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**IMPLEMENTING REGULATION RE DIRECTION &
SUPERVISION OF MINING BUSINESS
FOR INDONESIA'S 2008 – 2009 MINING LAW**

**SUMMARY AND ANALYSIS
OF
KEY ARTICLES**

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INTRODUCTORY NOTES

This Summary & Analysis is intended as an overview only of the Implementing Regulation re **Direction & Supervision of the Management & Implementation of Mining Business**, in respect of the 2008–2009 Indonesian Minerals and Coal Mining Law (“**New Mining Law**”), which was enacted on 5 July 2010 by the Indonesian Government (“**Mining Direction & Supervision Regulation**”).

This Summary & Analysis reflects our current understanding only of the Mining Direction & Supervision Regulation 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, (ii) summary and analysis, dated 30 November 2009, of the Implementing Regulation in respect of Mining Services, (iii) summary and analysis, dated 7 January 2010, of the second draft of Implementing Regulation on Reclamation & Post Mining Activities, (iv) summary and analysis, dated 25 January 2010, of the Regulation on Prioritization of Coal and Mineral Supply for Domestic Interest and (v) summary and analysis, dated 19 February 2010, of the Implementing Regulation on 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 Mining Direction & Supervision Regulation 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 for Mining Direction & Supervision Regulation 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 the Mining Direction & Supervision Regulation as part of the implementation of Articles 71(2) and 144 of the New Mining Law.
2. The Minister of Energy & Mineral Resources (“**MoEMR**”), the Governor or the Regent/Mayor, in accordance with their respective authority (“**the Relevant Government Authority**”), will carry out supervision of the implementation of IUP/IPR/IUPK holders’ mining business.
3. The Mining Direction & Supervision Regulation specifies the various forms of supervision that will be carried out in respect of mining business activities.
4. Supervision will be conducted at least once a year by a Mining Inspector or a Supervision Officer.
5. Mining Inspectors are responsible for the supervision of:
 - (a) exploration techniques;
 - (b) mining techniques;
 - (c) resources and reserves calculation;
 - (d) construction and testing of equipment;
 - (e) processing and refining;
 - (f) transportation and sales;
 - (g) operational safety;
 - (h) reclamation and post mining activities; and
 - (i) utilization of goods and services.
6. Supervision Officers are responsible for the supervision of:
 - (a) marketing;
 - (b) finances;
 - (c) data processing;
 - (d) conservation;
 - (e) occupational safety and health;
 - (f) worker technical skills;
 - (g) community empowerment and development;
 - (h) other mining business activities;
 - (i) management of IUPs, IPRs and IUPKs; and

- (j) quantity, type and quality of mining products.
7. In carrying out his duties, a Mining Inspector has the authority to:
- (a) enter a mining site on any occasion;
 - (b) order temporary cessation or closure of part or all mining activities if the mining activities are considered to be (i) endangering the safety of the mine workers, (ii) endangering public safety or (iii) causing pollution and/or environmental damage; and
 - (c) propose to the Head Mining Inspector that the temporary cessation order become a permanent cessation order.
8. In carrying out his duties, a Supervision Officer is authorized to enter a mining site on any occasion.
9. **The ability of a Mining Inspector to order a temporary cessation of mining activities is a, potentially, worrying development because of the clear opportunities it presents for unlawful “rent seeking” behavior on the part of Mining Inspectors.**

**DIRECTION & SUPERVISION OF MANAGEMENT & IMPLEMENTATION OF MINING BUSINESS
ACTIVITIES**

1. MINING SUPERVISION

Legal Basis	Remarks
Articles 13 - 20	<p>A. Supervision of mining business management is carried out by the Relevant Government Authority (“Management Supervision”).</p> <p>B. Management Supervision will include supervision of:</p> <ul style="list-style-type: none"> (a) the determination of Community Mining Areas (<i>Wilayah Pertambangan Rakyat</i> or “WPR”); (b) the determination and grant of Mining Business License Areas (<i>Wilayah Ijin Usaha Pertambangan</i> or “WIUP”) for non-metal and rock minerals; (c) the grant of WIUPs for metal minerals and coal; (d) the issuance of Community Mining Licenses (<i>Ijin Pertambangan Rakyat</i> or “IPRs”); (e) the issuance of Mining Business Licenses (<i>Ijin Usaha Pertambangan</i> or “IUPS”); and (f) the implementation of direction and supervision of activities conducted by IPR and IUP holders. <p>C. Supervision of the implementation of mining business activities in Indonesia will be conducted by the Relevant Government Authority (“Supervision of Mining Activities”).</p> <p>D. The Supervision of Mining Activities will include supervision of:</p> <ul style="list-style-type: none"> (a) mining techniques; (b) marketing; (c) finance; (d) data processing for minerals and coal; (e) conservation of mineral and coal resources; (f) safety and health of mine workers; (g) mining operation safety; (h) management of environment, reclamation and post-mining; (i) utilization of goods, services, technology and domestic engineering, design and construction capabilities (<i>rekayasa serta rancang bangun</i>) (“Utilization of Goods & Services”); (j) development of mine technical workers; (k) local community empowerment and development; (l) mastery, development and implementation of mining technology; (m) other mining business activities relevant to the public interest; (n) management of IUPs, IPRs and Special Mining Business License (<i>Ijin Usaha Pertambangan Khusus</i> or “IUPK”); and (o) quantity, type and quality of mining business products.

Legal Basis	Remarks
	<p>E. The Supervision of Mining Activities will be conducted at least once a year and shall be conducted by way of:</p> <ul style="list-style-type: none"> (a) evaluation of planning and implementation reports from IUP, IPR and IUPK holders; and (b) inspection of IUP, IPR and IUPK areas.

2. **TYPES OF MINING SUPERVISION**

Legal Basis	Remarks
Articles 21 - 34	<p>1. <u>Mining Technique Supervision</u></p> <p>Supervision of mining techniques will be carried out by a Mining Inspector and cover:</p> <ul style="list-style-type: none"> (a) in the case of Exploration IUPs or IUPKs: <ul style="list-style-type: none"> (i) implementation of exploration techniques; and (ii) procedures for resource and reserves calculation. (b) in the case of Production Operation IUPs or IUPKs: <ul style="list-style-type: none"> (i) construction planning and implementation including mining equipment testing/commissioning; and (ii) planning and implementation of: <ul style="list-style-type: none"> a. mining; b. processing and refining; and c. transportation and sales. <p>2. <u>Marketing Supervision</u></p> <p>Marketing supervision will be carried out by an official appointed by the Relevant Government Authority (“Supervision Officer”) and cover:</p> <ul style="list-style-type: none"> (a) production and sales realization including quality, quantity and the price of minerals and coal; (b) fulfillment of domestic market obligation; (c) planning and realization of sales contracts for mineral and/or coal sales; (d) selling costs; (e) planning and realization of non-tax state revenues from minerals and coal

Legal Basis	Remarks
	<p>sales; and</p> <p>(f) minerals and/or coal processing and refining costs.</p> <p>3. <u>Finance Supervision</u></p> <p>Finance supervision will be carried out by a Supervision Officer and cover:</p> <p>(a) budget planning;</p> <p>(b) realization of expenses;</p> <p>(c) realization of investment; and</p> <p>(d) fulfillment of payment obligations in respect of (i) fixed fees for WIUPs, WIUPKs and WPRs, (ii) production fees for metal minerals, coal, rock minerals and non-metal minerals, (iii) payment of 10% net profits tax for Production Operation IUPKs holders in respect of metal minerals and/or coal.</p> <p>4. <u>Supervision of Processing Data for Minerals and Coal</u></p> <p>Supervision of processing data for minerals and coal will be carried out by a Supervision Officer and cover data and/or information (i) procurement, (ii) processing, (iii) administration, (iv) documentation, (v) storage, (vi) maintenance and (vii) destruction.</p> <p>5. <u>Supervision of Conservation of Minerals and Coal</u></p> <p>Supervision of conservation of mineral and coal reserves will be carried out by a Mining Inspector and cover:</p> <p>(a) mine recovery and processing;</p> <p>(b) management and/or utilization of marginal reserves, low quality coal and low-grade minerals, and associated minerals;</p> <p>(c) data recording of minerals and coal resources and reserves that are not mined; and</p> <p>(d) data recording and management of processing and/or refining residue.</p> <p>6. <u>Supervision of Mining Occupational Safety and Health</u></p> <p>Supervision of mining occupational safety and health will be carried out by a Mining Inspector, in coordination with the relevant official in charge of manpower, in accordance with the relevant manpower laws and regulations and cover:</p> <p>(a) occupational safety, which includes among other things:</p> <p>(i) risk management;</p> <p>(ii) occupational safety programs, which include, among other things: prevention of accidents, explosions, fire and other dangerous events;</p>

Legal Basis	Remarks
	<ul style="list-style-type: none"> (iii) occupational safety training and education; (iv) occupational safety administration; (v) emergency management; (vi) occupational safety inspection; and (vii) prevention and investigation of accidents; <p>(b) occupational health, which includes among other things:</p> <ul style="list-style-type: none"> (i) manpower/labor health programs, which cover, among other things: manpower medical exam, occupational health services, prevention of occupational disease, first aid for accidents and training and education for occupational health; (ii) hygiene and sanitation; (iii) ergonomics; (iv) food, beverage and nutritional management for manpower/labor; and (v) diagnosis and examination of occupational diseases; <p>(c) working environment, which includes among other things:</p> <ul style="list-style-type: none"> (i) dust, noise and vibration control; (ii) lighting (iii) air quality; (iv) radiation, chemical factors and biological factor control; and (v) cleanliness of work environment; and <p>(d) occupational safety and health management systems.</p> <p>7. <u>Supervision of Mining Operational Safety</u></p> <p>Supervision of mining operational safety will be carried out by a Mining Inspector, together with the relevant official in charge of manpower, in accordance with the relevant manpower laws and regulations and cover:</p> <ul style="list-style-type: none"> (a) system and implementation of maintenance for mining facilities, infrastructure, installations and equipment; (b) installation safeguards; (c) feasibility of mining facilities, infrastructure installations and equipment; (d) the adequacy of technical manpower; and (e) evaluation of reports regarding study results. <p>8. <u>Supervision of the Management of Mining Environment, Reclamation and Post-Mining</u></p> <p>Supervision of the management of mining environment, reclamation and post-mining will be carried out by a Mining Inspector, together with the relevant official in charge of environment and reclamation, and cover:</p> <ul style="list-style-type: none"> (a) management and observation of the environment in accordance with the environmental management documents or approved environmental licenses;

Legal Basis	Remarks
	<p>(b) land re-structuring, recovery and restoration in accordance with designated utilization purpose;</p> <p>(c) determination and withdrawal of reclamation and post-mining guarantees;</p> <p>(d) post-mining management;</p> <p>(e) stipulation and disbursement of post-mining guarantees; and</p> <p>(f) fulfillment of quality standards for the environment in accordance with the prevailing laws.</p> <p>9. <u>Supervision of Utilization of Goods & Services</u></p> <p>Supervision of Utilization of Goods & Services will be carried out by a Mining Inspector in respect of the utilization of (i) goods, (ii) services, (iii) technologies, and (iv) capability of domestic engineering, design and construction, and must be conducted in accordance with the classification and qualification of mining services business actors and the prevailing laws.</p> <p>10. <u>Supervision of the Development of Mining Technical Workers</u></p> <p>Supervision of the development of the technical skills of mining workers will be carried out by the Supervision Officer and cover:</p> <p>(a) implementation of development programs;</p> <p>(b) implementation of competency tests; and</p> <p>(c) development budget plans.</p> <p>11. <u>Supervision of Community Empowerment and Development</u></p> <p>Supervision of community empowerment and development will be carried by Supervision Officer and cover:</p> <p>(a) community empowerment and development programs;</p> <p>(b) implementation of community empowerment and development; and</p> <p>(c) budgets for community empowerment and development.</p> <p>12. <u>Supervision of Other Mining Business Activities Related to the Public Interest</u></p> <p>Supervision of other mining business activities related to the public interest will be carried out by a Supervision Officer and cover various matters including:</p> <p>(a) public facilities (<u>e.g.</u>, public roads, schools and clinics) constructed by IUP or IUPK holders for local communities; and</p> <p>(b) financing to construct and provide the abovementioned public facilities.</p> <p>13. <u>Supervision of the Management of IUPs, IPRs and IUPKs</u></p> <p>Supervision of the management of IUPs and IUPKs will be carried by a Supervision Officer and cover various matters including:</p> <p>(a) areas covered by the IUPS, IPRs and/or IUPKS;</p>

Legal Basis	Remarks
	<ul style="list-style-type: none"> (b) mining locations; (c) processing and refining locations; (d) time periods for mining activities; (e) land issues settlement; (f) disputes settlement; and (g) mastery, development and implementation of mining technology. <p>14. <u>Supervision of Quantity, Type, and Quality of Mining Business Products</u></p> <p>Supervision of quantity, type and quality of mining business products will be carried out by a Supervision Officer and cover:</p> <ul style="list-style-type: none"> (a) types of commodities; (b) production quantity and quality of each mining location; (c) quantity and quality of washing and/or processing and/or refining; and (d) temporary stockpiles (run of mine), stockpiles and sales point.

3. SUPERVISORY IMPLEMENTATION

Legal Basis	Remarks
<p>Article 36 & 37</p>	<p>I. Mining Inspectors</p> <p>A. Mining Inspectors will carry out the activities of inspection, investigation and testing and be obliged to submit reports to the Head Mining Inspector.</p> <p>B. In carrying out his duties, a Mining Inspector is authorized to:</p> <ul style="list-style-type: none"> (a) enter a mining site on any occasion; (b) order temporary cessation or closure of part or all mining activities if the mining activities are considered to be (i) endangering the safety of the mine workers, (ii) endangering the public safety or (iii) causing pollution and/or environmental damage; and (c) propose to the Head Mining Inspector that a temporary cessation order become a permanent cessation order. <p>C. Supervision by a Mining Inspector will be conducted by means of:</p> <ul style="list-style-type: none"> (a) evaluation of periodic and/or occasional reports; (b) periodic or occasional inspections; and (c) evaluation of the success of implementation of programs and activities. <p>II. Supervision Officer</p> <p>A. Supervision by a Supervision Officer will be conducted by means of:</p>

Legal Basis	Remarks
	<p>(a) evaluation of periodic and/or occasional reports; and</p> <p>(b) verification and evaluation of reports from IUP or IUPK holders.</p> <p>B. In carrying out his duties, a Supervision Officer is authorized to enter a mining site on any occasion.</p>