



Consolidation of Indonesia's mining licensing regime

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Regulation No. 34 of 2017 by the Ministry of Energy and Mineral Resources on Licensing within the Minerals and Coal Mining Sector unifies a diverse patchwork of several former regulations relating to 6 types of coal and mineral business licenses for Business Entities, Cooperatives and Individuals¹.

The new regulation, which regulates IUJP mining services licenses as well as IUP/IUPKs, aims to simplify the existing licencing regime and reduce inconsistencies between the previous regulations. As such, it should be welcomed as reinforcing the Indonesian government's position on certain aspects of mining permitting, as described below.

Who Approves the Mining Licences?

As per the 2009 Mining Law, the general principle is "One Company, One Licence". As a result, a single Indonesian Business Entity cannot hold both an IUP for Production and a IUJP for Mining Services². Holders also cannot transfer licences between different Business Entities, Cooperatives or Individuals.

The New Regulation clarifies that the Minister is responsible for granting IUPs for Exploration and Production if the applicant is a foreign investment (PMA) vehicle. Providing for this function to be controlled by the central government should be welcomed by most foreign investors.

The Minister grants the IUPK and IUP in other circumstances too, including if the work area

crosses multiple provinces, shares borders with another country, is more than 12 nautical miles from the coastline, or held by a publicly listed company that owns more than one IUP in multiple provinces.

Provided that the work area falls in a single regency, the Governor of that regency is responsible for projects involving purely domestic capital under the domestic capital (PMDN) scheme.

As per Government Regulation No. 1 of 2017, regents (*bupati*) in the applicable work area no longer appear to have a formal role in the permit process.

One Mining Licence for Processing, Refining and Selling?

IUP OPK mineral processing and refining licences now have an initial term of up to 30 years, extendable by 20 years for each extension.

The change from 20 years is a response to concerns that licence terms were insufficient to ensure that returns could be generated following the capital intensive process of developing refining and processing facilities.

Apart from processing and refining, the IUP OPK now also covers the sale and transportation of regulated ore. No longer requiring separate permits for these activities should be also welcomed by investors.

¹ Article 127 of Law Number 4 of 2009 on Minerals and Coal Mining; Articles 27(2), 41, 44(5), 68 and 83 of Government Regulation Number 23 of 2010 on Implementation in Minerals and Coal Mining Business Activities.

² Article 15.

Corporate Matters

The transfer of shares in any IUP/IUPK and IUP OPK holder, as well as any change in the Board of Directors or Board of Commissioners, requires approval from the Director General on behalf of the Minister.

Based on the New Regulation, it appears that approvals for any change of investment or source of financing may not be required any longer. This is an interesting change given the issues raised under the previous approval regime in the context of insolvency proceedings for a number of Indonesian mining companies.

In such proceedings debtors had argued that guarantees and other contingent liabilities also required approvals. To the extent these had not been obtained at the time of execution, the relevant instruments were held to be unenforceable under Indonesian law.

Mining Services

In a similar vein to IUPs, the Minister will issue IUJPs to mining services (PMA) companies with foreign capital.

Attachment IVP to the New Regulation sets out a list of specific services for IUJP holders. The list does not distinguish between "core" and "non-core" services.

The comprehensive list in Attachment IVP serves as an important reminder to international mining services companies of the need to hold an IUJP if providing services to an Indonesian mining company. For example, foreign contractors appear to be engaged by Indonesian mining companies on a regular basis in order to conduct local resources and reserve estimation, which is expressly covered under Attachment IVP. Sanctions could ultimately result in the revocation of the underlying mining licence.

Conclusion

The New Regulation is a step in the right direction, and does not contain any major shocks. Given the clarifying nature of the New Regulation, it would be somewhat unfair to accuse the government of tinkering around the edges rather than addressing the key issues facing Indonesia's mining industry today. These issues include the turmoil around export restrictions of unprocessed mineral ore and the potential transition to the IUP/IUPK licence regime by a number of major Indonesian miners. In this regard, see our previous article on [Indonesia's export restrictions](#).

Nevertheless, the New Regulation may be held up as a good example of the continuing drive led by the Indonesian cabinet to consolidate and simplify the process of investing and conducting business in Indonesia.

For further information, please contact:



Marius Toime

Partner
Singapore
T: +65 6571 6603
Marius.toime@blplaw.com



Karen Leung

Associate
Hong Kong
T: +852 3143 8438
Karen.leung@blplaw.com