

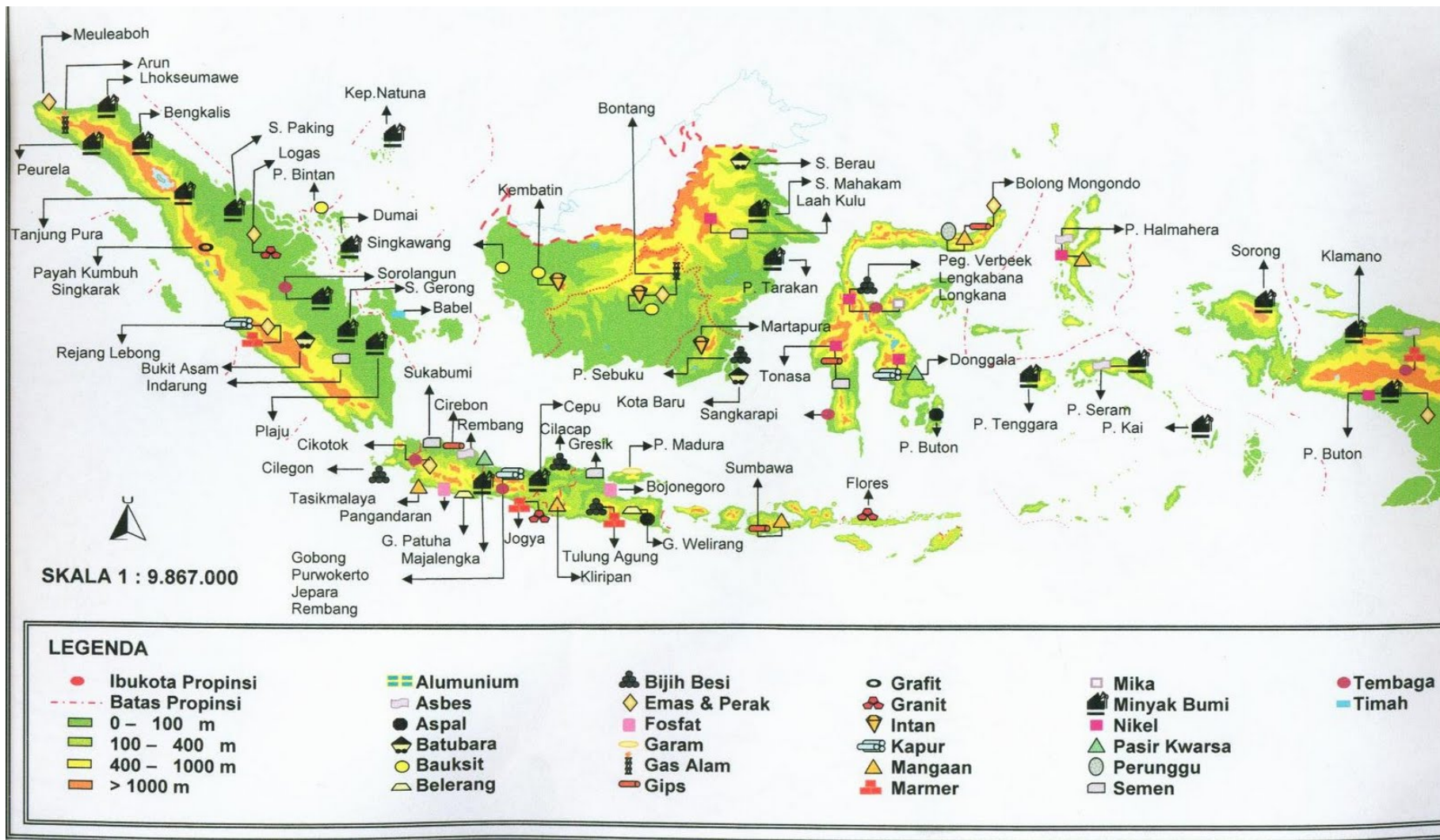
Mining Investment in Indonesia

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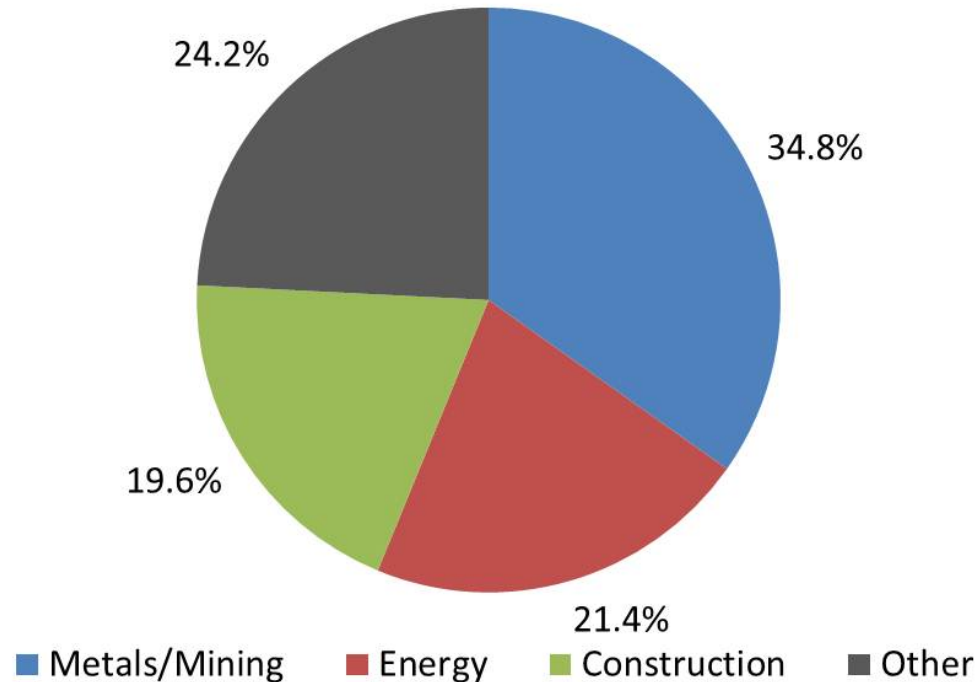
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China Mining Congress and Expo

Mining in Indonesia



Mining Investment in Indonesia



Data published by the Indonesian Investment Coordinating Board (“BKPM”) indicates that Chinese investment in Indonesia has steadily increased since 2010.

** Source: Indonesia Investment Coordinating Board, Press Release 2016*

Chinese Investment in Indonesian Mining and Mineral Processing/Refinery Sector

- **Alumina Smelter:**

- China Hongqiao Group, the world's largest aluminum producer by capacity, cooperates with Harita Group, through PT Well Harvest Winning Alumina Refinery, to operate an alumina smelter with 1 million tonne per annum capacity in West Kalimantan.

- **Nickel Smelter:**

- De Long Nickel Co. Ltd., through PT Virtue Dragon Nickel Industry, operates a nickel smelter in Konawe, Southeast Sulawesi;
- Xinxing Ductile Iron Pipes Co. has a nickel pig iron production unit on Obi Island;
- Tsingshan Group has a nickel smelting plant in Morowali, Sulawesi (in cooperation with Bintang Delapan Group).

Foreign Shareholding Limitation and Divestment Requirement

Mining Companies

- 100% open for foreign ownership if establishing a new company to bid for a mining business license (IUP or IUPK)
- Divestment requirement after 5 years of commercial production
- Divestment requirement is gradual from 6th through 10th year after commercial production
- Divestment procedures and the stipulation of the price of divested shares are set out under a Minister of Energy and Mineral Resources Regulation

Acquiring Existing Mining Company (IUP or IUPK Holders)

- 75% → maximum foreign ownership if acquiring an existing mining company in the exploration stage
- 49% → maximum foreign ownership if acquiring an existing mining company in the operation production stage

Smelter Companies

- 100% open for foreign ownership
- No share divestment requirement

Foreign Shareholding Limitation and Divestment Requirement

Gradual divestment from the 6th through 10th year after commercial production for Mining Companies owned by foreigners:

Year after commercial production	Required Divestment in the Mining Companies (IUP or IUPK holders)
6 th	20%
7 th	30%
8 th	37%
9 th	44%
10 th	51%

Foreign Shareholding Limitation and Divestment Requirement

- **Divestment** → Requirement to sell shares to the following Indonesian parties (which shall be made in sequence):
 - Central Government;
 - Regional Governments (Provincial Government or Municipality/Regency Government)
 - State-Owned Enterprises;
 - Regional-Owned Enterprises; or
 - Indonesian private business entities (in the form of limited liability company)
- Divesting party cannot provide a loan to the Indonesian parties to purchase the divested shares
- Prohibition on pledging the shares that are required to be divested
- Stipulation of the price of divested shares: Fair market value and without consideration of the mineral or coal reserve at the time of divestment. This will be the maximum price of divested shares to be sold to the Governments and will be the base price for the divestment of shares by auction to State-Owned Enterprises, Regional-Owned Enterprises, and Indonesian private business entities.

Mining Licenses

- Under the Old Mining Law, the framework for a foreign investor was contractual-based concessions such as Contract of Work, Coal Contract of Work, and through Mining Rights (KP) for an Indonesian investor
- The New Mining Law (Law No. 4 of 2009) replaced that framework with an area-based licensing system reflecting specified mining areas (known as Mining Business License or IUP)
- One company - one mining license (unless for companies listed on Indonesian stock exchange)
- Mining Business License (IUP) is issued in two separate phases:
 - Exploration: For general surveys, exploration and feasibility study within the designated area
 - Operation Production: For construction, mining, processing, refinery, transportation and sale

Issuance of Mining Licenses by BKPM

- MEMR Regulation No. 25 of 2015 regarding Delegation of Authority for Granting Mineral and Coal Business Licenses in the Framework of Integrated Licensing System at the BKPM
- MEMR has delegated the issuance of the following mining licenses to the BKPM:
 - Exploration Mining Business License
 - Operation Production Mining Business License and its extensions
 - Mineral or Coal Trading License and its extensions
 - Smelter License and its extensions
 - Principal License for Smelter
 - Temporary License for transportation and sale
 - Mining Service License and its extensions

Due Diligence Issue on Mining Companies

Typical Due Diligence Issues in Acquisition of Existing Mining Companies

- Mining License
- Clean and Clear Certificate
- Overlapping Issues with other Mining, Plantation, Oil and Gas concessions
- Zoning of Mining Concession:
 - Forest Area
 - Compliance with Spatial Layout plan
- Jetty and Mining Infrastructure
- Compensation to Land Owners within the Mining Concession
- Payment of Financial Obligation to the State such as Royalty, Reclamation Guarantee, and Dead Rent



Smelter Licenses (MOI vs. MEMR)

- A smelter may be licensed by the Minister of Industry (MOI) or the Minister of Energy and Mineral Resources (MEMR), although this matter is still being discussed by the relevant government units.
- The principal differences are as follows:

Difference	Smelter licensed by MOI	Smelter licensed by MEMR
Reporting obligation	Only periodic reports (LKPM) to BKPM	Besides LKPM, there are additional reporting obligations to MEMR: <ul style="list-style-type: none"> • Annual Work Plan and Budget (to be approved by MEMR) • Periodical reports for the realization of annual work plan and budget • Term sheet/MOU for any mineral sale agreement
Term	As stated in the license	30 years and can be extended, each for a maximum 20 years

Smelter Licenses (MOI vs. MEMR)

Difference	Smelter licensed by MOI	Smelter licensed by MEMR
Transfer of shares	Does not require recommendation from MOI	Requires approval from MEMR
Application procedures	<p>Regulated under Minister of Industry Regulation No. 41/M-IND/PER/6/2008 and its amendment</p> <p>Industrial Business License can be issued with or without Principal Approval</p>	<p>Regulated under Minister of Energy and Mineral Resources Regulation No. 5 of 2017 and its amendment</p> <p>Administrative, technical, environmental and financial requirements, which include:</p> <ul style="list-style-type: none"> • MOU or cooperation agreement with ore supplier • Experts in mining or metallurgy having at least 3 years of experience • Offtake agreement with the buyer • Feasibility study approved by MEMR or Governor, depending on their respective authority • Construction plan • Corporate documents and mining license of ore supplier

Proposed Amendments to New Mining Law

- Adjustment of Issuer of Mining Business License to only be Minister and Governor:
 - Regent/Mayor no longer has the authority to issue Mining Business License: this is in order to conform to the Regional Government Law
 - Mining business license in the framework of foreign investment, and for state-owned enterprise/regional-owned enterprise is issued by Minister
 - Mining business license in the ocean area is issued by Minister
- Term of Mining Business License for mining companies that are integrated with smelter or mine-mouth power plant
- Administrative sanctions for regional governments that do not comply with their obligations in the supervision of mining business activity



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