

NEW DIVESTMENT REQUIREMENT FOR MINING COMPANIES IN INDONESIA

May 01, 2012

On 21 February 2012, the Government issued Government Regulation No 24/2012 on the amendment to Government Regulation No. 23/2010 on the Implementation of Mineral and Coal Mining Activities ("GR 24/2012"). Previously, under Government Regulation No. 23/2010 on the Implementation of Mineral and Coal Mining Activities ("GR 23/2010"), the divestment of foreign shareholdings amounting to at least 20% of total shares in mining companies was required. Now, however, GR 24/2012 requires further progressive divestment of foreign shareholdings amounting to at least 51% of total shares in mining companies, although this can be achieved in stages.

The new required divestment must be carried out starting from the end of the fifth year of commercial production and be completed in the tenth year of commercial production. The following table shows the progressive divestment now required:

Years after the end of the fifth year of commercial production Minimum Divestment (as a percentage of total shares)

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|----------|----------|----------|----------|-----------|-----|-----|-----|-----|-----|
| 6th year | 7th year | 8th year | 9th year | 10th year | 20% | 30% | 37% | 44% | 51% |
|----------|----------|----------|----------|-----------|-----|-----|-----|-----|-----|

Further, according to GR 23/2010 jo. GR 24/2012, foreign shareholdings may be divested to (i) the Central/Regional Government, (ii) State/Region Owned Enterprises, or (iii) local companies with the following priorities:

- (a) the Central Government of Indonesia;
- (b) Provincial or Regional/Municipal Governments;
- (c) State/Region Owned Enterprises (through tender); and
- (d) National privately-owned companies (through tender).

The parties to whom the divestment is targeted will shift (e.g. from the Central Government of Indonesia to Provincial or Regional/Municipal Governments and so on) if after the expiry of a

certain period of time specified under GR 24/2012, none of these parties is willing to purchase the shares offered.

Other important matters under GR 24/2012 jo. GR 23/2010 include:

Unsuccessful divestment

An unsuccessful divestment attempt can be repeated in the following year.

No dilution

After successful divestment, if the capital of a company is increased, ownership of its capital by Indonesian shareholders may not be diluted to less than the minimum divestment percentage.

Completing the transfer of divested shares

Payment by and delivery of divested shares to Indonesian participants must be completed within 90 working days of the date of the expression of willingness to purchase or the date of the awarding of preferred bidder status.

Divestment procedure and mechanism

Details of the procedure for divesting foreign shares and the pricing mechanism therefor remain unclear. GR 23/2010 jo. GR 24/2012 are silent on whether a foreign investor can privately negotiate a transfer of shares to an Indonesian private company or individual without first offering the shares following the above divestment process. It appears the requirement will not arise if the foreign investor has already divested the required minimum percentage to an Indonesian private company or individual prior to the date on which the divestment obligation comes into effect.