



## BRIGITTA I. RAHAYOE & PARTNERS

COUNSELLORS AT LAW

### **The Requirements for the Changes of Shareholders, Board of Directors (“BOD”) and Board of Commissioners (“BOC”) in Mining Companies**

The Directorate General of Mineral and Coal (“**DGMC**”) under the Ministry of Energy and Mineral Resources through its website (<https://www.minerba.esdm.go.id/perizinan/persyaratan>) has provided the requirements for the changes of Shareholders, BOD and BOC of mining companies which are the holder of Mining Business License (*Izin Usaha Pertambangan* - “**IUP**”)/Coal Mining Concession Work Agreement (*Perjanjian Karya Pengusahaan Pertambangan Batubara* - “**PKP2B**”)/Contract of Work (*Kontrak Karya* - “**KK**”). We note that there few differences between the requirements stated on the website and the requirements regulated under the Regulation of Minister of Energy and Mineral Resources No. 48 of 2017 regarding Supervision of Business Activities in the Energy and Mineral Resources Sector (“**Reg MEMR 48/2017**”).

One of the differences is that the website states that shareholder(s) and prospective shareholder(s) (in the event there is transfer of shares) of mining companies which are holder of IUP/PKP2B/KK are not business entities originating from countries that have corporate tax exemptions’ fiscal policy (tax haven countries), while Reg MEMR 48/2017 does not provide such requirement.

Pursuant to the above, any mining companies whose shares are owned by business entities established and domiciled in tax haven countries which intend to change its shareholders or BOD/BOC most likely will be requested by the MEMR to transfer their shares to other parties which are established and domiciled in a country other than in tax haven countries. However, if a mining company does not conduct any corporate action mentioned above, we believe that such company is not obligated to fulfill the said requirement.

Nevertheless, we may need to conduct further research to the relevant government agencies with respect to the underlying regulation concerning the restriction of the shareholders from tax haven countries in mining companies which are the holder of IUP/PKP2B/KK and the application thereof.

This client alert is intended to provide an overview only, thus, cannot be deemed as a legal advice. If you need a more detailed discussion and/or advice, please do not hesitate to contact us.

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