RELAXING SOME MINERAL EXPORT REQUIREMENTS – JUST THE BEGINNING?[1][2][3][4][5]

INTRODUCTION

Indonesia has moved to relax the export requirements for some minerals but not for coal.

Metal minerals, non-metal minerals and rocks, that have met the minimum requirements for processing and refining or that may be temporarily exported in concentrate form until January 2017, may now be exported without the need for the exporter to become a Registered Exporter.

More importantly, in the case of metal mineral producers temporarily exporting in concentrate form, the requirement to achieve a specified level of progress in domestic refining facility construction, as a pre-condition to renewing their Export Approvals, has been significantly modified. Concentrate exporters are also being allowed to more easily amend their Construction Plans and recover their refinery construction guarantee deposits.

The remaining metal mineral concentrate export requirements, however, continue to be onerous.

In this article, the writer will review the newly relaxed export requirements for metal minerals, non-metal minerals and rocks before considering whether or not the recent relaxation of these export requirements may be the beginning of bigger changes to come in this area, especially with regard to a more general relation of the existing export ban on unprocessed metal minerals.

BACKGROUND

The export requirements for metal minerals, non-metal minerals, rocks **and** coal became steadily more onerous starting in 2012. The drivers of these more onerous export requirements were (i) the introduction of a domestic processing and refining obligation as part of the 2009 Mining Law ("**DP&R Obligation**"), (ii) the announcement of an export ban on all unprocessed metal minerals to take effect in January 2014 and as a way of enforcing the DP&R Obligation ("**Export Ban**"), (iii) the Government's growing concern about the level of illegal mineral exports and (iv) the urgent need of the Government to collect more revenue from the mining industry.

Readers interested in knowing more about the 2012 to 2015 history of the export requirements for metal minerals, non-metal minerals, rocks **and** coal are referred to the writer's previous articles on this

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subject including (i) *"Export Requirements for Certain Mineral Products – New Rules and New Complexity"*, Coal Asia Magazine, July – August 2012; (ii) *"Measures to Stop Illegal Mineral & Coal Exports – A Probable Triumph of Form over Substance",* Coal Asia Magazine, July – August 2014 and (iii) *New Mineral and O&G Export L/C Requirements – Exercising Market Power and Trying to Cover the O&G Revenue Shortfall*, Coal Asia Magazine, February - March 2015.

Metal mineral producers, temporarily exporting in concentrate form until January 2017, have found the requirement to establish a certain level of progress in domestic refining facility construction, as a pre-condition to renewing their Export Approvals every six months, particularly burdensome. Satisfying the Government that the construction progress requirement has been met essentially involves a huge commitment of senior management time and technical resources, on an almost continuous basis, so as to avoid any disruption to exports once the current Export Approval expires.

Foreshadowing the Government's acceptance of the need to ease the regulatory burden on metal mineral concentrate exporters, the Director of Minerals at the Ministry of Energy & Minerals Resources ("**ESDM**") was quoted, in the 6 February 2016 edition of The Jakarta Post, as having said:

> "*Several matters have to be adjusted to adapt to the current situation. This adjustment is not only meant for Freeport but also for numerous other companies that are having difficulty with smelter projects*."

The recently revised export requirements for metal minerals, non-metal minerals and rocks are set out in Minister of Trade ("**MoT**") Regulation No. 119 of 2015, dated 23 December 2015, re Export Provisions for Processed and Refined Mineral Products ("**MoTR 119/2015**") and in Minister of Energy & Mineral Resources Regulation No. 5 of 2016, dated 5 February 2016, re Procedures and Requirements for the Issuance of Recommendations for the Export of Processed and Refined Minerals ("**MoEMRR 5/2016**").

The new export requirements, as set out in MoTR 119/2015 and MoEMRR 5/2016, became effective in February 2016.

COMMENTARY

1. Overview

MoTR 119/2015 sets out the export requirements that now apply to **all** exporters of metal minerals, non-metal minerals and rocks but **not** to exporters of coal.

MoEMRR 5/2016 sets out certain **additional** requirements, for obtaining the all important Export Approval Recommendation ("**EA Recommendation**"), that now apply **only** to exporters of metal minerals in **semi-refined or concentrate** form but **not** to exporters of **fully refined** metal minerals, non-metal minerals, rocks or coal.

2. Current Export Requirements Applicable to all Metal Minerals, Non-Metal Minerals and Rocks

2.1 **Categories of Mining Products**: MoTR 119/2015 differentiates between three categories of mining products as follows:

(a) **Category 1 Mining Products**: Exportable mining products that have met the minimum requirements for processing or refining being;

(i) metal minerals;

(ii) non-metal minerals; and

(iii) rocks ("**C1 Mining Products**");

(b) **Category 2 Mining Products**: Exportable metal minerals that may be temporarily exported, in semi-refined or concentrate form, until 12 January 2017 ("**C2 Mining Products**"); and

(c) **Category 3 Mining Products**: Non-exportable mining products being:

(i) ore / raw materials;

(ii) mining products that have not met the minimum requirements for processing;

(iii) metal minerals that have not met the minimum requirements for processing and/or refining;

(iv) non-metal minerals that have not met the minimum requirements for processing; and

(v) rocks that have not met the minimum requirements for processing ("**C3 Mining Products**") (Article 4 of MoTR 119/2015).

2.2 **Permitted Exporters**: Export of C1 Mining Products and C2 Mining Products may only be carried out by a company which (i) holds a Operation Production Mining Business License ("**IUP**") and a Clear & Clean ("**C&C**") Certificate or (ii) holds a Special Operation Production IUP ("**IUPK**") and a C&C Certificate or (iii) holds a Special Operation Production IUP for Processing & Refining or (iv) holds an Industrial Business License ("**IUI**") or (v) holds an Industrial Registration ("**TDI**") (Article 5 of MoTR 119/2015).

2.3 **No Export Approval/Export Approval**: C1 Mining Products may be exported after going through the verification and technical surveying process ("**Tracking**") but **without** obtaining an Export Approval from MoT (Article 6(1) of MoTR 119/2015).

C2 Mining Products may only be exported after (i) obtaining an Export Approval and (ii) Tracking has been completed (Article 6(2) of MoTR 119/2015).

Exporters of C1 Mining Products and C2 Mining Products **no** longer need to obtain and maintain Registered Exporter status.

MoT has delegated its authority, in respect of the issuance of Export Approvals, to the Director General of Foreign Trade ("**DGoFT**") (Article 6 (3) of MoTR 119/2015).

In order to obtain an Export Approval, would-be exporters of C2 Mining Products only ("**C2MP Exporters**") must submit a written application, to DGoFT, along with the following supporting documents:

(a) copy of the C2MP Exporter's Operation Production IUP, Operation Production IUPK, Special Operation Production IUP for Processing & Refining or IUI;

(b) copy of C2MP Exporter's NPWP;

(c) copy of C2MP Exporter's TDP; and

(d) original of C2MP Exporter's Export Approval Recommendation from the Director General of Minerals & Coal ("**DGoMC**") ("**EA Recommendation**") (Article 7(1) of MoTR 119/2015).

The EA Recommendation should, as a minimum, specify the data and remarks on loading port, type, description of goods, HS Code and amount of processed and/or refined mining products, that will be exported (Article 7(2) of MoTR 119/2015).

DGoFT is meant to issue an Export Approval not later than five working days after the date on which the application is received in good order (Article 7(3) of MoTR 119/2015).

The Export Approval is valid for six months from its issuance date and may be extended/renewed for successive periods of six months each (Article 7(4) of MoTR 119/2015).

2.4 **Tracking**: Tracking is carried out:

(a) to ensure that mining products, to be exported, have met the applicable minimum processing or refining requirements;

(b) prior to the loading of mining products; and

(c) by Surveyors approved by MoT.

The results of Tracking are to be presented in the form of a Survey (*Laporan Survey* or "LS") to be used as one of the supporting documents for customs and excise purposes as required for applications for the Export Notification of Goods (*Pemberitahuan Ekspor Barang* or "**PEB**") submitted to the Customs & Excise Office.

The Survey may only be issued if the quantitive analysis result evidences that the mining products to be exported have met the applicable minimum processing or refining requirements.

Issuance of Surveys takes place not later than one day after the date of examination of the mining products to be loaded for export and each Survey may only be used for one shipment/ application for one PEB Number (Article 12 of MoTR 119/2015).

The Surveyor is responsible for ensuring that the processed or refined mining products to be exported are in accordance with the relevant Survey (Article 16 of MoTR 119/2015).

2.5 **Exemptions**: MoTR 119/2015 does not apply to the export of those mining products being:

(a) exhibits for exhibition purposes, accompanied by evidence showing participation in the relevant exhibition;

(b) personal goods of passengers, goods of transportation crew, cross-border goods and delivery goods;

(c) art pieces or craft works made of rocks which have been processed until they have artistic value and functions as produced by small or medium scale enterprises and in a maximum volume in accordance with annual production capacity accompanied by a statement letter from the responsible institution in the relevant industry or trade field;

(d) industrial products comprised of material originating from imports and supported with a statement letter from a technical institution in the relevant industry;

(e) industrial products comprised of material originating from scrap and supported with a statement letter from a technical institution in the relevant industry; and

(f) sample products for mineral testing in the context of research and development cooperation and where the relevant exporter has obtained prior approval from DGoFT (Articles 20 and 21 of MoTR 119/2015).

3. Current Additional Export Requirements that Apply to C2MP Exporters Only

3.1 **EA Recommendation Applications**: In order to obtain EA Recommendations, C2MP Exporters must submit an EA Recommendation application ("**EAR Application**") to DGoMC on behalf of MoEMR (Article 3 (1) of MoEMRR 5/2016).

EAR Applications must be accompanied by the following supporting documents:

(a) statement letter on the legality of submitted documents;

(b) copy of C&C Certificate in the case of holders of Production Operation IUPs;

(c) Certificate/Report of Analysis showing that the relevant C2 Mining Products have met the minimum refining requirement, issued within the last one month by an independent Surveyor;

(d) copies of C2MP Exporter's payment receipts for non-tax state revenue due to the State for the last one year;

(e) copies of Cooperation Agreements with the holders of (i) Metal Mineral Production Operation IUPs that have obtained C&C Certificates and/or (ii) Contracts of Work for Metal Minerals and/or (iii) Special Production Operation IUPs for Processing & Refining;

(f) **Construction Plan for Domestic Refining Facility ("DR Facility") that has been approved by DGoMC, on behalf of MoEMR, and includes, among other things, the construction schedule for the relevant DR Facility including technologies to be used, investment values and production capacity per year**;

(g) Construction Costs Report audited by a Public Accountant registered at the Ministry of Finance ("**MoF**") in the case of applicants which have realized their proposed construction cost for the ongoing construction of the relevant DR Facility;

(h) Work Plan and Budget for the current year that has been approved by the relevant government authority;

(i) **evidence of deposit of seriousness guarantee for construction of DR Facility** ("**SG Deposit**");

(j) evidence of environmental management performance for holders of Production Operation IUPs for Metal Minerals and Contracts of Work for Metal Minerals being:

    (i) copy of a valid layout point determination issued by the authorized institution that has been legalized;

    (ii) test results of standard compliance of water and air quality from a party with a laboratory that has been accredited in the current year;

    (iii) copy of approval letter re Reclamation Plan for five years that has been legalized; and

    (iv) copy of receipt for deposit re Guarantee of Reclamation for the present year that has been legalized;

(k) Evidence of environmental management performance for holders of Special Production Operation IUPs for Processing & Refining being:

    (i) copy of a valid layout point determination issued by the authorized institution and that has been legalized; and

(ii) test results of standard compliance of water and air quality from a party with a laboratory that has been accredited in the current year; and

(l) Export Plan which includes details of, among other things, the type and quantity of the relevant C2 Mining Products, the applicable tariff post/HS, port of loading, port of discharge and country of destination (Article 5 of MoEMRR 5/2016).

EA Recommendations are valid for a period of six months and may be extended/renewed for successive periods of six months each (Article 8(1) of MoEMRR 5/2016).

3.2 **Extension of EA Recommendations**: Applications to extend EA Recommendations ("**EAR Extension Applications**") must be submitted to DGoMC, on behalf of MoEMR, **not earlier than forty five calendar days and not later than thirty calendar days before the existing EA Recommendation expires** (Article 8(2) of MoEMRR 5/2016).

EAR Extension Applications are to be accompanied by the following supporting documents of the relevant C2MP Exporter:

(a) copy of existing Export Approval;

(b) **evidence of the realization of construction of DR Facility during the previous six months and Construction Plan for DR Facility for the next six months**;

(c) cumulative construction cost of DR Facility during the last six month period audited by a Public Accountant registered at MoF;

(d) test results of standard compliance of water quality by a party with a laboratory that has been accredited in the past six months;

(e) copies of payment receipts for non-tax state revenue due to the State for the past six months; and

(f) Export Plan which includes details of, among other things, the type and quantity of C2 Mining Products that have met the minimum refining requirements for metal minerals or anode slime, tariff post/HS, port of loading, port of discharge and country of destination (Article 9 of MoEMRR 5/2016).

In evaluating EAR Extension Applications, DGoMC takes into account:

(a) whether or not the type and quality of the relevant C2 Mining Products have met the minimum refining requirements for C2 Mining Products; and

(b) the certain permitted amount for export having regard to the following considerations:

(i) environmental management performance;

(ii) reserve amount which is the residual reserve calculated on the basis of the mined reserve as reduced by the relevant DR Facility's needs;

(iii) input capacity of the relevant DR Facility; and

(iv) **progress of construction of the relevant DR Facility** (Article 10(1) of MoEMRR 5/2016).

The relevant percentage of DR Facility construction progress required for approval of an EAR Application is as follows:

(a) **Stage I - the actual construction progress must amount to 7.5% including placement of GS Deposit;**

(b) **Stage II - the actual construction progress must be more than 7.5% but less than or equal to 30% including placement of GS Deposit; and**

(c) **Stage III - the actual construction progress must be more than 30% including placement of GS Deposit** (Article 25 of MoEMRR 5/2016).

Approval of an EAR Extension Application requires that the progress of DR Facility construction, achieved during the period covered by the previous EA Recommendation, be at least 60% of the target calculated cumulatively **provided that, in the event the progress target has not been achieved, then the EAR Extension will still be issued if the construction progress of the relevant DR Facility is "similar" to the progress for the previous period** (Article 10(2) and 10(3) of MoEMRR 5/2016).

3.3 **Construction Plans for DR Facilities**: C2MP Exporters must submit to and have approved by DGoMC, on behalf of MoEMR, the Construction Plans for their DR Facilities (Article 11 (1) of MoEMRR 5/2016).

In the event that there is any proposed change in the Construction Plan for a DR Facility, which includes any change in the capacity, product, technology, construction schedule or investment value, then the relevant C2MP Exporter may submit, for DGoMC approval, an amendment of the Construction Plan (Article 13 of MoEMRR 5/2016).

3.4 **Guarantees of Seriousness**: C2MP Exporters must also provide guarantees in the form of SG Deposits.

SG Deposits are to be paid into a joint account with the State Owned Enterprise Bank in Indonesia.

Provision of a SG Deposit does not eliminate the obligation of the relevant C2MP Exporter to actually carry out the obligation to increase added value through construction of its proposed DR Facility (Article 14 of MoEMRR 5/2016).

The required SG Deposit amount is calculated as being:

(a) 5% of the value of the relevant DR Facility construction investment to date; and

(b) 5% of the remaining value of the relevant DR Facility construction investment that is still to be carried out (Article 15 of MoEMRR 5/2016).

In the event that there is a change in the investment value of actual or proposed DR Facility construction, due to a change in the Construction Plan, then the relevant SG Deposit must be adjusted in accordance with the actual investment value as follows:

(a) **if the actual investment value is larger than the proposed investment value, the applicant must make up the deficiency in the SG Deposit after the amendment of the Construction Plan is approved; or**

(b) **if the actual investment value is smaller than the proposed investment value, the applicant may submit an application for reimbursement of the excess SG Deposit after the amendment of the Construction Plan is approved** (Article 21 of MoEMRR 5/2016).

C2MP Exporters may apply for reimbursement of their SG Deposits ("**SGD Reimbursement**") at the time they submit their EAR Extension Applications.

SGD Reimbursement is only allowed if the relevant C2MP Exporter has achieved DR Facility construction progress of at least 60%.

C2MP Exporters have two opportunities, of six months each, to achieve the minimum DR Facility construction progress target of at least 60% and thereby qualify for SGD Reimbursement (Article 19 of MoEMRR 5/2016).

The evaluation of SGD Reimbursement applications is calculated based on the construction progress of the relevant DR Facility as follows:

(a) **If the percentage of DR Facility construction progress is less than 70%, then the amount of SGD Reimbursement is calculated based on the following formula:**

P = 5% x (TI – SI) - ∑A

P = amount of SGD Reimbursement
TI= total Investment
SI= remaining investment which has not been realized
∑A= acccumulation of previous reimbursements

(b) **If the percentage of DR Facility construction progress is greater than or equal to 70% percent, then all of the SG Deposit may be reimbursed** (Article 27 of MoEMRR 5/2016).

4. **Discussion and Evaluation of the Major Changes**

4.1 **Immediate Implications**

4.1.1 **No Registered Exporter Requirement**: Doing away with the Registered Exporter requirement, in respect of metal minerals, non-metal minerals and rocks, will be welcomed by and may be of some minor significance to exporters of fully processed and refined metal minerals, exporters of non-metal minerals and exporters of rocks but is unlikely to make any material difference to these exporters' overall cost of doing business, spur any increase in the level of business activity of these exporters or encourage new entrants to the local mining industry.

In the case, however, of exporters of metal minerals in concentrate form (**i.e.**, C2MP Exporters) and as should be readily apparent from 3 above, the continuing conditions on their right to export are still so burdensome that the fact they no longer have to obtain or maintain Registered Exporter status will surely pass almost unnoticed.

4.1.2 **Reduced Construction Progress Requirement**: Notwithstanding 4.1.1 above, reducing the DR Facility construction progress requirement does have the potential to be very significant because C2MP Exporters are no longer required to establish that they have achieved not less than 60% of the target progress on a **cumulative** basis during the period covered by the most recent Export Approval. On the writer's interpretation of the reduced requirement, it will be sufficient to obtain an Export Approval for the next six months if the relevant C2MP Exporter has achieved, in the current period, substantially the same construction progress as in the period immediately prior to the current period, regardless of how small that construction progress may have been during the previous period. Indeed, the use of the word "similar", in specifying the reduced construction progress requirement, arguably contemplates that construction progress achieved, in the current period, which is actually less than the construction progress achieved during the previous period may still be sufficient to obtain an Export Approval for the next six months. The use of the word "similar" essentially introduces a degree of vagueness/an element of flexibility in evaluating DR Facility construction progress for the purposes of determining whether or not to issue an EA Recommendation for Export Approval extension/renewal. It also seems to be the case that a particular C2MP Exporter can fall short of the basic 60% target cumulative progress requirement in multiple periods without necessarily jeopardizing the extension/renewal of its Export Approval.

The significance of the reduced construction progress requirement rests in the fact that, for the first time, ESDM is recognizing the reality of DR Facility construction; namely, (i) it is likely to often be a very slow exercise with only quite modest incremental progress being made in any six month period and (ii) six months is an extremely short time over which to measure construction progress given the size and technical complexity of DR Facility projects. The smooth and continuous construction progress, implicitly assumed by the original construction progress requirement, was always unrealistic and showed a woeful lack of understanding, on the part of ESDM, as to how big construction projects take place in the real world. As such, reducing the construction progress requirement is to be welcomed as introducing a much needed element of reality into the EA Recommendation/Export Approval process.

4.1.3 **Changing Construction Plans and SG Deposit Variation**: For the first time, ESDM is now willing to explicitly recognize that, owing to the medium to long term nature of most DR Facility projects, it is inevitable that Construction Plans will sometimes change as a particular DR Facility project progresses and the relevant C2MP Exporter and its technical advisers rethink different aspects of the DR Facility project in order to take into account any number of extraneous factors such as technology changes and changes in government policy. Allowing/requiring individual C2MP Exporters to adjust their Construction Plans over time and, more importantly, adjust their SG Deposits, including by obtaining a SGD Reimbursement in those instances where the total investment cost will fall as a result of the change in Construction Plans, introduces a valuable element of flexibility as well as, in some cases, freeing up funds that may be used to complete the relevant DR Facility.

4.1.4 **Easier Reimbursement of SG Deposits**: Allowing 100% SGD Reimbursement when 70% of DR Facility construction has been achieved also has the potential to be quite significant given the size of the GS Deposits in the case of large GR Facility projects where the total investment cost may run into hundreds of millions of dollars if not more. At a time when all C2MP Exporters are suffering, as a result of greatly reduced metal mineral prices and the consequent increased wariness of financiers and investors, having large amounts of capital tied up in SG Deposits is clearly highly undesirable.

4.2 Longer Term Implications

The longer term implications of the recent relaxation of mineral export requirements depends on whether or not "that's it" or is merely the start of something bigger, especially in the case of metal minerals.

Doing away with the Registered Exporter requirement, in respect of metal minerals, non-metal minerals and rocks, may simply be part of the current Government's ongoing policy reform program which has repeatedly highlighted the need to reduce the amount of "red tape" that businesses have to deal with and in an endeavor to stimulate greater economic activity. In this regard, the Registered Exporter requirement is rightly to be seen as part of the excessive "red tape" facing mineral producers and exporters. However, if the dropping of the Registered Exporter requirement is really no more than just an effort to reduce excessive "red tape", it is very surprising that the Registered Exporter requirement has only been dropped in respect of metal minerals, non-metal minerals and rocks but **<u>not</u>** coal and when Indonesia has vastly more coal producers and coal exporters than it does producers and exporters of metal minerals, non-metal minerals and rocks. From a "red tape" elimination perspective only then, it would have actually made much more sense to eliminate the Registered Exporter requirement in the case of metal minerals, non-metal minerals, rocks **<u>and</u>** coal or even just in respect of coal but **<u>not</u>** in respect of metal minerals, non-metal minerals and rocks.

Various explanations are possible as to why the Registered Exporter requirement has only been dropped in respect of metal minerals, non-metal minerals and rocks but **<u>not</u>** coal. These possible explanations include that the Government is more concerned about reducing illegal coal exports and protecting its revenue from coal mining than it is about reducing the excessive "red tape" facing producers and exporters in the local coal mining industry. It is also possible

that dropping the Registered Exporter requirement, in respect of metal minerals, non-metal minerals and rocks only, is being undertaken on an experimental basis in order to see what the consequences, if any, are for illegal exports and Government revenue. Should no material adverse consequences be detected, then the Registered Exporter requirement may eventually be dropped for coal exporters as well.

A more interesting explanation, however, is that dropping the Registered Exporter requirement in respect of metal minerals, non-metal minerals and rocks only is the first, tentative step by the Government in allowing the resumption of exports of C3 Mining Products, including unprocessed metal minerals, at least on a temporary basis. There have been increasing indications, in statements by MoEMR and other Government officials over the past couple of months, that the export ban on unprocessed metal minerals is, once again, being reconsidered and that, at a minimum, the January 2017 deadline for full domestic processing and refining of all metal minerals will be pushed out to a later date. Given the political capital that has been invested in the Export Ban, it would be entirely understandable if the Government is moving very cautiously to relax the Export Ban even on a temporary basis only. As such, initially dropping the Registered Exporter requirement in respect of C1 Mineral Products only may be an early tangible sign of this cautious approach being implemented.

Reducing the DR Facility construction progress requirement for EA Recommendations, introducing greater flexibility into the changing of Construction Plans and allowing the easier withdrawal of GS Deposits in the case of C2MP Exporters, certainly goes well beyond the scope of a limited "reduction of red tape" exercise only. The Government is, very arguably, showing it understands the short to medium term impracticality of the requirement to build DR Facilities and, accordingly, looking for ways to ease the overall burden of this requirement on C2MP Exporters. While it is unlikely that the Government will be willing to drop, altogether, the DP&R Obligation or the Export Ban on C3 Mining Products, **full** domestic processing & refining of **all** metal minerals is increasingly looking like a longer term "aspirational" objective only for the Government rather than something that the Government expects to be capable of realization in even the medium term and on a large scale.

Perhaps the best evidence of the Government's changed thinking about the achievability, in even the medium term, of full implementation of the DP&R Obligation is to be found in the draft of the New Mining Law prepared by ESDM. This draft of the New Mining Law provides for, among other things, (i) CoW holders to have a **further five years, from when the New Mining Law comes into effect**, to carry out the DP&R Obligation and (ii) C2MP Exporters to continue to be able to export concentrate for a **further five years, from when the New Mining Law comes into effect**. This is the same as giving C2MP Exporters and, possibly, exporters of C3 Mining Products as well a **further five years** to complete the construction of their DR Facilities. Assuming the New Mining Law is passed by the Indonesian Parliament ("**DPR**") in 2016 and in substantially the same form as the existing ESDM draft, this will effectively push out the deadline for full implementation of the DP&R Obligation until late 2021 at the earliest. ESDM clearly believes that the DPR is "on side" with regard to its draft of the New Mining Law and the contemplated relaxation of full implementation of the DP&R Obligation as evidenced by the following statement from MoEMR, made in the context of the need to recognize the hurdles facing smelter development and quoted in the 17 February edition of The Jakarta Post:

> “*Informally, the House of Representatives Commission VII [which oversees mining and energy] has agreed to our proposal to amend the law.”*

The reason for this change in Government/ESDM thinking is not hard to understand. As the projections of the size of the Government’s likely revenue shortfall in 2016 and beyond grow ever larger, the need for the Government to find additional sources of revenue, including from the mining industry, becomes ever more pressing. It is entirely understandable then that the continuing loss of substantial revenues from the Export Ban on C3 Mining Products has become no longer acceptable to the Government. Put simply, the full enforcement of the Export Ban and insistence upon full implementation of the DP&R Obligation has increasingly come to be seen by the Government as a “luxury” it can no longer afford. Readers interested in learning more about the Government’s revenue problems and its expectation that the mining industry will make up a large portion of the shortfall are referred to the writer’s earlier article “*Mining Policy Reform – Is GoI Willing to Pay the Price for More Revenue from the Mining Industry?*”, Coal Asia Magazine, April – May 2015.

SUMMARY AND CONCLUSIONS

Coal producers will, understandably, be disappointed that the Registered Exporter requirement continues to apply to them.

C2MP Exporters, however, have good reason to be very pleased by the relaxation of the additional export requirements applicable to C2 Mineral Products and, in particular, the easing of the DR Facility construction progress requirement for Export Approval extension/renewal.

Even producers/would-be exporters of C3 Mining Products also have some reason to hope that at least partial relief from the Export Ban may be finally in sight.

The recent changes in mineral export requirements are, most likely, not really about reducing “red tape” at all but, rather, about relaxing the DP&R Obligation and the Export Ban. This is something the Government has clearly been thinking about, on and off, for some time and despite repeated denials to the contrary.

Given the further five years to be allowed to complete construction of DR Facilities, as envisaged by ESDM’s draft New Mining Law, it seems likely we are now seeing the first tentative steps by the Government to make full implementation of the DP&R Obligation a long term aspirational objective only and certainly not something that it is going to be the Government’s dominant priority in even the medium term. For better or for worse, the Government’s dominant priority is now clearly revenue raising.

The great pity, of course, is that it has taken so long for economic reality to finally gain some influence over policy making in respect of the local mining industry.

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