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**DIRECTORATE GENERAL OF  
MINERALS, COAL & GEOTHERMAL REGULATION  
REGARDING THE PROCEDURES & REQUIREMENTS  
FOR OBTAINING APPROVAL OF THE PARTICIPATION  
OF SUBSIDIARIES AND AFFILIATED COMPANIES AS  
MINING SERVICES PROVIDERS**

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**SUMMARY AND ANALYSIS  
OF  
KEY ARTICLES**

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## INTRODUCTORY NOTES

This Summary & Analysis is intended as an overview only of the Directorate General of Minerals, Coal & Geothermal (“**DGoMCG**”) Regulation re the **Procedures and Requirements for Obtaining Approval for the Participation of Subsidiaries and Affiliated Companies as Mining Services Providers**, dated 10 May 2010, and issued pursuant to Article 9 of the Minister of Energy & Mineral Resources Regulation re Mining Services for Minerals and Coal (“**Affiliated Mining Services Provider Regulation**”).

This Summary & Analysis reflects our current understanding only of the Affiliated Mining Services Provider 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 on Mining Services, (iii) Summary and Analysis, dated 25 January 2010, of the Regulation on Prioritization of Coal and Mineral Supply for Domestic Interest, (iv) Summary and Analysis, dated 19 February 2010, of the Implementing Regulation on Coal Mining Enterprise Activities, (v) Summary and Analysis, dated 13 September 2010, of the Implementing Regulation on Mining Direction & Supervision, (vi) Summary and Analysis, dated 5 October 2010, of the Implementing Regulation on Benchmark Price Determination, (vii) Summary and Analysis, dated 14 January 2011, of the Implementing Regulation on Reclamation & Post Mining Activities and (viii) Summary and Analysis, dated 18 April 2011, of the Implementing Regulation on Coal Benchmark Price Formulae. **Copies of these earlier Summaries & Analyses are available upon request.**

The use of implementing regulations and decrees 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 or officials of the Ministry with primary responsibility for overseeing the application of the new regulatory regime. The use of the Affiliated Mining Services Provider Regulation to expand on Article 9 of the Mining Services Regulation 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 Participation of Affiliated Mining Services Provider Regulation before making a material business decision regarding the same. **CHRISTIAN TEO PURWONO & Partners** would be pleased to assist you in this regard. Our contact details are set out below.

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## EXECUTIVE SUMMARY

1. An “Affiliated Mining Services Provider” is a business entity having any of the following relationships with an IUP/IUPK holder as follows:
  - (a) the IUP/IUPK holder has not less than 20% direct share ownership in the Affiliated Mining Services Provider;
  - (b) the IUP/IUPK holder has some direct share ownership in the Affiliated Mining Services Provider and has not less than 50% of the voting rights in respect of the Affiliated Mining Services Provider pursuant to an agreement allowing the IUP/IUPK holder to indirectly control the financial and operational policies of the Affiliated Mining Services Providers; or
  - (c) the IUP/IUPK holder is authorized to appoint or dismiss the Finance Director, the Operational Director or other similar executives of the Affiliated Mining Services Provider.
2. An IUP/IUPK holder may only appoint an Affiliated Mining Services Provider in certain circumstances where:
  - (a) there is no “similar” [unaffiliated] Mining Services Provider in the subject Regency/City and/or Province; or
  - (b) there is no unaffiliated Mining Services Provider capable of providing the services required by the IUP/IUPK holder based on the following criteria:
    - (i) the unaffiliated Mining Services Providers do not have sufficient investment;
    - (ii) the unaffiliated Mining Services Providers do not have sufficient working capital; and/or
    - (iii) the unaffiliated Mining Services Providers do not have sufficient manpower with the necessary competency in the field of mining;

as required by the IUP/IUPK holder.
3. The direct appointment of an Affiliated Mining Services Provider may only be carried out once the IUP/IUPK holder (i) has fulfilled an Announcement Requirement and (ii) has obtained DGoMC Approval.
4. DGoMC will issue the DGoMC Approval or rejection letter within 5 working days from the date of submission of an application by the IUP/IUPK holder together with the required supporting documents.
5. The Affiliated Mining Services Provider is required to fulfill the terms and requirements set forth by the IUP/IUPK holder with regard to (i) equipment, (ii) manpower and (iii) capitalization needed to carry out the relevant mining services business activities.
6. In the event that the IUP/IUPK holder does not comply with the procedures set out in the Affiliated Mining Services Provider Regulation, the relevant agreement between the

IUP/IUPK holder and the Affiliated Mining Services Provider shall be deemed null and void.

7. **It should be carefully noted that the exception which allows an IUP/IUPK holder to appoint an Affiliated Mining Services Provider, where there is no “similar” unaffiliated Mining Services Provider in the relevant geographical location, is extremely vague and seems to, effectively, give IUP/IUPK holders a great deal of latitude to appoint Affiliated Mining Services Providers where the IUP/IUPK holder decides, for whatever reasons and on whatever grounds, there is no “similar” unaffiliated Mining Services Provider. This is to be compared with the other exception which only applies in those cases where the unaffiliated Mining Services Providers have insufficient investment, working capital or technically competent manpower—altogether more difficult criteria to meet.**

## SUMMARY & ANALYSIS

### 1. GENERAL PROVISIONS

| Legal Basis | Remarks  |
|-------------|--|
| Article 1-2 | <p>A. “Subsidiaries and/or affiliated parties” (hereinafter referred to as the “<b>Affiliated Mining Services Providers</b>”) refer to business entities having a relationship with an IUP/IUPK holder which meets any of the following criteria:</p> <ul style="list-style-type: none"> <li>(a) the IUP/IUPK holder has not less than 20% direct share ownership in the Affiliated Mining Services Provider;</li> <li>(b) the IUP/IUPK holder has some direct share ownership in the Affiliated Mining Services Provider and has not less than 50% of the voting rights of the Affiliated Mining Services Provider pursuant to an agreement allowing the IUP/IUPK holder to indirectly control the financial and operational policies of the Affiliated Mining Services Provider; and/or</li> <li>(c) the IUP/IUPK holder is authorized to appoint or dismiss the Finance Director, the Operational Director or other similar executives of the Affiliated Mining Services Provider.</li> </ul> <p>B. This Affiliated Mining Services Provider Regulation has been enacted for the purpose of:</p> <ul style="list-style-type: none"> <li>(a) providing clear guidelines for the appointment of Affiliated Mining Services Providers by IUP/IUPK holders; and</li> <li>(b) implementing fairness, transparency and objectivity principles in utilizing Affiliated Mining Services Providers.</li> </ul> |

### 2. REQUIREMENTS & PROCEDURES TO APPOINT AN AFFILIATED MINING SERVICES PROVIDER

| Legal Basis  | Remarks  |
|--------------|--|
| Article 3-10 | <p>A. IUP/IUPK holders may only appoint Affiliated Mining Services Providers in the following situations:</p> <ul style="list-style-type: none"> <li>(a) there is no “similar” Mining Services Provider in the subject Regency/City and/or Province; or</li> <li>(b) there is no unaffiliated Mining Services Provider capable of providing the services required by the IUP/IUPK holder based on the following criteria: <ul style="list-style-type: none"> <li>(i) the unaffiliated Mining Services Providers do not have sufficient investment;</li> <li>(ii) the unaffiliated Mining Services Providers do not have</li> </ul> </li> </ul> |

| Legal Basis | Remarks   |
|-------------|---|
|             | <p>sufficient working capital; and/or</p> <p>(iii) the unaffiliated Mining Services Providers do not have sufficient manpower with the necessary competency in the field of mining;</p> <p>as required by the IUP/IUPK holder.</p> <p>B. A direct appointment, as mentioned in 2.A above, may only be carried out if:</p> <p>(a) the proposed plan to procure the required goods and services has been announced, on 2 consecutive occasions and within a period of 10 calendar days, in local and/or national mass media (“<b>Announcement Requirement</b>”) but no “unaffiliated” Mining Services Provider, which is financially and technically capable, has expressed any interest [in the appointment]; and</p> <p>(b) the IUP/IUPK holder has submitted an application to and obtained approval from the Minister of Energy and Mineral Resources (“<b>MoEMR</b>”) cq. Director General of Minerals and Coal (previously known as the “Director General of Minerals, Coal and Geothermal”) (“<b>DGoMC</b>”).</p> <p>C. In order to obtain DGoMC Approval, the IUP/IUPK holder must, first, submit various supporting documents and information including:</p> <p>(a) information regarding:</p> <p>(i) the name of the applicant;</p> <p>(ii) the reason for carrying out the direct appointment;</p> <p>(iii) the name of the Affiliated Mining Services Provider;</p> <p>(iv) the type of services required;</p> <p>(v) the volume of the services required;</p> <p>(vi) the value of the services;</p> <p>(vii) the time period for implementing the works; and</p> <p>(viii) the terms and conditions of payment;</p> <p>(b) a copy of the Mining Services Business License (<i>Ijin Usaha Jasa Pertambangan</i> or “<b>IUJP</b>”) or Registration Letter (<i>Surat Keterangan Terdaftar</i> or “<b>SKT</b>”) held by the Affiliated Mining Services Provider;</p> <p>(c) evidence of the fulfillment of the Announcement Requirement;</p> <p>(d) evidence of the evaluation result re the prequalification documents or post qualification documents [of non-Affiliated Mining Services Providers] which do not fulfill the requirements of the IUP/IUPK holder;</p> |

| Legal Basis | Remarks  |
|-------------|--|
|             | <p>(e) statement letter, signed by the President Director of the IUP/IUPK holder, guaranteeing that there will be no transfer pricing or transfer of profit [as between the IUP/IUPK holder and the Affiliated Mining Services Provider]; and</p> <p>(f) statement letter, signed by the President Director of the IUP/IUPK holder, guaranteeing that the administrative and technical requirements used to justify the appointment of the Affiliated Mining Services Provider, by way of direct appointment, are the same as the [actual] administrative and technical requirements for the procurement of the goods and services [needed by the IUP/IUPK holder].</p> <p>D. Not later than 5 working days after the application has been submitted in good and complete order by the relevant IUP/IUPK holder, DGoMC, on behalf of MoEMR, will issue the DGoMC Approval or rejection letter to the relevant IUP/IUPK holder.</p> <p>E. In providing the equipment required to carry out the relevant mining services business activities, the Affiliated Mining Services Provider is obliged to fulfill the requirements specified by the relevant IUP/IUPK holder.</p> <p>F. The Affiliated Mining Services Provider is allowed to use equipment owned by the IUP/IUPK holder in order to carry out mining services business activities as evidenced by an Equipment Lease Agreement setting out the:</p> <p>(a) type and number of the equipment items to be leased;</p> <p>(b) terms and conditions of payment; and</p> <p>(c) duration of the Equipment Lease Agreement.</p> <p>G. In providing the manpower required to carry out the relevant mining services business activities, the Affiliated Mining Services Provider is obliged to fulfill the requirements specified by the IUP/IUPK holder with regard to the amount of manpower considered sufficient by the relevant IUP/IUPK holder and in accordance with the relevant competency.</p> <p>H. In providing the working capital required to carry out the relevant mining services business activities, the Affiliated Mining Services Provider is obliged to fulfill the requirements set forth by the IUP/IUPK holder including that the working capital [of the Affiliated Mining Services Provider] must be not less than 3 months of operational costs.</p> <p>I. The Affiliated Mining Services Provider is required to subcontract part of its work to a Local Mining Services Provider in accordance with its competency (“<b>Subcontracted Works</b>”).</p> <p>J. The [provision of the] Subcontracted Works must be (i) recorded in a written agreement, (ii) acknowledged by the relevant IUP/IUPK holder and (iii) notified to MoEMR cq. DGoMC.</p> <p>K. The Affiliated Mining Services Provider is obliged to maintain evidence and financial transaction records [of the mining services provided to the IUP/IUPK</p> |

| Legal Basis | Remarks  |
|-------------|--|
|             | <p>holder] based on accounting principles generally accepted in Indonesia.</p> <p>L. In the event that the IUP/IUPK holder does not fulfill the procedures contemplated by the Affiliated Mining Services Provider Regulation, the relevant agreement between the IUP/IUPK holder and the Affiliated Mining Services Provider shall be deemed null and void.</p> |