

Indonesian Government confirms ban on export of raw minerals

At midnight on 12 January 2014, the long-foreshadowed Indonesian Government ban on the export of raw mineral ores from Indonesia took effect. Following continued international pressure from mining companies, the Government also announced transitional measures allowing producers to continue to export certain ore concentrates that meet a minimum metal content, subject to the payment of export duties. However, in order to benefit from this transitional arrangement, the Government announced that companies must demonstrate a serious intent to build refining capacity in Indonesia.

The issuance of regulations banning the export of raw mineral ores is consistent with the Indonesian Government's overall policy of moving the country's economic activity up the value chain and becoming less dependent on the export of unprocessed, non-value added natural resources to secure further growth.

The new regulations

The regulation issued as "Government Regulation No.1 of 2014 on the Second Amendment to Government Regulation No.23 of 2010 on the Implementation of Minerals and Coal Mining Activities" (**GR No.1/2014**) essentially requires mining companies to carry out processing and refining domestically. It also confirms that the holder of a "Contract of Work" (which is a contract entered into by a foreign-owned Indonesian company and the Indonesian Government under the old mining regime and which specifies the terms and conditions of mining in Indonesia by such foreign-owned Indonesian companies) and the holder of an "Production Operation IUP" and "Production Operation IUPK" (which are forms of mining licences) which have carried out mining and refining activities may continue to export the minerals within specified limits.

To temper the effect of GR No.1/2014, and following sustained international pressure from mining companies, the Indonesian Government also issued the watered-down "MEMR Regulation No.1 of 2014 on Increasing the Value Added of Minerals Through Domestic Processing and Refining Activities" (**MEMR Regulation**). The MEMR Regulation continues to allow the export of concentrates of copper (of at least 15% purity), iron ore (62%), manganese

Highlights

- Exports of nickel and bauxite ore are now prohibited.
- Exports of gold, silver and chromium ore may only proceed after they have been refined domestically.
- Transitional arrangements have been put in place to allow exports of copper, iron, manganese, lead, zinc and iron sand ore to continue in concentrate form (if approved by the Government) until 11 January 2017, subject to conditions and level of export duties of between 20% to 60%.
- Companies wishing to take advantage of the transitional provisions on the export of concentrate must apply to the Government, and demonstrate a serious intent to build a refining facility.
- The amount of ore concentrate to be exported under the transitional arrangements is to be determined by the Government on a case-by-case basis.

(49%), lead (57%), zinc (52%) and mineral sands (58%) for another three years, until 11 January 2017 (after which they must have been refined domestically).

However, in order to do so, companies must obtain a recommendation from the Director General of Minerals and Coal as well as an Export Approval Letter from the Minister of Trade in accordance with the procedures set out in new Minister of Trade Regulation No.04 of 2014 on the Provisions of Export for Mining Products that have been Processed and Refined. To obtain the recommendation, a pre-requisite to obtaining the Export Approval Letter, a company must demonstrate a serious intent to build a refining facility, either by itself or through cooperation with another party. Even if a company obtains permission to export concentrate, such export will be subject to specified limits as determined by the Government on a case-by-case basis. Furthermore, the "approval to export" may be subject to periodic review; providing no certainty that companies who obtain such approval can continue to export until January 2017.

The MEMR Regulation also confirms the export ban on nickel and bauxite ores, and the domestic refining requirement that applies to the export of gold, silver and chromium.

Lastly, the Indonesian Minister of Finance issued a new regulation which imposes a progressive duty rate for the export of the six mineral concentrates (copper, iron, manganese, lead, zinc and ilmenite/titanium). The export duty rates for mineral concentrates, excluding copper, range from 20-25% in 2014 and scale up to 60% in the second half of 2016. For copper concentrate, the export duty rate has increased to 25% for 2014, further increases to 35% in the first half of 2015, and then scales up to 60% thereafter. This increase in duty rates over the next three years is deliberately intended to make the export of raw ore progressively more and more uneconomic and, consistent with the Government's policy, to encourage producers to develop refining capacity in Indonesia.

Considerations for mining companies

Companies who wish to continue to export ore concentrate under the new provisions need to consider the following:

- (a) do their products meet the minimum metal content set out in the MEMR Regulation;
- (b) can they demonstrate to the Government a serious intent to develop refining capacity in Indonesia (including whether they have environmental assessment documents (AMDAL) and feasibility studies for construction of the facility); and

- (c) in light of the progressive increase in export duty rates, is it economically feasible for them to continue to export?

In the meantime, companies who are unable to meet their supply obligations as a result of the ban on ore exports should consider whether force majeure protection is available under existing supply contracts.

Uncertainty continues

Despite the coming into force of the export ban and the introduction of the new regulations, the uncertainty of investing in Indonesia's mining sector remains.

Full details on how these new regulations, including the transitional provisions, will work in practice, are yet to emerge. We also expect that many companies and industry members will lobby the Government to review its policies and the amount of export duty charged. Companies, in particular domestic companies, wishing to build refining plants will require additional revenue to fund construction of their plants. Our experience is that the Indonesian Government is usually open to constructive discussions on how government and private industry can assist each other to reach a mutually beneficial outcome. In this context, the Government is giving due consideration to revising the current tax incentives (such as tax holidays and tax allowances) for those companies committing to significant investment in Indonesia. The sectors that may be eligible to obtain tax incentives include the mining sector.

Adding to this uncertainty is the recent legal challenge filed by Indonesia's Mineral Entrepreneurs Association (APEMINDO) with Indonesia's Constitutional Court in January 2014 challenging the Government's authority under the Mining Law (Law No. 4 of 2009) to issue GR No.1/2014 and thereby restrict exports. International and domestic mining companies will be watching closely how this legal challenge plays out.

If you would like to have further details on these new regulations, or for information on investing in Indonesia generally, please contact one of the contacts listed below.

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