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October 2026

NEW REGULATORY ALERT | INDONESIA'S MINING SECTOR

Indonesia Tightens Restrictions on Affiliated Mining Services Companies: What Mining Groups Need to Know

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MEMR Decree No. 365/2026 introduces stricter conditions for mining companies seeking to engage their own subsidiaries or affiliates as mining services contractors. Existing arrangements may require immediate review

Mining companies in Indonesia that rely on their subsidiaries or affiliated entities to perform mining services may need to reconsider their existing operational structures.

On 18 September 2026, the Minister of Energy and Mineral Resources ("**MEMR**") issued Decree No. 365.K/MB.01/MEM.B/2026 on Technical Guidelines for the Approval of the Use of Subsidiaries and/or Affiliates in Mineral and Coal Mining Services Businesses ("**Decree 365/2026**"). The regulation took effect on the same date and revoked Director General Regulation No. 376.K/30/DJB/2010 ("**2010 DG Regulation**").

The new regulation introduces a more restrictive framework for mining companies seeking to appoint their own subsidiaries or affiliated companies as mining services contractors. Importantly, the definition of an affiliate now extends to companies sharing common ultimate beneficial owners, while regulatory approval is limited to specific government-assigned activities.

For mining groups with established intra-group service arrangements, these changes may have significant implications for corporate structuring, procurement, contractual arrangements, and business continuity.

Below are the key changes and practical considerations businesses should understand.

1. **Priority Must Be Given to Local Mining Services Contractors**

Under Decree 365/2026, holders of Mining Business Licenses ("**IUP**") and Special Mining Business Licenses ("**IUPK**") engaging external mining services contractors must appoint contractors holding a Mining Services Business License ("**IUJP**").

They are also required to prioritize contractors based in the regencies or municipalities surrounding their mining areas.

However, the regulation does not define what constitutes a "local" contractor or prescribe a minimum procurement quota. Accordingly, non-local contractors are not automatically excluded.

Practical implication: Mining companies should maintain proper procurement documentation demonstrating that local IUJP contractors have been genuinely considered when selecting their service providers.

2. **Affiliate Restrictions Now Extend to Common Beneficial Ownership**

One of the most significant changes under Decree 365/2026 is the expanded definition of an affiliate.

An IUJP contractor will be considered an affiliate of an IUP/IUPK holder if:

- The IUP/IUPK holder directly owns any shares in the contractor, regardless of the percentage of ownership; or
- Both companies share one or more common ultimate beneficial owners.

This represents a substantial departure from the previous regime, which applied a 20% shareholding threshold.

As a result, even minority direct shareholdings or common beneficial ownership arrangements may trigger the affiliate approval requirement.

Practical implication: Mining groups should not limit their review to direct shareholding structures. They should also map their ultimate beneficial ownership arrangements and identify potential affiliate relationships across their corporate group.

3. **Affiliate Appointments Are Now Limited to Government Assignments**

This is arguably the most consequential change introduced by Decree 365/2026.

Approval to engage subsidiaries or affiliated companies as mining services contractors may only be granted where the IUP/IUPK holder is carrying out a government assignment involving:

- A national strategic project;
- Construction of mineral processing and/or refining facilities, or coal development and/or utilization; and/or
- Supply of minerals or coal for domestic needs.

Companies operating outside these categories may effectively be unable to obtain the required approval.

An important issue remains unresolved: whether ordinary Domestic Market Obligation ("DMO") compliance, by itself, qualifies as a government assignment involving the supply of minerals or coal for domestic needs.

Practical implication: Mining companies should assess their eligibility for approval before entering into new affiliate service arrangements or continuing to rely on existing intra-group contractors.

4. **Approval Procedures and Scope**

Applications must be submitted to the MEMR or, where the relevant IUP was issued by a Governor, to the relevant Governor.

The MEMR is required to issue its decision within 14 working days after receiving a complete and correct application.

However, approval is limited to the specific fields and subfields covered by the affiliate's IUJP application and remains valid only until the IUJP expires.

This makes the preparation and scope of the application particularly important. An incomplete application may delay approval, while an inadequately defined scope may result in an approval that does not cover the affiliate's actual mining services activities.

5. How Does Decree 365/2026 Differ from the Previous Regulation?

The previous 2010 DG Regulation adopted a market-based approach. An affiliate could be appointed after an open tender failed to identify a suitable independent contractor meeting the relevant availability, working capital, investment, and manpower requirements.

Decree 365/2026 replaces this approach with a policy-based test linked to specific government assignments.

Other notable changes include:

- Removal of the 20% shareholding threshold: Any direct shareholding may now trigger affiliate classification.
- Removal of the prior open tender requirement: The previous market-testing procedure is no longer the basis for affiliate appointment.
- Removal of certain documentary requirements: The previous transfer pricing statement and per-contract approval requirements are no longer expressly retained.
- Removal of mandatory local subcontracting: Affiliates are no longer expressly required under the previous framework to subcontract part of their work to local companies.

The previous regulation expressly provided that affiliate contracts entered into without following the required procedure were null and void. Decree 365/2026 does not retain this express provision.

Nevertheless, this should not be interpreted as eliminating the legal consequences of non-compliance. The approval requirement remains grounded in Government Regulation No. 96 of 2021, although the consequences of a breach are now less clearly defined under the new decree

6. Existing Contracts: Is There a Transition Period?

Decree 365/2026 does not contain transitional provisions addressing existing affiliate contracts or approvals previously issued under the 2010 DG Regulation.

This creates an important area of uncertainty for mining groups currently operating through affiliated mining services companies.

Until the MEMR provides further clarification, companies should not assume that existing contracts or previously issued approvals are automatically grandfathered under the new regime.

Our recommendation: Existing arrangements should be reviewed against the new regulatory framework, and new affiliate engagements should not proceed without the required approval.

7. What Should Mining Companies Do Now?

Given the significant changes, mining companies should consider taking the following steps:

1. Map corporate relationships: Identify direct shareholding and common ultimate beneficial ownership links between IUP/IUPK holders and their IUJP contractors.
2. Review existing contracts: Assess existing mining services agreements and approvals obtained under the previous regulation.
3. Assess eligibility: Determine whether the relevant mining operations fall within the government assignment categories under Decree 365/2026.
4. Prepare approval applications: Where eligible, prepare and submit applications with clearly defined service fields and subfields.
5. Document procurement decisions: Maintain records demonstrating that local mining services contractors were properly considered.

Early action is particularly important for mining groups with substantial intra-group service arrangements, as restructuring procurement and contractor arrangements may require commercial and operational coordination.

HOW PRS CAN ASSIST

The introduction of Decree 365/2026 requires mining companies to look beyond regulatory interpretation and assess how the new rules affect their existing corporate and operational structures.

Pasaka Rievan Smith – Counsellors at Law ("PRS") assists mining companies, mining services contractors, and investors in navigating regulatory developments in Indonesia's mineral and coal sectors.

Our legal services include:

1. **Affiliate and Beneficial Ownership Mapping**: Reviewing corporate structures and identifying direct and indirect ownership relationships that may trigger affiliate classification.

2. M**ining Services Contract Review and Restructuring**: Assessing existing IUJP arrangements, mining services agreements, and subcontracting structures, and advising on legally compliant alternatives.

3. R**egulatory Approval Applications:** Advising on eligibility, preparing supporting documentation, and assisting with applications to the MEMR or relevant Governor.

4. R**egulatory Advisory and Engagement:** Assisting clients in seeking regulatory clarification on unresolved issues, including existing affiliate arrangements and DMO-related assignments.

Our approach combines regulatory analysis with practical commercial considerations to help clients manage compliance risks while maintaining operational continuity.

*About **Us***

Pasaka Rievan Smith - Counsellors at Law ("**PRS**") comprises a team of dedicated and trusted lawyers with over 20 years of experience in the legal industry, spanning law firms, multinational corporations, and government institutions. We provide prompt, precise legal counsel and opinions, offering both legal and commercial perspectives to support corporate clients. Confident in our ability to meet the diverse needs of our clients, PRS enables them to focus on achieving their business objectives. With experience in assisting start-ups, growing enterprises, established organizations, and family-owned businesses, we are committed to delivering both personal and professional attention, ensuring the utmost satisfaction for our clients.

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Should you wish to learn more about this topic or require tailored legal advice, please contact us at inquiry@pasakarievansmith.com — our qualified lawyers will be pleased to assist you.