Investment and Taxation Guide
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Mining in Indonesia

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Contents

Preface

It is now six years since the 2009 Law on Mineral and Coal Mining No.4 of 2009 (the "Mining Law") was promulgated, with the aim of maximising the benefits of the coal and minerals sectors for Indonesia. Various key implementing regulations, including related amendments, have been issued by the Government over the past five years to ensure that the ultimate goals of the Mining Law can be realised.

However, over this period, stakeholders in the Indonesian mining industry have experienced various challenges in understanding and implementing the Mining Law and associated regulations. This is the case for Contract of Work ("CoW") and Coal Contract of Work ("CCoW") holders as well as Mining Business License (*Izin Usaha Pertambangan,* or "IUP") and ex-Mining Rights (*Kuasa Pertambangan,* or "KP") holders. At the time of writing, there are still various issues outstanding, some of which are proving challenging to deal with. Apart from the protracted CoW/CCoW renegotiations, another challenge relates to implementation of the in-country processing/refining requirements, and in particular the requirement to build or contribute to construction of domestic processing/refining facilities (with the associated requirements to obtain Registered Exporter status, deposit a Seriousness Guarantee, and pay an export levy) and divestment requirements for foreign shareholders.

Despite there being a requirement to renegotiate CoW/CCoW terms within one year of the effective date of the Mining Law, based on publicly available information the Government appears to have only signed one renegotiated CoW for a major mining operation. The negotiations between the Government and contractors are still ongoing after six years, and many of them have only reached the stage of finalising Memoranda of Understanding ("MoU").

There are some key fundamental disagreements between the negotiating parties, primarily surrounding the *lex specialis* status of the Contracts, and there seems to be no easy solution to this deadlock in sight. Some of the key issues still being debated are changes to the applicable fiscal regime (including royalty rates); in-country processing requirements; reductions in the size of the Contract area; and new foreign divestment requirements. An urgent solution to the deadlock is paramount, as CoW/CCoW companies still produce the majority of Indonesian coal and minerals, and some significant projects have been put on hold due to the renegotiation process, as investors become concerned with the uncertainty surrounding the ultimate outcome of the negotiations.

Since the ban on exports of unprocessed (or insufficiently processed) minerals came into force on 12 January 2014, the Government has issued various implementing

Photo source : PT Berau Coal

regulations (some in the form of amendments to previously issued regulations) to allow certain mining companies to continue to export certain types of concentrates provided that those mining companies pay export levies up to January 2017 and commit to building or contributing to the construction of processing/refining facilities in Indonesia.

There has been significant debate between the Government and the mining sector regarding the types of minerals which could be exported as concentrates and the level to which other types of minerals need to be processed and refined before export. Further, questions continue to be raised by the industry regarding the economic feasibility of processing certain types of minerals, especially given current and forecast global and domestic demand and supply and price considerations, as well as the inadequate infrastructure in some areas of the country to support downstream processing facilities, and the quantum of the export levy and its impact on profitability.

In addition, CoW holders have also questioned the applicability of the regulations to them, given the *lex specialis* status of CoWs.

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

Whilst the Government continues to stimulate the development of in-country processing facilities by providing much lower export levies for mining companies who could confidently show their interest in developing their processing/refining facilities, the Government has also recently issued a tax regulation which appears to state that smelting businesses may only eligible for a tax incentive facility, rather than a tax holiday which is likely to be more appealing to companies engaged in the smelting business due to the sizable investment required.

These investor concerns have been compounded by the introduction of new divestment rules that require the early divestment of foreign interests whenever there is a change in the shareholders of a company holding an IUP; Government plans to increase royalty rates; and a downturn in commodity prices. As regards the divestment rules, the Government has attempted to ameliorate these issues by issuing a Government Regulation (*Peraturan Pemerintah,* or "GR") which extends the divestment period and provides different divestment thresholds for mining companies which undertake underground and open pit mining.

These factors mean that the Indonesian mining investment environment will continue to be difficult for companies in the short-term. Many investors view Indonesia as having significant geological potential in terms of its coal and mineral resources, but the regulatory uncertainties and, to a certain extent, royalty and fiscal regimes have become key deterrents to investment. This is particularly the case in this low commodity price environment, when mining companies are looking to improve operating efficiency and productivity, and limit capital spending. Indonesia may struggle to attract significant investment into its mining sector in the near term, given the perceived high-risk regulatory environment.

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

Companies intending to invest in Indonesia will need to carry out further research and obtain updated information on investment and operational requirements. They should also consider 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, should they need further advice. Please see Appendix G for the contact details of PwC Indonesia's mining specialists.

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Overview of the Indonesian Mining Industry

Photo source : PT Bukit Asam (Persero) Tbk

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

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

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 cement Indonesia's position as a global mining force. However, after more than six years, despite some movement towards increasing the level of investment, there is still some way to go before Indonesia can fully realise its potential for mining investment.

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

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

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

Under the Mining Law, the Central Government determines areas that can be mined and, except under certain exceptional circumstances, regional governments then have the authority to grant mining business licences within this pre-determined area. Under this approach, it is expected that the Central Government will have more control over the determination of areas open for mining, and that this will reduce the instances of overlapping mining concessions with areas reserved for other purposes, such as forestry. However the complexity of adjudicating the competing claims of different land users made this mapping exercise difficult and drawn out. It has only recently been completed.

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

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

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

- The requirement for the divestment of up to 51% of Operation Production IUP ("IUP-OP") interests held by foreign investors by the end of the 15th year of production – noting that the actual divestment requirement varies depending on whether the mining company carries out processing and/or refining activities, and whether the mine is open pit or underground
- Restrictions on the export of unprocessed mineral ore and the requirement for further in-country processing
- The requirement for each export to be verified by a surveyor appointed by the Government
- Imposing minimum DMOs for coal
- Imposing a benchmark pricing framework for coal and mineral exports to set a minimum price for transactions involving such commodities
- The draft regulation prohibiting the export of coal with a calorific value of less than 5,700 kCal and the associated processing/upgrading requirements for low rank coal, and
- The pricing for coal used in mine mouth power plants.

While the GRs issued to date provide further details regarding the implementation of the Mining Law, there is still a lack of clarity in relation to some of the more recent regulations issued, such as the divestment and in-country processing requirements. At present, there still appears to be some reluctance on the part of investors to make significant investment decisions due to these uncertainties.

Contribution to the Indonesian economy

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

In 2014, the mining industry contributed approximately 9% to the total Indonesian Gross Domestic Product (GDP). However, the industry represents a much larger share of the regional economies of many provinces, including Papua, Central Sulawesi, Bangka-Belitung, West Nusa Tenggara and East Kalimantan.

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

Coal and mineral production profile 2000 – 2014

Despite the coal price decline during 2012 and 2013, Indonesia recorded increases in coal production during those years. Demand was strong from coal-fired power plants around the world, and 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. The Government aims to limit coal production increases in 2014 and 2015 in order to allow the coal price to increase and secure coal reserves for future use by local power plants. The Government is currently targeting the development of 35,000 MW of new power generating capacity by 2020 which includes the development of mine mouth power plants.

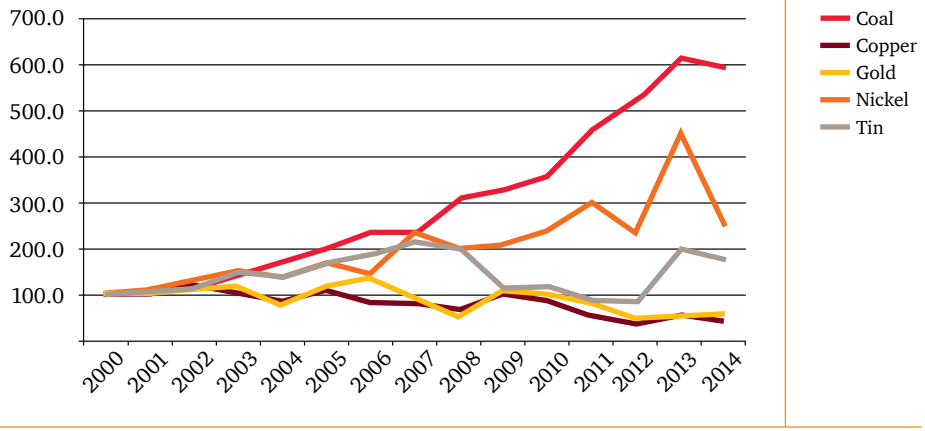
Further, there have been reports in 2015 of a plan to increase the royalty rate for coal IUP-OPs to closer to the 13.5% incurred by CCoW holders. However, the Indonesian Coal Mining Association had urged the Government to delay the royalty increase until the coal price exceeds US$80 per metric ton. If the royalty increase materialises at current coal price levels, the trend of decreasing production in 2014 is likely to continue in 2015, as marginal producers will find it difficult to generate adequate returns.

There were no significant changes in the production of gold, copper and coal during 2013 and 2014, whilst the production of tin declined slightly. Nickel production decreased significantly in 2014 after a peak in 2013, in anticipation of the ban on export of unprocessed mineral ore which came into effect in January 2014, and impacted nickel more than any other mineral type. It is expected that the production of tin, copper, and nickel may stagnate in 2015 and 2016 with the enforcement of the ban on exports of unprocessed minerals and the introduction of the export duty on mineral concentrates.

However, the expected commissioning of a number of smelter facilities in 2017 should help boost the production of tin, copper, and nickel from 2017 onward.

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

Coal and mineral production



Source: Coal is from Minister of Energy and Mineral Resources, whilst the minerals are from the US Geological Survey

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

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Mineral and Coal Mining Regulatory Framework

Photo source : PwC

The Mining Law

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

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

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

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

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

The Mining Law relies heavily on various implementing regulations. To date, six GRs have been issued in respect of:

- Mining Areas (GR 22)
- Mining Business Activities (GR 23, as amended by GR 24 in 2012, GR 1 in 2014 and further amended by GR 77 in 2014)
- Mineral and Coal Mining Direction and Supervision (GR 55), and
- Reclamation and Mine Closure (GR 78).

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

- Mining Services (PerMen 28, as amended by PerMen 24)
- DMO (PerMen 34)s
- Benchmark Price (PerMen 17)
- Mineral Processing Activities (PerMen 1 as amended by PerMen 8)
- Mine Reclamation & Closure (PerMen 7)
- IUP Tender Procedures (PerMen 28)
- Determination of mining areas (PerMen 37)
- Detailed Procedures for Granting Operation Production IUPs and IUPKs (PerMen 32)
- Procedures and Requirements for the Granting of Recommendations for Export of Processed and Refined Minerals (PerMen 11)
- Divestment (PerMen 27), and
- Mine Mouth Power Plant (PerMen 10).

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

- Royalty calculations
- Benchmark price (including Adjustment Costs and Benchmark Prices for certain types and uses)
- DMO Credits
- Affiliates
- Procedures and Requirements for Issuing Recommendations for Registered Coal Exporters, and
- Production costs for determining the coal price for mine mouth power plants.

Furthermore, the Minister of Finance ("MoF") has also issued regulations to implement the GRs and PerMen above, such as the export duty on mineral concentrates (PMK 75 as amended by PMK 128, PMK 6, and PMK153).

At the time of writing, the Government is reviewing some potential new regulations or amendments to the existing regulations on changes to royalty rates for coal IUP companies.

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

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

Mining Law
Law No.4/2009

Government Regulations

Mining Areas GR 22/2010 1 Feb 2010	**Mining Business Activities GR 23/2010** 1 Feb 2010 (as lastly amended by **GR 77 on 14 Oct 2014**)	**Mine Reclamation & Closure GR 78/2010** 20 Dec 2010	**Mineral and Coal Mining Direction and Supervision GR 55/2010** 5 July 2010	

MoEMR Regulations

Mining Services PerMen 28/2009 30 Sept 2009 (amended by PerMen 24/2012 on 8 Oct 2012)	**DMO PerMen 34/2009** 31 Dec 2009	**Benchmark Pricing PerMen 17/2010** 23 Sept 2010	**IUP Tender Procedures Permen 28/2013** 13 Sept 2013	**Detailed Procedures for Granting Operation Production IUPs IUPKs Permen 32/2013** 19 Nov 2013
Divestment PerMen 27/2013 13 Dec 2013	**Determination of Mining Areas PerMen 37/2013** 24 Dec 2013	**Mineral Processing PerMen 1/2014 (amended by PerMen 8 on 4 March 2015) revoked PerMen 7/2012 and its amendments 11 Jan 2014**	**Mine Reclamation and Closure PerMen 7/2014** 28 Feb 2014	**Procedures and Requirements for Export of Processed and Refined Mineral PerMen 11/2014** 17 April 2014
Mine Mouth Power Plant PerMen 10/2014				

DGoMC Circulars

Royalty Calculations 32.E/35/DJB/2009	**DMO Credits** 5055/30/DJB/2010	**Coal Benchmark Price :** No.515.K/32/DJB/2011 No.999.K/30/DJB/2011 & No.644.K/30/DJB/2013	**Affiliates** 376.K/30/DJB/2010	**Coal Benchmark Price for Certain Types and Uses** No.480.K/30/DJB/2014
Coal Benchmark Price for Mine-Mouth Power Plant : No.579.K/32/DJB/2015	**Procedures and Requirement for issuing Recommendation for Registered Coal Exporter :** No.714.K/30/DJB/2014			

Legal framework

Mining areas

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

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

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

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

- Having the spread of rock formations of the relevant mining product
- The mining product indicative data is available
- The mining product potential data is available, and
- There is mineral or coal reserve data.

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

It should be noted, however, that one key positive step taken by the Government is the establishment of a "clean and clear" list of mining licence areas which have been verified by the DGoMC and declared to be valid and free of competing claims. This list, which can be accessed at the DGoMC website, indicates that approximately only 55% of the nearly 11,000 existing mining licences had been given clean and clear status. There are indications that the MoEMR would revoke IUPs which fail to obtain the "clean and clear" status.

Mining licences

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

- "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.
- An IPR is a licence for conducting mining business in a WPR area of limited size and investment. IPRs are not available to foreign investors.

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

Ownership of mining licences

An IUP may be issued to the following entities:

- A business entity (established under the laws of Indonesia)
- A cooperative, or
- An Indonesian individual (including a partnership).

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

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

One mining licence per company

A key feature of the Mining Law is that a privately held company can only hold one licence (i.e. one IUP/IUPK), and only companies listed on the Indonesian stock exchange are entitled to hold more than one licence. The most recent regulations seem to have relaxed this requirement, and in certain circumstances

an IUP or IUPK can be transferred to an IUP/IUPK holding entity, although details of the procedures for such transfers still require further clarification.

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

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

Exploration and Production licences

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

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

IUP OP holder does not undertake hauling and selling activities, these activities could be performed by either:

- Another IUP OP holder which has processing and refining facilities, or
- Another entity which holds a special IUP for processing and refining.

Specific licences

Entities who do not themselves own their mines, and intend to engage solely in trading, processing and refining activities are still required to obtain a special IUP-OP. However, these licenses are distinguished by the specific activities which the holders intend to perform:

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

PerMen 32 formalises the extensive requirements for those wishing only to apply for these Transport and Sales and Processing and/or Refining IUP-OPs, and also imposes a number of new restrictions on these activities.

Licensing

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

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

	Transport and Sales IUP-OP	Processing and/or Refining IUP-OP
Rights and Obligations	• Any changes in source of supply, or capacity requires a license adjustment • Submit annual work program and budget • Submit monthly, quarterly and annual activity reports • Comply with any onshore value adding requirements e.g. in country processing • Must sell coal/minerals with reference to Government benchmark prices • Any changes in source of supply, or capacity requires a license adjustment • Submit annual work program and budget • Submit monthly, quarterly and annual activity reports • Comply with any onshore value adding requirements e.g. in-country processing • Must sell coal/minerals with reference to Government benchmark prices	
Restrictions: ***Changes in shareholding***	• Approval of the relevant issuing authority is required before any transfer of the shares in an IUP-OP holder occurs	• Approval of the relevant issuing authority is required before any share transfer in the IUP-OP holder occurs • However, it appears that no such approval is required for a share transfer when the company is holding only a Principle License

	Transport and Sales IUP-OP	Processing and/or Refining IUP-OP
Limitations: ***Sourcing of raw commodities***	• Raw commodities can be sourced from mines issued with a Clean and Clear certificate, or from another licensed trading company whose license was issued by a different issuing authority to the commodity buyer • Despite the relevant list of potential suppliers not including CoW/CCoW holders, the transitional provisions of PerMen 32 allow the Transport and Sales IUP-OP holder to cooperate with CoW/CCoW holders provided that it is in line with the provisions in PerMen 32 – noting that any existing agreement with a CoW/CCoW holder needs to be adjusted to be in line with the provisions in PerMen 32 by 18 November 2015.	• Raw commodities can be sourced from: IUP-OP mine holders, holders of other processing/refining licenses and trading companies • Despite the relevant list of potential suppliers not including CoW/CCoW holders, the transitional provision of PerMen 32 allows the Processing and/or Refining IUP-OP holder to cooperate with CoW/CCoW holders provided that it is in line with the provisions in PerMen 32 – noting any existing agreement with CoW/CCoW holder needs to be adjusted to be in line with the provisions in PerMen 32 by 18 November 2015

Temporary Licences

To deal with situations where the mining of coal/minerals is ancillary to some other main activity, the following temporary licences are available:

a. **Temporary Transporting and Trading Licence**: granted to a mining company to allow the sale of coal/minerals extracted during the exploration phase.

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

Both temporary licences have associated restrictions:

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

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

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

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

An IUP may be issued by either a regional government (Regent or Governor) or the central Government (represented by the Minister), depending on the location of the proposed mine and its associated infrastructure. For IUPs issued to PMA companies, a licence may only be granted by the central Government. However, it is not clear how to deal with IUPs already granted by a regional government to a PMA company prior to the enactment of this new rule. The IUPKs for converted CoWs/CCoWs should be granted by the central Government.

The issuance of Exploration IUPs is performed as follows:

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

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

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

IUP-OP		
Grantor	Project location	Environmental impact
Governor	Where the mining area, processing and refining and port facilities extend across more than one regency, but within one province.	Where the environmental impact extends across more than one regency, but within one province (based on the recommendation of the Mayor/Regent).
Mayor / Regent	Where the mining area, processing and refining and port facilities are within one city or regency.	Where the environmental impact is within one city or regency (based on the recommendation of the Minister and Governor).

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

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

Specific Licences (Transport and Sales IUP-OP and Processing and/or Refining IUP-OP)	
Grantor	Project location
Mayor/ Regent	Where the transport & sales and processing & refining activities are within one city or regency. *For Processing & Refining IUP-OPs*: • If the mining licence for the source mine supplying the raw commodities was itself issued by the Regent/Mayor.

Authority to issue an IUPK

An IUPK should be issued by the Central Government, regardless of the geographical coverage of the operations. State-owned companies are to be prioritised for the development of a WPN, but in the event that this option is not taken up, the IUPK can be offered to private investors via a tender process.

Licence terms and extensions

The mining licences are to be issued and extended as follows:

Exploration IUP and IUP-OP

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

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

Once the second extension of an IUP-OP expires, the relevant Mining Business License Area *(Wilayah Izin Usaha Pertambangan,* or WIUP) is to be returned to either the central or regional government. If the WIUP relates to metallic minerals and coal, it could be designated either as a WPN or WIUP/WIUPK *(Wilayah Izin Usaha Pertambangan/Wilayah Izin Usaha Pertambangan Khusus*) OP. The offer for WIUP would be via tender, whilst the offer for WIUPK would be via priority or tender (noting that the previous IUP OP holder would have the right to match the tender offer).

Specific Licence

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

IUPK

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

Licence areas

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

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

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

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

Tender requirements for new mining licences

New IUPs and IUPKs must be issued through a competitive tender process rather than direct appointment. A company may bid for an IUP, but for IUPK licences, State-owned companies have precedence. The tender process is intended to create transparency and fairness for all potential investors, and represents a significant change from the system adopted under the old mining law, where the relevant government authority could directly grant a KP upon application.

GR 23 (as amended by GR 24) and PerMen 28 provide the tender process and selection criteria for the WIUP and WIUPK.

Tender procedures

In brief, the tender procedures are as follow:

a. The tender must be announced at least three months prior to its commencement

b. The tender should be conducted for all WIUPs, whilst WIUPKS are to be offered by the central government to state-owned or district-owned enterprises. The tender process for WIUPKs will only be conducted when there is more than one state-owned or district-owned enterprise in contention, or no state-owned or district-owned enterprises accepting the offer. The WIUPK is then to be offered via a tender process to state-owned or district-owned enterprises, or to national enterprises where there are no other bidders

c. The tender process and establishment of a tender committee is to be managed by the Minister in the case of WIUPKs or by the Minister/Governor/Regent/Mayor in the case of WIUPs, depending upon the

location of the WIUP, the composition of the tender committee should satisfy the requirements regarding the minimum number and level of competence of committee members and the requirement to include representatives from certain government agencies

d. The type of business entity allowed to participate in the WIUP tender process is based on the size of WIUP acreage, as follows:

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

Note:

*) A national enterprises is defined as a completely Indonesian-owned company

**) For WIUP exceeding 5,000 hectares ("ha"), foreign investors wishing to take part in the tender process must use an Indonesian legal entity (i.e. a PT PMA)

e. The bidders are required to meet specified administrative, technical and financial conditions

f. There are two stages, pre-qualification and the final tender:

   i. During the pre-qualification stage, the evaluation of bidders is based on the administrative, technical and financial requirements

   ii. Every bidder who passes the pre-qualification stage then submits an offer price. The tender committee may then visit the location of the WIUP being offered. The evaluation of bidders is based on the weighted average results, with 40% from the pre-qualification result and 60% from the offer price. The offer price should not be less than the compensation price (i.e. the compensation for mining/geological information and investment for each WIUP and WIUPK). The compensation price will be determined based on other regulations

g. For three working days after the announcement of the winner, the other bidders may submit an objection if they believe the tender process was not in accordance with the regulations, or there was any misconduct. The minister, governor or regent/mayor (as the case may be) should provide a response within five working days.

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

Domestic Market Obligation ("DMO")

This policy is intended to guarantee the supply to meet increasing domestic demand, especially for coal.

The Central Government has the authority to control production and export of each mining product. The Regional Government is obliged to comply with the production and export controls imposed by the Central Government.

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

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

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

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

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

PerMen 34 introduces a “cap and trade” system, whereby mining companies that exceed their DMO obligations may sell/transfer DMO credits to a mining company that is unlikely to meet its DMO commitment. The mechanism for trading DMO

credits has been clarified in Circular 5055/30/DJB/2010 (dated 29 November 2010) which provides that DMO credits can be transferred between mining companies with the approval of the DGoMC, including credits held by traders on behalf of a mining company. The pricing mechanism for DMO credits is to be determined on commercial terms.

At the date of writing, the DMO is currently only applicable to coal. The Government has set a coal DMO of 92 million tonnes for 2015 (approximately 21.65% of forecast 2015 total production). Whilst there were 85 coal mining companies which were required to fulfil the DMO target of 95.55 million tonnes in 2014, it is rather unclear how the DMO for 2015 would be allocated to coal mining companies, as the official Ministerial decree has yet to be issued to date. Furthermore, as the Government has aimed to accelerate the completion of 35,000 MW electricity power plant, it is expected that DMO coal sales will continue to increase in the coming years.

Coal and Mineral Price Benchmarking

GR 23, as further elaborated by PerMen 17 provides the framework which authorises the Minister to set the mineral and coal sales reference prices.

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

The Benchmark price is set at the Free on Board (“FOB”) vessel point of sale. Accordingly, certain costs are accepted to adjust the Benchmark price if the delivery takes place at a point other than the FOB vessel (i.e. FOB barge or Cost Insurance Freight ("CIF")). The allowable adjustments would include the costs of barging, surveyors, insurance and transhipment. For metallic minerals, the types of costs allowable as adjustments to the Benchmark price include treatment costs and refinery costs.

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

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

The Benchmark price will be updated monthly and determined in accordance with market prices (based on a basket of recognised global and Indonesian coal indices in the case of coal). Various regulations were issued by DGoMC, setting out:

- The formula to be used to calculate the Benchmark price and the cost adjustments applicable for steam (thermal) and coking (metallurgical) coal.
- Guidance for the calculation of the Benchmark price for specific coal types (e.g. fine coal, reject coal, and coal with specific impurities) and specific uses (e.g. own use in the coal mining process, coal value adding processes performed at the mine mouth, and for Community Development ("CD") near the mine area).

The coal benchmark prices for specific types of coal would be based on the benchmark prices after taking into account some adjustment factors determined by the DGoMC, whilst the prices for coal for specific uses will generally be based on the production costs determined by the DGoMC, plus margin (i.e. 25% of the production costs).

Mine Mouth Power Plant

The MoEMR issued Regulation No.10/2014 ("PerMen 10") on mine mouth power plants' coal supply and price on 4 April 2014.

The basic coal price is to be the production cost (determined by DGoMC) plus 25% regardless of the calorific value of the coal (noting that previously only coal with a calorific value of less than 3,000 kcal was allowed). Once approved by the MoEMR, the basic coal price will be valid for the duration of the Power Purchase Agreement, with a price escalation considered each year based on the exchange rate, diesel prices, the consumer price index and wages.

The mine owners who supply mine-mouth power plants must have their concessions listed on the Clean-and-Clear List and must have the reserve allocation and coal quality required by the power plant. It also requires that the mine owner own a minimum of 10% of the shares of the power plant company. This is an entirely new requirement designed to help secure the supply of coal for mine-mouth projects.

The new regulations will apply to the tenders for the Sumsel 9 & 10 Power Plant Projects with the result that coal mines with a calorific value higher than 3,000 kcal can now participate in the projects.

New Listing Rules for Mining Companies

Pursuant to the issuance of Indonesia Stock Exchange ("IDX") Decision No. KEP-00100/BEI/10-2014, the listing rules for mining (mineral and coal) companies are being simplified. The new rules cover mining companies with a mining business license or holding companies which have already consolidated or intend to consolidate 50% of their mining subsidiary's income which:

- Have commenced sales, or
- Are already in the production phase but have not commenced sales, or
- Are not in production.

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

- Net tangible assets and deferred exploration costs must be at least RP 100 billion for listing on the Main Board and Rp 5 billion for 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 certified by a competent authority (in other countries this is referred to as either a "Competent Person report' or "Qualified Person report")
- Have a clean and clear certificate from DGOMC, and
- Have undertaken a feasibility study at the latest three years before the listing request is submitted.

Other requirements detailed in the IDX Regulations must also be adhered to.

Mineral and coal companies whose shares were already listed on the IDX before the issuance of this Decision must fulfil the requirement on directors' qualifications on or before 1 July 2015.

Divestment

The Mining Law provides that foreign shareholders must divest part of their interest in a mining concession company by the fifth year of production. Pursuant to the recent amendment of GR 23 by GR 77, the Government has reduced the divestment requirement from 51% to 30% (for IUP-OP and IUPK-OP holders which undertake underground mining) and extended the divestment period from the 10th year of production to the 15th year.

Under GR 77, the maximum shareholding which a foreign investor could acquire in a PMDN company which holds an IUP/IUPK would depend on the type of mining license the PMDN holds, and whether this PMDN company carries out processing and refining activities. The applicable maximum shareholding is set out as follows:

Mining License	Carry Out Processing and/or Refining Activities	Maximum Foreign Ownership (%)
Exploration IUP and Exploration IUPK	Not Applicable	75
IUP-OP and Production & Operation IUPK ("IUPK-OP")	No	49
IUP-OP and IUPK-OP	Yes	60
IUP-OP conducts underground mining	Not Applicable	70

Alternatively, a foreign investor may set up a 100% PMA company engaged in the mining business. However, it would have to divest some of its share in order to comply with the maximum foreign ownership above. The divestment rules below are also applicable to PMA mining companies set up prior to the issuance of the rules.

The divestment rule for mining companies under GR 77 is as follows:

Mining License	Carry Out Processing and/or Refining Activities	Year of Production - Divested up to					
		6th	7th	8th	9th	10th	15th
IUP-OP and IUPK-OP	No	20%	30%	37%	44%	51%	Not Required
IUP-OP and IUPK-OP	Yes	20%	Not Required	Not Required	Not Required	30%	40%
IUP-OP and IUPK-OP conducts underground mining	Not Applicable	20%	Not Required	Not Required	Not Required	25%	30%
IUP-OP and IUPK-OP conducts underground mining and open pit mining	Not Applicable	20%	Not Required	25%	Not Required	30%	Not Required

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

In addition to the above, GR 77 also stipulates the following:

1. Entities with a Processing and/or Refining IUP-OP are excluded from the divestment requirement above

2. In the case of the issuance of new share capital which 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 Indonesian participants mentioned above

3. Mining Companies whose shares are listed on the IDX are considered to be held 20% domestically at the maximum - noting that, as the status of listed companies as "local" has been subject to much debate in the past, this provision is likely to spur further discussion.

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

- 20% shares must be divested no later than 15 October 2015, and
- No later than five years from the issuance of GR 77, the CoW and CCoW holder must comply with the divestment requirement, i.e. by 15 October 2019.

While the divestment requirement does not *prima facie* apply to CoW/CCoW holders as this is being dealt with through individual CoW/CCoW re-negotiations, it is likely that the divestment requirement will become applicable once the contract term ends.

Additional requirements on conversion of capital investment status

GR 77 reiterates the requirements (previously covered under PerMen 27) for the conversion of a PMDN company to a PMA company or a change in the shareholders of a PMA company.

It provides detailed guidance on the divestment procedures including the timeline, divestment price, approval processes and the payment mechanism.

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

Divestment via IPO

The divestment via the Indonesian capital market will not be treated as satisfying these divestment requirements – (refer to the GR 77 provision on mining companies with shares listed on the IDX above).

Pricing of shares subject to divestment

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

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

The divestment price above would become:

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

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

Changes in capital investment

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

a. Investment and financing sources
b. Entity status from PMA to PMDN or from PMDN to PMA
c. The articles of association
d. The board of directors or the board of commissioners, and
e. Share ownership.

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

Transitional provisions

The transitional provisions include:

a. That an IUP-OP company that has already converted to PMA status with more than 49% foreign ownership is still subject to the divestment requirements of GR 77. Further, foreign investors cannot increase ownership until the divestment obligation is satisfied. This could represent a significant obstacle to mine development, as financing can arguably then only be sourced from Indonesian investors or financial institutions, and
b. That the divestment procedures and pricing of shares to be divested are applicable to CoW and CCoW companies. This will be an issue as most CoWs allow divestment based on the market value of the shares. Irrespective of this, the CoW and CCoW companies are likely to argue that the provisions in the CoW should override GR 77 and/or PerMen 27. The Government may, however, seek to include the new divestment pricing provisions in the CoW/CCoW re-negotiation process, or when the CoW/CCoW is extended as an IUPK-OP.

Mandatory in-country processing and export duty

Holders of IUPs and IUPKs are required to carry out in-country processing and refining to increase the value of the relevant minerals or coal.

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

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

The regulatory framework for mandatory in-country processing and exports of metallic minerals, non-metallic minerals and rocks are set out under the following regulations:

1. MoEMR Regulation No.1/2014 ("PerMen 1") as amended by MoEMR Regulation No. 8/2015 ("PerMen 8")
2. MoF Regulation No.6/2014 ("PMK 6/2014")
3. MoF Regulation No.135/PMK.011/2014 ("PMK 135/2014")
4. MoT Regulation No.04/M-DAG/PER/1/2014 ("PerMenDag 04") and
5. MoT Regulation No.39/M-DAG/PER/1/2014 ("PerMenDag 39").

The key provisions of the above regulations are as follow:

1. There should be an increase in added value for the following classes of minerals: metallic minerals; non-metallic minerals; and rocks.
2. The increase in added value shall be carried out through the following activities:
    - Processing and refining for metallic minerals
    - Processing for non-metallic minerals, or
    - Processing for rocks.
3. Processing is defined as activities to improve the quality of minerals or rocks without changing their physical and chemical properties, such as conversion into metallic mineral concentrates or polished rocks.
4. Refining is defined as activities to improve the quality of metallic minerals through an extraction process and by increasing the purity of the mineral to produce a product with different physical and chemical properties from the original, such as metals and alloys.
5. The minimum levels of domestic processing and refining for metallic minerals, non-metallic minerals and rocks prior to export are listed by product in Appendices I, II and III of PerMen 8 respectively (see Appendix A for the minimum processing and refining requirements applicable to metallic minerals prior to export). However this minimum processing and refining requirements would not be applicable for export of mineral for research and development purposes provided that recommendation from the DGoMC on behalf of MoEMR and export approval from Director General of Foreign Trade ("DGFT") are obtained.
6. PerMen 1 stipulates two types of minerals. Type 1 includes copper, iron ore, manganese, lead, zinc, ilmenite and titanium. Type 1 minerals can be exported as concentrates at much lower minimum processing levels than previously required under earlier proposed regulations. However, this relaxation is valid for three years from the date of PerMen 1 (i.e. until 11 January 2017) and is subject to a progressive export duty (as well as commitments to build or cooperate with others building refining facilities). Type 2 minerals consist of nickel, bauxite, tin, gold, silver and chromium. Type 2 minerals must be refined to a much higher minimum level than Type 1 minerals prior to export. There is no export duty for Type 2 minerals.
7. The progressive rates of export duty and minimum processing requirements for Type 1 minerals are as follow:

No.	Mineral	Export duty tariff					
		2014		2015		2016 - 2017	
		From 12 January to 31 July	From 1 August to 31 December	From 12 January to 30 June	From 1 July to 31 December	From 12 January to 30 June 2016	From 1 July 2016 to 12 Jan 2017
1	Copper concentrate (>=15% Cu)	25%	25%	35%	40%	50%	60%
2	Iron concentrate (>=62% Fe)	20%	20%	30%	40%	50%	60%
	Iron concentrate (>= 51% Fe and $Al_2O_3+SiO_2$>=10%)	20%	20%	30%	40%	50%	60%
	Iron ore pyrite (>=62% Fe)	NA	20%	30%	40%	50%	60%
3	Manganese concentrate (>= 49% Mn)	20%	20%	30%	40%	50%	60%
4	Lead concentrate (>=57% Pb)	20%	20%	30%	40%	50%	60%
5	Zinc concentrate (>= 52% Zn)	20%	20%	30%	40%	50%	60%
6	Ilmenite concentrate (>= 58% iron sand and 56% pellet)	20%	20%	30%	40%	50%	60%
	Titanium concentrate (>= 58% iron sand and >= 56% pellet)	20%	20%	30%	40%	50%	60%

8. A new set of export duty rates have also been issued for those companies that have decided to build smelters. These new rates are based on the progress of the smelter construction and are effective from 1 August 2014 until 12 January 2017.

   The Export Duty is set at:

   - 7.5% for companies where smelter construction is 7.5% complete or less, including the depositing of a "seriousness guarantee" of 5% of the project value
   - 5% for companies where smelter construction is between 7.5% and 30% complete
   - 0% for companies where smelter development is more than 30% complete.

Noting: the Seriousness Guarantee Funds would amount to 5% of the total investment (if new) or of the residual unrealized investment value (if the project is already ongoing). The funds could be released in annual increments in accordance with the progress of construction, but only if progress meets at least 60% of targets in every six-month period. Failure to meet this target for three consecutive periods could result in the Government appropriating the funds to the State Treasury Companies that do not build or do not plan to build a smelter will still be subject to Export Duty on a progressive scale starting at 20% and increasing to 60% by the second half of 2016. This new regulation is clearly intended to encourage smelter construction.

The stage of smelter construction will be included in the export recommendation issued by the MoEMR, which will become the basis for the imposition of Export Duty.

9. Administrative processes to be undertaken prior to export include obtaining a recommendation letter from the DGoMC on behalf of the MoEMR, which is reviewed on a six monthly basis, including a consideration of the progress on plans for refining the product. The recommendation is a prerequisite for obtaining an export permit from the Minister of Trade ("MoT").

10. Classification of the type of processed and/or refined mineral and rocks which could be exported by the Registered Exporter of Processed and Refining Mining Products (Eksportir Terdaftar) ("ET") as well as the types of ores and the insufficiently processed minerals and rock which cannot be exported are set out as follow:

Classification		Export Duty	Allowable Export Period	ET*)
1.	Processed and/or refined mineral and rocks which satisfy the minimum level of process in Indonesia. (See Appendix 1 of PerMenDag 04)	None	Not Limited	Yes
2.	Processed mineral with limited processing in Indonesia (see Appendix 2 of PerMenDag 04)	Applicable	Up to 12 January 2017 And require Export Approval from MoT **)	Yes

Classification		Export Duty	Allowable Export Period	ET*)
3.	Non Exportable mining products (see Appendix 3 of PerMenDag 04)	Not Applicable	Not Applicable	N/A

Note:
*) ET is valid for 3 year (recommendation from DGoMC on behalf of MoEMR is required)
**) MoT approval is valid for 6 months (can be extended) and requires a separate recommendation from DGoMC on behalf of MoEMR

11. The exports of coal and coal products can only be undertaken by Registered Exporters of Coal (ET Batubara). The export procedures and documents required for an ET Batubara application are generally similar to those for an ET Produk Pertambangan.

12. For the purpose of processing and refining activities, the holder of an IUP may cooperate with another IUP-OP holder for processing or refining activities, which may be in the form of:

    - Trading of raw materials, ore or concentrate, or
    - Collaboration on processing and/or refining minerals, which requires recommendation from the Minister or Governor depending on the location of the IUP-OP and the issuing authority. A further implementing regulation is expected to be issued to deal with subsequent approval process.

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

In-Country Refining Facilities

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

a. Whether it is favourable to include the processing/refining facilities and infrastructure within the company holding the IUP-OP (i.e. the mining company) or under a separate company holding a Processing and/or Refining IUP-OP?

b. If a separate company is to be established, what would be the arrangement with the mining company? Is a trading or a processing service arrangement preferable?
c. Whether any tax facilities are available, such as an income tax holiday or import facilities.
d. What are the relevant tax considerations in relation to the Engineering, Procurement and Construction (EPC) contract?
e. How can financing be arranged in the most tax efficient manner?
f. What is the right model for cooperation between shareholders (mining 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 G for the contact details of the PwC Indonesia mining specialists.

Letter of Credit ("L/C") Requirement for Exports of Mineral Resources

Pursuant to the issuance of MoT Regulation No. 04/M-DAG/PER/1/2015 ("PerMenDag 04/2015") which is intended to obtain more accurate information on foreign exchange revenue from exports, the MoT now requires the use of an L/C for the export of mineral products (e.g. nickel oxide, gold concentrate, gold bars, pure tin solder, copper bars, etc.).

In brief, the L/C requirements are as follow:

- The price stated in the L/C should not be lower than the global market price
- The payment should be made to a domestic foreign exchange bank (bank devisa)
- The L/C mechanism should be declared in the export declaration (PEB)
- The L/C documentation is subject to audit by a surveyor appointed by MoT, and
- No exports will be allowed if they fail to satisfy the L/C requirements.

Further implementing regulations will be issued by the DGFT.

The exporter of mineral products should closely examine the new 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.

On 30 March 2015, the MoT issued Regulation No. 26/M-DAG/PER/3/2015 ("PerMenDag 26/2015") which allows an exporter who is unable to implement the L/C terms deferral from the MoT (this is however subject to a post-audit by the MoT and penalty sanctions). The approval from the MoT will consider the following:

- The terms adopted in sales contracts for the Export of Certain Commodities between the exporter and overseas customer which was drawn up before PerMenDag 04/2015 became effective (e.g. whether it uses Telegraphic Transfer or L/C), and
- The ability of the exporter to adjust the means of settlement using L/C within a certain period of time, and
- Written confirmation of stamp duty on both points above.

A post-audit would be performed by the MoT on the above documents. The revocation of L/C terms deferral and other sanctions may apply if the audit identifies the above documents, and the conduct of export are incorrect.

The L/C can be paid via an export financing institution of the Government of Indonesia ("GoI").

Mineral Mining Production Limitation Regulations

Due to the non-renewable nature of coal and mineral resources, which are essential for national development, and to guarantee sufficient supplies to fulfil national needs, the Central Government considers that it is important to limit national coal and mineral production The Minister, Governor, or Head of Regency will determine the policy for production limitations.

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

Mining support services

IUP or IUPK holders can no longer subcontract out all activities, but must actually remove the coal/minerals ore from the ground themselves. A detailed list of the types of Mining Services Business distinguishes between certain defined Mining Services Business and Non-Core Mining Services. Broadly, the requirements are directed at ensuring the use of local businesses and restricting the use of affiliate companies.

Apart from the mandatory in-country processing, which can be fulfilled by engaging another party with a Processing and/or Refining IUP-OP license, an IUP/IUPK holder can only engage a Mining Services Company for the purposes of consultation, planning and testing, overburden stripping and transportation. Under PerMen 24, an IUP holder may outsource the construction of an underground mine to a mining services company specialising in tunnelling work, and the IUP holder can also use equipment owned by a mining services company through a rental arrangement. A detailed list of Mining Services is further detailed in the attachments to PerMen 28/24.

Classification of Mining Services and Mining Service Companies

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

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

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

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

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

Restrictions on the use of affiliates/subsidiaries

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

- The IUP/IUPK holder directly owns at least a 25% shareholding in the affiliated mining service company

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

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

Prohibition on receiving fees from a mining services company

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

Transitional provisions for existing Mining Services arrangements

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

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

Fiscal regime

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

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

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

Royalties

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

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

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

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

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

Transfer restrictions

Under the Mining Law, the transfer of an IUP/IUPK to another party is generally prohibited. However, GR 24 provides an exception whereby IUP/IUPKs can be

transferred if the transferee is at least 51% held by a company which already holds an IUP/IUPK. It is not year clear whether this rule is intended for transfers to any IUP/IUPK holder, or whether it is limited to a minimum 51% owned subsidiary of the existing IUP/IUPK holder.

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

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

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

Reclamation and mine closure guarantees

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

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

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

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

4. A *post-mining guarantee* in the form of a time deposit at a state-owned bank

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

PerMen 7/2014 also sets out the procedures for the preparation of the reclamation and post-mining activities report.

The transitional provisions in GR 78 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 upon approval from the Minister, the Governor, the Regent or the Mayor, as applicable.

Penal provisions

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

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.

Further implementing regulations

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

Transitional Provisions

Divestment

For details on the Transitional Provisions relating to Divestment, please refer to page 28.

KPs

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

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

CoWs/CCoWs/Coal Co-Operation Agreements ("CCA")s

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

However, the extended licence will be granted under the IUPK system, rather than under the CoW framework. If it has been extended once, the second extension would also be granted without the need for a tender. Both extensions require the companies to apply to the Minister at the earliest two years or at the latest six months prior to the expiry of Contract. Before issuing the IUPK, the Minister should have already issued 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 extension of IUPK OP is outlined in GR 77.

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

Contract holders 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 that allowed for IUPs under the new Law.

Further, the Mining Law indicates that the provisions of existing Contracts must be amended within one year to conform with the provisions of the new Law, other than terms related to state revenue (which is not defined but presumably includes State Tax Revenue and Non-Tax State Revenue such as royalties). At the time of

writing, more than five years after the issuance of the Mining Law, the negotiation process between the Government and Contract holders regarding amendments to the Contracts is still ongoing. It is not clear to which provisions of the new Mining Law existing contracts must conform, but this could include alignment with the Mining Law's provisions on divestment obligations, 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 in contract renegotiations with the Contract holders.

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

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

Outlook

The above is a brief analysis of some of the key terms of the Mining Law likely to be of interest to investors. Through the enactment of the Mining Law, the Government has sought to create more certainty about Indonesia's mining framework. However, six years on, while the key implementing regulations have been issued, some of them are not entirely clear in addressing the issues, meaning that further guidance is required. It is likely that this will continue to cause uncertainty for investors.

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

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

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

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

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

3 Contracts of Work

Photo source : PT Newmont Nusa Tenggara

General Overview and Commercial Terms

Contracts of Work

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 modernised over the past forty years to reflect changing conditions in Indonesia and abroad. To date, there have been seven generations of CoWs. A comparison of the various generations of CoWs is provided in Appendix E.

As discussed earlier, the Mining Law does not provide for CoWs under the new licensing framework, however the transitional provisions state that existing CoWs will be honoured until the stipulated expiry date, but from that point can only be extended under the new IUPK licensing framework. The following discussion, therefore, is only applicable to CoWs which existed prior to the Mining Law, and before any amendment following the Government's 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 under MoEMR Decision Letter No. 1614/2004. In essence, a CoW is a comprehensive contract between the GoI and an Indonesian company. The company could be 100 percent foreign-owned. However, if the company was 100 percent foreign-owned, it may have been subject to divestment requirements at a later date. As a practical matter, most CoWs have some level of Indonesian ownership.

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

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

The CoW outlines a series of stages with defined terms:

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

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

Some of the important considerations that are covered by a CoW include: expenditure obligations; import and export facilities; marketing; fiscal obligations; reporting requirements; records, inspection, and work programme; employment and training of Indonesian nationals; preference given to Indonesian suppliers; environmental management and protection; 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 tax, royalty, and other fiscal charges, including: dead rent in the Contract Area; production royalties; income tax payable by the company; employees' personal income tax; withholding taxes on dividends, interest, rents, royalties and similar payments; VAT; stamp duty; import duty; and land and buildings tax.

Coal Co-operation Agreement and Coal Contract of Work

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

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

Coal Co-operation Agreements

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

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

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

Foreign shareholders that own 100 percent 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 percent.

Coal Contract of Work

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

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

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

Fiscal regime under CoW, CCoW and CCAs

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

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

Pre-Contract of Work Expenses

The shareholder of the Contract company would typically incur significant expenditure before the Contract company is incorporated 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 will be amortised starting from the period in which production commences. These expenses are subject to audit by a public accountant and approval by the Minister and the Director General of Taxation ("DGT").

Exploration and Development

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

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

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

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

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

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

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

The company also has the following obligations under the Contract:

Contracts of Work	Coal Co-operation Agreements/Coal Contracts of Work
• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the items and amount of expenditure and is required to relinquish at least 25 percent of the original Contract Area.	• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the items and amount of expenditure and is required to relinquish at least 25 percent of the original Contract Area for second and third generations and 40 percent for first generation.
• Exploration Stage In the Exploration stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual program and budget to the Minister. At the end of the Exploration stage, the company is required to file with the Minister: - A summary of its geological and metallurgical investigations and all data obtained; and - A general geological map of the Contract Area. On or before the second anniversary of the commencement of the Exploration stage the company is required to have reduced the Contract Area to not more than 50 percent of the original Contract Area.	• Exploration Stage In the Exploration stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual program and budget to the Minister. At the end of the Exploration stage, the company is required to file with the Minister: - A copy of drill holes, pits and assays of the samples; and - A copy of 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 percent of the original Contract Area. First and second generation contractors are required to have reduced the Contract Area to not more than 20 to 40 percent of the original Contract Area.

Contracts of Work	Coal Co-operation Agreements/Coal Contracts of Work
• Feasibility Study Stage At the end of the Feasibility Study stage the company is required to submit a feasibility study, including environmental impact studies, to the Minister and to design the facilities. At the end of the Feasibility Study, the company is required to have reduced the Contract Area to not more than 25 percent of the original Contract Area.	• Feasibility Study Stage At the end of the Feasibility Study stage the company is required to submit a feasibility study, including environmental impact studies, to the Minister and to design the facilities. At the end of the Feasibility Study, the third generation CCoW company is required to have reduced the Contract Area to not more than 25,000 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 based on the number of hectares in the CoW area and the stage of the CoW.	• Dead Rent Throughout the life of the contract, the company is required to pay dead rent. This is an annual amount based on the number of hectares in the approved area and the stage of the mining.

Production

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

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

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

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

- Monthly statistical report
- Quarterly report concerning progress of operations, and
- An annual report for the third generation of 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 contained in the Mining Law and PerMen 28/24, which may be applicable to Contracts.

Because a company can be party to only one contract (either 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 formed to service the group Contract companies. This can provide operational efficiencies, but its tax implications should be considered further.

Other financial obligations

Royalties

Royalties are payable quarterly to the Government based on the actual volume of production or sales, according to the provision set out in the Contract. However, in practice, currently the royalty is to be paid to the Government prior to shipment as required under the prevailing export administrative procedures.

Dead rent and land and buildings tax

The company is required to pay dead rent and land and buildings tax as set out in the Contract. Dead rent is an annual charge based on the number of hectares in the Mining Area.

Termination of the Contract

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

1. Submit written notice to terminate the contract, attaching a closure plan, related documents, maps, plans, worksheets and other technical data and information.

2. Provided that the data and fulfilment of the company's obligations are considered acceptable to the Minister, the Minister will issue confirmation within six months from the date on which 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 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 set out in the Contract:

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

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

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

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

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

Transfer of Contracts

Purchase and sale of direct interests in the Contract

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

Purchase and sale of shares in a Contract Company

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

However, the shareholders of the Contract company cannot transfer 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 shares of the Contract company after the commencement of the operating period. Under the terms of the Contract, such consent shall not be unreasonably withheld or delayed.

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

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

Unincorporated joint ventures

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

Farm-ins

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

CoW and CCoW renegotiation

As discussed above, pursuant to the Mining Law of 2009, it is intended for the terms of existing mining contracts (CoWs and CCoWs) to be brought into line with the provisions of the Mining Law. Accordingly, the Government has approached many (if not all) CoW and CCoW holders to commence negotiations to amend the terms of contracts.

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

1. The size of mining areas: the Government is looking for CoW and CCoW holders to make additional relinquishments to bring the acreage closer to that of licenses issued under the Mining Law (please refer to the Licence Areas section on page 18 for more details)

2. Contract extensions: the CoW and CCoW will be extended as per IUPK (please refer to Transitional Provisions for CoWs/CCoWs/CCAs section on page 39 for more details)

3. The amount of royalties: the Government proposes to increase the royalty rates

4. Obligations to process raw materials in Indonesia: the CoW and CCoW holders were required to increase the level of value-added processes carried out in-country (please refer to the Mandatory in-country processing and export duty section on page 28 for more details);

5. Divestment: foreign shareholders are required to divest up to 51% of their interest in the CoW and CCoW company (please refer to the Divestment section on page 24 for more details);

6. Utilization of local goods and services: further restrictions on the use of affiliated service companies and promoting the use of local service contractors (please refer to the Restriction on the use of affiliates/ subsidiaries section on page 35 and Service providers to the mining industry section on page 81 for more details), and

7. Tax provisions (except for Corporate Income Tax ("CIT") rate): tax provisions are to follow the prevailing regulations.

Although all amendments were to be concluded within one year of the Mining Law becoming effective, at the time of writing, there are only a few CoW and CCoW amendments signed by the Government. Up to January 2015, the Government has agreed and signed MoUs with 26 CoW (including with PT Freeport Indonesia and PT Newmont Nusa Tenggara) and 61 CCoW holders. Meanwhile, there are still 7 CoW and 12 CCoW holders who had only agreed several terms in the MoU. The MoU would generally be used as the basis for CoW/CCoW amendments.

The main focus of the Government in 2015 is to accelerate the renegotiation process with generation two CCoW companies. The Government expect that this renegotiation process will be much easier since the content of generation one CCoWs is already in accordance with the Central GR.

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

Apart from the CoW amendment signed with PT Vale Indonesia Tbk., it is still not clear that more than six years on from the issuance of the Mining Law any significant progress has been made in finalising renegotiated terms. The industry will be keen to see the new Government's approach to this, and hopes for a strong commitment to respecting contract sanctity.

4

Tax Regimes for the Indonesian Mining Sector

Photo source : PT Bukit Asam (Persero) Tbk

General Overview of Indonesian Tax Systems

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

Tax Regime for an IUP/IUPK Company

General

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

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

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

Income

Under the prevailing Income Tax Law, the Government may issue a GR governing taxation of mining business. As at the date of this publication, a GR on mining taxation has not been issued. Thus, unless specifically stipulated, the prevailing tax rules are likely to apply.

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

CIT Rate

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

CIT rate is 25% of net taxable profit. A 5% income tax reduction is applicable for a company listed on the Indonesia Stock Exchange, subject to meeting certain requirements.

Income

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

General expenses

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

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

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

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

Exploration and development expenses

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

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

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

Depreciation of fixed assets

Fixed assets are categorised into four categories, depending on the nature of the asset and its expected useful life. The rate at which the asset can be depreciated will depend upon the category of the asset. Assets are generally depreciated over 4, 8, 16 or 20 years and taxpayers may apply a diminishing balance or straight line approach to depreciation.

Amortisation of intangible assets

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

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

Tax losses carried forward

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

Reclamation reserve

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

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

Mine closure

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

Interest expenses

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

It is generally prudent to ensure that any interest on intercompany loans does not exceed commercially available rates, as excessive rates can be challenged by the Indonesian Tax Office ("ITO") based on transfer pricing principles.

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

Transactions with related parties

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

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

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

Bookkeeping in US Dollars

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

Following the recent Indonesian adoption of new accounting standards concerning the use of an appropriate functional currency (consistent with

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

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

Tax Allowance and Tax Holidays

With the issuance of GR No. 18/2015 on 6 April 2015 ("GR 18") which comes into effect on 6 May 2015, the Government has further updated the list of businesses eligible to apply for income tax incentives, across a wide range of industry sectors and geographical regions with key new targets include the construction of smelters for mining products.

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

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

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

GR 18 sets detailed requirements under each designated business sector and/or region which relate to investment value, number of Indonesian workers and the size of the business area. This regulation only sets out new high level criteria as requirements for enjoying the tax incentives, and leaves the detailed requirements to be determined by the relevant ministers by issuing separate ministerial decrees.

GR 18 also eliminates the following requirements of the old GRs, which seemed to create some burdens for investors interested in applying for these tax incentives:

- The requirement for tax incentives to be available only after the taxpayer has realised at least 80% of its investment plan (at least for facilities granted from 6 May 2015).
- The new investment plans must be of at least Rp 1 trillion.

GR-18 confirms that the taxpayers who obtain this tax incenitive cannot use the other tax facilities for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu*/KAPET) and Tax Holiday.

In the previous GRs, only fixed assets investment were acknowledged as investments. GR 18 now acknowledges all forms of investment, including intangible assets. Consequently, this will add accelerated amortization of intangible assets to the tax facility.

The tax allowances available consist of:

- A reduction in net taxable income of up to 30% of the amount invested in the form of fixed assets (including land), prorated at 5% for 6 years of the commercial production, and provided that the assets invested is not being misused or transferred out within certain period
- Accelerated depreciation and amortisation
- Withholding taxes on dividends paid to non-residents to 10% or the applicable reduced tax treaty rate, and
- An increased loss carry forward period from 5 years to a maximum of 10 years.

Several regulations from the following authorities are expected to be issued soon

- The application procedures (from the Head of BKPM)
- Various taxpayer criteria as well as requirements for designated business sectors and/or regions as listed in the attachments of GR-18.

In the meantime, the implementing regulations based on the old GRs remain valid as long as they are not contrary to the provisions of GR 18.

The government also introduced a tax holiday which exempts eligible taxpayers in pioneer industries from income tax for up to 10 years. For the mining sector, the tax holiday is available for the base metals industry. The tax holiday is applicable to the relevant pioneer industry taxpayers licensed after 15 August 2011 which have new capital investment plans of at least IDR 1 trillion. In accordance with the prevailing tax regulations, recommendations for granting the CIT exemption or reduction facility must obtain recommendations from the Minister of Industry or Head of BKPM, no later than 15 August 2015.

Many smelter companies expect to be eligible to obtain the tax holiday facility. However, by specifically including smelter business in the tax allowance, it appears that the Government wishes to encourage investors in the smelting business to (only) apply for the tax allowance (and not the tax holiday) facilities. At the time of writing, we are not aware of any tax holiday facility having been granted for a smelter company.

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

Value Added Tax

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

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

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

For most companies, a VAT refund is only available at the end of the year. However, companies that incur VAT during the pre-production stage may still apply for refunds in respect of capital goods only on a monthly basis (note: Input VAT on services during the pre-production stage is neither creditable nor refundable). If they fail to reach production (which is defined as the delivery of VATable goods/services) within three years (may be extended to five years) from the date on which they credit the Input VAT, they must repay the refund by the end of the month following the failure to enter production. This timing requirement obviously presents a problem for long-term mining projects which may take several years to enter into production.

Withholding Tax

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

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

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

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

Land & Buildings Tax (Pajak Bumi dan Bangunan or PBB)

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

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

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

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

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

Tax Regime for a CoW/CCoW/CCA Company

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

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

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

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

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

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

The major development in the past twelve months is in relation to the DGT's formal view on CIT rate that should be applicable for third generation CCoWs and sixth/seventh generation CoW companies. As a background, the relevant CoW/CCoW companies would expect to apply the CIT rate of 25% in accordance with the prevailling Income Tax Law. However, the DGT issued circular No. 44/PJ/2014 ("SE 44"), confirming its view that these companies are subject to CIT at the rate of 30% (i.e. the CIT rate indicated in the Income Tax Law applicable upon the signing of Contract).

Note that the tax treatments described in this booklet are generic, and so deviations may exist between the various generations of Contracts. Appendix E summarises the typical tax treatments in the 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 Income Tax Law. In assessing the applicable tax regime, a detailed review of the Contract is necessary because different rules may exist between two Contracts of the same generation.

Tax administration of a CoW/CCoW/CCA company

Tax registration

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

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

Bookkeeping in US Dollars

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

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

Corporate Income Tax

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

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

Corporate Income tax rate

Where a Contract includes a specific CIT rate, these Contract companies may not be entitled to the reduced 25% CIT rate, which is applicable from the 2010 income year onwards (the rate was reduced from 30% in 2008).

The CIT rate applicable to the third generation CCoW and sixth/seventh generation CoW companies has been a longstanding issue not least because these CCoWs/CoWs typically provide a *lex specialis* tax framework linked to the 1994 Income Tax Law (i.e. with a 30% maximum CIT rate) but the relevant provision in the Contract could be subject to a different interpretation.

On 24 November 2014, the DGT issued SE 44 which states that, in the DGT's view the 30% rate continues to apply. The DGT has also instructed the ITO to socialise his view, particularly to taxpayers who previously applied the 25% rate.

Whilst SE 44 provides the DGT's views, it is still possible that the taxpayers will move to contest the interpretation. Nevertheless, holders of these CCoWs/CoWs should review their position in light of this development.

Operating expenses

Generally the same as under the prevailing law.

Exploration and development expenses

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

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

Reclamation reserve

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

Selling, general and administration expenses

Generally as per the prevailing law.

Asset revaluation

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

Employee benefits/facilities

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

Pre-Contract expenses

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

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

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

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

Depreciation of fixed assets

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

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

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

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

Amortisation of intangible assets

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

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

Interest expenses

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

As per the prevailing Income Tax Laws, interest on intercompany loans should not exceed commercially available rates.

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

Carried forward tax losses

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

VAT

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

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

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

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

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

One of those disputes, the long running VAT/Royalty offset issue for Generation 1 CCoWs, has recently been resolved (prospectively at least) with the issuance of MoF Regulation No. 194/PMK.03/2012 which provides that from 1 January 2013 VAT on supplies made to Generation 1 CCoWs will be not collected by the CCoW company. Accordingly, the historic practice of offsetting the VAT receivable against the Government Royalty payments will no longer be necessary. However, this does not resolve the historical offsetting position, which still remains unclear. As part of the resolution of that issue, the regulation also provided that Generation 1 CCoWs would be liable for Sales Tax (which was repealed with the introduction of VAT) on certain services (and goods for one contractor), payable on a self-remittance basis similar to that for WHT.

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

WHT

The Contract company is obliged to withhold tax from payments of dividends, interest, royalties and most types of services. The WHT rate will depend on the tax rules stipulated in the Contract, the type of service and whether the service provider is a resident or non-resident. MoF Regulation No. 39/PMK.011/2013 requires the CoW/CCoW companies to apply the prevailing WHT rates on certain services. Care should be taken in implementing this regulation to ensure compliance with the contract.

There may be WHT concessions on dividends paid to non-resident founder shareholder(s). The WHT rate under the prevailing Income Tax Law is 20%, before tax treaty relief, but some Contracts may provide a reduced WHT rate of nil or 7.5%. This rate is less than most tax treaty rates.

Land & Buildings Tax

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

Imports of Capital Equipment

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

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

Non-Tax State Revenue

Royalties

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

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

Dead Rent

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

Regional Tax

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

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

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

The prevailling Income Tax Law also stipulates that the Government will issue a separate GR on the calculation of Income Tax for the mining sector. The GR may cover the Income Tax on the transfer of a mining interest, however to date, no mining sector specific GR has been issued in respect of the calculation of Income Tax.

Technically, the transferor might include the proceeds of the sale of the mining interest as income for Income Tax purposes, whilst the transferee is entitled to deduct the purchase price in accordance with the rules for deducting the cost of intangible assets.

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

Purchases and sales of shares in an IUP/IUPK or Contract company

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

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

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

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

Investment Structuring

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

- A company can only hold one Contract or one IUP/IUPK. This ring fencing rule, together with the fact that there is no group relief for Income Tax purposes, requires careful planning, particularly for the use of service companies within one group, inter-company charges, inter-company borrowing, etc.
- The use of a tax efficient shareholding structure to maximise profit repatriation/dividends would enhance the project feasibility (note that under some tax treaties the WHT on dividends may be reduced from 20% to 15% or 10%)
- Sales of shares in Contract or IUP/IUPK companies that are not listed on the Indonesia Stock Exchange by foreign investors are taxed at 5% income tax on gross proceeds, unless protected by a tax treaty. The investment may be structured to reduce the tax on exit

- A typical concession in some of the Contracts of a reduced WHT rate for dividend tax payments to founder foreign shareholder(s)
- The use of tax efficient project financing strategies or intra-group financing considering the thin capitalisation rules and the fact that debt forgiveness is subject to tax in Indonesia (this issue is common in unsuccessful exploration projects), and
- The best investment structure and arrangements for mineral processing and refinery businesses.

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

5 Additional Regulatory Considerations for Mining Investment

Photo source : PT Bukit Asam (Persero) Tbk

Investment Law

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

The obligations for Limited Liability companies set out in the Investment Law No. 25 include:

- Prioritising the use of Indonesian citizen 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, (which includes corporate social responsibility) include restriction, freezing or revocation of business activities/licences.

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

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 protected forests. It is common that mining concession areas overlap with forestry areas (either a protected or productive forest), which means that mining activities will be impacted by the rules applicable to such forests.

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

Under Government Regulation No. 24 of 2010 as most recently amended by Government Regulation No. 61 of 2012 and the recently issued Minister of Forestry Regulation No. P-16/Menhut-II/2014 dated 10 March 2014, the utilisation of Forest Areas for non-forestry activities is permitted in both Production forest areas and Protected forest areas, upon obtaining a "borrow–and-use" permit from the Minster of Forestry.

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

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

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

Environmental Laws and Regulations

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

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

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

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

The sanctions applied for breaches of the Environmental Law range from three to 15 years of imprisonment and/or a fine from Rp 100 million to Rp 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 required to implement new processes and technologies, and increased production costs.

Energy Law

Given the importance of energy resources, it is necessary for the Central Government to create an energy management plan to fulfil the national energy needs in the long run. Law No. 30 of 2007 established the National Energy Council as a government body to design and formulate the national energy policy, to determine the national energy general plan, to determine the steps to be taken in an energy crisis and in emergency conditions, and to monitor the implementation of policy in energy fields with cross-sectoral characteristics.

Other Regulations Related to Mining Operations

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

Service Providers to the Mining Industry

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

- Exploratory drilling and sampling
- Infrastructure construction
- Contract mining and overburden removal
- Hauling and barging

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

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

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

	Exploratory drilling and sampling company	Construction company	Contract mining and overburden removal company	Hauling and barging company
Maximum foreign ownership	• Oil and gas survey services (49%) • Geological and geophysical survey (49%) • Geothermal survey (95%)	• Generally for non-small scale engineering procurement construction services is 67 percent and for construction contracting and consulting is 55 percent. • For certain construction, different requirements may apply, such as for platform construction the maximum foreign ownership is 75%, for spherical tank and offshore piping installation the maximum foreign ownership is 49% whilst for onshore piping, vertical/ horizontal tank construction is reserved for domestic investors only. • Small and medium scale construction contracting and consulting (only for local small scale companies)	• Same requirements as a construction company • Small and medium scale excavating and earth moving work and site preparation for mining (only for local small scale companies).	• Ferry, river and lake transport and transport facilities (49 percent) • Special goods, cargo and heavy equipment transport (49 percent) • Support business in terminals (49 percent) • Domestic and international sea transport (49 percent) • Land transport rental (local investor only) • Up to 100 percent, if formed as a general mining services company.

	Exploratory drilling and sampling company	Construction company	Contract mining and overburden removal company	Hauling and barging company
		• A construction company can be in the form of a representative office. In this case, a joint operation with local construction company is required.		
Tax	Prevailing tax laws	Prevailing tax laws (with a final deemed profit tax regime)	Prevailing tax laws	Prevailing tax laws

Corporate Social Responsibility

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

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

Processing

Under the Mining Law, mining companies will be required to process their minerals within Indonesia.

	Downstream processing
Regulation	Law 25/2007, Presidential Regulation 36/2010, Law 4/2009, PerMen 1
Investment licence issuer	Investment Coordinating Board
Business licence issuer	MoEMR/Governor/Mayor depending on the location
Maximum foreign ownership	Up to 100 percent
Tax	Prevailing tax laws

Mining Infrastructure

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

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

As a separate business

	Port	Road	Power Plant	Railways
Regulation	Law 17/2008 Law 25/2007 Presidential Regulation No. 39/2014 Government Regulation No. 61/2009	Law 38/2004 GR 34/2006 GR 15/2005 GR No. 44/2009 GR No. 43/2013 Law 25/2007 Presidential Regulation No. 39/2014	Law 30/2009 GR 3/2005 GR 10/1989 GR 26/2006 GR 14/2012 Law 25/2007 Presidential Regulation No. 39/2014	Law 23/2007 Government Regulation No. 56/2009 Law 25/2007 Presidential Regulation No. 39/2014
Investment licence issuer	Investment Coordinating Board Port business will be performed by the company by entering into the concession rights or agreement with the Port Authority	Investment Coordinating Board	Investment Coordinating Board	Investment Coordinating Board

	Port	Road	Power Plant	Railways
Business licence issuer	Port Operating Licence is granted to the Port Authority, which is formed by the Ministry of Transportation not the company itself. Sea Port Operating Licence is issued by : • Minister for Main Ports and Hub Ports • Governor or Mayor/Regent for Feeder Ports Lake/River Port Operating Licences are issued by the Mayor/Regent	Minister of Public Works Based on concession rights agreement with the government	Ministry of Energy and Mineral Resources, Governor or Mayor depending on the business/ transmission area and electricity facility location	Ministry of Transportation, Governor or Mayor depending on the railway coverage
Period of business licence	Based on concession rights or agreement with Port Authority	Based on concession rights or agreement with the relevant Minister	30 years	• Railways Infrastructure operational licence: based on concession agreement with the relevant Minister, Governor or Mayor • Railways Facility operational licence : 5 years and extendable

	Port	Road	Power Plant	Railways
Transferable licence?	No	Yes, based on agreement with the Ministry	Not regulated	Not regulated
Maximum foreign ownership	• Supply of harbour facilities (49 percent but can be up to 95% during concession period under a Public Private Partnership ("PPP") scheme) • Loading/ unloading (49 percent but can be up to 60% for investor from ASEAN countries) • Supply of reception facilities (49 percent) • Supply & business of sea harbour (49 percent)	• Toll road 95 percent	• Development & installation of electricity supply (95 percent) • Development & installation of electricity utilisation (95 percent) • Maintenance and operation of electricity equipment (95 percent) • Development of electricity equipment technology (up to 100 percent) • Electricity consulting (95 percent) • Nuclear power plant (up to 100%) • Electricity transmission and electricity distribution (95% but can be up to 100 percent under PPP scheme) • Power plant below 1MW reserved for domestic investment	• Rail transport Not specified (100 percent)

	Port	Road	Power Plant	Railways
Maximum foreign ownership *(continued)*			• Power plant below between 1 - 10MW (49%) • Power plan > 10 MW(95% but can be up to 100 percent under PPP scheme)	
Land rights	Land rights are given to the Port Authority. The company performs business based on concession rights or agreement with the Port Authority	Based on concession rights given by the Government	Legal title transferred to company in the form of *Hak Guna Bangunan* (Right to Use Land for Erecting Buildings) for a total period of 80 years	Depends on concession rights given by the Government
Fee to government	Stipulated in the concession rights agreement	Not stipulated in the regulations	Non tax state revenue collected from electricity transmission and distribution facility	Not stipulated in the regulations
Tax	Prevailing tax laws	Prevailing tax laws	Prevailing tax laws	Prevailing tax laws
Other issues	Law 17/2008 stipulates that implementing regulations will be further defined in the GR. No specific regulations on port operations in place to date	Only able to engage in toll road business	None	None

As part of mining business

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

6 Appendices

Photo source : PwC

Minimum processing and refining requirements prior to export

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
1.	Copper (smelting process)	a. Chalcopyrite b. Borite c. Cuprite d. Covelitte	Copper Concentrates	≥15% Cu	a. Copper Cathodes	Cu Metal ≥ 99% Cu
					b. Anode Slime	a. Metal Au ≥ 99%; b. Metal Ag ≥ 99%; c. Bullion Pb ≥ 90%; d. Metal Pd ≥ 99%; e. Metal Pt ≥ 99%; f. Metal Se ≥ 99%; g. Metal Te ≥ 99%; h. TeO_2 ≥ 98%; i. $Te(OH)_4$ ≥ 98%; j. PbO ≥ 98%; k. PbO_2 ≥ 98%; l. SeO_2 ≥ 98%; and/or m. Rare metals and rare soil (refer to the requirement for rare metal soil for tin).
					c. Telluride Copper	a. Cu Metal ≥ 99%; b. Metal Te ≥ 9%; c. TeO2 ≥ 98%; d. Te (OH)4 ≥ 98%; and/or e. Metal alloys telluride cooper > 20% Te

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Copper (leaching process)	a. Chalcopyrite b. Digenit c. Bornite d. Cuprite e. Covelitte			Metal	a. Metal Cu ≥ 99%; b. Metal Au ≥ 99%; c. Metal Ag ≥ 99%; d. Metal Pd ≥ 99%; e. Metal Pt ≥ 99%; f. Metal Se ≥ 99%; g. Metal Te ≥ 99%; h. $TeO2_2$ ≥ 98%; i. $Te(OH)_4$ ≥ 98%; and/or j. Rare metals and rare soil (refer to the requirement for rare metal soil for tin).
2.	Nickel and/or cobalt (smelting process) a. Saprolite b. Limonite	a. Pentlandite b. Garnerite c. Serpentinite d. Karolite	-	-	Nickel Matte, Metal Alloys and Nickel Metal	a. Ni Mate ≥ 70% Ni; b. FeNi ≥ 10%Ni; c. Nickel Pig Iron (NPI) ≥ 4% Ni; d. Ni Metal ≥ 93%; and/or e. NiO ≥ 70% Ni.
	Nickel and/or cobalt (leaching process) Limonite				Metal, Metal Oxide, Metal Sulfide, mix hydroxide/ sulfide precipitate, and hydroxide nickel carbonate	a. Metal Ni ≥ 93%; b. Mix Hydroxide precipitate (MHP) ≥ 25% Ni c. Mix sulphide precipitate (MSP) ≥ 45% Ni; d. Hydroxide Nickel Carbonate (HNC) ≥ 40% Ni; e. NiS ≥ 40% Ni; and/or f. Co Metal ≥ 93% g. CoS ≥ 40% Co; h. Metal Cr ≥ 99%; and/or i. Cr2O3 ≥ 40%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (reduction process) a. Saprolit b. Limonit				Metal Alloys	a. FeNispon (Sponge FeNi) ≥ 4% Ni; b. Luppen FeNi ≥ 4% Ni; and/or c. Nugget FeNi ≥ 4% Ni.
3.	Bauxite	a. Gibbsite b. Diaspora c. Boehmite	-	-	Metal Oxide/ Hydroxide and metal	a. Smelter grade alumina ≥ 98% Al2O3 b. Chemical grade alumina ≥ 90% Al2O3 Al(OH)3 c. Alumina Hydrate ≥ 90% Al(OH)3 d. Proppant: 1) Al2O3 ≥ 70% (Granulated); 2) Able to rupture at a pressure 7.500psi, the size of fraction: -20+40 mesh ≤ 5,2% -30+50 mesh ≤ 2,5%; or -40+70 mesh ≤ 2,0%. 3) Apparent Specific Gravity (ASG) 3,15. And/or e. Metal Al ≥ 99%

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
4.	Iron ore	a. Hematite b. Magnetite	Iron concentrate *)	≥ 62% Fe and ≤ 1% TiO_2	Sponge, metal and metal alloys	a. Sponge iron ≥ 75% Fe b. Pig iron ≥ 90% Fe; and/or c. Metal alloys (ferro alloy) ≥ 83% Fe
		Goethite/ laterite	Iron concentrate Laterite**)	> 51% Fe Rate (Al2O3 + SiO2) > 10%		
		Lamela magnetite-ilmenite (iron sand)	Iron sand concentrate ***)	≥ 58% Fe; and 1% TiO_2 ≤ 25%	Metal	a. Sponge iron > 75% Fe; and or a. Pig iron > 90% Fe.
			Pellet concentrate iron sand ****)	≥ 56% Fe; and 1% TiO_2 ≤ 25%	Slag	a. TiO_2 ≥ 85%; b. $TiCl_4$ ≥ 98%; c. Metal titanium alloy ≥ 65% Ti; d. V_2O_5 ≥ 90%; e. Metal vanadium alloy ≥ 65% V; and/ or f. Rare metals and rare soil (refer to the requirement for rare metal soil for tin).
			Ilmenite concentrate *****)	≥ 50% TiO_2	Oxide metals, chloride metals, and metal alloys	a. TiO_2 synthetic ≥ 85%; b. $TiCl_4$ ≥ 87%; and or c. Mix titanium metals ≥ 65%.
					Slag	Refer to slag requirement at iron sand concentrate

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
5.	Tin	Cassiterite	-	-	Metal	Metal Sn ≥ 99.90%
					Slag	a. W ≥ 90% b. Ta_2O_5 ≥ 90% c. Nb_2O_5 ≥ 90% d. Sb_2O_5 ≥ 90%
			Concentrate zircon	Refer to the requirements for zirconium and zircon.		Refer to the requirements for zirconium and zircon.
			Concentrate ilmenite	Refer to the requirements for ilmenite in iron sand		Refer to the requirements for ilmenite in iron sand
			Rutil concentrate	TiO_2 ≥ 90%	Chloride metals and metal alloys	a. $TiCl_4$ ≥ 98%; and/or b. Metal alloys of titanium ≥ 65% Ti.
			Monasit and *senotim* concentrate	-	Oxide metals, hydroxide metal, and metal rare soil	a. Oxide metals rare soil (REO) ≥ 99%; b. Hydroxide metals rare soil (REOH) ≥ 99%; and/or c. Rare metal soil ≥ 99%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
6.	Manganese	a. Pirolusit b. Psilomelan c. Braunit d. Manganit	Manganese concentrate	≥ 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 ≥ 47.5% MnO_2 ≤ 4%; d. Manganese Sulfide ($MnSO_4$) ≥ 90%; e. Manganese Chloride ($MnCl_2$) ≥ 90% f. Manganese Carbonate Synthetic ($MnCO_3$) ≥ 90%; g. Kalium Permanganat (KMnO4) ≥ 90%; h. Manganese Oxide (Mn_3O_4) ≥ 90%; i. Manganese Dioxide Synthetic (MnO_2) ≥ 98%; and/or j. Manganese Sponge (Direct Reduced Manganese) Mn ≥ 49%, MnO_2 ≤ 4%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
7.	Lead and Zinc	a. Galena b. Spalerite c. Smithsonite d. Hemimorphite (calamide)	Zinc Concentrate	≥ 52% Zn	Metal, Metal oxide/ hydroxide	a. Bullion ≥ 90% Zn; b. ZnO ≥ 98%; c. ZnO_2 ≥ 98%; and/or d. $Zn(OH)_2$ ≥ 98%.
					Gold metal and/or silver	a. Metal Au ≥ 99%; b. Metal Ag ≥ 99%.
			Lead Concentrate	≥ 57% Pb	Metal, metal oxide/ hydroxide	a. Bullion > 90% Zn; b. PbO ≥ 98%; c. $Pb(OH)_2$ ≥ 98%; and/or d. PbO_2 ≥ 98%;
					Gold metal and/or silver	a. Metal Au ≥ 99%; b. Metal Ag ≥ 99%.
8.	Gold	a. Native b. Associated minerals			Precious metal	Metal Au ≥ 99%
9.	Silver	a. Native b. Associated minerals			Precious metal	Metal Ag ≥ 99%
10.	Chromium	Chromite			Metal and alloys	a. Metal Cr ≥ 99% b. Metal Alloys of chromium ≥ 60% Cr

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
11.	Zirconium				Material of zircon chemical, sponge zircon, zirconia, metal zircon, and hafmium	a. Zirconium Oxy-chlorida (ZOC) $ZrOCl_2.8H_2O \geq 90\%$; b. Zirconium sulfate (ZOS) $Zr(SO_4)_2.4H_2O \geq 90\%$; c. Zirconium Sulfate Based (ZBS) $Zr_5O_8(SO_4)_2.xH_2) \geq 90\%$; d. Zirconium Carbonate Based (ZBC) $ZrOCO_3.xH_2O) \geq 90\%$; e. Amonium 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. Potassium Heksafloro Zirnonate (KFZ) $K_2ZrF_6 \geq 90\%$; h. Zirconium Sponge $\geq 85\%$; i. Zirkonia $(ZrO_2+HfO_2) \geq 99\%$; j. Zirconium $\geq 95\%$ ZR; and/or k. Hafnium $\geq 95\%$ Hf.
			Ilmenite	Refer to the requirements for ilmenite in iron sand		Refer to the requirements for Ilmenite in iron sand
			Rutil	Refer to the requirements for rutil in tin		Refer to the requirements for rutil concentrate in tin

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
12	Antimony	Stibnit			Metal antimony	a. SB ≥ 99%; and/or b. Sb_2O_5 ≥ 95%.

Remarks:

*) This represents iron concentrates which contains hematite/magnetite mineral with iron component of Fe ≥ 62%.

**) This represents iron concentrates which contains goethite/laterite mineral with iron component of Fe ≥ 51% and alumina (Al_2O_3) and silica (SiO_2) components of ≥ 10%.

***) This represents iron concentrates which contains lamella magnetite-ilmenite mineral with iron component of Fe ≥ 58% and compound concentration Titanium oxide of 1% ≤ TiO_2 ≤ 25%.

****) This represents iron concentrates in the form of pellet which contains lamella magnetite-ilmenite mineral with iron component of Fe ≥ 56% and compound concentration Titanium oxide of 1% ≤ TiO_2 ≤ 25%.

*****) This represents iron concentrates which contains lamella magnetite-ilmenite mineral with compound concentration Titanium oxide of TiO_2 ≥ 50%.

Appendix B: Regional Taxes

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

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

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

Ministry of Energy and Mineral Resources

IMA (Indonesian Mining Association)

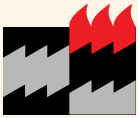
The Indonesian Mining Association was founded on May 29, 1975, as a non-governmental, non-political, non-profit organization established in accordance with the laws of the Republic of Indonesia. The headquarters and registered office of the association are located in Jakarta.

The association serves as a link between the Government and the mining industry, organizing lectures, seminars and training activities for the members, organizing periodic conferences on mining in Indonesia, publishes 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 ("AFMA") and currently provides the secretariat for the Federation.

IMA Purpose

The aims and objectives of the association are to support the government in its policies 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 such aspects of the mining industry at the national level and possible solutions to these problems.
2. Studying modern methods in the mining industry, which have been adopted in other countries for application in Indonesia.
3. Fostering a mutual respect between the members of the association, both private and government (it being understood that no decision or action of the association shall affect any contracts to which any of the members are parties).
4. Advancing new ideas relative to such aspects of the mining industry.
5. Fostering a spirit of scientific research among the members of the association.
6. Establishing contact and cooperation with similar professional organisations outside Indonesia.
7. Disseminating objective information and analysis concerning such aspects of the mining industry.
8. Maintenance of a high standard of professional conduct on the part of the Association members.
9. Promotion of the development of the infrastructure necessary to support the mining industry in Indonesia.
10. Familiarisation of the general public and educational institutions with current developments and problems in the mining industry.
11. Giving assistance to and encouraging potential university graduates in preparing for a career in the mining industry.



Indonesian Coal Mining Association ("ICMA")

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

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

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

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

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

The total membership of APBI-ICMA includes 122 companies consisting of:
Coal producers: 78 companies
Coal mining service providers: 44 companies
Our members produce about 80% of total national coal production.

Summary of CCoW generations

No	Item	First Generation	Second Generation	Third Generation	Remarks
1	**Dead rent – in US$ per hectare per annum except stated otherwise**				
	a. General Survey	0.01 – 0.03	0.05 – 0.10	0.025 – 0.05	Second Generation's 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%	Calculated based on coal sales price minus certain marketing/ selling
3	**CIT**				
	a. Tax Rates	35% for the first ten years of Operating Period; 45% thereafter	Follows the prevailing tax rates. The rate is reduced to 28% in 2009 and to 25% from 2010 onwards.	Maximum rate of 30% (tax rate reduction subject to a GR)	
	b. Depreciation rates				
	Non-building assets:				
	i. Straight line	12.5%	Follows the prevailing tax depreciation rates	10% -50%	For Third Generation, the tax depreciation rates only apply to tangible assets located in the Contract Area. Otherwise, provisions of the Income Tax Law Year 1994 should prevail
	ii. Double declining	Not Applicable		20% - 100%	
	Building assets:				
	i. Straight line	12.5%	Follows the prevailing tax depreciation rates	10% -20%	
	ii. Double declining	Not Applicable		Not Applicable	

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

No		Item		First Generation	Second Generation	Third Generation	Remarks
		viii.	Dead rent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	
		ix.	Sales tax	✓	Silent	Silent	
		x.	Uncredited VAT	Silent	✓	✓	
		xi.	Expenses for treating, processing, repairs and maintenance, handling, storing, transporting 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 the expenditures have been audited by independent auditor and approval from the DGT has been obtained
		Sales, General & Administation					
		i.	Salaries and wages	✓	✓	✓	
		ii.	Costs of specified benefits-in-kind in the contract area	✓	x	✓	For the second generation, not deductible unless the holder obtains remote area approval from the DGT
		iii.	Research expenses	✓	✓	✓	For the second generation, should be performed in Indonesia
		iv.	Travel expenses	✓	✓	✓	Only for business purposes
		v.	Technical fees	✓	✓	✓	

No	Item		First Generation	Second Generation	Third Generation	Remarks
	vi.	Management fees and other fees for services performed abroad	✓	✓	✓	
	vii.	Communication and office expenses	✓	✓	✓	
	viii.	Dues and subscriptions	✓	✓	✓	
	ix.	Advertising and other selling expenses, public relations, marketing	✓	✓	✓	
	x.	Legal and auditing expenses	✓	✓	✓	
	xi.	General overhead expenses	✓	✓	✓	
	xii.	Exploration expense	✓	✓	✓	
	xiii.	Other relevant expenses	✓	✓	✓	
	xiv.	Reserve for reclamation	Silent	✓	✓	For the third generation, subject to a deposit placed in a State Owned bank, audited by a public accountant and approved by the DGT
	g. Interest deductibility					
	Maximum debt to equity ratio		1.5 to 1	Silent	Not Applicable	At the time of writing, the DGT is drafting a GR on Mining Taxation, which may include thin capitalisation rules
	Maximum debt to equity ratio for Investments <US$200m		Not Applicable	Silent	5 to 1	
	Maximum debt to equity ratio for Investments >US$200m		Not Applicable	Silent	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	Second generation follows the prevailing tax losses carried forward period
4	**Withholding Tax**						
		i.	Dividends, interest and royalties	10%	15% / 20%	15% / 20%	- Second and Third generation WHT obligations are to follow the prevailing
		ii.	Dividends (founder shareholders)	10%	Silent	7.5%	- Reduced tax rate is available under a tax treaty
		iii.	Rental, technical fees, management fees and other service fees	10%	2% to 20%	2 %/20%	
		iv.	Employee income tax	Applicable	Applicable	Applicable	- Second and Third generation follows the prevailing employee income tax regulations
5	**Value Added Tax rate**						
		i.	VAT on coal sales	Not Applicable*	Exempted	10% on domestic sales; 0% on export sales	- Third generation CCoW VAT obligations are grandfathered to the 1994 VAT Law. VAT paid should be creditable/refundable
		ii.	VAT on domestic purchases	Not Applicable*	10% paid to vendor	10% collected by the mining company	- Input VAT cannot be credited/refunded by second generation CCoW holders, but this is deductible for corporate income tax purposes.
		iii.	VAT on import	Not Applicable*	10% paid to Custom Office	Exempted up to the tenth anniversary of Operating Period	- Second Generation follows the prevailing VAT Law

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

Summary of Mineral CoW generations

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

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

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

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

Glossary

Term	Definition
AMDAL	*Analisis Mengenai Dampak Lingkungan* (Environmental Impact Assessment)
BI	Bank of Indonesia
BKPM	*Badan Koordinasi Penanaman Modal* (Indonesia's Investment Coordinating Board)
CCA	Coal Co-operation Agreement
CIT	Corporate Income Tax
CITR	Corporate Income Tax Return
CoW	Contract of Work
CCoW	Coal Contract of Work
CD	Community Development
Contracts	CoW/CCoW/CCA
CSR	Corporate Social Responsibility
DGFT	Director General of Foreign Trade
DGoMC	Director General of Minerals and Coal
DGT	Director General of Taxation
DMO	Domestic Market Obligation
EPC	Engineering, Procurement, and Construction
ET	*Eksportir Terdaftar* (List of Exporter)
FOB	Free On Board
Forestry Law	Law No.41 of 1999 as amended by Law No.19 of 2004
GDP	Gross Domestic Product
GoI/ Government	Government of Indonesia
GR	Government Regulation
GR 1	Government Regulation No.1 of 2014
GR 18	Government Regulation No.18 of 2015 dated 6 April 2015
GR 22	Government Regulation No.22 of 2010 dated 1 February 2010

Term	Definition
GR 23	Government Regulation No.23 of 2010 dated 1 February 2010
GR 24	Government Regulation No.24 of 2012 dated 21 February 2012
GR 55	Government Regulation No.55 of 2010 dated 5 July 2010
GR 78	Government Regulation No.78 of 2010 dated 20 December 2010
ha	Hectare
IDX	Indonesia Stock Exchange
Investment Law	Law No. 25 of 2007
IPR	*Izin Pertambangan Rakyat* (People's Mining Licence)
ITO	Indonesian Tax Office
IUJP	*Izin Usaha Jasa Pertambangan* (Mining Services Business Licence)
IUP	*Izin Usaha Pertambangan* (Mining Business Licence)
IUPK	*Izin Usaha Pertambangan Khusus* (Special Mining Business Licence)
IUP-OP	*Izin Usaha Pertambangan Operasi Produksi* (Production Operation Mining Business Licence)
KP	*Kuasa Pertambangan* (Mining Right)
L/C	Letter of Credit
Minister	Minister of the MoEMR
Mining Law	Law on Mineral and Coal Mining No.4 of 2009
MoEMR	Minister of Energy and Mineral Resources
MoF	Minister of Finance
MoT	Ministry of Trade
MoU	Memoranda of Understanding
NEP	National Energy Policy
NPWP	*Nomor Pokok Wajib Pajak* (Tax Payer Identification Number)
OP	Operation Production
PBB	*Pajak Bumi dan Bangunan* (Land & Building Tax)
PE	Permanent Establishment

Term	Definition
PER	*Peraturan Direktur Jenderal Pajak* (Director General of Taxation Regulation)
PER 32	Regulation of DGT No. PER-32/PJ/2012
PerMen 1	Regulation of MoEMR No.1/2014
PerMen 7	Regulation of MoEMR No.7/2012
PerMen 7/2014	Regulation of MoEMR No. 7/2014, dated 28 February 2014
PerMen 8	Regulation of the MoEMR No. 8/2015, dated 4 March 2015
PerMen 10	Regulation of the MoEMR No. 10/2014, dated 7 April 2014
PerMen 11	Regulation of the MoEMR No.11/2012, dated 16 May 2012
PerMen 17	Regulation of the MoEMR No.17/2010, dated 23 September 2010
PerMen 24	Regulation of the MoEMR No.24/2012, dated 8 October 2012
PerMen 28	Regulation of the MoEMR No.28/2009, dated 30 September 2009
PerMen 28/2013	Regulation of MoEMR No. 28/2013, dated 13 September 2013
PerMen 32	Regulation of MoEMR No.32/2013
PerMen 34	Regulation of the MoEMR No.34/2009, dated 31 December 2009
PerMen 37	Regulation of MoEMR No. 37/2013
PerMenDag	*Peraturan Menteri Perdagangan* (Minister of Trade Regulation)
PerMenDag 04	Regulation of MoT No. 04/M-DAG/PER/1/2014, dated 11 January 2014
PerMenDag 39	Regulation of MoT No. 39/M-DAG/PER/7/2014, dated 15 July 2014
PMA	*Penanaman Modal Asing* (Foreign Investment Company)
PMDN	*Penanaman Modal Dalam Negeri*
PMK	*Peraturan Menteri Keuangan* (Minister of Finance Regulation)
PPP	Public Private Partnership Scheme
PT	*Perseroan Terbatas (*Limited Liability Company)
PTBA	PT Tambang Batubara Bukit Asam (Persero) Tbk
PwC	PwC refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity

Term	Definition
SE	*Surat Edaran* (Directorate General of Tax Circular)
SE 44	Director General of Tax Circular Letter No. 44/PJ/2014
SKT	*Surat Keterangan Terdaftar* (Registration Letter for non-core mining services business)
UU PT	*Undang Undang Perseroan Terbatas* (Corporations Law)
VAT	Value Added Tax
WIUP	*Wilayah Izin Usaha Pertambangan* (Mining Business Licence Area)
WIUPK	*Wilayah Izin Usaha Pertambangan Khusus* (Specific Mining Business Licence Area)
WHT	Withholding Tax
WP	*Wilayah Pertambangan* (Mining Area)
WPN	*Wilayah Pencadangan Negara* (State Reserve Area)
WPR	*Wilayah Pertambangan Rakyat* (People's Mining Area)
WUP	*Wilayah Usaha Pertambangan* (Commercial Mining Business Area)

About PwC

The firms of the PwC global network (www.pwc.com) provide Industry-focused assurance, tax and advisory services for public and private companies. More than 196,000 people in 157 countries connect their thinking, experience and solutions to build trust and enhance value for clients and their stakeholders.

Our offerings are organised into three Lines of Service, each staffed by highly qualified experienced professionals and leaders in our profession.

- Assurance Services provides innovative, high quality, and cost-effective services related to an organisation's financial control, regulatory reporting, shareholder value and technology needs;

- Tax Services provides a range of specialist tax services in three main areas: tax consulting, tax dispute resolution, and compliance. Some of our value-driven tax services for the mining sector include:

    - International tax structuring
    - Mergers and acquisitions
    - Compliance services
    - Dispute resolution
    - Indirect taxes
    - Transfer pricing; and
    - Tax process reviews

- Advisory Services provides comprehensive advice and assistance relating to transactions, performance improvement and crisis management, based on long-term relationships with clients and our financial analysis and business process skills.

PwC Indonesia's IPO Centre is comprised of specialists who provide a broad range of services to companies in connection with capital markets transactions, including:

- Advising on and assessing your company's readiness for becoming a public company
- Acting as reporting accountants on capital markets transactions
- Assisting and advising on accounting conversion projects
- Advising on regulatory issues
- Advising on the restructuring and re-organization to effectuate the IPO
- Consider listing eligibility issues
- General planning and preparation.

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.

Photo source : PwC

- We have operated in Indonesia since 1971 and have over 1,600 professional staff, including 46 Indonesian national partners and expatriate technical advisors, trained in providing assurance, advisory and tax services to Indonesian and international companies.

- Our Energy, Utilities and Mining (EU&M) practice in Indonesia comprises over 300 dedicated professionals across our three 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 market. We also draw on the PwC global EU&M network which includes some 3,400 qualified industry experts.

- 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.

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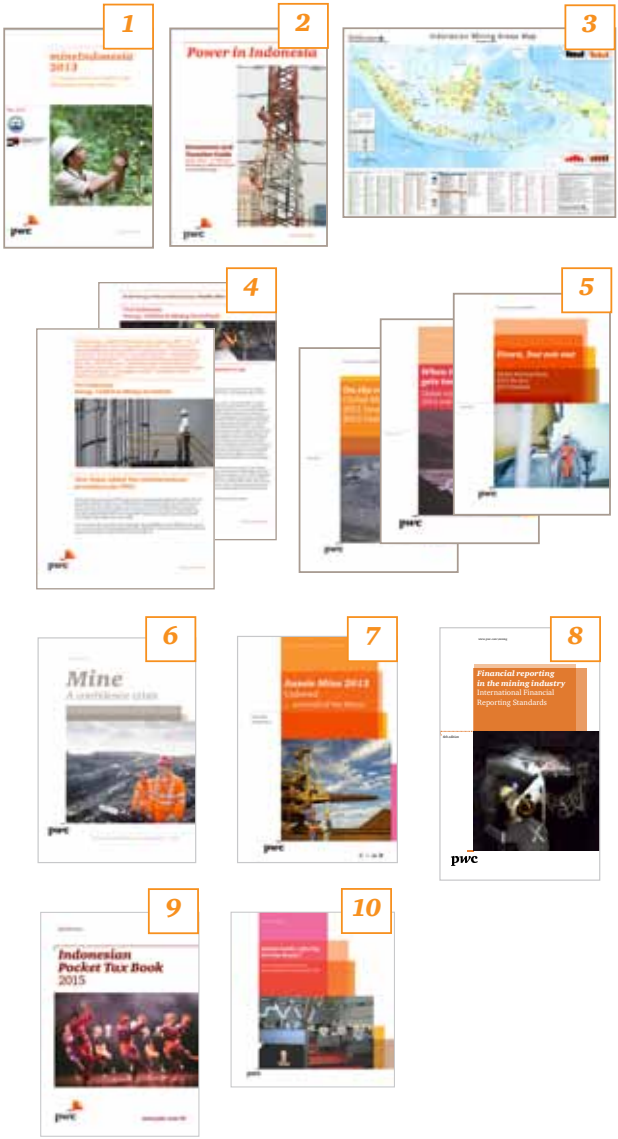

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