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NEW MINERAL AND O&G EXPORT L/C REQUIREMENTS – EXERCISING MARKET POWER AND TRYING TO COVER THE O&G REVENUE SHORTFALL¹²³⁴⁵

INTRODUCTION

The Government has tightened, once again, the regulatory requirements surrounding the export of Indonesia's coal, mineral and oil & gas products.

In January, the Minister of Trade (“**MoT**”) issued Regulation No. 4 of 2015 re Provisions for the Use of Letters of Credit in respect of the Export of Certain Products (“**MoTR 4/2015**”).

MoTR 4/2015 prohibits the export of various products, including a large number of different coal, mineral and oil & gas products, unless the overseas buyer has, first, opened a letter of credit (“**L/C**”), with an Indonesian bank, in payment for the products (“**L/C Requirement**”).

MoTR 4/2015 is to be understood as just the latest attempt by the Government to make greater use of Indonesia's market power, in respect of the supply of various natural resource products, to achieve certain advantages or benefits for Indonesia. In the case of MoTR 4/2015, these advantages or benefits include (i) growing the country's foreign exchange reserves and (ii) protecting and enhancing the country's tax revenue base by ensuring that the foreign currency proceeds, generated as a result of the sale of Indonesia's natural resource products, are actually received in Indonesia. At the same time, MoTR 4/2015 has to be seen in light of the Government's belief that it can overcome, at least in part, the projected decline in its revenue from the local oil & gas industry, as a result of falling world oil prices, by more aggressive and efficient collection of revenue from the local coal and minerals industries.

In this article, the writer will review the principal provisions of MoTR 4/2015 as well as endeavor to put MoTR 4/2015 in context by explaining how MoTR 4/2015 fits into the Government's overall strategy of making greater use of Indonesia's market power, in respect of the supply of various natural resource products, as well as the relationship between MoTR 4/2015 and the Government's growing budgetary concerns re falling oil & gas revenues.

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BACKGROUND

This is not the first time that the Government has sought to impose an L/C Requirement for certain export products.

In 2009, MoT issued Regulation No. 10/M-DAG/3/2009, dated 5 March 2009, re Export of Products which are Obligated to Use Letters of Credit (“**MoTR 10/2009**”).

MoTR 10/2009 required exporters of certain mining products and certain agricultural products, including coffee beans, cocoa, rubber and palm oil, with an export value of more than US\$1 million and covered by a single Export Notification of Goods (“**PEB**”) to use L/Cs. Where the single PEB value of these exports was US\$1 million or less, the exporter was allowed to use L/Cs or other methods of payment recognized in foreign trade and involving collection of the payment proceeds through the medium of a domestic foreign exchange bank.

MoTR 10/2009 was subsequently revoked by MoT Regulation No. 27/M-DAG/PER/6/2010, dated 24 June 2010, ostensibly because Indonesia’s foreign exchange reserves had significantly increased. The writer would suggest, however, that a more plausible reason for the revocation of MoTR 10/2009 was likely to have been intensive lobbying from certain politically well connected exporters which were finding MoTR 10/2009 extremely inconvenient in terms of the obstacles it posed to the continuation of aggressive transfer pricing and tax minimization schemes involving the use of “captive” offshore marketing companies and the warehousing of export proceeds outside Indonesia.

Although Indonesia’s foreign exchange reserves are far greater today than they were in 2010, enhancement of foreign exchange reserves is cited, in the preamble to MoTR 4/2015, as the reason for the reintroduction of the L/C Requirement in 2015. While growing Indonesia’s foreign exchange reserves may provide a partial explanation for MoTR 4/2015, the more substantive reason is likely to be a desire to protect and enhance the Government’s profits tax receipts from the natural resource industries in general and from the coal and minerals industries in particular.

COMMENTARY

1. **Principal Provisions of MoTR 4/2015**

- 1.1 **Certain Products**: The L/C Requirement only applies to those products specifically mentioned in MoTR 4/2015 and falling within the categories of (i) coal, (ii) minerals, (iii) oil & gas and (iv) palm oil.

The individual coal, mineral and oil & gas products covered by MoTR 4/2015 (“**Certain Products**”) are as follows:

(a) **Coal**

No	Product Description	Tariff Post / HS Code
	Coal; briquettes, ovoid and solid fuel made from coal.	27.01
	- Coal, destroyed or not, however not being agglomerated	
1.	-- Anthracite	2701.11.00.00
	-- Bituminous coal	2701.12
2.	--- Fuel coal	2701.12.10.00
3.	--- Others	2701.12.90.00
4.	-- Other coal	2701.19.00.00
5.	- Briquettes, ovoid and solid fuel made from coal	2701.20.00.00
	Lignite, agglomerated or not, not including jet.	27.02
6.	- Lignite, destroyed or not, however not being agglomerated	2702.10.00.00
7.	- Lignite being agglomerated	2702.20.00.00

(b) **Minerals**

No	Product Description	Tariff Post / HS Code
1.	Iron concentrate (hematite, magnetite, pyrites) with the level of $\geq 62\%$ Fe	ex 2601.11.00.00 ex 2601.12.00.00
2.	Iron concentrate (goethite/laterite) with the level of $\geq 51\%$ Fe and $(Al_2O_3+SiO_2) \geq 10\%$	ex 2601.11.00.00 ex 2601.12.00.00
3.	Manganese concentrate with the level of $\geq 49\%$ Mn	ex 2602.00.00.00
4.	Copper Telluride	ex. 2620.30.00.00
5.	Copper concentrate with the level of $\geq 15\%$ Cu	ex 2603.00.00.00
6.	Lead concentrate with the level of $\geq 57\%$ Pb	ex 2607.00.00.00
7.	Zinc concentrate with the level of $\geq 52\%$ Zn	ex 2608.00.00.00
8.	Ilmenite concentrate with the level of Fe $\geq 58\%$ (sand form) and Fe $\geq 56\%$ (pellet form)	ex 2614.00.10.00
9.	Anode Slime	ex 7112.99.90.00
10.	Smelter Grade Alumina $\geq 98\%$ Al_2O_3	ex 2818.20.00.00
11.	Chemical Grade Alumina $\geq 90\%$ Al_2O_3	ex 2818.20.00.00
12.	Chemical Grade Aluminum hydroxide $\geq 90\%$ $Al(OH)_3$	ex 2818.30.00.00
13.	Nickel Hydroxide – Mix Hydroxide Precipitate (MHP) $\geq 25\%$ Ni	ex 2825.40.00.00
14.	NiS $\geq 40\%$ Ni in form of powder	ex 2830.90.90.00 ex 7501.10.00.00
15.	Nickel Oxide (NiO) with the Ni level of $\geq 70\%$	ex 2825.40.00.00
16.	Nickel Sulfide – Mix Sulfide Precipitate (MSP) $\geq 45\%$ Ni	ex 2830.90.90.00
17.	Silver in form of powder with the level of $\geq 99\%$ Ag	ex 7106.10.00.00
18.	Silver in form of lumps, ingots or cast bars with the level of $\geq 99\%$ Ag	ex 7106.91.00.00
19.	Gold in form of powder with the level of $\geq 99\%$ Au	ex 7108.11.00.00
20.	Gold in the form of lumps with the level of $\geq 99\%$ Au	ex 7108.12.00.10
21.	Gold in the form of ingots or cast bars with the level of $\geq 99\%$ Au	ex 7108.12.00.10
22.	NPI alloy (pig iron alloy) in the form of lumps with $\geq 4\%$ Ni	ex 7201.50.00.00
23.	NPI alloy (pig iron alloy) in the form of ingots with $\geq 4\%$ Ni	ex 7201.50.00.00
24.	Sponge FeNi $\geq 4\%$ Ni	ex 7202.60.00.00

No	Product Description	Tariff Post / HS Code
25.	Nickel in the form of lumps, nuggets, luppen containing FeNi \geq 4% Ni	ex 7202.60.00.00
26.	Nickel Pig Iron (NPI) in the form of ingots or cast bars with \geq 4% Ni	ex 7202.60.00.00
27.	Ferro Nickel (FeNi) in the form of lumps with Ni \geq 10%	ex 7202.60.00.00
28.	Ferro Nickel (FeNi) in the form of ingots with Ni \geq 10%	ex 7202.60.00.00
29.	Copper in the form of cathodes with the level of \geq 99% Cu	ex 7403.11.00.00
30.	Copper in the form of ingots or cast bars with the level of \geq 99% Cu	ex 7403.19.00.00
31.	Copper in the form of slabs with the level of \geq 99% Cu	ex 7403.19.00.00
32.	Copper in the form of powder (non-lamellar structure) with the level of \geq 99% Cu	ex 7406.10.00.00
33.	Copper in the form of powder (lamellar structure) with the level of \geq 99% Cu	ex 7406.20.00.00
34.	Ni Matte in the form of lumps with Ni \geq 70%	ex 7501.10.00.00
35.	Ni Matte in the form of powder with Ni \geq 70%	ex 7501.10.00.00
36.	Ni Matte in the form of granules with Ni \geq 70%	ex 7501.10.00.00
37.	Ni Matte in the form of ingots or cast bars with Ni \geq 70%	ex 7501.10.00.00
38.	Ni Matte in the form of slabs with Ni \geq 70%	ex 7501.10.00.00
39.	Nickel in the form of powder with the level of Ni \geq 93%	ex 7504.00.00.00
40.	Aluminum (Al) \geq 99% in the form of ingots or cast bars	ex 7601.10.00.00
41.	Pure Tin not in form of bars with the level of Stannum (Sn) \geq 99.93% , with pure tin bars as the raw material	8001.10.00.00
42.	Tin Solder with the level of Stannum (Sn) \leq 99.7% in the form of bars or in any other form that will be used for soldering and welding	8003.00.10.00 ex 8003.00.90.00 ex 8311.30.90.10 ex 8311.30.90.90 ex 8311.90.00.00 ex 3810.10.00.00
43.	Unsoldered Tin Alloy with the level of Stannum (Sn) \leq 96% in the form of bars ZF or in any other form that will not be used for soldering and welding	8001.20.00.00 8007.00.20.00 8007.00.99.90

(c) **Oil & Gas**

No	Product Description	Tariff Post / HS Code
1.	Crude Oil	2709.00.10.00
2.	Condensate	2709.00.20.00
3.	Liquefied Natural Gas (LNG)	2711.11.00.00
4.	Compressed Natural Gas (CNG)	2711.21.10.00
5.	Vacuum residue	ex 2713.90.00.00

1.2 **Pricing:** The price paid for the Certain Products must (i) be specified in the L/C opened by the overseas buyer and (ii) be not less than the world market price for the certain product in question.

1.3 **Collection:** The proceeds, from drawdown of the L/C by the producer/seller/exporter of the Certain Products, must be collected through an Indonesian or “domestic” foreign exchange bank. Although not expressly stated, this aspect of the L/C Requirement implies that the producer/seller/exporter must open a bank account, in Indonesia, with a domestic foreign

exchange bank, thereby ensuring there is a record of the revenue from the sale transaction having been received in Indonesia and for the account of the relevant producer/seller/exporter.

The collection mechanism is the key element in ensuring that the producer/seller/exporter will have to declare, for Indonesian income reporting purposes, and eventually pay Indonesian profits tax on all its revenue from the sale and export of Certain Products and, more particularly, from the sale and export of coal, minerals and oil & gas.

This collection mechanism is intended to overcome the historical practice of some coal and mineral producers of arranging for the proceeds, from the sale of their coal and mineral products, to be collected through a bank outside of Indonesia and then kept indefinitely outside Indonesia, thereby facilitating the avoidance/evasion of Indonesian profits tax on that revenue.

- 1.4 **Export Notification**: Details of the L/C opened by the overseas buyer of Certain Products including, presumably, the applicable buying/selling price, must be included in the PEB filed by the producer/seller/exporter as part of the export approval process.
- 1.5 **Surveyor Report**: As the final step in ensuring that the Certain Products, as actually exported, are the same, in terms of quantity and quality specifications, as those covered by the relevant L/C, MoTR 4/2015 requires that, in the course of the mandatory survey process, the duly appointed surveyor, for each export shipment, checks and records, in its survey report, that an L/C covering the export shipment has been opened in strict accordance with the L/C Requirement.
- 1.6 **Prohibition on Export**: MoTR 4/2015 expressly prohibits the export, from Indonesia, of the Certain Products where all the elements of the L/C Requirement, as set out in 1.1 to 1.5 above, have not been fully complied with.
- 1.7 **Sanctions**: In addition to prohibiting non-compliant exports of the Certain Products, MoTR 4/2015 also provides for the imposition of unspecified administrative sanctions on producers/sellers/exporters which do not comply with the L/C Requirement. Although not entirely clear, it seems likely that the unspecified administrative sanctions include written warnings followed, in the case of producers/sellers/exporters of coal and minerals, by suspension and eventual cancellation/termination of registered exporter status for non-compliant coal and mineral producers/sellers/exporters. It is even possible that, in the case of an Operation Production IUP holder, non-compliance with the L/C Requirement could result in the eventual revocation of the relevant Operation Production IUP given the operation of Article 151(2)(c) of the 2009 Minerals & Coal Mining Law in conjunction with the obligation, to comply with all applicable laws and regulations, imposed on all IUP holders by the terms of the standard form IUP.

2. **Putting MoTR 4/2015 in Context**

- 2.1 **Commitment to Use of Market Power:** Over the last few years, the Government has increasingly come to believe that Indonesia's dominant world position, in the supply of various natural resource products including coal, nickel, tin and palm oil, gives Indonesia a substantial degree of market power which the Government can and should use (not to say exploit) to force the realization of outcomes that are of benefit to Indonesia. Banning the export of unprocessed metal minerals and imposing a first local trade requirement for tin are high profile examples of this use of market power. The L/C Requirement is simply another, less controversial example.

Like the ban on the export of unprocessed metal minerals and imposing a first local trade requirement for tin, the L/C Requirement is obviously inconsistent with a genuine commitment, on the part of the Government, to free trade as the Government is overtly and directly interfering in how arms-length sellers and buyers of the Certain Products conduct their sales and purchases so as to achieve an outcome that has nothing to do with the interests of these arms-length sellers and buyers. It is only because foreign buyers have few alternatives to Indonesia, as a source of at least some of the Certain Products, that the L/C Requirement can work without resulting in foreign buyers simply looking elsewhere for their Certain Product needs.

The L/C Requirement may be seen as a manifestation of the same ambivalent attitude to free trade that characterizes Indonesia's 2014 Trade Law. In this regard, the then Deputy Trade Minister, Bayu Krisnamurthi, was quoted, in the 12 February 2014 edition of The Jakarta Post as saying with respect to the Trade Law:

“The law affirms our standpoint that Indonesia does not fully embrace free trade. What we seek is a balance between market efficiency and the protection of various local stakeholders.”

Then Deputy House Speaker Pramono Anung was also quoted, in the same 12 February 2014 news item, as having said with quite disarming honesty:

“Speaking frankly, the legislation is a gift to us all, in almost 80 years we have never had a law concerning trade that addresses our drawbacks in the sector.”

- 2.2 **Need to Offset Declining Oil & Gas Revenues:** It has finally dawned on the Government that the recent dramatic fall in world oil prices is not an unqualifiedly good thing for Indonesia. Although falling world oil prices have certainly enabled the Government to greatly reduce fuel subsidies without raising domestic fuel prices, falling oil prices also pose a serious threat to Government revenue given Indonesia continues to be a significant oil & gas producer and the Government receives the “lion's share” of the proceeds from the sale of local oil & gas production. Waking up, at last, to the fact that falling world oil prices are, at best, very much a mixed blessing only for Indonesia, the Government now needs to find alternative sources of revenue to overcome its declining revenue from local oil & gas production. The problem is a particularly serious one for the Government given it has already committed itself to a huge increase in infrastructure spending over the next few years. Funding for this increase in

infrastructure spending was meant to come from savings as a result of the much reduced fuel subsidy. These “savings” are, however, in danger of being almost wholly offset by the projected decline in the Government’s share of oil & gas sales proceeds.

The Government has not been shy in making it clear that it expects (“hopes” might be a more accurate term) to use increased revenue collection from the coal and minerals industries as 1 of the principal means of offsetting the projected decline in the Government’s share of oil & gas sales proceeds. The proposed revision to the 2015 State Budget includes a projected increase of nearly 50% in revenue collection of RP52.2 trillion from the local coal and minerals industries in 2015 compared to the Rp35.4 trillion in revenue collected from the local coal and minerals industries in 2014. In this regard, the Director General of Minerals & Coal, Dr. Sukhyar, was quoted in the 5 February 2015 edition of The Jakarta Post as having said:

“The income will mostly come from the coal sector but the mineral sector is also expected to give a higher contribution.”

Dr. Sukhyar has indicated that the projected, huge increase in 2015 Government revenue from the local coal and minerals industries will be achieved through a combination of (i) higher coal royalties of 7%, 9% and 13.5% for low CV coal, mid level CV coal and high CV coal respectively and (ii) more stringent supervision of the reporting of and payment of applicable taxes on sales income by coal and mineral producers as a result of increased KPK involvement. The reintroduction of the L/C Requirement is clearly 1 of the ways that the Government hopes to realize this increase in revenue collection from the coal and minerals industries.

2.3 Problem of Transfer Pricing and Offshore Warehousing of Export Sales Proceeds: Transfer pricing and offshore warehousing of export sales proceeds, in the natural resources sector, have long been a serious problem, for the Government, from the perspective of protecting and growing Indonesia’s foreign exchange reserves and tax revenue base. According to the Government, the transfer pricing problem has, historically, been particularly serious in the local coal and minerals industries, with many Indonesian mine owners setting up “captive” marketing companies in Singapore that are, directly or indirectly, owned and/or controlled by the mine owners. The mine owner sells the coal/mineral product to the Singapore marketing company at less than the market price and the Singapore marketing company then re-sells the coal/mineral product to the real buyer at the market price and with the market price proceeds being kept in Singapore rather than being brought back to Indonesia. Just how serious is the problem of transfer pricing and offshore warehousing of export sales proceeds, in the local coal and minerals industries, remains an open question and there is little hard data available to definitively answer this question one way or the other.

Transfer pricing and offshore warehousing of export sales proceeds have an adverse impact on the Government’s revenue base in 2 distinct ways, reflecting the 2 distinctly different sources of tax revenue the Government derives from the local mining industry. First, an artificially low selling price reduces the so-called “non-tax state revenue” royalty or tariff payable at the point of first sale or export and at a fixed rate calculated by reference of the selling price of the coal or mineral product (“**Tier 1 Government Revenue**”). Second, an artificially low selling price reduces the net profit of the mine owner and, hence, the amount collected by the Government

from the tax levied on the net profits of the mine owner (“**Tier 2 Government Revenue**”).

Self-evidently, any effective solution to the problem of transfer pricing, in the local coal and mineral industries, needs to address **both** the Tier 1 Government Revenue impact **and** the Tier 2 Government Revenue impact of transfer pricing.

- 2.4 **A Partial Solution Only in Benchmark Pricing:** Although the introduction, in 2012, of benchmark pricing for coal and mineral products provides a partial solution to the transfer pricing problem, the problem of warehousing, offshore, export sales proceeds has continued to be a major concern for the Government. This is because export sales proceeds kept offshore do not become part of Indonesia’s foreign currency reserves and may make it easier for unscrupulous producers/sellers/exporters to avoid paying Indonesian profits tax on all of their income, both onshore and offshore, when there is no record, in Indonesia, of the export sale proceeds having been received by the producers/sellers/exporters.

In requiring the specification, as part of the L/C, of a buying/selling price not less than the applicable world price, MoTR 4/2015 is aiming for consistency, in the case of those Certain Products being coal and minerals, with Indonesia’s benchmark pricing obligation for coal and minerals which was introduced in 2010 pursuant to Article 85(4) of Government Regulation No. 23 of 2010 re Mineral & Coal Mining Activities and MoEMR Regulation No. 17 of 2010 re Procedures for Mineral & Coal Price Benchmark Price Determination (“**MoEMRR 17/2010**”) which purport to implement benchmark pricing (together, “**BPD Regulations**”).

- 2.4 **Objective of MoTR 4/2015:** MoTR 4/2015 is to be properly understood as 1 small part of a long term Government plan to ensure both that (i) Indonesia has sufficient foreign currency reserves and (ii) the Government generates far more tax revenue from the natural resources sector than it has done in the past. From the perspective of the domestic mining sector only, the second of the highlighted objectives of MoTR 4/2015 is entirely consistent with the 2011 Energy Security Policy of the previous Government which sets out 9 key objectives for the local coal and minerals industries including that the local coal and minerals industries start paying a “fair” level of tax – “fair” being a readily apparent euphemism for “more, much more” than has been the case in the past.

MoTR 4/2015 seeks to address a glaring deficiency in the BPD Regulations as they relate to the Tier 2 Government Revenue impact of transfer pricing; namely, the BPD Regulations do **not** say anything explicitly about either the price which the buyer must actually **pay** to the seller or the price which the seller must actually **receive** from the buyer for the seller’s coal or mineral products. The significance of this apparent omission is that, in Indonesia, the mine owner’s net profit, for tax purposes, will usually be calculated by reference to the net amount that the mine owner, as seller, actually **receives** from the buyer for its mineral production and **not** necessarily by reference to the selling price specified in a sale and purchase contract if the net amount received is different from the specified selling price. In other words, because of the way in which taxable income is usually calculated in Indonesia, if the seller agrees to give the buyer a rebate or a discount in respect of the nominal selling price specified in the sale and purchase contract then, most probably, the seller will only pay tax on the **net amount** actually received by the seller after deducting from the nominal selling price the agreed rebate or the discount.

Where there is no domestic record of the net amount actually received by the producer/seller/exporter, because the sales proceeds are collected and retained offshore, the producer/seller/exporter has considerably greater practical leeway, than would otherwise be the case, in terms of what amount is actually reported for Indonesian profits tax purposes.

Astute readers will immediately see the likely implications, for Tier 2 Government Revenue, of the BPD Regulations' exclusive focus on the selling price specified in coal and mineral sale and purchase contracts. With no apparent control over either the price actually **received** by the seller or the price actually **paid** by the buyer, the BPD Regulations still seem to allow mine owners to effectively engage in transfer pricing for the purpose of reducing the taxable net profits of the producer/seller/exporter (although not the royalty payment obligations of the producer/seller/exporter) and, thereby, wholly fail to control the adverse impact of transfer pricing on Tier 2 Government Revenue.

The "affiliates" provisions of the BPD Regulations do nothing to alleviate the likely negative impact on Tier 2 Government Revenue described above. This is because MoEMRR 17/2010 Article 2(1) merely provides that benchmark pricing applies to coal and mineral sales to affiliates. MoEMRR 17/2010 Article 2(1), however, does not deem the seller to have received or require the seller to have received the benchmark price from its affiliated buyer which is what would be necessary to overcome the residual risk to Tier 2 Government Revenue. MoTR 4/2015, accordingly, represents a very much "late in the day" attempt to properly protect Tier 2 Government Revenue.

If, as contemplated by MoTR 4/2015, both (i) the applicable global market price (**i.e.**, the benchmark price) must be specified in L/Cs for coal and mineral products and (ii) the proceeds, from drawdown of the L/C, must be collected through an Indonesian bank and received into a local bank account, opened in the name of the relevant producer/seller/exporter, the opportunity for coal and mineral producers/sellers/exporters to deny they have earned revenue substantially equal to the specified benchmark price multiplied by the quantity of coal or mineral sold and exported, as confirmed by the survey report, becomes much more limited.

3. **Assessment of MoTR 4/2015**

The effectiveness or otherwise of MoTR 4/2015, in helping to protect and enhance Indonesia's foreign exchange reserves and the tax revenue base, is very much dependent upon both the cooperation of the foreign exchange banks and the independence and integrity of the surveyors which are meant to ensure consistency between what is specified in the relevant L/C and the quality and quantity of the coal and minerals actually exported. Unfortunately, this cooperation, independence and integrity cannot necessarily be assumed in all situations and in the case of all surveyors in particular.

Perhaps, more importantly, it seems inherently unlikely to the writer that the Government will succeed, through the application of MoTR 4/2015 or otherwise, in collecting anything like enough additional revenue from coal and mineral sales to materially offset the projected decline in Government revenue from oil & gas sales. The Government seems to have forgotten or, perhaps, just chosen to ignore the fact that (i) market prices of most coal and mineral products are currently at multi-year lows, (ii) the

revenue the Government collects from the local coal and minerals industries is as much a function of prevailing market prices for coal and mineral products as it is of applicable royalty and profits tax rates and (iii) any increase in tax revenue collections, as a result of KPK investigation of past non-payments is likely to be, largely, a 1-off occurrence as coal and mineral producers pay up past arrears. The writer would also question whether local coal producers, in particular, are in any position to start paying higher royalty rates given their current financial difficulties. This seems to be very much a case of the Government having convinced itself that it did not get its “fair share” (whatever that might be) during the last mineral commodities boom and being absolutely determined to not allow this to happen again regardless of the consequences for continuing coal and mineral producers. This could prove to be a very short-sighted policy if the Government persists with the same.

The inclusion, in the revised 2015 State Budget, of a projected, near 50% increase in the Government’s revenue from the coal and mineral industries raises a serious question in the writer’s mind about the care with which the revised 2015 State Budget has been prepared and the extent to which it is really just an exercise in wishful thinking rather than a serious attempt to objectively map the Government’s projected revenue in 2015.

SUMMARY AND CONCLUSIONS

MoTR 4/2015 covers exports of oil & gas and palm oil as well as minerals and coal. However, the Government’s concerns about foreign exchange and tax revenue foregone, from the exploitation of Indonesia’s natural resources, are particularly acute in the case of the local coal and minerals industries.

The L/C Requirement is to be properly seen as another small example of the Government’s willingness to use market power to obtain a benefit for Indonesia; this time, in terms of protecting and expanding the country’s level of foreign exchange reserves and tax revenue base. Although this may be regarded as a good thing by some, it undeniably comes at the cost of interfering with how arms length sellers and buyers of Indonesia’s natural resource products conduct their sale and purchase transactions. As such, the L/C Requirement is inconsistent with any real commitment to free trade.

The Government believes, rightly or wrongly, that Indonesia has not been receiving its “fair share” from the exploitation of the country’s natural resources whether in the form of contribution to foreign exchange reserves or growing the tax revenue base. The Government seems determined to rectify this situation even if this means exploiting Indonesia’s position as the dominant world supplier of certain natural resource products and exacerbating the current financial predicament of many coal and mineral producers.

Now that the prospects for collecting more revenue from the local oil & gas industry have greatly dimmed as a result of falling world oil prices, the Government clearly expects and wants the local coal and minerals industries to make up the shortfall.

It can scarcely be doubted that there is more to come from the Government in terms of regulations intended to take advantage of Indonesia’s market power and overcome declining oil & gas revenues. Accordingly, it would be a mistake to see MoTR 4/2015 as an isolated and 1-off, new administrative burden for coal and mineral exporters. MoTR 4/2015 should, in fact, be seen as symptomatic of a new

era of aggressive Government moves to ensure that, going forward, Indonesia does receive its “fair share” (whatever that may be) from the exploitation of the country’s coal and mineral resources and without regard to the associated costs.

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