

DEVELOPMENT IN MINING REGULATORY ISSUES

Third Amendment to Government Regulation No. 23 of 2010 on Undertaking of Mineral and Coal Mining Activities

Government Regulation No. 77 of 2014 (GR 77/2014) is the third amendment to Government Regulation No. 23 of 2010 (GR 23/2010), came into force since 14 October 2014. The main provisions in GR 77/2014 are as follows:

- Composition of the foreign shareholding in a mining company that was converted from a local company to a foreign investment company;
- Mandatory divestment scheme for the holders of Production Mining Licenses (IUP Produksi – Izin Usaha Pertambangan Operasi Produksi) and Special Production Mining Licenses (IUPK Produksi – Izin Usaha Pertambangan Khusus Operasi Produksi), which depend on the fulfillment of processing/purification activities and mining method (open-pit mining, underground mining);
- Mandatory upgrades from Exploration Mining Licenses (IUP Eksplorasi – Izin Usaha Pertambangan Eksplorasi) and Special Exploration Mining Licenses (IUPK Eksplorasi – Izin Usaha Pertambangan Khusus Eksplorasi) to IUP Produksi or IUPK Produksi;
- Requirements to submit applications to reduce the mining area granted to the holder of the IUP Produksi or IUPK Produksi.

Foreign Ownership for Converted Mining Companies

The government introduced new provisions to this regulation, which provide the cap for the foreign shareholding in mining companies that are converted from local/domestic investment companies to foreign investment companies. The maximum amount of foreign shareholding is as follows:

1. Holder of IUP Eksplorasi or IUPK Eksplorasi: maximum 75% foreign shareholding;
2. Holder of IUP Produksi and IUPK Produksi that does not conduct processing or purification activities: maximum 49% foreign shareholding;
3. Holder of IUP Produksi and IUPK Produksi that conducts processing or purification activities: maximum 60% foreign shareholding;
4. Holder of IUP Produksi and IUPK Produksi that performs underground mining activities: maximum 70% foreign shareholding.

Mandatory Divestment

GR 77/2014 also introduced more detailed provisions relating to the mandatory divestment after the fifth year of production activities. In contrast with GR 23/2010, which only provided one format for divestment, the scheme described in GR77/2014 is different, taking into account the business activities, and whether the company operates processing/purification activities. The mandatory divestment schemes are now as follows:

NoMining Company Divestment Scheme

1. Holder of IUP Produksi or IUPK Produksi who does not conduct own processing/purification activities (which shall also include mining companies that has processing/purification arrangement with another mining company)
 - 6th year: 20%

- 7th year: 30%

- 8th year: 37%

- 9th year: 44%

- 10th year: 51%

2. Holder of IUP Produksi or IUPK Produksi who conducts own processing/purification activities
 - 6th year: 20%

- 10th year: 30%

- 15th year: 40%

3. Holder of IUP Produksi or IUPK Produksi who conducts underground mining activities
 - 6th year: 20%

- 10th year: 25%

- 15th year: 30%

4. Holder of IUP Produksi or IUPK Produksi who conducts underground and open-pit mining activities
 - 6th year: 20%

- 8th year: 25%

- 10th year: 30%

5. Holder of IUP Produksi or IUPK Produksi for processing/ purification activities Not obligated to conduct divestment

In divesting the foreign-owned shares, the IUP Produksi or IUPK Produksi should sequentially offer the shares to the following institutions: (i) the government, the regional government, regency/municipal government; (ii) state-owned or region-owned enterprise; (iii) national private company.

In addition, GR 77/2014 also specifies the deadline for the first mandatory divestment for mining companies. For mining companies who have been in the production operational stage less than five years before GR 77/2014 was enacted, they must perform the first mandatory divestment within one year after enactment of GR 77/2014 (i.e. by 14 October 2015), and subsequent divestments within five years after the enactment of GR 77/2014 (i.e. by 14 October 2019).

Mandatory upgrades from IUP Eksplorasi or IUPK Eksplorasi to IUP Produksi or IUPK Produksi

All mining companies are now required to “upgrade” their IUP Eksplorasi or IUPK Eksplorasi to IUP Produksi or IUPK Produksi. GR 77/2014 states that the company’s mining area will be returned to the Minister of Energy and Mineral Resources, Governor or Regent/Mayor who issued the mining license, if the mining companies fails to upgrade the IUP Eksplorasi or IUPK Eksplorasi.

Requirements to submit applications to reduce the mining area granted to the holder of the IUP Produksi or IUPK Produksi

Further requirements exist now on mining companies who submit applications to reduce their working area. GR 77/2014 now contains provisions on how the working area that has been returned to the government following the reduction be treated or be offered to other prospective applicants for mining licenses.

