BUDIARTO
LAW PARTNERSHIP
blp.co.id

ISO 9001
BUREAU VERITAS
Certification

BUDIARTO Law Partnership
is recognised in the IFLR1000

IFLR 1000
FINANCIAL AND CORPORATE
RECOGNISED FIRM
2015

NEWSLETTER Issue 19 MAY 2015

Circular Letter of the Minister of Energy and Mineral Resources on the IUPs Administration

by Febi Jaya Conggih

In line with the Government's efforts to curb the ownership in their entirety of mining companies operating in Indonesia, the Minister of Energy and Mineral Resources ("**MEMR**") has issued a Circular Letter to all relevant local governments, including mayors and regents, instructing the local governments to transfer administrative authority over foreign-owned mining companies holding mining business licenses ("**IUP**") to the central government. It is mentioned in the Circular Letter of MEMR No. 01.E/30/DJB/2015 on the Status Conversion of Mining Business Licenses in the Context of Domestic Investment into Foreign Investment (the "**Circular Letter**"), dated 7 April 2015.

This Circular Letter is a further implementation of Law No. 23, 2014 on the Local Government ("**Law No. 23/2014**") and Government Regulation No. 77, 2014 in respect of the Third Amendment of the Government Regulation Number 23, 2010 concerning the Implementation of Mineral and Coal Mining Business ("**PP No. 77/2014**"). Article 112E of PP No. 77/2014 states that relevant local authorities must deliver to the MEMR the documentation relating to Exploration IUPs, Production Operation IUPs, Special Production Operation IUPs for transportation and selling and Special Production Operation IUPs for processing and refining, insofar as these are held by foreign-owned companies and issued before the enactment of PP 77/2014. The documentation must be delivered within one year of the enactment of PP No. 77/2014, and will be converted by the MEMR in accordance with relevant laws and regulation.

According to this Circular Letter, the Governor must submit the above-mentioned IUP categories for processing and/or refining to the MEMR through the Director General of Mineral and Coal, for renewal at the latest on 14 October 2015. It applies both in the framework of foreign investment in place before the entry into force of PP No. 77/2014, and in the framework of foreign investment that was established by Regents/Mayors before the coming into force of PP No. 77/2014. This applies if the licensing document has been submitted by the Regent/Mayor to the Governor in accordance with the provisions of Article 404 of Law No. 23/2014.

As well as the Governors, the Regents/Mayors must also submit the foregoing IUPs for processing and/or refining in the framework of foreign investment that was established by the Regents/Mayors before the entry into force of PP No. 77/2014. This applies if the licensing documents are not submitted to the Governor of the MEMR through the Director General of Mineral and Coal for renewal by 14 October 2015.

New Regulation on the Registration of Fiduciary Instruments

by Febi Jaya Conggih

The Government has recently issued a new regulation setting out the procedures for the registration of fiduciary instruments, Government Regulation Number 21, 2015 entitled Procedures for the Registration and Expense of the Fiduciary Establishment Deed ("**PP No. 21/2015**"). The provisions concerning the procedures for the registration of fiduciary instruments as stipulated in Government Regulation Number 86, 2000 are no longer appropriate to the development of law and society, so this regulation had to be replaced. The new regulation is expected to improve the quality of fiduciary instruments so that they are easy, fast, and low cost. This can be done by doing a fiduciary instrument registration electronically.

The fiduciary instrument registration application and amendments to the certificate must be submitted to the Minister of Law and Human Rights by the recipient, attorney, or any representatives of the recipient. The registration must be no longer than 30 (thirty) days from the signing of the fiduciary deed. The application must consist of the identity of the fiduciary recipient, the date and number of the fiduciary deed, the name and domicile of the Notary who drew up the fiduciary deed, information on the main agreement, the guarantee value, and the value of and information regarding the fiduciary object.

The applicant who has already fulfilled the requirements as stated above will be given proof of registration, which consists of the registration number, date of the application, name of the applicant, fiduciary registration office, and the cost to be paid by the applicant for such registration. The applicant must pay the cost from the bank with the nominal value stated in the proof of registration. Simultaneous to the applicant making payment from the bank, the fiduciary instrument will be registered and signed by the Fiduciary Registration Office electronically. The fiduciary certificate can be printed out by the applicant on the same day that the fiduciary instrument has been registered.

The process of the amendment and revocation of fiduciary instruments is almost the same as the registration. But for the nullification of the fiduciary instrument, the recipient, attorney, or any representatives of the recipient must give notice to the Minister of Law and Human Rights no longer than 14 (fourteen) days after such nullification. The fiduciary instrument can be nullified when the debt secured by it is removed, waiver of the fiduciary instrument by the recipient, or the destruction of such objects that were those of the fiduciary instrument.

Pursuant to Article 18 of PP No. 21/2015, the cost for making the fiduciary deed depends on the value of the fiduciary instrument itself. For a nominal value up to Rp100.000.000,00 (one hundred million Rupiah), the cost of the fiduciary deed is maximum 2,5% of its fiduciary value, for a transaction of Rp100.000.000,00 up to Rp1.000.000.000,00 (one billion Rupiah), the cost of the fiduciary deed is maximum 1,5% of its fiduciary value, and for a value of more than one billion Rupiah, the cost is set by mutual agreement between the Notary and the parties, but cannot be more than 1% of the value of the transaction.

BUDIARTO
— LAW PARTNERSHIP —

The New Regulation on Public Accountants

by Dehlia Sahthio Winingsih

The regulation concerning the rotation of public accountants is often an issue. Pursuant to the Minister of Finance Regulation No. 17/PMK.01/2008 entitled the services of the public accountant, it was not easy for the government to revise the rule that the auditee had to release their client after 6 consecutive years. In the new Government Regulation No. 20, 2015 on Public Accountant Practice ("**GR No. 20/2015**"), however, the government has now determined that the maximum time limit for the rotation of a public accountant is 5 years.

In April 2015, the Government issued a regulation on public accounts aimed at improving the quality of services of public accountants. GR No. 20/2015 is a further adjustment of Law No. 5, 2011 on public accountant to regulate their professional development.

Pursuant to Article 11 GR No. 20/2015 regarding the limitation of audit services, it has now been established that the provision by the public accountant of audit services of historical financial information to an entity is restricted at the most to 5 (five) accounting year in a row. The entities referred to are the following:

1. Industry sector capital market;
2. Commercial Bank;
3. Pension Fund;
4. Insurance Company;
5. State Owned Enterprise;

At the time of GR No. 20/2015 taking effect, the public accountant who provides the services of a common financial audit on the report of an entity:

1. for 1 (one) accounting year is to be able to continue the provision of audit services in a consecutive manner for a further 4 (four) accounting years;
2. for 2 (two) accounting years respectively is be able to continue the provision of audit services in a consecutive manner for a further 3 accounting years;
3. for 3 (three) accounting years respectively is be able to continue the provision of audit services in a consecutive manner for a further 2 (two) accounting years.

Besides that, GR No. 20/2015 gives clarity on the implementation of professional public accountant services, including on the certificate of examination of public accountants in the Article 4. The public accountant must maintain their competencies through sustained professional education programs as per Article 3, as well as the authorizing Institute of Certified Public Accountants/I*nstitut Akuntan Publik Indonesia* ("**IAPI**") relating to the preparation and provision of the professional standards of public accountants.

In addition, GR No. 20/2015 also sets out the requirements and procedures for resignation of public accountants; cooperation between the office of the public accountant and the office of the foreign public accountant or foreign audit organization, and the arrangement of administrative sanctions.

Bank Indonesia Regulation Bans Foreign Currency for Domestic Transactions

by Robin Setiawan

Indonesia's central bank, Bank Indonesia has banned the use of foreign currencies for domestic transactions under regulations issued last week, aimed at controlling onshore demand for dollars and easing downward pressure on the rupiah. Indonesia has banned domestic transactions in foreign currency to guard the rupiah, with the exception of transactions in investment in infrastructure projects and international trade, as well as international grants. The lender issued a rule on March 31, which takes effect on July 1, to control demand on US dollars and ease pressure on the rupiah. The rupiah, which is trading around its lowest level since August 1998, is the worst-performing currency in Asia this year, and foreign exchange reserves dropped by almost $4 billion in March as the central bank stepped in to support the rupiah. Based on that situation, Bank Indonesia has issued a new regulation ("**PBI No. 17/2015**") that requires the people of Indonesia to use the rupiah currency for domestic transactions.

This new regulation is expected to reduce the demand for foreign currency, especially the US Dollar (USD) which put pressure on the rupiah. This new regulation is established with reference to Law No. 23 of 1999 of the Central Bank and Law No. 7 of 2011 on the Currency. Bank Indonesia will cooperate with local banks in Indonesia to ascertain the amount of transactions using foreign currency. The Director of Money Management at Bank Indonesia stated there was demand for at least USD6 billion each month for domestic transactions, which the bank hopes to cut once the PBI No. 17/2015 are in force. Indonesia has banned cash transactions in foreign currencies since 2011, with a maximum punishment of one year in prison and a 200 million rupiah (USD15,500) fine for offenders. In addition, from July 1, it will also ban non-cash transactions using foreign currency, with some exceptions, such as for international trade and investment in strategic infrastructure projects. The Bank Indonesia can penalise offenders with a maximum fine of 1 billion rupiah or ban them from using payment clearing systems. However, it also outlines around 8 categories where exceptions can be made, among others:

1. Transactions for implementing the State Budget;
2. Acceptance or disbursement of grants from or to overseas;
3. International transactions; bank savings in the form of foreign exchange;
4. International financing transactions; foreign exchange activities performed by banks;
5. Transactions on securities that are issued by the government in primary and secondary markets;
6. Other transactions in foreign exchange in accordance with laws and regulations;
7. Money changer transactions and
8. The carriage of foreign bank notes to or from Indonesia in accordance with prevailing laws and regulations.

As mentioned above, violators face a maximum of one year imprisonment and a Rp 200 million fine. This PBI No. 17/2015 also outlines the following administrative sanctions: a written warning; a fine of 1 percent of the transaction value (maximum Rp 1 billion); prohibition from participating in payment transactions; and/or a recommendation to the related authority for further action against the violator.

BUDIARTO
— LAW PARTNERSHIP —
The AXA Tower - Kuningan City, 28th Floor
Jl. Prof Dr. Satrio Kav.18, Kuningan - Setiabudi
Jakarta 12940, Indonesia
t : +6221-3048 0718
f : +6221-3048 0715
e : budiarto@blp.co.id