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Share Divestment Obligation in the Mining Sector

Two of the four delayed, anticipated implementing regulations to Law No. 4 of 2009 on Mining (Mining Law) were recently issued, including Government Regulation No. 23 of 2010 on Implementation of Mineral and Coal Mining Business Activities (Implementing Regulation). Among other things, the 115 Article behemoth addresses licensing, obligations befallen to license-holders - including the prioritization of mineral and coal resource production for domestic necessities - and, as this ILB will particularly discuss, the 'share divestment obligation' for extraction companies that are foreign-owned or have foreign investment participation.

Briefly, Mining Business Licenses, Community Mining Licenses, and Special Mining Business Licenses are addressed in Chapters 2, 3, and 4 of the regulation respectively. For a brief overview of the corresponding Mining Zones - as addressed in the second recently issued Government Regulation No. 22 of 2010 on Mining Zones - see: ILB No. 1320 17/02/2010.

On the divestment front: As supported by Article 112 of the Mining Law, for any licensed mining company that is either foreign-owned or even has shares that are controlled by foreign entities, within 5 years of the company's Operation Production License for mining being issued, at least 20% of the company's foreign-owned shares must be divested to an agent of the Indonesian state. Article 97 of the Implementing Regulation elaborates the mechanism for that divestment.

First, the shares must be offered to the federal government; if they are not willing to buy, the next to be offered shares are provincial or regent/municipal governments. If those parties are unwilling to purchase the shares, the next stage is to tender the shares to both state- and regional-owned enterprises ('BUMN' and 'BUMD' respectively). In all of those cases, parties are given 60 days from the date of offering to declare their interest. If no state-related party is willing to purchase the shares, they can be tendered to private, local companies; they are given 30 days to declare their interest after the initial offering date. In the event that no one buys the foreign-owned shares, the entire process will be repeated the following year.

As provided in Article 98 of the Implementing Regulation, in the event that the company's capital base grows (e.g., the number of shares increases), the proportion of the divestiture's initial size must remain consistent with the capital growth. Restated, the Indonesian party to whom the shares were divested must continue to control shares proportional to the initial size of the divestment.

The process for determining the share price will be determined by subsequent Minister of Energy and Mineral Resources Regulation.

This Implementing Regulation has been in force since 1 February 2010.

Past Issues

- Mining Zones Regulation (Issue 1320 - 17/02/2010)
- Delegation of Industrial Licensing Authorities to BKPM Amended (Issue 1319 - 17/02/2010)
- Revision of Foreign Investment in Retail Business Possible (Issue 1318 - 16/02/2010)
- Hazardous and Poisonous Waste Electronic Registration (Issue 1317 - 16/02/2010)

Documents

The Government Regulation No. 23 of 2010 (PP_NO_23_2010.pdf - 149.Kb)

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