



INDONESIAN MINING - GET YOUR SMELTER READY

Overview

Three newly enacted regulations¹ implementing a ban on exporting raw or unprocessed minerals have hit the Indonesian mining sector. These new mining regulations originate from the Indonesia mining law passed in 2009, which required raw minerals or ores to be processed and purified domestically prior to export with the object of increasing the value of raw/unprocessed minerals before sale overseas or export.

Whilst several implementing regulations to the mining law have been enacted prior to 2014, the export prohibition was delayed as it was thought that Indonesian mining players had insufficient financial muscle to construct their own processing and purification facilities (smelters).

Clearly, the Indonesian government now thinks the time is ripe for the mining industry to comply with the processing and purification obligation, and its view is underscored by an investment application in the downstream mining sector received by the Indonesian Capital Investment Coordinating Board of some Rp150 billion. The ban on exporting unprocessed minerals became effective on 12 January 2014.

1. The regulations include (i) Government Regulation No. 1 of 2014 concerning the amendment of the Government Regulation No. 23 of 2010 concerning the implementation of mineral and coal mining business activities; (ii) the Minister of Energy and Mineral Resources Regulation No. 1 of 2014 concerning the enhancement of value minerals through domestic processing and purification activities; and (iii) the Minister of Trade Regulation No. 04/M-DAG/PER/1/2014 on the provisions of exports of mining products resulting from processing and purification activities.



These regulations originate from the Indonesia mining law passed in 2009, which required raw minerals or ores to be processed and purified domestically prior to export with the object of increasing the value of raw/unprocessed minerals before sale overseas or export.

Processing and purification

These new regulations go further than all previous regulations and provide for processing/purification minimum standards for certain minerals. The regulations also extend the ban to any minerals for which minimum standards are stipulated in future.

The regulations state that (i) metallic minerals; (ii) non-metallic minerals; and (iii) stones are the types of mining commodities whose value can be enhanced. The enhancement of these commodities is done by way of:

- Processing and purifying, for metals.
- Processing, for non-metals.
- Processing, for stones.

Processing is defined by the regulations as the efforts made to enhance the quality of minerals and stones without altering their original physical and chemical properties. Purification of minerals, on the other hand, is defined as enhancing the quality of metal minerals, through the process of extraction and purifying, so as to produce products whose chemical and physical properties differ from their original form.

Under the regulations, stones and non-metals can be exported provided that they have been processed according to the minimum standards, as such products do not require purification.

Conversely, metals must be processed and purified according to the minimum standards before they can be exported.

Joint processing and purifying

The regulations allow holders of mining concessions to cooperate with one another to complete the processing and purification. Such cooperation may take the form of sale and purchase of raw materials, ores or concentrates or joint conduct of the processing and purifying activities. This cooperation is, however, subject to an approval either from the Minister of Energy and Mineral Resources (ESDM) or the relevant Governor.

Export timeline for certain minerals

Under the regulations, it is still possible to export certain metals (including copper, iron ores, iron sands, manganese and zinc) without undergoing the purification process (although they will still need to be processed according to the minimum standards) until 12 January 2017. However, an exporter of these five metallic minerals must first obtain a recommendation from the ESDM before conducting the export. Other metallic minerals, which include nickel, bauxite, tin, gold, silver and chromium, are still required to undergo the purification process prior to export.

Required permits to export

The exporter must obtain a recommendation from ESDM and be admitted as a registered exporter of processed and purified minerals from the Directorate General of Overseas Trade.

What should you do?

Given the uncertainty in the Indonesian legal environment, mining concession holders should continue to monitor any further changes to the mineral export prohibition, particularly for the types of minerals for which minimum standards are yet to be listed in the regulations.

We understand that as of 12 January 2014, exporters have stopped exporting unprocessed minerals, although the government still shows leniency to companies who have processed certain minerals to a certain level. Taking this uncertainty into account, we strongly recommend that the best path is to discuss or seek any necessary clarification from the Ministry of ESDM or any other relevant government agency before exporting any minerals.

The exporter must obtain a recommendation from ESDM and be admitted as a registered exporter of processed and purified minerals from the Directorate General of Overseas Trade.



How can HFW help?

Inevitably, banning the export of raw minerals will have a direct impact on foreign investment in Indonesia. From the regulations in the mining sector, it appears that the Indonesian Government's aim is to provide greater protection to state assets and national interests by applying stricter conditions on foreign investors. Another example of this tougher line is the requirement that foreign shareholders of an Indonesian mining company must reduce their shareholding to 49% of the company's share capital on the tenth year of its production. Nonetheless, the Indonesian Government says it expects foreign investment to increase in 2014 as the requirement to process/purify raw minerals domestically will open domestic and foreign investment opportunities and increase Indonesian employment. The Indonesian Capital Investment Coordinating Board predicts that foreign investment will increase by 15% as a result of the regulations.

HFW is able to advise interested parties on the mineral export prohibition. We can also help to structure investment models to start a business in the Indonesian mining sector, such as to comply with all the regulatory conditions and requirements under the prevailing law.

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