

NEWSLETTER

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MORE STRINGENT REGULATION ON SHARE DIVESTMENT AND FOREIGN INVESTMENT FOR MINING COMPANY

Regulation of the Minister of Energy and Mineral Resources No. 27 of 2013 concerning the Procedure and Price Fixing for Share Divestment and Changes to Investment in Mineral and Coal Mining Business (“**PERMEN No. 27/2013**”) was issued on 13 September 2013 and shall be effective as from the said issuance date. The issuance of PERMEN No. 27/2013 is as the implementing regulation of Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities (“**PP No.23/2010**”) as amended by Government Regulation No. 24 of 2012 (“**PP No.24/2012**”), particularly to administer the procedure and price fixing for share divestment.

A. Share Divestment

PERMEN No. 27/2013 key concerns are Share Divestment and Change of Investment. Share Divestment has been introduced by PP No.24/2012, yet the implementation of the said regulation awaits for the PERMEN No. 27/2013 to be enacted. While it keep the ratio of divestment as explicitly stated in Article 97 (1a) of PP No.23/2010, PERMEN No. 27/2013 set more stringent and detailed rule for share divestment.

Restrictions applied for the source of funding to purchase the divested share(s), the restriction of share dilution for the Indonesian shareholder(s), prohibition to pledge the divested share(s), and exclusion of the shares traded in the capital market as part of divested share(s). The share divestment must be reported by the Mining License (“**IUP**”) or Special Mining License (“**IUPK**”) holder to the Minister via Directorate General of Mineral and Coal with copy carbon addressed to the said IUP or IUPK issuer i.e. the Governor or Head of Regency/Mayor (“**Issuer of IUP/IUPK**”). The report shall consist of the minute and deed of sale and purchase of divested share(s) signed and approved by the seller and purchaser, and the current shareholding composition affected by the divestment.

The price for divested share is determined by: (i) the replacement cost against cumulative amount of investment cost disbursed by the investor, whose shares become the object of divestment; (ii) and deductible by financial obligation and cumulative amortization. The Government receives privilege to have the determined price for divested share as the highest offer price set for them. However, the same price shall serve as the base bidding price for the divested share to State-Owned Company, Regional-Owned Company, and Indonesian private entity.

One important provision regarding share divestment is prohibition to pledge the shares that must be divested. An exception to share divestment is that the shares of IUP on IUPK holder selling its shares in Indonesian stock market are not considered as shares that must be divested under PERMEN No. 27/2013.

B. Change of Investment

PERMEN No. 27/2013 includes five issues as change of investment, i.e. change of investment and source of finance, change of the company status from Foreign Investment Company (“**PMA**”) to Domestic Investment Company (“**PMDN**”) and vice versa, amendment of Article of Association, change of the management structure, and change of the shareholding composition.

PERMEN No. 27/2013 requires the IUP or IUPK holder to inform the Issuer of IUP/IUPK regarding the change of investment and source of finance, for instance whenever the IUP holder is granted a loan facility from a financial institution. The notification of change of investment and source of finance shall be made in an application form and supported with the relevant loan facility agreement. The change of investment and source of finance shall be effective subject to the approval of the Issuer of IUP/IUPK.

Should the IUP or IUPK holder wishes to change its company status from PMA to PMDN or vice versa, PERMEN No. 27/2013 requires prior approval from the Minister of Energy and Mineral Resources (“**Minister**”). The approval or refusal shall be made by taking into consideration of the ratio of shareholding allowed to be transferred to the foreign investor. The transfer of ownership to foreign investor for Exploration IUP or IUPK holder must not exceed 75% (seventy five per cent), while Operation Production IUP or IUPK holder is restricted to transfer its ownership to foreign investor at a maximum of 49% (forty nine per cent).

As a consequence for the company which does not obtain prior approval from the Minister, the change of company status shall be considered as not effective.

Any change of Articles of Association, such as the change of name or the domicile of the company, the amount of authorized capital and/or subscribed and paid-up capital, change of the Board of Directors and/or Board of Commissioners and status of the company from private to public or vice versa shall be considered as change of article of association. The structure shall be submitted to the Issuer of IUP/IUPK prior to the formalization of such change(s).

Change of the shareholding composition shall refer to the ratio of shareholding allowed to be possessed by the foreign investor. The same restriction for Exploration IUP or IUPK holder and Operation Production IUP or IUPK holder applied on this matter. The proposal for changing the shareholding composition shall be submitted to the Issuer of IUP/IUPK. Otherwise, it shall be submitted to the Minister if the change involves foreign investor.