

**BritCham Energy Sector
Group Meeting**

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IMPLEMENTING REGULATIONS FOR INDONESIA'S NEW MINING LAW

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OUTLINE OF PRESENTATION

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2. Current Status of Implementing Regulations
3. Reasons for Delay
4. Implications of Delay
5. Government Response
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7. The Mining Services Regulation
8. Outlook for Other Implementing Regulations
9. Summary & Conclusions



INTRODUCTION

1. The New Mining Law provides for the Implementing Regulations to be in place by January 2010
2. The Implementing Regulations, however, remain a “work in progress”
3. The Implementing Regulations may now be finalized by mid 2010

CURRENT STATUS OF IMPLEMENTING REGULATIONS

1. Mining Services Regulation has already been finalized and issued
2. Fourth draft of Mining Enterprise Activities Regulation has been circulated for comment
3. Second drafts of Regulations for:
 - (a) Mining Area Determination;
 - (b) Direction & Supervision of Mining Business; and
 - (c) Reclamation & Post Mining Activities have been circulated for comment

REASONS FOR DELAY IN FINALIZING REGULATIONS

1. 12 months was an overly ambitious target
2. Inadequate resources
3. Change of Indonesian Government
4. Other priorities
5. Extensive lobbying by special interest groups
6. “Push back” by foreign investors and their governments

IMPLICATIONS OF DELAY IN FINALIZING IMPLEMENTING REGULATIONS

1. Confusion in the Regencies about when and how to convert KPs into IUPs
2. Refusal in some Regencies to convert KPs into IUPs
3. Potential issue about validity of KPs converted into IUPs before Implementing Regulations are issued
4. Potential issue about validity of KPs converted into IUPs after 12 January 2010

GOVERNMENT RESPONSE TO DELAY IN FINALIZING IMPLEMENTING REGULATIONS

1. Informal extension of time limit for converting KPs into IUPs
2. Now, 12 months from when the Implementing Regulations come into force
3. Inherent inconsistency with New Mining Law

OPPORTUNITIES CREATED BY DELAY

1. Mistake to rush to convert KPs into IUPs
2. Conversion is effectively guaranteed
3. More time to transfer KPs to new entities
4. Avoidance of undisclosed liabilities



MINING SERVICES REGULATION – OVERVIEW

1. Only Implementing Regulation to be finalized so far
2. Evidence of benefit of lobbying by foreign investors and their home governments
3. Useful insight into the Indonesian Government's real intentions for mining industry reform

MINING SERVICES REGULATION - BACKGROUND

1. Mining services had become part of a perceived problem of foreigners using contractual arrangements to control mining projects
2. Foreign mining services providers were viewed as having been “too successful” in Indonesia
3. Large number of “unlicensed” mining services providers

MINING SERVICES REGULATION – POLICY CONSIDERATIONS

1. Mine Owners should not surrender control of mining projects to foreign/local mining services providers
2. Greater transparency in awarding mining services contracts
3. Local mining services providers should be given more business opportunities
4. Need for more rigorous mining services provider licensing regime

MINING SERVICES REGULATION - OWNERS AS OPERATORS - I

1. Mine Owner must act as Operator
2. As a minimum, Mine Owner must:
 - (a) Produce the ore
 - (b) Process/refine the ore
 - (c) Handle marketing, sales and export of ore

MINING SERVICES REGULATION - OWNERS AS OPERATORS - II

3. Mine Owner may, however, outsource the following activities:

- (a) Geological studies
- (b) Mine planning
- (c) Construction
- (d) Removal of overburden
- (e) Blasting
- (f) Transportation
- (g) Equipment Maintenance

MINING SERVICES REGULATION - GREATER TRANSPARENCY

1. No mining services contracts with Affiliates except with DGoMG Approval
2. Limited tender requirements

MINING SERVICES REGULATION - MORE OPPORTUNITIES FOR LOCALS

1. Prioritize domestic procurement
2. Limitations on using PMA mining services providers:
 - (a) newspaper announcement
 - (b) non-availability of technically or financially capable local/national mining services providers
3. PMA mining provider must subcontract some work to local mining services providers

MINING SERVICES REGULATION – SOME BAD NEWS FOR FOREIGN INVESTORS

1. More rigorous licensing requirements for mining services providers
2. Greater competition from local/national mining services providers

MINING SERVICES REGULATION – SOME GOOD NEWS FOR FOREIGN INVESTORS

1. Mining services provider licenses available
2. PMA mining services providers not excluded
3. Likely practical ability of Mine Owner to appoint preferred mining services provider
4. 3 Year “Grandfather” provision for existing mining services arrangements
5. No universal tender requirement

MINING SERVICES REGULATION – OVERALL ASSESSMENT

1. Mere “shadow” of Article 124(1) of New Mining Law which mandates the use of local and national mining services providers
2. Gives the “appearance” of restricting the use of PMA mining services providers
3. In reality, restrictions on using PMA mining services providers probably have little substance
4. A good outcome for PMA mining services providers

OUTLOOK FOR OTHER IMPLEMENTING REGULATIONS

1. Mining Services Regulation may offer guidance as to likely form/substance of outstanding Implementing Regulations
2. Nominal adherence to New Mining Law
3. Practical dilution of many requirements of New Mining Law
4. New Mining Law should be seen as a “vote getting” initiative
5. Implementing Regulations should be seen as a “business getting” initiative



SUMMARY AND CONCLUSIONS

1. Continuing uncertainty over timing and content of most Implementing Regulations
2. Mixed implications for foreign investment
3. On balance, however, Implementing Regulations may be good news for foreign investors



Thank You