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New divestment rules for mining companies


By Florence Gracia Santoso and Fitriana Mahiddin

On September 13th, 2013, the Minister of Energy and Mineral Resources (MEMR) issued MEMR Regulation No. 27 of 2013 regarding Procedures for Divestment and Share Pricing and Changes to Capital Investment in Mineral and Coal Mining Businesses (MEMR 27/2013).

This new regulation implements the divestment requirements for foreign-owned mining companies in Indonesia outlined in Government Regulation No. 24 of 2012 (GR 24/2012), clarifies the divestment timeline and share pricing, and introduces restrictions on mining companies facing divestment obligations.

In line with GR 24/2012, MEMR 27/2013 requires foreign-owned mining companies to divest their shares in stages to what the regulation refers to as Indonesian Participants, starting after five years of production. The timeline requires companies to divest at least 20 percent of their shares after six years, 30 percent after seven years, 37 percent after eight years, 44 percent after nine years and 51 percent after ten years.

Indonesian Participants are, in descending order of priority, the Central Government, Provincial Government, Regional Government, State-Owned Enterprises (BUMN), Regional Government-Owned Enterprises (BUMD) and National Private Entities in the form of limited liability companies that are 100 percent domestically owned.

Divestment process

MEMR 27/2013 clarifies that 'production,' as used to start the clock ticking on the divestment obligation, means the commencement of mining activities during the production stage. In other words, the countdown to divestment starts with the completion of the construction period (a maximum of two years from the issuance of the Mining Business License (IUP) for production).

Divestment share price

MEMR 27/2013 stipulates that the pricing of divested shares shall be based on the replacement cost of all investments from the exploration stage to when the divestment becomes due, less (i) accumulated depreciation and amortization based on the economic life or benefit of different classes of assets as adjusted for inflation, and (ii) financial obligations through the end of the year when the divestment is due. The resulting price is the highest price that can be offered to the Government and is the base tender price for BUMN, BUMD and National Private Entities. Independent appraisers may be used to calculate the pricing.

Restrictions on mining companies

Adding to the difficulty of finding Indonesian Participants to acquire the divested shares, MEMR 27/2013 places new restrictions on mining companies in satisfying divestment requirements. These include:

- Indonesian Participants are prohibited from borrowing money from the mining companies or their affiliates to purchase the divested shares.
- Divested shares held by Indonesian Participants shall not be diluted in the event of an increase of share capital in the mining company, ensuring Indonesian ownership is maintained.
- No pledge is allowed on divested shares.
- Shares sold on the Indonesian stock exchange will not be counted as a part of the divestment obligation.

The issuance of MEMR 27/2013 places new approval requirements on mining companies for various changes in the company. These include changes of funding sources or shareholders, a change of the company's status from a foreign capital investment company (PMA company) to a domestic company, and vice versa, and certain amendments to the Articles of Association.

Failure to comply with the provisions of MEMR 27/2013 could result in written warnings from the MEMR, temporary suspension of mining activities and revocation of the IUP for production.

Transitional provisions

Mining companies in which foreign investors held more than 49 percent of the shares before the enactment of MEMR 27/2013 must comply with the divestment rules and the foreign investors are not allowed to increase their share ownership.

Additionally, MEMR 27/2013 instructs all Governors, Regents and Mayors issuing IUPs – either for exploration, production, processing and refining, or transportation and sale – to PMA companies to deliver the documents to the MEMR within one year as of the enactment of MEMR 27/2013 to be reissued by the MEMR. As a result, PMA mining companies shall fall under the authority of the MEMR and will no longer seek approval from Governors, Regents or Mayors.

Soewito Suhardiman Eddymurthy Kardono (SSEK)
14th Floor Mayapada Tower, Jl. Jend. Sudirman Kav.28,
Jakarta 12920, Indonesia
Tel: (62) 21 304 16700 / 521 2038
Fax: (62) 21 521 2039
Email: florencesantoso@ssek.com
fitrianamahiddin@ssek.com
www.ssek.com