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**IMPLEMENTING REGULATION ON MINING  
AREA DETERMINATION FOR INDONESIA'S 2008  
– 2009 MINING LAW**

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**SUMMARY AND ANALYSIS  
OF  
KEY ARTICLES**

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## INTRODUCTORY NOTES

This Summary & Analysis is intended as an overview of the Implementing Regulation re **Mining Area Determination**, in respect of the 2008–2009 Indonesian Minerals and Coal Mining Law (“**New Mining Law**”), which was introduced on 1 February 2010 (“**Implementing Regulation on Mining Area Determination**”).

This Summary & Analysis reflects our current understanding only of the Implementing Regulation on Mining Area Determination and is subject to change as that understanding develops and evolves.

**This Summary & Analysis should be read in conjunction with our earlier (i) summary and analysis, dated 9 January 2009, of the New Mining Law itself, (ii) summary and analysis, dated 30 November 2009, of the final form of the Implementing Regulation on Mining Services, (iii) summary and analysis, dated 7 January 2010, of the second draft of two additional Implementing Regulations on Direction & Supervision of Mining Business and Reclamation & Post Mining Activities, (iv) summary and analysis, dated 25 January 2010, of the Regulation on Priorization of Coal and Mineral Supply for Domestic Interest and (v) summary and analysis, dated 19 February, 2010, on Mineral & Coal Mining Enterprise Activities. Copies of these earlier Summaries & Analyses are available upon request.**

The use of implementing regulations to augment a law is a very common practice in Indonesia. Laws are passed by the Indonesian Parliament with the intention they will set out the broad parameters only of a new regulatory regime while the details of the new regulatory regime will be provided in one or more implementing regulations and other instruments issued by the Ministry and or officials of the Ministry with primary responsibility for overseeing the application of the new regulatory regime. The use of the Implementing Regulation on Mining Area Determination to expand on the provisions of the New Mining Law is, therefore, entirely consistent with long established Indonesian legislative practice and procedure.

Many of the points made in this Summary & Analysis are necessarily speculative in nature and subject to further clarification and confirmation. Accordingly, it would be prudent not to rely solely on this Summary & Analysis but, rather, to seek specific legal advice with respect to any issue concerning the **Implementing Regulation on Mining Area Determination** before making a material business decision regarding the same. **CHRISTIAN TEO & Associates** would be pleased to assist you in this regard. Our contact details are set out below.

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## EXECUTIVE SUMMARY

1. The Indonesian Government has enacted Regulation No. 22, dated 1 February 2010, re Mining Area Determination (“**GR 22/2010**”) as part of the implementation of Articles 12, 19, 25, 33 and 89 of the New Mining Law.
2. Pursuant to GR 22/2010, Mining inspection and research, for the purpose of preparing WPs, will be carried out by MoEMR/Governor/Regent/Mayor (“**Relevant Government Authority**”). The Relevant Government Authority may also carry out exploration activities in the WPs and record the data and information derived from such exploration activities.
3. The Relevant Government Authority may appoint/assign (i) a State Research Institution and/or (ii) a Regional Research Institution to carry out mining inspection and research in a WP so as to support the preparation of WUPs and WPNs. Under certain conditions, MoEMR may also appoint/assign an International Research Institution for the purpose of carrying out mining inspection and research in a WP.
4. WPs will be determined by MoEMR in coordination with the Governor/Regent/Mayor and in consultation with the DPR. The Governor or Regent/Mayor may propose to MoEMR changes to WPs based on the results of inspection and research or exploration activities.
5. MoEMR may determine/specify a WPN as an area to be reserved and that can be utilized, under certain conditions, for “certain commodities” with (i) approval from the DPR, (ii) regional input and (iii) in accordance with the WPN Criteria. The WPN will then be converted into WUPKs having regard to certain considerations.
6. Any data and information that comes from mining business activities is owned by the Government, and shall be accessible by the Relevant Government Authority.
7. The Geographical Information System will be managed by MoEMR, as a nationally integrated information system, to standardize the boundaries/coordinates of and a basic map for the issuance of WUPs, WIUPs, WPRs, WPNs, WUPKs and WIUPKs.
8. Mining areas already the subject of KPs, SIPDs, Contract of Works and PKP2Bs shall be adjusted into WUPs and/or WIUPs, not later than 3 months after the enactment of GR 22/2010.

## SUMMARY AND ANALYSIS

### A. MINING AREA DETERMINATION

1. MINING AREA
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Legal Basis	Remarks
Article 1 - 2	<p>A. <b>“Mining Area”</b> (<i>Wilayah Pertambangan</i> or <b>“WP”</b>) means a geographic area (i) with mineral and/or coal mining potential, either on the surface or below ground and whether on land or sea, (ii) not subject to restrictions on government administration and (iii) which is part of the National Spatial Plan.</p> <p>B. A WP consists of:</p> <ul style="list-style-type: none"> <li>(i) Mining Business Areas (<i>Wilayah Usaha Pertambangan</i> or <b>“WUPs”</b>) which are parts of the WP that already possess available data, potential and/or geological information and shall be determined/specified by MoEMR;</li> <li>(ii) Community Mining Areas (<i>Wilayah Pertambangan Rakyat</i> or <b>“WPRs”</b>) which are parts of the WP that are to be used for activities related to community mining business and shall be determined/specified by the Regent/Major; and</li> <li>(iii) State Reserve Areas (<i>Wilayah Pencadangan Negara</i> or <b>“WPNS”</b>) which are parts of the WP reserved for the strategic national interest and shall be determined/specified by MoEMR.</li> </ul> <p>C. An area can be determined/specified as a WP if such area meets the following criteria:</p> <ul style="list-style-type: none"> <li>- indications of rock formations containing minerals and/or coal; and/or</li> <li>- presence of natural resources potential for solid and/or liquid mining material.</li> </ul> <p>D. Preparation of WPs is carried out through (i) WP planning and (ii) WP determination.</p>

2. MINING AREA PLANNING
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Legal Basis	Remarks
Article 3 – 14	<p>A. The planning of WPs will be carried out in two stages:</p> <ul style="list-style-type: none"> <li>- mining potential inventory; and</li> <li>- plan preparation of WPs.</li> </ul> <p>B. Mining potential inventory will be carried out by conducting mining inspection and research in order to obtain data and information, which includes/shows:</p>

Legal Basis	Remarks
	<p>(a) rock formations of metal minerals and/or coal carriers;</p> <p>(b) evaluation of geological data from (i) existing mining activities, (ii) mining activities that have ceased and/or (iii) mining activities in respect of licenses which have been returned to the Relevant Government Authority;</p> <p>(c) evaluation of data in respect of licenses that (i) are still valid, (ii) have expired and/or (iii) have been returned to the Relevant Government Authority; and</p> <p>(d) remote sensing interpretation in the form of structure patterns or lithology spreading.</p> <p>C. The inspection and research activities for metal minerals and coal will be carried out by:</p> <p>(a) <b>MoEMR</b> in the event the areas to be inspected and researched fall partly within the boundaries of 1 Province and partly within the boundaries of another Province or are offshore and further than 12 miles from the shoreline, and/or on the borderline with another country;</p> <p>(b) <b>the Governor</b> in the event the areas to be inspected and researched fall partly within the boundaries of 1 Regency/City and partly within the boundaries of another Regency/City (as long as both Regencies/Cities are in the same Province) or are offshore and between 4 and 12 miles from the shoreline; or</p> <p>(c) <b>the Regent/Mayor</b> in the event the areas to be inspected and researched fall within 1 Regency or City or are offshore and within 4 miles of the shoreline.</p> <p>D. In the event the areas to be inspected and researched are offshore, located between 2 adjacent Provinces and the distance between the 2 Provinces is not more than 24 miles, the authority to carry out inspection and research activities will, subject to 2E below, be divided equally between the 2 Provinces.</p> <p>E. Where 2D above applies, the authority of the relevant Regent in each Province will extend to 1/3 of the subject area while the balance of the subject area will be within the authority of the relevant Governor.</p> <p>F. MoEMR or the relevant Governor, in accordance with their respective authority, may appoint/assign (i) a State Research Institution and/or (ii) a Regional Research Institution to carry out mining inspection and research activities in order to support the preparation of WPs.</p> <p>G. Under certain conditions, a State Research Institution may cooperate with an International Research Institution, with prior approval from MoEMR, to carry out the mining inspection and research activities in accordance with the prevailing regulations.</p> <p>H. MoEMR or the Governor, in accordance with their respective authority, will determine the areas to be inspected and researched as part of the appointments/assignments referred to in 2F and G above (“<b>Assignment</b>”).</p> <p>I. A concerned Regent/Mayor may propose to MoEMR or the relevant Governor an area to be inspected and researched as part of the Assignment.</p>

Legal Basis	Remarks
	<p>J. The State Research Institution, Regional Research Institutions and/or International Research Institution/Organizations, as referred to in 2F and G above, must:</p> <ul style="list-style-type: none"> <li>- store, secure and not disclose the mining potential data and information resulting from the inspection and research activities;</li> <li>- provide to MoEMR all data derived from their inspection and research activities ; and</li> <li>- <b><u>in the case of International Research Institutions only</u></b>, provide [copies of all data derived from their inspection and research activities] to the affiliated State Research Institution not later than the expiry date of the cooperation [between the International Research Institution and the State Research Institution].</li> </ul> <p>K. Data and information derived from inspection and research activities must be processed/used to produce a mineral and/or coal potential map which contains, as a minimum, information on rock formations containing minerals and/or coal carriers (“<b>Potential Map</b>”).</p> <p>L. The relevant Governor and/or Regent/Mayor is obliged to report/provide the Potential Map to MoEMR.</p> <p>M. MoEMR will evaluate the Potential Map and the result of such evaluation will be utilized as reference points for determining/specifying WPs.</p>

**3. MINING AREA DETERMINATION**

Legal Basis	Remarks
Article 15 – 35	<p><b>1. <u>WPs</u></b></p> <p>B. WPs will be determined by MoEMR, in coordination with the Governor or Regent/Mayor and in consultation with the DPR, and the Governor or Regent/Mayor may propose WP Changes to MoEMR based on the results of inspection and research activities.</p> <p>C. WPs may be adjusted/changed once every 5 years.</p> <p>D. MoEMR may assign, to the relevant Governor, the authority to determined WUPs for non-metal mineral and rock mining which are located in a Province and fall partly within the boundaries of 1 Regency/City and partly within the boundaries of another Regency/City.</p> <p>E. The Relevant Government Authority may carry out exploration activities in the WPs and record the data and information derived from such exploration activities (“<b>Exploration Data</b>”). The Exploration Data shall comprise the following:</p> <ul style="list-style-type: none"> <li>(a) geological and rock formation data as well as geophysical and geochemical data; and</li> <li>(b) estimation of resources and reserves.</li> </ul>

Legal Basis	Remarks
	<p>F. Exploration Data should be processed to produce a mineral and/or coal reserves map, which contains, as a minimum, information on the distribution of resources and reserves (“<b>Exploration Map</b>”).</p> <p>G. The relevant Governor/Regent/Mayor is obliged to report/provide the Exploration Map, together with a report on exploration activities, to MoEMR.</p> <p><b>2. <u>WUPs</u></b></p> <p>A. WUPs shall consist of the following:</p> <ul style="list-style-type: none"> <li>(a) radioactive mineral WUPs;</li> <li>(b) coal WUPs;</li> <li>(c) metal mineral WUPs;</li> <li>(d) non-metal mineral WUPs; and/or</li> <li>(e) rock mineral WUPs.</li> </ul> <p>B. WUPs for radioactive minerals will be determined by MoEMR based on recommendations from the relevant institutions, the duties and authority of which are in the field of nuclear power.</p> <p>C. MoEMR or the relevant Governor, in accordance with their respective authority, shall plan and prepare for the determination of what parts of a WP will become WUPs in accordance with the Potential Map and the Exploration Map.</p> <p>D. MoEMR will prepare drafts of WUPs and/or WPNs, in accordance with the relevant WUP criteria and in coordination with the relevant institutions, the Governor and/or the Regent/Mayor. The criteria for WUPs are as follows:</p> <ul style="list-style-type: none"> <li>(i) contains rock formations of coal, metal minerals and/or radioactive minerals including offshore areas based on geological maps/data;</li> <li>(ii) contains geological outcrops of radioactive minerals, metal minerals, coal, non-metal minerals and/or rock minerals;</li> <li>(iii) potential presence of coal or mineral resources;</li> <li>(iv) has 1 or more minerals present including associated minerals and/or coal;</li> <li>(v) does not overlap with WPRs and WPNs;</li> <li>(vi) is an area that can be utilized for sustainable mining activities; and/or</li> <li>(vii) is an area intended for mining activities purposes pursuant to the prevailing Spatial Layout Plan.</li> </ul> <p>E. The Relevant Government Authority will determine WIUPs for non-metal minerals and/or rock minerals, within a particular WUP, based on the WIUP/WIUPK criteria referred to in 2D above.</p> <p>F. WIUPs for non-metal minerals and/or rock minerals, within a particular WUP will be determined by:</p> <ul style="list-style-type: none"> <li>(a) <b>the Regent/Mayor</b> in the event that the WIUPs cover an area that falls within 1 Regency or City or is offshore and within 4 miles of the shoreline;</li> <li>(b) <b>the Governor</b> in the event that the WIUPs cover an area that falls partly within the boundaries of 1 Regency and partly within the boundaries of</li> </ul>

Legal Basis	Remarks
	<p>another Regency (as long as both Regencies are in the same Province) or are offshore and between 4 and 12 miles from the shoreline; or</p> <p>(c) <b>MoEMR</b> in the event that the WIUPs cover an area that falls partly within the boundaries of 1 Province and partly within the boundaries of another Province or is offshore and further than 12 miles from the shoreline.</p> <p>G. In the event that the WIUPs cover an area that is offshore, located between 2 adjacent Provinces and the distance between the 2 Provinces is not more than 24 miles, the authority to determine the WIUPs will, subject to 3G below, be divided equally between the 2 Provinces.</p> <p>H. Where 3G above applies, the authority of the relevant Regent in each Province will extend to 1/3 of the subject area while the balance of the subject area will be within the authority of the relevant Governor.</p> <p>3. <b><u>WPNs</u></b>:</p> <p>A. WPNs shall be determined by MoEMR, with the approval from the DPR and based on input from the relevant Governor/Regent/Mayor.</p> <p>B. MoEMR will prepare drafts of WPNs, in accordance with the relevant WPN criteria and in coordination with relevant institutions, the Governor and/or the Regent/Mayor. The criteria for WPNs (“<b>WPN Criteria</b>”) are as follows:</p> <ul style="list-style-type: none"> <li>(a) contains rock formations showing the presence of radioactive minerals metal minerals and/or coal based on geological maps/data;</li> <li>(b) contains geological outcrops of radioactive and metal minerals or coal based on geological maps/data;</li> <li>(c) presence of potential/reserves of coal or mineral resources;</li> <li>(d) intended for mining commodity conservation purposes;</li> <li>(e) areas and/or islands adjacent to other countries;</li> <li>(f) protected areas; and/or</li> <li>(g) located in small islands with a maximum area of 2,000 Km<sup>2</sup> in accordance with the prevailing laws and regulations.</li> </ul> <p>C. Part of a WPN to be reserved for “certain commodities” may be utilized with prior approval from the DPR. Under certain conditions, WPNs will be converted to become WUPKs based on the following considerations:</p> <ul style="list-style-type: none"> <li>(a) fulfillment of domestic industrial raw materials and energy needs;</li> <li>(b) potential as source of foreign exchange;</li> <li>(c) condition of area based on presence of limited facilities;</li> <li>(d) potential for development as a center of economic growth;</li> <li>(e) available environmental support; and/or</li> <li>(f) potential for utilization of advanced technology and high capital investment.</li> </ul> <p>D. A WPN may consist of 1 or more WUPKs.</p> <p>E. Zoning maps for Exploration WIUPs and WIUPKs in protected areas may be delineated to become zoning maps for Production Operation WIUPs and WIUPKs.</p>

Legal Basis	Remarks
	<p>F. Delineation of Exploration WIUPs/WIUPKs to become Production Operation WIUPs/WIUPKs will be carried out in accordance with the results of a feasibility study by considering (i) the balance between expenses and usage and (ii) the balance between the risk and usage of protected area conversion, Reclamation &amp; Post Mining Activities, the Community Development Program and environmental management in accordance with the prevailing laws and regulations.</p>

#### 4. MANAGEMENT OF INFORMATION AND DATA

Legal Basis	Remarks
Article 36 – 37	<p>A. Management of information and data shall be carried out by the Relevant Government Authorities in accordance with their respective authority.</p> <p>B. Management of information and data shall include the activities of data and/or information collection, documentation, processing, structuring, recording, maintenance and destruction.</p> <p>C. Any data resulting from mining business activities will be owned by the Government, and the Regional Government is obliged to provide the mining business data to the Government for the purpose of carrying out the management of national mining data.</p> <p>D. The data referred to in 4A above will be used to (i) determine the classification of mining potential and WPs, (ii) determine the balance of resources and national reserves of minerals and coal and/or (iii) facilitate the development of the science and technology of minerals and coal.</p>

#### 5. GEOGRAPHICAL INFORMATION SYSTEM

Legal Basis	Remarks
Article 38	<p>A. The Geographical Information System will be managed by MoEMR, as part of a nationally integrated information system, the purpose of which is to standardize the boundaries/coordinates and basic map on the issuance of WUPs, WIUPs, WPRs, WPNs, WUPKs and WIUPKs.</p> <p>B. The WP information system shall be accessible by the Provincial Government and the Regional Government.</p>

**6. TRANSITIONAL PROVISIONS**

<b>Legal Basis</b>	<b>Remarks</b>
Article 42	Mining areas already the subject of KPs, SIPDs, Contracts of Work and PKP2Bs shall be converted to become WIUPs in WUPs in accordance with GR 22/2010 not later than 3 months after the enactment of GR 22/2010.