

New Indonesian Regulation on Mining Divestment Process

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The Indonesian Minister of Energy and Mineral Resources (“**MEMR**”) recently issued further regulations to reflect changes to the divestment process introduced under Government Regulation No. 1 of 2017¹ (“**GR 1/2017**”). This follows two other MEMR regulations issued earlier this year relating to the export of raw materials further to GR 1/2017, discussed in our recent **Client Alert**. New Regulation No. 9 of 2017 regarding Divestment Procedure and Divestment Shares Pricing Mechanism for Mineral and Coal Mining Business Activity (“**Reg. 9/2017**”) replaces the previous share divestment implementation process² with effect from 20 January 2017. This Newsflash addresses important features of Reg. 9/2017.

Indonesian participants’ order of priority

Reg. 9/2017 reformulates the order of priority for offering shares to Indonesian Participants to provide that offers of shares must be made in the following order:

1. Central Government;
2. Regional Government (Provincial, Regency or Municipal as applicable);
3. State-Owned Enterprise (Badan Usaha Milik Negara or “BUMN”) or Regionally-Owned Enterprise (Badan Usaha Milik Daerah or “BUMD”); and
4. Private Enterprises (all of which are hereinafter referred to as “Indonesian Participants”)

Previously, the offer of shares to the Central Government and Regional Government could be made simultaneously. Now, the Central Government has first priority, adding an additional layer to a divestment process. Assuming the offer is not taken-up by any government, state-owned or regionally-owned entities, the shares may then be offered to private entities by way of auction.

¹ Government Regulation No. 1 of 2017 regarding the Fourth Amendment to Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activity.

² MEMR Regulation No. 27 of 2013 regarding Divestment Procedure and Shares Pricing and Investment Alteration for Coal and Mineral Mining Business Activity (“**Reg. 27/2013**”) is partially revoked with respect to the divestment scheme, while the regulations on other matters in Reg. 27/2013 remain in force.

Time Limits around Sale Process

The specifics of the timing for conduct of the process are specified in Reg. 9/2017 and provide as set out below:

1. Central Government has 90 calendar days to evaluate the offer, and a further 30 calendar days to formally respond to the offer.
2. Regional Government has the same time-frame as the Central Government for responding to it.
3. Where a divesting party's interest is auctioned to BUMN or BUMD (as appropriate) it will have 30 calendar days to formally respond.
4. Where a divesting party's offer is auctioned to Private Enterprises it will have 30 calendar days to responding.

Divestment through the Stock Exchange

Reg. 9/2017 allows the divestment to be conducted via the Indonesia Stock Exchange as a last resort, if the divestment obligation cannot be completed through a normal offer procedure as described above. Previously, Reg. 27/2013 did not permit issuance of shares through the stock exchange.

Determination of Share Price and Settlement Period

Reg. 9/2017 stipulates that the price of the shares offered for divestment purposes will be determined based on their fair market value without taking into account the coal or mineral reserve at the time the shares are divested. Previously, the share price was determined based on their replacement cost. Reg. 9/2017 is silent on why the coal or mineral reserve is excluded from the price component. This may be based on the principle under the Indonesian Constitution that mineral and coal reserves still belong to the State. This may not prevent a value being attached to the right to extract the coal or mineral reserves, but it is inevitable that, in light of the statement in the regulation, valuation will continue to be an area of debate.

The completion period for the payment and delivery of the divested shares has been extended to 12 months from the date the Indonesian Participant commits to purchase the shares (from 90 calendar days previously).

Contract of Work companies to comply with divestment obligations

Reg. 9/2017 reconfirms that all "contract of work" holders are subject to divestment obligations.

Conclusion

In addition to adjusting the implementation of mining divestment obligation (as once again changed by GR1/2017) the (re)introduction of the ability to divest shares through the stock exchange is an important development under Reg. 9/2017. The measure provides more flexibility for mining companies in situations where the government, state-owned or regionally-owned enterprises do not absorb all divestment shares on offer. However it appears that key issues around valuation may still provoke debate.

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