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GOVERNMENT REGULATION ON UTILIZATION OF FOREST AREAS

SUMMARY AND ANALYSIS OF KEY ARTICLES

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INTRODUCTORY NOTES

This Summary & Analysis is intended as an overview only of Government Regulation No. 24 Year 2010 re Utilization of Forest Areas (“GR 24/2010”).

This Summary & Analysis reflects our current understanding only of GR 24/2010 and is subject to change as that understanding develops and evolves.

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 GR 24/2010 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. **Rent-Use Permit:** Utilization of Forest Areas for non-forestry activities, including general mining activities, is now allowed in (i) Production Forest Areas and (ii) Protected Forest Areas with a **Rent-Use Permit** from the Minister of Forestry (“MoFor”).
 - 2.1 **Requirements to obtain Rent-Use Permit:** In order to obtain a Rent-Use Permit, a party must, first, submit an application to MoFor and fulfill a number of administrative and technical requirements which will be further detailed in a subsequent MoFor Regulation.
 - 2.2 If the Rent-Use Permit applicant fulfills the subject administrative and technical requirements, MoFor will grant to the Rent-Use Permit applicant, in the first instance, an Approval-in-Principal License with a maximum validity period of 2 years which is extendable, subject to evaluation.
 - 2.3 The Approval-in-Principal License will specify a number of obligations that need to be fulfilled by the Rent-Use Permit applicant for the purpose of obtaining the Rent-Use Permit. Once the Approval-in-Principal License holder fulfills the Approval-in-Principal License obligations, MoFor will grant a Rent-Use Permit to the Approval-in-Principal License holder.
 - 2.4 Notwithstanding 2.2 and 2.3 above, it may be possible to obtain a Rent-Use Permit without, first, obtaining an Approval-in-Principal License in the case of survey and exploration activities. GR 24/2010, however, does not provide any clarification of what conditions a party must fulfill in order to obtain a Rent-Use Permit without going through the normal procedures.
 - 2.5 A Rent-Use Permit applicant must meet a “land compensation requirement” as follows :
 - (a) If the total Forest Area in the relevant Province, where the target Forest Area is situated, comprises less than 30% of the total Provincial land area (including islands and rivers), then the applicant must provide compensation land in the ratio of (i) 1:1 for non-commercial purposes or (ii) 1:2 for commercial purposes; and
 - (b) If the total Forest Area in the relevant Province, where the target Forest Area is situated, comprises more than 30% of the total Provincial land area (including islands and rivers), the applicant is obliged to (i) pay non-tax State Revenues on Forest Area Utilization and (ii) carry on reforestation activities in the ratio of 1:1.
 - 2.6 Rent-Use Permits for mining activities (i) with crucial impact, (ii) large Forest Areas and (iii) having strategic value may only be granted upon approval by the DPR. The criteria for Rent-Use Permits requiring DPR approval will be further specified in a subsequent MoFor Regulation.
3. **Mining Activities within Protected Forest Area:** Consistent with Article 38 Paragraph 3 of the Forestry Law, GR 24/2010 prohibits **open cut mining activities** in a Protected Forest Area. In other words, even though a party has managed to obtain a Rent-Use Permit in

respect of a Protected Forest Area, the party may only carry out **underground mining activities** for the purpose of utilizing the Protected Forest Area.

- 5.1 **Permitted Activities**: In addition to the relevant utilization activities (**i.e.**, general mining activities), a Rent-Use Permit also gives the holder the right to carry on land-clearing and deforestation activities subject to an obligation to (i) pay compensation, (ii) make forestry resources provision and/or (iii) provide reforestation funds in accordance with the prevailing laws and regulations.
- 5.2 It is not clear whether it is no longer necessary to obtain a Timber Utilization Permit for the purpose of land-clearing activities although this may well be the case.
- 6 **Obligations of Rent-Use Permit holder**: (i) The Rent Use Permit holder is obliged to pay non-tax State Revenues in respect of Forest Area utilization, (ii) carry out reforestation for the purpose of rehabilitating river areas, (iii) carry out reforestation on compensation land, (iv) conduct forest protection, (v) carry out reclamation and/or reforestation in the Forest Area once the Rent Use Permit holder ceases to use the same and (vi) carry out such other obligations as may be stipulated by MoFor.
- 7 **Transfer of Rent-Use Permit**: A party is not allowed to transfer its Rent-Use Permit to another party without approval from MoFor.
- 8 **Validity Period of Rent-Use Permit**: The validity period of a Rent-Use Permit will be the same as the validity period of the relevant license (**i.e.**, validity period of the relevant Mining License).
- 9.1 **Expiration of Principal License or Rent-Use Permit**: The Approval-in-Principal License/Rent-Use Permit will expire upon (i) the expiry of the Approval-in-Principal License/Rent-Use Permit validity period, (ii) the revocation of the Approval-in-Principal License/Rent-Use Permit by MoFor, (iii) the Approval-in-Principal License/Rent-Use Permit being voluntarily returned by its holder to MoFor prior to the expiration date of the same and/or (iv) the relevant Forest Area being converted to become a Non-Forest Area.
- 9.2 The expiration of a Rent-Use Permit does not eliminate the residual obligations of its holder.
- 9.3 Approval-in-Principal Licenses, that have been issued prior to the enactment of GR 24/2010 and where the obligations attaching to the same have been fulfilled by the holder, will become Rent-Use Permits subject to the obligations set forth in GR 24/2010.

SUMMARY AND ANALYSIS

1. UTILIZATION OF FOREST AREAS

Legal Basis	Remarks
Article 2 - 5	<p>A. "Utilization of Forest Areas" refers to utilizing part of a Forest Area for non-forestry activities ("Forest Area Utilization").</p> <p>B. Forest Area Utilization may only be carried out in (i) Production Forest Areas and (ii) Protected Forest Areas, in respect of activities with a clear strategic purpose such as:</p> <ul style="list-style-type: none"> (a) religious activities ; (b) <u>mining (i.e., oil and gas, coal, mineral and geothermal mining)</u>; (c) installation of generators, transmission and distribution of electricity; (d) promotion of new and renewable energy technology; (e) construction of telecommunication networks, radio transmitting stations, television relay stations; (f) construction/operation/support of public roads, highways and train railways; (g) construction/operation/support of transportation facilities, which are not categorized as public transportation, for transporting production output; (h) construction/operation/support of facilities for water resources, water installations and canals for clean water and/or waste water; (i) construction/operation/support of public facilities; (j) operation of forest related industries; (k) security and defense; (l) public safety supporting facilities; or (m) shelter for natural disaster victims. <p>C. Forest Area Utilization for mining activities may only be carried out in the following manner:</p> <ul style="list-style-type: none"> (a) mining activities in Production Forest Areas may be carried out by way of either open-cut mining or underground mining; while (b) mining activities in Protected Forest Areas may only carried out by way of underground mining.

Legal Basis	Remarks
	<p>D. Underground mining in Protected Forest Areas must not:</p> <ul style="list-style-type: none"> (a) cause land subsidence; (b) permanently change the main function of the Forest Area; and/or (c) damage the land water resource.

2. RENT USE PERMITS

Legal Basis	Remarks
<p>Article 6 - 18</p>	<p>1. <u>General Description</u></p> <p>A. Utilization of Forest Areas must be carried out in reliance upon a Rent-Use Permit.</p> <p>B. The Rent-Use Permit carries with it a “land compensation requirement” as follows:</p> <ul style="list-style-type: none"> (a) If the total Forest Area in the relevant Province, where the target Forest Area is situated, comprises less than 30% of the total Provincial land area (including islands and rivers), then the applicant must provide compensation land in the ratio of (i) 1:1 for non-commercial purposes or (ii) 1:2 for commercial purposes. (b) If the total Forest Area in the relevant Province, where the target Forest Area is situated, comprises more than 30% of the total Provincial land area (including islands and rivers), the applicant is obliged to (i) pay non-tax State Revenues in respect of Forest Area Utilization and (ii) carry out reforestation in the ratio of 1:1. <p>C. The “land compensation requirement” may only be waived in the case of Forest Area Utilization for:</p> <ul style="list-style-type: none"> (a) state defense activities, sea and air traffic safety, evaluation of dams, water conservation, sand control, facilities for meteorology, climatology and geophysics, and (b) survey and exploration for mining activities. <p>D. Notwithstanding 2C above, if the survey and exploration activities involve sample taking activities to evaluate the economic feasibility of proposed mining projects, then the “land compensation requirement” shall still apply.</p> <p>E. Rent-Use Permits will be issued by MoFor on the basis of application.</p>

Legal Basis	Remarks
	<p>F. Rent-Use Permits for mining activities (i) with crucial impact, (ii) in respect of large Forest Areas and (iii) having strategic value may only be granted upon approval by the House of Representatives (<i>Dewan Perwakilan Rakyat</i> or DPR).</p> <p>2. Procedures for Obtaining Rent-Use Permit:</p> <p>A. A Rent-Use Permit must be obtained by way of application and following fulfillment of certain administrative and technical requirements.</p> <p>B. Once the specified administrative and technical requirements have been fulfilled, MoFor will grant to the applicant, in the first instance, an Approval-in-Principal License with a maximum validity period of 2 years and which is extendable, subject to evaluation (“Approval-in-Principal License”).</p> <p>C. The Approval-in-Principal License will specify a number of obligations that must to be fulfilled by the Rent-Use Permit applicant (“Approval-in-Principal License Obligations”) in order to of obtain the Rent-Use Permit, including:</p> <ul style="list-style-type: none"> (a) determining the boundaries of the relevant Forest Area and making land compensation; (b) carrying out necessary inventory activities; (c) providing a capability statement re (i) payment of non-tax State Revenues on Forest Area Utilization and (ii) carrying out reforestation for the purpose of rehabilitating river areas (<u>if required</u>); (d) reforesting land to become Forest Areas (<u>if required</u>); and (e) carrying out such other obligations as are specified by MoFor. <p>D. Once the Approval-in-Principal License holder fulfills the Approval-in-Principal License Obligations, MoFor will grant the Rent-Use Permit to the Approval-in-Principal License holder.</p> <p>E. The Approval-in-Principal License holder may also apply to MoFor for dispensation/waver of the Approval-in-Principal License Obligations in the case of certain urgent matters which may otherwise harm the country.</p> <p>F. If the administrative and technical requirements for survey and exploration activities have been fulfilled, then MoFor may issue a Rent-Use Permit without the need to, first, obtain an Approval-in-Principal License.</p> <p>3. Rights of Rent-Use Permit Holder: In addition to the relevant utilization activities (<u>i.e.</u>, general mining activities), a Rent-Use Permit also gives the holder the right to carry on land-clearing and deforestation activities subject to the obligation to pay compensation, make forestry resources provision and/or provide reforestation funds in accordance with the prevailing laws and regulations.</p>

Legal Basis	Remarks
	<p>4. <u>Obligations of Rent-Use Permit Holder:</u></p> <p>A. The Rent-Use Permit holder is obliged to:</p> <ul style="list-style-type: none"> (a) pay non-tax State Revenues in respect of Forest Area Utilization; (b) carry on reforestation activities for the purpose of rehabilitating river areas (<i>daerah aliran sungai</i>); (c) carry out reforestation activities on compensation land; (d) conduct forest protection; (e) carry out reclamation and/or reforestation of Forest Land which is no longer being used; and (f) carry out such other obligations as are stipulated by MoFor. <p>B. The Rent-Use Permit Holder is not allowed to:</p> <ul style="list-style-type: none"> (a) transfer its Rent-Use Permit to another party without approval from MoFor; or (b) make the subject Forest Area available to another party. <p>5. <u>Validity Period of Rent-Use Permit:</u></p> <p>A. The validity period of a Rent-Use Permit is the same as the validity period of the relevant license (<u>i.e.</u>, validity period of the relevant Mining License).</p> <p>B. Rent-Use Permits, for activities that do not require a specific license, will be granted for a maximum period of 20 years.</p> <p>C. Rent-Use Permits, for state defense, air and sea traffic safety, public roads, railways, evaluation of dams, water conservation, sand control, facilities for meteorology, climatology, geophysics, and religious purposes, will remain valid for the period of such activities.</p>

3. **MONITORING AND EVALUATION**

Legal Basis	Remarks
Article 19	<p>A. MoFor will monitor and evaluate:</p> <ul style="list-style-type: none"> (a) the Principal License holder; (b) the Approval-in-Principal License Obligation dispensation/waiver recipient (as mentioned in 2.2 E above); and

Legal Basis	Remarks
	<p>(c) the Rent-Use Permit holder.</p> <p>B. MoFor may evaluate the Rent-Use Permit holder at any time or at least once every 5 years and, in the event the Rent-Use Permit holder is no longer using the Forest Area in accordance with the Rent-Use Permit, MoFor will revoke the Rent-Use Permit.</p> <p>C. Provisions concerning monitoring and evaluation will be further specified in a subsequent MoFor regulation.</p>

4. EXPIRATION OF APPROVAL-IN-PRINCIPAL LICENSES AND RENT-USE PERMITS

Legal Basis	Remarks
Articles 20-22	<p>A. The Approval-in-Principal License/Rent-Use Permit shall expire in the following situations:</p> <ul style="list-style-type: none"> (a) the expiry of the Approval-in-Principal License/Rent-Use Permit validity period; (b) the revocation of the Approval-in-Principal License/Rent-Use Permit by MoFor; (c) the Approval-in-Principal License/Rent-Use Permit is voluntarily returned, by its holder, to MoFor prior to the expiration date of the same; and/or (d) the relevant Forest Area has been converted to become a Non-Forest Area or a Forest Area which cannot be utilized in accordance with the relevant regulations. <p>B. The expiration of the Rent-Use Permit does not extinguish the obligations of the Rent-Use Permit holder to:</p> <ul style="list-style-type: none"> (a) pay non-tax State Revenues on Forest Area Utilization; (b) carry out reforestation activities for the purpose of rehabilitating river areas (<i>daerah aliran sungai</i>); (c) carry out reforestation activities on compensation land; (d) conduct forest protection; (e) carry out reclamation and/or reforestation activities in Forest Areas which are no longer used; (f) pay compensation, make forest resources provision and/or provide reforestation funds in accordance with the relevant regulations; and (g) carry out such other obligations as may be stipulated by MoFor.

Legal Basis	Remarks
	<p>C. Following the expiration of the Rent-Use Permit, the ownership of all existing immovable and movable goods [in the relevant Forest Area] will be stipulated in accordance with the prevailing laws and regulations.</p> <p>D. Movable goods that belong to the Rent-Use Permit holder must be removed from the relevant Forest Area not later than 6 months after the expiration date of the Rent-Use Permit or the completion of the reclamation activities.</p> <p>E. If the Rent-Use Permit holder fails to comply with 4D above, the existing movable goods in the Forest Area will be offered for sale, by tender, in accordance with the prevailing laws and regulations.</p>

5. SANCTIONS

Legal Basis	Remarks
Articles 23 - 24	MoFor may revoke the Rent-Use Permit if the holder fails to fulfill the obligations specified in 4 A and B above.

6. TRANSITIONAL PROVISIONS

Legal Basis	Remarks
Articles 25 - 26	<p>A. Approval-in-Principal Licenses, that have been issued prior to the enactment of GR 24/2010 and where the obligations have been fulfilled by the relevant holder, will be processed to become Rent-Use Permits in accordance with GR 24/2010.</p> <p>B. Rent-Use Permits issued prior to the enactment of GR 24/2010 will continue to be valid until their expiry date except where the relevant Forest Area has been converted into a Non-Forest Area.</p>