

INDONESIAN GOVERNMENT AMENDS FORESTRY LAW*

Previous AMPLA updates have highlighted the fact that Law 41 of 1999 regarding Forestry (Law 41/1999) banned open pit mining in “protected forests” in Indonesia. The law had retrospective application to many Contracts of Work that have been granted by the Indonesian Government. The definition of “protected forest” used in Law 41/1999 resulted in large areas of Indonesia, in many cases on which no significant forests existed, being closed to open pit mining.

On 11 March 2004 the Indonesian Government issued a Perpu (*Peraturan Pemerintah Pengganti Undang-Undang* or Government Regulation in lieu of Law) that could allow a number of mining companies impacted by Law 41/1999 to resume mining operations.

Under Indonesian law a Perpu is issued by the President when the Government considers that there is an emergency situation and it would take too long to address the matter through the legislative process. A Perpu will have the same power as a law in Indonesia unless the House of Representatives in a subsequent session disapprove the issuance of the Perpu.

Perpu No. 1 of 2004 (Perpu 1/2004) adds two new articles to Law 41/1999. One of the new articles of Perpu 1/2004 provides that all licenses or agreements in the mining sector that existed before Law 41/1999 became effective will remain effective until the relevant agreements or licenses expires. The other article of Perpu 1/2004 provides that the licenses or agreements to which the above article applies need to be stipulated by a Presidential Decree. Thus as a result of Perpu 1/2004 the prohibition on open pit mining in protected forests will not apply to a mining license or agreement that was issued in a protected forest area before Law 41/1999 became effective and in respect of which a Presidential Decree is promulgated.

Perpu 1/2004 is a significant development for a number of mining companies operating in Indonesia. It has been reported in the press that the following thirteen mining companies will be stipulated in a Presidential Decree to be promulgated and, as a result, will be able to resume mining activities in Indonesia: PT Freeport Indonesia, PT Karimun Granit, PT INCO Tbk, PT Indominco Mandiri, PT Antam Tbk (Halmahera, Buli Island), PT Natarang Mining (Lampung), PT Nusa Halmahera Minerals (Newcrest), PT Pelsart Tambang Pasir, Kalimantan, PT Weda Bay Nickel, PT GAG Nickel, PT Sorikmas Mining, PT Tabalong, and PT Antam Tbk (Bahubulu, South East Sulawesi).

CONSTITUTIONAL VALIDITY OF FTAA'S AND PHILIPPINE MINING LAW

Background

The decision of the Supreme Court of the Republic of the Philippines (Court) in *La Bugal – B'laan Tribal Association, et al. v Secretary Ramos, et al*¹ promulgated by the Court on 27 January 2004 has significant implications for companies considering investing in mining and oil and gas projects in the Philippines.

The case dealt with a petition for mandamus and prohibition which was lodged before the Supreme Court in 1997 challenging the validity of the *Mining Act of the Republic of the Philippines*,

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¹ Decision of the Supreme Court of the Republic of the Philippines, G.R. No. 127882, 27 January 2004.