant increase in thermal coal prices in the second half of 2016. Coal production again exceeded the target in 2017 reaching 461 million tonnes, or 12% above the 413 million tonne target. Similarly, coal production in 2018 of 557 million tonnes also exceeded the 2018 target of 425 million tonnes. It is reported that the coal production target for 2019 has been set at 490 million tonnes.

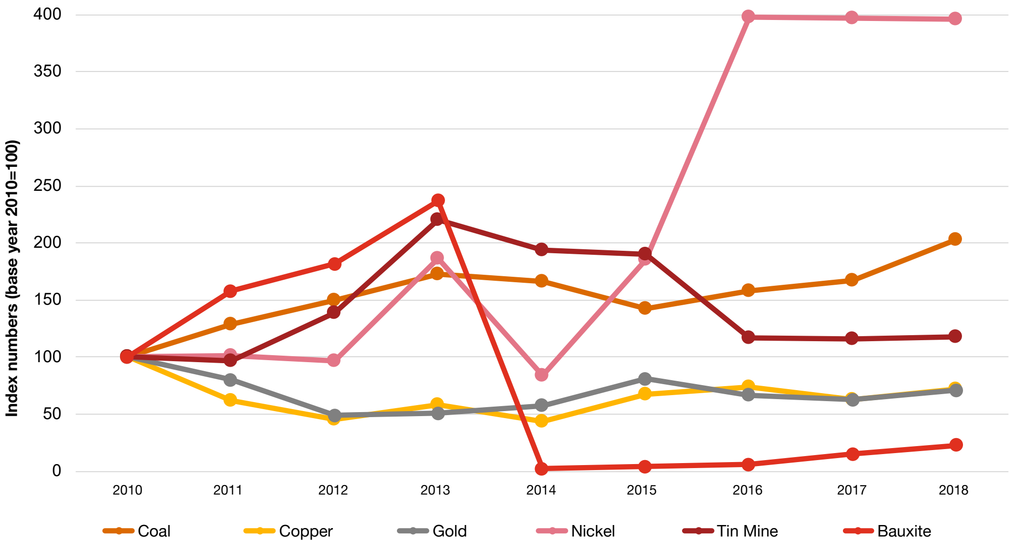
Despite the revision in the timeline from 2019 to 2024 for completion of the Government's aggressive plans for an additional 35,000 Megawatts ("MW") of power generating capacity, with coal-fired power representing approximately 60%, the DMO for supply of coal to the local market increased again in 2018 to 115 million tonnes from 97 million tonnes in 2017. Moreover, rising coal prices, a weakening rupiah, combined with a negative foreign trade balance provided an opportunity to increase coal exports. This led to the issuance of MoEMR Decree No. 1925 K/30/MEM/2018 which provides an additional coal export quota of up to 100 million tonnes nationally, for coal mining companies that have fulfilled their DMO quota.

There were no significant changes in the production levels of tin during 2018, as tin production has significantly decreased since 2013 as a result of the Indonesian Government's efforts to limit export quotas in order to deal with illegal mining and reserve depletion, and also due to the suspension of operations in several tin mines due to environment-related issues.

Meanwhile, copper production increased in 2018 mainly due to the improved production of the Grasberg mine after resolution of the protracted negotiations between Freeport-McMoran and the Government of Indonesia around the divestment of shares and the conversion of the permit from a CoW to an IUPK-OP. However, the transition from open pit to underground mining at Grasberg may see some short-term interruption to growth in Indonesian copper production.

The production of nickel and bauxite has also continued to increase after the relaxation of the ban on exports of nickel ore and washed bauxite by the Indonesian Government at the beginning of 2017. Another factor contributing to the increase is the production from the new nickel smelters that have been coming on-line since 2017 together with higher global nickel prices driven by increased demand for the electric vehicle industry.

Historical Indonesian coal and mineral production trends are presented in the diagram below (indexed to the base year 2010 = 100 tonnes).



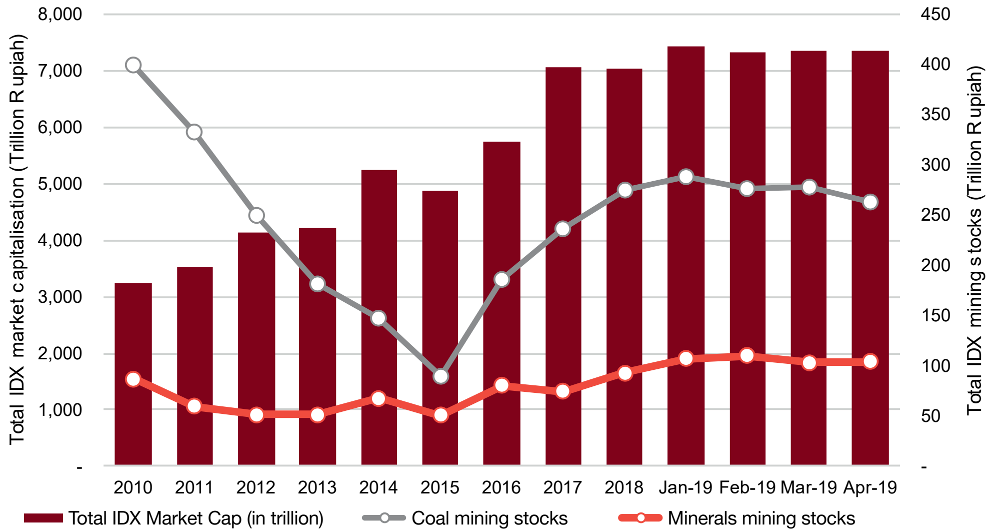
*Source: Indonesian Coal Mining Association, U.S. Geological Survey, Directorate General of Mineral and Coal 2018 Performance Report (*Laporan Kinerja Direktorat Jendral Mineral dan Batubara Tahun 2018*), PwC Analysis*

The Strong Price Environment Drove a Further Increase in the Market Capitalisation of Indonesian Mining Stocks in 2018

2017 and 2018 saw a continuation in the recovery of IDX-listed mining stocks with the total market capitalisation increasing by 17% to IDR 310 trillion at 31 December 2017 and by another 19% to IDR 367 trillion at 31 December 2018. In 2017, the increase was contributed by coal stocks which increased by 27%, while metal and minerals stocks, on the other hand, decreased by approximately 8%. While in 2018, both mineral and coal stocks increased by 25% and 17%, respectively.

As can be seen in the following chart, the movements in the market capitalisation of listed coal and mineral mining companies on the IDX generally follow the fluctuations in commodity prices, hence the further reduction in market capitalisation of coal stocks up to April 2019.

Market Capitalisation of Mining Companies in Indonesia



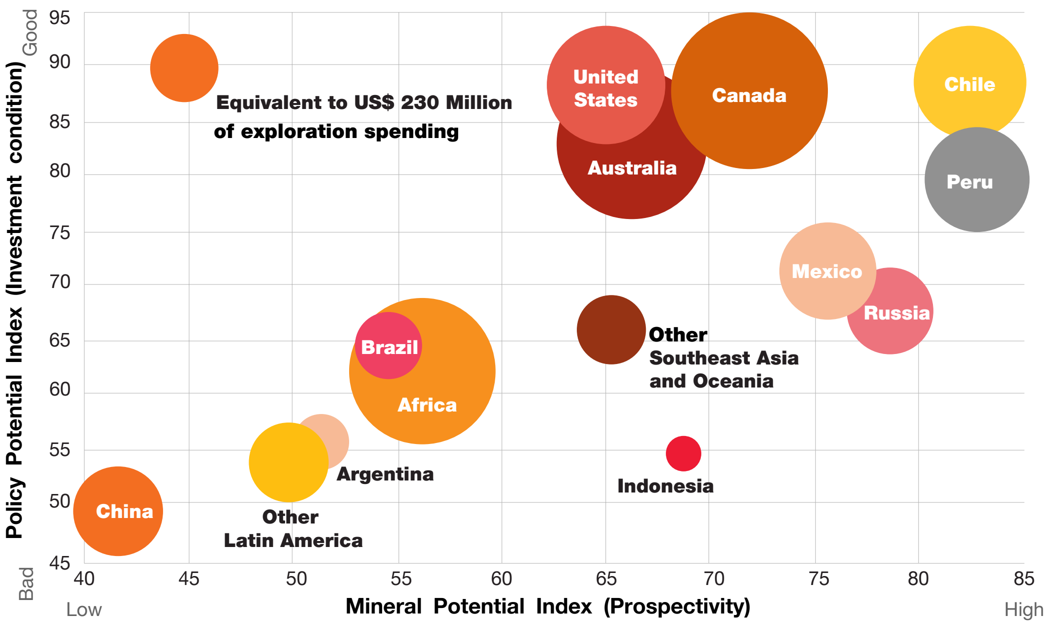
Source: IDX

Indonesian Mining Exploration – In Need of a Boost

Exploration is the lifeblood of the mining industry. Unfortunately, exploration spending, particularly in greenfield areas, has been virtually stagnant in Indonesia for a number of years. Since the fall in commodity prices in 2012, Indonesian mining companies have consistently reported a drop-off in their revenues and profitability. In response to falling commodity prices (and in many cases high leverage), Indonesian mining companies have shifted their attention from increasing production and development to cutting operational expenditure and focusing on easier-to-mine mineral deposits, while curtailing capital expenditure. All of these have led to an essentially stagnant mining investment environment in Indonesia in recent years.

Global mining companies rank Indonesia highly in terms of its prospective minerals, but poorly in terms of its mineral policies and investment climate. Based on the 2018 Annual Mining Survey issued by the Fraser Institute, the global perception of the Indonesian mining sector has slightly improved, despite still ranking among the worst. In terms of the policy perception index, which gauges how friendly government policy is to the mining sector, Indonesia is ranked 70th out of the 83 regions that were surveyed, a slight improvement from 84th out of the 91 regions surveyed in the previous year. Survey respondents highlighted that the taxation regime, uncertainty concerning disputed land claims, socioeconomic agreements, and community development conditions continue to be deterrents to investment. However, in terms of the mineral potential index, representing the perceived geologic attractiveness, Indonesia's ranking dropped quite significantly from being ranked number one out of the 91 countries surveyed in 2017 to 25th out of 83 countries surveyed in 2018. This may be partly due to the limited exploration that has been performed over the last ten years.

Mineral Potential Index vs Policy Perception Index



Source: Fraser Institute and S&P Global Market Intelligence

Based on data from MoEMR, Indonesia's nickel, bauxite and tin reserves in 2016 amounted to 3.2 billion tonnes, 1.3 billion tonnes, and 1.9 billion tonnes, respectively, and the more recent MoEMR press release in late 2018 stated that Indonesia's coal reserves had increased to 37 billion tonnes. However, despite its geological potential, Indonesia has yet to capture a fair proportion of the global exploration spend. Indeed, Indonesia has consistently received less than 2.5% of the global exploration budget during the period from 2006 to 2014, and only around 1.0% during the period from 2015 to 2018, which is extraordinarily low when compared to its mineral potential.

Continuing uncertainty regarding the regulatory environment for mining in Indonesia has dampened the appetite for investment. Many major international mining companies have left Indonesia, while continuing to invest elsewhere, sometimes even in countries which have far less geological potential.

This has in large part been due to the challenges in implementing the new Mining Law since 2009 – particularly in relation to foreign investment in the mining sector, the desire for the onshore beneficiation of mining products, and land management issues, including the competing interests of forestry and mining operations. While the stated aim of many of these new regulations – increasing the value-add of the sector to Indonesia, and supporting jobs and long-term growth in the economy – is good, the timing was unfortunate, and it has meant that the sector has significantly underperformed in relation to its potential.


Photo source: PT Indo Tambangraya Megah Tbk

This is particularly the case with the implementation of the in-country downstream processing requirements for minerals and the ban on exports of unprocessed ores since 2014. At a time when there is a global surplus of many refined products and when Indonesia's economic growth means that it is not yet fully able to support sufficient local demand, many projects are not economically feasible. In January 2017, the Indonesian Government sought to address this by issuing a regulation which, under certain circumstances, relaxes the export ban on low-grade nickel ores and washed bauxite – although this gives rise to its own issues, given that some investors have commenced investment in downstream processing facilities that rely on the requirement for in-country beneficiation.

Uncertainty regarding contract extensions, foreign divestment rules, potential changes in royalty rates, and delays in tenders for coal-fired power plants have also impacted the coal sector in recent years. These uncertainties have resulted in an increased investment risk, which has meant that foreign investment in particular has waned, and as a result the industry is no longer dominated by large, long-term mining companies, but by short-term financial investors – which may not bring the long-term sustainable benefits that the Government is looking for. Also, this type of investment does not focus on greenfield exploration, but more on known deposits, putting reserve replacement at risk.

The continued lack of exploration spending in Indonesia over the last decade is clearly a worrying sign, as exploration spending is the lifeblood of the mining sector. The low level of greenfield exploration activity is a significant threat to the long-term success of the industry and it may adversely affect the future growth of the Indonesian economy. An increase in exploration, discovery, and the development of new deposits is essential for sustaining the industry over the longer term. Without substantial greenfield exploration in the coming years, we are unlikely to see significant new mine developments in Indonesia, other than for existing known deposits.

The mining industry is a high-cost, capital-intensive industry. Without certainty regarding the laws and regulations that affect the mining business in Indonesia, there is unlikely to be significant new investment, even with an improvement in commodity prices. This is particularly the case in the minerals sector, given the comparatively higher investment costs relative to coal mining, and despite the many under-explored areas of the country. This situation will continue to be a drag on the industry's growth in Indonesia in 2019 and beyond, and it should be an area of focus for the Government, particularly given the export revenues, jobs and other economic benefits that can be generated by a strong mining industry.

Given the reported plans for a new Mining Law, this is perhaps the best time for the Government to provide the mining industry in Indonesia with the necessary stimulus to invest, by introducing a regulatory framework that:

- Removes the hurdles to investment in exploration, such as uncertain and uneconomic foreign divestment rules;
- Simplifies permitting at the licensing stage (e.g. direct application for concessions rather than tenders);
- Provides incentives at the exploration stage, when risk capital is required from investors (e.g. waive the Value Added Tax ("VAT") during the exploration stage, provide tax credits when the production commences, as well as assistance with land acquisition or compensation, etc.);
- Encourages exploration in order to support the development of long-term downstream processing initiatives.

There are some clear steps that can be taken to work towards a better framework for investment in exploration in Indonesia. Some things to consider include:

- Preparing a detailed economic study of the benefits to the regional and national economies that are derived from each of the exploration, mining production, and downstream processing phases of a mining life-cycle. This should make clear the often overlooked benefits to the economy that are derived from the exploration and development of mines;
- Designing a best practice mining policy regime that covers, among others: streamlining the permits for the exploration phase; taxes, royalties, and other incentives; improving the foreign ownership regime, etc.;
- Developing a strategic national mining policy, which has the buy-in of all stakeholders – of both the Regional and Central Governments, as well as the mining industry. Perhaps most importantly, there needs to be clear coordination between and consistent policy implementation by the various arms of Government, which is a perennial concern of investors.

Exploration is the lifeblood of the mining industry. Reserve replacements are urgently needed if Indonesia is to remain a major mining country.

Regulators need to find a balance between securing state revenue, on the one hand, and attracting investment (and particularly greenfield exploration investment) and developing a sustainable mining industry, on the other. An investor-friendly regulatory regime is needed to boost the mining sector.

Mining is a cyclical business. Global mining companies will again come hunting for projects in high potential geographies – the question is whether Indonesia can establish an attractive and competitive mining investment framework before the next round of investments. Now is the time to change the paradigm and give mining exploration a boost.

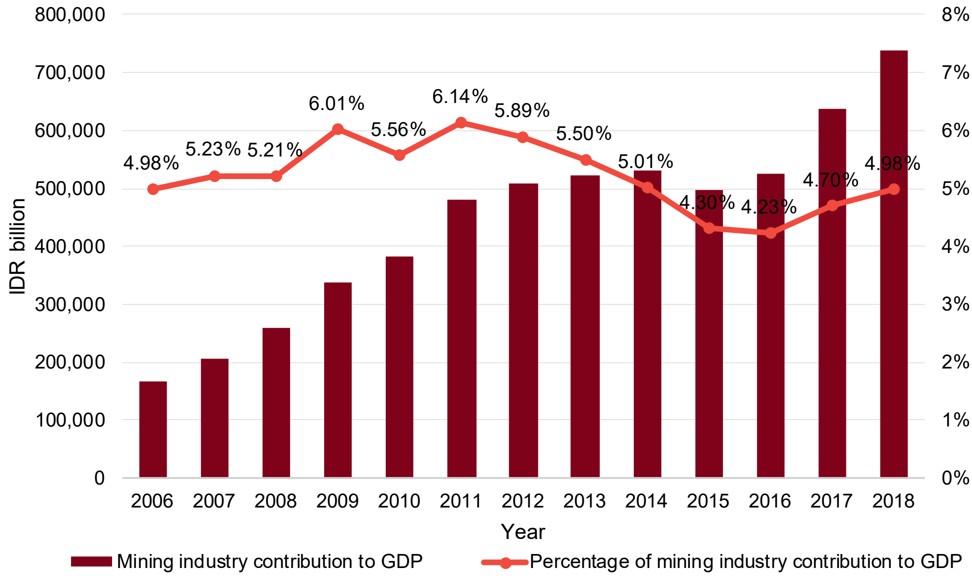
The Mining Industry's Contribution to the Indonesian Economy Improved in 2018

The mining sector has been one of the key sectors contributing to Indonesia's economic growth over many decades. The sector makes a significant contribution to the Indonesian Gross Domestic Product ("GDP"), its exports, Government revenue, employment, and, perhaps most importantly, to the development of the many remote regions of Indonesia. Mining companies are in many cases the only significant employers in some of these remote areas.

The mining sector's contribution to Indonesian GDP declined from 6.1% in 2011 to 4.2% in 2016 and has since recovered to almost 5% in 2018. The rise is primarily due to the increase in commodity prices, especially for coal, as mining contribution is positively correlated with mining commodity prices. The increase in export quotas for coal in 2018 added to foreign exchange receipts and the overall contribution of the mining industry to the economy, with only 115 million tonnes of the total 2018 coal production of 557 million tonnes consumed domestically.

Photo source: PT Bukit Asam Tbk

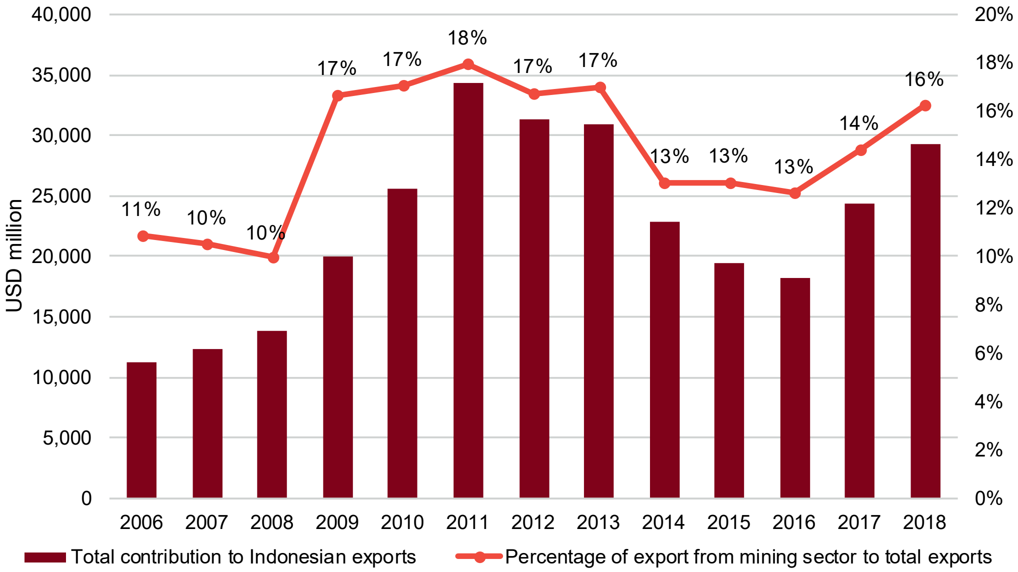
Contribution of Mining Industry to Indonesian GDP



Source: BI

The mining sector represents a high proportion of Indonesian exports, particularly as mining products are generally priced in US dollars. The mining sector's contribution to Indonesian exports had fallen off for a few years, following the implementation of the ban on exports of unprocessed (or not-sufficiently processed) minerals in January 2014 and the introduction of a significant export duty on mineral concentrates. During the period from 2014 to 2016, the mining industry's contribution to Indonesia's total export revenues was consistent at around 13%, down from 17% in 2013. The Government hoped that the total contribution of the mineral sector would increase once the mineral processing and refining facilities were in place, by generating higher value products, and once the relaxation of the export ban on low-grade nickel ores and washed bauxite took effect in 2017. While the mining industry's contribution to total exports increased to 14% and 16% in 2017 and 2018, respectively, the major contributor to the improvement was actually the coal sector, increasing from US$ 14.6 billion in 2016 to US$ 20.5 billion in 2017 and to US$ 24 billion in 2018 on the back of higher coal prices. The export data from Bank Indonesia ("BI") indicates that the relaxation of the export ban on nickel ore only provided an additional US$ 155 million and US$ 628 million in 2017 and 2018, respectively, while bauxite exports posted a remarkable increase of US$ 66 million and US$ 265 million in 2017 and 2018, respectively, from only US$ 430,000 in 2016. BI noted that the export realisation of both nickel and bauxite ores in 2018 were 19.8 million tonnes and 8.7 million tonnes, respectively, which are less than half of the quota capacity given by the MoEMR, indicating the potential revenue increase from export of both commodities in the future.

Mining Products as a Percentage of Total Indonesian Exports



Source: BI

2 Regulatory Framework

2.1 Introduction

Mineral and coal mining activities are governed by the Mining Law. This law replaced the previous Mining Law 11/1967, which provided the framework for all of Indonesia's pre-2009 mining concessions, including all of the existing CoWs and CCoWs.

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

Since its introduction in 2009, the Mining Law has encountered a number of issues. Some of the issues that are still being dealt with include foreign ownership restrictions, domestic processing requirements, and the conversion of CoWs and CCoWs to the new licensing system. Although it has been a decade since the Mining Law was introduced, the industry is still transitioning to full compliance with the current Mining Law.

There has been talk of a revision to the Mining Law since 2016, with the aim of addressing many of the issues mentioned above. At the time of writing, however, the draft of a new Mining Law is still being reviewed by the *Badan Legislasi Dewan Perwakilan Rakyat* (the Legislative Body of the House of Representatives – "BaLeg DPR"). Following the completion of the review by the House of Representatives (*Dewan Perwakilan Rakyat* - "DPR"*)*, the next step is a discussion with the Central Government, which is represented by the MoEMR and the DGoMC.

The key objective of the Mining Law is to support sustainable national development, and therefore it imposes the following requirements on investors in conducting their mining activities:

- Good mining practices;
- Increasing the added-value of mining products;
- Improving society;
- Being cautious with regard to environmental impact;
- Maintaining good governance and bookkeeping.

Photo source: PT Freeport Indonesia

To support the above, the Mining Law is dependent upon a significant number of implementing regulations that provide detailed guidelines about how it will be administered. Most of the fundamental implementing regulations have been issued, although some clarifications are still required. At the time of writing, 11 GRs (including amendments) have been issued in respect of the following areas:

- Mining Areas (GR 22/2010);
- Mining Business Activities (GR 23/2010 as amended by GR 24/2012, GR 1/2014, GR 77/2014, GR 1/2017, and GR 8/2018);
- Reclamation and Mine Closure (GR 78/2010);
- Mineral and Coal Mining Direction and Supervision (GR 55/2010);
- Types and Tariffs of Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak* – "PNBP") Applicable to the MoEMR (GR 9/2012);
- Treatment of Taxation and/or PNBP In Mineral Mining Business (GR 37/2018).

Please note that GR 9/2012 and GR 37/2018 were not issued specifically as implementing regulations of the Mining Law, but are regulations that are relevant for mining companies operating in Indonesia. GR 9/2012 provides guidance about the rates of production royalty that the holder of a Special Mining Business Licence (*Izin Usaha Pertambangan Khusus* or "IUPK") should pay - please refer to the discussion regarding this GR in Section 2.5 of this Guide, "Royalties and the Fiscal Regime". GR 37/2018 provides guidance regarding the treatment of taxation and/or PNBP that Indonesian mineral mining companies should be aware of - please refer to the discussion regarding this GR in Section 4.2 of this Guide, "The Tax Regime for an IUP/IUPK Company".

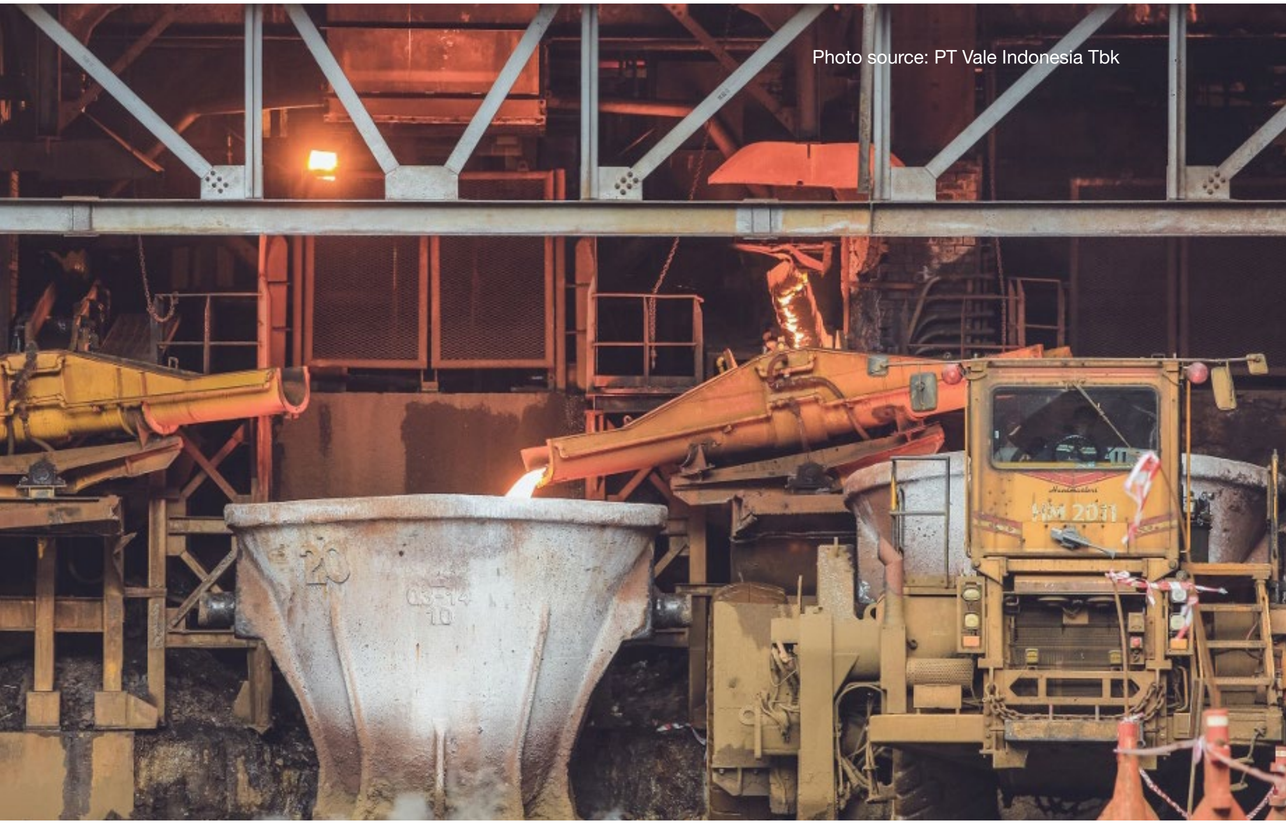


Photo source: PT Vale Indonesia Tbk

A number of PerMen have also been issued by the MoEMR. Some of the key regulations relate to:

a. The Procedure for the Granting of Areas, Licenses, and Reporting in the Business Activity of Mineral and Coal Mining (PerMen 11/2018, as amended by PerMen 22/2018 and PerMen 51/2018);
b. The Mineral and Coal Mining Business (PerMen 25/2018 as amended by PerMen 50/2018)
c. The Determination of Mining Areas (PerMen 37/2013);
d. The Delegation of Authority for Mining Licence Issuance (PerMen 25/2015);
e. The Supervision of Business Activities in the Sectors of Energy and Mineral Resources (PerMen 48/2017);
f. The Procedures for Setting the Benchmark Prices of Metal Minerals and Coal (PerMen 7/2017 as amended by PerMen 44/2017 and PerMen 19/2018);
g. The Coal Price Determination for Mine Mouth Power Plants (PerMen 9/2016, as amended by PerMen 24/2016);
h. The Divestment Procedure and the Mechanism for the Price Determination of Divestment Shares (PerMen 9/2017, as amended by PerMen 43/2018);
i. The Implementation of Good Mining Practice and the Supervision of Mineral and Coal Mining (PerMen 26/2018).

As part of the effort to simplify the regulations, in order to attract more investment to the mining sector, the following regulations were issued by the MoEMR in 2018:

1. PerMen 8/2018, concerning "the Revocation of the Decision of the MoEMR and the Decision of the Minister of Mining and Energy related to Mineral and Coal Business Activities" was issued in February 2018, revoking several regulations, as set out below:
   - The Decision of the Minister of Mining and Energy No. 2555.K/201/M.PE/1993, concerning the "Mining Inspection Officer in the General Mining Sector";
   - The Decision of the Minister of Mining and Energy No. 103.K/008/M.PE/1994, concerning the "Supervision of the Implementation of the Environmental Management Plan and the Environmental Monitoring Plan in the Field of Mining and Energy";
   - The Decision of the Minister of Mining and Energy No. 620.K/008/M.PE/1994, concerning the "Central Environmental Impact Analysis Commission of the Department of Mining and Energy";
   - The Decision of the Minister of Mining and Energy No. 2202.K/201/M.PE/1994, concerning the "Granting of a Preliminary Investigation Permit in the Frameworks of PMA or PMDN in the General Mining Sector";
   - The Decision of the Minister of Mining and Energy No. 134.K/201/M.PE/1996, concerning the "Use of Maps, Clarifications of Boundaries and Widths of Mining Concession Areas, CoW, and CCoW in the General Mining Sector";
   - The Decision of the Minister of Mining and Energy No. 135.K/201/M.PE/1996, concerning the "Verification of the Capability and Capacity of Applicants for Mining Concessions, CoW, and CCoW";
   - The Decision of the MoEMR No. 1614/2004, concerning the "Guidelines for Processing the Applications for CoW and Coal Mining Undertaking Work Agreements in Foreign Investment Frameworks".

2. PerMen 11/2018 was issued in February 2018, and revoking several regulations, as set out below:
    - PerMen 12/2011, as amended by PerMen 25/2016, concerning “Mining Area Stipulation Procedures”;
    - PerMen 28/2013, concerning “IUP Area Tender Procedures and Special IUP Areas in Metal Minerals and Coal Mining”;
    - PerMen 15/2017, concerning the “Procedure for the Granting of Operation Production IUPKs as Continuations of CoWs or CCoWs”;
    - PerMen 34/2017, concerning “Licencing in Mineral and Coal Mining”;
    - MoEMR Decree No. 1453.K/29/MEM/2000, concerning the “Technical Guidelines for the Implementation of Government Duties in the General Mining Sector”;
    - DGoMC Regulation No. 714.K/30/ DJB/2014, concerning the “Procedures and Requirements for Issuing Recommendations for Registered Coal Exporters”;
    - DGoMC Regulation No. 841.K/30/ DJB/2015, concerning the “Procedures and Requirements for Issuing Recommendations for Registered Exporters (*Eksportir Terdaftar* or “ET”) and the Approval of the Export of Pure Lead Bars”.

3. PerMen 25/2018 was issued in April 2018, revoking several regulations, as set out below:
    - PerMen 25/2008, concerning the “Procedures for the Determination of the Policy on Limiting National Mineral Mining Production”;
    - PerMen 34/2009, concerning the “Priority of Supply for Mineral and Coal Needs for Domestic Interests”;
    - PerMen 17/2010, concerning the “Determination of Benchmark Pricing for Mineral and Coal Sales”;
    - PerMen 33/2015, concerning the “Procedures for the Installation of Boundary Marks in Mineral and Coal Special Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan Khusus* – “WIUPKs”);
    - PerMen 41/2016, concerning the “Development and Empowerment of the Community in Mineral and Coal Mining Business Activities”;
    - PerMen 5/2017, as amended by PerMen 28/2017, concerning “Increasing the Added Value of Minerals through Domestic Mineral Processing and Refining Activities”;
    - PerMen 6/2017, as amended by PerMen 35/2017, concerning the “Procedures and Requirements for Obtaining Recommendations for Exports of Processed and Refined Minerals”.

4. PerMen 26/2018 was issued in May 2018, revoking several regulations, as set out below:
    - PerMen 2/2013, concerning the “Supervision of the Implementation of Mining Business Management as Implemented by the Provincial Government and Regency/City Government”;
    - PerMen 7/2014, concerning “Reclamation and Post-Mining in Mineral and Coal Mining Business Activities”;
    - PerMen 38/2014, concerning “Applications for Safety Management Systems for the Mineral and Coal Mining Sector”;
    - Decree of the Minister of Mining and Energy No. 555.K/26/M.PE/1995, concerning “Occupational Health and Safety for General Mining”;
    - Decree of the Minister of Mining and Energy No. 1211.K/008/M.PE/1995, concerning the “Prevention and Handling of Environmental Pollution and Damage in General Public Mining Activities”;
    - Decree of the MoEMR No. 1457 K/28/MEM/2000, concerning “Technical Guidance for Environmental Management in the Mining and Energy Sectors”.

The DGoMC has also issued a number of regulations/circular letters, with some of the key ones regarding the following:

- Royalty Calculations;
- Benchmark Prices (including Adjustment Costs and Benchmark Prices for certain types and uses);
- DMO Credits;
- Use of Affiliates for Mining Services;
- Production Costs for Determining the Coal Price for Mine Mouth Power Plants.

In addition to the above regulations, there are several regulations that are also applicable to mining companies operating in Indonesia, which are as follows:

- GR 1/2019, concerning "Export Proceeds from the Exploitation, Management, and/or Processing Activities of Natural Resources". Please refer to Section 6 of this Guide, "Additional Regulatory Considerations for Mining Investment", and the sub-section "Requirement to Deposit DHE with an Indonesian FX Bank", for further discussion regarding GR 1/2019.
- Ministry of Finance ("MoF") Regulation (*Peraturan Menteri Keuangan* or "PMK") No. 13/PMK.010/2017, as amended by PMK No. 164/PMK.010/2018, concerning the "Stipulation of Exported Goods that are Subject to Export Duty and Rates of Export Duty". Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", for further discussion regarding PMK No. 13/PMK.010/2017, as amended by PMK No. 164/PMK.010/2018.
- PerMenDag 82/2017, as amended by PerMenDag 48/2018 and PerMenDag 80/2018, concerning the "Provisions for the Use of Sea Transportation and National Insurance for the Export and Import of Certain Goods". Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on the "Use of National Sea Transportation and Insurance for Coal Exports", for further discussion regarding PerMenDag 82/2017, as amended by PerMenDag 48/2018 and PerMenDag 80/2018.
- PerMenDag 94/2018, as amended by PerMenDag 102/2018, concerning the "Provisions for the Use of Letters of Credit for the Export of Certain Goods". Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on the "Letter of Credit ("L/C") Requirements for Exports of Minerals Resources", for further discussion regarding PerMenDag 94/2018 as amended by PerMenDag 102/2018.

The Hierarchy of the Current Regulatory Framework is Illustrated by the Diagram Below:

Mining Law No. 4/2009

Government Regulations

- **Mining Areas** GR 22/2010
- **Mining Business Activities** GR 23/2010 as amended by GR 24/2012, GR 1/2014, GR 77/2014, GR 1/2017, and GR 8/2018
- **Reclamation and Mine Closure** GR 78/2010
- **Mineral and Coal Mining Direction and Supervision** GR 55/2010
- **Royalty Rates** GR 9/2012
- **Tax and Non-Tax State Revenue Treatment in the Mineral Mining Sector** GR 37/2018

MoEMR Regulations

- **Mining Area, Licensing and Reporting in Mineral and Coal Mining** PerMen 11/2018 as amended by PerMen 22/2018 and PerMen 51/2018
- **Determination of Mining Areas** PerMen 37/2013
- **Authority Delegation for Mining Licence Issuance** PerMen 25/2015
- **Supervision of Business Activities in the Sector of Energy and Mineral Resources** PerMen 48/2017
- **Benchmark Pricing** PerMen 7/2017 as amended by PerMen 44/2017 and PerMen 19/2018
- **Coal Price Determination for Mine Mouth Power Plants** PerMen 9/2016 as amended by PerMen 24/2016
- **Domestic Market Obligation ("DMO")** PerMen 25/2018 as amended by PerMen 50/2018
- **Increasing Mineral Value Added Through Processing and Refining Activities** PerMen 25/2018 as amended by PerMen 50/2018
- **Restrictions on the Exports of Processed and Refined Minerals** PerMen 25/2018 as amended by PerMen 50/2018
- **Divestment Procedures and Mechanism of Price Determination** PerMen 9/2017 as amended by PerMen 43/2018
- **Mine Reclamation and Closure** PerMen 26/2018

DGoMC Circulars, Regulations, and Decrees

- **Royalty Calculations** No. 32.E/35/DJB/2009
- **Adjustment Costs for Coal Benchmark Prices** No. 515.K/32/DJB/2011, No. 999.K/30/DJB/2011, No. 644.K/30/DJB/2013
- **Coal Benchmark Price for Certain Types and Uses** No. 480.K/30/DJB/2014
- **DMO Credits** No. 5055/30/DJB/2010, No. 300.K/30/DJB/2018
- **Use of Affiliates for Mining Services** No. 376.K/30/DJB/2010
- **Coal Benchmark Price for Mine-Mouth Power Plants** No. 953.K/32/DJB/2015

Photo source: PT Timah Tbk

2.2 Mining Areas, Mining Licences, and Reporting in Mineral and Coal Business Activities

A. Mining Areas

Based on the Mining Law, there are several terms that are used to describe mining areas, as follows:

- Mining Area (referred to in Bahasa Indonesia as *Wilayah Pertambangan* – "WP") means a potential area for minerals and/or coal that is not bound by governmental administrative boundaries as part of the national spatial planning;
- Mining Business Area (*Wilayah Usaha Pertambangan* – "WUP") means a part of a mining area that has already been completed with data, geology potential, and/or information about geology;
- WIUP means an area that has been authorised to an IUP holder;
- A People's Mining Area (*Wilayah Pertambangan Rakyat* – "WPR") means a part of a mining area where small-scale mining activities are carried out;
- A State Reserve Area (*Wilayah Pencadangan Negara* – "WPN") means a part of a mining area that is reserved for the national strategic interest;
- A Special Mining Business Area (*Wilayah Usaha Pertambangan Khusus* – "WUPK") means a part of a State Reserve Area that may be commercialised;
- A WIUPK means an area that has been authorised to a Special Mining Business Licence holder.

The implementing regulations of the Mining Law that provide further guidance about mining areas are GR 22/2010, GR 23/2010 (as amended by GR 24/2012, GR 1/2014, GR 77/2014, GR 1/2017, and GR 8/2018), PerMen 37/2013, and PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018).

Based on the above regulations:

- WUPs are to be determined by the Central Government (i.e. the MoEMR), by coordination with the Regional Government, and they shall be delivered in writing to the DPR of the Republic of Indonesia. The Central Government may delegate its partial authority with regard to the determination of WUPs to the Provincial Governments.
- WPNs are to be determined by the Central Government (i.e. the MoEMR), following the consent of the DPR of the Republic of Indonesia, and with due regard to regional aspirations.
- WPRs are to be determined by the Regents/Mayors, following consultation with the Regional DPR of the district/city in question.
- WUPKs are to be determined by the Central Government (i.e. the MoEMR).

WUPs include:
- Radioactive WUPs;
- Metal mineral WUPs;
- Coal WUPs;
- Non-metal mineral WUPs; and/or
- Rock WUPs.

PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), which revoked PerMen 23/2013, provides guidance for the determination and granting of non-metal mineral and rock WIUPs, metal mineral and coal WIUPs, and metal mineral and coal WIUPKs.

The Determination and Granting of Non-Metal Mineral and Rock WIUPs

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), the MoEMR or Governor determines the non-metal mineral or rock WIUPs, based on the applications that are submitted by business entities, cooperatives, or individuals. Prior to the determination of a non-metal mineral and rock WIUP:
- The MoEMR shall receive a recommendation from the Governor and/or the relevant governmental institution;
- The Governor shall receive a recommendation from the Regent/Mayor and/or the relevant institution.

The recommendation by the Governor or the Regent/Mayor shall be provided no later than five business days after the date when the request for such a recommendation was received.

The DGoMC, on behalf of the MoEMR or Governor, shall perform administrative and technical evaluations on the requests that are submitted by business entities, cooperatives, or individuals, and, based on the results of the evaluation, the DGoMC, on behalf of the MoEMR or Governor, shall make a decision to accept or refuse the request for the WIUP determination, no later than ten business days after the date when the request was received.

On behalf of the MoEMR or Governor, the DGoMC shall provide a determination for a non-metal mineral and/or rock WIUP to a requesting party that has provided a proof of payment of reserve funds into the state treasury.

The implementing guidelines for the determination of non-metal mineral and/or rock WIUPs are stipulated in MoEMR Decree No. 1798 K/30/MEM/2018 (“KepMen 1798/2018”).

The Determination and Granting of Metal Mineral and Coal WIUPs

Metal mineral and coal WIUPs are determined and granted by the MoEMR or Governor to a business entity, a cooperative, or an individual through an auction. The announcement of the auction shall be made at least one month prior to the auction, as follows:

- It shall be announced in at least one local newspaper and/or one national newspaper;
- It shall be announced at the office of the Ministry of Mineral and Coal, or through their official website; and/or
- It shall be announced at the office of the Provincial Government that manages minerals and coal, or through their official website.

The auction shall be performed by:

- The MoEMR, if the metal mineral and coal WIUP is located between two provinces or is in a sea area that is more than 12 sea miles from the coastal line to the sea and/or archipelagic waters; or
- The Governor, if the metal mineral and coal WIUP is located in one province or is in a sea area that is less than or equal to 12 sea miles from the coastal line to the sea and/or archipelagic waters.

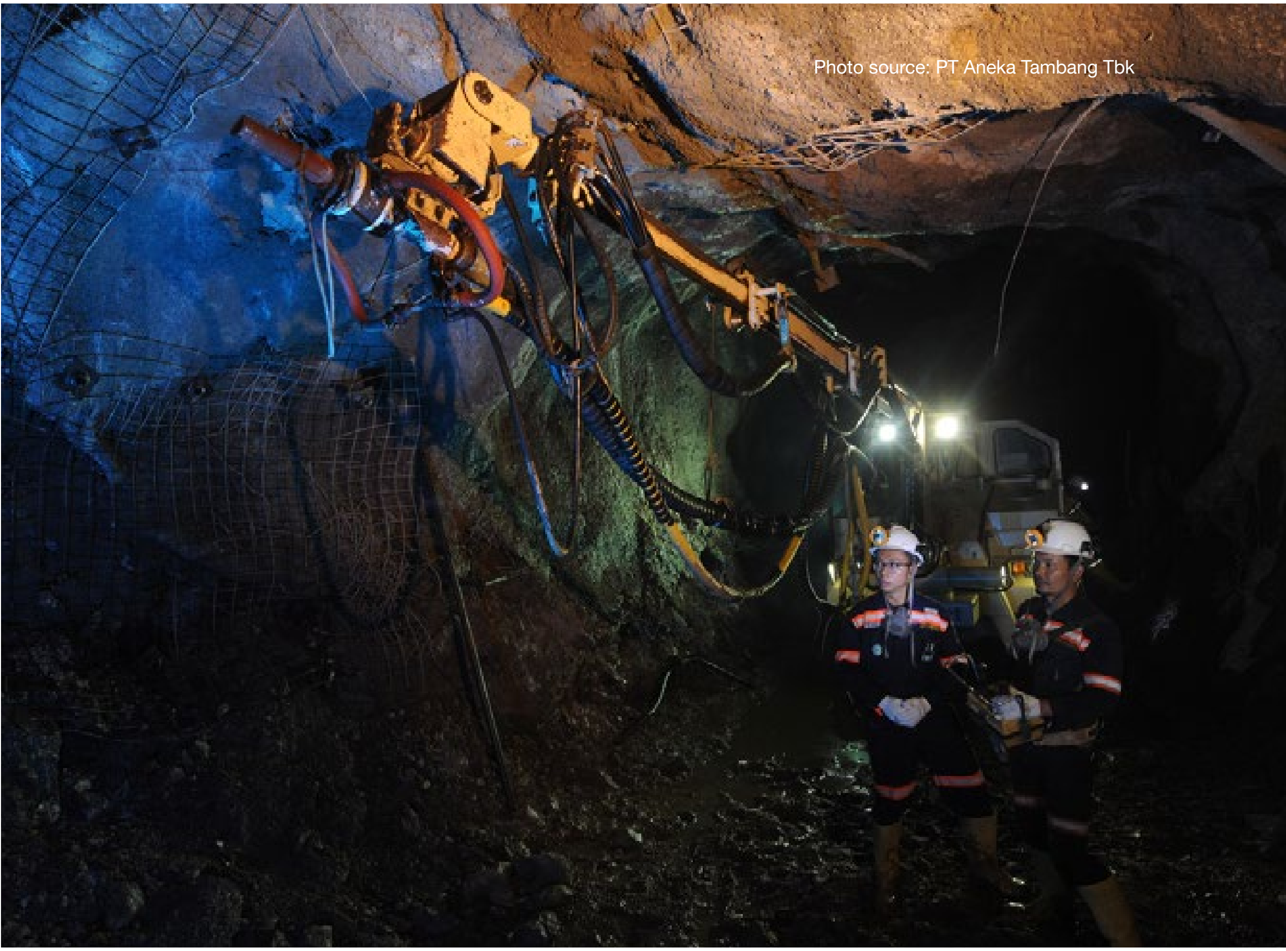


Photo source: PT Aneka Tambang Tbk

Based on PerMen 11/2018, the parties that are allowed to participate in a metal mineral or coal WIUP auction are determined by the size of WIUP acreage, as follows:

≤ 500 ha	> 500 ha
• (Local) Regional State-Owned Companies (*Badan Usaha Milik Daerah* or "BUMD") • (Local) National enterprises* • Cooperatives • Individuals (including firms and partnerships)	• National State-Owned Companies (*Badan Usaha Milik Negara* or "BUMN") • BUMDs • National enterprises* • Foreign held entities PMA • Cooperatives

Note:
**) A national enterprise is defined as a fully Indonesian-owned company*

Previously, under PerMen 28/2013, the parties that were allowed to participate in the WIUP auction process were determined by the size of the WIUP acreage, as follows:

≤1,000 ha	1,001 – 5,000 ha	> 5,000 ha
• (Local) BUMDs • (Local) National enterprises • Cooperatives • Individuals (including firms and partnerships)	• BUMNs • BUMDs • National enterprises • Cooperatives	• BUMNs • BUMDs • National enterprises • PMAs

By way of comparison, PerMen 11/2018 provides greater opportunities for a PMA company to participate in the auction of a metal mineral and coal WIUP, because previously, under PerMen 28/2013, a PMA company could only participate in the auction of a metal mineral and coal WIUP of more than 5,000 ha. This is in line with the Government's intention to increase investment in the Indonesian mining sector.

The auction of the metal mineral and coal WIUPs is carried out in two stages, as follows:

i. **Pre-qualification**
During the pre-qualification stage, the evaluation of the auction participants is based on the administrative, technical, and financial requirements. The auction participants are required to meet specified administrative, technical, and financial requirements. The technical requirements include experience in mining, the availability of human resources, and work plans.

ii. **Qualification**
Every auction participant who passes the pre-qualification stage submits an offer price.

Based on PerMen 11/2018, the prospective winner of the auction is to be determined by the Auction Committee, based on the weighted average results of the evaluation that was performed at the pre-qualification and qualification stages, with the pre-qualification result carrying 70% and the offer price carrying 30%. Previously, under PerMen 28/2013, the weighted average results of the evaluation were determined by 40% of the pre-qualification result and 60% of the offer price.

By way of comparison, PerMen 11/2018 places greater importance on the evaluation of the auction participants in relation to the administrative, technical, and financial requirements, whereas PerMen 28/2013 put a greater focus on the offer price.

However, the provisions of PerMen 11/2018, which placed greater on the pre-qualification results, were only applicable for two months, because PerMen 22/2018 was issued to amend PerMen 11/2018 in April 2018. PerMen 22/2018 restores the previous guidance from PerMen 28/2013, where the prospective winner of the auction of the metal mineral and coal WIUPs is determined by 40% of the pre-qualification result and 60% of the offer price.

The implementing guidelines regarding the implementation, organisation, tasks, and authority of the members of the Auction Committee, the terms and conditions that are applicable to the participants in a metal mineral or coal WIUP auction, and the implementation of the metal mineral and coal WIUP auctions are stipulated in KepMen 1798/2018.

The Determination and Granting of Metal Mineral and Coal WIUPKs

There are two mechanisms for the determination and granting of metal mineral and coal WIUPKs, as follows:

a. The Determination and Granting of Metal Mineral and Coal WIUPKs by Priority

The determination and granting of metal mineral and coal WIUPKs by priority is managed by the MoEMR, and is only available to BUMNs and BUMDs. The BUMD to which the WIUPK is granted by priority shall be the BUMD that has been established by the Provincial or Regional/City Government, and that is located at the WIUPK that is going to be offered.

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), a BUMN or BUMD that intends to obtain the WIUPK needs to meet the administrative, technical, and financial requirements. This requirement did not exist in the previous regulation (i.e. PerMen 28/2013).

When there is only one BUMN that is interested and eligible, the WIUPK shall be directly granted to such a BUMN. In this case, the DGoMC, on behalf of the MoEMR, shall deliver the direct appointment letter to the BUMN, and shall also instruct the BUMN to provide a share investment for the BUMD of at least 10%, provided that the BUMN can either:

- form a new joint venture entity in no more than 90 calendar days after the appointment date; or
- appoint its affiliate in no more than 60 calendar days from the appointment date.

In providing the share participation, the BUMN shall coordinate with the Provincial and Regional/City Government where the WIUPK is located. If, following such coordination, both the provincial and the Regional/City Governments are interested in making the share investment, then the 10% share investment shall be divided into:

- 4% for a BUMD that is established by the Provincial Government;
- 6% for a BUMD that is established by the Regional/City Government.

Based on PerMen 51/2018, which was issued as the second amendment of PerMen 11/2018, a BUMN may offer a share participation in the new joint venture entity, or, in the BUMN affiliate as referred to above, to a private business entity whose capital is entirely generated from domestic investment. Previously, PerMen 11/2018 was silent about the share participation by a private business entity in the event that a metal mineral/coal WIUPK is granted by priority to a BUMN.

When there is only one BUMD that is interested and eligible, the WIUPK shall be directly granted to such a BUMD. In this case, the DGoMC, on behalf of the MoEMR, shall deliver the direct appointment letter to the BUMD and shall inform it that:

- the BUMD itself can directly operate the mining activities within the WIUPK; or
- the BUMD can form a new business entity as a joint venture in no more than 90 calendar days after the date of the direct appointment letter.

A private business entity may have a share participation in the BUMD, or in a new joint venture entity as referred to above, but such an investment by a private business entity is capped at a share ownership of 49%.

b. The Determination of Metal Mineral and Coal WIUPKs by Auction

The auction process for metal mineral and coal WIUPKs is conducted by the MoEMR when more than one BUMN or BUMD is interested in the WIUPK's offer.

The process of auctioning the WIUPKs to private business entities that are engaging in the mineral and coal mining businesses will only be conducted when:

- no BUMN or BUMD is interested in the WIUPK offer; and/or
- no BUMN or BUMD is able to meet the administrative, technical, and financial requirements.

Based on PerMen 22/2018, the auction procedures, evaluation of pre-qualification phase documents, evaluation of bid prices, weighting values of the evaluation results of the pre-qualification documents and the bid prices, as well as the ranking determination of the prospective auction winner of the metal mineral and coal WIUPK are similar to those for metal mineral and coal WIUP auctions.

Photo source: PT Agincourt Resources

The following table summarises the provisions in PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), when the WIUPK auction is won by a BUMN, a BUMD, or a private business entity:

When the WIUPK auction is won by a BUMN	When the WIUPK auction is won by a BUMD	When the WIUPK auction is won by a private business entity
• The MoEMR shall announce the BUMN as the auction winner and instruct the BUMN to provide a share participation by a BUMD of at least 10%, provided that the BUMN can: i. form a new joint venture entity in no more than 90 calendar days after the determination of the auction winner; or ii. appoint its affiliate in no more than 60 calendar days after the determination of the auction winner. • In providing the share participation, the BUMN shall coordinate with the Provincial and Regional/City Governments where the WIUPK is located. • If, following such coordination, both of the Provincial and Regional/City Governments are interested in taking the share investment, the 10% share investment shall be divided into: - 4% for a BUMD established by the Provincial Government; - 6% for a BUMD established by the Regional/City Government. • The share participation of a BUMN in a new joint venture entity or in its affiliate, as referred to above, is to be at least 51%.	• The MoEMR shall announce the BUMD as the auction winner and inform the BUMD that it can: i. directly operate the mining activities within the WIUPK; or ii. form a joint venture entity in no more than 90 calendar days after the determination of the auction winner. • A private business entity may have a share participation in the BUMD or in a new joint venture entity as referred to above, with a maximum of share ownership of 49%.	• The MoEMR shall announce the private business entity as the auction winner and instruct the entity to provide a share participation for the BUMD of at least 10%, provided that the private business entity can: i. directly operate the mining activities within the WIUPK; or ii. form a joint venture entity in no more than 90 calendar days after the determination of the auction winner. • In providing the share participation, the private business entity shall coordinate with the Provincial and Regional/City Governments where the WIUPK is located. • If, following such coordination, both of the Provincial and Regional/City Governments are interested in taking the share participation, the 10% share participation shall be divided into: - 4% for a BUMD established by the Provincial Government; - 6% for a BUMD established by the Regional/City Government.

The implementing guidelines for the determination of metal mineral and coal WIUPKs by priority and the procedures for metal mineral and coal WIUPK auctions are stipulated in KepMen 1798/2018.

B. Mining licences

Types of Mining Business Licences

Under the Mining Law, mining licences may be issued to one or more parties within the designated WPs, as follows:

- An IUP is a general licence to conduct mining business activities in a WUP area;
- An IUPK is a licence for conducting mining activities in a specific WPN area in which mining business activities can be carried out;
- A People's Mining Licence (*Izin Pertambangan Rakyat* – "IPR") is a licence for conducting a mining business in a WPR area of limited size and investment. IPRs are not available to foreign investors.

The implementing regulations of the Mining Law that provide further guidance about mining licences are GR 23/2010 (as amended by GR 24/2012, GR 1/2014, GR 77/2014, GR 1/2017, and GR 8/2018), PerMen 25/2015, and PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018).

Prior to the issuance of PerMen 11/2018, in February 2018, the guidance regarding mining licences was stipulated in several of the regulations that were issued by the MoEMR, namely PerMen 28/2009 (as amended by PerMen 24/2012), concerning "Mining Services"; PerMen 32/2013 (as amended by PerMen 32/2015), concerning the "Detailed Procedures for Granting Specific Licences in the Field of Coal and Mineral Mining"; PerMen 15/2017, concerning the "Procedures for the Issuance of IUPK-OP as the Continuation of Operations of a CoW/CCoW"; and PerMen 34/2017, concerning "Licensing in Mineral and Coal Mining". All of these regulations were revoked and replaced by PerMen 11/2018 in a bid by the Government to simplify the licencing procedures in the mineral and coal mining businesses.

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), the business licences in the fields of mineral and coal mining are as follows:

a. Exploration Mining Business Licence ("Exploration IUP")

An Exploration IUP is a mining business licence that is granted for the performance of general surveys, exploration, and feasibility studies within a WIUP.

b. Exploration Special Mining Business Licence ("Exploration IUPK")

An Exploration IUPK is a mining business licence that is granted for the performance of general surveys, exploration, and feasibility studies within a WIUPK.

c. Mining Business Licence for Production Operation ("IUP-OP")

An IUP-OP is a mining business licence that is granted for performing production operation activities (i.e. construction, mining, processing and/or refining, transportation, and sales) within a WIUP.

d. Special Mining Business Licence for Production Operation ("IUPK-OP")

An IUPK-OP is a mining business licence that is granted for performing production operation activities (i.e. construction, mining, processing and/or refining, transportation, and sales) within a WIUPK.

e. Mining Business Licence for Production Operations Specifically for Processing and/or Refining ("IUP-OP Specifically for Processing and/or Refining")

An IUP-OP Specifically for Processing and/or Refining is a mining business licence that is granted specifically for purchasing, transporting, processing, and refining, as well as selling mineral and coal commodities.

f. Mining Business Licence for Production Operations Specifically for Transportation and Sales ("IUP-OP Specifically for Transportation and Sales")

An IUP-OP Specifically for Transportation and Sales is a mining business licence that is granted specifically for purchasing, transporting, and selling mineral and coal commodities.

g. Mining Services Business Licence ("IUJP")

An IUJP is a mining business licence that is granted for performing core mining service business activities in relation to certain phases/parts of the mining business activities. These activities include:

i. Consultation, planning, and implementation in the fields of:

- general surveys;
- exploration;
- feasibility studies;
- mining construction;
- transportation;
- mining environments;
- reclamation and post-mining activities; and/or
- mining occupational safety;

ii. Consultation and planning in the fields of:

- mining; or
- processing and refining.

In the performance of the mining activities, the holder of the IUJP can only perform activities for rock/topsoil stripping from the holders of an IUP-OP or IUPK-OP.

In order to improve the welfare of the community around the mine, the holder of an IUP-OP or IUPK-OP may assign the alluvial mineral sediment excavation to that community through a partnership programme, with prior consent from the DGoMC, on behalf of the MoEMR. The community around the mine shall have an IUJP, which is issued by the Governor. The partnership programme shall be based on a cooperation agreement between the holder of the IUP-OP or IUPK-OP and the holder of the IUJP, complying with criteria set out under PerMen 11/2018.

PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018) stipulates that business entities that are not engaged in the mining business, but that intend to sell minerals or coal being excavated [as a side impact of their mining business activities], are still required to obtain an IUP-OP for Sales. Examples of these business entities are entities that carry out the following activities:

- construction of traffic facilities and infrastructure;
- port construction;
- tunnel construction;
- civilian construction; and/or
- river, lake, and/or sea dredging.

Business entities that utilise the excavated minerals or coal for their own use and for non-commercial purposes are not required to have an IUP-OP for Sales.

Under the Mining Law, where the holder of an Exploration IUP wishes to sell coal and/or minerals that have been extracted during the exploration phase, it must obtain a Temporary Licence for Transport and Sales from the MoEMR, Governor, or Regent/Mayor. Detailed guidance regarding this Temporary Licence was previously stipulated by PerMen 32/2013. Based on PerMen 32/2013, the Temporary Licence for Transport and Sales has associated restrictions, such as:

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

It is worth noting that PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), which revoked PerMen 32/2013, does not provide any guidance regarding this Temporary Licence.

Based on the Transitional Provisions of PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018):

- a Registration Certificate is no longer required for performing non-core mining service activities;
- holders of Transportation and Sale Registration Certificates that were issued before the enactment of PerMen 11/2018 must apply to the MoEMR or Governor for an adjustment to the IUP-OP Specifically for Transportation and Sales, six months after the enactment of PerMen 11/2018, at the latest;
- the Clear and Clean Status and/or the Clear and Clean Certificates that were issued before the enactment of PerMen 11/2018 shall remain valid;
- non-metal mineral and rock IUPs that were issued before the enactment of PerMen 11/2018 do not require Clear and Clean Status and/or the Clear and Clean Certificate; and
- an IUP issued after the enactment of PerMen 11/2018 does not require Clear and Clean Status.

Ownership of Mining Business Licences

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), mining business licences may be issued to the following parties:

Exploration IUP and IUP OPs	Exploration IUPK and IUPK-OPs	IUP-OP Specifically for Processing and/ or Refining	IUP-OP Specifically for Transportation and Sales	IUJP
• Business entities • Cooperatives • Individuals	• Business entities	• Business entities *) • Cooperatives *) • Individuals *)	• Business entities • Cooperatives • Individuals	• Business entities • Cooperatives • Individuals **)

**) An IUP-OP Specifically for Processing and/or Refining of metal minerals, non-metal minerals, and coal can only be granted to business entities, while for rocks, an IUP-OP Specifically for Processing and/or Refining can be granted to business entities, cooperatives, and individuals.*

***) Individuals who are holders of IUJPs can only be engaged in the mining services business in consultation and/or planning activities.*

In the above table, the business entities include BUMNs, BUMDs, and private business entities. PerMen 11/2018 does not define private business entities further. However, based on GR 24/2012, private business entities include PMDNs and PMAs. Under the previous Mining Law 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 it is consistent with the current Negative List on Foreign Investment that has been issued by BKPM, which allows 100% foreign investment in the mining sector, subject to the share divestment rules that are discussed in Section 2.6 of this Guide, “Divestment of Foreign Shareholdings”.


Photo source: PT Adaro Energy Tbk

Authority to Issue IUP

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), the issuance of IUPs is performed as follows:

Exploration IUP	
Grantor	**Condition**
MoEMR	If the WIUP is located: • across provinces; • in sea territory that is more than 12 miles from the shoreline towards the open sea and/or towards archipelagic waters; or • directly adjacent to another country. The Exploration IUP is also granted by the MoEMR if: • the application of the Exploration IUP is made by a listed/public company; and • the application of the licence is made for more than one metal mineral or coal IUP.
Governor	If the WIUP is located: • within one province; or • in ocean territories that are up to 12 miles from the shoreline towards the open sea and/or towards archipelagic waters.

IUP-OP	
Grantor	**Condition**
MoEMR	If the mining location, processing and/or refining location, as well as the special port location are located: • across provinces; or • directly adjacent to another country. The IUP-OP is also granted by the MoEMR if: • the application of the IUP-OP is made by a listed/public company; and • the application of the licence is made for more than one metal mineral or coal IUP.
Governor	If the mining location, processing and/or refining location, as well as the location of the special port are within one province.

Exploration IUPK and IUPK-OP	
Grantor	**Condition**
MoEMR	Exploration IUPK and IUPK-OP can only be granted by the MoEMR.

IUP-OP Specifically for Processing and/or Refining	
Grantor	**Condition**
MoEMR	If: • the mining commodities to be processed are from other provinces outside the location of the processing and/or refining facilities; • the mining commodities to be processed are from abroad; and/or • the processing and refining facilities are located across provinces.
Governor	If: • the mining commodities to be processed are from the same province as the location of the processing and/or refining facilities; and/or • the location of the processing and/or refining facilities is within one province.

IUP-OP Specifically for Transportation and Sales	
Grantor	**Condition**
MoEMR	If the transportation and sales are made across province and/or nation.
Governor	If the transportation and sales are made in one province.

IUJP	
Grantor	**Condition**
MoEMR	If the mining service business activities are conducted throughout Indonesia.
Governor	If the mining service business activities are conducted in one province.

There are inconsistencies between PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), the Mining Law, and GR 23/2010 in terms of the authority for issuing IUPs. Under the Mining Law and GR 23/2010, IUPs may be issued by the Mayor/Regent when certain conditions are met, e.g. an Exploration IUP is granted by the Mayor/Regent when the WIUP is within one city or regency, while an IUP-OP is granted by the Mayor/Regent when the mining area, processing, refining, and port facilities are within one city or regency, etc. In PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), there is no longer a provision stipulating that the Mayor/Regent can grant mining business licences. The authority for issuing IUPs under PerMen 11/2018 is only given to the MoEMR and the Governor. This is in line with the provisions of the Regional Autonomy Law No. 23/2014 and its amendments, which stipulate that the Regency/Municipal Government does not have the authority to issue IUPs. Following this change, the Central Government now has greater control over the process of issuing mining business licences.

Under GR 23/2010, the issuing of an IUP-OP is also to consider the environmental impact, as follows:

- An IUP-OP is granted by the MoEMR (based on the recommendation of the Mayor/Regent and the Governor), where the environmental impact extends across more than one province;
- An IUP-OP is granted by the Governor (based on the recommendation of the Mayor/Regent), where the environmental impact extends across more than one regency, but remains within one province; and
- An IUP-OP is granted by the Mayor/Regent (based on the recommendation of the MoEMR and the Governor), where the environmental impact is within one city or regency.

There are no provisions in PerMen 11/2018 stipulating that the issuance of an IUP-OP shall consider the environmental impact.

It is therefore unclear whether the provisions regarding environmental impacts under GR 23/2010 will still apply in the granting of an IUP-OP. Where such provisions still apply, it is uncertain which tests will prevail for the granting of an IUP-OP in circumstances where there is an inconsistency between the project's location and the extent of its environmental impact.

Exploration IUPs, IUP-OPs, IUP-OPs Specifically for Processing and/or Refining, IUP-OPs Specifically for Transportation and Sales, and IUJPs that are issued to PMA companies are granted by the MoEMR. The Governor shall deliver the documents relating to IUPs whose status has changed from a PMDN company to a PMA company to the MoEMR, and then the MoEMR shall make the necessary adjustments to the IUPs for them to become PMA IUPs or PMA IUJPs.

Through PerMen 25/2015, the MoEMR has delegated to BKPM the authority to issue the following licences to PMA companies:

- Exploration IUPs;
- IUP-OPs including extensions;
- Cancellation of IUPs relinquished to the Government;
- IUP-OPs Specifically for Transportation and Sales including extensions;
- IUP-OPs Specifically for Processing and/or Refining including extensions;
- Temporary Licences for Transport and Sales;
- IUP-OPs for Sales;
- In-Principle Licences for Processing and/or Refining; and
- IUJPs, including extensions.

It should be noted that the In-Principle Licence for Processing and/or Refining is no longer applicable, following the issuance of PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018).

The authority of BKPM as outlined in PerMen 25/2015 also includes approval of changes in status from a PMDN company to a PMA company, and vice versa.

Licence Terms and Extensions

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), the mining business licences are issued and extended as follows:

Types of Licences	Licence Terms		Extensions	Notes
Exploration IUPs	Coal	Maximum 7 years	N/A	Applications to change an Exploration IUP to an IUP-OP should be submitted no later than: • Six months before the expiration of the Exploration IUP (for metal minerals, non-metal minerals of certain types, or coal); • Three months before the expiration of the Exploration IUP (for non-metal minerals or rocks).
	Metal Minerals	Maximum 8 years	N/A	
	Non-Metal Minerals	Maximum 3 years *)	N/A	
	Rocks	Maximum 3 years	N/A	
Exploration IUPKs	Coal	Maximum 7 years	N/A	Applications to change an Exploration IUPK to an IUPK-OP should be submitted no later than six months before the expiration of the Exploration IUPK.
	Metal Minerals	Maximum 8 years	N/A	
IUP-OPs	Coal	Maximum 20 years	2 x 10 years	Applications for extensions of licences should be submitted: • No earlier than five years and, at the latest, one year prior to the expiration of the IUP-OP (for metal minerals, non-metal minerals of certain types, or coal); • No earlier than two years and, at the latest, six months before the expiration of the IUP-OP (for non-metal minerals or rocks).
	Metal Minerals	Maximum 20 years	2 x 10 years	
	Non-Metal Minerals	Maximum 10 years **)	2 x 5 years **)	
	Rocks	Maximum 5 years	2 x 5 years	
IUPK-OPs	Coal	Maximum 20 years	2 x 10 years	Applications for extensions of licences should be submitted no earlier than five years and, at the latest, one year prior to the expiration of the IUPK-OP.
	Metal Minerals	Maximum 20 years	2 x 10 years	

Types of Licences	Licence Terms		Extensions	Notes
IUP-OP Specifically for Processing and/or Refining		30 years	20 years for each extension	Applications for extensions of licences should be submitted no earlier than five years and, at the latest, one year prior to the expiration of the IUP-OP Specifically for Processing and/or Refining.
IUP-OP Specifically for Transportation and Sales		5 years	5 years for each extension	Applications for extensions of licences should be submitted, at the latest, one month prior to the expiration of the IUP-OP Specifically for Transportation and Sales.
IUJPs		5 years	5 years for each extension	Applications for extensions of licences should be submitted, at the latest, one month prior to the expiration of the IUJP.

**) Certain non-metal mineral companies may be granted an Exploration IUP for a maximum of 7 years.*
***) Certain non-metal mineral companies may be granted an IUP-OP for a maximum of 20 years, which is extendable twice, for a period of 10 years for each extension.*

Once the second extension of an IUP-OP expires, the relevant WIUP is to be returned to either the Central or the Regional Government. If the WIUP relates to metal minerals and coal, then it could be determined as either a WPN or WIUP/WIUPK. The offer for a WIUP would be via tender, while the offer for a WIUPK would be via priority or tender (noting that the previous IUP-OP holder would have the right to match the tender offer).

Procedures for the Issuance of an IUPK-OP as a Continuation of CoW/ CCoW Operations

The procedures for the issuance of an IUPK-OP as a continuation of a CoW/CCoW operation were previously stipulated in PerMen 15/2017. However, PerMen 15/2017 was revoked by PerMen 11/2018, which was issued in February 2018. There are no substantial differences between PerMen 11/2018 and PerMen 15/2017 with regard to the procedures for the issuance of an IUPK-OP as a continuation of a CoW/CCoW operation, except PerMen 15/2017 (i.e. article 3.2) stipulated that the holder of a CoW or CCoW that is about to expire can submit an application for an Extended IUPK-OP as a continuation of operations without going through an auction. This provision does not exist in PerMen 11/2018.

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), a holder of a metal mineral CoW can request conversion of the CoW to an IUPK-OP prior to the expiration of the CoW. An application for the conversion of a CoW to an IUPK-OP must be submitted to the MoEMR, through the DGoMC, by attaching the following documents:

- Area maps and coordinate borders, according to the provisions of the applicable rules and regulations;
- Proof of the complete payment of any fixed fees and production fees; and
- A Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya*, or “RKAB”).

The DGoMC, on behalf of the MoEMR, shall evaluate the application that is submitted by the holder of a metal mineral CoW, and the MoEMR shall issue the IUPK-OP, based on the results of the evaluation that has been performed by the DGoMC.

The IUPK-OP shall be issued for a period of time in accordance with the remaining validity period for the metal mineral CoW and the period of the first extension for ten years. The IUPK-OP may be extended two times, for two periods of ten years each. The holder of the IUPK-OP has rights and obligations according to the provisions of the applicable rules and regulations.

In the execution of the IUPK-OP, all of the approvals that were issued by the Central Government and the Regional Government shall remain applicable, as long as they do not conflict with the provisions of the applicable rules and regulations.

The implementing guidelines for the application, evaluation, and approval of IUPK-OPs resulting from the conversion of metal mineral CoWs are stipulated in MoEMR Decree No. 1796 K/30/MEM/2018 ("KepMen 1796/2018").

The holder of a CoW or CCoW that is about to expire must submit an application for an Extended IUPK-OP to the MoEMR, through the DGoMC. Such an application, at the minimum, must satisfy the administrative, technical, environment, and financial requirements, and must be submitted no earlier than two years and, at the latest, six months prior to the expiration of the CoW or the CCoW. This requirement (i.e. in an application to convert a CoW or CCoW to an Extended IUPK-OP) is slightly different from the requirement for an IUPK-OP extension as elaborated in PerMen 11/2018 article 44.3, where an application for an IUPK-OP extension, should be submitted no earlier than five years and at the latest one year prior to the expiration of the IUPK-OP.

The DGoMC, on behalf of the MoEMR, shall evaluate the application that is submitted by the holder of a metal mineral CoW. Based on the DGoMC's evaluation, the MoEMR may approve or reject the application for the Extended IUPK-OP up to two months prior to the expiration of the CoW or CCoW, at the latest.

The Extended IUPK-OP is considered as:
- The First Extended IUPK-OP for an application that is submitted by the holders of a CoW or a CCoW who have not previously obtained an extension; or
- The Second Extended IUPK-OP for an application that is submitted by the holders of a CoW or a CCoW who have previously obtained an extension.

The Extended IUPK-OP is provided for a period of ten years. The First Extended IUPK-OP may be extended for another ten years, according to the provisions of the applicable rules and regulations. The Extended IUPK-OP has rights and obligations, according to the provisions of the applicable rules and regulations.

The implementing guidelines for the application, evaluation, and approval of the Extended IUPK-OP are stipulated in KepMen 1796/2018.

PerMen 51/2018 provides that the MoEMR may stipulate other provisions for the holder of an IUPK-OP, as a continuation of the operations of a CoW or a CCoW, in order to guarantee the effectiveness of the implementation of mineral and coal mining business activities and to ensure a conducive business climate, by taking into account:
- the scale of investment;
- the operational characteristics;
- the volume of production; and/or
- the environmental carrying capacity.

Rights, Obligations and Prohibitions of Holders of Mining Business Licences

The rights, obligations, and prohibitions of each type of IUP holder are stipulated in PerMen 11/2018, as follows:

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs	There is an expansive list in PerMen 11/2018. Some examples are as follows: • To conduct the mining business activities at a WIUP or a WIUPK in accordance with the provisions of the laws and regulations; • To have the minerals, including the associated minerals or coal that have been produced, after fulfilling the production dues, except for the radioactive minerals; • To build the facilities and/or infrastructure supporting the mining business activities; • To sell the minerals or coal, including selling overseas after the fulfilment of domestic needs, and selling minerals or coal that have been excavated during exploration activities or feasibility study activities, in accordance with the provisions of the legislation; • To obtain the rights to the land, in accordance with the provisions of the legislation; • To use foreign workers in accordance with the approval of the agencies that administer affairs in the field of manpower, in accordance with the provisions of the legislation; • To make any changes to investment and financing sources, including charges of paid-up capital, and place them in accordance with the approval of the annual RKAB;	There is an expansive list in PerMen 11/2018. Some examples are as follows: • To conduct all of the mining business activities in accordance with the provisions of the legislation; • To prepare and submit an annual RKAB to the MoEMR or the Governor; • To prioritise the fulfilment of coal and mineral needs in the country, and to adhere to the controls over production and sales; • To prepare and obtain approval for reclamation and post-mining plans and to introduce reclamation and post-mining guarantees; • To increase the added value of mineral or coal mining products in the country, in accordance with the provisions of the laws and regulations; • To prepare, implement, and submit reports on the implementation of the community development and empowerment programmes; • To submit all of the data that was obtained from the activities of the exploration and production operations to the MoEMR or the Governor; • To prioritise the utilisation of local manpower, goods, and services in the country, in accordance with the provisions of the legislation; • For PMA IUP and IUPK holders, to divest shares to Indonesian participants, in accordance with the provisions of the legislation; and • To pay the necessary financial obligations, in accordance with the laws and regulations;	• To sell the mining products abroad, before processing and/or refining them in this country; • To sell mining products that have not been produced by its own mining concession; • To perform blending activities for coal originating from the holders of an IUP-OP, IUPK-OP or an IPR, without receiving approval from the DGoMC or governors in accordance with their authority; • To perform the processing and/or refining of the mining products, without having the IUP, IPR, or IUPK; • To engage subsidiaries and/or affiliates as mining service providers, without receiving approval from the DGoMC on behalf of the MoEMR; • To have an IPR, an IUP-OP Specifically for Processing and/or Refining, an IUP-OP Specifically for Transportation and Sales, and an IUJP; • To pledge the IUP/IUPK and/or mining commodities to other parties; • To perform a general inspection and exploration, and to conduct a feasibility study, before the annual RKAB for the Exploration IUP is approved;

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs (Continued)	• To apply to the Minister or Governor, in accordance with the correct authority, for an IUP or IUPK in order to search for other mining commodities in the WIUP or WIUPK, by forming a new Business Entity in accordance with the provisions of the legislation; • To build the transport facilities, and the storage/ stockpiling facilities, and to purchase and use explosives in accordance with the approval of the annual RKAB; • To propose a request to use the area outside the WIUP or WIUPK to the MoEMR or Governor in order to support the mining activities.	• To obtain approval from the MoEMR or the Governor for any changes to shareholders and the Boards of Directors/ Commissioners; • To pay adequate compensation to the relevant communities, in the event of any errors in the conduct of the mining business activities that have a directly negative impact on those communities.	• To perform any construction, mining, processing and/ or refining activities, as well as any transportation and sales activities, including advanced exploration, before the annual RKAB for the IUP-OP is approved; • To perform mining business activities in areas that are prohibited by the legislation; • To transfer the IUP/ IUPK to another party, without the prior consent of the MoEMR or the Governor; • To conduct a transfer of shares, so that the BUMN and/or BUMD ownership share in a business entity which holds an IUPK becomes less than 51% for the IUPK which is owned by a BUMN and/or BUMD.
IUP-OP Specifically for Processing and/or Refining	• To process and/or refine mining commodities from the holders of: 1. IUP-OPs; 2. IUPK-OPs; 3. IUP-OPs Specifically for Processing and/or Refining; 4. IPRs; 5. IUP-OPs Specifically for Transportation and Sales; 6. CoWs; and 7. CCoWs. • To enter into cooperative agreements with other parties for the utilisation of the residual and/ or by-products of the processing and/or refining products for domestic industrial raw materials;	There is an expansive list in PerMen 11/2018. Some examples are as follows: • To prepare and submit the annual RKAB to the MoEMR or the Governor, in order to obtain the necessary approval; • To obtain approval for the use of foreign workers, from the agencies that administer the affairs in the field of manpower; • To obtain approval for any changes in investment and financing sources, including changes in paid-up capital; • To comply with the restrictions on processing and/or refining, in order to conduct overseas sales in accordance with the provisions of the legislation;	• To undertake the processing and/ or refining of mining products that have not originated from the holders of: 1. IUP-OPs; 2. IUPK-OPs; 3. IUP-OPs Specifically for Processing and/ or Refining; 4. IPRs; 5. IUP-OPs Specifically for Transportation and Sales; 6. CoWs; and 7. CCoWs. • To have the an IUP, IPR, or IUPK, or IUJP; and

Holders of	Rights	Obligations	Prohibitions
IUP-OP Specifically for Processing and/or Refining (Continued)	• To mix mine commodity products in order to meet the buyer's specifications; and • To utilise public facilities and/or infrastructure in order to support business activities, in accordance with the provisions of the legislation.	• To comply with the benchmark prices for mineral or coal sales, in accordance with the provisions of the legislation; • To prioritise the fulfilment of mineral and coal needs in the country; and • To prepare, implement, and submit reports on the implementation of any community development and empowerment programmes; • To prioritise the utilisation of local manpower, goods, and services in the country; • To obtain approval from the MoEMR or the Governor for any changes to shareholders and the Boards of Directors/ Commissioners.	• To transfer the IUP-OP Specifically for Processing and/or Refining to another party.
IUP-OP Specifically for Transportation and Sales	• To buy, transport, and sell the mineral and coal mining commodities from and to IUP holders (i.e. holders of IUP-OPs, IUPK-OPs, IUP-OP Specifically for Processing and/or Refining, IPRs, CoWs, CCoWs, and other holders of IUP-OPs Specifically for Transportation and Sales); and • To construct and/or use the transportation and sales facilities and infrastructure, including stockpiles, ports, or special ports, in accordance with the provisions of the laws and legislation.	• To send a copy of the agreements/contracts with IUP holders; • To comply with the legislation in the fields of traffic and road traffic, if the holder uses public road facilities, which includes complying with the load capacity level requirements that are adjusted with the class of the road, the traffic of the road, and the traffic accident risks; • To file a periodic report of the business operations to the MoEMR or the Governor every three months, or whenever it is needed; • To file a report on the Verification Results that are issued by the surveyor on a monthly basis to the MoEMR or the Governor, no later than ten days after the end of the month.	• To perform any transportation or sales activities relating to any mineral or coal commodities that have not originated from the areas of IUP holders (i.e. holders of the IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/ or Refining, IPR, CoW, CCoW, and any other holders of the IUP-OP Specifically for Transportation and Sales); • To perform any transportation or sales activities relating to any mineral or coal commodities between provinces and/or states for the holder of an IUP-OP Specifically for Transportation and Sales that has been issued by the Governor; • To purchase mineral or coal commodities in the mine mouth; • To transfer the IUP to another party; and • To have an IUP, IPR, IUPK, or IUP-OP Specifically for Processing and/or Refining.

Holders of	Rights	Obligations	Prohibitions
IUJPs	• To perform activities in accordance with the scope of the business; • To change the scope of the business activities by filing a request for a change to the MoEMR or Governor; and • To obtain an extension of the IUJP once all of the requirements have been fulfilled.	• To prioritise the use of local products; • To prioritise the use of local subcontractors; • To prioritise the use of local workers; • To perform activities in accordance with the scope of the business activities; • To perform environmental management efforts in accordance with the provisions of the laws and regulations; • To optimise the use of either local mining equipment or local services that are required during the course of the service and business activities; • To perform the mining safety requirements in accordance with the provisions of the laws and regulations; • To prepare and submit a report of the activities to the issuer of the IUJP through a holder of the IUP/IUPK, in accordance with the provisions of the laws and regulations; • To appoint the person in charge of operations as the supreme leader in the field; and • To have competent mining technical personnel in accordance with the provisions of the laws and regulations.	• To have an IUP, IPR, IUPK, IUP-OP Specifically for Processing and/or Refining, or an IUP-OP Specifically for Transportation and Sales; and • To perform activities that are not in accordance with the IUJP.

Prohibition Against Receiving Fees from a Mining Services Company

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

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), and only the companies that are listed on the IDX and the companies that have been granted non-metal mineral and/or rock WIUPs are entitled to hold more than one licence. GR 24/2012 seems to have relaxed this requirement and in certain circumstances an IUP or IUPK can be transferred to an IUP/IUPK holding entity although the details of the procedures for such transfers still require further clarification.

Reduction of Licence Areas

A key aspect of GR 23/2010 is that the size of an Exploration IUP for coal and metal minerals must be reduced after three years of exploration (the period of time is shorter for non-metal minerals and rocks). The maximum area for the production phase will be reduced again once the Production IUP/IUPK has been issued.

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

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

An IUP or IUPK is issued for a particular type of mineral or coal. If other minerals are discovered in the licence area, then the relevant government authority will issue further IUPs or IUPKs for those different minerals. The holder of the Exploration IUP will be given priority for acquiring a licence to mine the additional mineral(s), before the relevant government authority grants a mining licence to another investor.

Transfer Restrictions

Under the Mining Law, the transfer of an IUP/IUPK to another party is generally prohibited. However, GR 24/2012 provides an exception, whereby IUPs/IUPKs can be transferred if the transferee is at least 51% held by a company that already holds an IUP/IUPK. It is not yet clear whether this rule is intended for transfers to any IUP/IUPK holder, or whether it will be 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 of entities holding multiple IUP/IUPKs, pursuant to the transitional rules in GR 23/2010. Further information regarding the full extent of this amendment is required. There is also some concern that it goes beyond the powers granted under the Mining Law, which may require further consideration.

Under the Mining Law, the transfer of the ownership and/or the shares of an IUP/IUPK company on the IDX can only be conducted after the commencement of a certain phase of the exploration activities. The transfer should be communicated to the relevant government authority, and it should not contravene the provisions of the prevailing legislation.

The Mining Law does not appear to regulate the transfer of shares outside the IDX. The requirements regarding the transfer of shares of certain mining companies are set out in PerMen 48/2017. Please note, however, that, PerMen 48/2017 only applies to the holders of:

- IUPs or IUP-OPs Specifically for Processing and/or Refining where the IUP was issued by the MoEMR;
- IUPKs; and
- CoWs or CCoWs.

It is not clear why the scope of PerMen 48/2017 is only limited to holders of the above IUPs and CoWs or CCoWs. No explanation has been provided in PerMen 48/2017 to explain such a narrow scope.

Based on PerMen 48/2017, the transfer of shares in the above types of IUP, CoW or CCoW must be approved by the MoEMR prior to transfer. In order to obtain the approval, an application must be submitted to the MoEMR through the DGoMC, by completing certain administrative and financial requirements. The DGoMC shall then evaluate the application, and based on the results of the evaluation, the MoEMR will make a decision within 14 business days of receipt of the application.

C. Reporting of Mineral and Coal Business Activities

Based on PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018), IUP holders are required to prepare and submit an annual RKAB and periodic written reports on the annual RKAB, as well as on the performance of the business activities. These two documents need to be submitted on a regular basis to the MoEMR (through the DGoMC) or the Governor.

The key provisions in respect of these reporting requirements are summarised as follows:

Aspect	Key Provisions
The types of IUPs that are subject to the Reporting Requirements	• Exploration IUPs and IUPKs; • IUP-OPs and IUPK-OPs; • IUP-OPs Specifically for Processing and/or Refining; • IUP-OPs Specifically for Transportation and Sales; and • IUJPs.
The timeframe for the submission of the Annual RKAB	• Initial reporting: no later than 30 calendar days after the issuance of the IUP. • Subsequent reporting: at least 90 calendar days after and no later than 45 calendar days before the end of the fiscal year, which also includes the obtaining of the consent for the annual RKAB. • In event of an IUP being issued within 45 calendar days of the end of the fiscal year, the IUP holder shall submit the annual RKAB in order to obtain the consent either: (i) before the performance of the annual RKAB in the current year; or (ii) no later than the end of the fiscal year for next year's annual RKAB.
The Evaluation and Acceptance Process for the Annual RKAB	• On behalf of the MoEMR or the Governor, the DGoMC shall perform an evaluation of the annual RKAB and provide the consent for, or a response about the annual RKAB in no more than 14 business days after the date when the annual RKAB was completely and properly received. • IUP holders are required to deliver the revised version of the annual RKAB, which must accommodate the response from the DGoMC, in no more than five days after the date when the response from the DGoMC was received. • The DGoMC shall give consent for the revised version of the annual RKAB in no more than 14 business days after the date when the revised annual RKAB was completely and properly received.
Amendments to the Annual RKAB and Reports (Subsequent to Obtaining Consent from the MoEMR or the Governor)	• Holders of Exploration IUPs and IUPKs, IUP-OPs, IUPK-OPs, or IUP-OP Specifically for Processing and/or Refining may apply for one amendment to the annual RKAB in the current year, should there be a change in their production capacity. The application for an amendment to the annual RKAB is to be submitted after the IUP holder has submitted its Q2 Quarterly Report, and it has to be submitted, at the latest, by 31 July of the current year. • The evaluation and acceptance process for an amendment to the annual RKAB follows the provisions explained in the previous point. • Holders of IUP-OPs and IUPK-OPs must submit amendments to their Reports on the Feasibility Study, should there be any changes to the technical, economic, or environmental variables, according to the provisions of the applicable rules and regulations. • Holders of Exploration IUPs and IUPKs, IUP-OPs, IUPK-OPs, or IUP-OPs Specifically for Processing and/or Refining must report any amendments to the utilisation of their mining service businesses in the current year.

At the time of writing, the Government is in the process of simplifying the regulations and/or licences in the coal and minerals sectors. Going forward, the MoEMR will optimise the use of the annual RKAB as a source of information, in order to streamline the process for obtaining licences and/or recommendations.

This initiative is expected to cut bureaucracy, reducing the time that it takes for industry players to obtain a particular licence/recommendation and, thus, increase the attractiveness of the mining industry for potential investors. Below are several examples of licences/recommendations that were previously required to be obtained individually, but which have now been revoked by the Government and replaced with approvals that are granted in conjunction with the annual RKAB that is submitted by IUP holders:

- Approvals for Exploration Reports;
- Approvals for Changes to Investment Plans and Financing Sources, including Changes of Issued and Paid-Up Capital;
- Approvals for Blending Coal from the holder of the IUP-OP or IUPK-OP;
- Approvals for Carrying Out the Sleep Blasting;
- Approvals for the Operation of Dredger/Suction Boats;
- Permits and Recommendations for the Loading, Storage, and Usage of Explosives;
- Recommendations for Facilities for the Import, Re-Export, Temporary Import, or Transfer of Goods; and
- A recommendation from the DGoMC is no longer necessary for being acknowledged as a Registered Coal or Pure Lead Bar Exporter by the MoT. Instead, IUP holders can use the annual RKAB to apply directly to the DGoMC for such licences.

In addition to the annual RKAB submission requirement, PerMen 11/2008 also requires IUP holders to submit three additional reports: (a) a Periodic Report; (b) a Final Report; and (c) a Special Report, with various levels of requirements, depending on the type of IUP holder, as summarised below:

Mining Licence	Periodic Reports	Final Reports	Special Reports
Exploration IUPs and IUPKs	• Report for the Annual RKAB; • Report on the Mining Water Waste Quality; • Statistical Report on any Mining Accidents and Dangerous Events; • Statistical Report on Workers' Diseases; • Report on Reclamation in the Release or Closing of the Reclamation Facility; and • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining.	• Complete Report on the Exploration; and • Report on the Feasibility Study.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases that Infect the Workers; • Report on Illness Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Mineral and Coal Mining.

Mining Licence	Periodic Reports	Final Reports	Special Reports
IUP-OPs and IUPK-OPs	• Report for the Annual RKAB; • Report on the Mining Water Waste Quality; • Statistical Report on any Mining Injuries and Dangerous Events; • Statistical Report on Workers' diseases; • Report of a on Reclamation in order to Release or Close the Reclamation Facility; • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining; • Report about Conservation; and • Report on the Post-Mining Activities in order to close the Post-Mining Facility.	• Report on the Boundaries Installation; and • Final Report on the Production Activities of Operation.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases that Infect the Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Mineral and Coal Mining.
IUP-OP Specifically for Processing and/or Refining	• Report for the Annual RKAB; • Report on Mining Water Waste Quality; • Statistical Report on any Mining Accidents and Dangerous Events; • Statistical Report on Workers' Diseases; and • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining.	Not applicable.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases that Infect the Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Mineral and Coal Mining.
IUP-OP Specifically for Transportation and Sales	• Realisation Report for Mineral or Coal Purchases; and • Realisation Report for Mineral or Coal Sales.	Not applicable.	Not applicable.
IUJPs	• Report on Mining Services Business Activities; and • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining.	Not applicable.	Not applicable.

Set out below is a summary of the reporting timeframe for each of the reports mentioned in the previous table:

Type of Report	Report Submission Period
Periodic Reports	• The monthly reports need to be submitted to the MoEMR (through the DGoMC) or the Governor, no later than five calendar days after the end of a fiscal month, and 15 calendar days after the end of a fiscal month for the Report on the Mining Water Waste Quality, specifically. • Quarterly reports need to be submitted to the MoEMR (through the DGoMC) or the Governor, no later than 30 calendar days after the end of the last month in the quarter.
Final Reports	• PerMen 11/2018 has yet to set out a specific timeframe for the submission of this type of report. • The DGoMC, on behalf of the MoEMR, will set out further guidelines for the implementation, drafting, delivery, evaluation, and/or acceptance of the Final Reports.
Special Reports	All types of Special Report need to be submitted immediately after the occurrence of the triggering events. For example: • The Early Notice of Accidents and the Early Notice of Dangerous Events reports need to be submitted immediately after the occurrence of the accident or the incident; • The Report on Illness Caused by Work needs to be submitted immediately after the diagnosis and inspection results are have been issued; and • The Report on Environmental Incidents needs to be submitted within 1 x 24 hours after an environmental incident occurs.

The DGoMC (on behalf of the MoEMR) or the Governor evaluates and may provide a response to the reports submitted by IUP holders. PerMen 11/2018 does not stipulate a specific deadline for the government to provide its response, but it does stipulate a maximum timeframe of no more than five working days for the IUP holders to reply to the DGoMC and/or the Governor.

Based on the Transitional Provisions of PerMen 11/2018:

- An Annual RKAB which has been submitted to and/or has been approved by the MoEMR (through the DGoMC) or the Governor before the enactment of PerMen 11/2018 shall remain valid as the implementation basis for the mining activities, and must be adjusted in accordance with the provisions in PerMen 11/2018, especially those related to the type of permit for which approval has been issued in the Annual RKAB; and
- The provisions in PerMen 11/2018, concerning the approval of the annual RKAB, as well as any changes to shareholders and the Boards of Directors and/or Commissioners, shall be applied to the CoW and the CCoW.

The implementing guidelines for the preparation, evaluation, and approval of the RKAB, as well as the reports on mineral and coal mining business activities, are stipulated in MoEMR Decree No. 1806 K/30/MEM/2018.

2.3 Controls Over the Production and Sale of Mineral and Coal Products

Due to the non-renewable nature of coal and mineral resources, which are essential for national development, and in order to guarantee sufficient supplies to fulfil national needs, the Central Government considers it important to limit national coal and mineral production.

The MoEMR, in coordination with the relevant Government Agency and/or Provincial Government, may determine the volume of national production of minerals and coal for the national interest. The MoEMR may also determine the volume and types of need for minerals and coal for the DMO, and the volume and types of minerals and coal that can be exported.

DMO

This policy is intended to guarantee the supply that is necessary for meeting the increasing domestic demand, especially for coal. The Central Government has the authority to control the production and the export of each mining product. The Regional Government is obliged to comply with the production and export controls that are imposed by the Central Government.

Details of the DMO procedures were previously stipulated in PerMen 34/2009. However, PerMen 34/2009 has since been revoked by PerMen 25/2018.

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

Neither PerMen 34/2009 nor PerMen 25/2018 set a specific DMO percentage. Rather, the decision for each particular year is to be made by the MoEMR through the issuance of the MoEMR Decree, which is typically issued annually. At the time of writing, the DMO has only been applied to coal.

MoEMR Decree No. 78 K/30/MEM/2019, concerning the "Determination of Minimum Coal Sales for the Domestic Market Obligation for the Year 2019", stipulates that the holders of CCoWs, IUP-OPs and IUPK-OPs are required to meet the minimum coal DMO of 25% of their 2019 production plan, as approved by the MoEMR or the Governor. A mining company that is unable to meet its DMO obligation, in accordance with the requirements of MoEMR Decree No. 78 K/30/MEM/2019 may purchase DMO credits from mining companies that have exceeded their DMO obligations.

The mechanism for trading DMO credits has been clarified in DGoMC Circular Letter No. 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 that are held by traders on behalf of mining companies. The pricing mechanism for DMO credits is to be determined on commercial terms. In October 2018, DGoMC Decree No. 300.K/30/DJB/2018 was also issued to provide implementing guidelines on the application, evaluation, and stipulation of the DMO credit transfer.

The sanction for not fulfilling the DMO requirement is a reduction in the coal production and export quota for the following year. Based on MoEMR Decree No. 78 K/30/MEM/2019, the MoEMR may appoint companies to fulfill the DMO when domestic coal users encounter difficulties in obtaining their coal supply.

As the Government continues to progress its 35,000 MW electrification programme, it is expected that the DMO for coal set by the Government will continue to increase over the coming years.

Coal and Mineral Price Benchmarking

GR 23/2010 (amended by GR 1/2017), as further implemented by PerMen 7/2017 and PerMen 25/2018, provides the framework that authorises the MoEMR to set the mineral and coal sales benchmark prices.

The Concluding Provision of PerMen 7/2017 stipulates that, from the effective date of PerMen 7/2017, the provisions in PerMen 17/2010 that regulate the benchmark price for minerals and coal will be revoked. By way of comparison, the benchmark price for minerals as regulated by PerMen 17/2010 included the benchmark prices for metal minerals, non-metal minerals, and rocks, whereas the benchmark prices for minerals as regulated by PerMen 7/2017 include the benchmark prices for metal minerals. PerMen 17/2010 was then effectively revoked by PerMen 25/2018. However, both PerMen 7/2017 and PerMen 17/2010 do not provide any guidance regarding the benchmark prices for non-metal minerals and rocks that was previously provided by PerMen 17/2010.

Broadly, the MoEMR, through the DGoMC, will be responsible for setting the benchmark prices for coal and metal minerals.

The benchmark price serves 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 the actual sales price is below the benchmark price, then the Government Royalty should be based on the benchmark price.

Under PerMen 17/2010, certain costs are accepted in order to adjust the benchmark price for the purpose of the Government Royalty calculation. Such allowable adjustments include the costs of barging, surveyors, insurance, and transshipment. For metal minerals, the types of costs that are allowable as adjustments to the benchmark price include treatment costs and refinery costs.

In PerMen 7/2017, by contrast, there are no specific provisions regarding the allowable adjustments to the benchmark prices. However, it is worth noting that DGoMC Regulation No. 999.K/30/DJB/2011 (as amended by DGoMC Regulation No. 644.K/30/DJB/2013), concerning the "Procedures for Determining the Adjustment Costs of the Coal Benchmark Price", has not yet been revoked, based on the information that is available on the official website of the MoEMR. These DGoMC regulations were issued to provide guidelines for determination of the allowable adjustment costs to the benchmark price, for the purpose of implementing PerMen 17/2010. Interestingly, MoEMR Decree No. 1823 K/30/MEM/2018, concerning the "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue", which was issued in May 2018, stipulates that the allowable adjustments to the benchmark prices only include transhipment and barging costs. Therefore, there are inconsistencies between DGoMC Regulation No. 999.K/30/DJB/2011 (as amended by DGoMC Regulation No. 644.K/30/DJB/2013) and MoEMR Decree No. 1823 K/30/MEM/2018, with regard to the allowable adjustment costs to the benchmark price. We understand, however, that in practice, mining companies are currently only allowed to include barging and transhipment costs as adjustments to the benchmark price.

The benchmark prices for metal minerals, as determined by the DGoMC on behalf of the MoEMR, may include the following commodities:

a. Nickel, in the form of nickel ore; ferronickel; mixed hydroxyde precipitate; mixed sulfide precipitate; nickel metal shots; nickel pig iron; nickel ingots; and/or nickel-matte;
b. Cobalt, in the form of: cobalt ore; cobalt concentrate; cobalt ingots; and/ or cobalt sulfide;
c. Lead, in the form of: lead ore; lead concentrate; lead ingots; and/or lead bullion;
d. Zinc, in the form of: zinc ore; zinc ingots; zinc concentrate; and/or zinc oxide;
e. Bauxite, in the form of: bauxite ore; aluminium ingots; chemical grade alumina; and/or smelter grade alumina;
f. Iron, in the form of: iron ore; iron concentrate; iron sand; iron sand pellets; sponge iron; and/or pig iron;
g. Gold, in the form of gold metal;
h. Silver, in the form of silver metal;
i. Tin, in the form of tin ingots;
j. Copper, in the form of: copper ore; copper concentrate; and/or copper metal;
k. Manganese, in the form of: manganese ore; and/or manganese concentrate;
l. Chromium, in the form of: chromium ore; and/ or chromium metal;
m. Titanium, in the form of: ilmenite concentrate; and/or titanium concentrate; and
n. Other certain metal minerals.

The benchmark prices for metal minerals and coal are based on the benchmark price formula, which takes certain factors into account. For metal minerals, these factors include, but are not limited to, the value/content of the metal mineral; the Mineral Reference Prices (*Harga Mineral Acuan* or "HMA"); corrective factors; treatment costs; and refining charges. For the determination of the coal benchmark prices, examples of these factors include the calorific value of coal; the Coal Reference Price (*Harga Batubara Acuan* or "HBA"); moisture content; sulphur content; and ash content.

Where coal is sold on a term basis, the HBA that is used as the reference for determining the price of coal in the sales contract is based on the formula of 50% of the HBA in the month of the signing of the contract, plus 30% of the HBA in the month prior to the signing of the contract, plus 20% of the HBA two months prior to the signing of the contract. This formula was introduced in PerMen 7/2017.

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). Various regulations have been issued by the DGoMC, setting out the following:

a. The formula that is to be used for calculating the benchmark price and the cost adjustments that are applicable for steam (thermal) and coking (metallurgical) coal; and
b. Guidance about the calculation of the benchmark prices for specific coal types (e.g. fine coal, reject coal, and coal with specific impurities) and for specific uses (e.g. for own use in the coal mining process, for value-adding processes that are performed at the mine mouth, and for Community Development near the mine area).

The coal benchmark prices for specific types of coal are to be based on the benchmark prices, after taking into account the adjustment factors that have been determined by the DGoMC, while the prices for coal for specific uses will generally be based on the production costs that have been determined by the DGoMC, plus a margin.

On 18 July 2017, PerMen 44/2017 was issued to amend PerMen 7/2017. However, no significant changes were introduced by PerMen 44/2017. The provisions in PerMen 7/2017 as amended by PerMen 44/2017, related to the determination of the benchmark prices for metal minerals and coal, HMA, HBA, and the benchmark prices for specific coal types and specific uses. Previously, under PerMen 7/2017, the benchmark prices for metal minerals and coal, HMA, HBA, and the benchmark prices for specific coal types and specific uses were determined by the DGoMC on behalf of the MoEMR. Under PerMen 44/2017, these prices are determined by the MoEMR.

Coal Price for Electricity that is Supplied in the Public Interest

On 7 March 2018, GR 8/2018 was issued as the fifth amendment of GR 23/2010, the "Implementation of Mineral and Coal Mining Business Activities". Based on GR 8/2018, the MoEMR shall determine the selling price of coal that is supplied specifically for the fulfilment of domestic needs.

On 8 March 2018, PerMen 19/2018 was issued as the second amendment of PerMen 7/2017. Based on PerMen 19/2018, the MoEMR shall determine the selling price of coal for domestic needs based on the quality of the coal. The MoEMR considers the public interest when determining the coal price. On 9 March 2018, KepMen 1395/2018, concerning the "Coal Selling Prices for the Electricity Supply for the Public Interest", was issued as an implementing regulation of PerMen 19/2018 and GR 8/2018.

The key provisions of KepMen 1395/2018 are as follows:

1. The selling price of coal for electricity that is supplied in the public interest is set at US$ 70/mt, FOB Vessel, for coal that meets the following specifications: a calorific value of 6,322 kcal/kg GAR; total moisture of 8%; total sulphur of 0.8%; and ash content of 15%. The royalty that is to be paid to the Government from the coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and the selling price.
2. If the coal specifications differ from those above, and the HBA for such coal is equal to or exceeds US$ 70/mt, then the selling price of coal for electricity that is supplied in the public interest is based on the formula that is set out in Annex I of KepMen 1395/2018. The royalty to be paid to the Government from the coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and the selling price.
3. If the coal specifications differ from those above, and the HBA is lower than US$ 70/mt, then the selling price of the coal is based on the formula that is set out in Annex II of KepMen 1395/2018. The royalty to be paid to the Government from the coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and the coal benchmark price.
4. The coal selling prices that are described in the points above are only applicable to coal sales in 2018 and 2019, with a maximum sales volume of 100 million mt per year.
5. The holders of IUP-OPs, IUPK-OPs, and CCoWs that have met their minimum coal DMO as set out by the MoEMR, and that have complied with the coal selling price requirements, as set out in KepMen 1395/2018, may be granted an increase in production volume of up to a maximum of 10% of the approved total production volume by the MoEMR.
6. KepMen 1395/2018 should be applied retroactively from 1 January 2018 (but see amendment below).

On 12 March 2018, MoEMR Decree No. 1410 K/30/MEM/2018 ("KepMen 1410/2018") was issued to amend the effective date of KepMen 1395/2018 from 1 January 2018 to 12 March 2018.

To further enforce the implementation of MoEMR Decree No. 23 K/30/MEM/2018, concerning the "Determination of Minimum Coal Sales for the DMO for the Year 2018", and KepMen 1395/2018, the MoEMR sent a letter to the holders of CCoWs, Coal PMA IUPs, and Coal PMDN IUPs on 19 April 2018, informing them of the following, among others:

1. In accordance with MoEMR Decree No. 23 K/30/MEM/2018 and KepMen 1395/2018, the coal DMO for 2018 is set at 25% of the production volume (with 80% designated for PLN for electricity), with the HBA capped at a maximum of US$ 70/mt, where the HBA exceeds US$ 70/mt.
2. The volume of coal that the CCoW and PMDN IUP companies must sell and supply to PLN every month is based on the volume of coal as determined above, divided by 12 months, or at the volume agreed with PLN. It is not clear why the Coal PMA IUP companies have not been included here, even though they are addressees of the letter.
3. In order to maintain the stability of the coal supply to PLN, the volume of coal that is to be delivered each month shall be the amount stipulated in the contract between PLN and the coal companies, or through the direct sales mechanism.
4. If the coal companies fail to meet the monthly coal supply, in accordance with the contract, then the Government shall evaluate (or adjust) the amount of production for the next month, which will be determined according to the 2018 RKAB and the coal that has been exported by the companies.
5. Companies that do not have a contract with PLN also have an obligation to meet the minimum DMO, as explained above, which can be met through the DMO quota transfer mechanism.

In August 2018, MoEMR Decree No. 1925 K/30/MEM/2018 ("KepMen 1925/2018") was issued as the second amendment of KepMen 1395/2018. Based on KepMen 1925/2018, the holders of IUP-OPs, IUPK-OPs, and CCoWs that:

- have met their minimum coal DMO, as set out by the MoEMR;
- have complied with the coal selling price requirements, as set out in KepMen 1395/2018;
- have met the principles of good mining practices; and
- have fulfilled their obligations with respect to the environment under prevailing laws and regulations

may be granted an increase in their joint production volume, until the national coal production amount increases by 100 million mt.

The Government has stated that the above regulations were issued considering the purchasing power of the community, and attempting to increase the competitiveness of the industry with respect to electricity prices, yet many believe that the Government has acted in order to protect the interests of PLN. The regulations will significantly ease the burden of PLN, since its production costs have increased significantly after coal prices spiked in late 2016. The issuing of the above regulations has left another black mark against efforts to ensure legal certainty in the Indonesian mining sector, and it is unlikely to attract more investment to Indonesia.

Photo source: PT Timah Tbk

Coal Price Determination for Mine Mouth Power Plants

PerMen 9/2016, as amended by PerMen 24/2016, sets out the guidance regarding the supply and pricing of coal for mine mouth power plants.

Under PerMen 24/2016, the coal price for mine mouth power plants is based on the basic coal price plus the exploitation fee/royalty. The basic coal price is based on the agreement between the coal mine owner and the power plant company, and it is calculated with the production cost formula plus a margin (from 15% to 25%), and by considering an escalation factor. The escalation factor is adjusted on an annual basis, based on the changes in the US Dollar/ Rupiah exchange rate, fuel prices, the consumer price index, and the regional minimum wage. The margin is based on the agreement between the coal mine owner and the power plant company, within the range that is provided for in the PerMen. The basic coal price must be communicated to the MoEMR. The basic coal price is valid for the duration of the Power Purchase Agreement. Transport costs are excluded, except for the transportation of coal from the mine to the power plant's stockpiling facility.

Mines supplying mine mouth power plants must be listed in the Clean and Clear list, and they must have the reserve allocation and the coal quality that is required by the power plant. PerMen 9/2016, as amended by PerMen 24/2016, also requires the mine owner to hold a minimum of 10% of the equity of the power plant company. The distance between the mine and the power plant must be a maximum of 20 kilometres. Note, however, that based on PerMen 11/2018, the Clean and Clear certificate is no longer required.

2.4 Mandatory In-Country Processing and Export Restrictions

Holders of coal IUPs and IUPKs are required to carry out processing in order to increase the value that is added to the coal that they produce, either directly or in cooperation with other companies, IUP holders, and IUPK holders.

- "Processing", by a holder of a coal IUP-OP or a coal IUPK-OP, covers the following activities:

Coal upgrading	Coal briquetting	Coke making
Coal liquefaction	Coal gasification, including underground coal gasification	Coal slurry/coal water mixture

- "Processing", by a holder of a coal Processing IUP-OP, covers the following activities:

Coal blending	Coal upgrading	Coal briquetting	Coke making
Coal liquefaction	Coal gasification	Coal slurry/coal water mixture	

Holders of mineral IUPs and IUPKs are required to carry out in-country processing and refining in order to increase the value that is added to the minerals that they produce, either directly or in cooperation with other companies, IUP holders, and IUPK holders. PerMen 25/2018 specifically sets out the requirements for in-country mineral processing and refining.


Photo source: PT Freeport Indonesia

Minerals for which the added value can be increased include:
- Metal minerals;
- Non-metal minerals; and
- Rocks.

Processing covers the activities that improve the quality of the minerals or rocks, without changing their physical and chemical properties, such as conversion into metal mineral concentrates or polished rocks. Refining is defined as activities that improve the quality of metal minerals, through an extraction process and by increasing the purity of the mineral, in order to produce a product with different physical and chemical properties from the original, such as metals and alloys.

The increase in the value that is added to minerals shall be achieved through the following activities:
- Processing and refining of metal minerals;
- Processing of non-metal minerals; and
- Processing of rocks.

Holders of an IUP-OP, IUPK-OP, or a Processing and Refining IUP are required to meet the minimum in-country processing and refining requirements for various types of metal minerals, non-metal minerals, certain rocks, as well as the by-products, and residues from the refining of metal mineral mining commodities (in the form of copper, tin, lead, and zinc), and the by-products or residues from the refining of lead concentrates in slag form.

These specific minimum in-country processing and refining requirements are detailed in Attachments I to IV of PerMen 25/2018 (see Appendix A of this Guide for the minimum in-country processing and refining requirements for metal minerals prior to export).

The obligation to meet the minimum in-country processing and refining requirements, as set out in PerMen 25/2018, is not applicable if the products are directly used for the domestic interest, and the minerals are exported for research and development purposes, provided that a recommendation from the DGoMC, on behalf of the MoEMR and export approval from the Directorate General of Foreign Trade ("DGoFT") are obtained.

Processing and refining can be conducted in cooperation with other IUP and IUPK holders, as well as the holders of Processing and/or Refining IUPs. This cooperation may be in the form of:
(a) Sales and purchases of ore/concentrates; or
(b) Processing and/or refining activities.

The cooperation plans must be submitted to the MoEMR, for the attention of the DGoMC (or Governor), for approval. A holder of an IUP-OP or IUPK-OP that supplies ores, concentrates, or mineral intermediate products to other processing and/or refining parties must submit its sales plans to the MoEMR, for the attention of the DGoMC (or Governor).

Photo source: PT Freeport Indonesia

Investment Considerations for Building In-Country Refining Facilities

In the event that a mining company intends to build a smelter in Indonesia, some key considerations for investors considering investments in processing/refining facilities and associated infrastructure are as follows:

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 most beneficial arrangement with the mining company? Would a trading or a processing service arrangement be preferable?
c. Whether any tax facilities are available, such as an income tax holiday or import facilities.
d. The relevant tax considerations in relation to the Engineering, Procurement, and Construction ("EPC") contract.
e. How financing can be arranged in the most tax-efficient manner.
f. The right model for cooperation between shareholders (mining companies, offtakers, financial investors, domestic, foreign, etc.).

PwC Indonesia recommends that investors contact our specialist mining team should they require further advice. Please see Appendix F for the contact details of PwC Indonesia's mining specialists.

Relaxation of Ban on Export of Unprocessed Minerals

In an attempt to alleviate the impact on miners and the country's export revenues from the ban on export of unprocessed or insufficiently processed minerals the Government issued GR 1/2017 allowing mining companies to continue exporting semi-processed product and certain types of ores for a five-year period from 11 January 2017, subject to conditions set out in implementing regulations.

Following the payment of export duties under the relevant laws and regulations, and the fulfilment of the minimum domestic processing and refining requirements, and having obtained export approval from the DGoFT, the holders of IUP-OPs, IUPK-OPs, IUP-OPs Specifically for Processing and/or Refining, and the holders of a CoW that has been converted into an IUPK-OP, may export certain approved quantities of their semi-processed products for a period of five years, from 11 January 2017.

Based on PerMen 25/2018 which revoked PerMen 5/2017, there are specific rules that are applicable to metal minerals with particular criteria (i.e. nickel with a content of < 1.7% and washed bauxite with an Aluminium Oxide content of ≥ 42%). The holders of IUP-OPs, IUPK-OPs, or IUP-OPs Specifically for Processing and/or Refining, and other parties that are engaged in metal mineral processing and/or refining, are required to utilise metal minerals with particular criteria that are produced from domestic mining to meet the domestic utilisation, through:

a. The processing and refining of metal minerals with particular criteria in their own processing and/or refinery facilities;
b. The supply of metal minerals with particular criteria to processing and/or refining facilities that are built by other holders of IUP-OPs, IUPK-OPs, IUP-OPs Specifically for Processing and/or Refining, and other parties that are engaged in metal mineral processing and/or refining; or
c. Receiving a supply of metal minerals with particular criteria from other holders of IUP-OPs, IUPK-OPs, IUP-OPs Specifically for Processing and/or Refining, and other parties that are engaged in metal mineral processing and/or refining.

The holders of IUP-OPs, IUPK-OPs, or IUP-OPs Specifically for Processing and/or Refining, and other parties that are engaged in nickel and bauxite processing and/or refining may export certain approved quantities of product which do not meet the mineral content requirements, including nickel with a content of < 1.7% and washed bauxite with an Aluminium Oxide content of ≥ 42%, for a period of five years, from 11 January 2017, provided that they have constructed or are in the process of constructing a refining/smelting facility, either individually or jointly with other parties, and that they pay export duties under the relevant laws and regulations.

Export approval from the DGoFT is granted following a recommendation from the MoEMR. As set out in PerMen 25/2018, in order to obtain a recommendation, the holders of IUP-OPs, IUPK-OPs, and Processing and/or Refining IUPs must submit an application for recommendation to the MoEMR, for the attention of the DGoMC.

The DGoMC shall evaluate the application for export recommendation and, based on this evaluation, the DGoMC, on behalf of the MoEMR, will approve or reject the application within 14 working days of receiving the application.

Export recommendations shall only be provided by the DGoMC under the following conditions:

- The physical progress of the development of refinery facilities has at least completed the entire stage of the project's initial preparation activities, including a feasibility study, environmental permit, and land control, as well as the following stage of the project's preparation activities, including basic design, detailed engineering design, and site preparation for the year 2018;
- The physical progress of the development of the refinery facilities has at least completed the stage of the project's initial preparation activities, and the following stage of project preparation activities, as well as entering the stage of project implementation activities including procurement and construction for the year 2019;
- The physical progress of the development of the refinery facilities has at least completed the stage of the project's initial preparation activities, and the following stage of project preparation activities, as well the entire stage of project implementation activities, including procurement and construction for year 2020; and
- The physical progress of the development of the refinery facilities has at least completed the stage of the project's initial preparation activities, and the following stage of project preparation activities, and the entire stage of project implementation activities, as well as entering the stage of commissioning and start-up activities for year 2021.

The implementing guidelines for the application, evaluation, and approval of grants of recommendation for export are stipulated under MoEMR Decree No. 1826 K/30/MEM/2018.

The DGoMC, on behalf of the MoEMR, shall perform the supervision of the implementation of the mineral export sales and the monitoring of the progress of the refinery facilities (including the physical progress of the refinery facilities and the value of the development costs that have been spent on building the refinery facilities).

The physical progress of the development of the refinery facilities must reach at least 90% of the approved plan for any given month, as cumulatively calculated until the last month, by an Independent Verifier.

In the event that, based on a six monthly review, the percentage of the physical progress of the development of the refinery facilities does not reach 90%, the DGoMC, on behalf of the MoEMR, shall issue a recommendation to the DGoFT to revoke the export approval that has been previously granted.

Other than the revocation of the recommendation for export approval, the holders of metal mineral IUP-OPs, IUPK-OPs, and IUP-OPs Specifically for Processing and/or Refining may be subject to administrative fines amounting to 20% of the cumulative value of the mineral export sales.

If the administrative fine is not paid within one month of its imposition, the holders of metal mineral IUP-OPs, IUPK-OPs, and IUP-OPs Specifically for Processing and/or Refining may be subject to further administrative sanctions in the form of temporary suspensions of some or all business activities, for at most 60 days, by the MoEMR or the Governor, as applicable.

In February 2017, the Minister of Finance ("MoF") issued PMK No. 13/PMK.010/2017 setting out the rates of export duty for the various forms of processed metal minerals. Under PMK No. 13/PMK.010/2017, the export duty rates are linked to the physical progress of the refining facility development, as set out in the export recommendation that is issued by the MoEMR, according to the following four stages:

- Stage I – the level of the physical progress of the development is not more than 30% of the total development;
- Stage II – the level of the physical progress of the development is more than 30% but not more than 50% of the total development;
- Stage III – the level of the physical progress of the development is more than 50% but not more than 75% of the total development; and
- Stage IV – the level of the physical progress of the development is more than 75% of the total development.

The export duty rates under PMK No. 13/PMK.010/2017 are as follows:

No	Types of Mineral	Export Duty Rate				
		The physical progress stage of the refining facility's development				Minerals with certain criteria
		Stage I	Stage II	Stage III	Stage IV	
1	Copper concentrate with concentration > 15% Cu	7.5%	5%	2.5%	0%	N/A
2	Iron concentrate (hematite, magnetite) with concentration > 62 % Fe and < 1% TiO_2	7.5%	5%	2.5%	0%	N/A
	Laterite iron concentrate (geothite/laterite) with concentration > 50% Fe and concentration of (Al_2O_3+SiO_2) > 10%	7.5%	5%	2.5%	0%	N/A
	Iron sand concentrate (magnetite-ilmenite lamellae) with concentration > 56% Fe and 1% < TiO_2 < 25%	7.5%	5%	2.5%	0%	N/A
	Iron sand concentrate pellet (magnetite-ilmenite lamellae) with concentration > 54% Fe and 1% < TiO_2 < 25%	7.5%	5%	2.5%	0%	N/A
3	Manganese concentrate with concentration > 49% Mn	7.5%	5%	2.5%	0%	N/A
4	Lead concentrate with concentration > 56% Pb	7.5%	5%	2.5%	0%	N/A
5	Zinc concentrate with concentration > 51% Zn	7.5%	5%	2.5%	0%	N/A
6	Ilmenite concentrate with concentration > 45% TiO_2	7.5%	5%	2.5%	0%	N/A
7	Other titanium concentrates with concentration > 90% TiO_2	7.5%	5%	2.5%	0%	N/A
8	Nickel with concentration < 1.7% Ni	N/A				10%
9	Washed bauxite with concentration > 42% Al_2O_3	N/A				10%

In December 2018, the MoF issued PMK No. 164/PMK.010/2018, to amend PMK No. 13/PMK.010/2017. PMK No. 164/PMK.010/2018, which was effective 30 days from the date of its promulgation, amends the physical progress stages of the refining facility's development, from the previous four stages to the following three stages:

- Stage I – the level of the physical progress of the development is not more than 30% of the total development;
- Stage II – the level of the physical progress of the development is more than 30% but not more than 50% of the total development; and
- Stage III – the level of the physical progress of the development is more than 50% of the total development.

PMK No. 164/PMK.010/2018 also amends the export duty rates, as follows:

No	Types of Mineral	Export Duty Rate			
		The physical progress stage of the refining facility's development			Minerals with certain criteria
		Stage I	Stage II	Stage III	
1	Copper concentrate with concentration > 15% Cu	5%	2.5%	0%	N/A
2	Iron concentrate (hematite, magnetite) with concentration > 62 % Fe and < 1% TiO_2	5%	2.5%	0%	N/A
	Laterite iron concentrate (geothite/laterite) with concentration > 50% Fe and concentration of (Al_2O_3+SiO_2) > 10%	5%	2.5%	0%	N/A
	Iron sand concentrate (magnetite-ilmenite lamellae) with concentration > 56% Fe and 1% < TiO_2 < 25%	5%	2.5%	0%	N/A
	Iron sand concentrate pellet (magnetite-ilmenite lamellae) with concentration > 54% Fe and 1% < TiO_2 < 25%	5%	2.5%	0%	N/A
3	Manganese concentrate with concentration > 49% Mn	5%	2.5%	0%	N/A
4	Lead concentrate with concentration > 56% Pb	5%	2.5%	0%	N/A
5	Zinc concentrate with concentration > 51% Zn	5%	2.5%	0%	N/A
6	Ilmenite concentrate with concentration > 45% TiO_2	5%	2.5%	0%	N/A
7	Other titanium concentrates with concentration > 90% TiO_2	5%	2.5%	0%	N/A
8	Nickel with concentration < 1.7% Ni	N/A			10%
9	Washed bauxite with concentration > 42% Al_2O_3	N/A			10%


Photo source: PT Indo Tambangraya Megah Tbk

Use of National Sea Transportation and Insurance for Coal Export

In late October 2017, PerMenDag 82/2017, concerning the “Provisions for the Use of Sea Transportation and National Insurance for the Export and Import of Certain Goods”, was issued and became effective on 1 May 2018.

Under PerMenDag 82/2017, coal exporters are required to use sea transportation that is controlled by national sea transportation companies for their transportation activities, and also to use insurance from national insurance companies. National sea transportation companies are defined as marine transportation companies that are incorporated in Indonesia and that carry out sea transportation activities within the territorial waters of Indonesia and/or to and from ports abroad. National insurance companies are not defined in PerMenDag 82/2017.

The use of sea transportation that is controlled by foreign sea transportation companies and the use of insurance from foreign insurance companies is only permitted when availability of national companies is limited or not available. However, detailed guidance on when such conditions occur is not provided in PerMenDag 82/2017.

Interestingly, Article 11 of PerMenDag 82/2017 indicates that exemptions from applying the provisions in the regulation are possible, provided that such an exemption is approved by the MoT, after receiving consideration from the Minister/ Chairman of the Non-Ministerial Government Institution/Agency head. However, there is no detailed guidance in PerMenDag 82/2017 explaining how such an exemption is to be provided.

Under this regulation, coal exporters are also required to submit a report on the use of sea transportation and national insurance to the DGoFT no later than the 15th day of the subsequent month, using the format of the report that is set out in PerMenDag 82/2017.

Sanctions for not complying with the provisions in this regulation could take the form of written warnings, licence freezing, or licence revocation, depending on which provisions are being violated.

Although the objective of this regulation may be admirable (i.e. to boost the national shipping and insurance industries), PerMenDag 82/2017 has been heavily criticised due to concerns over the readiness of the national shipping and insurance industries to support the implementation of this regulation and, accordingly, the fear that this regulation may significantly and negatively impact the coal industry. The fact that the Government has not yet issued any implementing regulations providing guidance on the implementation of PerMenDag 82/2017 has further fuelled such concerns.

Following the concerns expressed by various stakeholders impacted by the regulation, and following a strong negative reaction from the industry, the MoT issued PerMenDag 48/2018 in April 2018 to delay the requirement to use national sea transportation companies by two years (i.e. until May 2020), while the requirement to use national insurance companies was similarly postponed by three months (i.e. until August 2018). PerMenDag 48/2018 also removed article 5.2 of PerMenDag 82/2017, which allowed the use of insurance from foreign insurance companies when the availability of insurance from national insurance companies was limited or not available.

On 30 July 2018, PerMenDag 80/2018 was issued as the second amendment of PerMenDag 82/2017, adding a requirement for verification by a surveyor designated by the MoT prior to the export of the coal. The requirement to use insurance from national insurance companies, or a consortium of national insurance companies, was further postponed until 1 February 2019.

The implementing guidance for the verification procedures that are to be performed by the surveyor, as referred to above, is set out in DGoFT Regulation No. 9/DAGLU/PER/10/2018 concerning the "Technical Guidance for the Verification or Technical Tracing for the Export of Coal and Coal Products", which was issued by the DGoFT on 18 October 2018.

On 16 January 2019, the DGoFT finally issued DGoFT Regulation No. 2/DAGLU/PER/1/2019 concerning the "Technical Guidance for Implementing the Requirement for the Use of National Insurance for the Export and Import of Certain Goods". However, this guidance did not include the list of approved national insurance companies for insuring coal exports.

Since DGoFT Regulation No. 2/DAGLU/PER/1/2019 was issued very late, i.e. less than a month before the deadline that was set out in PerMenDag 80/2018 for coal exporters to start using insurance from national insurance companies, coal exporters submitted a request to the MoT to further postpone the deadline to use insurance from national insurance companies. In response to this request, the MoT announced that a trial period from 1-28 February 2019 would be implemented for the use of national insurance companies in the export of coal. During this trial period, no sanctions would be applied if coal exporters did not yet comply. On 25 February 2019, the list of approved national insurance companies was announced by the DGoFT, and then on 27 February 2019, the DGoFT announced that the trial period for the use of national insurance companies for the export of coal would be extended until 31 May 2019.

The requirement to use insurance from national insurance companies continues to draw protests from coal exporters, as the majority of coal exported from Indonesia is done so on FOB terms, under which the insurance is borne by the coal buyers. In order to comply with this regulation, coal exporters would need to enter into a negotiation with the coal buyers to change the FOB terms. If not there is likely to be an additional cost to the coal company for the local insurance, as it could not be passed on to the buyer.

L/C Requirements for Export of Mineral Resources

The requirement for the use of an L/C for exports of coal and minerals is set out in PerMenDag 94/2018 (as amended by PerMenDag 102/2018), which revoked the previous regulations PerMenDag 4/2015 (as amended by PerMenDag 67/2015) and PerMenDag 26/2015. These regulations are intended to result in more accurate information being obtainted about foreign exchange revenues from exports.

Pursuant to PerMenDag 94/2018 (as amended by PerMenDag 102/2018):

a. The use of an L/C is mandatory for the export of mineral products.
b. The price stated in the L/C should not be lower than the global market price. In the event that the global market prices are not available, the prices as determined by the government or the prices in the country of destination shall be used as the export prices.
c. The payment should be made to a domestic foreign exchange bank (*bank devisa*) or the export financing institution *(lembaga pembiayaan ekspor*) established by the Government. In receiving a payment that is made by L/C, the export financing institution shall refer to the provisions of the BI Regulation regarding Foreign Exchange Resulting from Exports.
d. The L/C mechanism should be declared on the export declaration (*Pemberitahuan Ekspor Barang* - "PEB").
e. The L/C documentation is subject to audit by a surveyor appointed by the MoT.
f. Exporters must submit a report to the DGoFT on the realisation of the exports that have been completed, with the final price of L/C, on a monthly basis, by no later than the 15th day in the subsequent month.
g. In the event that an exporter is unable to implement the L/C terms, it should apply to the MoT for a deferral. The approval from the MoT will consider the following:
    - The terms that have been adopted in sales contracts for exports of coal and/or minerals between exporters and overseas customers that were drawn up before PerMenDag 94/2018 became effective;
    - The ability of the exporter to adjust the means of settlement using an L/C within a certain period of time; and
    - Written confirmation of the stamp duty on both points above.
h. No exports will be allowed if they fail to satisfy the L/C requirements.

Exporters of mineral products should closely examine the procedures and requirements in order to avoid unnecessary sanctions, including the suspension of export/import activities. However, it remains unclear how the rules can be effectively applied for inter-company sales, non-sales exports, exports through pipelines, and exports under trustee arrangements, among others.

2.5 Royalties and the Fiscal Regime

Royalties

All IUP/IUPK holders are required to pay production royalties at varying rates, depending on the mining scale, the production level, and the mining commodity price. Currently, a range of percentages on the sale proceeds apply to different types of coal and mineral mining.

Holders of an IUPK will be required to pay an additional royalty of 10% of the net profit. The Central Government is entitled to receive 40% of this additional royalty, while the balance is to be shared between the relevant province and regencies. Since this additional royalty is determined by the 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 the key Indonesian commodities are set out in the following table. For the rates that are applicable under a CoW/CCoW, reference should be made to the relevant agreement (see Chapter 3 and Appendix E for further details of the CoW 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 guidance for the implementation of the imposition, collection, and payment of royalties is set out in MoEMR Decree No. 1823 K/30/MEM/2018, concerning the "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue".

The Government has been looking to increase the production royalty rates for IUPs, in particular for coal, as the current rates are significantly lower than those under a CCoW (i.e. a 13.5% production share). However, this has not yet been implemented in any official regulations.

Fiscal Regime

There are no specific articles outlining the details of the tax or other fiscal provisions in the Mining Law. However, the Government issued GR 37/2018, concerning the "Treatment of Taxation and/or Non-Tax State Revenues in the Mineral Mining Business", in August 2018, to provide special rules in relation to both the tax and PNBP arrangements for the mineral mining sector. GR 37/2018 does not extend to the coal mining sector. However, it is expected that the Government will also issue a regulation similar to GR 37/2018 in the near future, to provide special rules in relation to both the tax and PNBP arrangements for the coal mining sector.

Please refer to Chapter 4 for further details regarding GR 37/2018 and mining-specific taxation matters.

2.6 Divestment of Foreign Shareholdings

Under GR 77/2014, the maximum shareholding which a foreign investor can acquire in a company that holds an IUP/IUPK depends on the type of mining licence that the company holds, and whether this company carries out processing and refining activities. The maximum applicable shareholdings are set out as follows:

Mining Licence	Carrying Out Processing and/or Refining Activities	Maximum Foreign Ownership (%)
Exploration IUPs and Exploration IUPKs	Not Applicable	75
IUP-OPs and IUPK-OPs	No	49
IUP-OPs and IUPK-OPs	Yes	60
IUP-OPs conducting underground mining	Not Applicable	70

Pursuant to the amendment of GR 77/2014 by GR 1/2017, foreign shareholders must, following five years of production, divest their shares in stages, such that by the tenth year of production, foreign shareholders shall have a maximum 49% shareholding.

A summary of the divestment rules for mining companies under GR 1/2017 is as follows:

Mining Licence	Year of Production - Divestment %				
	6th	7th	8th	9th	10th
IUPs and IUPKs	20%	30%	37%	44%	51%

Divestments are to be made to (in order of preference) the Central Government, the Provincial Government or Regency/Municipal Government, BUMN and BUMD, or a national private business entity (in the form of a Limited Liability Company).

Previously, under GR 77/2014, IUP-OP and IUPK-OP holders that conduct underground mining can, following the fifth year of production, have a maximum 70% foreign shareholding whereas IUP-OP and IUPK-OP holders that carry out processing and/or refining activities can, following the fifth year of production, have a maximum 60% foreign shareholding. Additionally, IUP-OP and IUPK-OP holders that conduct underground mining or that carry out processing and/or refining activities can divest over a period, up to the 15th year of production. Under GR 1/2017, however, these provisions are no longer applicable, and divestment must follow the requirements under GR 1/2017, as explained above. GR 1/2017 will ultimately result in all foreign investors losing the majority stake in the mines in which they have invested, regardless of whether they are carrying out underground mining or smelting activities.

The following provisions of GR 1/2017 are not very clear and/or may have multiple potential interpretations, but PerMen 9/2017 provides further guidance clarifying the provisions:

- GR 1/2017 stipulates that foreign shareholders shall offer their divestment shares within 90 calendar days of the fifth year following the issuance date of the IUP-OP. This implies that production is measured from the issuance date of the IUP-OP, rather than the actual date of the commencement of the production (which means that the construction period is counted). PerMen 9/2017, however, clarifies that the initial production date is the date of the commencement of the production activities, for the purpose of divestment.

- GR 1/2017 removed a provision under GR 77/2014, which stated that divestment requirements do not apply to the holders of an IUP-OP Specifically for Processing and/or Refining. PerMen 9/2017 clarifies that holders of IUP-OP Specifically for Processing and/or Refining are not subject to the divestment requirements.
- GR 1/2017 removed a provision under GR 77/2014, which stated that mining companies whose shares are listed on the IDX are considered to be 20% domestically held at a maximum. PerMen 9/2017 clarifies that divestment may be carried out through an Initial Public Offering ("IPO") on the IDX, in the event that none of the Central Government, Provincial Government, Regency/Municipal Government, a BUMN, a BUMD, or a national private business entity are interested in taking the divestment shares. PerMen 9/2017 does not, however, provide the maximum ownership that can be considered as domestically held, as under GR 77/2014.

In addition to the above, GR 1/2017 and PerMen 9/2017 stipulate the following:

- Holders of IUP-OPs and IUPK-OPs for which shares must be divested are prohibited from providing loans to the Indonesian party, for the purpose of acquiring the divestment shares. This provision is likely to be intended to prevent the foreign shareholder from maintaining control through nominee arrangements.
- Holders of IUP-OPs and IUPK-OPs are prohibited from pledging the shares which are obliged to be divested.
- In terms of the issuance of new share capital that dilutes the Indonesian shareholder's ownership percentage, the entities holding an IUP-OP and IUPK-OP should in the first instance offer the new shares to the existing Indonesian shareholder, or to other Indonesian participants (the Central Government, the Provincial Government, a BUMN, a BUMD, or a national private business), if the existing Indonesian shareholder is not interested in exercising its rights.

The divestment procedures, including the timeline, the divestment price, the approval processes, and the payment mechanism, should follow the requirements of PerMen 9/2017 (as amended by PerMen 43/2018).

Divestments are to be made (in order of preference) to the Central Government, the Provincial Government, Regency/Municipal Government, a BUMN or BUMD, or a national private business entity (referred to collectively as "Indonesian Participants"). The divestment may be conducted through the issuance of new shares and/or the transfer or sale of existing shares, either directly or indirectly.

The Government, through the MoEMR, must provide a written answer to the divestment offering no later than 30 calendar days after the expiration of the time period for the evaluation and negotiation of the divestment share price.


Photo source: PT Freeport Indonesia

If the Government is not interested or does not provide a written reply to divestment offering within the required timeline, the divestment offering is to be made (in order of preference) to the Provincial Government or Regency/Municipal Government, a BUMN or BUMD, or a national private business entity. The Provincial Government or Regency/ Municipal Government must be the Provincial Government or Regency/Municipal Government where the mining business activity takes place.

The holders of IUP-OPs or IUPK-OPs must offer share divestments to the Provincial Government or Regency/Municipal Government within a period of no more than seven calendar days following the Government confirming that it is not interested or it did not providing a written reply to the divestment offering within the required timeline. The Provincial Government or Regency/Municipal Government must provide a written reply to the divestment offering no later than 30 calendar days after the offer date.

In the event that the Provincial Government or Regency/Municipal Government is not interested, or it did not provide a written reply within the required timeline, PerMen 9/2017 stipulated that the holders of IUP-OPs or IUPK-OPs are required to offer share divestments to BUMNs and BUMDs by way of a tender. Based on PerMen 43/2018, the divestment offer to BUMNs and BUMNs is no longer conducted by way of a tender. In the event that there is more than one BUMN or BUMD that has expressed its interest in the divestment offer, the MoEMR shall coordinate the determination of the amount of the divested shares that are to be purchased by the BUMN or the BUMD. The offer should be made by the BUMN or BUMD within a period of no more than seven calendar days after the Provincial Government or Regency/Municipal Government confirming that it is not interested or not providing a written reply to the divestment offering within the required timeline. The BUMN or BUMD must provide a written reply to the divestment offering no more than 30 calendar days after the offer date.

In the event that a BUMN or BUMD is not interested or does not provide a written reply within the required timeline, the holders of IUP-OPs or IUPK-OPs are required to offer the share divestment to national private business entities, by way of a tender, within a period of no more than seven calendar days following the BUMN and BUMD confirming that they are not interested or not providing a written reply to the divestment offering within the required timeline. National private business entities must provide a written reply to the divestment offering no more than 30 calendar days after the offer date.

During the implementation of the divestment procedure, the holders of IUP-OPs or IUPK-OPs must grant access to Indonesian Participants, to conduct due diligence.

In the event that the divestment offering to Indonesian Participants fails to be implemented, the share divestment can be carried out through the offering of divestment shares on the IDX.

Pricing of Shares that are Subject to Divestment

PerMen 9/2017 stipulates that the divestment share price is based on the "fair market value", without considering the value of the mineral or coal reserves at the time when the divestment is conducted. This pricing mechanism could be a significant concern for foreign investors, given that it is likely to result in a price that is lower than the fair market value, which is generally understood to include the net present value of the cash flows generated through the exploitation of the reserves over the remaining life of the mine.

However, the above provision regarding the divestment share price has been changed by PerMen 43/2018. Based on PerMen 43/2018, the fair market value shall not consider the mineral or coal reserves, except those which may be mined within the period for IUP-OPs or IUPK-OPs. Furthermore, the calculation of the fair market value shall be conducted by the discounted cash flow method, using the economic benefits within the divested implementation period until the end of the IUP-OP or IUPK-OP and/or market data benchmarking.

Based on PerMen 9/2017, the regulated divestment share price would become:

a. The maximum price to be offered to the Central Government, Provincial Government or Regency/Municipal Government; or
b. The minimum price to be offered to a BUMN, BUMD, or national private business entity.

PerMen 43/2018 amended the above provision, and stipulated that the regulated divestment share price would become:

a. The maximum price to be offered to the Central Government, Provincial Government or Regency/Municipal Government, BUMN, BUMD, or a special purpose vehicle that has been established or appointed by the Government through the MoEMR, together with the Provincial Government or Regency/Municipal Government, BUMN and/or BUMD; or
b. The minimum price to be offered to a national private business entity by way of tender.

The Government (via the MoEMR) may engage an independent valuer to evaluate the divestment share price. If agreement cannot be reached on the divestment share price, PerMen 9/2017 stipulated that the divested shares shall be offered on the basis of the divestment share price that has been calculated in reference to the evaluation that has been performed by the Government. This provision has now been removed in PerMen 43/2018.

Additional Requirements Regarding the Conversion of Capital Investment Status

GR 77/2014 reiterates the requirements for the conversion of a PMDN company to a PMA company, or for a change in the shareholders of a PMA company.

The change from a PMDN company to a PMA company, or vice versa, will require approval from the MoEMR. IUP holders (including holders of IUP-OPs Specifically for Transportation and Sales and IUP-OPs Specifically for Processing and/or Refining) are prohibited from changing their investment status before obtaining Ministerial approval.

Transitional Provisions

The transitional divestment provision under GR 77/2014 stipulates that a CoW or CCoW holder that has been in the production phase for less than five years prior to the issuance of GR 77/2014 is subject to the new divestment requirements. CoW and CCoW holders that have been in the production phase for more than five years prior to the issuance of GR 77/2014 must carry out the divestment, based on the following criteria:

- 20% of the shares that are held must have been divested no later than 15 October 2015; and
- No later than five years after the issuance of GR 77/2014, the CoW and CCoW holder must comply with the divestment requirement, i.e. by 15 October 2019.

GR 1/2017 made no changes to this transitional divestment provision. This could potentially cause confusion in interpreting this transitional provision, because the explanation of this transitional provision is not consistent with the new divestment requirements under GR 1/2017, i.e. the explanation of this transitional provision provides examples of the application of the old divestment requirements under GR 77/2014. For example, a CoW holder that is involved in underground mining production may divest over a period up to the 15^{th} year of production.

As stipulated by GR 1/2017 and PerMen 9/2017, CoW and CCoW holders are required to comply with the divestment requirements in these regulations. This will continue to generate an ongoing debate between the Government and the CoW and CCoW holders, since these companies are likely to argue that the provisions in the CoW/CCoW should override GR 1/2017 and PerMen 9/2017.

Divestment via IPO

GR 77/2014 stipulated that mining companies whose shares are listed on the IDX are considered to be 20% domestically held at a maximum. Pursuant to the amendment of GR 77/2014 by GR 1/2017, this provision has been removed in GR 1/2017. Therefore, GR 1/2017 is silent regarding the maximum ownership that can be considered as domestically held for IDX-listed mining companies.

PerMen 27/2013 stated that divestment via the Indonesian capital market will not be treated as satisfying the divestment requirements. Pursuant to the revocation of PerMen 27/2013 by PerMen 9/2017, this provision has been removed. Instead, PerMen 9/2017 stipulates that divestment can be carried out by offering shares on the IDX in the event that none of the Central Government, the Provincial Government or Regency/Municipal Government, a BUMN, a BUMD, or a national private business entity is interested in taking divested shares. This implies that divestment via the Indonesian capital markets can be treated as satisfying the divestment requirements.

2.7 Reclamation and Mine Closure

On 20 December 2010, the Government released GR 78/2010, which deals with reclamation and post-mining activities for both IUP-Exploration and IUP-OP holders. On 29 February 2014, the MoEMR issued PerMen 7/2014 (the implementing regulation for GR 78/2010), which details the requirements and guidelines for the preparation of reclamation and post-mining plans. PerMen 7/2014 has been revoked by PerMen 26/2018, and the guidelines regarding reclamation and mine closure have now been provided by PerMen 26/2018.

An Exploration IUP/IUPK holder must include a reclamation plan in its exploration RKAB, among other requirements, 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 needs to be prepared before any exploration activities are undertaken. After submitting an application for an IUP-OP, the reclamation plan for the production phase and the post-mining plan are also to be prepared by the IUP/IUPK holder, and this plan should cover a five-year period (or the remainder of the mine life, if shorter).

Based on PerMen 7/2014, an IUP-OP/IUPK-OP holder must provide the following, among other requirements:

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

The requirement to provide reclamation and post-mining guarantees does not release the IUP holder from the requirement to perform reclamation and post-mining activities. PerMen 7/2014 also sets out the procedures for the preparation of the reclamation and post-mining activities report.

PerMen 26/2018 does not provide detailed as guidances that provided in PerMen 7/2014. As stipulated in PerMen 26/2018, the implementing guidelines for reclamation and mine closure have yet to be determined the MoEMR. At the time of writing, the implementing guidelines have not yet been issued.

The transitional provisions in GR 78/2010 and PerMen 7/2014 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 with the approval of the MoEMR, the Governor, the Regent, or the Mayor, as applicable.

2.8 Penalty Provisions and Dispute Resolution

Penalty Provisions

The Mining Law also regulates the consequences of infringement of the Law by the IUP/IUPK holder (an illegal miner).

A breach of the Law can be punished by both administrative and criminal sanctions, including the 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.

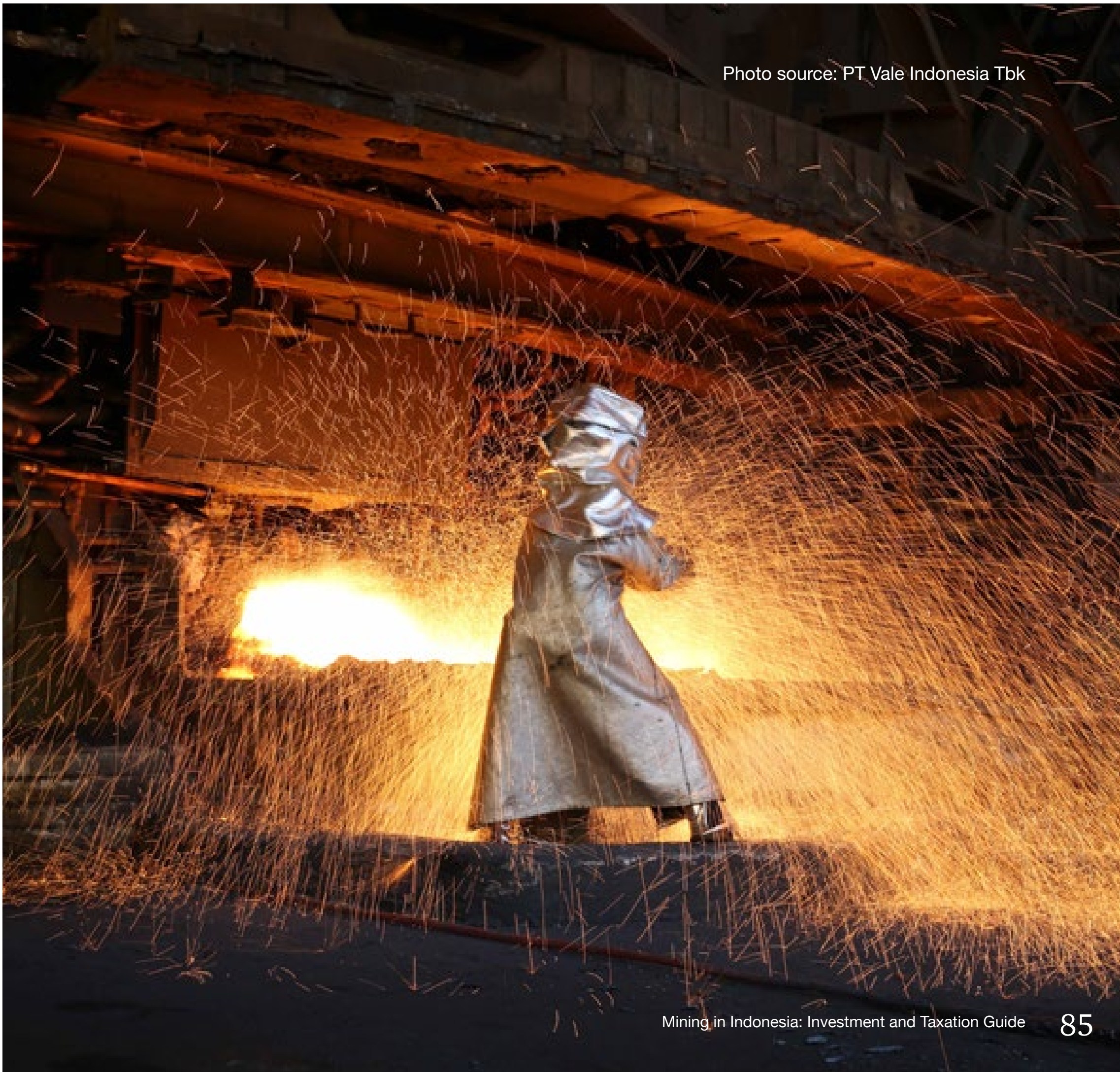


Photo source: PT Vale Indonesia Tbk


Photo source: PT Timah Tbk

2.9 Transitional Provisions

CoWs/CCoWs/Coal Co-Operation Agreements ("CCAs")

All existing CoWs/CCoWs/CCAs (collectively referred to hereafter as the "contract(s)") will continue until their expiry date and may be extended without the need for a tender (where further extensions are still available under the contracts).

However, the extended licences will be granted under the IUPK system, rather than under the CoW framework. If a licence has been extended once, the second extension will also be granted without the need for a tender. Before issuing the IUPK, the MoEMR should already have issued it approval for the relevant mine area as a WIUPK OP. Failure to fulfil these requirements may result in the mine area being opened for tender.

Detailed guidance on the application for extensions of IUPK-OPs is outlined in GR 77/2014, as amended by GR 1/2017 and PerMen 11/2018.

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

Contract holders who have already commenced some form of activity are required, within one year of the 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 the size that is allowed for IUPs under the new Law.

Furthermore, the Mining Law indicates that the provisions of existing contracts must be amended within one year to conform with the provisions of the new Mining Law, other than the terms relating to state revenue (which is not defined, but presumably includes State Tax Revenue and PNBP, such as royalties). It is not stated in the Mining Law which provisions the existing contracts must conform to, but this could include alignment with the Mining Law's provisions on divestment obligations, the re-sizing of the mining areas, reduced production periods, prohibitions on using affiliated mining contractors, and the like. Many of these matters have been raised by the Government during the contract renegotiations with contract holders. At the time of writing, all of the CCoW holders and substantially all of the CoW holders have completed the negotiation process and signed contract amendments with the Government. Please refer to the discussion in Section 3.5 of this Guide, "CoW and CCoW Renegotiation", for the latest status of the negotiation process between the Government and the contract holders.

Divestment

For details on the Transitional Provisions Relating to Divestment, please refer to Section 2.6 of this Guide, "Divestment of Foreign Shareholdings".

3 Contracts of Work

3.1 General Overview and Commercial Terms

CoW

The CoW system for regulating mining operations has played a key role in the success of Indonesia's mining industry. The CoW system, which was introduced in 1967, has been gradually refined and modernized over the past 40 years to reflect the changing conditions in Indonesia and abroad. To date, there have been seven generations of CoWs. A comparison of the various generations 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 on they can only be extended under the IUPK licensing framework. Hence, the following discussion is only applicable to those CoWs that existed prior to the Mining Law, and before any amendments following the Government's renegotiation 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 by MoEMR Decision Letter No. 1614/2004, which has been revoked by PerMen 8/2018. In essence, a CoW is a comprehensive contract between the Government and an Indonesian company. The company could be 100% foreign-owned. However, if the company was 100% 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 geographical area (the contract area).

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

Photo source: PT Bukit Asam Tbk

The CoW outlines a series of stages with defined terms:

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

Notes:
1) Depending on the CoW generation. For the details, refer to Appendix E.
2) For the first generation, the maximum period from the general survey until the feasibility study was 18 months, which 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; inspections; work programmes; employment and training of Indonesian nationals; preferences given to Indonesian suppliers; environmental management and protection issues; regional cooperation in relation to infrastructure; provision for infrastructure for the use of the 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 of the tax, royalty, and other fiscal charges, including: dead rent in the contract area; production royalties; income tax that is payable by the company; employees' personal income tax; withholding taxes on dividends, interest, rents, royalties, and similar payments; VAT; stamp duty; import duty; and Land and Building Tax (*Pajak Bumi dan Bangunan* – "PBB").

CCA and CCoW

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

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

CCA

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 have been amended to transfer the rights and obligations of PTBA under the CCAs to the Government, as represented by the MoEMR.

Under the CCA, the coal contractor is entitled to an 86.5% share of the coal that is produced by the area, and the contractor bears all of the costs of mine exploration, development, and production. The Government (previously PTBA) retains its entitlement to the remaining 13.5% of production. However, in accordance with Presidential Decree No. 75/1996, dated 25 September 1996, the contractors pay the Government's share of the production in cash, which represents 13.5% of sales after the deduction of the 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 generations of CCA and CCoW, the equipment purchased by the contractor remains the property of the contractor.

Foreign shareholders that own 100% of 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%.

CCoW

Under the CCoWs, the mining company is, in effect, entitled to 100% of the coal production. However, a royalty of 13.5% of sales revenue is paid to the Government.

The CCAs and CCoWs outline a series of stages with defined terms:

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

Pre-Contract Expenses

The shareholder of the contract company typically incurs significant expenditure before the contract company is incorporated and the contract is signed. This pre-incorporation expenditure may be transferred from the shareholder to the contract company, as deferred pre-operating costs, and it will be amortised, starting from the period in which the production commences. These expenses are subject to an audit by a public accountant and approval by the Minister and the Directorate General of Taxation ("DGT").

Exploration and Development

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

Following the signing of the contract, the company is required to lodge a security deposit, in US Dollars, in the state-owned bank account, which is released upon the completion of the following:

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

For the seventh generation of CoWs, or the third generation of CCoWs, the security deposit is released upon the completion of the following:

- The satisfactory completion of the General Survey period (25%);
- The end the first year of exploration (25%); and
- The submission of a general geological map within 12 months of the completion of the Exploration Stage (50%).

During the pre-production stage, all of the companies signing the contract are required to submit detailed quarterly progress reports to the MoEMR. Under the contracts, the companies have responsibility for all of the financing requirements of the project and details are to be reported to the MoEMR.

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, preferences to 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:

CoW	CCA/CCoW
• 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 the amount of expenditure, and it is required to relinquish at least 25% 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 the amount of expenditure, and it is required to relinquish at least 25% of the original contract area for the second and third generations, and 40% for the first generation.

CoW	CCA/CCoW
• 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 programme and budget to the MoEMR. At the end of the Exploration Stage, the company is required to file the following with the MoEMR: - A summary of its geological and metallurgical investigations and all of the data that has been obtained; and - A general geological map of the contract area. On or before the second anniversary of the commencement of the Exploration Stage, the company is required to have reduced the contract area to not more than 50% of the size 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 programme and budget to the MoEMR. At the end of the Exploration Stage, the company is required to file the following with the MoEMR: - A copy of the drill holes, pits, and assays of the samples; and - A copy of the geophysical or geological maps of the contract area. On or before the second anniversary of the commencement of the Exploration Stage, the third-generation company is required to have reduced the contract area to not more than 25% of the size of the original contract area. First and second generation contractors are required to have reduced the contract area to not more than 20%.
• 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 MoEMR, 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% of the size 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 MoEMR, and to design the facilities. At the end of the Feasibility Study, the third generation CCoW companies are required to have reduced the contract area to not more than 25,000 ha.
• 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 that is 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 that is based on the number of hectares in the approved area and the stage of the mining.

Production

During the production phase, the company is required to provide the following Exploitation reports to the MoEMR:
- A fortnightly statistical report;
- A monthly statistical report;
- A quarterly report concerning the progress of operations;
- An annual report; and
- Other reports to various departments.

The company may export its production, but it 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 MoEMR:
- A monthly statistical report;
- A quarterly report concerning the progress of operations; and
- An annual report, for the third generation of CCoWs.

The contract company may choose to operate the mine itself, or it may sub-contract the operations of the mine, but outsourcing mining operations should now be considered in light of the rules that are contained in the Mining Law and its implementing regulations, which may be applicable to contracts.

Because a company can be party to only one contract (either a 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 that has been 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 the production or the sales according to the provisions that are set out in the contract. However, in practice, the royalty is currently to be paid to the Government prior to shipment, as required by MoEMR Decree No. 1823 K/30/MEM/2018 concerning "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenues".

Dead Rent and PBB

The company is required to pay dead rent and PBB as set out in the contract. Dead rent is an annual charge that is based on the number of hectares in the Mining Area. PBB is a certain percentage of the Mining Area.

3.2 The Fiscal Regime Under CoWs, CCoWs, and CCAs

All generations of contracts, except for the second generation CCAs, are based on the taxation and other laws and regulations that were in place at the time when the agreements were signed. In many circumstances, this means that the regulations affecting the mining companies operating under such contracts differ from the current regulations. This often creates difficulties in interpreting the agreements as well as in doing business with other companies. Potential investors in mining properties that are covered by earlier generation contracts should seek professional assistance in order to examine such issues.

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

Please note that the recent contract renegotiations (see Section 3.5 of this Guide, "CoW and CCoW renegotiation" and Section 4.3 of this Guide, "Tax Regime for a CoW/CCoW/CCA company" below) generally incorporate the adoption of the prevailing fiscal rules effective from 1 January 2018. Accordingly, fiscal regime of each contracts should be reviewed on a case-by-case basis.

3.3 Termination of the Contract

If at any time during the term of a contract the company believes that 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):

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

A general summary of the implications of the 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 that are set out in the contract:

a. General Survey and Exploration Period

- The company has a period of six-months to sell or remove its property, otherwise the property becomes the property of the Government; and
- The company is required to provide any information that has been gained from the work that it has performed to the Department of Mines and Energy.

b. Feasibility Study Period

- The company is required to offer all of the property that is located in the contract area to the Government at market value;
- The offer is valid for 30 days. If the Government accepts the offer, then it is required to settle within 90 days; and

- 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 of the property that is located in the contract area to the Government at market value;
- The offer is valid for 30 days. If the Government accepts the offer, then it is required to settle within 90 days; and
- If the Government does not accept the offer, then the company then has 12 months to sell or remove its property, otherwise the property reverts to the Government without any compensation to the company.

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

3.4 Transfer of the Contract

The Purchase and Sale of Shares in a Contract Company

Due to the difficulties that are involved in transferring a direct interest in a contract (see below) it is common for such interests to be transferred indirectly through the transfer of shares in the company holding the contract, or through transferring the shares of the holding companies above the company holding the contract.

However, the shareholders of the contract company cannot transfer any shares prior to the commencement of the operating period, without the written consent of the Government.

The shareholders in the contract company also require the prior written consent of the MoEMR for a transfer of the 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.

The Purchase and Sale of Direct Interests in a Contract

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

Farm-Ins

Neither the contracts nor the income tax legislation specifically address farm-ins, per se. As a commercial matter, a typical farm-in to a mineral property involves the eventual transfer of an interest in the property. Accordingly, the farm-in arrangement, and the tax treatment thereof, must be considered by the Minister in conjunction with the approval of the transfer. A farm-in can usually be achieved more easily through a transfer of shares in the holding company or offshore investing company.

3.5 CoW and CCoW Renegotiations

As discussed above, pursuant to the Mining Law of 2009, it is intended that the terms of the existing mining contracts (CoWs and CCoWs) are to be brought into line with the provisions of the Mining Law. Accordingly, the Government has approached all of the CoW and CCoW holders in order to amend the terms of the contracts.

The renegotiation process began in 2010, with 31 CoW and 68 CCoW holders. After years of negotiation, the Government has finally signed contract amendments with 30 CoW and 68 CCoW holders. As of the time of writing, it has been reported that there is only one CoW holder which has not yet agreed with all of the terms in the proposed amendments.

Based on the MoEMR's press releases, there were six strategic issues being negotiated and included in the contract amendments being the size of the mining areas; the continuation of the mining operation; the state revenue; the obligation to process and refine minerals in Indonesia; the obligation for divestment of shares; and the obligation to utilise local goods and services. Our understanding is that most fiscal matters have been renegotiated to a "prevailing law" basis.

4 Tax Regimes for the Indonesian Mining Sector

4.1 General Overview of Indonesian Tax Systems

PwC Indonesia publishes the Indonesian Pocket Tax Book on an annual basis. This publication provides a general guide to the prevailing Indonesian Income Tax Law No. 36/2008 ("ITL") and regulations and is available on PwC Indonesia's website (https://www.pwc.com/id/en/pocket-tax-book/english/pocket-tax-book-2019.pdf).

4.2 The 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 ITL and regulations may still be available.

However, there is a strong intention on the part of the Government to apply the prevailing ITL and regulations to IUP/IUPK holders. Therefore, in practice, special tax provisions with overriding status (*lex specialis*) are generally not available for IUPs/IUPKs, as is the case for existing IUPs.

A company holding an IUP/IUPK is required to register for tax and to obtain a tax payer identification 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 within whose jurisdiction the mine operates. This includes VAT obligations (if applicable and not centralised in the head office) and Withholding Tax ("WHT").

Photo source: PT Bukit Asam Tbk

Corporate Income Tax ("CIT") – General

The prevailing ITL stipulates that the specific tax provisions applicable for general mining (including coal) business activities will be covered under a GR. On 2 August 2018, the Government issued GR No. 37 Year 2018 ("GR-37") to provide special rules in relation to both tax and PNBP arrangements for the "mineral" mining sector. At the outset therefore, it should be noted that these rules do not extend to the coal mining sector. The Government announced that special rules for coal mining will also be issued. However, at the date of writing the GR for coal mining sector taxation has not yet been issued.

GR-37 also provides different tax arrangements according to the type of mineral mining "concession" in question. This includes for CoWs where the CoW follows the prevailing tax regulations (i.e. for CoWs with no "*lex specialis*" principle). Concession holders must however comply with the WHT and related collection obligations outlined in GR-37 in all circumstances.

Relevant Concession Holders

The tax and PNBP provisions outlined under GR-37 are applicable for the holders of:

a. IUP;
b. IUPK;
c. IPR;
d. IUPK-OP; being a mining business licence granted for this stage of activities (i.e. not just the actual mining but also construction, processing and/or refining, transportation and sales) within a State Reserve Area. The IUPK-OPs referred to in GR-37 are limited to those relating to the conversion of an "active" CoW which has not expired into an IUPK-OP (which is obviously directly relevant to a number of historical concessions now being converted out of the CoW format); and
e. a CoW with tax provisions which follow the prevailing tax regulations (i.e. with no *lex specialis* provisions).

CoWs with *lex specialis* tax provisions are to be honoured until the end of the CoW period and so are not directly impacted by GR-37 (although most of these CoWs are being phased out in any case). However, as indicated above, even these Contractors are still obliged to follow the WHT and/or collection obligations as outlined in GR-37.

Applicable Tax Year

The Income Tax provisions under GR-37 are applicable from the 2019 tax year for IUP, IUPK, IPR and CoW holders.


Photo source: PT Aneka Tambang Tbk

CIT Rate

Under the prevailing ITL and supporting tax regulations, a company is subject to CIT on its net taxable profit. The net taxable profit is calculated as the gross income minus the allowable expenditure.

The CIT rate for a company is 25% of net taxable profit. A 5% income tax reduction is applicable for companies that are listed on the IDX, subject to meeting certain requirements around trading liquidity.

Particularly for holders of IUPK-OP converted from a CoW/CCoW, this CIT rate of 25% is applicable for the fiscal year following the issue of the IUPK-OP until the end of the IUPK-OP period.

General Expenses

Deductible expenses are those that have been incurred in order to generate, maintain, and collect taxable income, and generally include the amount that has been paid or accrued for expenditure that is attributable to the company’s operations and that has a useful life of less than one year.

Certain expenditure may not be tax deductible under the ITL, such as certain donations and benefits-in-kind (“BIKs”) that have been provided to employees. Some BIKs that have been provided at the mining site may be deductible if the mine is located in a remote area and approval from the DGT has been obtained.

The specific operating expenses of a mining operation may include supplies, contracted services, insurance, royalties on intellectual property, processing expenses, repairs and maintenance, etc. These should be deductible in the year in which they are incurred.

Selling general and administrative expenses are generally tax deductible in the year in which they are incurred.

Income

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

Under GR-37, the value of the mining product sales is to be based on one of the following prices determined at the time the sale occurs:

a. the market price of the “metal” mineral in question (e.g. aluminium as per the London Metal Exchange, zinc as per the Asian Metal Exchange, etc.);
b. the market price of the “non-metal” mineral in question (e.g. iron and steel as per the price published on an international or domestic commodity market);
c. the market price of the relevant “rock-like” material in question (e.g. as per the price published on an international or domestic commodity market); or
d. the actual selling price (but only if there is no market price reference).

Notwithstanding this, if the actual selling price is higher than the published market price, the actual selling price should be used. Taxpayers can otherwise use the actual selling price only if the discrepancy is within 3% of the relevant published market price.

This “valuation” approach to determine taxable value represents a significant departure from general Income Tax principles.

Exploration and Development Expenses

Exploration and development expenses may include those that are related to camp construction, drilling, access roads, project communication facilities, etc.

On-site exploration expenses are generally deductible in the year in which they are incurred, provided that the expenses meet the general deductibility criteria.

Major exploration and mine development expenses should generally be capitalised and amortised upon spending rather than production.

Stripping/Overburden Removal Costs

Under GR-37, stripping costs incurred prior to the start of Production Operations should be capitalised and:

a. amortised proportionally over the contract period, or
b. amortised according to the unit of production method over the contract period.

Amortisation starts from the month that Production Operations are approved by the MoEMR.

Stripping costs incurred during Production Operations, such as the cost of overburden removal, the opening of underground pits (including to find new reserves), etc. should be deducted outright.

These rules are applicable even for taxpayers that hold more than one mining licence and simultaneously carry out both Pre-Production Operations and Production Operations.

Overall the new stripping arrangements could operate such that pre-production spending may be recoverable (for tax) over a longer period. This could be problematic for projects with mine-lives significantly shorter than the relevant concession period. Recovery of post-production spending is also effectively subject to the five-year tax loss carry forward limit.

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 assets can be depreciated will depend upon the category of the asset. Assets are generally depreciated over four, eight, 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 four, eight, 16, or 20 years using either a diminishing balance or straight-line approach.

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

Specific Depreciation and Amortisation Treatment under GR-37

Particularly for holders of IUPK-OP converted from a CoW, the fiscal depreciation and/or amortisation under GR-37 shall be calculated in accordance with the following:

a) for assets obtained prior to the issue of the IUPK-OP:
   i) the depreciation/amortisation rules outlined in the original CoW (except for buildings) apply up until the end of the fiscal year when the IUPK-OP was issued;
   ii) the prevailing depreciation/amortisation rules apply (except for buildings) for the fiscal years following the issue of the IUPK-OP with the depreciation/amortisation based upon the tax book value at the beginning of the fiscal year following the issue of the IUPK-OP over the remaining useful lives;
   iii) there is an entitlement to depreciate/amortise the residual tax book value of assets with useful lives which end in the fiscal year following the issue of the IUPK-OP;
   iv) the depreciation/amortisation rules outlined in the original CoW apply to existing buildings for the life of the IUPK-OP.

b) for assets obtained after the issue of the IUPK-OP these follow the prevailing depreciation/amortisation rules;

c) if the IUPK-OP for some reason ends before the period set out in the IUPK-OP, then the residual value may be deducted.

Reclamation Reserve

For accounting purposes, a mining company is usually required to maintain a reclamation reserve in its accounts for the environmental management and reclamation work that is conducted during the mining period and at the end of the life of the mine.

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

Photo source: PT Vale Indonesia Tbk

Mine Closure

The prevailing ITL is not clear on whether provisions for mine closure (e.g. mine infrastructure demobilisation costs) are 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 planning is crucial in order to ensure the utilisation of deductions from these costs. The current regulations on reclamation reserves including GR-37 are silent on the matter of mine closure reserves, meaning that mine closure reserves are unlikely to be deductible until the costs are spent or funded.

Non-Interest-Bearing Loans

It is common for a shareholder not to charge interest on loans to mining companies during the exploration and development stages. 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.

Thin Capitalisation Rule

Effective for the fiscal year 2016 and onwards, the MoF has put in place "thin capitalisation" rules under regulation No. 169/PMK.010/2015 (PMK 169). PMK 169 provides a maximum Debt-to-Equity Ratio ("DER") of 4:1 for deduction of interest expenses.

PMK 169 disallows deductions on interest expenses in the following circumstances:

- Entirely, if equity is zero or negative;
- Partly, according to the portion of the loan exceeding the DER;
- Partly, according to the portion of the loan that is associated with the generation of income that is subject to final tax (e.g. land and/or building rental);
- Entirely, for the non-reporting of private offshore loans (see below).

PMK 169 defines interest as including discounts or premiums, arrangement fees, interest on leasing, compensation for loan guarantees, and the related foreign exchange expenses. Even when the DER is within the permitted level, the ITL requirements should still be complied with, meaning that a challenge on interest deductions would still be possible if, for example, the loan was used to generate Indonesian bank interest income, the loan was used to finance BIK, the interest rate was not at arm's length, or the related party loan leverage was beyond industry practice.

On 28 November 2017, the DGT Issued Regulation (*Peraturan Direktur Jendral Pajak* or "PER") No. PER-25/PJ/2017 ("PER 25") as the implementing regulation of PMK 169. PER 25 outlines the DER calculation form and introduces the Foreign Loans Report Form that should be attached to the annual CIT return of the company that is subject to the DER. The requirement to submit the forms in the CIT return commenced from fiscal year 2017.

BIK

BIKs provided in remote areas are treated as deductible expenses for employers and not taxable in the hands of the employee. Companies located in remote areas should submit an application to the DGT to get a validation that their place of business is indeed located in a remote area.

The MoF issued Regulation No.167/PMK.03/2018 (PMK-167) that adds specific provisions for IUPK-OP holders. This regulation is dated and effective starting 19 December 2018. Remote area approval for IUPK-OP holders is granted for a period of ten years and can be extended for another ten years. This timeline is longer than the standard validity period for non IUPK-OP holders of a maximum ten years (i.e. five years, extended by another five years).

The IUPK-OP licence holder should evidence that the licence originates from the conversion of an “active” CoW or CCoW, and that CoW or CCoW includes a provision regarding the deductibility of BIKs during the contract period.

Tax Losses Carried Forward

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

Article 22 Income Tax Collection

Purchases of coal and minerals from an entity (or individual) holding an IUP are subject to a requirement to collect and remit Article 22 Income Tax at 1.5% of the purchase price at the time of the purchase. Article 22 Income Tax at 1.5% is also applicable to exports of coal and minerals by IUP companies (remitted upon export).

The sale of gold bars, other than when they are sold to BI or when they are processed into jewellery for export, is subject to Article 22 Income Tax at 0.45%. This is collected by the gold producer.

Article 22 Income Tax constitutes a CIT prepayment and so constitutes a cash flow concern only.

This provision is also applicable for relevant mining concession holders as stipulated in GR-37.

Bookkeeping in US Dollars

For tax purposes, a PMA company may request authorisation to maintain its bookkeeping in US Dollars and in English. The company must request approval no later than three months after its establishment, or three months before the commencement of the US Dollar accounting year (for an established company).

Following adoption of accounting standards on the use of an appropriate functional currency (consistent with International Financial Reporting Standard ("IFRS")), wholly Indonesian-owned entities, in addition to PMA companies, can now elect to use the US Dollar rather than the Indonesian Rupiah as their bookkeeping currency for tax purposes where a currency other than the Rupiah is their functional currency. The same deadlines apply for applications.

For tax purposes however, the US Dollar is the only alternative to the Indonesian Rupiah.

Under GR-37, IUPK-OP holders may maintain bookkeeping in accordance with the language and currency agreed in the original CoW until the end of the tax year following the issue of the IUPK-OP. Bookkeeping in Indonesian language and IDR currency is mandatory thereafter unless a written notification on bookkeeping in a foreign language and currency (other than IDR) is submitted pursuant to the relevant tax regulations.

Photo source: PT Timah Tbk

Transactions with Related Parties

Payments to affiliates may be deductible if they are directly attributable to mining operations. However, the amount of the deduction is limited to that which would have been paid to a non-related party for the same service.

The DGT has increased its audit focus on related party transactions. Taxpayers must disclose a significant amount of detail in their CIT return regarding the levels of related party transactions that exist, and they must also be able to justify the use of a particular pricing methodology. The DGT has been actively performing transfer pricing audits. As a result, taxpayers with related party transactions must carefully consider their transfer pricing positions. In addition, the DGT now requires the preparation of standard transfer pricing documents, i.e. a Master File, a Local File, and Country-by-Country Reporting ("CbCR"). Notification of the availability of the Master File and the Local File should be submitted by the filing deadline for the CIT return. Notification of the availability of the CbCR should also be filed with the Tax Office. For fiscal year 2018, the notification should be filed by 31 December 2019, while for fiscal year 2019 this should be done by 31 December 2020.

The application of the mineral/coal benchmark prices to related party transactions for tax purposes is unclear. The benchmark pricing regulations currently only apply for the purpose of performing the Government Royalty calculation (i.e., they do not technically apply to the CIT). However, given that the major coal indices are used as the basis for setting the benchmark prices these prices are generally used as the reference point by the DGT for determining the arm's length prices.

Tax Holidays

On 27 November 2018, the MoF issued regulation No. 150/PMK.010/2018 (“PMK 150”) regarding tax holidays. Effective from 27 November 2018, PMK 150 revoked the previous tax holiday regulation, No. 35/PMK.010/2018.

Below are the available tax facilities under PMK 150.

<table>
<tr><th rowspan="2">Provision</th><th colspan="2">Capital Investment Plan</th></tr>
<tr><th>IDR 100 billion - <
IDR 500 billion
(New)</th><th>≥ IDR 500 billion</th></tr>
<tr><td>CIT reduction rate</td><td>50%</td><td>100%</td></tr>
<tr><td>Concession period (from the start of commercial production)</td><td>5 years</td><td>5 – 20 years, depending on the investment value:
<table>
<tr><th>No.</th><th>Investment
(in IDR)</th><th>Period
(in years)</th></tr>
<tr><td>1</td><td>500 billion up to < 1 T</td><td>5</td></tr>
<tr><td>2</td><td>1 T up to < 5 T</td><td>7</td></tr>
<tr><td>3</td><td>5 T up to < 15 T</td><td>10</td></tr>
<tr><td>4</td><td>15 T up to < 30 T</td><td>15</td></tr>
<tr><td>5</td><td>≥ 30 T</td><td>20</td></tr>
</table></td></tr>
<tr><td>Transition</td><td>25% CIT reduction for the next 2 years</td><td>50% CIT reduction for the next 2 years</td></tr>
</table>

The tax holiday is applicable to relevant pioneer industry taxpayers that have new capital investment plans of at least IDR 100 billion, that meet the 4:1 DER, that have not had any decisions on any previous tax holiday applications, and that constitute an entity that has been established in Indonesia. Whilst PMK 150 does not require investors to commit to a time deposit in an Indonesian bank equal to 10% of the planned investment value (as was the case in the previous regulation), PMK 150 requires the taxpayer applying for the tax holiday to demonstrate that its domestic shareholders have fulfilled their tax obligations in Indonesia (by presenting a Tax Clearance Letter (*Surat Keterangan Fiskal*) issued by the DGT).

For the mining sector, the tax holiday is available for an integrated upstream basic metal industry (with or without its integrated derivative product processing facilities). Many smelter companies expect to be eligible for the tax holiday facility. However, by including the smelter business in the (separate) tax allowance incentive, the Government wishes to encourage investors in smelters to (only) apply for the tax allowance (and not the tax holiday). At the time of writing, we are not aware of any tax holiday facility having been granted for a smelter company.

BKPM Regulation No. 1 Year 2019 provides the list of business activities that are eligible for the tax holiday facility.

The tax holiday facility is available for recommendations generated by the Online Single Submission (“OSS”) system or applications submitted by BKPM to the MoF via the DGT for up to five years after the effective date of PMK-150, i.e. until 26 November 2023.

Tax Allowances

The Government provides several tax allowances in GR 18/2015 along with MoF regulation No. 89/PMK.010/2015. GR 18/2015 was amended by GR 9/2016 but it has not changed the criteria for the eligible mining sectors.

The tax allowances consist of:

- A reduction in net taxable income of up to 30% of the amount that has been invested, in the form of qualifying fixed assets (including land), prorated at 5% for six years, and provided that the assets that have been invested in are not being misused or transferred out within a certain period;
- Accelerated depreciation and amortisation;
- WHT on the dividends that are paid to non-residents, at 10%;
- An increased loss carry-forward period, from five years to a maximum of ten years.

Mining sector tax incentives are available, subject to the satisfaction of certain criteria, for:

- Basic iron and steel manufacturing;
- Gold and silver processing and refining;
- Certain brass, iron ore, uranium, thorium, tin, lead, copper, aluminium, zinc, manganese and nickel processing and refining activities;
- Coal gasification;
- The use of coal for energy liquefaction.

Apart from the processing and refining of copper, silver, and gold, these income tax incentives are generally only applicable to activities that are undertaken outside Java.

GR 9/2016 sets out the detailed requirements under each designated business sector and/or region that relate to the investment value, the number of Indonesian workers, and the size of the business area. This regulation only sets out the new high-level criteria that are required to enjoy the tax incentives, and it leaves the detailed requirements to be determined by the relevant ministers.

GR 18/2015, as amended by GR 9/2016, confirms that taxpayers who obtain this tax incentive cannot use other tax facilities, such as those for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu* - “KAPET”) or Tax Holidays.

Photo source: PT Agincourt Resources

VAT

The delivery of goods and services in Indonesia is generally subject to VAT, except for the 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 that have been taken directly from their 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, have been stipulated.

In the event that a company delivers a non-VAT-able mining product (e.g. gold bars or coal), any Input VAT that has been incurred on the import and/or domestic purchase of goods/services will not be creditable/refundable, and so it effectively becomes an additional cost (which should be deductible).

During pre-production, only Input VAT that has been incurred on purchases of capital goods is creditable. Furthermore, since the company will not have any Output VAT during the pre-production period, a VAT overpayment is likely.

For most companies, a VAT refund is only available at the end of the year. However, companies that incur VAT during pre-production may apply for refunds in respect of VAT on capital goods on a monthly basis. But, if they fail to commence production (defined as the delivery of VAT-able goods/services) within three years (potentially extended to five years in some circumstances) from the date on which they credit the Input VAT, they must repay the VAT refund by the end of the month following the failure to enter into production. This timing requirement obviously presents a problem for long-term mining projects, which may take several years to enter into production.

IUPK-OP Holder as VAT and Luxury Sales Tax Collector

On 19 December 2018, the Government issued MoF regulation No. 166/PMK.03/2018 ("PMK 166") which appoints the holder of mineral IUPK-OPs issued no later than 31 December 2019 and originating from the conversion of an "active" CoW as a VAT and Luxury Sales Tax ("LST") Collector.

Being a VAT and LST Collector requires the holder of the mineral IUPK-OP to remit VAT and LST on purchases/imports directly to the State Treasury. Amongst others, supplies of up to IDR 10 million per annum (inclusive of VAT and/or LST) as well as payments for the purchases of oil and non-oil fuels from Pertamina are exempted.

Where VAT Collector obligations are exempted then the standard VAT mechanism applies meaning that the vendor in question will charge and collect VAT and/or LST from the IUPK-OP holder.

WHT

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 royalty payments 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.

2% WHT is applicable on payments for most types of services that are made to Indonesian resident entities. If the payments are made to a non-resident, then the WHT rate is 20%. A tax treaty may provide outright relief on service payments and reduce the WHT on payments of dividends, interest, and royalties (generally to 10% or 15%). The DGT-regulated procedures are to be followed in order to access the benefits of a tax treaty, including a pre-determined disclosure form, and measures to prevent tax treaty abuse.

Final Tax on Interest from Mining Export Proceed (*Devisa Hasil Ekspor* – "DHE") Deposits

Referring to the explanation on the DHE to be deposited into the Indonesian financial system in Section 6 of this Guide, "Additional Regulatory Considerations for Mining Investment", and the sub-section "Requirement to Deposit DHE with an Indonesian FX Bank", the interests from DHE Deposits either in United States dollars or Rupiah currency placed domestically with a bank incorporated or domiciled in Indonesia or a branch of a foreign bank in Indonesia shall be subject to final Income Tax at certain rates (0% - 10%) depending on the time period of deposit.

Timeline	Final Income Tax Rate for DHE Deposits	
	IDR currency	US$ currency
One Month	7.5%	10%
Three Months	5%	7.5%
Six Months	0%	2.5%
More than Six Months	0%	0%

PBB

DGT regulation No. PER-47/PJ/2015 ("PER 47") provides the Procedures for the Imposition of PBB within the Mining Sector for Minerals and Coal Mining. In general, PBB in the mining industry covers land and/or buildings that are located in the mining areas, including locations within the mining licence area and outside the mining licence area, which are used for mining activities. It is applicable to both onshore and offshore activities.

Land and buildings that are defined as PBB objects include:

- Land surfaces, which include: (1) onshore areas (such as reserve production areas, unproductive areas, emplacement areas, security areas, etc.); and (2) offshore areas;
- Subsurface areas that are used in the exploration and production stages;
- Building structures that are permanently attached to the land and/or areas of water and that are used for mining activities.

The PBB rate is 0.5% of the taxable sale value of the PBB object. The taxable value for mining is stipulated as a proportion of the sale value of the PBB object, i.e. at 40% of the sale value for PBB objects.

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

For land and buildings that are specifically used for mining, the sale value should also take into account the net income from the mining activity (gross income less production costs). PER 47 provides a detailed explanation of how this calculation should be performed.

4.3 Tax Regime for a CoW/CCoW/CCA Company

One of the key features of a contract is its *lex specialis* status meaning that the terms in the contract override the general law. For example, when certain 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 were in force at the time when the contract was 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 coal contracts where they generally follow the prevailing tax regulations).

Taxation matters that are not governed by 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 the tax stability throughout the life of the project, or at least until the end of the contract term.

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

The mining tax regime that is included in a contract is relatively straightforward. However, in some cases the language of the contract may be widely interpreted which can result in disputes between the mining company and the DGT.

The transitional provisions of the Mining Law (Article 169) provide that existing contracts will remain effective until the expiration date. However, and confusingly, the contracts were still required to be adjusted within one year in order to conform with the Mining Law, except for the provisions on state revenue (except, again, if there are efforts to increase the state revenue). Accordingly, the Government has approached all of the CoW and CCoW holders in order to amend the terms of the contracts, which has now largely been completed (see Section 3.5 of this Guide, "CoW and CCoW renegotiation").

Appendix E summarises the typical tax treatments for particular generations of contracts. Not all generations of contracts have specific tax rules and, as such, those contacts may simply require the tax treatments to follow the prevailing ITL. In assessing the applicable tax regime a detailed review of the contract is necessary. In addition, the tax treatments described in this guide are generic and variations may exist between the various generations of contracts.

Photo source: PT Timah Tbk

Tax Registration

A company holding a contract is required to register for tax and obtain a NPWP. The contract company should register for tax at the local tax office where the mine operates. This includes the obligations for VAT (if this is applicable and has not been centralised at head office) and WHT.

CIT

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

Mineral CoWs typically have *lex specialis* CIT rules. In respect of a CCA/CCoW, the first and most of the third-generation contracts include *lex specialis* CIT provisions, while the second and the 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 CIT calculation.

Bookkeeping in US Dollars

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

Irrespective of the currency and the language used, the company may settle its CIT liabilities in Rupiah or US Dollars, and file its tax returns in the Indonesian language.

With respect to CIT, the relevant tax returns should be presented in US Dollars side by side with Rupiah in the annual CIT return.

Exploration and Development Expenses

On-site exploration expenses are generally deductible in the year in which the expenses are incurred, provided that the expenses relate to the contract 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, some generations of contracts may require reference to the previous ITL and/or a deposit with a state-owned bank in order for the reclamation provision to be deductible.

Operating Expenses

Generally, as per the prevailing law.

Selling and General & Administration Expenses

Generally, as per the prevailing law.

Asset Revaluation

Generally, as per the prevailing law.

Employee Benefits/ Facilities

Contracts normally provide for concessional tax treatments on benefits that are provided to employees who reside in the contract area. The costs of most of the benefits that are provided to employees who are located in the contract area are deductible, but such benefits are not taxed at the hands of the employees.

Pre-Incorporation Expenses

The shareholder(s) of a contract company may incur 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 they may be claimed as deductions, by way of amortisation, starting from the commencement of the production.

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 that need to be addressed, relating to the transfer of pre-incorporation expenses from the shareholder(s) to the company, including 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 include different depreciation rules, but most offer an accelerated rate.

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

Fixed assets should be classified into categories that are based on their useful life. Accelerated depreciation rates may be available for fixed assets that are located in the contract area. Earlier generations of CCoWs/CCAs usually provide an investment allowance (i.e. a hypothetical depreciation) and have a fixed depreciation rate that is based on the straight-line method, irrespective of the type of assets.

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

Interest Expenses

Most CoWs/CCoWs provide specific rules on DER. If such rules are not available in the contract, then the company should follow the DER stipulated in PMK 169 and PER 25.

Amortisation of Intangible Assets

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

Expenses that are incurred prior to production (with a useful life that is greater than one year, although some contracts do not require this) may be capitalised and amortised once production commences. These may also include expenses that have been incurred by the contract company's shareholder(s) prior to the formation of the company (i.e. pre-incorporation expenses).

Carried Forward Tax Losses

Tax losses can be carried forward for the period stipulated in the contract. This is generally more than the five-year carry-forward that is allowed under the prevailing ITL. Tax losses cannot be carried back.

PBB

PBBs for CoW and CCoW companies are usually specifically governed under the contract.

VAT

With the exception of the CCA companies which are subject to Sales Tax (see below), CoW/CCoW companies are subject to VAT on the utilisation of services and goods. However, some contracts may adopt a VAT regime that is different to the prevailing VAT regulations. For example, Input VAT may be creditable, despite coal or gold bars being produced (which are exempt from output VAT).

During pre-production, the company will not have any Output VAT, as there has not yet been deliveries of mining products. Therefore, a VAT overpayment is likely, as the company should pay Input VAT to vendors for its purchases of taxable goods/services.

Until 2004, mining companies were designated as VAT Collectors, meaning that the mining company should collect and pay the VAT that has been charged by vendors (i.e., Input VAT) directly to the State Treasury, rather than to the respective vendors. Some contract companies are required to continue to act as VAT collectors under the relevant contracts.

Subject to the tax rules in the contract, the company may claim a refund on the Input VAT that has been paid, but it must undergo a tax audit.

All VAT payments are denominated in Rupiah. If the company keeps its books in US Dollars, then any outstanding VAT receivables could give rise to foreign exchange issues, particularly if they are long outstanding.

Imports of Capital Equipment

Most contracts provide an exemption from Import Duty, VAT, and Income Tax on imports of capital equipment for up to a year after the commencement of commercial production.

If no import facility is available under a contract, then relief or exemptions may be available under the prevailing law.

MoF regulation No. 259/PMK.04/2016 provides requirements for the transfer, re-export, or destruction of goods that have been imported by CoW/CCoW companies and that have obtained an exemption from Import Duty and VAT upon import. In general, any transfer/re-export/destruction of goods that have been imported with exemptions within five years requires a recommendation from the BKPM and approval from the Customs Office. Failure to meet these requirements may lead to Import Duty and VAT becoming payable, plus associated penalties.

Sales Tax

Before the enactment of the VAT Law in 1984, Indonesia adopted a Sales Tax. Under the *lex specialis* rules, a Sales Tax is still applicable to first-generation CCA companies. A Sales Tax is imposed at a maximum of 5% on certain services that are provided to CCA companies, and it is payable on a self-remittance basis (similar to WHT).

From 1 January 2013, MoF regulation No. 194/PMK.03/2012 provides that first-generation CCA companies also should not collect VAT on these services.

WHT

CoW/CCoW companies are obliged to withhold tax from payments of dividends, interest, royalties, and most types of services. The WHT rate will depend on the tax rules that are stipulated in the contract, the type of payment, and whether the recipient is a resident or a non-resident.

However, pursuant to MoF regulation No. 39/PMK.011/2013, the MoF requires CoW/CCoW companies to apply the prevailing WHT rates on certain services (although this is often disputed by CoW/CCoW companies under *lex specialis* principles).

Latest Developments

As at the date of this publication, the CoW and CCoW holders had finished the renegotiation of their CoW/CCoW with the Government. The tax provisions in the amended CoW/CCoW generally follow the prevailing tax laws and regulations. The new tax provisions would take effect as of the signing date and terminate at the expiry date of the initial CoW/CCoW.

4.4 Other taxation considerations

Non-Tax State Revenue

Royalties

Royalties are payable to the Government quarterly, based on the actual volume of production or the sales. For CoW/CCoW companies, this is based on the terms of the contract. However, based on the prevailing regulations and the current practice, the royalty should be paid prior to the shipment.

The prevailing royalty rates that are applicable to IUP/IUPK/IUPK-OP holders are set out in Chapter 2.

Dead Rent

Throughout the lives of all of its mining interests, the company is required to pay dead rent. This is due annually and the amount is normally based on the number of hectares in the mining area and the stage of the mining operations (e.g. there are different rates for the general survey, exploration, and exploitation stages).

Regional Tax

A mining company may be liable for a number of Regional Taxes and Retributions (except the first generation CCoW). The rates range from 1.5% to 35% of a wide number of reference values determined by the relevant regional Government.

Contracts may limit the additional types and rates of Regional Tax introduced after the signing date of the contract. A summary of the types of regional taxes is included in Appendix B.

Government Share Under an IUPK-OP

Particularly for an IUPK-OP (a mining business licence which is a conversion of an active CoW) holder, in addition to the royalties, dead rent, Land and Building Tax, environmental and forestry regulations, the Government via GR-37 also requires the IUPK-OP holder to make the following "share" payment:

- State share due at 4% of net profit – as per the Mining Law and regulations;
- Regional Government share due at 6% of net profit – as per the Mining Law and regulations.

The above obligations are applicable from the calendar year following the issue of the IUPK-OP. The net profit is determined after deducting CIT and based on the audited financial statements. These obligations are regarded as profit distributions and therefore are not deductible.

Importantly therefore, the State and Regional Government payment calculations appear to follow accounting profit rather than taxable income. In addition, it is not likely that the payments will constitute "taxes" for foreign tax credit or other fiscal purposes and so any home country tax treatment should be considered carefully. Finally, there will doubtless be scope for different calculation interpretations between the various Government bodies.

Transfers 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. 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.

Purchase and Sale of Shares in an IUP/IUPK or Contract Company

This approach is common for the acquisition of mining properties in Indonesia. For a domestic seller, Income Tax is imposed on the profits that are 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 subject to certain requirements).

The prevailing ITL provides for a long-arm capital gains tax provision. The DGT can treat the sale of a conduit or special purpose company that has been established in a tax haven country and that has an Indonesian subsidiary as the sale of an interest in an Indonesian company. In this case, the DGT can impose the 5% final Income Tax on the gross proceeds of the sale.

To date, there has been no definition of 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.

Some Key Tax Consideration on Investment

A tax efficient investment structure can create significant tax savings over the life of a mine. A favourable structure can also be effective for project financing purposes. Some relevant contract and IUP/IUPK issues to be aware of include the following:

- An individual legal entity 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, means that careful planning is required, particularly for the use of service companies within one group, as well as inter-company charges, inter-company borrowing, etc.;
- The use of a tax efficient shareholding structure can enhance a project's feasibility (note that under some tax treaties and subject to the fulfilment of Certificate of Domicile requirements, the WHT on dividends may be reduced from 20% to 15%, 10%, or even 5%);
- The sale of shares in a contract or in IUP/IUPK companies that are not listed on the IDX by foreign investors are taxed at 5% on gross proceeds, unless protected by a tax treaty;
- Some contracts offer a reduced WHT rate for dividend payments to founder foreign shareholder(s);
- Project financing strategies or intra-group financing should consider the thin capitalisation rules and note that debt forgiveness is subject to tax in Indonesia (this issue is common in unsuccessful exploration projects);
- The overall investment structure should consider both mineral processing and any refinery/downstream businesses.

5 Accounting Considerations

The accounting considerations section discusses certain accounting issues that are commonly faced by a mining company operating in Indonesia. The discussion in this Guide does not attempt to cover all of the accounting requirements that are applicable to a mining company operating in Indonesia. Please contact one of our advisers listed in Appendix F to discuss these further.

5.1 Exploration and Evaluation ("E&E")

Exploration costs are incurred to discover mineral resources. Evaluation costs are incurred to assess the technical feasibility and commercial viability of the resources found. Exploration starts when the legal rights to explore have been obtained. Expenditure incurred before obtaining the legal right to explore is generally expensed; an exception to this would be separately acquired intangible assets such as payment for an option to obtain legal rights.

The accounting treatment of E&E expenditures (capitalising or expensing) can have a significant impact on the financial statements and reported financial results, particularly for entities at the exploration stage with no production activities.

Statement of Financial Accounting Standard ("SFAS") No. 64 "Exploration for and evaluation of mineral resources" sets out the accounting for E&E expenditures. Under SFAS No. 64, an entity shall determine an accounting policy specifying which expenditures are recognised as E&E assets and apply the policy consistently. In making this determination, an entity considers the degree to which the expenditure can be associated with finding specific mineral resources. An entity may change its accounting policies for E&E expenditures, if the change makes the financial statements more relevant to the economic decision-making needs of users and no less reliable, or more reliable and no less relevant to those needs. An entity shall judge the relevance and reliability using the criteria in SFAS No. 25, "Accounting Policies, Changes in Accounting Estimates and Errors".

Photo source: PT Bukit Asam Tbk

Expenditures incurred in exploration activities should be expensed unless they meet the definition of an asset. An entity recognises an asset when it is probable that economic benefits will flow to the entity as a result of the expenditure. These economic benefits might be available through the commercial exploitation of mineral reserves or the sales of exploration findings or further development rights. It is often difficult for an entity to demonstrate that the recovery of exploration expenditure is probable.

Evaluation activities are further advanced than exploration activities, and hence they are more likely to meet the criteria for recognising an asset. However, each project needs to be considered on its merits. The amount of evaluation work that is required to conclude that a viable mine exists will vary for each area of interest.

Management needs to develop a consistent and transparent accounting policy that is applied through the various phases of E&E activity, highlighting the cut-off point before capitalisation of costs commences. Costs incurred after probability of economic feasibility is established are capitalised only if the costs are necessary to bring the resource to commercial production. Subsequent expenditures should not be capitalised after commercial production commences, unless they meet the asset recognition criteria.

E&E assets can be measured using either the cost model or the revaluation model. In practice, most companies use the cost model. Depreciation and amortisation of E&E assets usually does not commence until the assets are placed in service. E&E assets recognised should be classified as either tangible or intangible according to their nature.

E&E are reclassified from the E&E account when evaluation procedures have been completed. E&E assets for which commercially-viable reserves have been identified are reclassified to development assets. E&E assets are tested for impairment immediately prior to their reclassification from E&E, and when impairment indicators are identified, which include but are not limited to:

- Rights to explore in an area have expired or will expire in the near future, without renewal;
- No further exploration or evaluation has been planned or budgeted for;
- A decision has been made to discontinue E&E in an area because of the absence of commercial reserves; and
- Sufficient data exists to indicate that the book value will not be fully recovered from future development and production.

5.2 Development

Development expenditures are costs that have been incurred in order to obtain access to proved and probable reserves and to provide facilities for extracting, treating, gathering, transporting, and storing the minerals.

Development expenditures are capitalised to the extent that they are necessary to bring the property to commercial production. They should be directly attributable to an area of interest or be capable of being reasonably allocated to an area of interest. Costs which could meet these criteria include:

- the purchase price for development assets, including any duties and any non-refundable taxes;
- costs directly related to bringing the asset to the location and condition for intended use such as drilling costs or removal of overburden to establish access to the ore reserve; and
- the present value of the initial estimate of the future costs of dismantling and removing the item and restoring the site on which it is located, where such obligations arise when the asset is acquired or constructed.

Allocation of expenditure includes direct and indirect costs. Indirect costs are included only if they can be directly attributed with the area of interest. These may include items such as road construction costs and costs to ensure conformity with environmental regulations. Costs associated with re-working engineering design errors or those attributed to inefficiencies in development should not be capitalised.

General or administrative overheads relating to the whole entity, rather than to specific phases of operations, are expensed as incurred. Time charges from head office staff may be capitalised where there is a clear and direct allocation of their time to development specific activities.

Entities should also consider the extent to which "abnormal costs" have been incurred in developing the asset. SFAS 16 requires that the cost of abnormal amounts of labour or other resources involved in constructing an asset should not be included in the cost of that asset. Entities will sometimes encounter difficulties in their mining plans and make adjustments to these. There will be a cost associated with this, and entities should develop a policy on how such costs are assessed as being normal or abnormal.

Expenditures incurred after the point at which commercial production has commenced should only be capitalised if the expenditures meet the asset recognition criteria.

Pre-Production Sales

There may be a long commissioning period for a mine, sometimes longer than twelve months, during which production is gradually increased towards design capacity. An entity may receive revenue from the saleable material that is produced during this phase. Where the test production is considered necessary for the completion of the asset, the proceeds from the sales are usually offset against the asset costs, instead of being recognised as revenue. Judgment is required to determine whether all of the revenues that have been earned during the commissioning period should be deducted from the cost of developing the mine.

5.3 Production

Revenue Recognition

Revenue recognition can present challenges for mining entities. Production often takes place in joint ventures, and entities need to analyse the facts and circumstances in order to determine when and how much revenue to recognise. Extracted mineral ores may need to be moved long distances and may need to be of a specific type in order to meet the smelter or refinery requirements. Entities may exchange products in order to meet logistical, scheduling, or other requirements.

The following are common challenges relating to revenue recognition in the mining industry:

a. Provisional Pricing Arrangements

Sales contracts for certain commodities often incorporate provisional pricing - as at the date of delivery of the mineral ore, a provisional price may be charged. The final price is generally an average market price for a particular future period. Revenue from the sale of provisionally priced commodities is recognised when the risks and rewards of ownership are transferred to the customer (which would generally be the date of delivery) and revenue can be reliably measured. At this date, the amount of revenue to be recognised will be estimated based on the forward market price of the commodity being sold. In most cases, the relevant forward market price should provide a reliable basis for measuring the value of the sale at the date of delivery. If so, the sale should be recognised at this time. At each subsequent period end the provisionally priced contracts are marked to market using the most up-to-date market prices with any resulting adjustments usually being recognised within revenue.

b. Agency Arrangements

It is important to identify whether a mining entity is acting as a principal or an agent in transactions as only when the entity is acting as a principal will it be able to recognise revenue based on the gross amount received or receivable in respect of its performance under a sales contract. Entities acting as agents do not recognise revenue for any amounts received from a customer to be paid to the principal. Whether an entity is acting as a principal or agent is dependent on the facts and circumstances of the relationship, which should be assessed carefully and thoroughly to determine the appropriate accounting treatment.

c. Tolling Arrangements

Many companies that are involved in the industry provide value-added services to companies that mine ore or unprocessed mineral products. These companies may be involved in smelting, washing, refining, or transporting products on behalf of a mining company. The mining company may have agreed the sale with the end user, or be selling to a smelting or refining company who will then sell to an end user.

For example, a custom smelter may operate on either a purchase or a toll basis. On a purchase basis, the smelter is entitled to a charge that is based on the final sale price of the metal produced. On a toll basis, the smelter is entitled to a treatment (toll) charge, which is usually fixed by contract or based on a formula relating to the selling price of the metal.

Revenue recognition by the mining company might then be at one of the following points:

- When they ship the metal to the smelter;
- When the metal arrives at the smelter;
- At the end of the period in which the smelter has to make provisional payments; or
- When the smelter advises the producer of the final metal quantities and, in some instances, sales price.

The appropriate point of revenue recognition from the mining company's perspective is determined based on the transfer of risks and rewards. When intermediaries are used, such as in a smelting arrangement, an assessment of whether such an arrangement also constitutes a lease must also be considered.

Photo source: PT Timah Tbk

Stripping Costs During the Production Phase

An entity usually obtains two kinds of benefits from its stripping activity. These are extraction of ore in the current period in the form of inventory and improved access to the ore body for future periods. As a result, two different kinds of assets are created. If the stripping activity in the current period does not provide an identifiable benefit, the associated costs are expensed in the current period.

To the extent that the benefits from the stripping activity are realised in the form of inventory produced, the associated costs are recorded in accordance with the principles of SFAS 14: Inventories.

To the extent that the benefits are realised in the form of improved access to the ore body in the future, the associated costs are recognised as a 'stripping activity asset' if all of the following conditions are met:

(a) It is probable that the future economic benefit associated with the stripping activity will flow to the entity;
(b) The entity can identify the component of the ore body for which access has been improved; and
(c) The costs relating to the stripping activity associated with that component can be measured reliably.

Identifying components of the ore body is a complex process involving management judgment. It might be difficult to separately identify costs to produce inventory and to improve access to the ore body. In such cases, costs are allocated between the inventory produced and the stripping activity asset with reference to a relevant production measure. Allocation of costs cannot be based on a sales measure.

Stripping assets are initially measured at cost and subsequently measured at cost less depreciation, amortisation and impairment losses. While rare in practice, the stripping activity assets may also be carried at revalued amount if the existing asset of which it is a part is carried at its revalued amounts. The stripping activity asset is typically depreciated based on the Units of Production ("UoP") method, unless another method is more appropriate.

5.4 Closure and Rehabilitation

The mining industry can have a significant impact on the environment. Closure or environmental rehabilitation work at the end of the useful life of a mine or installation may be required by law, the terms of operating licences or an entity's stated policy and past practice.

An entity that promises to remedy damage or has done so in the past, even when there is no legal requirement to do so, may have created a constructive obligation and thus a liability under SFAS. There may also be environmental clean-up obligations for contamination of land that arises during the operating life of the mine or installation. The associated costs of remediation/restoration can be significant. The accounting treatment of closure and rehabilitation costs is therefore critical.

A provision is recognised when an obligation exists to perform the rehabilitation. The local legal regulations should be taken into account when determining the existence and extent of the obligation. An obligation might arise if an entity has a policy and past practice of performing rehabilitation activity. A provision is recorded if others have a reasonable expectation that the entity will undertake the restoration. Obligations to decommission or remove an asset are created at the time when the asset is put in place. Mining infrastructure, for example, must be removed at the end of its useful life, typically upon the closure of the mine.

Closure provisions are updated at each balance sheet date for changes in the estimates of the amount or timing of future cash flows and changes in the discount rate. Changes to provisions that relate to the removal of an asset are added to or deducted from the carrying amount of the related asset in the current period. However, the adjustments to the asset are restricted. The asset cannot decrease below zero and cannot increase above its recoverable amount:

- if the decrease in provision exceeds the carrying amount of the asset, the excess is recognised immediately in profit or loss;
- adjustments that result in an addition to the cost of the asset are assessed to determine if the new carrying amount is fully recoverable or not. An impairment test is required if there is an indication that the asset may not be fully recoverable.

The accretion of the discount on a closure liability is recognised as part of finance expense in profit or loss.

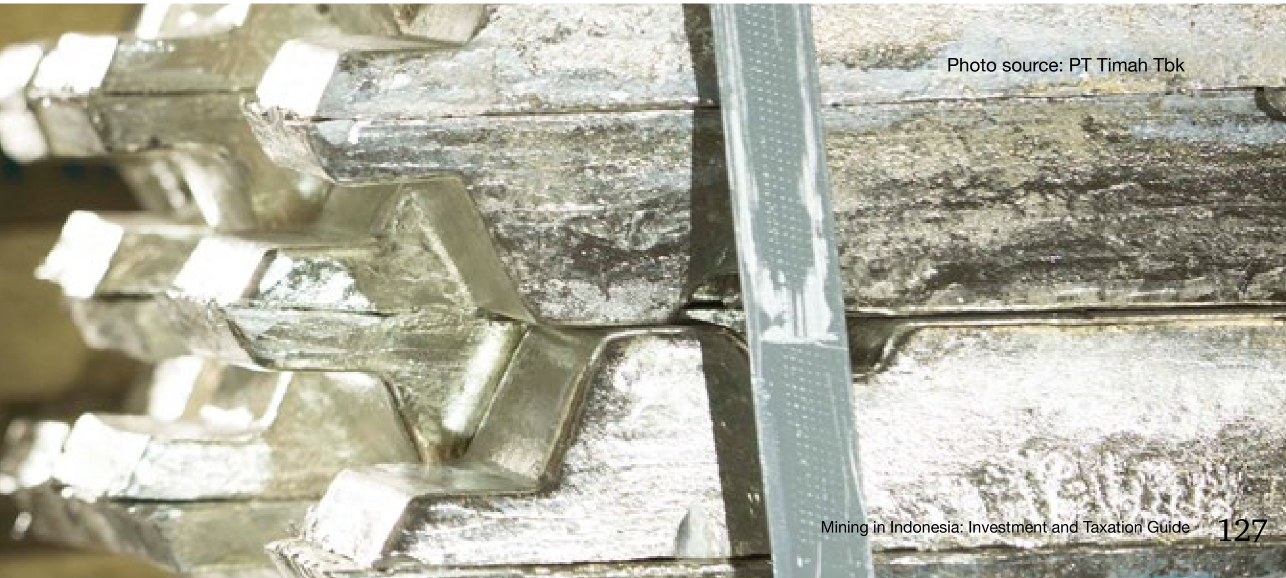


Photo source: PT Timah Tbk

5.5 Significant New Accounting Pronouncements

Statement of Financial Accounting Standard (*Pernyataan Standar Akuntansi Keuangan* or "PSAK") 72 – A New Model for Recognising Revenue

Mining companies in Indonesia will have to apply the new PSAK 72, "Revenue from Contracts with Customers" effective 1 January 2020 (with earlier adoption permitted), to determine the timing and amount of revenue that can be recognised for the sale of goods and services. PSAK 72 is adopted from IFRS 15, "Revenue from Contracts with Customers". PSAK 72 introduces a new revenue recognition model that emphasises the satisfaction of performance obligations identified in a contract with customers for a seller to recognise revenue. Entities will now have to apply a five-step approach to determine when and how much revenue can be recognised:

STEP

1. Identify the contract with the customer;
2. Identify the separate performance obligations in the contract;
3. Determine the transaction price;
4. Allocate the transaction price to the separate performance obligations; and
5. Recognise revenue when (or as) the performance obligation is satisfied

Entities will need to exercise judgment when considering the terms of the contract and all of the facts and circumstances, including implied contract terms. The introduction of a new revenue recognition model may change the timing and amount of the top-line revenue of many mining companies.

Below, we have highlighted a number of matters where the current revenue recognition practice adopted by mining companies are likely to change following the adoption of PSAK 72. Our analysis has not been written to provide a comprehensive list of all matters affected by the adoption of PSAK 72, as there may be other areas of complexity identified in the different forms of contract that mining companies currently use. We may identify additional issues as more mining companies begin to apply PSAK 72 and our views may evolve during that process.

Description of Matters	Accounting Considerations based on PSAK 72	Potential Impact
Agency relationships Mining entities will often engage in other activities in addition to selling extracted ore, such as providing transportation of product. It is important to identify whether a mining entity is acting as a principal or an agent in transactions as it is only when the entity is acting as a principal that they will be able to recognise revenue based on the gross amount received or receivable in respect of its performance under a sales contract. Entities acting as agents do not recognise revenue for any amounts received from a customer to be paid to the principal. Revenue is recognised for the commission or fee earned for facilitating the transfer of goods and services. Whether the entity is acting as agent or principal depends on the facts of the relationship, which can require significant judgment.	**Principal versus agent considerations** An entity is the principal in an arrangement if it obtains control of the goods or services of another party in advance of transferring control of those goods or services to the customer. Obtaining title momentarily before transferring a good or service to a customer does not necessarily constitute control. An entity is an agent if its performance obligation is to arrange for another party to provide the goods or services. Indicators that the entity is an agent include: • the other party is primarily responsible for fulfilment of the contract; • the entity does not have inventory risk; • the entity does not have latitude in establishing prices; • the entity does not have customer credit risk; and • the entity's consideration is in the form of a commission. An agent recognises revenue for the commission or fee earned for facilitating the transfer of goods or services. Its consideration is the 'net' amount retained after paying the principal for the goods or services that were provided to the customer.	The indicators under the new standard are similar to those in the existing guidance, but they are provided in a new context. The indicators are designed to help entities determine if they obtain control of the goods or services before transferring the control of those goods or services to the customer. The number and significance of judgments to determine whether the company is acting as a principal or agent appear to be increasing within the industry, particularly in relation to companies that provide value-added services to companies that mine ore or unprocessed mineral product.
Delivery – Cost, insurance and freight ("CIF") versus free on board An entity will recognise revenue when (or as) a good or service is transferred to the customer and the customer obtains control of that good or service. Control of an asset refers to an entity's ability to direct the use of and obtain substantially all of the remaining benefits (that is, the potential cash inflows or savings in outflows) from the asset. Resources are often extracted from remote locations and require transportation over great distances. Transportation by truck instead of railway can be a significant cost. There are two main variants of the contracts that address the future shipping costs – CIF or FOB.	**CIF** **Identifying separate performance obligations** The new standard will require an entity to account for each distinct good or service as a separate performance obligation. Freight services may meet the definition of a distinct service. **Satisfaction of performance obligations** An entity recognises revenue when it satisfies a performance obligation by transferring a promised good or service to a customer. A good or service is transferred when the customer obtains control of that good or service. The new standard lists indicators of control transferring, including an unconditional obligation to pay, legal title, physical possession, transfer of risk and rewards and customer acceptance.	The new standard is generally not expected to change the point at which revenue is recognised for the performance obligation to provide goods. However, an entity should evaluate whether it has separate performance obligations for the goods and the freight services. This could mean recognition of a portion of the revenue when control of the goods passes and recognition over time for the portion of revenue relating to the freight services. Factors which might indicate there is a separate performance obligation for transportation include:

Description of Matters	Accounting Considerations based on PSAK 72	Potential Impact
CIF contracts mean that the selling entity will have the responsibility to pay the costs, insurance and freight until the goods reach a final destination, such as a refinery or an end user. FOB contracts mean that the selling entity delivers the goods when the goods are delivered to an independent carrier. The buyer has to bear all costs and risk of loss to the goods from that point. In both approaches, contractual terms mean that risk and title and therefore control of the commodity normally pass at the ship's rail, although the timing of revenue recognition could change under the new standard, depending on the terms of trade. The difference between the shipping terms affects which party is responsible for freight costs.	*Sales of goods:* Revenue is recognised at the point when control transfers to the customer. This will generally follow the terms of the contract, and is usually when the goods pass the rail on a vessel that has been selected by the buyer, at which point the buyer will control the goods. *Transportation:* A performance obligation for transportation generally meets the criteria for a performance obligation that is settled over a period of time, and the revenue will be recognised over the period of transfer to the customer. If it does not meet the criteria, the performance obligation would will be settled at a future point in time, and revenue would will likely be recognised when the customer receives the goods.	• Specialism of any vehicles or technology involved with providing the transportation; • Level of cost, distance or time associated with providing the transportation; and • Whether the terms of the contract allow the customer to opt out of the transportation element and collect the commodity themselves. There cannot be a separate performance obligation for an entity to transport its own goods (that is, prior to transfer of control of the goods to the customer).
	FOB **Satisfaction of performance obligations** An entity recognises revenue when it satisfies a performance obligation by transferring a promised good or service to a customer. A good or service is transferred when the customer obtains control of that good or service. The new standard lists indicators of control transferring, including an unconditional obligation to pay, legal title, physical possession, the transfer of risk and rewards, and customer acceptance.	The new standard is generally not expected to change the point at which revenue is recognised for the performance obligation to provide goods. However, an entity should evaluate whether they have a separate performance obligation for the freight services. This could mean recognition of a portion of the revenue when control of the goods passes, and recognition over time for the portion of revenue relating to freight services.

Description of Matters	Accounting Considerations based on PSAK 72	Potential Impact
Provisional pricing arrangements Sales contracts for commodities often incorporate provisional pricing. Provisional pricing might arise for a variety of reasons: • The time taken to transport the product might mean that the customer wishes to pay the market price at the date of eventual delivery at the final destination – in those situations, a provisional price is charged on the date control of the product initially transfers. The final price is generally an average market price for a particular future period or a final assayed amount. • The product is being transported in concentrate form and the final quality and volume of component commodities will not be known until further processing at its final destination.	**Satisfaction of performance obligations** The sales contract would be in the scope of the new standard. There will be a single performance obligation, being the delivery of the promised product. Revenue will be recognised when the performance obligation is satisfied, which is when the customer obtains control of the product. **Determining the transaction price** The entity will need to determine the transaction price, which is the amount of consideration it expects to be entitled to in the transaction. Management should first consider whether provisionally priced contracts include embedded derivatives that are in the scope of financial instrument guidance. A mining entity will apply the separation and/or measurement guidance in other standards first, and then apply the guidance in the revenue standard to the remaining portion of the contract. The transaction price might be variable or contingent on the outcome of future events, which would include provisional pricing arrangements. Variable consideration is subject to a constraint. The objective of the constraint is that an entity should recognise revenue as performance obligations are satisfied to the extent that a significant revenue reversal is not "highly probable", in future periods. Such a reversal would occur if there is a significant downward adjustment of the cumulative amount of revenue recognised for that performance obligation. Judgment will be required to determine if the amount to be recognised is subject to a significant reversal. The new standard has a list of factors that could increase the likelihood or magnitude of a revenue reversal. Management's estimate of the transaction price will be reassessed each reporting period.	Judgment will be required to determine if the provisional pricing results in the identification of an embedded derivative or variable consideration. If the entity determines that the provisional pricing results in variable consideration, further judgment will be required to determine whether the estimated transaction price is subject to significant reversal. This might be particularly relevant where the final quantity and quality of product being delivered will not be known until processing at its destination. Where price is conditional upon the component elements of the product, this is more likely to be variable consideration. Judgment will also be required to identify the point at which the variable consideration becomes unconditional, and is then considered a financial asset within the scope of PSAK 71. Where provisional pricing features represent embedded derivatives, mining entities would be required to continue to separate them and recognise and measure them in accordance with financial instrument guidance. However, given the revised presentation requirements in the new standard, it may no longer be appropriate to present movements in the embedded derivative in revenue from contracts with customers.

Description of Matters	Accounting Considerations based on PSAK 72	Potential Impact
Take-or-pay and similar long-term supply agreements Long-term sales contracts are common in the mining industry. Producers and buyers may enter into sales contracts that are often a year or longer in duration to secure supply and reasonable pricing arrangements. Such contracts are often fundamental to supporting the business case or to finance, develop or continue activity at a particular mine. Contracts will typically stipulate the sale of a set volume of product over the period at an agreed price. There are often clauses within the contract relating to price adjustment or escalation over the course of the contract to protect the producer and/or the seller from significant changes to the underlying assumptions in place at the time the contract was signed. Long-term commodity contracts frequently offer the counterparty flexibility and options in relation to the quantity of the commodity to be delivered under the contract. Mining entities should continue to first assess whether these arrangements represents financial instruments or contain embedded derivatives that should be accounted for under the financial instruments standards (e.g., whether a contract with volume flexibility contains a written option that can be settled net in cash or another financial instrument). In addition, mining entities should continue to evaluate whether such arrangements convey the right to use a specific asset, and therefore constitute a lease under the leasing standards.	**Identifying the contract** In relation to take-or-pay contracts, only the minimum amount specified would generally be considered a contract, as this is the only enforceable part of the agreement. Options in the contract to acquire additional volumes will likely be considered a separate contract at the time the customer exercises the option, unless such options provide the customer with a material right (e.g., an incremental discount). Where there is a material right, the option should be accounted for as a separate performance obligation in the original contract. It is likely that each unit of product will be considered a separate performance obligation (e.g., tonne of coal). This will require the total transaction price to be allocated to the separate performance obligations using standalone selling prices. **Breakage** Customers may not exercise all of their contractual rights to receive a good or service in the future. Unexercised rights are often referred to as breakage. An entity should recognise estimated breakage as revenue in proportion to the pattern of exercised rights. Management might not be able to conclude whether there will be any breakage, or the extent of such breakage. In this case, they should consider the constraint on variable consideration, including the need to record any minimum amounts of breakage. Breakage that is not expected to occur should be recognised as revenue when the likelihood of the customer exercising its remaining rights becomes remote. The assessment should be updated at each reporting period. In take-or-pay arrangements, this may mean that an entity may be able to recognise revenue in relation to breakage amounts in a period earlier than when the breakage occurs, provided that it can demonstrate it is expects that the customer will not exercise these rights. Given the nature of these arrangements and the inherent uncertainty in being able to predict a customer's behaviour, it may be difficult to satisfy this requirement.	The new standard will require mining entities to apply judgment in identifying the performance obligations, as well as the reasons for price changes over the term of the arrangement. These judgments will determine whether the total transaction price is allocated and recognised based on stand-alone selling prices (e.g., using forward curves), contractual pricing, straight line or another basis. Mining entities will also have to consider whether such arrangements include a significant financing component that will have to be accounted for separately.

Transitional Provisions

PSAK 72 is effective for reporting periods beginning on or after 1 January 2020. Earlier adoption is permitted. Mining companies may have to change their processes and information systems to capture the information they need.

PSAK 73 – A New Era of Lease Accounting

Mining companies in Indonesia will have to apply the new PSAK 73, 'Leases' effective 1 January 2020 (with earlier adoption permitted). PSAK 73 is adopted from IFRS 16, 'Leases'. In contrast to the existing PSAK 30 standard on leasing that requires a lessee to make a distinction between a finance lease (balance sheet) and an operating lease (off-balance sheet), the new PSAK 73 model will require lessees to capitalise nearly all leases on the balance sheet to reflect the right to use an asset for a period of time and the associated liability for payments to use the asset, except for certain short-term leases that are for a period of less than twelve months and leases of low-value assets. PSAK 73 does not prescribe the threshold for low-value assets unlike IFRS which determined low-value assets to be those below US$ 5,000. As such, judgment is required in determining low-value assets.

PSAK 73 will therefore affect almost all commonly used financial ratios and performance metrics including debt-to-equity, current ratio, interest coverage, Earnings Before Interest and Taxes ("EBIT"), Earnings Before Interest, Tax, Depreciation and Amortisation ("EBITDA"), return on capital employed and the classification between operating and financing cash flows. The changes due to adoption of PSAK 73 may affect the loan covenants, credit ratings, borrowing costs, and could drive other changes to the business models of mining companies.

Aside from the impacts on the balance sheet as described above, PSAK 73 will also influence the income statement, because an entity now has to recognise interest expense on the lease liability (obligation to make lease payments) and depreciation on the 'right-of-use' asset (that is, the asset that reflects the right to use the leased asset). Due to this, for lease contracts previously classified as operating leases the total amount of expenses at the beginning of the lease period will be higher than under PSAK 30. Another consequence of the changes in presentation is that EBIT and EBITDA will be higher for companies that have substantial operating leases (due to the partial reclassification of lease costs to finance costs which is likely to be greater than the depreciation recognised on the newly recognised assets).

PSAK 73 will also change the cash flow statement. Lease payments that relate to contracts that have previously been classified as operating leases are no longer presented as operating cash flows in full. Only the part of the lease payments that reflects interest on the lease liability would be presented as an operating cash flow (if the entity's accounting policy classifies interest payments as operating cash flows). Cash payments for the principal portion of the lease liability are classified within financing activities. Payments for short-term leases, leases of low-value assets and variable lease payments not included in the measurement of the lease liability remain presented within operating activities.

Mining companies will need to carefully consider all major arrangements that they have entered into that may increase both assets and liabilities on the balance sheet under the new lease standard, such as mining equipment, vehicles as well as land and buildings. Similarly, mining contractor companies will need to consider all major arrangements that they have entered into such as leases over construction equipment, vehicles as well as land and buildings, which may give rise to balance sheet lease accounting under the new leases standard.

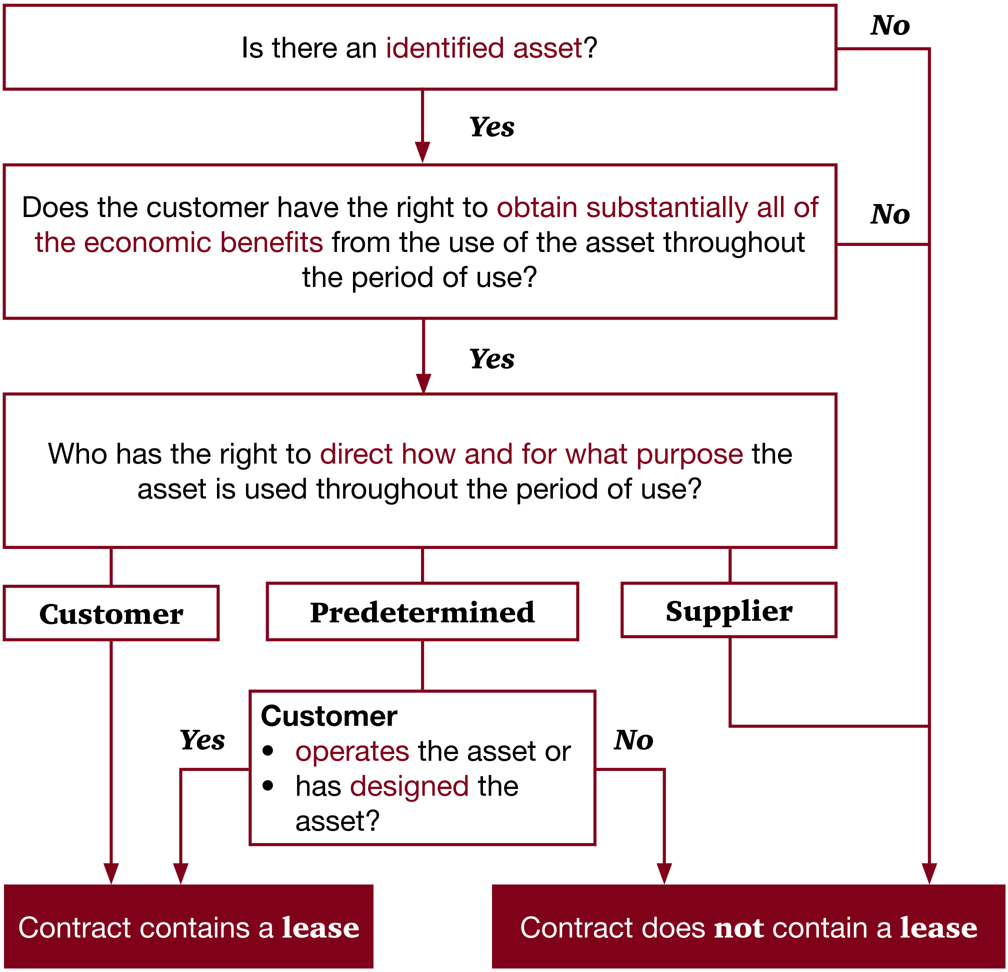
What is a Lease?

PSAK 73 prescribes that a contract contains a lease when:

a) There is an identified asset; and
b) The contract conveys the right to control the use of the identified asset for a period of time in exchange for consideration.

Identified Asset	Right to Control the Use of an Identified Asset
An asset can be identified implicitly or explicitly in the contract. A contract may explicitly define a particular asset; or implicitly when the supplier can fulfill the contract only through the use of a particular asset. A right to substitute an asset if it is not operating properly, or if there is a technical update required, does not prevent the contract from being dependent on an identified asset.	The definition of a lease is now much more driven by the question of which party to the contract controls the use of the underlying asset for the period of use. A customer no longer needs only to have the right to obtain substantially all of the benefits from the use of an asset (the 'benefits' element), but must also have the ability to direct the use of the asset (the 'power' element). This conceptual change becomes obvious when looking at a contract to purchase substantially all of the output produced by an identified asset (for example, a power plant). If the price per unit of output is neither fixed nor equal to the current market price, the contract would be classified as a lease under Interpretation of SFAS (*Interpretasi Standar Akuntansi Keuangan* - "ISAK") 8 "Determining whether an Arrangement Contains a Lease". PSAK 73, however, requires not only that the customer obtains substantially all of the economic benefits from the use of the asset but also an additional 'power' element: namely, the right of the customer to direct the use of the identified asset (for example, the right to decide the amount and timing of power delivered). The right to control the use of an identified asset is the key distinguishing factor, because in a lease, the customer has control over the right to use the identified asset, whereas under a simple supply contract, the supplier retains control over the use of the particular asset. The key question to address, therefore, is which party (that is, the customer or the supplier) has the right to direct how and for what purpose an identified asset is used throughout the contract period. PSAK 73 gives several examples of relevant decision-making rights: a) The right to change what type of output is produced; b) The right to change when the output is produced; c) The right to change where the output is produced; d) The right to change how much of the output is produced. The list is not exhaustive and none of the above criteria is independently exclusive, meaning there is no threshold to determine whether any of the criteria are more important than the others. The relevance of each of the decision-making rights depends on the underlying asset being considered.

The flowchart below summarises the analysis that needs to be made to determine whether a contract contains a lease:

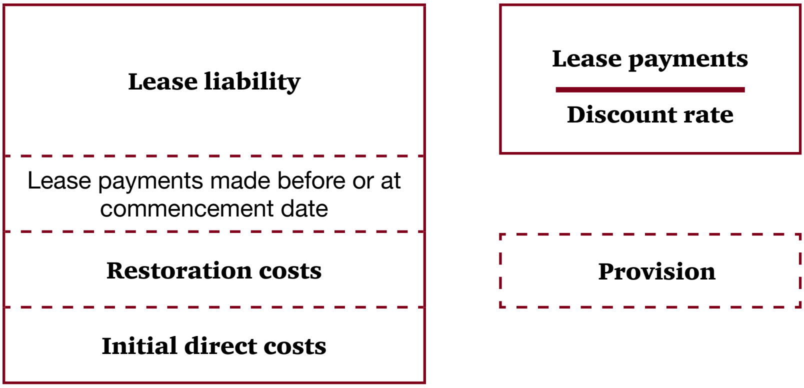


Lease Accounting for a Lessee

Initial Recognition

There is no longer a distinction between a finance lease contract and an operating lease; all lessees are required to capitalise a right-of-use asset and a corresponding lease liability for almost all lease contracts. The lease liability is initially capitalised on the date of commencement and measured at an amount equal to the present value of the lease payments during the lease term that are not yet paid. The value of the right-of-use of the asset is equal to the lease liability at the commencement of the lease plus any direct costs incurred to obtain the contract and contractually obligated restoration costs.

There is no change to the approach to determining the discount rate for the lease. The lessee uses as its discount rate the interest rate implicit in the lease. If this rate cannot be readily determined, the lessee should instead use its incremental borrowing rate.



The effect of this approach is a substantial increase in the amount of capitalised financial liabilities and assets for entities that have entered into significant lease contracts that are currently classified as operating leases.

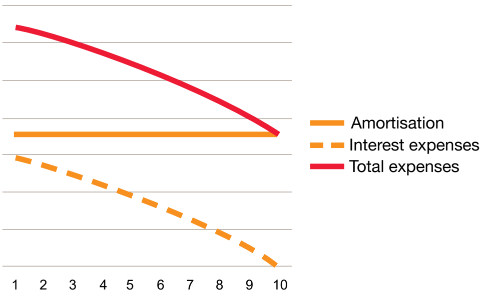
Subsequent Measurement

The lease liability is measured in subsequent periods using the effective interest rate method.

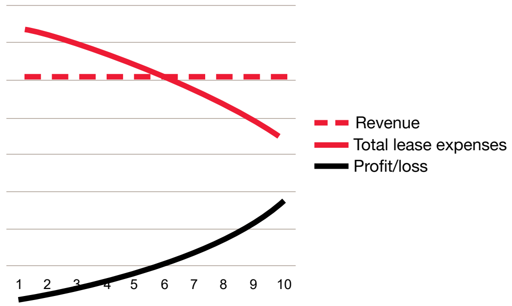
The right-of-use asset is depreciated in accordance with the requirements in PSAK 16, “Property, Plant and Equipment”, which will result in depreciation on a straight-line basis or another systematic basis that is more representative of the pattern through which the entity expects to consume the right-of-use asset.

The combination of the straight-line depreciation of the right-of-use asset and the effective interest rate method applied to the lease liability results in a decreasing total lease expense throughout the lease term. This effect is sometimes referred to as *frontloading*.

Lease expenses

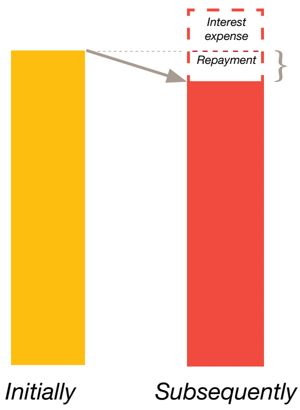


Profit/loss

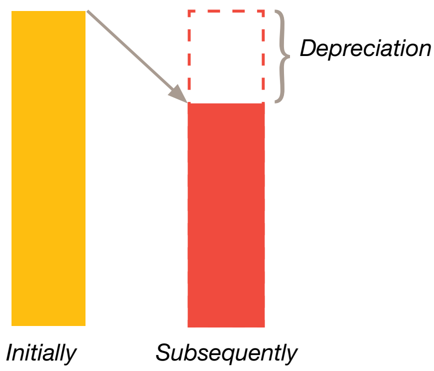


The carrying amount of the right-of-use asset and the lease liability will no longer be equal in subsequent periods. Due to the frontloading effect described above, the carrying amount of the right-of-use asset will, in general, be below the carrying amount of the lease liability.

Lease liability



Right-of-use asset



Potential Impact on the Lessee's Key Performance Indicators

Below, we summarise the potential impact on a typical lessee's financial performance from the new PSAK 73 requirement to capitalise substantially all leases on the balance sheet:

Indicator	Calculation	Impact from PSAK 73
Gearing (Debt-to-equity)	Liabilities/Equity	This will increase because all lessees will now capitalise the lease liabilities arising from operating leases (which were off-balance sheet under PSAK 30).
EBIT	Earnings before interest and tax	This will increase because typically the depreciation of the right-of-use asset added to this measure is lower than the removal of lease payments that were previously presented as operating expenses under PSAK 30.
EBITDA	Earnings before interest, tax depreciation and amortisation	This will increase because of the removal of lease payments that were previously presented as operating expenses under PSAK 30.
Operating cash flow	-	This will increase because operating lease payments that were previously presented as part of operating cash flow are now presented as part of financing cash flow; even though this is offset by higher cash outflows from the finance costs of the lease.
Financing cash flow	-	This will decrease because operating lease payments that were previously presented as part of operating cash flow are now presented as part of financing cash flow. The financing cash flow may also be further reduced by the cash outflow related to the financing cost element of a lease.
Asset turnover	Sales/total assets	This will be lower, because of the additional right-of-use of the leased asset that now has to be capitalised on the balance sheet.

Lease Accounting for a Lessor

The accounting for a lessor is practically the same under PSAK 73 as it was under PSAK 30. The lessor still has to classify leases as either finance or operating, depending on whether substantially all of the risk and rewards incidental to ownership of the underlying asset have been transferred. For a finance lease, the lessor recognises a receivable at an amount equal to the net investment in the lease, which is the present value of the aggregate of lease payments receivable by the lessor and any unguaranteed residual value. If the contract is classified as an operating lease, the lessor continues to present the underlying assets.

Transitional Provisions

PSAK 73 is effective for reporting periods beginning on or after 1 January 2020. Earlier application is permitted, but only in conjunction with PSAK 72. This means that an entity is not allowed to apply PSAK 73 before applying PSAK 72.

Entities are not required to reassess existing lease contracts but can elect to apply the guidance regarding the definition of a lease only to contracts entered into (or changed) on or after the date of initial application ("grandfathering"). If an entity chooses this expedient, it shall be applied to all of its contracts. Acknowledging the potentially significant impact of the new lease standard on a lessee's financial statements, PSAK 73 does not require full retrospective application, but instead allows a simplified approach. Full retrospective application is optional.

6 Additional Regulatory Considerations for Mining Investment

Investment Law

Law No. 25/2007 (the “Investment Law”) is the most recent investment law, which introduces an integrated one-stop service in order to simplify business licencing. Under the Investment Law, the BKPM is given the power to coordinate the implementation of investment policy.

The obligations for Limited Liability companies that are set out in the Investment Law include:

- Prioritising the use of Indonesian citizen’s manpower;
- Creating a safe and healthy working environment;
- Implementing corporate social responsibility; and
- Environmental conservation.

Investors exploiting non-renewable natural resources must also allocate funds for site restoration that fulfil the standards of environmental feasibility. Sanctions for non-compliance with certain aspects of the Investment Law (including corporate social responsibility) involve the 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 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 repayments, sales of investments, and management and technical service fees.


Photo source: PT Aneka Tambang Tbk

Forestry Law

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

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

Under GR 24/2010, as amended by GR 61/2012 and GR 105/2015, and Ministry of Forestry Regulation No. P.27/MENLHK/SETJEN/KUM.1/7/2018 (as amended by Ministry of Forestry Regulation No. P.7/MENLHK/SETJEN/KUM.1/2/2019), the utilisation of Forest Areas for non-forestry activities is permitted in both production forest areas and protected forest areas, subject to a "borrow–and-use" permit from the Ministry of Forestry. A "borrow and use" permit is non-transferrable and it cannot be used as a guarantee to other party.

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

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

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

Energy Law

Given the importance of energy resources, it is necessary for the Central Government to create an energy management plan to ensure that the national energy needs will be fulfilled in the long run. Law No. 30/2007 ("Energy Law") established the National Energy Council as a government body for designing and formulating national energy policy, for determining the national energy general plan, for determining the steps that are to be taken in an energy crisis and in emergency conditions, and for monitoring the implementation of policy in energy fields with cross-sectoral characteristics.

Environmental Laws and Regulations

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

The environmental law was recently updated by Law No. 32/2009 ("Environmental Law"). It requires the Central Government and regional governments to prepare a strategic environmental analysis and to 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 that are exploiting natural resources and that have an environmental or social impact to create and maintain an environmental impact asessment (*Analisis Mengenai Dampak Lingkungan* or "AMDAL"), which consists of an environmental impact assessment, an environmental management plan, and an environmental monitoring plan. Environmental management effort documents, Environment Management Effort (*Upaya Pengelolaan Lingkungan* or "UKL") and Environment Monitoring Effort (*Upaya Pemantauan Lingkungan* or "UPL"), generally need to be prepared in situations where the AMDAL document is not required.

The sanctions that are applied for breaches of the Environmental Law range from three to fifteen years of imprisonment and/or a fine, from IDR 100 million to IDR 750 million. The Environmental Law also stipulates the 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 that is necessary for implementing the new processes and technologies and the increased production costs.

New Listing Rules for Mining Companies

Pursuant to the issuing of IDX Decision No. KEP00100/BEI/10-2014, the listing rules for mining (mineral and coal) companies have been simplified. The new rules cover mining companies (and prospective mining companies) that have a mining business licence, or holding companies which (or which will) consolidate 50% of a mining subsidiary's income, where the mine:

- Has commenced sales, or
- Is already in the production phase but has not commenced sales, or
- Is not yet in production.

To qualify for listing, the prospective issuers must fulfil the following conditions (among others):

- The net tangible assets and deferred exploration costs must be at least IDR 100 billion, for listing on the Main Board and IDR 5 billion for listing on the Development Board;
- One or more of the company's directors must have technical expertise and at least five years' work experience in the mining sector, within the past seven years;
- The issuer must maintain proven and probable reserves that have been certified by a competent authority (in some other jurisdictions this is referred to as either a "Competent Person's report" or a "Qualified Person's report");
- Have a clean and clear certificate; and
- Have undertaken a feasibility study within three years of the date when the listing request is submitted.

Other requirements are detailed in the IDX Regulations. Mineral and coal companies whose shares were listed on the IDX before the issuance of this Decision should have fulfilled the requirements regarding directors' qualifications by 1 July 2015.

In respect of the requirement to have a clean and clear certificate, as explained above, please note that this clear and clear certificate is actually no longer required, subsequent to the enactment of PerMen 11/2018, in February 2018. However, at the time of writing, IDX Decision No. KEP00100/BEI/10-2014, as explained above, has not yet been amended to conform with PerMen 11/2018.

BI Regulation on the Obligation to Use Rupiah

BI Regulation No. 17/3/PBI/2015, on the Obligation to Use Rupiah for Transactions in Indonesia, has been effective since 1 July 2015, with the stated aim of stabilising the Rupiah's exchange rate.

The MoEMR issued a media release on 1 July 2015 (No. 40/SJI/2015) to outline the agreement between the MoEMR and BI concerning this regulation, as it pertains to the oil & gas, mining, and power industries, following various discussions with the private sector. The media release refers to three categories of transactions, as follows:

- Category 1: transactions that are able to be made directly in Rupiah, for example leases of offices/houses/vehicles, salary payments to Indonesian employees, and payments for various support services, where a transition period of up to six months will be given;
- Category 2: transactions where time is required to implement the provisions of the regulation, for example fuel purchases, import transactions through local agents, long-term contracts, and multi-currency contracts, where transactions for fixed-term contracts shall continue to be in a foreign currency, with the possibility of future amendment;
- Category 3: transactions for which it is fundamentally difficult to fulfil the provisions of the regulation, for example salary payments to expatriates, drilling services, and the lease of ships, where businesses may continue to use foreign currencies.

Investors should continue to monitor this issue, as further procedures for the implementation of the BI regulation are expected to be issued by the MoEMR and BI in due course.

Photo source: PT Bukit Asam Tbk

BI Regulation on the Reporting of Foreign Exchange Trading

BI Regulation No. 16/22/PBI/2014, regarding the Reporting of Foreign Exchange Trading and the Reporting of the Application of Prudential Principles in Foreign Loan Administration for Non-Bank Corporations, includes a requirement for companies to report their foreign currency loans to BI on a quarterly basis. Furthermore, the fourth quarter report needs to be verified by an independent public accountant. Failure to comply with the reporting obligation will trigger administrative sanctions of IDR 10 million.

In January 2019, BI Regulation No. 21/2/PBI/2019 regarding the Reporting of Foreign Exchange Trading was issued to revoke certain provisions in BI Regulation No. 16/22/PBI/2014. The Concluding Provision of BI Regulation No. 21/2/PBI/2019 stipulates that, from the effective date of BI Regulation No. 21/2/PBI/2019 (i.e. 1 March 2019), the provisions in BI Regulation No. 16/22/PBI/2014 that regulate the the reporting of foreign exchange trading will be revoked. All laws and regulations that constitute the implementing regulations of BI Regulation No. 16/22/PBI/2014 shall remain effective insofar as they are not in conflict with BI Regulation No. 21/2/PBI/2019.

The prudential principles under BI Regulation No. 16/21/PBI/2014 as amended by BI Regulation No. 18/4/PBI/2016 and Circular Letter No. 16/24/DKEM as amended by Circular Letter No. 17/18/DKEM/2015 are as follows:

a. Minimum hedging ratio is 25% of the negative difference between foreign exchange assets and foreign exchange liabilities that will be due within three months and that will be due between three and six months from the end of the reporting quarter. Only companies that have "negative difference" of more than US$ 100,000 are required to fulfill the minimum hedging ratio;
b. Minimum liquidity ratio is 70%, calculated by comparing the company's foreign exchange assets and foreign exchange liabilities that will be due within three months from the end of the reporting quarter; and
c. Minimum credit rating of "BB-" or equivalent from credit ratings agencies recognised by BI.

Requirement to Deposit DHE with an Indonesian FX Bank

On 10 January 2019, the Government issued GR 1/2019 regarding "Export Proceeds from the Exploitation, Management and/or Processing Activities of Natural Resources".

GR 1/2019 provides that:

- Foreign exchange-denominated proceeds derived from the exploitation, management and/or processing of natural resources (DHE) are to be deposited into the Indonesian financial system. DHE cover those arising from the export of mining, plantation, forestry and fishery products (although the MoF will issue further regulations on exactly which exports are subject to GR 1/2019).
- The deposits are to be via a special account with an FX Bank and must be deposited by the end of the third month following the registration of the relevant PEB.
- Exporters can use DHE for the payments of customs and other export-related duties, loans, imports, profit/dividend distributions and other purposes as set out in the Indonesian Investment Law (e.g. for the transfer of capital, profits, and to pay most outgoings such as interest, purchase of materials, capital goods, investment, royalties, salaries, etc.).
- More controversially perhaps GR 1/2019 provides that, if transactions are made through an escrow account, the exporters must also open an escrow account at a FX Bank and, where applicable, transfer the existing offshore escrow arrangements within 90 days of the issuance of GR 1/2019.

Notably, there are no exceptions specified in GR 1/2019 including any to deal with risk management issues or existing financing arrangements.

Administration of GR 1/2019 rests with:

- The MoF with authority to monitor exports of the natural resources;
- BI with authority to monitor the deposit of the DHE into the FX Bank as well as utilisation pursuant to the requirements under GR 1/2019; and
- The Financial Services Authority (i.e. OJK) with authority to monitor escrow accounts maintained by FX Banks.

Sanctions for non-compliance include fines, a prohibition on exporting and/or revocation of the relevant business licence. The MoF will also issue further regulations on the imposition of the sanctions.

The GR 1/2019 requirements are not however completely new. BI Regulation No. 16/10/PBI/2014 (most recently amended by BI Regulation No. 17/23/PBI/2015) on the Receipt of Foreign Exchange Export Proceeds and the Withdrawal of Foreign Exchange and MoEMR Decree No. 1952K/84/MEM/2018 on the Use of Domestic Banks or Branches of Indonesian Banks Abroad for Sale of Mineral and Coal to Abroad have required that export proceeds in these areas be deposited through an Indonesian-licensed foreign exchange bank for some time. However, GR 1/2019 introduces much stricter requirements, over a broader range of exports, and with more sanctions for non-compliance.

Other Regulations Related to Mining Operations

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

Corporate Social Responsibility

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

Under the Law No. 40/2007 (“Corporation Law”), Article 74, PT companies that have a resources business must implement CSR, which must be budgeted for in the companies’ expenditure plans. The details of such responsibilities will be further stipulated under government regulations. At the time of writing, no government regulations have been issued.

Appendices

Minimum In-Country Processing and Refining Requirements for Metal Minerals Prior to Export

<table>
<tr><th rowspan="3">No</th><th colspan="2">Commodity</th><th colspan="4">Minimum Limit</th></tr>
<tr><th rowspan="2">Ore</th><th rowspan="2">Mineral</th><th colspan="2">Processing</th><th colspan="2">Refining</th></tr>
<tr><th>Products</th><th>Quality</th><th>Products</th><th>Quality</th></tr>
<tr><td rowspan="3">1.</td><td rowspan="2">Copper (fusion process)</td><td rowspan="2">Chalcopyrite
Digenite
Bornite
Cuprite
Covelitte</td><td rowspan="2">Copper Concentrates</td><td rowspan="2">≥15% Cu</td><td>Copper Cathode</td><td>Cu Metal ≥ 99.9% Cu</td></tr>
<tr><td>Copper Telluride</td><td>a. Cu Metal ≥ 99.9%;
b. Te Metal ≥ 99%;
c. TeO_2 ≥ 98%;
d. Te $(OH)_4$ ≥ 98%; and/or
e. Copper telluride alloy > 20% Te</td></tr>
<tr><td>Copper (leaching process)</td><td>Chalcopyrite
Digenite
Bornite
Cuprite
Covelitte</td><td>-</td><td>-</td><td>Metal</td><td>a. Cu Metal ≥ 99.9%;
b. Au Metal ≥ 99%;
c. Ag Metal ≥ 99%;
d. Pd Metal ≥ 99%;
e. Pt Metal ≥ 99%;
f. Se Metal ≥ 99%;
g. Te Metal ≥ 99%;
h. TeO_2 ≥ 98%;
i. $Te(OH)_4$ ≥ 98%; and/or
j. Rare metals and rare earth elements (refer to the requirement for rare-earth metal terms for tin).</td></tr>
<tr><td>2.</td><td>Nickel and/or cobalt (fusion process)
a. Saprolite
b. Limonite</td><td>Pentlandite
Garnierite
Serpentinite
Carolite</td><td>-</td><td>-</td><td>Nickel Matte, Metal
Alloys, Nickel Metal and oxide Metal</td><td>a. Ni Mate ≥ 70% Ni;
b. FeNi ≥ 8%Ni;
c. Nickel Pig Iron (NPI) 2% ≤ Ni < 4% with Fe ≥ 75%;
d. NPI ≥ 4% Ni;
e. Ni Metal ≥ 93%; and/or
f. NiO ≥ 65% Ni.</td></tr>
</table>

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (leaching process) Limonite				Metal, Metal Oxide, Metal Sulfide, mix hydroxide/sulfide precipitate, and hydroxide nickel carbonate	a. Nickel Metal, Ni ≥ 93%; b. Mix Hydroxide Precipitate (MHP), Ni ≥ 25%; c. Mix Sulfide Precipitate (MSP), Ni ≥ 45% d. Hydroxide Nickel Carbonate (HNC), Ni ≥ 40%; e. Nickel Sulfate and Nickel Sulfate Hydrate ($NiSO_4$ and $NiSO_4.xH_2O$), Ni ≥ 20%; f. Cobalt Sulfate and Cobalt Sulfate Hydrate ($CoSO_4$ and $CoSO_4.xH_2O$), Co ≥ 19%; g. Nickel Chloride and Nickel Chloride Hydrate ($NiCl_2$ and $NiCl_2.xH_2O$), Ni ≥ 20%; h. Cobalt Chloride and Cobalt Chloride Hydrate ($CoCl_2$ and $CoCl_2.xH_2O$), Co ≥ 19%; i. Nickel Carbonate ($NiCO_3$), Ni ≥ 40%; j. Cobalt Carbonate ($CoCO_3$), Co ≥ 40% Co; k. Nickel Oxide (NiO), Ni ≥ 65%; l. Cobalt Oxide (CoO), Co ≥ 65%; m. Nickel Hydroxide ($Ni(OH)_2$), Ni ≥ 50%; n. Cobalt Hydroxide ($Co(OH)_2$), Co ≥ 50%; o. Nickel Sulfide (NiS), Ni ≥ 40%; p. Cobalt Metal, Co ≥ 93%; q. Cobalt Sulfide (CoS), Co ≥ 40%; and/or r. Chromium Metal, Cr ≥ 99%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (reduction process)				Metal Alloys	a. Sponge FeNi 2% $\leq$ Ni < 4% with Fe $\geq$ 75%; b. Sponge FeNi $\geq$ 4% Ni; c. Luppen FeNi 2% $\leq$ Ni < 4% with Fe $\geq$ 75%; d. Luppen FeNi $\geq$ 4% Ni; e. Nugget FeNi 2% $\leq$ Ni $\leq$ 4% with Fe $\geq$ 75%; and/or f. Nugget FeNi $\geq$ 4% Ni.
3.	Bauxite	Gibbsite Diaspora Boehmite	-	-	Metal Oxide/ Hydroxide and Metal	a. Smelter grade alumina $\geq$ 98% Al_2O_3; b. Chemical grade alumina $\geq$ 90% Al_2O_3; c. Alumina Hydrate $\geq$ 90% $Al(OH)_3$; d. Proppants: 1) $Al_2O_3 \geq$ 72% (Granulated); 2) Able to rupture at a pressure of 7.500psi, the size of the fraction: -20+40 mesh $\leq$ 5.2%; -30+50 mesh $\leq$ 2.5%; or -40+70 mesh $\leq$ 2.0%. 3) Apparent Specific Gravity (ASG) 3.27. and/or e. Al Metal $\geq$ 99%
4.	Iron	Hematite Magnetite	Iron concentrates *)	$\geq$ 62% Fe and $\leq$ 1% TiO_2	Sponge, Metal, and Metal alloys	a. Sponge iron $\geq$ 72% Fe; b. Sponge ferro alloy $\geq$ 72% Fe; c. Pig iron $\geq$ 75% Fe; and/or d. Ferro alloy $\geq$ 75% Fe
		Goethitee Hematite Magnitite (Laterite iron)	Laterite iron concentrates **)	> 50% Fe and (Al_2O_3 + SiO_2) > 10%		
		Lamela magnetite-ilmenite (iron sand)	Iron sand concentrates ***)	$\geq$ 56% Fe; and 1% < $TiO_2 \leq$ 25%	Metal	a. Sponge iron > 72% Fe; and or b. Pig iron > 75% Fe.
			Pellet iron sand concentrates ****)	$\geq$ 54% Fe; and 1% < $TiO_2 \leq$ 25%		
			Ilmenite concentrates *****)	$\geq$ 45% TiO_2	Metal oxide, Metal chloride, and Metal alloys	a. Synthetic $TiO_2 \geq$ 85%; b. $TiCl_4 \geq$ 87%; and or c. Titanium alloy $\geq$ 65% Ti.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
5.	Tin	Cassiterite	-	-	Metal	Metal Sn ≥ 99.90%
			Zircon concentrates	Refer to the requirements for zirconium and zircon.		Refer to the requirements for zirconium and zircon.
			Ilmenite Concentrate	TiO_2 ≥ 45%	Metal oxide, Metal chloride, and Metal alloys	a. Synthetic TiO_2 ≥ 85%; b. $TiCl_4$ ≥ 87%; and or c. Titanium alloy ≥ 65% Ti.
			Rutile concentrates	TiO_2 ≥ 90%	Metal chloride and Metal alloys	a. $TiCl_4$ ≥ 98%; and/or b. Titanium alloy ≥ 65% Ti.
			Monazite and xenotime concentrates	-	Metal Oxide, Metal hydroxide, and Rare Earth Metal	a. Rare earth metal oxide (REO) ≥ 99%; b. Rare earth metal hydroxide (REOH) ≥ 99%; and/or c. Rare earth metal ≥ 99%.
6.	Manganese	Pyrolusite Psilomelane Braunite Manganite	Manganese concentrates	≥ 49% Mn	Metal, Metal alloys and Manganese Chemical	a. Ferro Manganese (FeMn), Mn ≥ 60% b. Silica Manganese (SiMn), Mn ≥ 60% c. Manganese Monoxide (MnO), Mn ≥ 42.0% MnO_2 ≤ 4%; d. Manganese Sulfate ($MnSO_4$) ≥ 90%; e. Manganese Chloride ($MnCl_2$) ≥ 90% f. Manganese Carbonate Synthetic ($MnCO_3$) ≥ 90%; g. Potassium Permanganate ($KMnO_4$) ≥ 90%; h. Manganese Oxide (Mn_3O_4) ≥ 90%; i. Manganese Dioxide Synthetic (MnO_2) ≥ 98%; j. Manganese Sponge (Direct Reduced Manganese) Mn ≥ 49%, MnO_2 ≤ 4%; and/or k. Electrolytic Manganese Dioxide MnO_2 ≥ 90% and K < 250 ppm

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
7.	Lead and Zinc	Galena Sphalerite Smithsonite Hemimorphite (calamine)	Zinc concentrates	≥ 51% Zn	Metal and Metal oxide/hydroxide	a. Zinc Bullion ≥ 90% Zn; b. ZnO ≥ 98%; c. ZnO_2 ≥ 98%; and/or d. Zn $(OH)_2$ ≥ 98%.
					Gold Metal and/or silver	a. Au Metal ≥ 99%; and/or b. Ag Metal ≥ 99%.
			Lead concentrates	≥ 56% Pb	Metal and Metal oxide/hydroxide	a. Lead Bullion > 90% Pb; b. PbO ≥ 98%; c. $Pb(OH)_2$ ≥ 98%; and/or d. PbO_2 ≥ 98%;
					Gold Metal and/or silver	a. Au Metal ≥ 99%; and/or b. Au Metal ≥ 99%.
8.	Gold	a. Native b. Associated minerals	-	-	Gold Metal	Au Metal ≥ 99%
9.	Silver	a. Native b. Associated minerals	-	-	Silver Metal	Ag Metal ≥ 99%
10.	Chromium	Chromite	Chromite concentrates	Cr_2O_3 ≥ 40% and Fe ≥ 13%	Metal, alloys, and chemical chromium compounds	a. $Cr_2(Co_3)_3$, Cr ≥ 16% b. $Cr_2(So_4)_3$, Cr ≥ 14% c. $Cr_2(So_3)_3$, Cr ≥ 28% d. $CrPo_4$, Cr ≥ 20% e. $Cr(No_3)_3$ and $(Cr(No_3)_3.xH_20)$, Cr ≥ 12% f. $Cr(No_2)_3$, Cr ≥ 25% g. $Cr(OH)_3$, Cr ≥ 47% h. $Cr(ClO_3)_2$, Cr ≥ 16% i. $Cr(Mn0_4)$, Cr ≥ 12% j. Cr Metal ≥ 99%; and/or k. Chromium alloys ≥ 60% Cr

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
11.	Zirconium		-	-	Zircon chemical, zircon sponge, zirconia, zircon metal, and hafnium	a. Zirconium Oxychloride (ZOC) $ZrOCl_2.8H_2O \geq$ 90%; b. Zirconium sulfate (ZOS) $Zr(SO_4)_2.4H_2O \geq 90\%$; c. Zirconium Basic Sulfate (ZBS) $Zr_5O_8(SO_4)_2.xH_2O)$ $\geq 90\%$; d. Zirconium Basic Carbonate (ZBC) $ZrOCO_3.xH_2O) \geq 90\%$; e. Ammonium Zirconium Carbonate (AZC) $(NH_4)_3ZrOH(CO_3)_3.\ 2H_2O$ $\geq 90\%$; f. Zirconium Acetate (ZAC) $H_2ZrO_2(C_2H_3O_2)_2 \geq 90\%$; g. Kalium Hexafluoro Zirconate (KFZ) $K_2ZrF_6 \geq$ 90%; h. Zirconium Sponge ≥ 85%; i. Zirconia $(ZrO_2+HfO_2) \geq$ 99%; j. Metal Zirconium ≥ 95% Zr; and/or k. Metal Hafnium ≥ 95% Hf.
			Ilmenite	$TiO_2 \geq 45\%$	Metal oxide, Metal chloride and Metal alloy	a. TiO_2 synthetic ≥ 85%; b. $TiCl_4 \geq 87\%$; and or c. Titanium metals alloy ≥ 65% Ti.
			Rutile	$TiO_2 \geq 90\%$	Metal chloride and Metal alloy	a. $TiCl_4 \geq 98\%$; and or b. Titanium metals alloy ≥ 65% Ti.
12	Antimony	Stibnite	-	-	Antimony Metal	a. SB ≥ 99%; and/or b. $Sb_2O_5 \geq 95\%$.

Remarks:

*) Referred to as iron concentrate shall be iron concentrate containing hematite/magnetite mineral with total content of iron Fe ≥ 62% and content of titanium oxide compound $TiO_2 \leq 1\%$.

**) Referred to as laterite iron concentrate shall be iron concentrate containing gutit/hematite/magnetite mineral with total content of iron Fe ≥ 50% and total content of alumina (Al_2O_3) and silica $(SiO_2) \geq 10\%$.

***) Referred to as iron sand concentrate shall be iron concentrate containing lamella magnetite-ilmenite mineral with total content of iron Fe ≥ 56% and content of titanium oxide compound $1\% < TiO_2 \leq 25\%$.

****) Referred to as iron sand concentrate pellet shall be iron concentrate in the form of pellet containing lamella magnetite-ilmenite mineral with total content of iron Fe ≥ 54% and content of titanium oxide compound $1\% < TiO_2 \leq 25\%$.

*****) Referred to as ilmenite concentrate shall be iron concentrate containing lamella magnetite-ilmenite mineral with content of titanium oxide compound $TiO_2 \geq 45\%$.

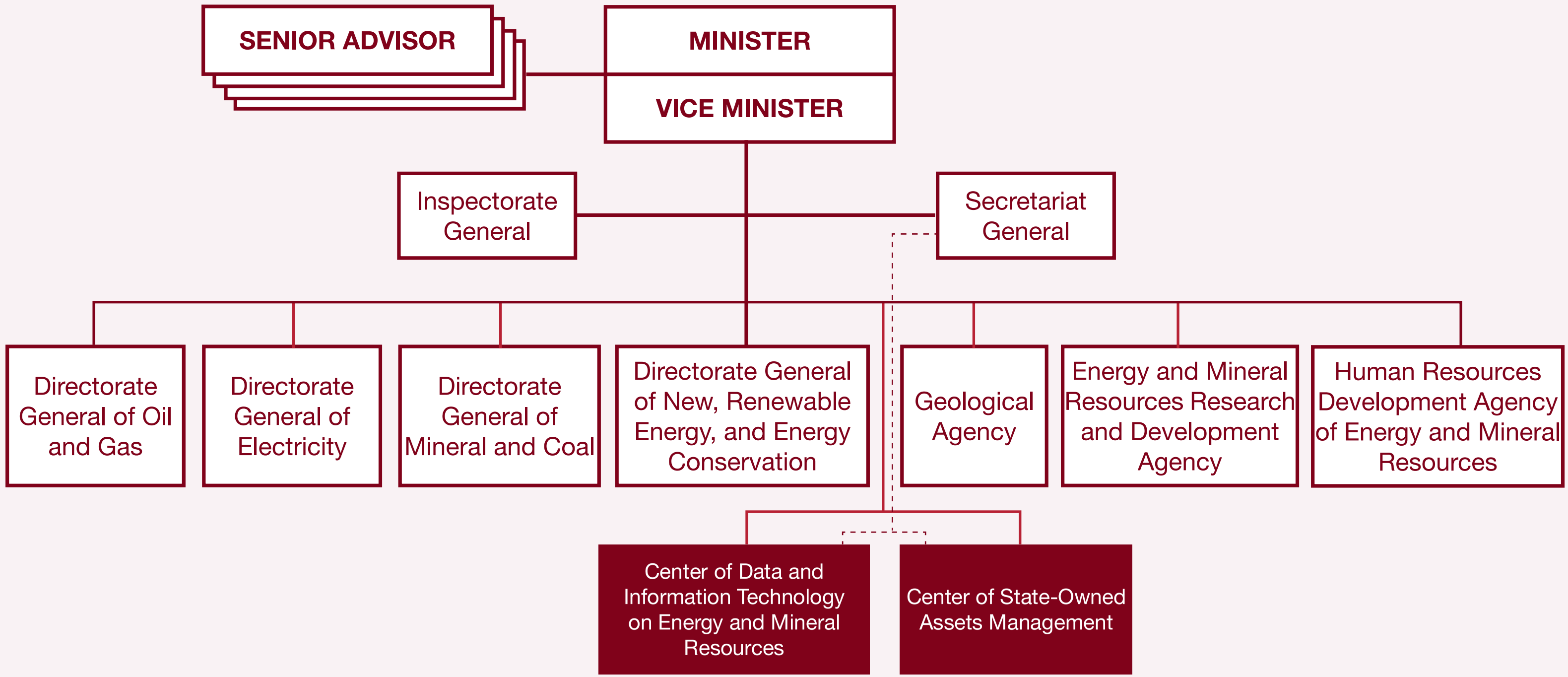
Regional Taxes

This table represents a selection of the various regional taxes that are 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 the sales value and a weight factor (size, fuel, type, etc.). A government table will be published on an annual basis to enable this calculation.
			2% - 10% for the second vehicle owned and above	
			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 vehicles	
			20% on the first title transfer	
			1% on the second title transfer and above	
			Heavy equipment	
			0.75% on the first title transfer	
			0.075% on the second or subsequent title transfer	
3	Tax on motor vehicle fuel	10%	For public vehicles: at least 50% lower than the tax on non-public vehicle fuel (depending on each region)	Sales price of fuel (gasoline, diesel fuel, and gas fuel)

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
4	Tax on the collection and utilisation of surface water	10%	Set by region	Purchase value of water (determined by applying a number of factors).
B. Regency and Municipal Taxes				
5	Catering	10%	10%	Purchase value
6	Tax on street lighting	10%	3% forutilisation by industry	Sales on electricity
			1.5% for personal use	
7	Tax on non-metal minerals and rocks (formerly the C-Category mined substance collection)	25%	Set by region	
8	Tax on groundwater	20%	Set by region	Purchase value
9	Duty on the acquisition of land and buildings rights	5%	Set by region	Land and buildings sale value

Ministry of Energy and Mineral Resources



1. Senior Advisor to the Minister for Strategic Planning
2. Senior Advisor to the Minister for Investment and Infrastructure Development
3. Senior Advisor to the Minister for Natural Resources Economic
4. Senior Advisor to the Minister for Environment and Spatial Planning

Source: MoEMR, https://www.esdm.go.id/en/profile/organizational-structure

IMA (the Indonesian Mining Association)

IMA was founded on 29 May 1975, as a non-governmental, non-political, and non-profit organisation that was established in accordance with the laws of the Republic of Indonesia. The headquarters and the registered office of the association are located in Jakarta.

The association serves as a link between the Government and the mining industry, organising lectures, seminars, and training activities for members, as well as organising periodic conferences on mining in Indonesia, publishing proceedings and mining information, and representing the Indonesian mining industry at national and international meetings. IMA is a founding member of the ASEAN Federation of Mining Associations, and it currently provides the secretariat for the Federation.

IMA's Purpose

The aims and objectives of the association are to support the government and its policies in order to encourage the development of the mining industry and to utilise non-confidential and non-proprietary information to promote the exploration, mining, mineral beneficiation and metallurgical aspects in Indonesia through:

1. Studying problems relating to the above aspects of the mining industry at the national level and finding possible solutions to these problems.
2. Studying modern methods in the mining industry, which have been adopted in other countries, for their potential application in Indonesia.
3. Fostering a mutual respect between the members of the association, both private and governmental (it being understood that no decision or action of the association shall affect any contracts to which any of the members are party).
4. Advancing new ideas relating to the above aspects of the mining industry.
5. Fostering a spirit of scientific research among the members of the association.
6. Establishing contact and cooperating with similar professional organisations outside Indonesia.
7. Disseminating objective information and analysis concerning the above aspects of the mining industry.
8. Maintaining a high standard of professional conduct on the part of the Association's members.
9. Promoting the development of the infrastructure that is necessary to support the mining industry in Indonesia.
10. Familiarising the general public and educational institutions with current developments and problems in the mining industry.
11. Giving assistance to and encouraging potential university graduates to prepare for a career in the mining industry.

APBI-ICMA (the Indonesian Coal Mining Association)

ASOSIASI PERTAMBANGAN **BATUBARA** INDONESIA
INDONESIAN **COAL** MINING ASSOCIATION

APBI-ICMA was 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 organisation that embraces both upstream (E&E) and downstream (marketing and distribution, utilisation, and mining services) aspects of the coal industry in Indonesia.

The association aims to create an environment that allows its members to discuss common concerns and exchange ideas, and it works towards a common goal for the coal mining industry.

The APBI-ICMA also acts as a partner to relevant government Institutions and provides them with 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 and strengthen the economic health of the coal mining industry in order to deliver greater benefits to government, investors, communities, employees, customers, and the environment.

Summary of CCoW Generations

No	Item	First Generation	Second Generation	Third Generation	Remarks
1	**Dead rent – in US$ per hectare per annum unless stated otherwise**				
	a. General Survey	0.01 – 0.03	0.05 – 0.10	0.025 – 0.05	Second Generation's dead rent follows the prevailing dead rent 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%	Based on the coal sales price minus certain marketing/ selling expenses
3	**CIT**				
	a. Tax Rates	35% for the first ten years of the Operating Period; 45% thereafter	25%*)	Incremental CIT rate to 30% (or a lower rate that is subject to a GR)	-
	b. Depreciation rates				
	Non-building assets:	-	-	-	-
	i. Straight-line	12.5%	5% - 25%*)	10% - 50% (for tangible assets that are located in the contract area); otherwise 5% - 25%	-
	ii. Declining balance	Not Applicable	10% - 50%*)	20% - 100% (for tangible assets that are located in the contract area); otherwise 10% - 50%	
	Building assets:	-	-	-	-
	i. Straight-line	12.5%	5% - 10%*)	10% - 20% (for tangible assets that are located in the contract area); otherwise 5% - 10%	-
	ii. Declining balance	Not Applicable	Not Applicable*)	Not Applicable	-

No	Item	First Generation	Second Generation	Third Generation	Remarks
	c. Amortisation rates (%)				
	a. Straight-line	12.5%	10% - 25%*)	10% -50%	Under most CCoWs, the costs incurred prior to commercial operation may be deferred and amortized
	b. Declining balance	Not applicable	10% - 50%*)	20% - 100%	
	d. Accelerated Depreciation				
	Non-building assets:	25%	Not Applicable*)	Not Applicable	Accelerated depreciation can be claimed only within 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. Damages/ losses that are not compensated for under insurance	✓	✓	✓	-
	v. Payments of royalties or other payments in respect of patents, designs, 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.	Dead rent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	-
	ix.	Sales tax	✓	Silent	Silent	-
	x.	Uncredited VAT	Silent	✓	✓	-
	xi.	Expenses for treatments, washing, processing, repairs and maintenance, handling, storage, loading, transportation, and shipping	✓	✓	✓	-
	xii.	Expenses for commission and discounts	✓	✓	✓	-
	xiii.	Expenses for environment/ reclamation	Silent	✓	✓	-
	xiv.	Expenses incurred prior to the establishment of the company by a shareholder	Silent	x	✓	For the Third Generation, these are deductible, provided that the expenditures have been audited by an 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 Second Generation, these are not deductible unless the holder obtains remote area approval from the DGT
	iii.	Research expenses	✓	✓	✓	For the Second Generation, this 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, and marketing expenses	✓	✓	✓	-
	x.	Legal and auditing expenses	✓	✓	✓	-
	xi.	General overhead expenses	✓	✓	✓	-
	xii.	Exploration expenses	✓	✓	✓	-
	xiii.	Other relevant expenses	✓	✓	✓	-
	xiv.	Reserve for reclamation	Silent	✓	✓	For the Third Generation, this is subject to a deposit being placed in a State-Owned bank, audited by a public accountant, and approved by the DGT
	g. Interest deductibility					
	Maximum DER		1.5 to 1	4 to 1*) refer to PMK-169	Not Applicable	-
	Maximum DER for Investments <=US$ 200m		Not Applicable	Not Applicable	5 to 1	
	Maximum DER for Investments >US$ 200m		Not Applicable	Not Applicable	8 to 1	

No	Item	First Generation	Second Generation	Third Generation	Remarks
	h. Tax loss carried forward	Four years (losses before the fifth anniversary of the Operating Period can be utilised in any year)	Five years	Eight years	-
4	**WHT rates**				
	i. Dividends, interest and royalties	10%	15% for domestic taxpayers, 20% for foreign taxpayers	15% for domestic taxpayer, 20% for foreign taxpayer	For the Second and Third Generation, the reduced tax rate is available under a tax treaty; However, please note that the WHT rates under CCoWs may be irrelevant, based on PMK-39
	ii. Dividends (founder shareholders)	10%	Silent	7.5%	
	iii. Rental, technical fees, management fees and other service fees (domestic/ foreign)	10%	2% to 20%	15%/20% of deemed net income	
	iv. Employee income tax	Applicable*)	Applicable*)	Applicable*)	
5	**VAT rates**				
	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. Any VAT that is 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 holders, but this is deductible for CIT purposes
	iii. VAT on import	Not Applicable*)	10% paid to Custom Office*)	Could be exempted in accordance with the prevailing regulations	-
	iv. VAT on offshore services	Not Applicable	10% on a self-assessment basis*)	10% on self assessment basis	-

No	Item	First Generation	Second Generation	Third Generation	Remarks
6	**Sales Tax rates**	2 - 2.5% on domestic services that are provided to contractors; and 0 - 5% on goods (for one Contractor only)	Not Applicable	Not Applicable	The Sales Tax was repealed in 1984, when VAT was introduced; A list of services (and goods) is provided in PMK-194
7	**Import of capital goods:** **a. Import duty** **b. Article 22 Income Tax**	Exempted	a. Exempted/ reduced rates up to the tenth anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	a. Exempted/ reduced rates up to the tenth anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	Exemption from import duty is subject to either CCoW or BKPM Master List approval
8	**Other taxes and levies**				
	a. Regional taxes (e.g. motor vehicles and street lighting levies)	Regional Development Tax (IPEDA): maximum of US$ 100,000 a year	Applicable *)	Follows the prevailing Regional Tax Law at a rate not exceeding the prevailing rate at the signing date	-
	b. Land and building tax	Silent	0.5% x 40% of the sale value of PBB objects*) (refer to PER-47)	Pre-production period: equal to deadrent; Operating production period: deadrent plus 0.5% x 30% of gross revenue from the mining operations	-
9	**Stamp duty**	1/1000 of the total loan amount	IDR3,000/ IDR6,000*)	Silent	-

Note:
*) *follows the prevailing tax laws and regulations*

Photo source: PT Timah Tbk

About PwC

The firms of the PwC global network (www.pwc.com/id) provide industry-focused assurance, tax, legal, advisory, and consulting services for public and private companies. More than 223,000 people in 157 countries connect their thinking, experience and solutions to build trust and enhance value for clients and their stakeholders.

PwC is organised into lines of service, each staffed by highly qualified experienced professionals who are leaders in their fields, providing:

Assurance Services provide assurance over any system, process or controls and over any set of information to the highest PwC quality.

- Risk Assurance
- Financial Audit
- Internal Audit
- Capital Market Services
- Accounting Advisory Services

Tax Services optimise tax efficiency and contribute to overall corporate strategy through the formulation of effective tax strategies and innovative tax planning. Some of our value-driven tax services include:

- Corporate Tax
- International Tax
- Transfer Pricing (“TP”)
- Mergers and Acquisitions (“M&A”)
- VAT
- Tax Disputes
- International Assignments
- Customs
- Investment and Corporate Services

Advisory services implement an integrated suite of solutions covering deals and transaction support from deal strategy through to execution and post-deal services:

- Business Recovery Services
- Capital Projects & Infrastructure
- Corporate Finance
- Corporate Value Advisory
- Deal Strategy
- Delivering Deal Value
- Transaction Services

Consulting Services help organisations to work smarter and grow faster. We consult with our clients in order to build effective organisations, to innovate and grow, to reduce costs, to manage risk and regulations, and to leverage talent. Our aim is to support you in designing, managing, and executing lasting beneficial change:

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- Risk Consulting
- Technology Consulting
- Strategy Consulting

Legal Services provide responsive high value services through the provision of cutting edge legal solutions to support and facilitate legal developments in Indonesia. We work with you to understand your commercial objectives, express our advice in commercial terms and offer you seamless end-to-end service across the life cycle of your project. We structure and manage transactions from start to finish. While technical excellence is at the core of what we do, the breadth of our business and market insight differentiates us from traditional law firms to deliver clients an unparalleled, focused, integrated service. Our core value is providing excellent legal services, putting client needs and priorities first, continuously improving and doing business ethically.

- Mergers and Acquisitions
- Capital Markets and Securities
- Corporate Advisory
- Finance
- Litigation & Dispute Resolution

Appendix F

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

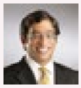
- The PwC network is the leading adviser to the mining industry, both globally and in Indonesia, working with more explorers, producers and related service providers than any other professional services firm. We have operated in Indonesia since 1971 and have over 2,200 professional staff, including 63 partners and technical advisers, specialised in providing assurance, advisory, tax and legal services to Indonesian and international companies.
- Our Energy, Utilities and Resources ("EU&R") practice in Indonesia comprises over 350 dedicated professionals across our lines of service. This body of professionals brings deep local industry knowledge and experience with international mining expertise and provides us with the largest group of industry specialists in the Indonesian professional services market. We also draw on the PwC global EU&R network which includes more than 13,500 people focused on serving energy, power and mining clients.
- 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.
- Our client service approach involves learning about your organisation's issues and seeking ways to add value to every task we perform. Detailed mining knowledge and experience ensures that we have the background and understanding of industry issues and can provide sharper, more sophisticated solutions that help clients accomplish their strategic objectives.

PwC Mining Contacts

Assurance

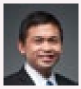

Sacha Winzenried
sacha.winzenried@id.pwc.com


Yusron Fauzan
yusron.fauzan@id.pwc.com


Gopinath Menon
gopinath.menon@id.pwc.com


Yanto Kamarudin
yanto.kamarudin@id.pwc.com

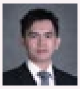

Daniel Kohar
daniel.kohar@id.pwc.com


Toto Harsono
toto.harsono@id.pwc.com


Firman Sababalat
firman.sababalat@id.pwc.com


Dodi Putra
putra.dodi@id.pwc.com


Heryanto Wong
heryanto.wong@id.pwc.com


Dedy Lesmana
dedy.lesmana@id.pwc.com


Tody Sasongko
tody.sasongko@id.pwc.com


Irwan Lau
irwan.lau@id.pwc.com

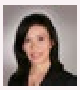
Tax


Tim Watson
tim.robert.watson@id.pwc.com


Antonius Sanyojaya
antonius.sanyojaya@id.pwc.com


Suyanti Halim
suyanti.halim@id.pwc.com


Turino Suyatman
turino.suyatman@id.pwc.com


Gadis Nurhidayah
gadis.nurhidayah@id.pwc.com


Tjen She Siung
tjen.she.siung@id.pwc.com


Alexander Lukito
alexander.lukito@id.pwc.com


Otto Sumaryoto
otto.sumaryoto@id.pwc.com


Raemon Utama
raemon.utama@id.pwc.com

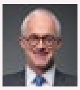
Advisory


Mirza Diran
mirza.diran@id.pwc.com


Joshua Wahyudi
joshua.r.wahyudi@id.pwc.com


Michael Goenawan
michael.goenawan@id.pwc.com


Agung Wiryawan
agung.wiryawan@id.pwc.com

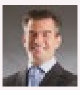

Julian Smith
smith.julian@id.pwc.com


Hafidsyah Mochtar
hafidsyah.mochtar@id.pwc.com

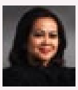

Ripa Yustisiadi
ripa.yustisiadi@id.pwc.com

Consulting


Lenita Tobing
lenita.tobing@id.pwc.com


Paul van der Aa
paul.vanderaa@id.pwc.com

Legal


Melli Darsa
melli.darsa@id.pwc.com


Indra Allen
indra.allen@id.pwc.com

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Project Team

Sacha Winzenried - Project Leader
Dedy Lesmana - Project Manager
Adi Pratikto
Suyanti Halim
Raemon Utama
Asshary Arbaa
Narindra Krisnamukti
Handi Sutanto
Fitri Budiman
Laksmana Hanif
Kertawira Dhany
Nabila Nadia

PwC Indonesia (www.pwc.com/id)
Telp: +62 21 5212901
Fax: +62 21 5290 5555/5290 5050

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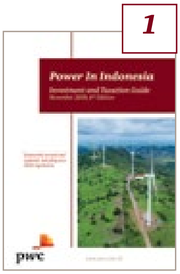

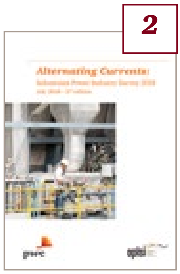

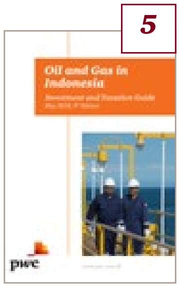

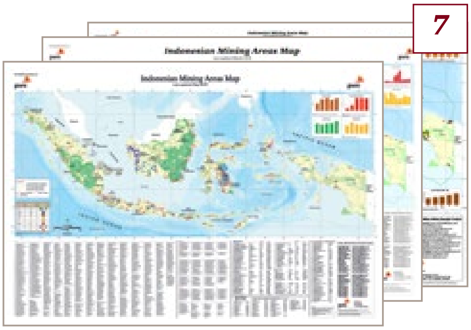

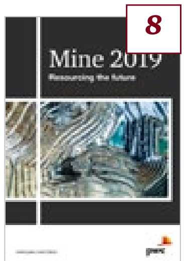

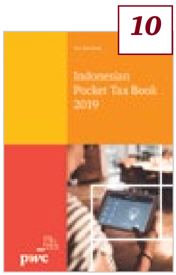

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