

# Indonesia Regulatory Update

January 2017



## Regulatory Highlights

This publication sets out to highlight at summary level, some of the key current regulatory changes in Indonesia. These important changes have implications for industry, covering a wide range of industries and within these, specific and complex business processes. For further details on any of the items covered, a listing of KPMG Contact Points for further discussion is included at the end of the document. If you wish to receive a full research pack of all of the Indonesia regulatory change then please contact Susanto, contact details provided at the end of this document. Hyperlinks to the source documentation (Bahasa Indonesia for most items) are provided as appropriate.

Regulatory updates covered in this publication are as follows:

- Mineral and Coal Mining Business Permit
- Production Sharing Contract - Gross-Split Scheme
- Exemption or Reduction of Import Duty and/or Value-Added Tax on the Import of Goods in the Context of Contract of Work of Coal Mining
- New Regulations on Financial Technology
- New or Amended Regulations on Insurance
- Merger and Consolidation of Publicly Traded Companies

## Energy and Natural Resources Sector

### Mineral and Coal Mining Business Permit

Government has issued Government Regulation ("Peraturan Pemerintah" or "PP") No.1 of 2017 on the Fourth Amendment of [PP No. 23 of 2010](#) regarding Implementation of Mineral and Coal Mining Business Activities. This Regulation has come into effect as of 11 January 2017.

PP No. 1 of 2017 revises the submission period for Production Operation Mining Business Permit ("Izin

*Usaha Pertambangan Operasi Produksi*" – "IUP OP") and Special Production Operation Mining Business Permit ("Izin Usaha Pertambangan Khusus Operasi Produksi" – "IUPK OP"). Applications for the extension of IUP OPs and IUPK OPs must be submitted within the following period:

- a. **IUP OPs for metal minerals, certain types of non-metallic minerals or coal:** between five years and one year prior to the expiry of existing permit.
- b. **IUP OPs for non-metallic minerals or rocks:** between two years and six months prior to the expiry of existing permit.
- c. **IUPK OPs:** between two years and six months prior to the expiry of existing permit.

Under the previous Regulation, mining company could only start applying for an IUP OP or IUPK OP extension between two years and six months before the expiry of existing permit.

PP No. 1 of 2017 sets the requirement for holders of IUP OPs to comply with certain benchmark prices when selling their mineral or coal products. This Regulation also sets out the obligation for holders of Mining Business Permit ("Izin Usaha Pertambangan" – "IUP") and Special Mining Business Permit ("Izin Usaha Pertambangan Khusus" – "IUPK"), which are owned or controlled by foreign investors, to gradually divest at least 51% of their total shares after the fifth year of production. The divested shares must be offered to Indonesian parties, specifically the Government, state-owned/regionally-owned enterprises and/or national private business entities.

PP No. 1 of 2017 further regulates the provision on the implementation of processing and refining, minimum limit of processing and refining, as well as export of minerals. Companies who wish to build smelters in Indonesia are required to utilize metal minerals under certain criteria, which is further regulated under [Ministry of Energy and Mineral Resources Regulation No. 5 of 2017](#).

(Issued regulation in Bahasa: [PP No. 1 of 2017](#))

## Production Sharing Contract - Gross-Split Scheme

Ministry of Energy and Mineral Resources ("MEMR") issued Regulation No. 8 of 2017 dated 13 January 2017. This Regulation has come into effect as of 16 January 2017.

MEMR Regulation No. 8 of 2017 introduces Production Sharing Contract ("PSC") *Gross-Split Scheme*, where the calculation of profit splits between the Government and oil-and-gas contractors will be determined based on the amount of gross production. Under this scheme, Government will no longer cover the contractors' operational costs as previously obliged under the *cost recovery scheme*.

Two main components are involved in the calculation of gross-split amount, namely:

1. the base-split component; and
2. the variable and progressive adjustment components.

The base-split component is set at: (Government: Contractors) 57%:43% for oil PSC; and 52%: 48% for Gas PSC. The variable and progressive adjustment component encompasses several conditions which are used to adjust the base-split component, among others: field, location, reservoir depth and type, the amount of carbon dioxide, usage of local industrial content and stage of production. These variables will be added to or subtracted from the base calculation.

MEMR Regulation No. 8 of 2017 revokes [MEMR Regulation No. 38 of 2015](#) on the Acceleration of Unconventional Oil-and-Gas Business.

(*Issued regulation in Bahasa: [MEMR Regulation No. 8 of 2017](#)*)

## Exemption or Reduction of Import Duty and/or Value-Added Tax on the Import of Goods in the Context of Contract of Work of Coal Mining

Ministry of Finance ("MoF") Regulation No. 259/PMK.04/2016 regarding Exemption or Reduction of import duty and/or Value-Added Tax ("VAT") on the Import of Goods in the Context of Contract of Work ("CoW") of coal Mining replaces [MoF Regulation No. 110/PMK.010/2005](#) on the same topic. This Regulation will come into effect as of 3 February 2017.

MoF Regulation No. 259/PMK.04/2016 specifies that the exemption or reduction of import duty and/or VAT may only be granted to contractors whose contracts set out about the exemption of import duty and/or VAT. Such tax exemption and/or reduction will be granted based on a master list prepared by the Chairman of the Investment Coordinating Board ("Badan Koordinasi Penanaman Modal" or "BKPM") or the designated official on behalf of the MoF. Import of goods that is not based on the master list will be subjected to import duty and/or VAT, except in the event of force majeure, whereby the invoice that

has been approved by the Chairman of BKPM or the appointed official may be used as replacement of the master list. This Regulation also allows the transfer of imported goods which have been granted with the exemption or reduction of import duty and/ or VAT, in the event that the imported goods have been used for at least two years.

MoF Regulation No. 259/PMK.04/2016 specifies the provisions on assignment, re-export and destruction of imported goods which have been granted with the exemption or reduction of import duty and/or VAT, as well as the tax treatment related to the facility of import duty and/or VAT exemption or reduction that has been granted.

(*Issued regulation in Bahasa: [MoF Regulation No. 259/PMK.04/2016](#)*)

## Financial Services

### New Regulations on Financial Technology

In December 2016, the Indonesian Financial Services Authority ("Otoritas Jasa Keuangan" or "OJK") and *Bank Indonesia* ("BI") issued several new regulations and a circular letter which relate to the implementation of Financial Technology in Indonesia, as regulated under [BI Regulation No. 18/40/PBI/2016](#):

#### a. [77/POJK.01/2016: IT based lending services](#)

Some of the noteworthy provisions regulated in 77/POJK.01/2016 include:

- Peer-to-peer ("P2P") lending platform providers ("Providers") are required to be either in the form of Limited Liability Companies ("Perseroan Terbatas" or "PT") or Services Cooperatives.
- Providers are defined as Indonesian entities which provide, manage, and operate an IT-based loan service.
- Loans must be in Indonesian Rupiah (IDR) and matched using an electronic system over the internet. Providers cannot engage in balance sheet lending.
- Foreign citizens and/or legal entities direct and/or indirect ownership should not exceed 85% of the total shares.
- Providers must apply for a Registration Certificate and Provider License from the OJK.
- Providers are required to have IDR 1 billion in subscribed capital at the time of application for registration and IDR 2.5 billion in capital at the time of a request to obtain a Provider License.
- Providers engaged in P2P lending services before the Regulation became effective (29 December 2016), must register with the OJK within six months (i.e. by 29 June 2017).

- Providers must have at least one Director and one Commissioner. Each member of the Board of Director ("BOD") or Board of Commissioner ("BOC") must have experience in a financial industry business for one year or more. The members of BOD and/or BOC may be foreign citizens.
- Borrowers must be originated from and domiciled in Indonesia. Lenders can be local or foreign parties.
- Loans cannot exceed IDR 2 billion for each borrower. The Regulation does not specify maximum interest rates.
- Other obligations for Providers include: quarterly reporting to the OJK for Registered Providers and monthly reporting for Licensed Providers, mandatory provisions in loan agreements to protect users, qualification requirements for employees and management, use of escrow accounts and virtual accounts; and to provide access to lenders on information regarding the usage of their funds and provide access to borrowers on their loan positions.

**b. 18/41/DKSP: Payment Transaction Processing**

BI Circular Letter No.18/41/DKSP issued on 30 December 2016, provides greater clarity and guidance in relation to [BI Regulation No. 18/40/PBI/2016](#) on Payment Transaction Processing issued on 9 November 2016 (please refer to our [November 2016 Regulatory Update Publication](#) for more on 18/40/PBI/2016).

Additional information includes:

- Minimum paid up capital of at least IDR 3 billion for companies applying for an E-Wallet License (All Payment Gateway Service Providers, and E-Wallet Service Providers that have (or plan to have) at least 300,000 active users, must obtain a Service Provider License from BI).
- Maximum E-Wallet balance is IDR 10 million.
- E-Wallets may only be used for shopping transactions or bill payments.
- A party that had been granted a license as a Payment-System Service Provider before this Circular Letter came into effect is required to submit an annual report regarding the payment-system service business plan to BI by 15 March 2017.
- A party that obtained the license as E-Wallet Organizer before this Circular Letter came into effect is required to notify BI and submit quarterly reports on the implementation of E-Wallets, which shall include details on the number of E-Wallet users, as well as the volume and value of transactions.

E-Wallet Organizers must comply with this requirement before 30 June 2017.

This Circular Letter came into effect on 30 December 2016.

**c. 18/105/DKom: Memorandum of Understanding ("MoU") on the National Payment Gateway ("NPG")**

In December 2016, BI signed a MoU with four banks (i.e. PT Bank Mandiri Tbk.; PT Bank Negara Indonesia Tbk.; PT Bank Rakyat Indonesia Tbk.; and PT Bank Central Asia Tbk.) and three national principals (i.e. Artajasa Pembayaran Elektronis; Alto Network; and Rintis Sejahtera) which will act as the acquirers and switching companies, respectively.

The signing of the MoU represents BI's commitment to enhance payment system interoperability and inter-connectivity in Indonesia. The NPG will extend public access to non-cash transactions and receipts, thus promoting the National Non-cash Movement. In addition, the NPG will expand the number of domestic payment system issuers, instruments and services, which is expected to enhance national payment system resilience, independence and competitiveness.

**New or Amended Regulations on Insurance**

During December 2016, OJK had issued several new and amended regulations which are the implementations of [Law No. 40 of 2014](#) on Insurance.

Some of these newly-issued OJK regulations on Insurance are as follows:

**a. 67/POJK.05/2016 : Business License and Organizational Structure of Insurance, Sharia Insurance, Reinsurance and Sharia Reinsurance Companies**

Some of the noteworthy provisions covered in 67/POJK.05/2016 are, among others:

- **Ownership:** Requirement to prepare an action plan approved by General Meeting of Shareholders to comply with the Indonesian shareholding requirement (for partially foreigner owned companies which has not complied with Indonesia shareholding requirement), either through:
  1. selling the shares to Indonesian citizen or legal entity fully owned by Indonesian citizen, or
  2. initial public offering.

The action plan must include information on the share ownership adjustment method, the implementation stages and the timeline. The

approved action plan must be submitted to OJK on 28 June 2017, at the latest.

- **Capital requirement:** The minimum paid-up capital requirement is increased from IDR100 billion to IDR150 billion for insurance company, and from IDR200 billion to IDR300 billion for reinsurance companies. The minimum paid-up capital requirement for sharia insurance company and sharia reinsurance company is set at IDR100 billion and IDR175 billion, respectively.
- **Obligatory funds:** The obligatory funds (policyholder protection fund) that need to be held are calculated based on 20% of the minimum paid-up capital.
- **Shareholder and Controller:** Insurance companies are required to prepare an implementation plan approved by General Meeting of Shareholders to comply with the single presence policy before 17 October 2017. Insurance companies are required to appoint "controllers" and notify OJK, latest by 28 June 2017.
- **Mandatory certification:** BOD, BOC and executive officers, whose position are one level below the BOD/BOC, are required to obtain professional risk management certification.
- **Foreign employees:** Foreign employees can only be hired as expert (a position one level below BOD), actuary or consultant. Foreign employees are only eligible to undertake limited functions, i.e., underwriting, actuary, marketing and/or information systems.
- **Expert, actuary and internal audit:** Insurance companies are required to adjust their total number of experts based on the types of business activities that they engage in, as well as the complexity of their business models. Insurance companies are required to employ at least one expert and an actuary and must establish an internal audit working unit.

This Regulation has come into effect as of 28 December 2016.

**b. 69/POJK.05/2016: Business Organization of Insurance, Sharia Insurance, Reinsurance and Sharia Reinsurance Companies**

Some of the noteworthy provisions covered in 69/POJK.05/2016 are, among others:

- **Business expansions:** 69/POJK.05/2016 allows insurance companies to expand their business scope. In order to undertake any of such expansion, insurance companies must first secure approval from the OJK.
- **Agents:** Agents are allowed to become agents of another insurance company in a

different business line only after obtaining approval from the insurance company which they are currently engaged in.

- **Requirements for agents:** Insurance companies must inform the customers about resigning agents and the replacement. Insurance companies are required to provide training (at least twice a year) on its insurance products to its agents.
- **Insurance policies:** Insurance companies must ensure that customers receive insurance policies within 10 working days after payment is received by the companies.
- **Appointment of an appraiser:** Insurance companies can appoint an appraiser to appraise any claims. Claims must be paid within 30 days after the insurance companies and the customer agree on the amount of the claim.
- **Outsourcing:** Insurance companies may outsource work to foreign service-providers which are related to the research and development of products, information systems and/or other activities that cannot be supported by any Indonesian service providers. Agreement with foreign service-provider must be notified to the OJK at the latest 14 days before the agreement is signed.
- **Data centre:** insurance companies are obliged to store their data in data centers and disaster recovery centers in Indonesia. Insurance companies must comply to this requirement before 12 October 2017

This Regulation has come into effect as of 28 December 2016.

**c. 71/POJK.05/2016: Financial Soundness of Insurance and Reinsurance Companies**

Some of the noteworthy provisions covered in 71/POJK.05/2016 are, among others:

- The minimum regulatory solvency ratio is set at 100% of Minimum Risk Based Capital ("MRBC"), however, insurance and reinsurance companies should set its internal target of solvency ratio annually and it should not be lower than 120% of MRBC, taking into consideration its risk profile and stress test results.
- Requirement to prepare annual financial statements in accordance with insurance regulations and the annual financial statements should be reviewed by either the company's appointed actuary or public accountant registered at OJK.
- Further requirements related to term deposit as investment instrument. Term deposit with tenor up to a month, the maximum

placement in each bank is capped at 20% of total investment. Certificate deposit in each bank is limited at 50% of the total term deposits. The maximum term deposit in each rural bank and syariah rural bank is capped at 1% of total investment.

- Limit for the placement of funds in corporate bonds was increased from 15% to 20% of the total investment. The limit for investment in Medium Term Note ("MTN") and securities issued by multinational firm was increased from 15% to 20%.

**d. 73/POJK.05/2016: Good Corporate Governance for Insurance Companies**

OJK Regulation No. 73/POJK.05/2016 on Good Corporate Governance ("GCG") for Insurance Companies replaces OJK Regulation [No. 2/POJK.05/2014](#). Some of the noteworthy provisions covered in 73/POJK.05/2016 are as follows:

- Insurance companies are obligated to apply GCG in its business activities. The five main principles in the application of GCG by insurance companies are: transparency, accountability, responsibility, independency and fairness.
- Insurance companies are required to prepare minutes of shareholders' meeting, which shall include the date and time; agenda; participant list; and the results of shareholders' meeting.
- Requirement for insurance companies which are fully owned by Indonesian citizens and/or legal entities whose majority of the shareholders are Indonesians, to have all Indonesian BOC and BOD members. For Insurance companies which have foreign direct investment, the BOD and BOC members can be either combination of foreigners and Indonesians or all Indonesians.
- Independent Commissioners are prohibited from holding concurrent positions as Independent Commissioner of other insurance company or sharia insurance company which has the same business field.
- Insurance companies are required to have a Compliance Director at the latest 28 December 2019.
- Insurance companies are required to have risk management function to monitor the application of risk management.

This Regulation has come into effect as of 28 December 2016.

## Capital Market

### Merger and Consolidation of Publicly Traded Companies

OJK Regulation No. 74/POJK.04/2016 on the Merger and Consolidation of Publicly Traded Companies replaces [Bapepam Rule No. IX.G.1](#) on the Merger or Consolidation of Public Companies or Issuers. This Regulation has come into effect as of 28 December 2016.

Regulation No. 74/POJK.04/2016 clarifies the requirements in the case of a merger or consolidation involving a publicly traded company ("Company") and one of its subsidiaries whose financial statements are consolidated with Company's financial statements and which is 100% directly owned by the Company. In such event, the Company will be exempted from the requirements of Merger or Consolidation Proposal regarding:

- i. the procedures for converting shares;
- ii. pro-forma financial information;
- iii. summary of the appraisal reports on the shares of each Company; and
- iv. summary of appraisal report on the merger or consolidation.

Regulation No. 74/POJK.04/2016 also stipulates the requirements for Merger or Consolidation Proposal to include certain additional information in the event when merger or consolidation results in any of the following:

1. Material changes being made to the surviving/ new Company's characteristics, financial conditions or other affecting factors;
2. Alteration being made to the Company's main line of business; or
3. The emergence of a new controlling party for the Company.

These requirements are further specified under Articles 6 and 7 of this Regulation.

The Company are required to announce summary of Merger or Consolidation Proposal to the public by no later than two business days after securing BOC approval and 30 days prior to the date of the invitation to the General Meeting of Shareholders. The announcement must be published in a national newspaper or on the IDX's website as well as on the Company's websites. In the event that OJK request amendment / additional information relating to the Merger or Consolidation Proposal, the Company must submit responses to the queries no later than 10 business days after receiving the pertinent OJK request.

(Issued regulation in Bahasa: [OJK Regulation No. 74/POJK.04/2016](#))

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