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LEGAL UPDATES | **Government Changes Divestment Requirements for Mining Companies in Indonesia**

The mining industry in Indonesia remains in flux. On October 14, 2014, the Indonesian Government issued the third amendment to Government Regulation No. 23 of 2010 regarding the Implementation of Mineral and Coal Mining Business Activities. This third amendment is Government Regulation No. 77 of 2014 (GR 77/2014).

Divestment Requirement

Perhaps the most significant change introduced by GR 77/2014 concerns the divestment requirement for mining companies. In an apparent effort to foster underground mining and domestic processing and refining activities, the Indonesian Government has eased the divestment requirement for mining companies engaged in underground mining or which perform their own processing and refining activities.

Under GR 77/2014, a maximum of 70% foreign capital is allowed in mining companies conducting underground mining (whether in whole or combined with open-pit mining). A maximum of 60% foreign capital is allowed for mining companies that perform their own processing and refining activities. Previously, foreign ownership for all mining companies in the operation production stage, regardless of mining method and commodities, was capped at 49%.

The following table sets forth the divestment obligations under GR 77/2014.

Indonesia Snapshot

Capital: Jakarta
Population: 259 million (2016)
Currency: Indonesian Rupiah
Nominal GDP: \$936 billion USD (IMF, 2016)
GDP Per Capita: \$3,620 USD at Current Prices (IMF, 2016)
GDP Growth: 5.0% (2016)
External Debt: 36.80% of GDP (BI, Q2 2016)
Ease of Doing Business: 91/190 (WB, 2017)
Corruption Index: 90/176 (TI, 2016)

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- Government Regulation No. 77 of 2014 (GR 77/2014)

	Years after Commercial Production					
	6 th	7 th	8 th	9 th	10 th	15 th
Mining companies conducting underground mining (in whole or combined with open-pit mining)	20%	-	-	-	25%	30%
Mining companies conducting their own processing and refining	20%	-	-	-	30%	40%
Other mining companies (unchanged from previous amendment)	20%	30%	37%	44%	51%	-

GR 77/2014 also clarifies that, unlike mining companies, smelter companies are not subject to any divestment obligation.

Conversion to PMA Company

In the event a wholly owned Indonesian mining company is converted into a foreign capital investment company (PMA Company), such conversion shall be subject to the following foreign ownership restrictions.

Mining company		Maximum foreign ownership
Exploration stage		75%
Operation production stage:	a. conduct domestic processing and refining	60%
	b. conduct underground mining (in whole or combined with open-pit mining)	70%
	c. others	49%

Unlike the divestment requirements, which are applicable to mining companies after they start commercial production, the above foreign ownership limits apply immediately once the company is converted to a PMA Company. This requirement was introduced under Minister of Energy and Mineral Resources (MEMR) Regulation No. 27 of 2013 dated September 13, 2013, and has been implemented in practice by the MEMR.

Return of Mining Area

Any mining licenses that are revoked, not upgraded or extended shall be returned to the MEMR, governor, or regent/mayor according to their authorities, after submitting a report on the existence of minerals or the coal potential and reserves in such mining area. The returned area may be re-stipulated as a mining area and granted with a new mining license by way of tender or area application, depending on the mining commodities.

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