Indonesia


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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining law in Indonesia is governed by the Law on Mineral and Coal Mining No. 4 of 2009, dated 12 January 2009 ("**Mining Law**"). The Mining Law provides general provisions regarding coal and mineral mining activities in Indonesia. Further, a number of implementing regulations have been subsequently enacted by the Government (both central and regional) as an implementation of the provisions of the Mining Law. The implementing regulations are in the form of, among others, Government Regulations, Minister of Energy and Mineral Resources ("**MEMR**") Regulations, and Director General of Mineral and Coal ("**DGMC**") Regulations.

The main implementing regulations of the Mining Law are, among others, as follows:

a. Government Regulation No. 22 of 2010 regarding Mining Areas ("**GR 22/2010**");

b. Government Regulation No. 23 of 2010, as amended by Government Regulation No. 24 of 2012, Government Regulation No. 1 of 2014, Government Regulation No. 77 of 2014, Government Regulation No. 1 of 2017 and Government Regulation No. 8 of 2018 regarding the Implementation of Mineral and Coal Business Activity ("**GR 23/2010**");

c. Government Regulation No. 55 of 2010 regarding the Fostering and Supervision of Implementation of Mineral and Coal Mining Business Management;

d. Government Regulation No. 78 of 2010 regarding Reclamation and Mine Closures ("**GR 78/2010**");

e. MEMR Regulation No. 11 of 2018 as amended by MEMR Regulation No. 22 of 2018 regarding Procedures of Granting of Area, Licensing and Reporting in Mineral and Coal Mining Business Activities ("**MEMR Regulation 11/2018**");

f. MEMR Regulation No. 26 of 2018 regarding the Implementation of Good Mining Rules and Supervision of Mineral and Coal Mining ("**MEMR Regulation 26/2018**")

g. Decree of the Minister of Energy and Mineral Resources No. 1827 K/ 30/ MEM/ 2018 regarding Guidelines of Good Mining Rules Implementation;

h. MEMR Regulation No. 43 of 2015 regarding Procedures to Evaluate the Issuance of Mining Business Licenses ("**MEMR Regulation 43/2015**");

i. MEMR Regulation No. 25 of 2018 concerning Mineral and Coal Mining Business ("**MEMR Regulation 25/2018**"); and

j. MEMR Regulation No. 9 of 2017 regarding Procedures for Shares Divestment and Mechanism to Determine the Price for Shares Divestment in the Minerals and Coal Business Activity ("**MEMR Regulation 9/2017**").

1.2 Which Government body/ies administer the mining industry?

According to the Mining Law, different Government bodies have the authority to administer the mining industry, as follows:

a. The Regent/Mayor has the authority to issue, among others:

(i) a Mining Business Licence (*Izin Usaha Pertambangan* or "**IUP**"), if the mining area is located within one regency/city;

(ii) a Mining Services Business Licence (*Izin Usaha Jasa Pertambangan* or "**IUJP**"), if the services are rendered within one regency/city;

(iii) a Production Operation IUP specifically for the transportation and sale, if the transportation and sale activities are conducted within one regency/city; and

(iv) a Production Operation IUP specifically for processing and refining, if the mining products to be processed are supplied by the holder(s) of a Production Operation IUP issued by the Regent/Mayor, and/or the location of the processing activity is located in one regency/city.

b. The Governor (head of a province) has the authority to issue:

(i) IUPs, if the mining area crosses the boundaries of regencies/cities in one province based on recommendation of the Regent/Mayor pursuant to the relevant laws and regulations;

(ii) IUJPs, if the services are rendered within two or more regencies/cities in one province;

(iii) Production Operation IUPs specifically for transportation and sale, if the transportation and sale activities are conducted within two or more regencies/cities in one province; and

(iv) Production Operation IUPs specifically for processing and refining, if the mining products to be processed are supplied by the holder(s) of a Production Operation IUP issued by the Governor and/or the holder(s) of a Production Operation IUP for which the mining area(s) is/are located in different regencies/cities, but within one province, and/or the location of the processing activity crosses two or more regencies/cities in one province.

c. The MEMR has the authority to issue, among others:

(i) IUPs, if the mining permit area crosses the boundaries of provinces based on the recommendation of the Governors and the Regents/Mayors pursuant to the relevant laws and regulations;

(ii) IUJPs, if the services are rendered within two or more provinces;

(iii) Production Operation IUPs specifically for transportation and sale, if the transportation and sale activities are conducted within the Indonesian territory or for export purposes;

(iv) Production Operation IUPs specifically for processing and refining, if the mining products to be processed are imported and supplied by holder(s) of Special Production Operation IUPs, holder(s) of Production Operation IUPs issued by the MEMR, or holder(s) of Production Operation IUPs for which the mining area is located in different provinces; and

(v) all the above licences, if the applications are submitted by a foreign investment ("**PMA**") company (this is an Indonesian entity, the shares of which are owned in whole or in part by foreign shareholders).

The old Mining Law has inherited the form of Coal Contract of Works ("**CCOW**") from coals and Contract of Works ("**COW**") for minerals. CCOWs and COWs are different from IUPs. An IUP is a licence issued by the relevant Government. CCOWs and COWs provide rights to mine coal and minerals granted to mining companies based on mining contracts entered into by (central) Government with the mining companies for a certain period. Pursuant to the Mining Law, all CCOWs and COWs will continue to be valid until their respective expiration, subject to adjustment pursuant to the Mining Law within one year as of the enactment of the Mining Law. MEMR Regulation No. 11/2018 further provides that the mining stages of the CCOW and COW must be adjusted to become: (i) the exploration stage which consist of general survey, exploration and feasibility study; and (ii) the production operation stage which consist of construction, mining, processing and/or refining and the transport and sale.

As per January 2018, there are 31 COW companies and 68 CCOW companies which have conducted negotiation for amendment with the Government, and out of that 22 COWs and 68 CCOWs have reached agreements for the amendment of the COWs and CCOWs with the MEMR.

Pursuant to MEMR Regulation 11/2018, the authority of the Regent/Mayor to issue the IUP has been completely removed and such authority is only given to the MEMR and the Governor with the following details:

The MEMR has the authority to issue:

a. Exploration IUP for mineral and coal, in the following Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan* or "**WIUP**"):
   i. a WIUP which crosses the boundaries of provinces;
   ii. a WIUP which is located on seabed more than 12 miles from a coastline and/or archipelagic water; or
   iii. a WIUP which has direct boundary with other countries.
b. Exploration IUP for PMA companies.
c. Exploration IUP and Production Operation IUP for public companies which own more than one IUP for metal minerals or coal and the WIUP is located in more than one province.
d. Special Mining Business Licences (*Izin Usaha Pertambangan Khusus* "**IUPK**") for Exploration and Production Operation for minerals and coal.
e. Production Operation IUP if the mining location, the processing and/or refining location and the special terminal location (i) crosses the boundaries of provinces, or (ii) has direct boundary with other countries.
f. Production Operation IUP if the applications are submitted by PMA companies.
g. Production Operation IUPs specifically for processing and refining if:
   i. the mining commodities are supplied from other areas outside the location of processing and refining;
   ii. the mining commodities are imported;
   iii. the location of processing and refining crosses the boundaries of provinces; and
   iv. the application is submitted by a PMA company.
h. IUJPs (i) if the services are rendered throughout Indonesian territory and for (ii) PMA companies.

   The Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*, or "**BKPM**") also has the authority to issue a mining related licence to PMA companies based on delegation from the Minister.

The Governor has the authority to issue:

a. an Exploration IUP for metal minerals and coal in the WIUP which is located within one province or on seabed more than 12 miles from the coastline and/or archipelagic water;
b. Production Operation IUPs specifically for transportation and sale, if the transportation and sale activities are conducted within one province;
c. Production Operation IUPs specifically for processing and refining, if: (i) the mining products are supplied from the same province of the processing and refining facility; and/or (ii) if the processing and/or refining facility are located within the same province; and
d. IUJPs if the services are rendered within one province.

1.3 Describe any other sources of law affecting the mining industry.

The source of law affecting the mining industry in Indonesia consists of the following:

a. the Indonesian 1945 Constitution, as amended ("**Constitution**");
b. the Law (*Undang-Undang*)/Government Regulation in Substitution of Law;
c. Government Regulations;
d. Presidential Regulations;
e. Ministerial (and its sub-divisions) Regulations; and
f. Regional Regulations (*Peraturan Daerah*).

In theory, some other legal sources may also affect the mining industry, such as decisions of the Constitutional Court and other court decisions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

An Exploration IUP is required to be obtained for a mining company to conduct the reconnaissance phase activity. The Exploration IUP is required not only to conduct the exploration activities, but also the general survey and feasibility study or other reconnaissance activities.

2.2 What rights are required to conduct exploration?

As mentioned in question 2.1 above, an Exploration IUP is required to be obtained for a mining company to conduct exploration activities. An application to obtain an Exploration IUP may only be submitted by legal entities or individuals who have obtained the WIUP through a tender process for metal minerals and coal WIUP conducted by, and through, submission of an application for non-metal minerals and rock WIUP to the MEMR or Governor (according to its authority) (see question 1.2 above).

Metal Minerals and Coal WIUP

Before the Government opens the tender process, the Government has to first determine the mining area in consultation with Parliament and the regional Governments. The mining area is an area which potentially has minerals and/or coal, which is not restricted by the Government's administration and constitutes part of the national zoning. Part of the Mining Area will be granted as a Mining Business Area (*Wilayah Usaha Pertambangan* or "**WUP**"), which has the data, potential and/or geological information available. Currently, the Government is still in the process of determining the mining area throughout the Indonesian territory. Therefore, to date, the Government has not yet opened any tender process and, consequently, no new IUP under the Mining Law has been issued to date.

Once the winner of the WIUP tender is selected, the relevant governmental bodies (depending on their authorities) will then issue the Exploration IUP to the winner of WIUP tender for the specific mineral and coal upon application by the tender winner. Further, a mining company which has completed the feasibility study in the exploration stage can apply for a Production Operation IUP. The holder of a Production Operation IUP is permitted to conduct activities of construction, mining, processing and refining/smelting, as well as hauling/transportation and sale.

Non-metal and Rock WIUPs

The application for obtaining non-metal minerals and rock WIUPs is not conducted through a tender process, but through a direct application from the applicant to the relevant governmental bodies (depending on their authorities) as follows:

a. the MEMR, with a prior recommendation from the relevant Governor; and

b. the Governor, with a prior recommendation from the relevant Regent/Mayor.

However, pursuant to Law No. 23 of 2014 regarding the Regional Government as amended by Law No. 2 of 2015 and No. 9 of 2015 on Stipulation of Government Regulation *in lieu* of Law No. 2 of 2014 on Amendment to Law No. 23 of 2014 regarding the Regional Government ("Law 23/2014"), the authority of the Regent/Mayor to issue the WIUP has been completely removed and is only given to the MEMR and the Governor, as follows:

The MEMR has the authority to issue:

a. a Mining Area (*Wilayah Pertambangan* "**WP**") as part of a national spatial plan, which consists of a WUP, People's Mining Business Area (*Wilayah Pertambangan Rakyat* "**WPR**"), State Reserves Area (*Wilayah Pencadangan Negara* "**WPN**") and Special Mining Business Area (*Wilayah Usaha Pertambangan Khusus* "**WUPK**");

b. a WIUP for metal minerals, coal and a Special Mining Business Licences Area (*Wilayah Izin Usaha Pertambangan Khusus* "**WIUPK**"); and

c. WIUP for non-metal minerals and rocks which crosses boundaries of provinces and/or on seabed more than 12 miles from the coastline.

The Governor has the authority to issue a WIUP for non-metal minerals and rocks within one province and/or on seabed more than 12 miles from the coastline.

2.3 What rights are required to conduct mining?

It is required that an IUP is obtained before a mining company can conduct any mining business activity/operation. Please refer to the process described in question 2.2 above for a mining company to obtain a Production Operation IUP.

2.4 Are different procedures applicable to different minerals and on different types of land?

Yes, the procedures will be based on the type of minerals. Please refer to the process described in question 2.2.

With respect to the types of land, the procedure for obtaining land rights would be different based on the type of land concerned. For example, if the mining area is located in (i) a forest area (which is not a protected forest area), the mining company must obtain or borrow a used permit from the Ministry of Forestry, (ii) a forest area on which area there is a forest concession, an agreement with the forest concession company is required, (iii) an area which is owned by another party, an agreement with the land owner is required, or (iv) an area which is owned or occupied by another parties or local communities, a land relinquishment must be conducted.

2.5 Are different procedures applicable to natural oil and gas?

Yes. The procedures applicable for natural oil and gas are not within the scope of the Mining Law, and therefore they are different from the procedures for mining.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

The Mining Law provides three categories of mining licenses as follows:

1. IUPs, which can be granted to (i) business entities (including State-owned companies, region-owned companies and PMA companies), (ii) cooperatives (*koperasi*), and (iii) Indonesian individuals;
2. IPRs which can be granted to (i) Indonesian individuals for a maximum 1 (one) hectare, (ii) community groups (*kelompok masyarakat*) for a maximum 5 (five) hectares, and (iii) cooperatives (*koperasi*) for a maximum 10 (ten) hectares; and
3. Special Mining Business Licences (*Izin Usaha Pertambangan Khusus* or "**IUPK**"), which can be given to Indonesian legal entities, either in the form of State-owned entities, region-owned entities, or private entities. State-owned entities and region-owned entities shall have priority in obtaining the IUPK.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign investors must have an Indonesian vehicle to conduct mining business activities in the form of a PMA company pursuant to Law No. 25 of 2007 on Investment.

Shares in a PMA company are subject to divestment requirements with the following progressive divestment:

Years after commencement of production	Minimum divestment (as a percentage of the total shares)
6	20%
7	30%
8	37%

Years after commencement of production	Minimum divestment (as a percentage of the total shares)
9	44%
10	51%

Based on GR 23/2010, a PMA company holding a Production Operation IUP is required to gradually divest its shares based on the table mentioned above (counted from the date of issuance of the Production Operation IUP). The divestment process will apply to the Indonesian participant(s) in the following sequential order: (i) the Central Government; (ii) the Provincial or the regional/municipality Government; (iii) a State-owned company ("**BUMN**"); (iv) a Region-owned company ("**BUMD**"); and (v) a national privately-owned company. However, there is an exception in regards with this obligation. MEMR Regulation 9/2017 provides that a PMA company holding the Production Operation for Processing and Refining is not required to divest its shares.

3.3 Are there any change of control restrictions applicable?

The change of shares ownership, including the change of control (acquisition), can only be conducted with prior approval from the Government (depending on its authority to issue the IUP).

GR 23/2010 provides that any change of shareholding in a PMA company can only be conducted if:

a. the foreign share ownership is not more than 75% for a company holding an Exploration IUP and IUPK;

b. the foreign share ownership is not more than 49% for a company holding a Production Operation IUP and IUPK but the processing and/or refining activities are conducted by third parties;

c. the foreign share ownership is not more than 60% for a company holding a Production Operation IUP and IUPK and conducting the processing and/or refining activities; and

d. the foreign share ownership is not more than 70% cent for a company holding a Production Operation IUP and IUPK and conducting underground mining.

3.4 Are there requirements for ownership by indigenous persons or entities?

As elaborated in question 3.1 above, based on GR 23/2010 jo. MEMR Regulation 9/2017, a PMA company holding a Production Operation IUP (save for the Production Operation for Processing and Refining) is required to gradually divest its shares to be owned by the Indonesian participant(s) (counted from the date of issuance of the Production Operation IUP).

3.5 Does the State have free carry rights or options to acquire shareholdings?

There is no free carry right of the Government to acquire shareholdings in a mining company, including PMA companies.

Please refer to the explanation on options given to the Government or Government-related entities in question 3.2 above in shares divestment stages. The shares of a PMA company to be divested will be offered to the Government, where the central Government has a priority to acquire the offered shares. If the Government indicated that it is not interested in the offered shares or fails to respond to the offer within 60 calendar days, the shares will be offered to BUMNs and BUMDs by auction.

The price for the divestment shares offered to an Indonesian participant shall be determined based on the fair market value without calculating the minerals and coal stock when the divestment of shares is conducted. The price for the divestment shares shall be the highest price for the offer of the shares divestment to: (i) the Central Government; and (ii) the Provincial or the regional/municipality Government. This price is the floor price for the offer of the shares divestment to: (i) a BUMN; (ii) a BUMD; and (iii) a national privately-owned company which is conducted through auction.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The Mining Law and GR 23/2010 provide that mining companies are obligated to conduct processing and refining activities of their (ore) mining products domestically. In other words, mining companies can only export the mining products which have been processed and/or refined in Indonesia.

The following regulations govern the activities of processing, refining and further beneficiation of mined minerals:

a. GR 23/2010;

b. MEMR Regulation 11/2018;

c. MEMR Regulation 25/2018;

d. Minister of Trade Regulation No. 01/M-DAG/PER/1/2017 on the Provision for Exporting Mining Products Resulting from Processing and Refining ("**MOT Regulation 01/2017**");

e. Minister of Trade Regulation No. 09/M-DAG/PER/2/2017 on Procedures for Determining the Export Benchmark Price of Processed Mining Product Subject to Export Duties ("**MOT Regulation 09/2017**");

f. MEMR Regulation No. 7 of 2017 concerning Procedures on Stipulation of Benchmark Price for Metal Mineral and Coal as amended by MEMR Regulation No. 44 of 217 and MEMR Regulation No. 19 of 2018 regarding on Procedures of Stipulation of Benchmark Price for Metal Mineral and Coal;

g. Minister of Trade Regulation No. 39/M-DAG/PER/7/2014 as amended by Minister of Trade Regulation No. 49/M-DAG/PER/8/2014 and Minister of Trade Regulation No. 52 of 2018 on the Provisions for Exporting Coal and Coal Products;

h. Minister of Trade Regulation No. 04/M-DAG/PER/1/2015 as amended by Minister of Trade Regulation No. 67/M-DAG/PER/8/2015 on Provisions to Use a Letter of Credit for Exporting Certain Commodities ("**MOT Regulation 4/2015**");

i. Minister of Trade Regulation No. 26/M-DAG/PER/3/2015 of 2015 on Specific Provisions on the Implementation of Using a Letter of Credit for Exporting Certain Commodities;

j. Bank Indonesia Regulation No. 16/10/PBI/2014 dated 14 May 2014 as amended by Bank Indonesia Regulation No. 17/23/PBI/2015 dated 23 December 2015 on the Receipt of Export Proceeds and Withdrawal of Foreign Exchange from External Debt (Offshore Borrowings) ("**BI Regulation 16/2014**");

k. Minister of Finance Regulation No. 13/PMK.010/2017 on the Stipulation of Export Goods that Are Subject to Export Duty and Export Tariff ("**MOF Regulation 13/2017**"); and

l. Ministry of Energy and Mineral Resources Circular Letter No. 03.E/30/DJB/2015 of 2015 on the Requirement to Obtain Technical Consideration for the Exemption of Payment Using L/C.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In brief, the regulations referred to in question 4.1 provide the following provisions:

a. Ferrous mining companies (holders of Contract of Work/ Production Operation IUPs) which have conducted ferrous mining activities can export in certain quantities upon fulfilment of the minimum processing and refining/smelting specifications, as provided in Attachment I of MEMR Regulation 25/2018.

b. It is not permitted to export raw materials/ores or unprocessed minerals.

c. Certain minerals (i.e. nickel, bauxite, ore, gold, silver, and chromium) can only be exported after they have been purified with the minimum content, as specified in Attachment 1 of MEMR Regulation 25/2018. The minimum content of these minerals is high (95% or above). However, based on MOT Regulation 01/2017 for the nickel with the content of <1.7% and bauxite with the content of ≥42% are excluded from the obligation to satisfy the minimum requirement of processing and refining, prior to be exported if (i) the owner of the IUP or IUPK nickel has utilised nickel with the content of <1.7%, at maximum of 30% from the total input capacity of its processing and refining facility, and (ii) the owner of the IUP or IUPK nickel or bauxite has or is in the process of constructing the refining facility independently or working together with other parties.

d. Certain other minerals (e.g. copper, iron sand, iron ore, zinc, lead, and manganese) can only be exported after they have been processed or purified with the minimum content, as specified in Attachment I of MEMR Regulation 25/2018.

e. MOT Regulation 09/2017 set out the procedures for determining Export Benchmark Prices (*Harga Patokan Ekspor* or "**HPE**") for processed mining produces. HPE is the basis for the Minister of Finance to calculate and impose export duties.

f. MOT Regulation 4/2015 requires the exporter to use a Letter of Credit ("**L/C**") as a mandatory payment instrument when exporting certain commodities (i.e. mining products), for which the price stated on the L/C must at least be equivalent to the global market price for the relevant exported commodities. Pursuant to Article 3 of MOT Regulation 4/2015, payment under an L/C must be made to a domestic foreign exchange bank (*bank devisa*) or to an export financing institution formed by the Government. However, based on the Minister of Trade Regulation No. 26/2015 on Special Provisions on the Use of Letter of Credit for the Export of Certain Goods, in case the exporter is not yet able use the L/C, the exporter is allowed to request for a postponement of the use of L/C to the MEMR.

g. Under BI Regulation 16/2014, the receipt of the Export Exchange (*Devisa Hasil Eksport* or "**DHE**") is obligated to be reported at the latest by the end of the third month after the registration month of the Export Declaration (*Pemberitahuan Eksport Barang* or "**PEB**").

h. MOF Regulation 13/2017 stipulates that export tariffs on processed mineral products for exporters that are involved in construction of refining/smelting facilities or cooperate in the construction of refining/smelting facilities shall be grouped by the progress level of mineral refining/smelting facility construction on an absorption costing percentage basis, namely as follows:

Stages of Physical Construction of Refining Facility	Description	Export Tariff from 2017–2022
First Stage	Physical construction has reached up to 30% of the total construction	7.5%
Second Stage	Physical construction has reached 30%–50% of total construction	5%
Third Stage	Physical construction has reached 50%–75% of total construction	2.5%
Fourth Stage	Physical construction has reached more than 75% of total construction	0 %

MOF Regulation 13/2017 further stipulates the export tariff of 10% for export of (i) nickel with Ni content of < 1.7% and (ii) washed bauxite with Al2O3 content of ≥ 42%, for export that is conducted from 2017 to 2022.

Further, in order to conduct export activities, exporters of mineral products must obtain a Recommendation from the DGMC and/or Export Approval from the Ministry of Trade. However, pursuant to MOT Regulation 01/2017, there are a few mining products which have satisfied the requirement content after being processed and refined that can be exported without the Export Approval and only required to undergo verification and technical search. The lists of the mining products are attached as Schedule I of this regulation.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

GR 23/2010 and MEMR Regulation 11/2018 provide that a holder of an IUP and IUPK is not permitted to transfer its IUP and IUPK to another party. GR 23/2010, however, allows the transfer of certain part of Operation Production WIUP or WIUPK that is held by a state-owned company (BUMN) to another entity where 51% or more of the shares of such entity are owned by the BUMN. This partial transfer of WIUP or WIUPK can only be conducted with a prior approval from the MEMR.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

The IUP cannot be imposed with a security right to secure finance. Security rights can, however, be created over the assets of the IUP holder, such as land, building, equipment, stocks, receivables, as well as other contractual security rights, to secure finance. In addition, a security right can also be created over shares of a mining company to secure finance. However, please note that the holder of Production Operation IUP and Production Operation IUPK are not allowed to encumber the shares which are subject to divestment.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The rights to conduct the mining activities stated in the IUP are not separable or transferable. An IUP holder may, however, assign a mining services company which holds an IUJP to perform certain mining activities, among others (i) exploration (in the framework of consultation, plan, and execution), and (ii) mining (in the framework of consultation and plan) but limited to stripping overburden and transportation of minerals and coal. Specifically for the holder of Production Operation IUP or Special IUP of Production Operation using closed-pit (underground) mining method may assign the work for making access of tunnel/shaft towards vein ore/seam coal, stream, and ventilation to the holder of IUJP in mining construction field, sub division of tunnelling.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

The rights to conduct reconnaissance, exploration and mining under the IUP are attached to the IUP holder. The IUP holder can be in the form of a PMA (joint venture) company. Indonesian law only recognises the IUP holder as the party that has rights to conduct reconnaissance, exploration and mining.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Pursuant to Article 40 of the Mining Law, the IUP shall only be granted for 1 (one) type of mineral. If any metal mineral and/or coal is discovered in a mining area which is different to the primary mineral and/or coal which is prospected to be mined, the MEMR will stipulate a new mining area or special mining area based on the application submitted by the holder of the IUP whose mining area is discovered different or not associated metal mineral and/or coal. Any IUP holder which is willing to mine the new stipulated mining area shall establish a new business entity. If the IUP or Special IUP holder does not intend to mine such different or non-associated mineral products, the opportunity to mine such products is given to another party through tender process. The other party which obtains the mining area through the tender process shall coordinate with the holder of IUP or Special IUP facilitated by the MEMR or Governor in accordance with their authorities.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The law is silent on the rights over residue deposits on the land used for mining activities. However, the IUP holder is still entitled to exercise rights over such residue deposits during the period of the IUP. In the event that the period of the IUP has lapsed, the IUP holder shall no longer be entitled to exercise rights over such residue deposits.

6.5 Are there any special rules relating to offshore exploration and mining?

The prevailing law and regulations on mining do not provide different rules or procedures for offshore exploration and mining. The Regional Government Law and Regulation of Minister of Energy and Mineral Resources No. 43 of 2015 concerning Evaluation Procedure of the Issuance of Mineral and Coal Mining Business Licence ("**MEMR Regulation 43/2015**") only provide a division of authorities issuing IUPs and determining mining area. For mining areas located on the seabed (i) which are more than 12 (twelve) miles from the coastline, the MEMR will issue the IUP and stipulate the IUP area of non-metal mineral and stone, and (ii) up to12 (twelve) miles from the coastline, the Governor will issue the IUP and stipulate the IUP area of non-metal and stone. These provisions are further regulated under MEMR Regulation 11/2018. MEMR Regulation 11/2018 also stipulates that in the event that a mining area is located on the seabed between 2 (two) provinces less than 24 (twenty-four) miles from the coastline, the governance of such seabed shall be divided equally.

To date, the Mining Law and GR 23/2010 still regulate the authority of Regent/Mayor to issue the IUPs. With reference to the Regional Government Law as well as MEMR Regulation 43/2015 and MEMR Regulation 11/2018, hence the Mining Law and GR 23/2010 should be adjusted to be in line with those regulations.

In addition to the above, the operation and ownership of vessels (including vessels used for offshore mining activities) must comply with the requirement of Law No. 17 of 2008 on Shipping, which stipulates, among others, that the vessel operation must be based on a specific shipping licence issued by the Minister of Transportation. The majority foreign share ownership of a PMA company holding a vessel is restricted, as the shares in this company must be majority (51% or more) owned by local shareholder(s).

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Unlike in other jurisdictions, Indonesian land titles do not extend beneath the surface of the land and therefore the land title holder has no right to conduct mining activities on the land in the absence of an IUP. On the other hand, Article 134 of the Mining Law states that the right of IUP holders does not include the surface of land.

On the right of an IUP holder over the surface of land, the Mining Law does not stipulate a requirement for the IUP holder to acquire ownership of the land over which the mining will be conducted under the valid IUP. The Mining Law imposes an obligation on IUP holders to enter into a "settlement" with people holding land titles within the mining area. The purpose of this "settlement" is to compensate the land title holders for the disruption to their utilisation of the surface of land caused by the mining activities. A settlement only needs to be reached with land title holders in the mining areas which are actually to be affected by mining activities. Settlement of land titles may be conducted in stages based on the needs for land by the IUP holder. There is no requirement to compensate every land title holder whose land is overlapping with the mining area under the IUP.

Although it is not a requirement, mining companies sometimes choose to acquire land title ownership of the underlying land, particularly for strategic land areas. This is to avoid any dispute in the future in respect of whether compensations have been adequately provided and to provide legal certainty on the right to conduct activities in such land areas.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Please refer to our explanation in question 7.1 above.

7.3 What rights of expropriation exist?

IUP holders and the State do not have the right of expropriation for mining activities. The IUP holder using the land for mining activities must conduct a settlement with the land title holders as explained in question 7.1 above.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The prevailing Environmental Law (Law No. 32 of 2009 on Environmental Protection and Management) stipulates the following criteria of business/activities which may have a substantial environmental impact:

- the change of form of land and landscape;
- the exploitation of natural resources, whether renewable or non-renewable;
- the processes and activities which may potentially cause environmental pollution, and/or damage, and squandering and degradation of natural resources in their utilisation;
- the processes and activities which may result in an effect on the natural environment, artificial environment and socio-cultural environment;
- the processes and activities which will affect the preservation of natural resources conservation areas and/or cultural heritage protection;
- the introduction of types of plantations, animals and micro-organisms;
- the production and utilisation of biological and non-biological resources;
- the activities which are high-risk, and/or affect national defence; and/or
- the application of technology which may potentially affect the environment.

Any business/activity which meets the above criteria must prepare AMDAL documents (*Analisis Mengenai Dampak Lingkungan* or Environmental Impact Analysis) which consist of:

a. Term of Reference (*Kerangka Acuan*). This Term of Reference shall be the basis on drafting ANDAL and RKL-RPL;

b. an Environmental Impact Assessment (*Analisis Dampak Lingkungan* or "**ANDAL**");

c. an Environment Management Plan (*Rencana Pengelolaan Lingkungan Hidup* or "**RKL**"); and

d. an Environmental Monitoring Plan (*Rencana Pemantauan Lingkungan* or "**RPL**").

In relation to the mining activities, the Mining Law stipulates that every mining company that applies for an IUP must attach AMDAL documents as one of the requirements.

Furthermore, Government Regulation No. 27 of 2012 regarding Environmental Permits also provides that every business and/or activities that are required to have AMDAL documents are required to have an Environmental Permit from the relevant Government Institutions.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Pursuant to GR 78/2010, which is further regulated under MEMR Regulation 26/2018, the IUP holder is required to conduct reclamation and post-mining activities. The Exploration IUP holder must: (i) formulate a reclamation plan on the basis of environmental documents in accordance with the provisions of laws and regulations in the field of environmental protection and management; and (ii) complete a feasibility study prior to the submission of the application for approval of reclamation and post-mining from the relevant mining authority.

Meanwhile, the holder of Production Operation IUP is required to: (i) place a reclamation guarantee at the production operation stage and post-mining guarantee in accordance with the stipulation of the MEMR or Governor in accordance with their authorities; (ii) submit a reclamation plan at the production operation stage periodically; (iii) conduct reclamation at production operation stage and post-mining; and (iv) submit a report of reclamation implementation of production operation stage and post-mining.

Furthermore, Government Regulation No. 101 of 2014 concerning Management of Hazardous and Toxic Material Waste ("**GR 101/2014**") stipulates that wastes which are sourced from mining activities are classified as hazardous and toxic material wastes. In order to be able to store the tailing and other waste products, GR 101/2014 stipulates that the producer of hazardous and toxic material wastes obtains a licence to manage hazardous and toxic material wastes for the storage of hazardous and toxic material waste activities.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

As mentioned above, every IUP holder is obligated to conduct reclamation and post-mining activities. Upon the closure of mining operations, the mining company must immediately conduct the reclamation and post-mining activities based on the reclamation and post-mining plans which have been approved by the mining authority.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes, there is a zoning requirement which is regulated under Law No. 26 of 2007 concerning the Spatial Plan. In general, the Spatial Plan is divided based on the system, main function of the area, administrative territory, the area's activity and the strategic value of such area. The national Spatial Plan issued by the Government shall be applicable for a period of 20 years, but it may be evaluated every five years.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

As explained in section 7 above, the IUP holder is required to resolve the agreement to relinquish and settle the land that will be used for mining operations with the land title holders. In practice, however, the settlement process will need to be made not only with the land title holders, but also with those occupants or (local) people holding certain "un-certificated" land or community land title.

In practice, most mining companies will only relinquish the land (*pembebasan tanah*) for parts of the mining area that will be used for the actual mining and related activities. For example, a mining company may have an area of 1,000 hectares under its IUP, but the area where it actually conducts mining operations and other activities (roads, housing, etc.) may only be for an area of 500 hectares; the mining company will then only process the land relinquishment for such 500 hectares. There is no obligation of the mining company to relinquish the remaining 500 hectares that will not be used for mining activities.

As explained, a mining company is not required to relinquish the whole area under the IUP, and the relinquishment process can be done in stages, depending on the needs of the company.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

In general, provisions of health and safety in mining are regulated under the following regulations:

a. the Mining Law and its implementing regulations;
b. Law No. 1 of 1970 regarding Safety;
c. *Staatsblad* No. 341 of 1930 regarding Mining Occupational Safety Regulations;
d. Government Regulation No. 19 of 1973 regarding Admission and Supervision of Occupational Safety in the Field of Mining;
e. MEMR Regulation 26/2018;
f. MEMR Regulation 11/2018; and
g. Head of Nuclear Supervision Board Decree No. 12/Ka-BAPETEN/VI-99 Regarding Provisions of Mining Occupational Safety and Purifying of Radioactive Extractives.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The holder of Exploration IUP, Special IUP for Exploration, Production Operation IUP, and Special IUP for Production and Operation in implementing the provision of health mining shall: (i) provide any equipment, tools, self-defence services, personnel, and fees which are required for the implementation of mining safety provisions; and (ii) establish and stipulate organisation of mining safety by taking into account the number of employees, nature, or size of working area. Under MEMR Regulation 26/2018, the provision of mining safety covers:

a. the mining safety and health, which consist of at least:
   - Mining work safety covering, among others:
     - risk management;
     - a work safety programme which covers prevention of accident, fire, and other dangerous events;
     - education and training of work safety;
     - work safety administration;
     - emergency management;
     - work safety inspection; and
     - prevention and investigation of accidents.
   - Mining work health covers the employee health programme, hygiene and sanitation, ergonomic, food and beverage management, employee's nutrition and/or diagnostic and examination of occupational diseases.
   - Mining work environmental which cover company regulation, assessment, measurement and control over the work environmental condition.

b. The mining operation safety, which consists of at least:
   - System and implementation of facility and infrastructure maintenance, installation and mining equipment as follows:
     - to plan the maintenance of facility and infrastructure, installation and mining equipment maintenance;
     - to appoint the person in charge in the facility and infrastructure, installation and mining equipment maintenance;
     - to conduct maintenance of facility, infrastructure, installation and mining equipment in accordance with laws and regulations as well as acknowledged national or international standard.
   - Installation security.
   - Technical personnel in the field of operation safety who is competent.
   - Facility, infrastructure, installation and mining equipment worthiness by conducting feasibility testing and maintenance.
   - Evaluation of report of mining technical study result.
   - Mining facility safety.
   - Safety of explosive and detonation.
   - Exploration safety.
   - Open-pit mining safety.
   - Closed-pit (underground) mining safety.
   - Dredger safety.

The holder of Exploration IUP, Special IUP for Exploration, Production Operation IUP, and Special IUP for Production Operation shall conduct the provision of mining safety based on Feasibility Study, Environmental Documents and Annual Work and Budget Plan which have been approved in accordance with the laws and regulations.

11 Administrative Aspects

11.1 Is there a central titles registration office?

The Mining Law does not recognise a "central title registration office". However, article 4 of MEMR Regulation 43/2015 stipulates the DGMC or Governor of relevant Province is authorised to conduct evaluation on the issued IUP. In case of incompliance, the DGMC or the Governor has the authority to revoke or amend such IUP. The result of the evaluation will be reported to the DGMC and will be used as recommendation for a Clear and Clean IUP.

In regard to the Clear and Clean status, MEMR Regulation 11/2018 further regulates that upon the effectiveness of the regulation on 21 February 2018:

a. the Clear and Clean status and/or Clear and Clean certificates that have been issued shall remain valid;

b. non-metal mineral IUPs and rock IUPs that have been issued prior to the enactment of the MEMR Regulation 11/2018 do not require Clear and Clean status and/or Clear and Clean certificates; and

c. IUPs that have been issued prior to the enactment of MEMR Regulation 11/2018 do not require Clear and Clean status.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes, there is. The appeal system towards administrative decisions must follow the judicial proceedings of the State Administrative Court (*Pengadilan Tata Usaha Negara*) as stipulated under Law No. 5 of 1986 concerning the State Administrative Judicial System, as lastly amended by Law No. 51 of 2009. A State administrative decision that can be appealed to the State Administrative Court must complete the following 4 (four) elements, as follows:

a. a written decision;

b. issued by a State administrative institution;

c. issued based on specific provisions in the prevailing laws and regulations; and

d. the decision must be valid, final and causes a legal implication on a specific person or entity.

If the decision falls under the above elements (examples: licences, permits, etc.), the appeal of an administrative dispute can be taken at the State Administrative Court and State Administrative High Court. The highest judicial power, within the sphere of the State Administrative Judicial System, is vested in the Supreme Court as the highest State court. If the claim is upheld by the court, the court may invalidate and instruct the Government to revoke the decision concerned.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

There is no specific clause in the Constitution which has a direct impact upon the right to conduct reconnaissance, exploration and mining. The Constitution does, however, state, in Article 33(3), as a general provision that the land and waters as well as the natural riches therein are controlled by the State and exploited for the greatest benefit of the people.

12.2 Are there any State investment treaties which are applicable?

Yes, there are. In an endeavour to attract foreign investment, Indonesia has concluded a number of bilateral and regional investment treaties, both with developed and developing countries. The agreements contained in the treaties in general contain similar provisions for the purpose of investment protection. The treaties usually provide general investment protections, such as issues on nationalisation, capital repatriation, subrogation, dispute settlement, etc. However, there are treaties that expressly cover investment protection for specific business sectors. For example: in the agreement between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Promotion and Protection of Investments, dated 16 February 2005, which has been ratified by Presidential Regulation of No. 6 of 2006, dated 1 February 2006, the term 'investments' shall mean any kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, though not exclusively:

a. movable and immovable property as well as other property rights, such as mortgages, liens or pledges;

b. shares, stocks, debentures and similar interest in companies;

c. claims to money or to any performance under contract which has an economic value;

d. intellectual property rights (including, but not limited to, copyrights and neighbouring rights, trademarks, patents, industrial design, layout design of integrated circuit and right in plants varieties) know how, trade secrets, trade names and goodwill; and

e. business concession conferred by law or under contract, including concessions to search for, or exploit, natural resources.

In the Investment Support Agreement between the Government of the Republic of Indonesia and the Government of the United States of America, dated 13 April 2010, which has been ratified by Presidential Regulation of No. 48 of 2010, dated 19 July 2010, there is no specific sector referred in the Agreement. The term 'Investment Support' refers to any debt of equity investment, any investment guarantee and any investment insurance, reinsurance or coinsurance which is provided by the issuer (or, in the case of coinsurance, is provided by the issuer and commercial insurance companies ("**Coinsurers**") under coinsurance arrangements under which the issuer acts both for itself and for such Coinsurers) in connection with a project in the territory of the Republic of Indonesia.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Pursuant to the Mining Law, there is no special rule applicable to taxation of exploration and mining companies. Every Indonesian mining company shall pay the taxes within the authority of the Government under the general laws and regulation on taxation. The taxes imposed on mining companies are among others (i) Income Tax, which is governed under Law No. 7 of 1983, which has been last amended by Law No. 36 of 2008 ("**Law 36/2008**"), and (ii) Value-Added Tax, which is governed under Law No. 8 of 1983, which has been last amended by Law No. 42 of 2009.

However, there are still various mining companies which are subject to a certain tax regime governed by CCOW and COW. The type of CCOW and COW are differentiated based on the year of execution of such CCOW. The tax provisions in CCOW and COW generally overrule the normal tax regulations.

The table below sets out information on the income tax that is imposed for services provided in every step of the mining activities under Law 36/2008: (i) Ministry of Finance Regulation No. 141/PMK.03.2015 concerning the Type of other Service Referred to in Article 23 Paragraph (1) Letter C Point 2 of Law 36/2008; and (ii) Government Regulation No. 51 of 2008 on Income Tax on Income from Construction Services, which has been amended by Government Regulation No. 40 of 2009:

Mining Phase	Income Tax	Percentage of Tax Imposed
1. General survey	■ Article 23	2%
	■ Article 26	20%
2. Exploration	■ Article 23	2%
	■ Article 26	20%
3. Feasibility study	■ Article 23	2%
4. Construction	■ Article 4 paragraph 2	■ 2% (if construction engineering is executed by service providers having the qualification of small-scale business)
		■ 4% (if construction engineering is executed by service providers not having qualifications)
		■ 3% (if construction engineering is executed by service providers other than those which have the qualifications of a small-scale business or not having qualifications as mentioned above)
		■ 4% (if construction planning or supervision is executed by service providers which have business qualifications)
		■ 6% (if construction planning or supervision is executed by service providers which do not have business qualifications)
5. Exploitation	■ Article 23, or Article 26	2%
		20%
6. Reclamation	■ Article 23	2%

The income tax of Article 23 is imposed if the company which provides the aforementioned services is a resident taxpayer or a permanent establishment in Indonesia. However, if the company which provides the services is a non-resident taxpayer, then it will be responsible for paying income tax under Article 26. The rate of the income tax of Article 26 mentioned above may be affected by a relevant applicable tax treaty.

Pursuant to Law No. 28 of 2009 on Regional Taxes and Retributions, a mining company exploiting non-metal and rock materials is subject to regional tax, the rate of which will depend on the regional Government regulation, but may not exceed 25% of the sale value of the material.

Furthermore, the land where any mining company conducts its business activities is subject to Land and Building Tax. This is governed by Law No. 12 of 1985 on Tax on Land and Buildings, which has been amended by Law No. 12 of 1994 ("Law 12/1994"), and the Directorate General of Taxation Regulation No. PER-32/PJ/2012 concerning the Procedure of Imposing Land Building Tax on the Mining Sector for Mineral and Coal Mining. The rate of said Land and Building Tax is 0.5% calculated from the Sale Value of the Tax Object (*Nilai Jual Objek Pajak* or "**NJOP**"). The NJOP is defined as the average price obtained from the sale and purchase transaction reasonably occurring, and in the event there is no sale and purchase transaction, the NJOP shall be determined by comparing other prices and objects of the same type or the new acquisition value, or a replacement NJOP.

13.2 Are there royalties payable to the State over and above any taxes?

Yes, there are royalties payable to the State. In accordance with Article 128 (4) of the Mining Law, mining companies shall pay for: (i) Dead Rents; (ii) Exploration Royalties; (iii) Production Royalties; and (iv) compensation for access to data/information other than taxes. Said royalties are stipulated under Government Regulation No. 9 of 2012 concerning Non-Tax State Revenue under the MEMR ("**GR 9/2012**"). However, it is to be noted that the Government is currently preparing an amendment to GR 9/2012.

The table below sets out some information on the tariffs based on GR 9/2012:

Non Tax State Revenue	Unit	Tariff
A. Revenue from service for the provision of a mineral and coal information data system:		
1. Service for the provision and issuance of a WIUP:		
a) Inquiry into mining area information	Per 15 minutes	Rp. 200,000
b) Area reservation and printing of a non-metal mineral WIUP map	Per WIUP	Rp. 10,000,000 – Rp. 50,000,000 (depends on the acreage)
c) Area reservation and printing of rock WIUP map	Per WIUP	Rp. 5,000,000 – Rp. 30,000,000 (depends on the acreage)
2. Service for the printing of a mining area information map.	Per sheet	Rp. 1,000,000 – Rp. 3,000,000 (depends on the size and the type)
B. Revenue from dead rent for metal mineral and coal mining business:		
1. IUP and IUPK of metal mineral and coal exploration	Per hectare/*annum*	US$ 2
2. IUP and IUPK of metal mineral and coal production operation	Per hectare/*annum*	US$ 4
3. Rent for smallholder lighten ("**IPRI**"):		
a) Non-metal minerals and rocks	Per hectare/*annum*	US$ 1
b) Metal minerals and coal	Per hectare/*annum*	US$ 2
C. Revenue from Royalties. (Please note that the royalty percentage depends on the commodity)		
1. Coal (open pit) with calorific value (Kkal/kg, air dried basis):		
a) ≤ 5,100	Per tonne	3% of the selling price
b) 5,100–6,100	Per tonne	5% of the selling price

Non Tax State Revenue	Unit	Tariff
c) > 6,100	Per tonne	7% of the selling price
2. Coal (underground) with calorific value (Kkal/kg, air dried basis):		
a) ≤ 5,100	Per tonne	2% of the selling price
b) 5,100–6,100	Per tonne	4% of the selling price
c) > 6,100	Per tonne	6% of the selling price
3. Gold	Per kilogram	3.75% of the selling price
4. Nickel Ore	Per tonne	5% of the selling price
5. Diamonds	Per carat	6.50% of the selling price

The tariffs for royalties and their calculation depend on the type of minerals. However, specifically for CCOW, the royalty payable by the CCOW companies to the Government will be based on the provision in CCOW, i.e.: 13.5% of the selling price.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

The Mining Law stipulates that the provincial and regency/municipality Governments are allowed to make their own regional regulations. However, such regional regulations shall be made in accordance with the prevailing laws and regulations.

In practice, the regional Governments are often found issuing regulation on spatial planning which hinder the extension process of certain licenses of the mining companies.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

To our knowledge, there are no regional rules, protocols, policies or laws relating to several countries in the particular ASEAN region that need to be taken into account by an exploration or mining company.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

No, there are no specific provisions in the Mining Law which entitles the holder of a mining right to abandon the mining right. However, under GR 23/2010, an IUP holder may submit an application at any time to the relevant authority for partial reduction of the mining area. For the CCoW and CoW, usually there is a provision in the contract which gives the contractor the rights to relinquish all or part of Mining Area at any time and from time to time during the term of the contract, subject to a written application to the MEMR.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Yes. Based on GR 23/2010, the IUP holder of exploration rights have obligation to relinquish their mining area on the following conditions:

Metal minerals

a) in the fourth year retain an exploration area of not exceeding 50,000 (fifty thousand) hectares; and

b) in the eighth year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP or Special Production Operation IUP, retain an area of not exceeding 25,000 (twenty-five thousand) hectares.

Coal

a. in the fourth year retain an exploration area of not exceeding 25,000 (twenty-five thousand) hectares; and

b. in the seventh year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP or a Special Production Operation IUP, retain an area of not exceeding 15,000 (fifteen thousand) hectares.

Non-metal minerals

a. in the second year retain an exploration area of not exceeding 12,500 (twelve thousand five hundred) hectares; and

b. in the third year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP, retain an area of not exceeding 5,000 (five thousand) hectares.

Certain-typed non-metal minerals

a. in the third year retain an exploration area of not exceeding 12,500 (twelve thousand five hundred) hectares; and

b. in the seventh year or at the final stage of an exploration, at the time of upgrade to a Production Operation IUP, retain an area of not exceeding 5,000 (five thousand) hectares.

Rock

a. in the second year retain an exploration area not exceeding 2,500 (two thousand five hundred) hectares; and

b. in the third year or at the final stage of exploration at the time of upgrade to a Production Operation IUP, retain an area not exceeding 1,000 (one thousand) hectares.

In the event the maximum required area of the retained area as mentioned above has been met, then the IUP holder or Special IUP holder or shall no longer be required to reduce the area.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes, the Mining Law gives the relevant authority (the issuer of the mining licence) the right to revoke the mining rights or licences in the event of non-compliance with any of the provisions stipulated in the Mining Law and/or obligations stated in the mining licence. In practice, the Government will not automatically revoke the mining licence. In the event of non-compliance with the Mining Law and/or obligations stated in the mining licence, the imposition of sanction will be conducted gradually from the lightest sanction to the most severe one in accordance with MEMR Regulation 25/2018. The sanctions begin with a warning letter issued by the relevant authority to the holder of the mining licence for a maximum of three times, each with terms of warning of 30 calendar days. If, after the written warnings, the holder of the mining licence has not yet complied with its obligations, then its mining activities will be partly or wholly suspended. The temporary suspension will be

imposed for a maximum of 60 calendar days. If after the foregoing sanctions have been imposed the non-compliance still continues, then, as a last resort, the authority will revoke the mining licence.

It is to be noted that the holder of mining licence whose licence is revoked by the relevant authority is still required to fulfil and complete all of its obligations in accordance with the prevailing laws and regulations. These obligations are deemed to have been completed once the holder of the mining licence obtains an approval from the MEMR or Governor in accordance with its authority.

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A B N R
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