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CHRISTIAN TEO & PARTNERS

# OPPORTUNITIES TO INVEST IN RESOURCES, RENEWABLE ENERGY + INFRASTRUCTURE IN INDONESIA

2019

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## 1 ECONOMIC OVERVIEW

### 1.1 ECONOMIC OVERVIEW OF INDONESIA

Indonesia is currently the largest economy in southeast Asia and is predicted to become the world's fourth largest economy by 2050.<sup>1</sup> Some of the main drivers of strong projected economic growth in Indonesia are its **favourable demographics** – it is estimated that approximately 50% of its population of 262 million (in 2017) are under the age of 30<sup>2</sup> – and its **emerging middle class**: real income growth will lift private consumption. Infrastructure investment will also remain high.<sup>3</sup>

As Indonesia fast approaches the position of the world's fourth largest economy by 2050, it will find itself with the power to influence the Indo-Pacific region, shape its economic and political architecture, and be a global influence.<sup>4</sup>

The level of ease of doing business in Indonesia is improving slowly, and since mid-2015, the Government has prioritised reforms aimed at improving the business climate, including streamlining procedures for setting up and running a business.<sup>5</sup>

Below are Indonesia's key economic indicators<sup>6</sup> which show that in 2019, Indonesia's Gross Domestic Product (GDP) was US \$1.1 trillion and its real GDP growth (% change year on year (yoy)) was 5.2% and its population in 2018 was 264.2 million, and increase of 0.84%.<sup>7</sup>

Indonesia's current account position has been deteriorating for the past two years and now shows a very substantial deficit.<sup>8</sup> More precisely, the current account deficit is greater than US\$8 billion at the start of 2019 compared to a quarterly average of approximately US\$4 billion over the period second quarter 2015 to first quarter 2017. There was a particularly dramatic increase

in the current account deficit, of more than 67%, from approximately US\$4.6 billion in the second quarter of 2017 to approximately US\$8 billion in the second quarter of 2018.

The recent increase in the current account deficit<sup>9</sup> has been accompanied by a slight weakening in the value of the Indonesian Rupiah which has slid from approximately Rp13,800:US\$1 in early 2018 to Rp1,4129:US\$1 as at 18 October 2019,<sup>10</sup> a decline of approximately 2.5%.

Various reasons have been advanced for the rapidly increasing current account deficit but Indonesia's unfortunate position, as a growing net oil importer in a time of rising oil prices, is almost certainly one of the main reasons.

The above facts indicate that the macroeconomic outlook for Indonesia, as a whole, is positive. Indonesia is predicted to achieve a prolonged period of economic growth in order to become the world's fourth largest economy by 2050. Given Indonesia's expected rise to become an economic powerhouse, it is becoming increasingly important for Australia to cement itself as a key trading partner of Indonesia so we can capitalise on the economic opportunities that will flow as a result of this rise. However, it is clear that Indonesia will not achieve its ambitious growth trajectory without the support of foreign investment and capital, particularly in infrastructure and education which have been cited on a number of occasions as being of strategic importance to the Government. Although Indonesia has made some significant strides to improve the investment climate and the ease of doing business, there still remains areas for improvement to encourage greater foreign investment.

#### General Information

Capital	Jakarta					
Official language	Bahasa Indonesia					
Population	264.20 million (2018)					
Currency	Rupiah					
Economic indicators	2014	2015	2016	2017	2018	2019
GDP (US\$b) (current prices)	891.1	860.7	932.4	1,015.4	1,100.9	1,075.0
GDP per capita (US\$)	3,533.6	3,369.4	3,604.3	3,875.8	4,051.7	4,123.3
Real GDP growth (% change yoy)	5.0	4.9	5.0	5.1	5.2	5.2
Inflation (% change yoy)	6.4	6.4	3.5	3.8	3.2	3.3
Unemployment (% labour force)	5.9	6.2	5.6	5.5	5.3	5.2

## 1.2 AUSTRALIA'S TRADE AND INVESTMENT RELATIONSHIP WITH INDONESIA

Despite Indonesia being Australia's closest northern neighbour, the two-way bilateral trade and investment relationship between Indonesia and Australia is regularly described as "underdone".<sup>11</sup> The two countries have unexpectedly low levels of trade and investment links for economies which share a border.<sup>12</sup>

Analysis completed by the Perth USAsia Centre shows that trade relations among the G20 economies reveals the paucity of Australia-Indonesia economic ties.<sup>13</sup>

The share of two-way trade in 2016 among the sixteen contiguous dyads within the G20 (countries which share either a land or maritime border), reveals that Indonesia and Australia have the lowest bilateral trade volumes of any contiguous pairing within the G20, accounting for 2.8 and 2.0 percent of each other's two-way trade respectively. Even Russia, which was the subject of economic sanctions by some G20 members during 2016, had deeper trade relations with several of those countries with sanctions in place than the relationship between Australia and Indonesia. Australia's trade and investment relationship with Indonesia is illustrated in the table below:

### Australia's trade and investment relationship with Indonesia

Australian merchandise trade with Indonesia, 2018 (A\$m)		Total share	Rank	Growth
Exports to Indonesia	6,823	2.0%	11th	-2.4%
Imports to Indonesia	4,996	1.6%	15th	18.9%
Total merchandise trade (export + imports)	11,242	1.8%	13th	5.6%
Major Australian exports 2017 (A\$m)		Major Australian imports 2018 (A\$m)		
Wheat	827	Crude Petroleum	1,108	
Crude Petroleum	749	Refined Petroleum	468	
Live animals (excl seafood)	702	Wood, simply worked	304	
Coal	633	Footwear	218	
Australia's trade in services with Indonesia, 2018 (A\$m)		Total share	Rank	Growth
Exports of services Indonesia	1,6097	1.8%	14th	6.1%
Imports of services Indonesia	4,068	4.2%	6th	13.8%
Major Australian services exports, 2018 (A\$m)		Major Australian service imports 20178 (A\$m)		
Education-related travel	899	Personal travel excluding education	3,454	
Personal travel excluding education	441	Transport	259	
Australia's investment relationship with Indonesia, 2017 (A\$m)		Total	FDI	
Australia's investment in Indonesia		5,632	2,283	
Indonesia's investment in Australia		1,076	1	

### Indonesia's global merchandise trade relationships

Indonesia's principal export destinations, 2017		Indonesia's principal import destinations, 2017	
1 China	15.1%	1 China	24.1%
2 United States	10.8%	2 Singapore	11.4%
3 Japan	10.2%	3 Japan	9.5%
14 Australia	1.6%	8 Australia	3.1%

## 1.3 INDONESIA-AUSTRALIA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT – OPPORTUNITIES FOR INCREASED TRADE AND INVESTMENT

### (a) Introduction

On 4 March 2019, the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) was signed by the Government of Indonesia and the Commonwealth Government of Australia.<sup>14</sup>

After consideration of the IA-CEPA (including consideration of public submissions and the necessary consultation processes with relevant stakeholders), on 9 October 2019, the Joint Standing Committee on Treaties (JSCOT) (who considers tabled treaties in Australia, including IA-CEPA) tabled a report on Australia's proposed IA-CEPA with Indonesia. JSCOT has recommended ratification of the treaty.<sup>15</sup> Note that the submissions received by JSCOT in support of the IA-CEPA are publicly available to view on the Parliament of Australia website.<sup>16</sup>

The IA-CEPA is the main bilateral initiative deployed to rectify the gap in Indonesia-Australia economic relations. The goal of the IA-CEPA is to create a framework for closer economic connections, by addressing barriers to trade (both tariff and non-tariff barriers) while improving mutual access to service markets. It also seeks to increase bilateral investments through facilitation and regulatory cooperation measures.<sup>17</sup>

### (b) Key outcomes of the IA-CEPA for Australian business – services and investment

Market access outcomes on services and investment will provide increased certainty to Australian businesses and services suppliers in the Indonesian market, including guaranteed levels of Australian ownership. Indonesia's commitments are much stronger than they have ever agreed to before in a trade agreement. Indonesia will not be able to limit the level of Australian ownership – or require that ownership be divested – below the percentages agreed (with limited exceptions). IA-CEPA also contains a set of high-quality, modern rules governing the treatment of services and investment, as well as

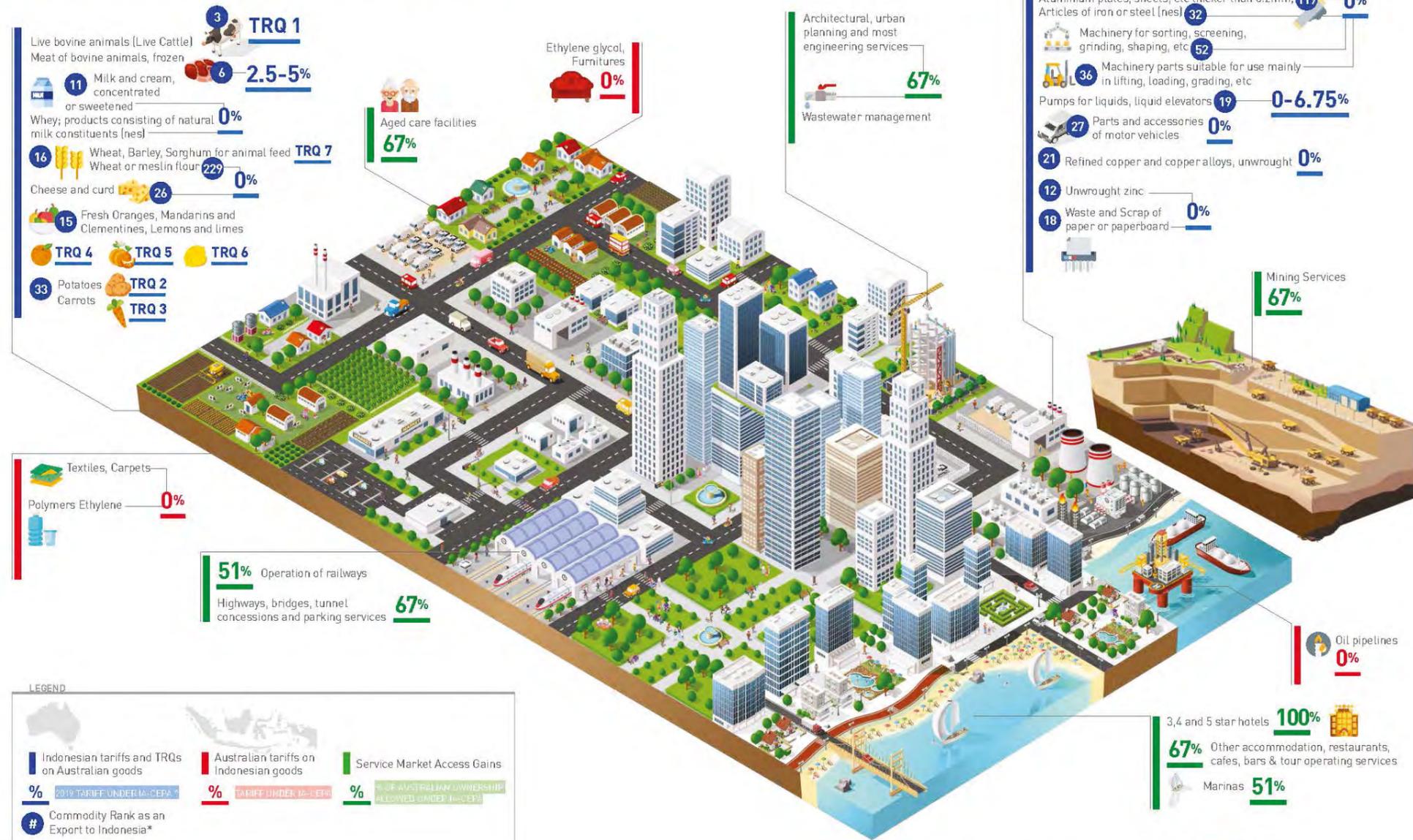
modern rules on digital trade. Obligations are balanced with robust safeguards to preserve Australia's right to regulate in the public interest.<sup>18</sup>

### (c) Services and investment – highlights

- (i) Mining and related services Australian ownership up to 67% of contract mining services and mine site preparation services.
- (ii) Construction services – Australian ownership up to 67% for most construction-related work.
- (iii) Energy:
  - Indonesia committed to allow Australian ownership up to:
    - + 95% of power plants (more than 10 megawatts);
    - + 75% of oil and gas platform construction;
    - + 67% for electrical power construction, installation, operation and maintenance;
    - + 55% for electrical power installation constructions;
    - + 51% of geothermal power plants (10 megawatts or less); geothermal surveying, drilling and operations; and offshore oil and gas drilling.
  - (iv) Transport/infrastructure:
    - + Australian ownership up to 67% for highways, bridges, tunnel concessions and parking services and 51% for operation of railways.
  - (v) Wastewater management:
    - + Australian ownership up to 67% of wastewater management.
  - (vi) Professional Services
    - + Australian ownership up to 67% of architectural, urban planning and most engineering and surveying services.
  - (vii) Work training:
    - + Australian ownership up to 67% for supplying certain technical and vocational training.



## IA-CEPA deliverables at a glance



\*Tariff will progressively reduce  
\*Commodity rank was assigned to each key export using data provided by the Australian Department of Foreign Affairs and Trade. This data available at: <https://dfat.gov.au/about-us/publications/Pages/trade-statistical-pivot-tables.aspx>  
† Key point: Upon IA-CEPA's entry into force, Australia will eliminate all tariffs on imports of goods from Indonesia

Graphic developed by Perth USAsia Centre using data provided by the Australian Department of Foreign Affairs and Trade. This data available at: <https://dfat.gov.au/about-us/publications/Pages/trade-statistical-pivot-tables.aspx>

- (d) Key outcomes of the IA-CEPA for Australian business goods
- + Building on the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), IA-CEPA will provide better and more certain access to the Indonesian market for Australian exporters.
  - + Over 99% of Australian goods exports by value to Indonesia will enter duty free or under significantly improved preferential arrangements by 2020 (compared with 85% under AANZFTA).
  - + Indonesia will guarantee automatic issue of import permits for key products such as rolled steel coil and copper cathodes (import licences are a major irritant for many Australian exporters into Indonesia).
- + The treatment at entry into force of hot and cold rolled steel coil is duty free access (from between 2.5% to 11.25%) for 250,000 tonnes in year one. The longer term outcome is 5% annual growth in volume thereafter. An example of an Australian company that currently exports cold rolled steel coil to Indonesia is BlueScope Steel.<sup>19</sup>
- + The treatment at entry into force of copper cathodes is that the tariff will be eliminated.
- (e) Goods - other key outcomes
- + Trade facilitation - improvements in administrative procedures for exporters and importers to facilitate goods trade.
  - + Non-tariff measures - dedicated chapter on non-tariff measures (NTMs) with bilateral co-operative mechanism

enabling regular discussion of NTMs – a first for an Australian FTA.

- (f) Some of the key outcomes of the IA-CEPA for Indonesia
- (i) Skills package

As part of an overall skills package, Australia and Indonesia have agreed to a reciprocal Skills Exchange, allowing people with staff tertiary level skill qualifications from both countries to gain 6 months experience in the other's market.

Australia has also committed to allow up to 200 Indonesians per year to engage in 6 month work training opportunities in Australia – this will help build the capacity of Indonesia's workforce in key sectors, including those of

interest to Australian investors.

Indonesia will also receive an increase in the number of Australian work and holiday visas (from 1000 today to 4100 in year one, growing to 5000 over six years). This will provide useful work experience for young Indonesians as well as assist regional Australia to meet seasonal labour requirements.

- (ii) Economic cooperation

IA-CEPA includes a framework for trade and investment-related cooperation through a jointly-funded work program. The joint work program will support technical assistance and capacity building activities across a range of trade-related areas to strengthen commercial links and help stimulate two-way investment.



(d) Industry comments in support of the IA-CEPA<sup>20</sup>

Below we have set out a number of people that have been cited by the Australian Government Department of Foreign Affairs and Trade (DFAT) as supporting the conclusion of the IA-CEPA negotiations.

**Mark Vassella,**  
Managing Director and  
Chief Executive Officer of  
BlueScope

“BlueScope is very pleased that the Australian Government has secured a high quality, comprehensive agreement with Indonesia.

The outcome on hot rolled coil (HRC) and cold rolled coil (CRC) steel opens up the potential to more competitively export steel products from our Port Kembla Steelworks to BlueScope’s operations in Indonesia. This is a win-win for Australia and Indonesia: it will boost Australian steel exports; while also ensuring that BlueScope’s operations in Indonesia, which employ over 500 Indonesians, have access to a wider range of high quality, competitively priced feedstock.

We congratulate the government, including the former Trade Minister The Hon Steven Ciobo, for their hard work and close liaison with industry in achieving this important outcome.”

**Phil Turtle,**  
National President of  
Australia Indonesia Business  
Council (AIBC)

“The Australia Indonesia Business Council, as the peak organisation involved with the promotion and facilitation of trade and investment between Australia and Indonesia, is delighted to see the finalisation of IA-CEPA and congratulates all involved in its formulation. The Australia-Indonesia relationship is an important yet historically underdone one, and this Agreement promises to kick-start a new era of Trade and Investment between our countries. With important outcomes delivered across a broad range of sectors, the AIBC looks forward to playing an important role in socialising IA-CEPA within the business community, ensuring the opportunities created are widely known and pursued.”

**Tania Constable,**  
Chief Executive Officer  
of Minerals Council of  
Australia

“This is a good outcome for the Australian and Indonesian resources sectors.

The agreement’s provisions will create more scope for Australia’s world-leading mining services firms to partner with Indonesian businesses in developing that country’s extensive minerals and energy resources.

This will not only provide new export opportunities for Australia – it will also support economic growth and development in one of Australia’s nearest and most important neighbours.

The agreement’s tariff reductions for copper cathodes and steel products will improve market access for these resources-based commodities. Cheaper input costs will also boost the competitiveness of a number of Indonesia’s manufacturing industries.”

**Robert Trzebski,**  
Chief Operating Officer  
of Austmine

“Austmine welcomes news of the conclusion of IA-CEPA. For over 10 years now, Indonesia has consistently ranked among the top 5 export destinations for Australian exporters of Mining Equipment, Technology and Services (METS) and remains a region of future growth in the resources sector. IA-CEPA should encourage more Australian METS exports to Indonesia, to the mutual benefit of our countries”.

## 2 AUSTRALIAN COMPANY PROFILES



Asia-Pacific region. Nusantara owns a 100% interest in the Awak Mas Gold Project through its 100% owned local Indonesian subsidiary company, PT Masmindo Dwi Area (**Masmindo**). The Awak Mas Gold Project is located in the Luwu Regency of the South Sulawesi Province in Indonesia.

Nusantara’s Chief Executive Officer (CEO), Neil Whitaker and Executive Chairman, Greg Foulis sat down with Julia Scott, Energy + Resources Lawyer, Gilbert + Tobin to discuss Nusantara’s investment experience in Indonesia and the plan for Nusantara going forward.

### What are some of the keys to successfully doing business in Indonesia?

Nusantara made a strategic decision to relocate Neil as the CEO to Jakarta and both Greg and Neil emphasised the importance of having a physical presence in Indonesia and described Jakarta as being “*the centre of gravity for the business*”. Neil, having over 40 years’ experience in the mining sector, joined Nusantara as CEO on 26 August 2019. Having previously worked in the Asia-Pacific region (including Indonesia), Neil has relevant experience which will place him in good stead to drive the Awak Mas Gold Project towards development. The relocation of the CEO to Jakarta is a testament to Nusantara’s commitment to Indonesia and its strategy to drive the business from Jakarta.

Since arriving in Jakarta, Neil said that he did not appreciate the network that he had left behind; he has had a tremendous welcome from the shareholders and from the local community both in Jakarta and in Sulawesi. He said that it is these long-standing relationships that will assist him in his role as CEO and in successfully delivering the Awak Mas Gold Project.

In speaking about these relationships in Indonesia, Neil commented that he knows the shareholders of Nusantara well including Nusantara’s local strategic partner, PT Indika Energy Tbk (**Indika**). Both Neil and Greg commented that part of Nusantara’s strategic direction and successfully setting up in Indonesia is to collaborate with Indika and they also see this as a key differentiator from other mining companies operating in Indonesia. Indika is an Indonesia-based integrated energy company mainly engaged in energy support services.

Neil, in providing an overview of his professional working career, commented that he is returning to Indonesia at a time when, in his view, the business and regulatory environment

Although the Indonesian mining sector is a key player on the international mining stage, the sector is far from reaching its full potential. This presents a significant opportunity for growth, development and an increase in foreign investment. There are a number of Australian companies with current operations in Indonesia with Australian companies among the leading investors in Indonesia’s energy and resources sector.

It is one of the many examples of the bilateral nature of the trade and investment relationship between Australia and Indonesia. Indonesia has also been a particular export target for Australian companies in the mining services sector with the 2015 Austmine National Survey indicating that almost half of Australian mining equipment, technology and services (METS) sector companies are exporting to Indonesia.

Co-author Julia Scott recently discussed the Indonesian investment experience with representatives of three Australian companies with current operations and projects in Indonesia. CEO Neil Whitaker and Executive Chairman Greg Foulis both of Nusantara Resources Limited, CEO of Bis Industries Limited, Brad Rogers and Helen Brown of Bisnis Asia each provided their unique insights. The following company profiles set out a summary of these recent Q&A discussions.

### 2.1 MINING SECTOR

#### Nusantara Resources Limited

Nusantara Resources Limited (**Nusantara**) is an Australian mining company which is focussed on growing shareholder value by developing and operating gold projects within the

in Indonesia is very supportive of the mining industry. He compared the current environment in Indonesia to 2010 when there were Australian investors and companies who were nervous about doing business in Indonesia because of the difficult regulatory framework, whereas today the situation is quite different giving companies the right grounding to successfully do business in Indonesia.

So, it comes back to the business model for success, which is that companies should be looking to partner appropriately, not just at the ownership level but across the board. Having these long-standing relationships is key in securing the best partnerships.

#### Why did Nusantara invest in Indonesia?

Greg explained that when investors are looking at Nusantara they will frequently ask 'why Indonesia', to which Greg responds as follows. Greg commented that firstly Indonesia has tremendous geological and mining potential which is demonstrated by the fact that it has some of the world's great copper, gold and nickel mines. The area that Nusantara is operating in is Sulawesi, which is a "powerhouse of mining". The other element that is quite striking about Indonesia is that there is a tremendous skill base, which has the capacity to do everything required to support the mining sector.

Greg pointed to a number of other Australian companies and investors that have also successfully invested in Indonesia including Nickel Mines Limited and EMR Capital which demonstrates that the investment climate in Indonesia is positive (refer to section 2.4).

#### How did Nusantara go about identifying a suitable partner in Indonesia?

In December 2018, Nusantara's strategic partner, Indika, acquired 19.9% of the share capital of Nusantara (which has since increased to 21.02%).

Greg commented that what Nusantara did in 2018 by partnering with Indika was setting itself up for more than financing. Beyond Indika's financial capacity, there are a number of other benefits. One of these benefits is that a subsidiary of Indika is PT Petrosea Tbk (Petrosea), a publicly listed company in Indonesia. Importantly, Petrosea has an engineering and mining services business and are a competitor to tier-one contractors operating in Indonesia such as Leightons and Thiess. Partnering with Petrosea provides an opportunity to leverage their engineering, procurement and construction capability as a partner, rather than a contractor or services provider.

#### What are Nusantara's plans for 2020 and beyond?

Nusantara is looking to be very strategically considered in how it builds its business in Indonesia. Now that they have finished all the basics, they are focusing on securing debt and equity finance for the Awak Mas Gold Project to take it into

the development phase. Although these discussions are very far progressed with financiers and investors, it remains the priority for the Nusantara management as development of the project cannot commence before financing is secured. To take the Awak Mas Gold Project into development, Nusantara is also focused on putting together a project management team, engaging local contractors (who will most likely be our preferred partner in Indonesia, Petrosea) and procuring the required technical support from Australia.

Looking beyond 2020, Nusantara's goal is to own multiple mine assets in the Asia-Pacific region and to maintain an exploration program (including in the neighbouring deposit, Salu Bulu). Greg emphasised that Indika and Nusantara strategic interests are aligned in that they both want to build a mining business beyond the Awak Mas Project. So, strategically there is a desire by Indika and Nusantara to build a multiple operation business.

#### How will Nusantara manage the mandatory divestment requirement under the Indonesian mining law in your strategic plan?

In 2018, Nusantara went through a process, as did a number of other companies, where its Contract of Work tenure was reconfirmed. More importantly, there was a very positive development as Nusantara's mandatory sell down period shifted from 5 to 10 years from first production and any sell down of the asset must be at fair value from an international perspective. Importantly, both the timeline and the mechanism were articulated.

*"Our divestment point is 10 years from first production, which is a long way out. But again, the Nusantara approach has been to partner from day 1 rather than think about it in year 10."*

Nusantara chose to partner at the beginning and not wait for the mandatory divestment process to start. There is an arrangement under the Shareholders Agreement with Indika whereby Indika can buy a minimum of 25% of the shares in Masmindo, being the holder of the Contract of Work. This is significant because Indika's participation in Masmindo will count towards the mandatory divestment requirement stipulated by the Indonesian mining law. The mandatory divestment requirement is often cited by potential investors as a deterrent to investment in mining in Indonesia. Nusantara is an example of how they have used their partnership with Indika to differentiate themselves from any other mining company.

## 2.2 MINING SERVICES

### Bis Industries Limited

Bis is a leading provider of specialised services to the resources sector, delivering for mining customers since 1915. Bis provides haulage, site services, underground services and consulting to Resources companies across Australia and Indonesia. Bis first entered the Indonesian market in 2014, securing a contract to provide handling, haulage and logistics solutions to a coal mining operation in Tabang in East Kalimantan (Tabang Project). The success of the Tabang Project promoted further expansion of Bis' Indonesian operations, with Bis securing its second Indonesian contract at the Gunung Bara Utama coal mine in East Kalimantan. Bis CEO Brad Rogers discussed the company's entry into the Indonesian market and the important part that customer-led innovation will play in the company's future.

#### Why did Bis choose Indonesia as its first overseas market to invest?

Back in 2011 it was clear that the Australian iron ore and coal mining market was shifting towards steady, slow production.

Although Bis' long term business relationships would ensure Australia remained a good market for the company, Bis recognised the availability of overseas investment opportunities. The company was looking to target a market with favourable conditions for its unique business offering. Brad discussed the decision to extend Bis's off road load and haul business into the Indonesian market:

*"So for the off road load and haul business, we literally did a kind of global search against an evaluation framework to determine what would be an attractive market for Bis, and Indonesia came up as the most attractive market in the world in that regard."*

Bis recognised that its dual cab technology and higher payload solutions equipped it with a disruptive and competitive advantage over other players in the Indonesian market.

Brad acknowledged Bis' intention to expand its existing strategy:

*"...we want to be different, different and sustainable; different adds value, and let's take that thinking to the best market in the world and that was Indonesia for that particular role."*

The innovative haulage solution that was implemented in Indonesia by Bis was recognised with the METS Exporter for the Year Award in 2018, which recognises a METS (mining, equipment, technology and services) provider that has had the most significant export win by value or technological solution. Since then, Bis has secured further industry awards, and sparked interest from domestic and international miners for its innovative new mine hauler - Rexx.

#### Is Bis looking at other opportunities in Indonesia to expand its Indonesian footprint?

Bis' current operations are coal contracts in East Kalimantan. Bis is interested in expanding into non-coal contracts, potentially involving gold and nickel to allow the business to diversify and spread across other parts of Indonesia. Brad recognised that expanding across different commodities is beneficial from a risk management perspective. As it currently stands, a major change to the thermal coal market or unfavourable weather conditions in East Kalimantan has the potential to significantly impact its Indonesian operations.

#### What have been the greatest challenges to starting and running a business in Indonesia and how does this compare (if at all) to running a business in Australia?

Despite acknowledging that the requirement that foreign investors divest mining projects after 10 years has been a deterrent for many overseas investors in the mining sector, in relation to Bis' own experience Brad indicated that

*"our own experience of investing in Indonesia has been very positive"*

Prior to making the decision to invest, Bis took the time to properly understand the market, form the necessary relationships and develop sufficient confidence in the opportunities and risks. Brad offered the following reason for Bis' comparatively positive investment experience: *"I think that's partly to do with us being quite diligent in who we choose to do business with and we are focused on the kind of quality corporate counterparties."*

#### What advice would you give other Australian companies looking to invest in Indonesia?

Take the time to learn from the experiences of others.

*"The reality is, no matter how good your homework and entry strategy is, you're going to get some things that go wrong."*

Although not unique to Indonesia, it is often said that it is difficult to find people with the right skills – how does Bis go about either finding the right people to ensure that you can meet your commitments to your clients?

*“The usual part of going there, spending time, showing that you’re serious and explaining your plan to good people... form proper relationships wherever in the world you are and make sure you bring value to your counterparty.”*

Is Bis looking at other innovation opportunities to service customers?

There is much more to come from Bis. The company has a pipeline of innovative products and services that they will be launching to the market over the next 12 months, which have all been developed with their customers’ needs in mind.

*“We have a dedicated team designing products and services to solve customer challenges and deliver distinctive value to their operations. Our culture of curiosity and innovation has driven the business from its early days, and we are proud it remains at the forefront of everything that we do.”*

Rexx was awarded the 2019 Future of Mining Innovation award and Bis was most recently listed as one of Australia’s most innovative companies by the Australian Financial Review. What makes Rexx so unique to the current haulage offerings in the market?

Known as ‘Rexx’, the dual powered 20-wheel dump truck has been designed with a range of features specifically incorporated to deliver savings to Bis customers. Rexx can travel fully loaded for up to 40kms, which is more than four times the range of conventional dump trucks, eliminating costly rehandle from mining operations.

*“Rexx is a robust haul truck which offers miners a step change in flexibility and efficiency. Rexx forms part of Bis’ suite of bespoke load and haul solutions, which also includes Dual Powered Road Trains, providing a highly competitive, integrated mine haulage solution for mining customers.”*

Rexx’s robust and simple design leverages Bis’ existing knowledge and resources. This has meant Bis were able to keep our manufacturing costs low, allowing Bis to deliver savings to customers through its service delivery model.

*“At Bis, we are driven by bringing technology and innovation to our customers to deliver real value. We are very excited about the opportunity that Rexx creates for a whole range of mining operations in Australia and internationally.”*



### 2.3 CULTURAL CONSIDERATIONS: INSIGHTS

Capitalising on business opportunities in Indonesia by Helen Brown, Managing Director, Bisnis Asia

It is not just about how good your product or service is when going into Indonesia, if you do not put effort into building a mutually respectful relationship, you can set the wrong impression and negatively impact growth targets.

Acting and talking in a way that generates respect is one of the smartest moves that a company can make in the early stages of exploring a potential deal.

Australian businesses go wrong when they do not understand the Asian culture well and how culture affects the way business is carried out which is equally applicable to Indonesia, a country that mixes cultural norms with regulations and daily business dealings.

There is no doubt that businesses want to be the first to capitalise on growing economies. Indonesia has an economy worth almost half-a-trillion dollars, in heavy industries such as construction, mining and manufacturing. With a population of almost 270 million, the average age is 30, and there is a growing cohort of smart, young and aspirational adults who have big ideas about the future of their country.

Doing business in Indonesia takes time. That is why it is important to use this time effectively by understanding what cultural aspects are relevant to your business.

It means having a cultural understanding of where your product or service best fits, and being open to business proceedings that will not unfold the way you expect.

Interactions and communication have been developed and operate in what is called a “high-context” environment, and this affects how decisions are made – why people defer to others, how people respond to questions and in situations, and how Indonesian society is hard-wired against disagreement.

You can already see how this is very different from the Australian business culture. And for a company wanting to have a chance of success in business in Indonesia it is important to learn how to adapt to this to be as effective as possible.

Practical skills can be learned and refined over time that will help you with your market entry into Indonesia.

Learning cultural competence also helps you better understand obstacles to business growth and will better equip you to manage the risk that goes with complicated markets like Indonesia. There are ways to navigate this new territory and develop confidence to be a part of it, while not compromising company values.

*“There’s a lot of cultural barriers...even Australia itself is a very different place to the rest of the world. As Australians, I think we need to understand that more.”* - Fil Filiposki, AttackForge Co-Founder

Setting the right impression in a new culture, and knowing what to look for during meetings or negotiations, can help you avoid costly mistakes.

Bisnis Asia provides tailored, in-house training on issues that you will face and gives practical methods for improving trade.

# 3 OPPORTUNITIES IN RESOURCES

## 2.4 SIGNIFICANT DEVELOPMENTS BY AUSTRALIAN COMPANIES IN INDONESIA

### Nickel Mines Limited

Nickel Mines Limited (**Nickel Mines**) (ASX: NIC) is an Australian public company who was admitted to the Australian Securities Exchange in 2018. Nickel Mines is emerging as a globally significant, low cost producer of nickel pig iron (NPI), a key ingredient in the production of stainless steel. Nickel Mines holds 60% economic interests in the Hengjaya Nickel and Ranger Nickel projects, both of which operate 2 line Rotary Kiln Electric Furnace (RKEF) plants producing NPI within the Indonesia Morowali Industrial Park (IMIP). Nickel Mines also holds an 80% economic interest in the Hengjaya Mineralindo Nickel Mine (Hengjaya Mine), a large tonnage, high grade saprolite deposit located in the Morowali Regency of Central Sulawesi, Indonesia.<sup>21</sup>

### EMR Capital and the Martabe Gold Project

In 2016, an investment consortium led by EMR Capital, a specialist mining private equity fund, acquired a 95% stake in an Indonesian-based mining company, PT Agincourt Resources (**Agincourt**) for US\$775 million from Hong Kong-listed G-Resources. The remaining 5% is held by PT Artha Nugraha Agung, which is 70% owned by the District of South Tapanuli and 30% owned by the Province of North Sumatra. Agincourt has business activities encompassing mineral exploration and the mining, processing and sale of gold and silver bullion. Agincourt's sole operating site is the highly prosperous Martabe Gold Mine located in Sumatra, Indonesia.

At the close of 2017, PT Agincourt Resources had a total workforce of 793 employees, with 762 employees based at the Martabe Gold Mine and 31 employees based at the office in Jakarta. An additional 1,901 contractor employees were based at the mine. Over 74% of the total workforce, or 1,852 employees and contractors, were employed from the local community.

The Martabe Gold Mine operates under a 30 year Contract of Work with the Indonesian government. The area covered by this agreement is 1,639 km<sup>2</sup> and extends across four Regencies in the Province of North Sumatra. Construction of the Martabe Gold Mine commenced in 2008 and production commenced in July 2012.

EMR Capital Chief Executive Officer, Jason Chang is cited as having said significant growth had been achieved

at Martabe under the company's ownership. "Throughput and gold and silver produced have substantially increased, reserves have doubled, and AISC is now amongst the lowest in the world," he said. "The management team and all employees at Martabe have done an outstanding job during EMR ownership of the operation, particularly in relation to environmental performance and social and community relations, which are absolutely world-class."

In 2018, EMR Capital reportedly sold its stake in the Martabe gold mine for US\$1.21 billion to PT Pama Persada, a subsidiary of United Tractor. PT Pama Persada are the largest mining contractor in Indonesia so while they are not a mining company per se they are in the mining business.

Chang has been reported as saying that Indonesia was an important market for the company and it was currently assessing a number of other opportunities there.

EMR has nine investments worldwide across copper, gold, hard coking coal and potash. The Melbourne-based firm recently completed the \$2.25 billion acquisition of 80% of Rio Tinto's Kestrel mine as part of a consortium with Adaro Energy (see below).

### Kestrel Coal Resources

The incorporation of Kestrel Coal Resources (**Kestrel**) is another significant recent development and a good example of the bilateral nature of the investment relationship between Indonesia and Australia. Kestrel is a private company owned by EMR Capital of Australia and PT Adaro Energy of Indonesia. EMR Capital own a 52% share and PT Adaro Energy own a 48% share. EMR and Adaro joined forces to acquire the Rio Tinto 80% share in the Kestrel Coal Mine. The mine is located in the Bowen Basin at Crinum which is 51 km northeast of Emerald in Central Queensland, Australia. The agreement to purchase the Rio Tinto 80% share in Kestrel Mine was signed in March 2018. The transaction was completed in early August, 2018. Kestrel Coal Mine is a joint venture between Kestrel Coal Resources (80%) and Mitsui Investments (20%).<sup>22</sup>

## 3.1 MINING

### (a) Overview of the mining law in Indonesia

Indonesia continues to be an important player in the global mining scene with significant levels of coal, copper, gold, tin and nickel. Global mining companies continue to rank Indonesia highly in terms of coal and mineral prospects. The modest uptick in global commodity prices has improved the outlook of the sector. Indonesia's commitment to substantially increasing its level of infrastructure investment should also reduce costs over time in getting commodities to market.<sup>23</sup>

Article 33 paragraph (3) of the Indonesian Constitution affirms that:

*"the earth, the water, and natural resource wealth that are buried within the earth are to be under the control of the State and utilized for the greatest prosperity of the community."*

Pursuant to Article 8 of Indonesia's 1967 Mining Law, foreign parties could participate in large-scale Indonesian mining projects through Contracts of Work (**CoW**) and Coal Contracts of Work (**CCoW**) whilst relatively small-scale and medium-scale mining projects could only be conducted by Indonesian national parties by virtue of Mining Licenses (KPs). Neither (i) a foreign entity nor (ii) an Indonesian company in which foreign investors may legally hold shares (**PMA Company**) could hold a KP under the 1967 Mining Law. A PMA Company could, however, hold a CoW or a CCoW.

On 12 January 2009, the 1967 Mining Law was repealed and replaced by the 2009 Mining Law.

The 2009 Mining Law contemplates that:

- (i) KPs will be replaced by Mining Business Licenses (**IUPs**);

- (ii) CoWs/CCoWs will be replaced by Special Mining Business Licenses for Operation Production (**IUPKOP**);
- (iii) IUPs/IUPKs may be held by any type of Indonesian business entity, including a PMA Company, without any initial restriction or limitation on share ownership but with an unspecified divestiture obligation applicable to PMA Companies holding IUPs/IUPKs to be carried out starting after 5 years of production; and
- (iv) mandatory local value-added activities to be carried out in respect of both coal and metal minerals.

### (b) Changes to the mining law

#### (i) Introduction

With effect from 21 February 2018, Indonesia issued the Minister of Energy and Mineral Resources (**MoEMR**) Regulation No. 11 of 2018 on The Procedures for Granting Areas, Licensing and Reporting in Mineral and Coal Mining Business, which made some significant changes to the licensing regime. This regulation revoked and replaced eight previous regulations.<sup>24</sup>

MoEMR Regulation No. 11 of 2018 did not make any changes to the basic metrics of IUPs/IUPKs being maximum area size, maximum term, number of permitted renewals and issuing authority, all of which are carried over from previous regulations.

The following looks only at the material changes that MoEMR Regulation No. 11 of 2018 introduced for mine owners who are CoW/CCoW holders and mine owners who are IUP/IUPK holders.<sup>25</sup>

(ii) Mine Owners – CoW/CCoW holders

#### Adjustment of activity stages

CoWs/CCoWs provided for five activity stages being (i) general inspection, (ii) exploration, (iii) feasibility, (iv) construction and (v) operation production.

MoEMR Regulation No. 11 of 2018 adjusts the activity stages of CoWs/CCoWs to two only, being (i) exploration (covering general survey, exploration and feasibility study), and (ii) operation production (covering construction, mining, processing and/or refining, and transportation and/or sales).<sup>26</sup>

Each activity stage will be the subject of a decree (Surat Keputusan or SK) issued to the relevant CoW/CCoW holder. The intention is that the SK will refer only to either “exploration” or “operation production” so that general survey, exploration and feasibility study activities will all be covered by one SK for “Exploration” while construction and operation production will be covered by a second SK for “Operation Production”.

#### Upgrades

To the extent that a CoW/CCoW holder is not already at the operation production stage, its activity stage is to be upgraded to that of “Operation Production” once its Work Plan has been approved by the Ministry of Energy and Mineral Resources (**Ministry**) and, in any case, not later than 21 August 2018.<sup>27</sup>

#### Amendment of CoWs/CCoWs

After many years of negotiation, substantially all CoW/CCoW holders signed CoW/CCoW Amendment Agreements with the Ministry in early 2018 which provided for, amongst other things, the relevant CoWs/CCoWs to be replaced by IUPKS not later than the expiry of the current terms of the relevant CoWs/CCoWs.

Those CoW holders who want to be able to export less than fully refined metal mineral products, must convert their CoWs into IUPKS before exporting less than fully refined metal mineral products as a pre-condition to obtaining the Ministry recommendation for an Export Permit.

All of those CoW/CCoW holders who signed CoW/CCoW Amendment Agreements were also obliged to accept a 51% divestiture requirement within 10 years and increased non-tax government revenue and other tax imposts although, in many instances, the applicable rate of corporate income tax was reduced.

Refer to the section below for the problems with converting CCoWs to IUPKOPs.

(iii) Mine owners – IUP/IUPK holders

#### Security deposits

There has been a change in the calculation of the amount of the security deposit that must be included as part of an IUP/IUPK application following a party being declared the winner of a mining business license area tender. The previously required Security Deposit amount was 10% of the higher of the value of data compensation, total investment and replacement cost. This has now been changed to a fixed amount which is stated as being (i) Rupiah 5,000,000 in the case of IUPs/IUPKs less than or equal to 40 hectares and (ii) Rupiah 150,000 per hectare in the case of IUPs/IUPKs greater than 40 hectares.<sup>28</sup>

#### Rights and obligations of IUPK holders

MoEMR Regulation No. 11 of 2018 sets out what we understand is intended to be a comprehensive statement of all the rights and obligations of IUPK holders in one place (rather than across various laws and regulations as was previously the case). Accordingly, we now have a clearer and more comprehensive statement of the rights and obligations of IUPK holders,<sup>29</sup> which should go some way towards reducing the uncertainty surrounding IUPKs and otherwise make it possible to evaluate IUPKs, as an alternative to CoWs/CCoWs, in a more fully informed manner.



#### Ownership of minerals and coal

One of the rights of IUP/IUPK holders is the right to own and sell the minerals (including “associated minerals” but excluding radioactive minerals) and coal that they produce once the relevant production royalty or non-tax government revenue, due in respect of such minerals and coal, is paid.<sup>30</sup>

The right to own minerals and coal is in the current mining law<sup>31</sup> but has been largely ignored by resource nationalists. This is despite the fact that, without this right, IUP/IUPK holders would not be in a position to sell the minerals and coal produced by them or otherwise transfer good title to those minerals and coal to the buyers, whether domestically or by way of export, unless they were acting as agents of the Government. We suggest that the restatement of the rights of IUP/IUPK holders in respect of the ownership of minerals and coal in the new regulation is an attempt to resolve the apparent inconsistency in MoEMR Regulation No. 9 of 2017 regarding procedures and the pricing mechanism for divestiture of shares in respect of mineral and coal business activities.<sup>32</sup> As mentioned above, the 2009 Mining Law contains a divestment obligation whereby foreign shareholders of companies holding IUPs/IUPKs must, following five years after commencement of production, divest shares to the central or regional government, state or regional owned enterprises or private Indonesian parties. The treatment of “Fair Market Value” in MoEMR Regulation No. 9 of 2017 has subsequently been amended by MoEMR Regulation No. 43 of 2018 which was issued on 25 September 2018. Fair Market Value is now to be calculated not including mineral or coal reserves except for those mineral and coal reserves that can be mined during the term of the relevant Production Operation IUP/IUPK. MoEMR Regulation No. 43 of 2018 goes on to provide that Fair Market Value should be calculated on a discounted cash flow basis and having regard to comparable market data. Although MoEMR Regulation No. 43 of 2018 leaves a lot to be desired, in terms of clarity and certainty, it appears to envisage an earnings based calculation of Fair Market Value whereby the divestiture price is calculated on the basis that, once all taxes due to the Central Government in respect of mined production ore are paid, the mined ore belongs to the relevant Production Operation IUP/IUPK holder such that the Divestiture Price should be 51% of  $A \times B - C$ , where:

“A” is the estimated mineral ore production over the remaining term of the relevant Production Operation IUP/IUPK;

“B” is the estimated average market price of the mined production ore over the remaining term of the relevant Production Operation IUP/IUPK; and

“C” are the estimated taxes and charges payable by the relevant Production Operation IUP/IUPK to the Central Government in respect of the estimated mineral ore production over the remaining term of the relevant Production Operation IUP/IUPK.

It is beyond the scope of this Paper to set out the divestment obligations under the 2009 Mining Law. For further information on the divestment obligations of foreign companies, we recommend contacting the authors of this paper.

#### Foreign employees

IUP/IUPK holders may utilise the services of foreign employees subject to (i) approval of their work plans and budgets, which must now make express provision for existing and proposed foreign employees, if any, and (ii) approval of the employment of each proposed foreign employee by the Ministry of Manpower.<sup>33</sup>

Refer to the section below for further updates in relation to expatriates.

#### Preference for local and national mining services providers

IUP/IUPK holders are no longer expressly required to give preference to Local Mining Services Providers and National Mining Services Providers (i.e., non-PMA Companies) or to otherwise only use an Other Mining Services Provider (i.e. a PMA Company<sup>34</sup>) if there is no National Mining Services Provider or Other Mining Services Provider “available” to do the required work in the sense of being willing to do and financially and technically capable of doing the required work. However, it has always been relatively easy for IUP/IUPK holders, wanting to use an Other Mining Services Provider, to appoint the Other Mining Services Provider of its choice by being careful to specify the required mining services in such a way that only the preferred Other Mining Services Provider is likely to be willing to do and financially and technically capable of doing the required work.

With a couple of exceptions, the MoEMR Regulation No. 11 of 2018 is a largely positive development.

It is entirely consistent with the Government's various reform packages that are said to be aimed at reducing the amount of "red tape" constraining the activities of investors, whether domestic or foreign.

Refer to section 6 of this Paper for a review of the principal changes made to the licensing regime for mining services providers as a result of the new regulation.

(iv) Availability of new mineral exploration areas

In 2018 it was reported that new Indonesian mineral exploration areas will soon start to become available after a hiatus of almost seven years, namely 10 mining business license areas (**WIUPs**) (for iron ore, gold, asphalt and coal) and six special mining business license areas (**WIUPKs**) (for nickel and coal) (**New WIUP/WIUPK Offerings**). In turn, this means that it should be possible, in the near future, to obtain new Exploration Mining Business Licenses and new Exploration Special Mining Business Licenses for metal minerals and coal which is a positive development for investors.

The impending resumption of the availability of new mineral exploration areas has been made possible, in part, by the issuance of MoEMR Regulation No. 11 of 2018, which sets out, among other things, the regulatory regime needed to make the New WIUP/WIUPK Offerings legally possible.

To highlight the potential opportunity for investors, there has been a huge drop-off in exploration activity in Indonesia over the course of recent years. While this drop-off can be partly explained by a decline in mining profitability, during the 2012 to 2016 downturn in the mineral commodity price cycle, Indonesia has fared significantly worse than other geologically prospective countries in terms of declining exploration activity. In November 2015, the Indonesian Forum for Mineral Exploration and Development Association made a very detailed, written submission to the Ministry on the problems facing the local mineral exploration industry and what was required to "encourage a healthy and contributory exploration sector" in Indonesia (2015 EMDI Submission). The 2015 EMDI Submission identified that Indonesia has, in recent years, been spending just the very modest amount of approximately US\$100 million per annum on mineral exploration, most of which has gone towards "brown fields exploration" rather than towards "green fields exploration".

A 2017 World Bank Group presentation highlighted

that Indonesia only attracted about 1% of global mineral exploration spending in 2015 compared to 5.2% of global mineral exploration spending in 1995. Indonesia's recent and quite dramatic underperformance, in mineral exploration activity, may also be partly explained by the impossibility of obtaining new Exploration IUPs/IUPKs, while the Moratorium was in place, as well as by the uncertainty that was created as a result of the struggle for licensing control of the local mining industry. To the extent that the new regulation and the New WIUP/WIUPK Offerings herald the end of the Moratorium and the impending resumption of the issuance of new Exploration IUPs/IUPKs, without the previous uncertainty created by the struggle for licensing control of the local mining industry, some people might see this as the beginning of a new and more promising time for mineral exploration activity in Indonesia. This depends, however, on whether or not the new regulation incorporates the much needed reforms required to ensure investor interest in WIUP/WIUPKs as they become available.

First, in the case of WIUPKs (which are meant to be areas determined to hold the most significant and strategically important deposits of metal minerals and coal), State Owned Enterprises (**BUMNs**) and Regional Government Owned Enterprises (**BUMDs**) have priority rights to these WIUPKs. It is only if there is no BUMNs and no BUMDs interested in exploring and qualified to explore a particular WIUPK that it is possible for private sector parties to participate in a tender for that WIUPK.

Second, it is the Ministry/MoEMR which ultimately determines which mining areas are designated as WIUPs and which mining areas are designated as WIUPKs. This means that the Central Government has substantially unfettered discretion to designate a particular mining area as a WIUPK, rather than a WIUP, thereby triggering the priority right of SOEs and BUMDs.

Third, while the winning BUMD in a WIUPK tender may offer an equity participation to a private sector party, that equity participation will be limited to a maximum of 49% and will certainly be of the basis of the private sector party assuming not less than 49% of the exploration costs.

Fourth, in the unlikely event that there is no BUMN and no BUMD, interested in and qualified to explore a particular WIUPK and a private sector party is the winner of the resulting tender, the private sector party must offer a 10% participating interest to BUMDs in the relevant Province/Regency.

(d) Recent material updates

Since October 2018, there have been a number of material developments in the Indonesian resources sector. The material developments are summarised below.

(i) Completion of Freeport Indonesia Divestiture

The divestiture of majority ownership of PT Freeport Indonesia (**Freeport Indonesia**), to an Indonesian state-owned enterprise (**BUMN**), was completed in late December 2018 and thereby brought to an end one of the most contentious and long-running sagas in the history of the local mining industry.

As part of the completion of the Freeport Indonesia divestiture:

- (a) BUMN, PT Indonesia Asahan Aluminum (**Inalum**), increased its equity interest in Freeport Indonesia from 9.36% to 51.23%;
- (b) Inalum paid US\$3.85 billion to Rio Tinto and Freeport McMoran Inc;
- (c) Freeport Indonesia received a Special Operation Production Mining Business License (**IUPKOP**) extendable, on a 2 x 10 year basis, until 2041;
- (d) Freeport Indonesia committed to building a smelter within five years;
- (e) Inalum will subsequently transfer 10% of Freeport Indonesia shares to a special purpose vehicle, PT Indonesia Papua Metal Mineral (**PTIPMM**), to be owned as to 60% by Inalum and as to 40% by a Papua BUMD; and
- (f) Inalum will lend Papua BUMD US\$819 million, secured against Papua BUMD's 40% interest in PT Indonesia Papua Metal and Mineral and to be repaid out of subsequent dividends due to Papua BUMD from Freeport Indonesia.

It remains to be seen what, if any, long term benefit Indonesia and Indonesians as a whole actually derive from the Government's relentless pursuit of the Freeport Indonesia divestiture. The Government, nevertheless, deserves credit for not allowing itself to be swayed by those short-sighted individuals who claimed to have seen an opportunity for Indonesia to "get something for nothing" by either (i) cancelling the Freeport CoW on the pretext of past wrongdoing or (ii) taking the position that the Government had no obligation to extend the Freeport CoW once the then current term expired in 2021.

Despite some domestic criticism of the Government's decision to allow Inalum to pay US\$3.85 billion for a majority shareholding in Freeport Indonesia, this was actually a relatively small price to pay for avoiding what would otherwise have likely been serious and lasting damage to Indonesia's reputation as at least a somewhat reliable foreign investment destination.

(ii) Further restrictions on use of export proceeds

Growing concern about the size of Indonesia's current account deficit has caused the Government to further restrict dealings with proceeds from the export of products resulting from the exploration for, management and processing of certain natural resources including mineral products (**Natural Resource Products**) (**DHE SDA**).

In January 2019, Government Regulation No. 1 of 2019 re Export Proceeds from Exploration, Management and/or Processing of Natural Resources (**GR 1/2019**) was issued.

Supervision of the implementation of GR 1/2019 is shared jointly by the Ministry of Finance (**MoF**), Bank Indonesia (**BI**) and the Financial Services Authority (**OJK**).

The Government subsequently introduced additional measures to ensure compliance with GR 1/2019. These additional measures are set out in MoF Regulation No. 98 of 2019 re Administrative Sanctions for Violation of the Obligation to Repatriate Foreign Exchange from Export of Natural Resources (**MoFR 98/2019**).

GR 1/2019 came into effect on 10 January 2019 while MoFR 98/2019 came into effect on 1 July 2019.

GR 1/2019 provides that, subject to a couple of minor exceptions, DHE SDA must be:

- (a) deposited in a special DHE SDA account opened by the exporter with an Indonesian foreign exchange bank (DHE SDA Account) (DHE SDA Account Requirement);
- (b) not later than three months after the filing and registration by the exporter of a declaration (PEB) in respect of the relevant natural resource product export transaction; and
- (c) only used for certain specific purposes (Permitted Uses Restriction).

The only exceptions to the DHE SDA Account Requirement are in respect of DHE SDA (i) generated by the Government itself and collected through BI or (ii) in the form of cash received by an exporter domestically and accompanied by appropriate supporting documents.

Indonesian Foreign Exchange Banks do not include overseas branch offices of banks headquartered in Indonesia.

MoFR 98/2019 imposes significant financial penalties and administrative sanctions for non-compliance with the DHE SDA Account Requirement, the Permitted Uses Restriction and other obligations.

Exporters, with DHE SDA Accounts, are restricted in what use they may make of the export proceeds or DHE SDA once the same are deposited in their DHE SDA Accounts. More particularly, DHE SDA Account balances may only be used for:

- (a) payment of export duties and other official fees related to export activities;
- (b) repayment of loans;
- (c) payment for imports;
- (d) distribution of profits and dividends; and
- (e) other investor needs recognized by Law No. 25 of 2007 re Investment including:
  - (A) purchases of materials and goods, including capital goods, required to protect the sustainability of capital investment;
  - (B) financing of capital investment;
  - (C) royalties;
  - (D) technical assistance payments;
  - (E) project contract payments; and
  - (F) fees for the use of intellectual property rights (together, **Permitted Uses**).

It is not clear, however, to what extent, if any, the Permitted Uses are confined to activities related to the exporter's business activities of exploring for, managing and processing Natural Resource Products intended for export or whether, instead, the Permitted Uses extend to any business activities of the relevant exporter even if those activities are unrelated to Natural Resource Products.

The Permitted Uses Restriction also does not make clear to what extent, if any, the Permitted Uses are confined to

onshore Permitted Uses or also include offshore Permitted Uses.

Where the Permitted Uses are to be funded through an escrow account, the relevant escrow account must also be with an Indonesian Foreign Exchange Bank although, it would seem, not necessarily the same Indonesian Foreign Exchange Bank where the relevant DHE SDA Account is maintained.

In the event the relevant escrow account has already been opened overseas, the exporter must move the escrow account to Indonesia before any payments in respect of Permitted Uses may be made using that escrow account.

(iii) Problems with Conversion of CCoWs to IUPKOPs

It continues to be unclear when and in what circumstances Indonesia's major coal producers will be able to convert their CCoWs into Special Operation Production Mining Business Licenses.

The long and unexplained delay in issuing the necessary enabling regulations may well indicate that the Government and major coal producers have been unable to reach consensus, as yet, on what would be minimally acceptable conversion conditions as far as both parties are concerned.

Numerous CCoWs will expire in the next few years. The expiring CCoWs include the CCoWs of PT Tanito Harum in 2019, PT Arutmin Indonesia in 2020, PT Kendilo Coal Indonesia in 2020, PT Kaltim Prima Coal in 2021, PT Multi Harapan Utama in 2022, PT Adaro Indonesia in 2022, PT Kideco Jaya Agung in 2023 and PT Berau Coal in 2025.

As the only continuing legal right to produce coal, on a large scale, is going to be a IUPKOP, CCoW holders are understandably very interested in converting their CCoWs into IUPKs and sooner rather than later.

The problems that CCoW holders face, in terms of converting their CCoWs into IUPKs, are twofold. First, there is the present lack of any clear legal basis for converting CCoWs into IUPKs. Second, the 2009 Mining Law indicates that the maximum concession area for an IUPKOP is 15,000 hectares. This is far less than the concession areas presently covered by CCoWs.

The Ministry of BUMN wants to see the balance of CCoW concession areas, in excess of 15,000HA, given to BUMNs.

In early 2019, the Ministry of Energy & Mineral Resources (**ESDM**) ignored the claimed SOE priority right, to former CCoW concession areas in excess of 15,000 hectares, and granted PT Tanito Harum an IUPKOP in respect of the same area previously covered by its CCoW or about 35,000 hectares.

Following a direct submission to the President by the Corruption Eradication Commission, the ESDM changed its position and cancelled the IUPKOP previously issued to PT Tanito Harum.

During the final days of the current legislative term, an attempt was made to force through amendments to the 2009 Mining Law that, if passed, would have secured the right of CCoW holders to receive IUPKOPs in respect of the same concession areas covered by their soon to expire CCoWs. This attempt, however, was ultimately unsuccessful due to intervention by the President and following public protests.

It remains to be seen what happens during the President's Second Term, which commenced on 20 October, in terms of protecting the rights of CCoW holders through amendments to the 2009 Mining Law or other means.

(iv) Bringing forward of nickel export ban

The Government has brought forward the ban on the export of nickel ore, with a nickel content of less than 1.7%, from 11 January 2022 to 31 December 2019 and thereby effectively banned the export of all Nickel Ore as of 31 December 2019 (**2019 Nickel Ore Export Ban**). The Government has, however, left in place the existing right to export bauxite ore and certain metal mineral concentrates until 2022 and subject to various export conditions being satisfied.

The legal basis for the 2019 Nickel Export Ban is to be found in the recently issued MoEMR Regulation No. 11 of 2019 re Second Amendment to MoEMR Regulation No. 25 of 2018 re Mineral & Coal Mining Business (**MoEMRR 11/2019**).

The 2019 Nickel Ore Export Ban is obviously inconsistent with the decision in 2017 to allow the resumption of exports of unprocessed nickel ore, with a nickel content of less than 1.7% and in ESDM approved quantities, for a maximum of five years or until 11 January 2022 and provided various export conditions were satisfied.

Even before the issuance of MoEMRR 11/2019, rumors about the impending 2019 Nickel Ore Export Ban had resulted in a dramatic increase, of more than 40% during 2019, in the price of nickel products on international markets.

The Government's justification, for the 2019 Nickel Ore Export Ban, may be summarised as follows:

- (a) domestic processing and refining of all nickel ore is the inescapable future of Indonesia and it is inevitable that there will eventually be a complete nickel ore export ban;
- (b) domestic processing and refining of nickel ore will greatly increase the value of Indonesia's metal mineral exports and make a major contribution to improving Indonesia's current account position;
- (c) Indonesia can significantly increase investment in construction of smelters for domestic processing and refining of nickel ore by showing suitable commitment to an immediate Nickel Ore Export Ban;
- (d) there is already or will shortly be sufficient smelter capacity in Indonesia to domestically process and refine all of the country's nickel ore production;
- (e) having regard to (a) to (d) above, it is very much in Indonesia's economic interests to move forward the Nickel Ore Export Ban from 2022 to 2019; and
- (f) there is no good reason why Indonesia should wait until 2022 to implement the Nickel Ore Export Ban notwithstanding that, as part of the 2017 resumption of nickel ore and bauxite ore exports, the Government previously assured nickel ore producers they could keep exporting low grade nickel ore until 2022 provided various export conditions were satisfied.

Regardless of any short-term economic advantages that will accrue to Indonesia as a result of the 2019 Nickel Ore Export Ban, there must be a concern that the 2019 Nickel Ore Export Ban may:

- (a) be interpreted as showing Indonesia has made little progress in overcoming the so-called "flip flop phenomenon", of ever-changing policy and regulation in the mining industry, that even the President has complained about;
- (b) confirm investors' worst fears about the lack of consistency and continuity in Government policy on mining industry related issues; and
- (c) discourage some new investment in the mining

industry, except possibly in smelter construction.

(v) Finalisation of Expatriate Employment Decree

The Minister of Manpower (**MoM**) has issued MoM Decree No. 228 of 2019 re Positions Available for Expatriates (**MoM Decree 228/2019**).

MoM Decree 228/2019 is a new decree on expatriate employment that overcomes a number of the concerns created by a draft of this decree circulated in early 2019 (**March Draft MoM Decree**).

The March Draft MoM Decree proposed to (i) take the approach then used in the case of certain industry sectors only, (ii) expand that approach to cover a much larger number of industry sectors (**Relevant Industry Sectors**), (iii) specify the only available employment positions for expatriates in each of the Relevant Industry Sectors (**Designated Expatriate Positions**) and (iv) eliminate the flexibility of the then used approach to grant exceptions, on a case by case basis and for expatriate employment in positions other than Designated Expatriate Positions, so long as a recommendation could be obtained from the minister responsible for supervising the Relevant Industry Sector (**Ministerial Discretion to Approve Additional Expatriate Positions**).

If it had been finalized and issued in its then form, the March Draft MoM Decree would have effectively limited expatriates to employment in the Designated Expatriate Positions only and without regard to (i) the needs of particular companies or (ii) the difficulties that particular companies or sectors may, from time to time, encounter in recruiting domestic employees with the required skills and experience.

The **no** compromises, **no** exceptions approach to expatriate employment, as reflected in the March Draft MoM Decree, was a major and undesirable departure from the then used and non-exclusive approach with its greater flexibility to allow for exceptions in individual cases.

The construction, mining and oil & gas sectors are particular beneficiaries of MoM Decree 228/2019 as the March Draft MoM Decree appeared to make little or no provision for expatriate employment in these critically important sectors of the Indonesian economy.

MoM Decree 228/2019 became effective on 27 August 2019.

MoM Decree 228/2019 has some similarities to the March

Draft MoM Decree.

Like the March Draft MoM Decree, MoM Decree 228/2019 brings together, in one place, a consolidated list of the Designated Expatriate Positions in all Industry Sectors. Previously, the Designated Expatriate Positions were set out in some twenty individual MoM decrees which have now been revoked as part of MoM Decree 228/2019.

Notwithstanding the similarities, however, MoM Decree 228/2019 has (i) added new Industry Sectors, (ii) significantly increased the number of Designated Expatriate Positions in many Industry Sectors and (iii) specifically retained the Ministerial Discretion to Approve Additional Expatriate Positions.

MoM Decree 228/2019 makes express provision for additional Industry Sectors and significantly more Designated Expatriate Positions in various Industry Sectors compared to the Draft MoM Decree.

MoM Decree 228/2019 has a new Industry Sector called “Mining and Excavation” with three Sub-sectors being (i) Oil & Gas, (ii) Coal & Mineral Mining and (iii) Geothermal. Quite remarkably, the March Draft MoM Decree did **not** make specific reference to **any** of these sub-sectors.

MoM Decree 228/2019 lists 592 Designated Expatriate Positions in the Mining & Excavation Sector, with (i) 482 Designated Expatriate Positions in the Oil & Gas Sub-sector, (ii) 15 Designated Expatriate Positions in the Coal & Mineral Mining Sub-sector and (iii) 95 Designated Expatriate Positions in the Geothermal Sub-sector.

MoM Decree 228/2019 provides that expatriates may serve as directors and commissioners of Indonesian companies operating in **all Industry Sectors** so long as such director/ commissioner positions do not deal with human resources matters and do not otherwise violate the prevailing laws and

regulations (MoM Decree 228/2019 Section 2).

Compared to the (i) 482 Designated Expatriate Positions in the Oil & Gas sub-sector and (iii) 95 Designated Expatriate Positions in the Geothermal Sub-sector, MoM Decree 228/2019’s recognition of only 15 Designated Expatriate Positions, in the Coal & Minerals Mining Sub-sector, may be regarded as quite restrictive. The 15 Designated Expatriate Positions in the Coal & Minerals Mining Sub-sector are (i) Project Manager, (ii) Business Development Manager, (iii) Finance Manager, (iv) Marketing & Commercial Manager, (v) Technical Sales Manager, (vi) Maintenance Manager, (vii) Research & Development Manager, (viii) Procurement & Logistics Manager, (ix) Contract Manager, (x) Technical Advisor, (xi) Technical Expert Development Consultant, (xii) Underground Mining Specialist, (xiii) Hydrology Consultant, (xiv) Pyrometallurgy Consultant and (xv) Auditor.

To the above 15 Designated Expatriate Positions, in the Coal & Minerals Mining Sub-sector, must be added MoM Decree 228/2019’s “blanket recognition” that expatriates may be directors and commissioners of Indonesian companies. Accordingly, while not beyond doubt, it is likely the case that expatriates can also fill the roles of President Director, Finance Director and Operational Director of coal and minerals mining companies so long only as these positions do not deal with human resources matters and do not otherwise violate the prevailing laws and regulations.

It is notable, however, that the Designated Expatriate Positions, in the Coal & Minerals Mining Sub-sector, do **not** include any positions for expatriates, below the board of directors’ level, in engineering, geological review or operations.

The net effect of MoM Decree 228/2019 is to make the Designated Expatriate Positions less restrictive than was the case with the March Draft MoM Decree and, at the same time, ensure there is some “inbuilt” continuing flexibility to address changing individual company needs for expatriates without having to amend MoM Decree 228/2019.

The Government has clearly listened attentively to the concerns expressed by various foreign embassies and chambers of commerce in respect of the March Draft MoM Decree. More importantly, the Government has accepted a number of the recommendations from these bodies in terms of the changes required to the March Draft MoM Decree.

MoM Decree 228/2019 does **not** include all the

recommended protections for expatriates currently working in Indonesia and for Indonesian companies currently employing expatriates. Nevertheless, MoM Decree 228/2019 should be considered a reasonable compromise between nationalist sentiments and the legitimate **minimum** needs of foreign investors. This is definitely a positive development as any greater restrictions on the ability of Indonesian companies to employ expatriates would be likely to present major problems for foreign investors.

### 3.2 OIL AND GAS

#### (a) Overview

Indonesia is one of the world's major producers and exporters of oil and gas products such as crude oil and liquefied natural gas (LNG). Indonesia is currently focusing on building its energy security, spreading resources income across the regions and improving its taxation and regulatory framework to encourage investment in the sector.

This provides new opportunities for foreign companies to consider investing in Indonesia's petroleum industry.

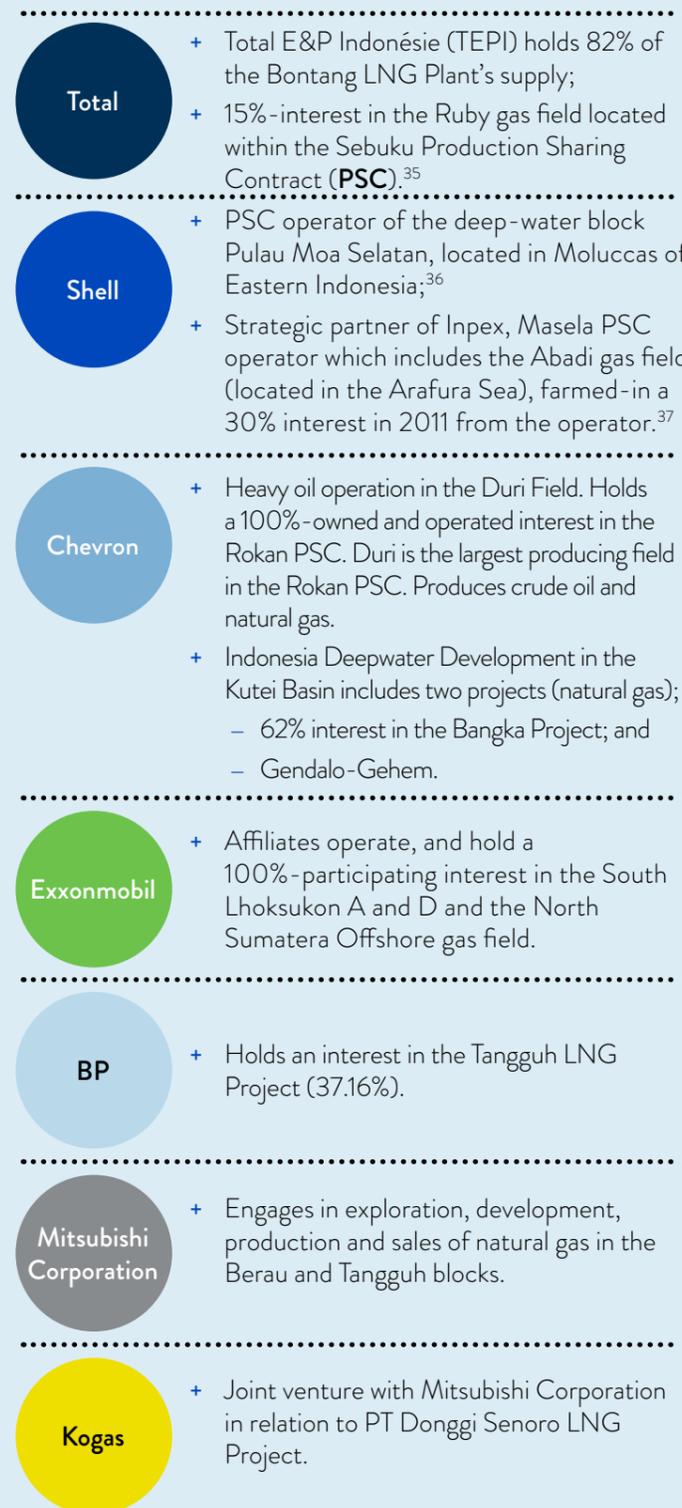
There are various opportunities in the exploration, development and extension stages. As at 31 March 2019 there was 214 blocks, including 110 exploration and 90 exploitation blocks available for bidding. There are several projects underway that have been recently given approvals by the Government, as discussed below.

However, the level of investment in the oil and gas industry in Indonesia has been on the decline over the past decade, largely due to regulation instability and uncertainty. Despite the Government's efforts to stimulate exploration through offers of new acreage and other pre-production financial incentives, it is Pertamina (an Indonesian State owned oil and natural gas corporation) that is largely dominating Indonesia's oil and gas sector.

The introduction of the Gross Split Scheme and the release of new regulations should go some way to resolving prior uncertainty. Indeed, investment in the oil and gas industry in Indonesia was around US\$10.9 billion in 2018 compared to US\$10.3 billion in 2017, suggesting that it has achieved this to some extent. Nonetheless, Indonesia still has a significant way to go for investment in the industry to return to historical highs (for example, revenue from the oil and gas industry decreased by almost 80% from Rp216 trillion in 2014 (US\$15b) to Rp44 trillion in 2016 (US\$3b)).

An example of current investment would be the upcoming Impex Abadi LNG Project (pre-Front End Engineering Design (pre-FEED)) which was recognised in June 2017 as a "National Strategic Project", and was given "Priority Infrastructure Project" status in September 2017.

Indonesia has an established history of international investment with respect to petroleum operations and many established players have petroleum operations and interests in Indonesia, including:



We note SKK Migas (special task force for upstream oil and gas business activities) has highlighted the availability of a minimum of 42 oil and gas main projects in Indonesia until 2027, which is expected to require US\$43.3 billion in investment.

#### (b) Upstream regulatory regime

##### (i) Production Sharing Contracts (PSC)

Indonesia was the first country to implement a PSC, a model of which has developed and been used widely throughout petroleum producing jurisdictions. In Indonesia, Pertamina participates in PSCs with international contractors.

Indonesia introduced the first PSC in 1966. It operates on the premise that the Government provides the contractor the right to explore a certain area and the contractor provides the necessary funds and technical skills in order to explore and, if successful, produce. The Government and the contractor split production through a formula set out in the PSC.

In 2017 Indonesia introduced a new type of PSC which no longer permits cost recovery and instead, adopts a gross-split model. The implications of this model are still being considered by industry. All new PSCs (or extensions of existing PSCs) going forward will be under the new gross-split model. A key feature of this new gross-split model is that contractors will no longer be required to submit cost recovery for approval by SKK Migas.

Between 2017-2019 there has been 40 Gross Split PSCs awarded and by 25 April this year there were a further 10 blocks in the bidding process.

##### (ii) Pre-production incentives

There are various fiscal incentives for companies prior to commercial production. These include:

- + import duty free for goods and services;
- + various VAT exemptions;
- + land tax reduction by 100%; and
- + the carrying forward of losses for 10 years.

#### (c) Downstream opportunities

The Government has identified the following types of projects in which they are actively looking for international participation:

- upgrading of existing plants;
- new grass root refinery plant projects;
- small and mini LNG plants; and
- LNG receiving terminal and regasification facilities.

We note that the recently issued Ministry of Finance Regulation No. 150/2018 regarding tax holiday incentives for particular industries includes the oil and gas refinery industry.

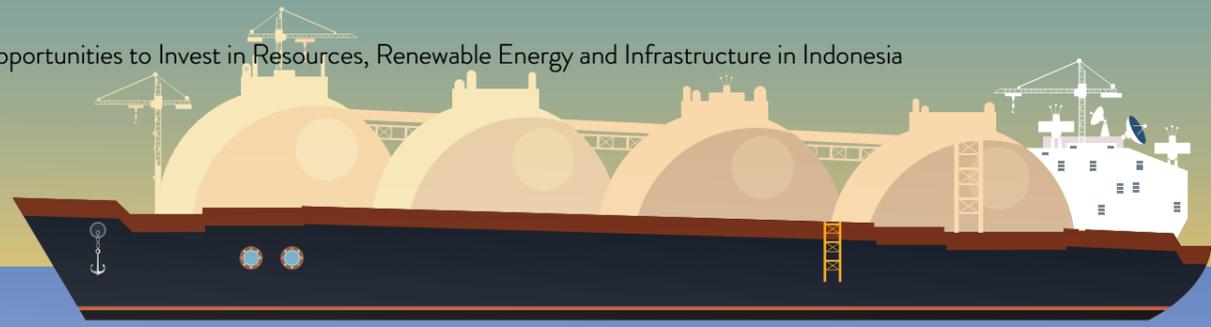
#### (d) LNG snapshot

Indonesia's first LNG plant production was in 1978. For many years, Indonesia positioned itself as the world's largest LNG exporter. Indonesia is now also an importer of LNG which is impacting its current account deficit.

##### (i) Currently operating LNG facilities

There are three current LNG liquefaction facilities in Indonesia:

- + Bontang in East Kalimantan: held by Pertamina (55%), VICO Ltd (20%), Japan Indonesia LNG Co Ltd (JILCO) (15%) (JILCO is a subsidiary of LNG Japan Corporation), Total S.A. (10%).
- + Tangguh in West Papua: held by BP (40.22%), CNOOC (13.9%), Mitsubishi Corporation (16.3%), Nippon Oil Exploration (Berau) Ltd (12.23%), KG Berau Petroleum Ltd (8.56%), Indonesia Natural Gas Resources Muturi Inc (7.35%), KG Wiriagar Overseas Ltd (1.44%).<sup>38</sup>
- + Donggi Senoro in Sulawesi: held by Mitsubishi Corporation and Korea Gas Corporation (KOGAS) indirectly through joint venture company Sulawesi LNG Development Limited (59.9%), PT Pertamina (29%), PT Medco LNG Indonesia (11.1%).<sup>39</sup>



Further, there are two LNG facilities being constructed in Indonesia:

- + Senggang LNG (0.5 MTPA), which is targeting first commercial production in 2019.<sup>40</sup> However, the Senggang LNG project has been temporarily halted due to the absence of a “borrow-and-use” permit for forest area for construction in a mangrove forest reserve area.
- + Abadi LNG, which Inpex Masela Ltd let a pre-FEED contract to KBR for the project in eastern Indonesia, based on an onshore LNG development scheme with an annual LNG production capacity of 9.5 MTPA.<sup>41</sup> In July 2019, the Government of Indonesia approved the revised Plan of Development for the project. The cost of the project is an estimated US\$20 billion.<sup>42</sup> In relation to the approval of the revised Plan, Wood Mackenzie research director Andrew Harwood observes:<sup>43</sup>

*“Post Jokowi’s election win, the government has shown greater flexibility on fiscal terms. In addition to the PSC extension, the government has agreed to an enhanced contractor profit split, investment credit and indirect tax exemptions which will provide for a post-tax contractor profit share of 50%...For Indonesia, making progress on Abadi is critical. Domestic LNG demand is expected to rise to 13 mmtpa by 2030 as gas demand grows and production declines.”*

Note, existing facilities also plan for expansion given the significant demand. Tangguh in West Papua is progressing with Train 3, which will add 3.8 MTPA of production capacity to the existing facility, bringing total capacity to 11.4 MTPA.<sup>44</sup>

(ii) Regasification

After operating as a liquefaction facility for over 30 years, one of Indonesia’s earliest LNG facilities, Arun LNG (held by Pertamina (55%), ExxonMobil (30%), JILCO (15%)), was converted into a regasification terminal in 2014.

In the same year, the Lampung floating storage and regasification unit (FSRU) terminal commenced operations. The FRSU vessel ‘PGN FRS Lampung’ is owned by Hoegh LNG Partners LP (Hoegh). Indonesian natural gas transportation and distribution company PT

Perusahaan Gas Negara (PGN) operates the vessel on a 20 year time charter with Hoegh.

Mitsui O.S.K. Lines signed a deal for the construction of a Floating Storage Regasification Unit (FSRU). The FSRU will be operated by a joint venture set up by Pertamina, Marubeni and Sojitz. The project is expected to start operation in December 2021.<sup>45</sup>

Indonesia-based company Jaya Samudra Karunia (JSK) took delivery of FRSU Karunia Dewata in 2018, the largest FRSU built in China.<sup>46</sup>

(iii) New projects/extensions

We understand that there are several new upstream projects underway that have received approvals from the Government, including:

- + the Jambaran Tiung Biru Project (gas processing facilities). The EPC contract was signed in December 2017 and the project received funding of US\$1.85 billion in August 2019. It is expected to commence production in 2021. The project is estimated to have reserves of 2.5 trillion cubic feet of gas.<sup>47</sup>
- + capacity expansion of the Jangkrik field in the Makassar strait. The participants are Eni, Engie and Pertamina. The Merakes field is estimated to hold 2 trillion cubic feet of gas. In April 2018, Eni received development plan approval.<sup>48</sup>
- + Tangguh Train III project, Papua’s Bintuni Bay which will add a liquefaction unit of 3.8 million tons per year of production capacity to the existing facility, bringing the total plant production capacity to 11.4 million tons per year (a 50% increase). It is expected to be operational from 2020. A fourth LNG train is also proposed.<sup>49</sup>
- + as mentioned above the Abadi LNG Project (INPEX Masela 68%, Shell 35%). Masela is expected to produce 150 million cubic feet per day of natural gas and 9.5 million tons per year of LNG, once it starts up in 2027.

We also note that following the April Presidential Election, the Government has decided to (i) extend Conoco Phillips’s operation of the Corridor oil & gas block in South Sumatra and (ii) approve Inpex’s revised plan of development for the Masela oil & gas block in South

Maluku. Rather than turning these important oil and gas projects over to Pertamina to develop, the Government has allowed major foreign companies to continue to take the lead role in each project.

The post-Presidential Election treatment of Conoco Phillips and Inpex is to be contrasted with the pre-Presidential Election treatment of two other major foreign companies, Total and Chevron, which lost the right to respectively continue operating the Mahakam oil & gas block and the Rokan oil & gas block when their production sharing contracts expired. Pertamina was, in each case, appointed as the new operator. Total and Chevron may have simply been unlucky, in terms of the expiration dates of their production sharing contracts, in the event that the Mahakam and Rokan projects went to Pertamina for no reason other than that the Government could not afford to be seen to be favoring foreign investors in the run-up to the April Presidential Election. The suggestion is that, with the Presidential Election over, the Government was able to be much more pragmatic in the case of the Corridor and Masela projects. The research director at global energy consultant Wood Mackenzie was quoted in the 25 July edition of The Jakarta Post as saying with reference to the Corridor oil & gas block decision:

*“This decision suggests a new pragmatism at play from the Indonesian government following the recent national elections, acknowledging the importance of international oil company experience... It indicates that retaining international oil company experience and capital is once again on the government’s radar.”*

The Government’s decision to allow Conoco Phillips and Inpex to continue with the Corridor and Masela projects may be explainable, to a greater or lesser degree, by a growing realization that Pertamina simply lacks the resources, at this time, to be able to effectively develop the Corridor and Masela projects in addition to the Mahakam and Rokan projects. With Indonesia’s oil production continuing to decline and the consequent need to import more oil in order to meet domestic demand having a very negative impact on Indonesia’s current account deficit, the President may have decided that the economic risks associated with allowing Pertamina to also take over the Corridor and Masela projects were simply too great to ignore.

The capital and other constraints currently faced by Pertamina may mean that, going forward, there will be more opportunities for Australian and other foreign companies in the Indonesian oil & gas industry than was previously thought to be the case.

(e) Other recent updates

(i) Requirement to supply to the domestic market

In 2018, draft amendment to Law No. 22 became publicly available for comment. Amongst other changes, the amendment requires the production of oil and gas to be prioritized to meet domestic demand (compared to the original law requiring a maximum of 25% to go to the domestic market) and entitles the Government of Indonesia to regulate oil and gas products to achieve this end. This change suggests there will be less investor control over the export of oil and gas products.

(ii) Restrictions on foreign workers

On 5 February 2018, the MoEMR revoked Decree 31/2013 pursuant to MoEMR Decree No. 6/2018. The result is that positions previously closed to expatriates are now open unless restricted under general manpower regulations.

(iii) Deposit of export proceeds

On 10 January 2019, the Indonesian Government released Government Regulation No. 1 of 2019, which provides that, amongst other changes, foreign exchange-denominated proceeds derived from the exploitation, management or processing of natural resources must be deposited in an account with an Indonesian bank licensed to conduct foreign currency business. These export proceeds are those arising from the export of mining, plantation, forestry and fishery products.

The concern for the oil and gas sector are as follows:

- + prior to this change, proceeds were generally arranged such that the funds were only held in an Indonesian bank momentarily before being wired overseas. This may no longer be possible;
- + PSC contractors may now have to deposit the proceeds from the sale of oil and gas products into an applicable onshore escrow account, which could be problematic for existing trustee structures; and
- + the new law has introduced various new sanctions for non-compliance.

(iv) Environmental law

In October 2009, Environment Law No. 32/2009 was issued. Although initially postponed, the law is now active. It requires entities to comply with standard environmental quality requirements and to secure environmental permits prior to commencing operations.

Likewise, although introduced in 2010, Government Regulation No. 24/2010 (as amended by GR No. 61/2012 and GR No. 105/2015) recently came into force. The result is that the use of forestry areas for non-forestry activities is only permissible if an IPPKH has been obtained from the Ministry of Forestry. The “borrow-and-use” permit holder is required to pay various non-tax state revenues if undertaking non-forestry activities and is under an obligation to undertake reforestation activities upon ceasing use of the land. The use of the forestry area may also require land compensation to certain stakeholders. It is the failure of obtaining a “borrow-and-use” permit that has halted the construction of the Sengkang LNG project.

**Securing domestic supplies**

As mentioned above, energy security is a major priority for Indonesia.

Indonesia is now an importer of LNG and is looking to grow its portfolio of gas suppliers to cater for domestic demand. Pertamina has entered into long-term LNG sale and purchase agreements (SPAs), including with the following companies.

- Woodside**

In 2017, Woodside entered into a long-term LNG SPA with Pertamina for the provision of 0.6 million tonnes per annum (2022–2034), with an option of 1.1 million tonnes per annum (2024–2038).
- Total**

Total signed LNG SPAs with Pertamina:

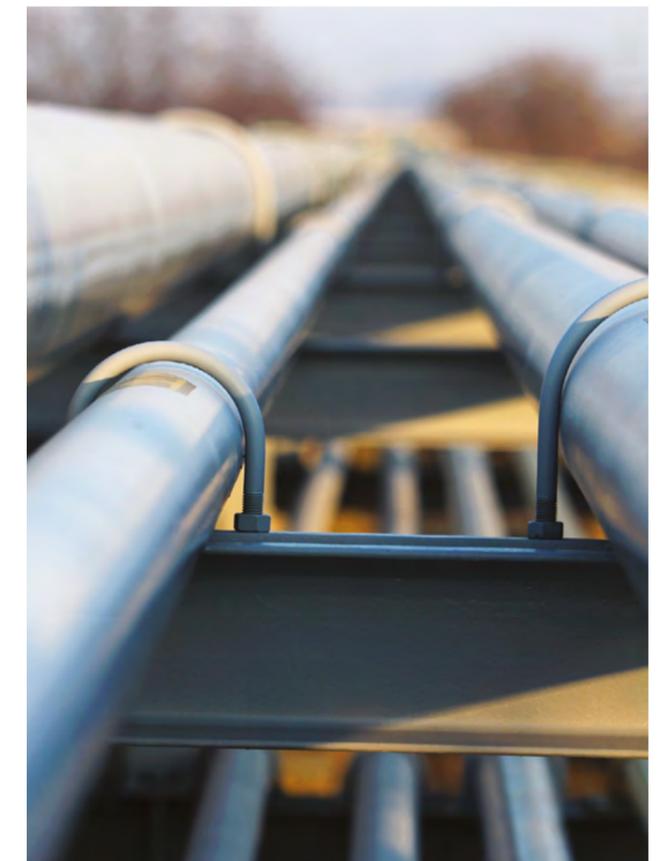
  - + for volumes ranging from 0.4 to up to 1 million metric tons per year over a period of 15 years starting in 2020 (LNG will be supplied from Total’s global portfolio);
  - + for 0.4 million metric tons of LNG per year over a period of ten years starting in 2020 (from the Corpus Christi Plant which is under construction in the US).
- Exxonmobil**

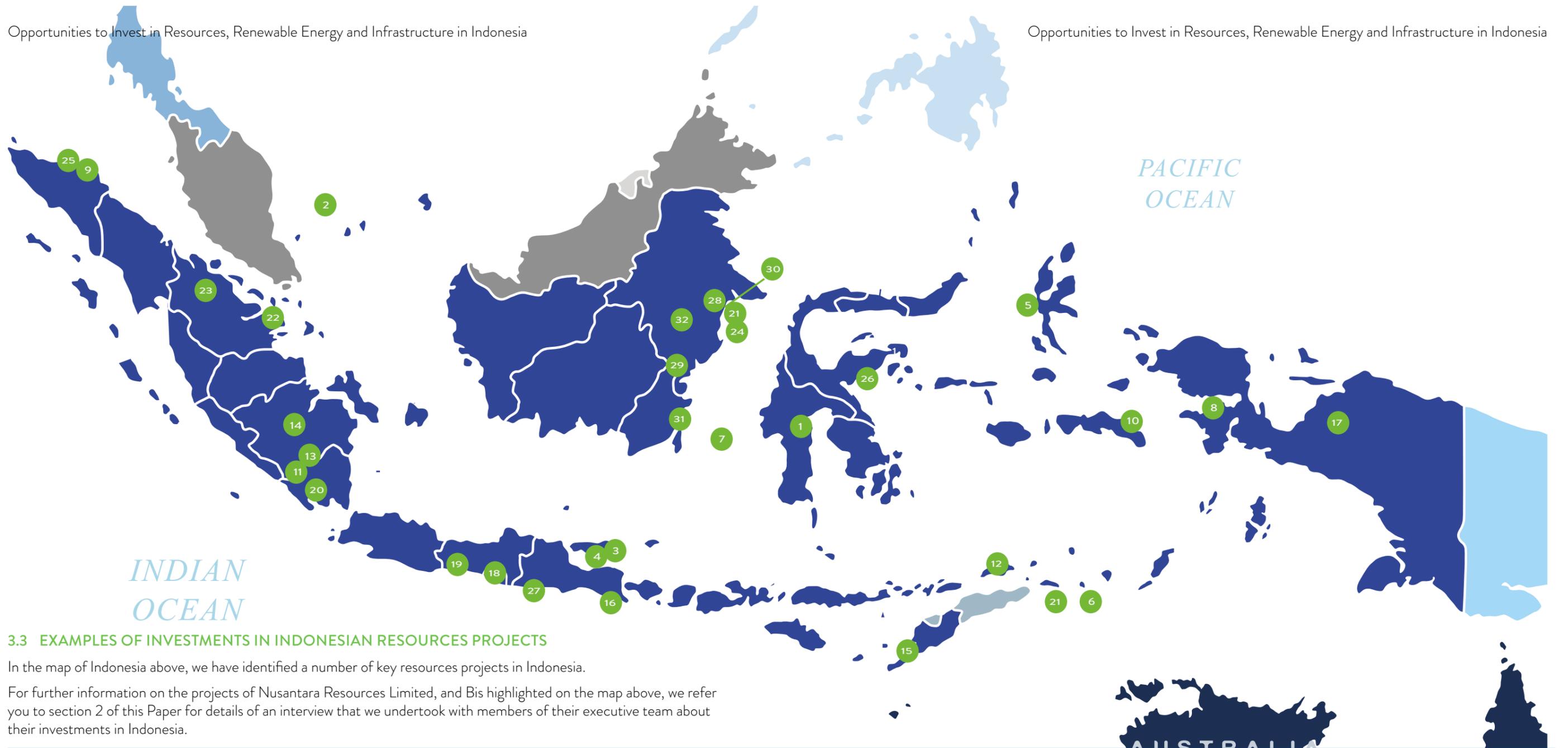
Pertamina will buy 1 million tonnes of LNG per year from ExxonMobil starting in 2025.
- Anadarko**

  - + In 2019, signed a 20 year SPA with Pertamina.<sup>50</sup>

**Conclusion**

We are optimistic of the future of oil and gas in Indonesia as many new opportunities are emerging as highlighted above. We suggest the uncertainty that emerged previously due to the legislative changes will become increasingly less pronounced, and there will be a reversal in the investment trend in the oil and gas space to address the significant and growing demand for oil and gas products in Indonesia. This tremendous demand and the Government of Indonesia’s intention of attracting foreign investment, combined with a strong history of investment, suggests there is plenty of opportunity available.





### 3.3 EXAMPLES OF INVESTMENTS IN INDONESIAN RESOURCES PROJECTS

In the map of Indonesia above, we have identified a number of key resources projects in Indonesia.

For further information on the projects of Nusantara Resources Limited, and Bis highlighted on the map above, we refer you to section 2 of this Paper for details of an interview that we undertook with members of their executive team about their investments in Indonesia.

#### Mining / Oil & Gas

##### Nusantara Resources Limited (ASX)

- 1. Awak Mas Gold Project

##### Mitsui & Co., Ltd

- 2. Ande Ande Lumut Oil Project (Northwest Natura PSC)

##### Ophir Energy Indonesia

- 3. Maleo & Peluang (Madura Offshore PSC)

- 4. Oyong & Wortel (Sampang PSC)

##### Newcrest Mining Limited (ASX)

- 5. Gosowong Gold Mine

##### Inpex Corporation

- 6. Abadi LNG Project
- 7. Sebuku Block Ruby Gas Field

- 8. Tangguh LNG Project (Berau Block)

##### Blue Sky Resources Ltd

- 9. South Block A PSC

##### Lion Energy Limited (ASX)

- 10. Seram (Non-Bula) PSC

##### Jadestone Energy

- 11. Ogan Komering PSC

##### Finder Resources Limited

- 12. Wetar Copper Project
- 13. Ojolali Gold and Silver Project

##### Bass Oil Ltd (ASX)

- 14. Tangai-Sukananti JV

##### Gulf Manganese Corporation (ASX)

- 15. Kupang Smelting Hub

##### PT Merdeka Copper Gold Tbk

- 16. Tujuh Bukit Project

##### West Wits Mining Limited (ASX)

- 17. Derewo River Gold Project

##### Alpha HPA Ltd (ASX)

- 18. Wonogiri Gold Copper Project

##### Indo Mines Limited (ASX)

- 19. Jogjakarta Pig Iron Project

##### Kingsrose Mining Limited (ASX)

- 20. Way Linggo Project

##### Other projects

- 21. Bontang (in East Kalimantan)
- 22. Pulau Moa Selatan block (includes Shell)
- 23. Rokan PSC (Chevron)
- 24. Indonesia Deepwater Development: Bangka Project and Gendalo-Gehem (Chevron)

- 25. South Lhoksuko (includes ExxonMobil)

- 26. Donggi Senoro LNG Project (includes Mitsubishi Corporation)

- 27. Jambaran Tiung Biru (expected to commence production in 2021)

##### MINING SERVICES

- Orica Limited
- 28. Kaltim Nitrate Indonesia

##### Bis Industries Limited

- 29. Logistics for Gunung Bara Utama, Coal

##### Thiess

- 30. Sangatta Coal Mine
- 31. Senakin Coal Mine
- 32. Melak Coal Mine

# 4 OPPORTUNITIES IN RENEWABLE ENERGY

## 4.1 OPPORTUNITIES

Indonesian energy demand is predicted to grow strongly over the medium term due in part because Indonesia's middle class will expand dramatically over the next decade and a half. This will put extreme pressure on Indonesia's creaking energy infrastructure and make identifying new energy sources increasingly important for sustaining growth.

Indonesia's 2014 National Energy Policy (**NEP 2014**) targets Indonesia achieving energy independence and energy security by 2050. The basis of the energy independence on an optimal energy mix that seeks to balance the country's traditional reliance upon coal and other fossil fuels as the primary energy source, with a future emphasis on new and renewable energy.

NEP 2014 sets ambitious targets for achieving the optimal energy mix, with new and renewable energy sources to contribute at least 23% of Indonesia's total required energy by 2025 and at least 31% of Indonesia's total required energy by 2050, both of which are **minimum** targets.<sup>51</sup>

NEP 2014 provides that energy independence and energy security for Indonesia is to be achieved by, among other things:

- (a) using energy resources, including coal, for national capital development rather than as a mere export commodity; and
- (b) managing energy resources, including coal, in an optimal, integrated and sustainable way.

NEP 2014 goes on to provide that, for the purpose of ensuring that there is sufficient available energy to meet national demand on a long-term basis, Indonesia must among other things:

- (a) reduce fossil energy exports gradually, especially for gas and coal, and set a deadline for the cessation altogether of fossil energy exports; and
- (b) increase fossil energy reserves by limiting the production of fossil energy resources.

NEP 2014 further mandates that Indonesia must achieve power generation capacity of approximately 115 GW by 2025 and of approximately 430 GW by 2050.

Notwithstanding the existence of NEP 2014 and the Government's support for new and renewable energy, very little progress has been made to date in reducing Indonesia's dependence on coal. The heavily promoted and ongoing 35GW expansion of Indonesia's electricity generating capacity only envisages some 2.9 GW or 8.1% of this additional electricity generating capacity coming from new and renewable energy resources.

Various reasons, both good and bad, can be put forward for this lack of progress in realising any meaningful rebalancing of Indonesia's energy mix towards a greater reliance upon new and renewable energy resources. One reason for this is arguably the incentives for the State electricity company, PLN, may not be sufficient for it to move away from its traditional reliance on electricity generated by fossil fuel-fired power plants and, more particularly, coal-fired power plants given that coal continues to be a cheaper fuel source than Indonesia's abundant renewable energy resources of solar power, wind power, hydro power, biomass power, biogas power, city waste power, geothermal power and tidal power.

However, we understand that there are a number of "instruments" being used by the Government to ensure PLN has enough incentive to buy electricity from new and renewable energy sources, including, among others:

- (a) Government Guarantee of Viability of PLN to buy the electricity from an Independent Power Producer (**IPP**) issued by the Indonesian Minister of Finance (a Minister of Finance Decree to guarantee that, should PLN fail to pay, the Government will pay for PLN); and
- (b) Tax incentives (import tax free and reduction of income tax) to the new and renewable energy based IPP developers.

Furthermore, it should be noted that MoEMR Regulation No. 50 of 2017 has replaced the previous and controversial MoEMR Regulation No. 12 of 2017 which provided for the pricing strategy for determining the price that PLN pays for electricity generated from renewable energy sources.

Importantly, MoEMR Regulation No. 50 of 2017 provides that where the local grid price (**BPP**) is equal to or less than the national BPP, the tariff is negotiated between the IPP developer and PLN on a case by case basis. In the event that the local grid BPP is higher than the national BPP, the maximum tariff will be equal to the local grid BPP.

By way of example, for the Kamojang geothermal power project in West Java, the local grid BPP was at the time US \$0.0681, however the agreed tariff between the IPP developer and PLN was higher than the local grid BPP, being US \$0.0940 per kWh.

Furthermore, in the case of the Rantau Dedap geothermal power project in South Sumatra, the local grid BPP was at the time US \$0.0718 and the negotiated tariff was higher, being \$0.1176 per kWh.

An example includes the recently negotiated result whereby the agreed power purchase/selling price was US \$0.0940 per kWh for the Kamojang geothermal IPP (West Java Area with local grid BPP of US \$0.0681 at the time and an agreed power purchase/selling price at US \$0.1176 per kWh for Rantau Dedap geothermal IPP (South Sumatra Area where the local grid BPP was at the time US \$0.0718).

The Rantau Dedap project is a 220MW power plant that is being developed by PT Supreme Energy Rantau Dedap (**SERD**), a special-purpose company formed by a joint venture of Marubeni (35%), Supreme Energy (30%) and Engie (35%). On 16 November 2017, it was announced that SERD and PLN signed an amendment of Power Purchase Agreement (**PPA**) for the Rantau Dedap Geothermal Project (with the original PPA having been signed on 12 November 2012). The amendment of PPA was to reflect the tariff adjustment required for developing the project based on the results of the feasibility study report. The price adjustment and PPA amendment process began in 2016 and in early November 2017, the Minister approved the price adjustment. A spokesperson from Supreme Energy was quoted as saying:

*"This successful adjustment process is a result of intensive and constructive negotiations between the parties, driven by the goal for congruence for accelerating the development of geothermal energy as part of renewable energy in Indonesia."*<sup>52</sup>

## 4.2 INCENTIVES

We understand that some of the incentives available for Australian and foreign investors to invest in renewable energy in Indonesia are as follows:

- (a) higher pricefeed-in-tariff or higher power selling price (Government);
- (b) tax incentives (Government):
  - (i) exemption of import duties on equipment and machinery and two years exemption of import duties on materials;
  - (ii) reduction of income tax;
  - (iii) tax holiday for 5-15 years where the project value is over US \$80 million;
- (c) simplification of licensing and permitting;
- (d) easier access to funding from multilaterals (for example, the Asian Development Bank, International Finance Corporation/World Bank);
- (e) compared to coal fired and gas fired power projects, obtaining project financing for renewable energy based power projects from bilateral financiers such as the Japan Bank for International Cooperation and KfW (Germany) is easier and they offer competitive interest rates.



### 4.3 OPPORTUNITIES IN POWER / ELECTRICITY

For opportunities in new and renewable energy projects, we refer our readers primarily to the revised and adjusted master plan for 2018 – 2027 which sets out the actual number of the committed projects that fall into the following categories:

(a) Independent Power Producers (IPPs)

(i) Hydro IPPs:

- A. run-off-river hydropower;
- B. pumped storage hydropower; or
- C. small and mini hydropower,

(ii) geothermal IPPs;<sup>53</sup>

(iii) solar photovoltaic (solar PV);

(iv) wind farm;

(v) minemouth coal fired IPPs;

(vi) gas fired well head IPPs;

(vii) captive power producers associated to smelter plants (copper, ferronickel, aluminium, gold, iron and steel);

(viii) biomass power projects including that utilise palm oil waste;

(ix) biogas power projects;

(x) tidal power projects (mainly in the outer islands of eastern Indonesia). However, we understand that the Government perceives tidal power as a “long term” opportunity, hence sea current (including tidal) power generation is not really a committed project (refer to the table below).

(b) Public sector power projects developed and operated by PLN.

(c) Power projects under a Public Private Partnership (PPP) Scheme.

Target additional capacity of new and renewable energy power plants 2019 – 2027<sup>54</sup>

No.	New and renewable energy sources	Capacity	2019	2020	2021	2022	2023	2024	2025	2026	2027	Total
1	Geothermal	MW	221	235	405	445	355	2537	20	5	-	4373
2	Hydro	MW	193	755	315	196	635	4461	-	564	-	7406
3	Mini hydro	MW	366	103	31	-	-	-	-	-	-	702
4	Solar PV	MW	214	281	-	200	-	325	-	-	-	1042
5	Wind Power	MW	5	45	10	30	309	-	-	60	-	519
6	Biomass inc. MSW	MW	41	19	235	-	-	-	-	10	-	350
7	Sea Current inc. Tidal	MW	-	-	-	-	-	-	-	-	-	0
	<b>Total</b>	<b>MW</b>										14912

### 4.4 BANKABILITY OF IPP PROJECTS

MoEMR Regulation No. 10 of 2017 was amended by MoEMR Regulation No. 49 of 2017<sup>55</sup> and MoEMR Regulation No. 10 of 2018<sup>56</sup> to address the concerns in relation to the bankability of IPP projects.

Some of the concerns in MoEMR Regulation No. 10 of 2017 were as follows:

- + the risk of changes in Government policies and regulations (Government Force Majeure) was borne by both PLN and the IPPs;<sup>57</sup>
- + in circumstances where the project is terminated or the power plant to becomes non-operational, as a result of Government Force Majeure, both PLN and the IPP would be relieved from their obligations;<sup>58</sup> and
- + where a change in law resulted in an adjustment to the costs to the IPP, the tariff would be adjusted accordingly so that the IPP was no better or worse off.

### 4.5 CONCLUDING REMARKS

For further information on renewable energy opportunities, we refer our readers to the Directorate General of New, Renewable Energy and Energy Conservation (EBTKE) of the MoEMR, and PLN. Alternatively, feel free to contact us directly.



**Renewables Projects**

- |  |  |   |   |  |  |  |  |
|--|--|---|---|--|--|--|--|
| 1. Sidrap Wind Farm, Sidrap, South Sulawesi          | 4. Geothermal Power Station, South Sumatra Province      | 7. Poso Hydropower, Central Sulawesi Province                         | 9. Upper Cisokan Pumped Storage Power, West Java Province | 12. BioGas Plant, South Kalimantan Province    | 15. Sarulla Geothermal Power Plant, North Sumatra Province | 18. Vena Energy wind power plant, Jenepono, South Sulawesi                                       | 21. Asahan One Hydroelectric power plant, North Sumatra Province |
| 2. Kamojang Geothermal Plant, West Java Province     | 5. Star Energy Geothermal Darajat II, West Java Province | 8. Matenggeng Pumped-Storage Hydro Power Plant, Central Java Province | 10. Floating solar farm, West Java Province               | 13. BioGas Power Plant, North Sumatra Province | 16. Agam Hydro Power Plant, West Sumatra                   | 19. Vena Energy sola power plant, Likupang, North Sulawesi                                       | 22. Geothermal Power Plant, Lumut Balai                          |
| 3. Gunung Salak Geothermal Plant, West Java Province | 6. Wayang Windu Geothermal Plant, West Java Province     |   | 11. Tolo Wind Farm, South Sulawesi Province               | 14. Palmerah Tidal Bridge, East Nusa Tenggara  | 17. Kuppang Solar Farm, Nusa Tenggara                      | 20. Vena Energy solar PV power plant, Pringgabaya, Selong, Sengkol in Lombok, West Nusa Tenggara | 23. Geothermal Power Plant, Sorik Marapi                         |
|  |  |   |   |  |  |  | 24. Geothermal Power Plant, Sokoria                              |

**KEY**  Existing  Planned

# 5 OPPORTUNITIES IN INFRASTRUCTURE

## 5.1 OPPORTUNITIES

The expansion of Indonesia’s infrastructure has not kept pace with the country’s robust economic growth that occurred following the recovery from the Asian Financial Crisis. Although economic growth is relatively strong, Indonesia’s economic growth has failed to reach its full potential due in part to infrastructure constraints. Lack of adequate infrastructure has also undermined the attractiveness of Indonesia’s investment climate. However, this is set to change as the Government focuses on the roll-out of the most aggressive infrastructure development in Indonesia’s history – the National Strategic Projects programme.

Whilst Indonesia’s economy has reaped the rewards of the lucrative commodities boom, improved infrastructure is essential to the growth of the resources sector in Indonesia. The geography of Indonesia presents some big challenges for logistics and transport operators in the resources sector. Stretching across approximately 17,000 islands, 5 million square kilometres of sea and a total land area of 1,919,317 square kilometres, the archipelago country is huge and mines are frequently located long distances from water and transshipment facilities.

As is common in many resource-rich countries, a large share of resource production is sold onto world markets. Indonesia is the world’s largest exporter of thermal coal, formerly the largest exporter of LNG (now Australia), the largest exporter of palm oil and (prior to the 2014 ban on

the export of certain unrefined ores) one of the largest suppliers of nickel and bauxite. The Government is well aware of the importance of improving old ports and building new ones as Indonesia strives to tackle its notoriously high logistics costs and improve access to international markets.

The current Indonesian President His Excellency, Joko Widodo (now in his second term) and his administration have pledged to drastically improve Indonesia’s infrastructure, including updating the nation’s roads, ports and railways and is ratcheting up infrastructure spending, with priorities set in logistics, energy and transportation sectors. National strategic projects, regarded as the most important infrastructure projects within the Government’s ambitious infrastructure development program, have been identified by the Committee for Acceleration of Priority Infrastructure Delivery. Based upon the most recent evaluation and selection process, 223 projects and three programs have been shortlisted. The aggregate estimated investment value of such infrastructure projects is a staggering US\$307.4 billion.

Through Presidential Instruction No. 1/2016 on the Acceleration of the Implementation of National Strategic Projects, signed on 8 January 2016 by the Indonesian President Joko Widodo, all relevant ministries and institutions are tasked to support the acceleration of Indonesia’s national strategic projects. This is a demonstration of the significance which the Government attaches to this initiative.

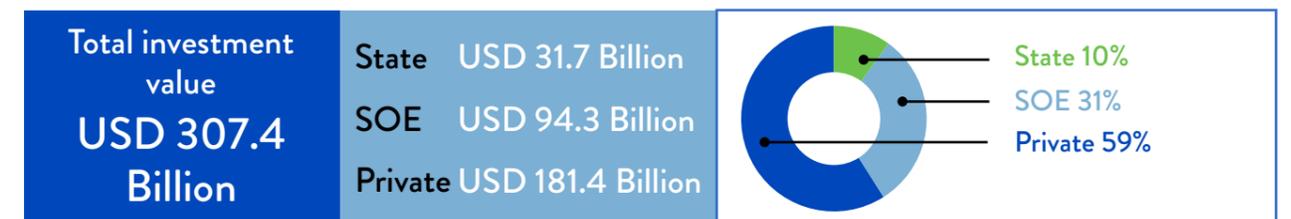
As at May 2019, 77 projects had been completed. Among them, a 140.9 kilometre stretch of toll road that is part of an eight-section Trans Sumatra toll road system.

Most of the national projects completed and on the horizon pertain to the transport and water reservoir sectors.<sup>59</sup>

As shown below, the initiative is not being fully funded by the Government budget, with over half of the required investment value to come from the private sector. Public-private partnerships have been historically used in Indonesia with varied success. In an attempt to incentivise private sector investment to plug the infrastructure funding gap the Indonesia Infrastructure Guarantee Fund has been established to arrange government guarantees for public-private partnership projects. This measure resulted in the successful tender for the Central Java Power Plant, the first public-private partnership deal under the new guarantee system.

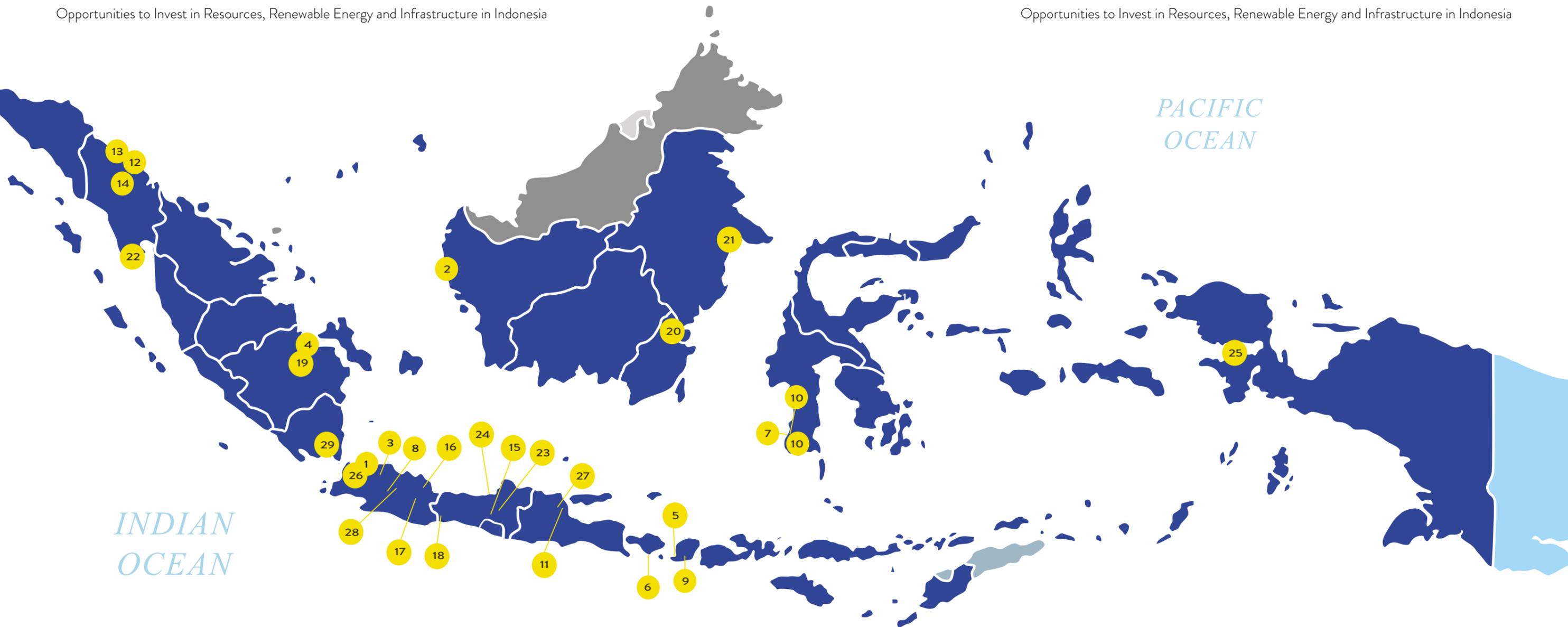
Opportunities for investment include several new port developments, including the proposed international deep-sea port at Kijing, currently underway and scheduled to be completed in 2020,<sup>60</sup> which is located strategically in the resource-rich area of West Kalimantan, noted for its exports of bauxites, rubber, palm oil, and timber. The existing port in the area, the estuary port of Pontianak, is failing to keep up with increasing cargo demand. One of the most ambitious projects currently underway is the extension of the Tanjung Priok port. Once phase three is finished, the new seaport’s annual capacity would rise from 5 million twenty-foot equivalent units (TEU) annually to 18 million. New Priok would also be able to facilitate Maersk Triple-E class container ships – amongst the largest in the world with 18,000 TEU capacities – in a 300 metre two-way sea lane. Other projects open to investors for cooperation are shown in the table below.

Estimated Investment Value for 223 Projects + 3 Programs\*:



\*Excluding 7 projects with unknown investment value





**Infrastructure Projects**

- |  |   |  |  |   |  |  |   |
|--|---|--|--|---|--|--|---|
| 1. New Priok Port Development Product Terminal, Jakarta; estimated project cost US \$730 million         | 4. New Deep Port Development in Tanjung Carat, South Sumatra; estimated project cost US \$462,8 million | 7. Makasar New Port, South Sulawesi; estimated project cost for phase 1 US \$575 million     | 10. Makassar - Pare Pare Railway, South Sulawesi; estimated project cost US \$376 million    | 14. Pematang Siantar – Parapat Railway, North Sumatra; estimated project cost US \$4.26 million | 19. Tanjung Api-Api Special Economic Zone, South Sumatra; US \$4.0 billion | 23. Yogya-Bawen Toll Road Project; US \$1.02 billion       | 28. Cisumdawu Toll Road, West Java; US \$607 million      |
| 2. New Deep Port Development in Kijing phase 1, West Kalimantan; estimated project cost US \$382 million | 5. Gili Mas New Port, Lombok Island, West Nusa Tenggara; estimated project cost US \$153 million        | 8. Bandung Metro Capsule, West Java; estimated project cost US \$37 million                  | 11. Surabaya Tram, East Java; estimated project cost US \$870 million                        | 15. Agro-Edupark Tlogo Wening Tourism Area, Central Java; US \$25 million                       | 20. Rail Network Development, East Kalimantan; US \$79million              | 24. Semarang Light Rail Transit Project; US \$1.04 billion | 29. Bandar Lampung Water Supply, Lampung; US \$82 million |
| 3. Inland Waterways of Cikarang Bekasi Laut, West Java; estimated project cost US \$374 million          | 6. Port of Benoa, Denpasar Bali; estimated project cost US \$158 million                                | 9. Lombok International Airport, West Nusa Tenggara; estimated project cost US \$126 million | 12. Kuala Tanjung Hub Port, North Sumatra; estimated project cost US \$2.6 billion           | 16. Kertajati Aerocity, West Java; US \$1.5 billion   | 21. Maloy Batut Special Economic Zone Trans Kalimantan                     | 25. Bintuni Industrial Zone, West Papua; US \$451 million  |   |
|  |   |  | 13. Kualanamu International Airport, North Sumatra; estimated project cost US \$1.53 billion | 17. Legok Nangka South Waste Treatment, West Java; US \$265 million                             | 22. Eco Individual Park Belang-Belang, West Sulawesi; US                   | 26. Serang-Panimbang Toll Road, Banten; US \$379 million   |   |
|  |   |  |  | 18. Nusawiru Airport, West  |  | 27. Sudoarnjo General Hospital, East Java; US \$19 million |   |

## 5.2 RECENT UPDATES IN INFRASTRUCTURE

In early June 2019, the Minister of Public Works & Housing (MoPW&H) issued MoPW&H Regulation No. 9 of 2009 re Licensing Service Guidelines for Foreign Construction Service Business Entities (MoPW&HR 9/2019).

MoPW&HR 9/2019 was issued as guidelines for licensing services for foreign construction services business entities due to the introduction of an entirely new and currently developing centralized business licensing system, under the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM), called the Online Single Submission (OSS) System.

Pursuant to MoPW&H Regulation 9/2019, foreign owned Indonesian companies carrying out construction business activities will need to extend their Construction Services Licenses (*ijjin Usaha Jasa Konstruksi* or IUJK) before the expiry date of their IUJKs with due consideration of the capital structure applicable in accordance with the prevailing laws and regulations.

Pursuant to current Negative List of Investment provided in President Regulation No 44 of 2016, the maximum permitted foreign ownership for PMA Companies providing Construction Services involving High Technology and/or High Risk and/or with a Working Value (*Nilai Pekerjaan*) of more than Rp50,000,000,000 is 67% (67/33 Shareholding Composition).

Therefore, there is concern that already established 100% foreign owned PMA Companies carrying out construction business activities in Indonesia will need to adjust their shareholding composition so as to comply with the 67/33 Shareholding Composition as and when they submit their application to extend their IUJKs.

Various foreign chambers of commerce in Indonesia

are currently working to procure the amendment or revocation of MoPW&HR 9/2019 as MoPW&HR 9/2019 is not seen as being consistent with Indonesia's existing foreign investment regime or the President's expressed interest in encouraging more foreign investment in Indonesia and otherwise promoting infrastructure development.

## 5.3 CONCLUSION

Infrastructure is vital for the long-term growth and competitiveness of emerging economies. Many Asian countries are still facing constraints in developing and funding infrastructure projects. However, this is not the case in Indonesia where the Government is investing heavily in infrastructure spending, providing various opportunities for investors and lenders. However, despite the significant scope for private investment in the Indonesian infrastructure space, MoPW&HR 9/2019 is concerning given the threat it poses to foreign construction companies. Such a legislative change, if passed, may substantially undermine Indonesia's existing foreign investment regime.

## 5.4 RELEVANT INDUSTRY CONTACTS

- + Badan Koordinasi Penanaman Modal (Indonesia Investment Coordinating Board)
- + Indonesian Chamber of Commerce and Industry (KADIN Indonesia)
- + Committee for Acceleration of Priority Infrastructure Delivery (KPPIP)
- + Indonesia Australia Infrastructure Partnership (KIAT) (through DFAT).<sup>61</sup>

# 6 OPPORTUNITIES IN METS

## 6.1 INTRODUCTION

Indonesia's scale and prospectivity has ensured that the resources sector continues to attract significant foreign interest. Australian Mining Equipment, Technology and Services (METS) companies enjoy a reputation as industry leaders in quality and innovation – this reputation is a valuable asset for Australian miners. Asian equipment suppliers generally retain the largest market share across the resources sector, while suppliers from Australia are perceived as being of higher quality but also higher cost. Demonstrating the productivity or efficiency benefits of your product or service is key.

METS companies still have significant opportunities to build market share in Indonesia. Opportunities exist for providers of mining technology who can clearly demonstrate productivity gains to Indonesian miners. Demand remains strong for mining and exploration software, specialised and innovative equipment, education and training services and specialised mining consulting. Like Australia, Indonesian miners are grappling with lower prices for commodities, so demand is strong for savings and productivity enhancements. The Indonesian mining industry has also suffered from considerable skills shortages – creating opportunities for training providers. Mine safety – an area of outstanding Australian capability – also looms large as a growth opportunity for Australian service providers.

As mentioned above, the Government has announced a series of ambitious targets for the construction of new energy generation capacity. The proposed energy mix sees coal continuing to play a key role meaning that domestic demand for Indonesian coal is likely to increase, generating more opportunities for METS companies.<sup>62</sup>

Should Indonesia's partial ban on unprocessed ore exports remain in place, the next five years will likely see substantial investment in smelting facilities as part of the realisation of the Government's policy of requiring domestic processing and refining of all metal minerals (DP&R Policy). The DP&R Policy has generated considerable challenges for ore miners but will create opportunities for Australian companies throughout the project lifecycle, from feasibility studies through construction and operation of smelters.

Indonesia continues to grapple with the problem of the increasing account deficit and weakening Rupiah.<sup>63</sup> The Government of Indonesia continues the ongoing process of revising the Negative Investment List<sup>64</sup> in an endeavour to attract more foreign investment, which invites the question of whether the increasing current account deficit and the weakening Rupiah will also encourage Indonesia to reconsider other policies in the energy and mining sectors. Of particular interest in this regard is what the implications of this changing policy environment may be for the Export Ban (bauxite ore and nickel ore in particular) and the DP&R Policy as a whole.

Last year we noted that in the context of the export ban and the DP&R Policy, a greater focus by the Government on increasing exports (as advocated by the World Bank) could result in the Government either (i) relaxing the Export Ban and allowing a resumption of exports of larger quantities of lower value added bauxite ore, nickel ore and other unprocessed metal minerals or (ii) retaining the Export Ban in its current form, "doubling down" on the DP&R Policy and placing increased emphasis on "fast tracking" refinery/smelter construction so as ensure the export, at an earlier time than would otherwise have been the case, of large quantities of high value added fully processed and refined alumina, aluminium, matte nickel and other metal mineral products. Now we note it appears that the Government is favouring the latter alternative to dealing with the increasing current account deficit and the weakening Rupiah, as reflected by the bringing forward of the export ban.

Further to section 3.1 of this Paper, the following overview looks at the material changes that MoEMR Regulation No. 11 of 2018 has introduced for a Mining Services Provider who is a holder of a IUJP (Mining Service Business Licence).



## 6.2 MINING SERVICES PROVIDERS – IUJP HOLDERS<sup>65</sup>

### (a) Issuance of IUJPs

IUJPs or a business license for a mining services provider will now be issued by (i) the MoEMR if the relevant mining service business activities are to be carried on throughout Indonesia or if the relevant mining services provider is a foreign company or PMA Company or (ii) relevant Governor if the relevant mining service business activities are to be carried on in one Province only. Regents or Mayors no longer have authority to issue IUJPs even if the relevant mining service business activities are only to be carried on in a single Regency or City.<sup>66</sup> Denying Regents and Mayors any authority to issue IUJPs is a logical step in the ongoing process of ensuring that Regional Governments are “kept at arms-length”, as far as is feasible, from all aspects of licensing in the mining industry and where a foreign company or a PMA Company is involved.

### (b) Extension of IUJPs

Greater control over the timing of applications for extension of IUJPs has been introduced, with the permitted application period being limited to not later than one month prior to the expiry date of the relevant IUJP. This is consistent with the previous position where the only constraint on IUJP renewal applications was that they had to be submitted not later than one month before the expiry date of the relevant IUJP.<sup>67</sup>

### (c) Categories of IUJP holders

The long established separate categories of Local Mining Services Providers, National Mining Services Providers and Other Mining Services Providers (i.e., PMA or foreign companies) has been dispensed with. The new regulation now only refers to “Mining Services Providers”.

### (d) Classification and qualification of IUJP holders

In addition to being categorised as Local Mining Services Providers, National Mining Services Providers and Other Mining Services Providers, IUJP Holders (regardless of category) were previously classified as “small”, “medium” or “large” based on the net worth qualification of the relevant IUJP Holder. The significance of these classifications/qualifications was that it determined the types of mining service business activities the relevant IUJP Holder could carry on. The new regulation no longer recognises or uses this classification system.

### (e) Individual IUJP holders

IUJP holders, which are individuals rather than companies, are now limited to carrying out mining service business activities in the nature of consultancy and/or planning. Previously, there was no officially prescribed limit on the types of mining service business activities that could be carried out by IUJP holders who were individuals rather than companies.<sup>68</sup>

### (f) Categories of Mining Services

The new regulation no longer adopts the previous distinction between “Mining Services” and “Non-Core Mining Services”, which distinction was used to determine whether a particular Mining Services Provider needed a business license (i.e., an IUJP) or a registration letter (i.e., an SKT) to operate.

### (g) Non-Core Mining Supporting Services

As part of 2018 changes to the regulatory regime for Core Mining Services and Non-Core Mining Supporting Services (NCMSS), ESDM has changed its practice with regard to Technical Licenses required for performance of what were previously NCMSS.

The change in ESDM practice is not with regard to the need to obtain Technical Licenses but rather with regard to responsibility for ensuring that necessary Technical Licenses have been obtained. Previously, many mining services providers relied upon their IUJPs to carry out what were previously NCMSS such as (i) manpower placement/supply and (ii) maintenance/repair of mining equipment rather than obtain additional Technical Licenses to carry out these types of activities.

ESDM has now made clear that IUJP holders cannot continue to carry out what were previously NCMSS in reliance upon their IUJPs only. IUJP holders, performing what were previously NCMSS, must now obtain the necessary Technical Licenses.

The change in ESDM’s practice is important for those IUJP holders which are 100% foreign owned PMA Companies. This is because the foreign ownership limitation applicable to each of manpower placement/supply and maintenance/repair of mining equipment (including maintenance and repair of motor vehicles) is 49%. Accordingly, IUJP holders which are 100% foreign owned PMA Companies cannot obtain Technical Licenses in the form of (i) a PPJP to carry out manpower placement/supply activities or (ii) an IUI to carry out maintenance/repair of mining equipment (including maintenance/repair of motor vehicles).

The change in ESDM practice will likely make it necessary for those IUJP holders, which are 100% foreign owned PMA Companies, to split their business operations into two parts whereby: (a) overburden removal, transportation and all other non-mining activities that mine owners are allowed to outsource to IUJP holders, (100% foreign owned PMA Companies), will be carried on by the existing IUJP holders; and (b) new PMA Companies, (less than 49% foreign-owned), will be established to carry out manpower placement/supply and maintenance/repair of mining equipment (including maintenance and repair of motor vehicles) for which separate Technical Licenses are required.

# 7 KEY INDUSTRY CONTACTS

- + [Australia Indonesia Business Council](#) (AIBC) and [Indonesia Australia Business Council](#) (IABC)
- + [Indonesia Investment Coordinating Board](#) (BKPM)
- + [Indonesia Mining Services Association](#) (ASPINDO-IMSA)
- + [Indonesian Coal Mining Association](#) (APBI-ICMA)
- + [The Indonesian Renewable Energy Society](#) (METI-IRES)
- + [Department of Foreign Affairs and Trade](#) (DFAT)
- + [Australian Trade and Investment Commission](#) (Austrade)



## 8

## RELEVANT EXPERTISE

## 8.1 ENERGY + RESOURCES

### CLIENTS NOTE ITS RELEVANT EXPERTISE AND RESPONSIVENESS AS WELL AS ITS ABILITY TO “ESTABLISH AND MOBILISE A TEAM WHICH IS TAILOR-MADE TO THE JOB.”

#### Chambers Asia Pacific Energy & Natural Resources 2019

Gilbert + Tobin has leading energy & resources specialists who advise on world-class transactions both in Australia and in key markets worldwide.

Our experience includes advising on the development of greenfield projects (including associated financings), upstream asset sales and joint ventures, long term sale agreements and providing general commercial contracting advice.

The team advises on all aspects of energy and resources projects, including finance, acquisitions and disposals, project development and delivery strategies, construction, procurement, regulation and operations. Our team's mix of corporate, regulatory and project experience enables us to advise on a project's entire lifecycle in all areas of this sector, including energy, mining, oil and gas.

We regularly advise publicly listed and private Australian and international companies involved in resource exploration, development, mine closure, remediation and mining. Commodities include base metals, coal, copper, diamonds, gold, iron ore, mineral sands, nickel, platinum, rare earths, uranium, pearls, salt and timber. We also have extensive experience in coal bed methane, gas and other hydrocarbons.

Gilbert + Tobin enjoys close “best friends” relationships with the leading firms in all key foreign jurisdictions. This means we are not tied to the pre-determined connections of larger international firms, but can provide seamless cross-border advice utilising the best lawyers in each jurisdiction. This gives our clients the benefit of global expertise, allowing us the flexibility to work closely with a specific firm on transactions, therefore avoiding the conflicts an alliance may bring.

Most of our partners and many of our lawyers have practised in other jurisdictions at top-tier overseas firms and we work constantly throughout the Asia Pacific, and have deep experience in developing countries including Indonesia.

- + Lion Energy on the acquisition, partial disposal and continued holding of its interests in a production sharing contract and joint operating agreement in Indonesia.
- + Meridian Energy on a number of PPAs in respect of its renewable electricity portfolio.
- + GDF Suez on its proposed acquisition of an international portfolio of renewable and non-renewable independent power projects in Asia and Africa.
- + Major petroleum project in Myanmar on negotiating and advising on large gas supply arrangements.
- + Advising PNG-government owned entity, NPCP Holdings Limited, regarding domestic supply and third party access arrangements in respect of greenfield gas pipeline developments
- + Advising UBS Investment bank and a syndicate of lenders on the project financing of Oil Search Ltd's Gobe Oil Project (PNG), and UBS Australia on a subordinated equity-bridge debt facility for Oil Search Ltd.
- + EIG Global Energy Partners in respect of its proposed investment and participation in a large upstream oil and gas exploration and development project in the PNG highlands.
- + CNOOC, on its interest in the North West Shelf LNG Project, including detailed contract review and advice.
- + Shell (as in-house counsel) advising on all legal aspects of the Prelude Floating LNG Project, including equity sell-down from Shell to Kogas, and preparation of key project agreements.
- + Woodside, advising on the Pluto LNG Project, including preparation of key project agreements and equity sell-down to Tokyo Gas and Kansai Electric.

- + Horizon Oil Ltd on its sale of a significant interest in its PNG assets to Talisman.
- + Kumul Petroleum Holdings Limited (Papua New Guinea's national oil company) on legislative and regulatory reform initiatives in PNG.
- + Bis (as in-house counsel) on incorporating in Indonesia and supporting the establishment of its mining operations.
- + Preparation and negotiation of key project agreements for the Bis and Bayan Resources project in Tabang.
- + Contributed to briefing to Indonesian Economic Minister on issues faced in investing and establishing a business in Indonesia including research and preparation of memorandum outlining key ‘manpower’ issues and recommended changes to the Government.
- + Contributions to the Indonesia-Australia Comprehensive Economic Partnership Agreement via the Indonesia-Australia Business Partnership Group on ‘manpower’ issues affecting foreign companies.
- + Hong Kong based telecommunications company acting on the transformation of its business support and operational support IT systems.
- + PT. Garuda Indonesia (Persero) Tbk with litigation strategy oversight and advice to Garuda in relation to an airline cartel prosecution by the ACCC.
- + Advised Jemena Gas Network on the 2015-2020 access arrangement review process, from the proposal development stage through to the current merits and judicial review proceedings.
- + Advised Consolidated Electric Power Asia Ltd on the 1,000 MW power station at Saul, the largest coal-fired power station in the Philippines
- + Advised the State of the Philippines on the creation of competition policy and regulatory frameworks for the Philippine Electricity Sector (including drafting policy and legal advice as well as draft legislation and regulation).
- + Sundance Resources Ltd on the development of the Mbalam/Nabeba Iron Ore “Mega Projects” in Cameroon and DRC including EPC contracts for mine, port, road and rail construction; third party access arrangements; government concession agreements.
- + Syrah Resources Ltd on delivery and operation of a Graphite Project in Mozambique including EPC Contract, equipment supply contracts, intermodal logistics terminal, fuel supply and storage facilities, port access, trucking and testing laboratory services.
- + Triton Minerals Ltd on its Graphite Project in Mozambique including EPC, Mining Services, Power Supply and Camp Services.
- + Birimian Ltd (now Mali Lithium) on services agreements for its proposed Lithium Project in the Republic of Mali.
- + Volt Resources Ltd on early stage contracts for its Graphite Project in Tanzania.
- + GR Engineering Ltd on the EPCM contract for the delivery of a Copper Project in Indonesia.
- + A Chinese Consortium on its investment into Resources and Infrastructure Projects in Australia and the Central African Region.
- + Sirius Resources Ltd (now Independence Group) on the construction and procurement of its minerals processing plant and all non-process infrastructure for the Nova Nickel Project, including EPC, D&C and BOOT contracts for diesel and solar power, logistics.
- + Galaxy Resources Ltd on various construction and services agreements for its Lithium Projects in Australia and Canada.
- + Sheffield Resources on its study contract, project delivery strategy and mining services contract for its WA Mineral Sands Project.
- + Galena Mining / Abra Mining on the project delivery strategy and contract templates for their WA Lead-Silver Project.
- + Mitsubishi Corporation on the proposed development of the Oakajee Port, Rail and Iron Ore Mine “Mega-Project” in Mid-West WA.
- + Pilbara Minerals Ltd on the construction and procurement of its minerals processing plant and all non-process infrastructure for its Pilgangoora Lithium Project e.g. EPC, PMC, ECI, BOOT, FEED, D&C, Power Station, PPA, Port Access, Haulage, Camps.
- + Fortescue Metals Group on infrastructure access agreements for its “Iron Bridge” Iron Ore Project in the Pilbara Region of WA.

## 8.2 RENEWABLE ENERGY

**“THEY HAVE A CLIENT-CENTRIC CULTURE AND THEIR FORWARD-LOOKING APPROACH TO THE DELIVERY OF LEGAL SERVICES IS AN ELEMENT WHICH SETS THEM APART.”**

**Chambers Asia Pacific Energy & Natural Resources 2018**

Gilbert + Tobin is the leading independent Australian corporate law firm. We have become the legal adviser of choice for clients who value our entrepreneurial culture and determination to succeed. Key highlights of our offering include:

- + **Experience with renewables transactions.** We have a proven track record of advising on renewable energy transactions and in particular on solar and wind farm projects around Australia.
- + **Leading project development expertise.** We have advised major industry players on numerous solar and wind farm development projects around Australia. From concept to completion, we have the necessary legal expertise and industry experience to ensure successful project delivery across a wide range of renewable energy projects.
- + **Outstanding M&A and finance teams.** Our Corporate Advisory team are outstanding legal and strategic practitioners, both on acquisition agreements and equity financing. We are ranked as Tier 1 in Chambers in each of M&A, Private Equity and Capital Markets.
- + **Cross-practice expertise.** Our reputation for expert advice extends across a broad range of areas including Banking + Infrastructure, Real Estate + Projects, M&A, Capital Markets, Tax, Competition + Regulation, Infrastructure, Energy + Resources, Intellectual Property and Litigation + Dispute Resolution.
- + **Transparent and collaborative approach.** We understand that successful projects require an understanding of the processes, timing and drivers of the various stakeholders involved. It involves being able to work effectively and constructively with all stakeholders.
- + **Value for money.** We understand clients want value for money. We are innovative and flexible on our pricing without compromising quality of service. Our work practices and experience ensure we deliver first rate services at reasonable prices.

- + Ausnet on the development, structuring and operation of a ‘behind-the-meter’ roof-top residential, commercial and industrial roof-top solar PPA business in Victoria.
- + A leading Singaporean entity on the development, structuring and operation of a ‘behind-the-meter’ roof-top residential, commercial and industrial roof-top solar PPA business in Western Australia.
- + H.R.L Morrison on their \$532 million acquisition and project financing of AGL Energy’s 50% stake in the Macarthur Wind Farm.
- + Clean Energy Finance Corporation in connection with the establishment of its investment program and structuring matters.
- + FRV on the structuring, development and subsequent sale of its 20 MW Royalla Solar Project.
- + ACL Energy on the development and sale of the Hallett 1, Hallett 2, Hallett 4 and Wattle Point wind farms and in its bid to acquire certain renewable energy generation opportunities in Queensland.
- + Austnet on the purchase of the Mortlake Terminal Station from Origin Energy.
- + Eurus on its bid for the Emu Downs Wind Farm in WA including separate bids for the existing wind farm and associated development opportunities.
- + Dong Energy on its acquisition of an interest in two UK offshore wind projects in the Round 3 Hornsea Zone and its joint venture with Siemens and Mainstream Renewable Power to co-develop the projects.
- + Pacific Equity Partners on its joint bid for Pacific Hydro, a global owner, operator and developer of wind and hydro renewable energy assets.
- + Infigen Energy on the development of the Capital, Woodlawn and Walkaway II wind farms.
- + Sunseap Leasing, a leading Singaporean solar developer, on its Australian market entry and joint venture arrangements.
- + Energy Developments on the limited recourse financing of seven renewable energy projects in the USA and separately the limited recourse financing of a portfolio of over 20 power projects in Australia.
- + The proposed acquirer of the Williamsdale Solar Farm in the Australian Capital Territory.
- + UBS International Infrastructure Fund and Retail Employees Superannuation Trust on the acquisition and project financing of the 206 MW, A\$740m Collgar Wind Farm, which at the time was Western Australia’s largest renewable energy project.
- + Ratch on all aspects of the development of the 180 MW Collector wind farm in New South Wales and the 200 MW Mt Emerald wind farm.
- + Karratha Airport on its Solar Project, including drafting and negotiating the full suite of project documentation and advising on the subsequent divestment of the project.
- + Windlab and Eurus Energy on the development and financing of the \$50 million Coonooer Bridge wind farm.

8.3 BANKING + INFRASTRUCTURE

**“I REGARD THEM VERY HIGHLY: THEY’RE COMMERCIAL, THEY PROVIDE GOOD ADVICE... AND THEY’RE ALSO REALLY PLEASANT TO WORK WITH.”**

**Chambers Asia Pacific 2018**

Our Banking and Infrastructure Group advises leading Australian and international financial institutions, investment banks, corporations and private equity funds.

We combine a thorough understanding of Australian and international financial markets with a strong commercial focus and project management abilities to achieve our clients’ objectives.

Because we act regularly for lenders, borrowers, arrangers and investors, our lawyers understand the different commercial drivers in any transaction and draw on that experience to ensure our clients’ business objectives are met within the required timeframes. We are able to anticipate key legal and commercial issues likely to arise in any financial transaction and then guide our clients through them.

The members of our Banking and Infrastructure Group have strong experience in both domestic financing and crossborder transactions. Many of our lawyers have also practised in other jurisdictions, including Europe, Asia and the United States, and are thoroughly versed in the applicable market documentation standards (e.g. LMA).

We are one of the few firms in Australia that is on the legal panel of all four major Australian trading banks and that maintains strong relationships with all of the major global investment banks. This gives us a unique insight into these institutions’ individual approaches and requirements, and also allows us to operate seamlessly for both lenders and borrowers.

Our expertise is recognised by the leading legal directories, including most recently being ranked at Band 1 for Banking & Finance – Acquisition Finance by Chambers Asia-Pacific for 2018.

Acquisition and Leveraged Finance	Advising a full range of stakeholders on the debt aspects of corporate mergers and acquisitions, as well as leveraged and management buyouts. We regularly advise on both senior and mezzanine structures, as well as those including high yield and other capital market products.
Corporate Finance	Advising on Investment-grade IPO facilities, transactional, working capital, leasing and trade finance facilities.
Debt Capital Markets, Securitisation and Derivatives	Advising on various debt issuance and securitisation programmes (RMBS and CMBS establishments), A\$MTN, Kangaroo and EMTN programmes, Bank hybrids, US private placements, High yield bonds, CD, CP, ECP, USCP and global CP program establishments, social impact bonds, credit-wrapped notes, convertible notes and exchangeable notes and Tender offers and buy backs.
Project and Infrastructure Related Finance	Advising on debt and equity financing arrangements, project formation, structuring and implementation for a range of projects, regulated and unregulated infrastructure, property development, transport, power and energy, mining and resources and oil and gas.
Construction	Advising on construction-related aspects of major transactions and providing precise insights into the risk allocation of the construction aspects of a transaction.
Restructuring and Insolvency	Advising on restructuring and workouts, distressed debt investing, corporate distress, voluntary administrations, liquidations, receiverships and creditor schemes and associated disputes and applications.
Structured Asset Finance	Advising on structured asset finance transactions including aircraft and equipment leasing and off-balance sheet structures.

- + Various APAC telecommunications operators in 2G/3G/4G network infrastructure rollouts and network support arrangements, billing and CRM system implementation and upgrades, microwave, IN supply procurements, cloud computing and OTT implementation arrangements, IT infrastructure arrangements, AD&M arrangements and global licensing and resale and alliance arrangements.
- + XL Axiata in relation to its current RAN Turnkey Project, its end-to-end managed services outsourcing of its field services, network operations and maintenance of its entire telecommunications network, managed services of its VAS and digital merchant businesses, and outsourcing of its IT infrastructure services, including providing on-site support in Jakarta.
- + Reliance Rail PPP in relation to there financing of Australia’s largest PPP (valued at A\$3.6 billion) between the NSW government and Downer EDI, including the rolling stock PPP contract, credit wrapped bonds and bank debt, to deliver the Waratah trains on the Sydney Rail network.
- + Sunshine Coast Airport - advising Palisade Investment Partners on its successful bid to become operator of the Sunshine Coast Airport and commercial partner in the associated development of the Airport.
- + Trustpower/Tilt Renewables demerger - advising Trustpower and Tilt Renewables to implement a comprehensive financing package for Tilt Renewables.
- + Tilt Renewables on the financing of its newest wind farm development, Salt Creek, a 55 megawatt project in south west Victoria.
- + The Synergy Greenfield Renewable Fund – advising the lenders to the fund, a landmark investment fund.
- + Syrah Resources in relation to all aspects of the development of its Balama Graphite and Vanadium asset in Mozambique.
- + Cooper Energy on the project financing for its A\$355 million Sole Gas Project.
- + Veolia and Infrastructure Capital Group on the proposal to build, operate and maintain a water treatment plant for Centennial Coal and Energy Australia.
- + Ooredoo Myanmar in relation to complex telecommunications network infrastructure deployment (including rollout of the first 4G/LTE network in Myanmar), mobile money, fibre sharing, tower co-location and technology transactions against multiple suppliers and operators, including undertaking various short term assignments on-site in Yangon, Myanmar.
- + National Australia Bank Limited and Sumitomo Mitsui Banking Corporation as financiers to Fotowatio Renewable Ventures, funding the multimillion-dollar construction of the Clare Solar Farm project.



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# END NOTES

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- 30 MoEMR Regulation No. 11 of 2018 Article 58(b).
- 31 Article 93 of the 2009 Mining Law.
- 32 MoEMR Regulation No. 9 of 2017 was issued in January with the apparent intention of, among other things, making the price payable for divestiture shares in foreign-owned Operation Production IUP/IUPK holders more realistic by providing that the (i) maximum Divestiture Price, in the case of Divestiture Shares that are offered to the Central Government and the relevant Provincial Government/Regional Government, and (ii) base Divestiture Price, in the case of Divestiture Shares auctioned to State-owned Enterprises and Regional-owned Enterprises or private Non-PMA Companies, is the fair market value of the Divestiture Shares but “not taking into account the underlying mineral or coal reserves” of the relevant foreign-owned Operation Production IUP/IUPK holder (MoEMR Regulation No. 9 of 2017 Article 14 Paragraphs 1 and 2). This provision was a source of much controversy at the time. Recognising “fair market value”, as the appropriate basis for determining the Divestiture Price, was a positive development and certainly an improvement on the previously mandated “recovery of investment” only basis. However, the significance of this positive development seemed to have been almost entirely diluted by excluding the underlying mineral or coal reserves from the calculation of “fair market value”. The “fair market value” of a mining project is commonly understood as being almost entirely reflected in the assessed market value of the proven mineral or coal reserves underlying that mining project.
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