



COUNSELLORS AT LAW

Investing in Indonesia/投资印度尼西亚 &与 Force Majeure Implications of COVID-19/新冠肺炎不可抗力影 响

2 September 2020 /2020年9月2日

Presentation to China Chamber of Commerce for Import and Export of Machinery and Electronic Products/陈述对象：中国机电产品进出口商会

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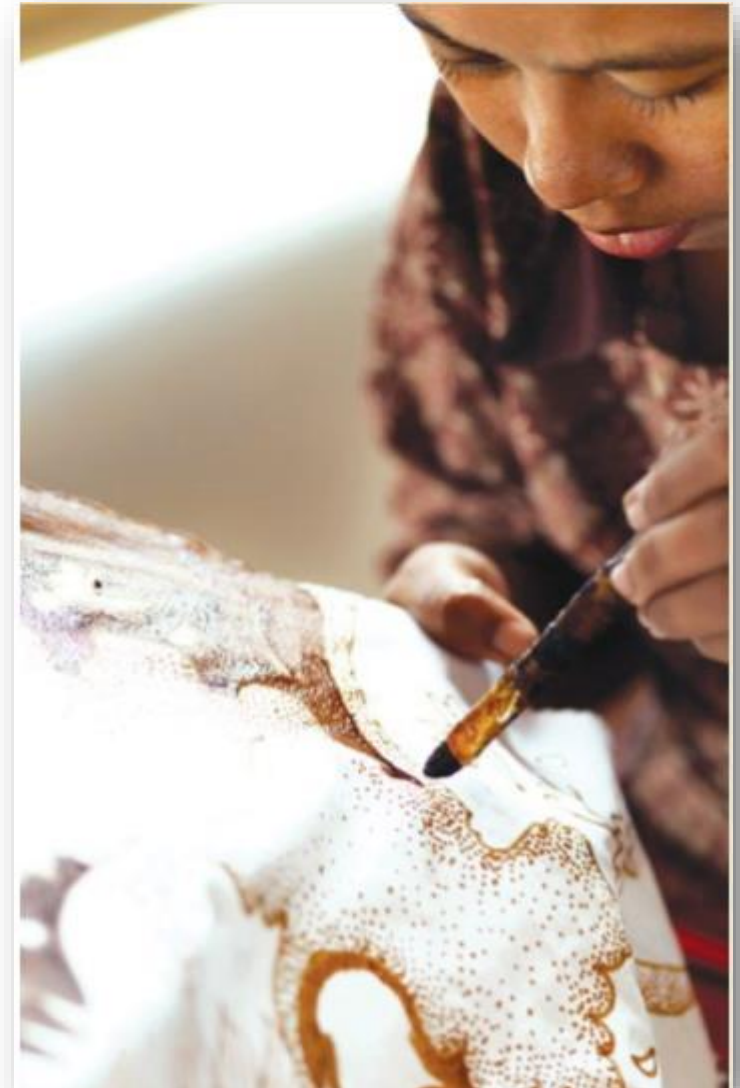
Profile of ABNR

ABNR简介

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ABNR拥有100多个合伙人和律师，是印尼最大的独立、全方位服务律师事务所，也是印尼按收费标准排名前三的律师事务所之一。在印尼的项目、并购、银行与金融、重组与破产、纠纷、人力、房地产、航空、海运、竞争和TMT等法律服务领域占主导地位。

ABNR还为印度尼西亚Lex Mundi律师事务所提供全球范围内的独家会员服务，Lex Mundi是全球领先的独立律师事务所网络，会员遍布100多个国家。



Why Indonesia?

为何选择印度尼西亚?

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1

4th largest population
in the World

世界第四大人口国

3

Growing middle class

中产阶级不断壮大



2

Median age of 21

中值年龄为21岁

4

24.7 million people
purchasing via E-
commerce

2470万人通过电子商务进行购物



5

51% growth in active
internet users compared
to 31% for ASEAN

活跃互联网用户增长51%
(东盟为31%)



Why Indonesia?

为何选择印度尼西亚

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Indonesia's economy is forecast to be the **world's 10th largest** by 2025

预计到2025年，印尼经济将成为世界第10大经济体。

\$1 trillion GDP

GDP of more than \$1 trillion (PPP)



The largest economy in ASEAN



Only ASEAN Member in the G20

印度尼西亚预计到2025年将跃居全球第十大经济体

GDP 1万亿美元 GDP超过1万亿美元 (PPP)

东盟最大经济体

G20唯一一位东盟成员国

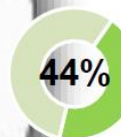
Indonesia is the **fourth most populous** country in the world



Population of 260 million

2x

"Consuming class" twice the size of the population of Australia



Young and dynamic people
44% of Indonesians are aged under 25

印度尼西亚是全球第四人口大国
2.6亿人口

“消费阶层”的人口规模是澳大利亚的两倍

年轻、有活力人群。44%的印尼人年龄低于25岁

Indonesia is a **global leader in social media**. It has:



More Facebook and Twitter users than the population of Australia



The world's third largest market for Facebook



The most active city for Twitter in the world: Jakarta

印度尼西亚在社交媒体方面处于全球领先地位，其拥有：比澳大利亚人口更多的Facebook和Twitter用户

Facebook全球第三大市场

全球使用Twitter最活跃的城市：雅加达

来源： 各种来源，2018年

Why Indonesia? 为何选择印度尼西亚?

Indonesia in the future... 2030... 2050... 未来的印度尼西亚...2030年...2050年



McKinsey&Company

Investing in Indonesia

2030 年

全球第七大经济体

消费阶层的人口数量
达1.35亿

71%的城市人口创造86%的GDP

需要1.13亿技术工人

消费者服务、
农业和渔业、
资源以及教育行业
会产生1.8万亿个市场机遇

... and in 2030

7th-largest economy in the world

135 million members of the consuming class

71% of the population in cities producing **86%** of GDP

113 million skilled workers needed

\$1.8 trillion market opportunity in consumer services, agriculture and fisheries, resources, and education

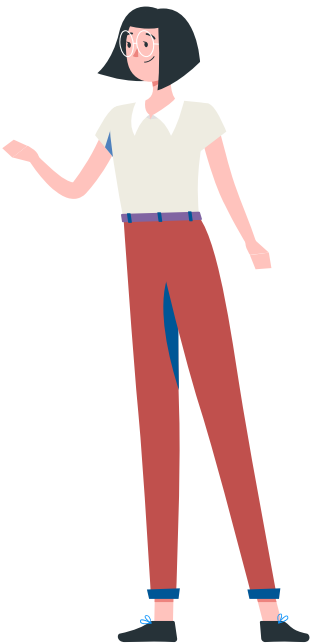


2050年，新兴市场国家将跻身全球前10大经济体（按购买力平价计算GDP）

Emerging markets will dominate the world's top 10 economies in 2050 (GDP at PPPs)

	2016	2050		
中国	China	1	1	China
美国	US	2	2	India
印度	India	3	3	US
日本	Japan	4	4	Indonesia
德国	Germany	5	5	Brazil
俄罗斯	Russia	6	6	Russia
巴西	Brazil	7	7	Mexico
印尼	Indonesia	8	8	Japan
英国	UK	9	9	Germany
法国	France	10	10	UK

■ E7 economies ■ G7 economies



Forms of Investment

投资形式

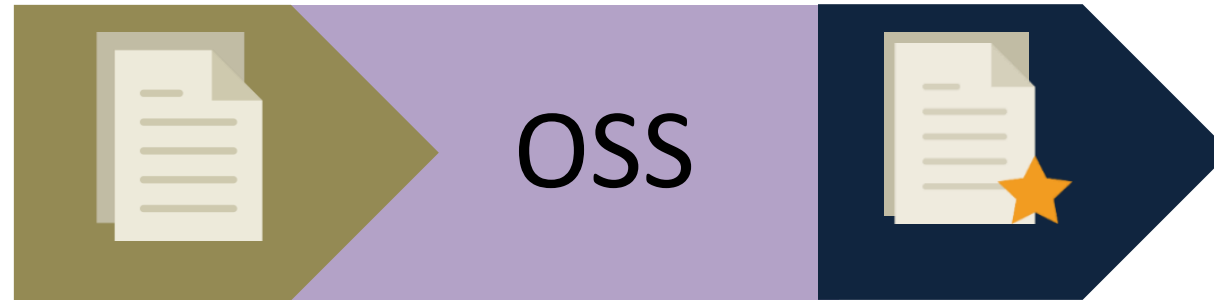
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Type 类型	Main Purpose 主要目的	Requirements 要求
Limited Liability Company 有限责任公司	<ul style="list-style-type: none">- Legal entity incorporated under Indonesian law- 根据印度尼西亚法律注册成立的法律实体- Typical vehicle for FDI- 外商直接投资(FDI)常用投资工具- For profit- 赚取利润- FDI subject to “Negative List”- 外商直接投资受《非鼓励投资目录》规限	<ul style="list-style-type: none">- Two shareholders- 两名股东- Two board system- 两个委员会制度- Local Director- 本地董事- Minimum capital of IDR2.5 Billion- 最低资本为25亿印尼盾- Business and Operational Licenses- 营业执照及经营许可证
Representation Office 代表处	<ul style="list-style-type: none">- Marketing- 营销- Non-profit (except Rep Office for Construction Business)- 非盈利（建筑企业代表处除外）	<ul style="list-style-type: none">- Registered as Taxpayer- 注册为纳税人- Registration requirements- 注册要求



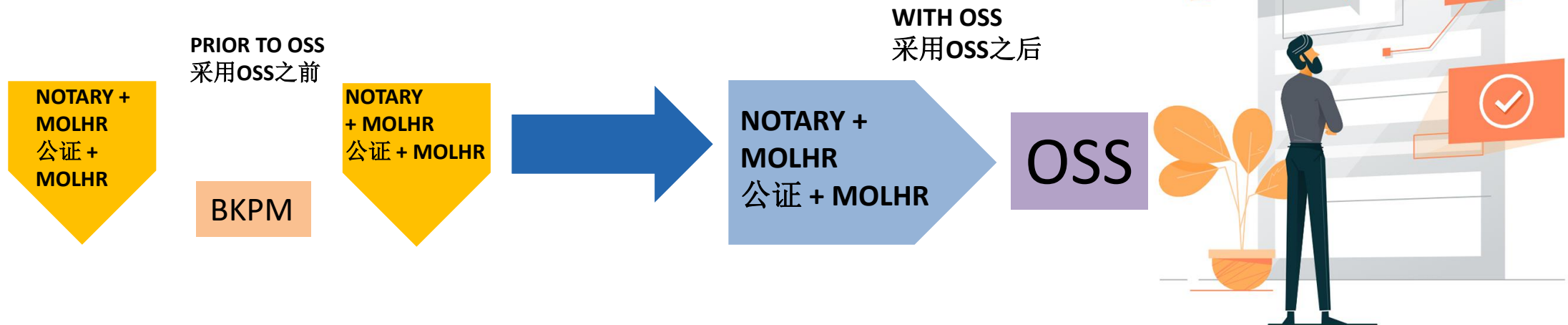
Forms of Investment 投资形式

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Old mechanics
旧机制

New mechanics (NSPK)
新机制 (NSPK)



Fiscal Incentives

投资激励

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Facilities available to investors include:
向投资者提供的便利包括:



Import duty exemption or relief
on import duty¹
进口税减免或进口税宽免¹



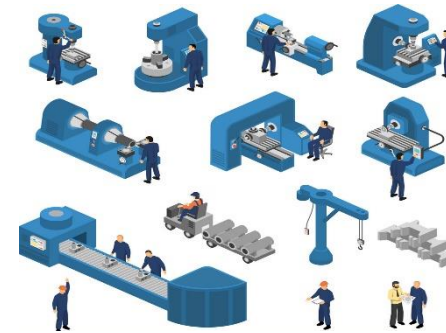
Reductions in corporate income tax²
企业所得税降低²



Land and buildings tax relief³
土地及建筑税宽免³



Value Added Tax Exemption⁴
增值税减免⁴



Accelerated depreciation or amortization
加速折旧或摊销

¹ for production of capital goods, machinery, or equipment not yet produced in Indonesia and for production of raw materials or components for a specified period upon fulfillment of specified requirements
针对印度尼西亚尚未生产之资本货物、机器或设备的生产，以及在满足特定要求的情况下于特定时期内原材料或部件的生产
² depending on the total investment amount made within a specified period
取决于在规定时期内的投资总额

³ for specified business fields in specified regions, areas, or zone
针对指定区域、地区或地带的指定业务领域
⁴ for a specified period for importation or production of capital goods, machinery, or equipment not yet produced in Indonesia
在一定时期内针对印度尼西亚尚未生产的资本货物、机器或设备的进口或生产

Fiscal Incentives

税收和财政激励

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Fiscal Incentives Facility 财政激励措施



税收减免

2016年第9号政府法规

TAX ALLOWANCE

Government Regulation No.9/2016

- 30% reduction of Corporate Income Tax (for 6 years, 5% each year)
- 145 Eligible business fields

进口关税便利

MoF Regulation No.
176/PMK. 011/2009 jo. MoF
Regulation No.
76/PMK. 011/2012 jo. MoF
Regulation 188/PML.
010/2015

IMPORT DUTY FACILITY

MoF Regulation
No.176/PMK.011/2009 jo. MoF
Regulation No. 76/PMK.011/2012 jo.
MoF Regulation 188/PMK.010/2015

- Exemption of import duty on machineries and equipment
- 2 years exemption of import duty on raw materials
- Additional 2 years import duty exemption for raw materials if using locally-produced machineries and equipment (min 30%)

绿色通道便利

GREEN LANE FACILITY

- Facility for custom clearance at ports in Indonesia for capital goods, machinery or raw material
- For new companies under construction phase
- Require BKPM recommendation and LKPM obligation fulfilled

- 企业所得税减免30%（6年，每年5%）
- 145个合格业务领域
- 机器和设备免缴进口税
- 豁免2年原材料进口关税
- 如果使用本地生产的机器和设备，则额外豁免2年原材料进口关税（最低30%）
- 为资本品、机器或原材料在印度尼西亚港口的清关提供便利
- 针对处于建设期的新公司
- 需要执行BKPM建议和LKPM义务



Fiscal Incentives

税收和财政激励

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Tax Allowance
Government Regulation No 9/2016



税收减免
2016第9号年政府法规

Agriculture

- Livestock
- Corn Plantation
- Soybean Plantation
- Rice farming
- Tropical fruits plantation

Power Generation

- Geothermal
- Alternative energy

Oil and Gas Industry

- Oil refineries
- Liquefied Natural & Petroleum Gas
- Lubricants

Manufacturing Industry

- Iron and Steel
- Clothing
- Semi conductors
- Electronic components
- Computer
- Communication devices
- Television
- Wheel
- Pharmaceutical
- Cosmetics
- Fish and Shrimp processing

农业

- 牲畜
- 玉米种植园
- 大豆种植园
- 水稻种植
- 热带水果种植园

发电

- 地热
- 替代能源

石油天然气行业

- 石油加工
- 液化天然气和石油气
- 润滑油

制造业

- 钢铁
- 服饰
- 半导体
- 电子元件
- 计算机
- 通信设备
- 电视
- 轮胎
- 制药
- 化妆品
- 鱼虾加工



Pioneer Industries



先导行业

1. integrated upstream basic metals (which covers general smelting activities);
2. integrated oil and gas refining;
3. integrated petrochemicals arising from oil, gas or coal;
4. integrated inorganic basic chemicals;
5. integrated organic base chemicals derived from agricultural, plantation or forestry activities;
6. integrated pharmaceutical raw materials;
7. manufacturing of semi-conductors and other components integral to computers;
8. manufacturing of the main components of communication equipment integral to smartphones;
9. manufacturing of the main components of health equipment integral to irradiation, electro medical, or electrotherapy equipment;
10. manufacturing of the main components of industrial to electrical motors or internal combustion engines;
11. manufacturing of the main components used in motor vehicle production;
12. manufacturing of the main components integrated with robotics;
13. manufacturing of the main components of vessel production;
14. manufacturing of the main components of aircraft production;
15. manufacturing of the main components of locomotive production;
16. power plant machinery (including waste to power); and
17. economic infrastructure
18. Digital economy

1. 一体化上游基本金属（包括一般冶炼活动）；
2. 一体化油气提炼；
3. 一体化石化产品（由石油、天然气和煤炭产生）；
4. 一体化基本无机化学品；
6. 一体化制药原材料；
7. 制造半导体和其他计算机不可或缺的组件；
8. 制造智能手机不可或缺之通信设备的主要元件；
9. 制造辐照、电医疗或电热设备不可或缺之医疗设备的主要元件；
10. 制造电机或内燃机行业的主要元件；
11. 制造汽车生产所使用的主要元件；
12. 制造与机器人相集成的主要元件；
13. 制造建造船舶的主要元件；
14. 制造建造飞机的主要元件；
15. 制造建造机车的主要元件；
16. 发电厂装置（包括垃圾焚烧发电厂）；及
17. 经济基础设施
18. 数字经济

Indonesia's Investment Promotion Zones

印度尼西亚投资促进区

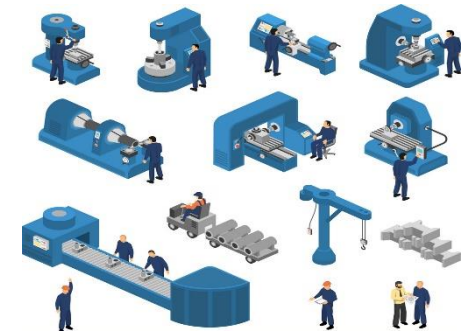
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Free Trade Zones (FTZs)
自由贸易区(FTZ)



Special Economic Zones (SEZs)
经济特区(SEZ)



Special Industrial Zones (SIZs)
工业特区(SIZ)

Each Zone Has Specific Criteria and Incentives

每个区域都有特定标准和激励措施

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- Investment criteria and incentives in each zone depend on overall objectives of the zone's establishment.
- 各区域的投资标准和激励措施取决于设立该区域的总体目标。
- Not possible to provide exhaustive list of criteria and incentives as these are tailored to meet the needs of specific industries.
- 无法提供详尽的标准和激励措施清单，因为这些标准和激励措施是为满足特定行业需求而制定的。
- Generally, the more generous the incentives and facilities and the better the location, the tighter the eligibility criteria for investing in the zone will be
- 一般来说，激励措施和便利越优厚、位置越好，投资该区域的资格审查就越严格。



Batam-Bintan-Karimun Free Trade Zone

巴淡-民丹-卡里蒙自由贸易区

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- Located just a stone's throw from Singapore on the Strait of Malacca, one of the busiest shipping lanes in the world.
 - 距离新加坡仅一步之遥，位于世界上最繁忙航道之一——马六甲海峡。
 - Goods and services are exempt from:
 - 商品和服务免征：
 - ✓ Value Added Tax (VAT)/增值税（VAT）
 - ✓ Luxury Good Tax (PPn-BM)/奢侈品税（PPn-BM）
 - ✓ Import Duties/进口税
 - ✓ Export Duties/出口税
 - Ideal location for production base for goods with high import content for export to third countries.
 - 为出口到第三国的高进口含量货物提供生产基地的理想地点。
- Disadvantage – subject to Indonesia's generally applicable foreign-investment restrictions in certain sectors
- 不利条件——受印度尼西亚对若干行业普遍适用的外国投资限制条件
- 规范

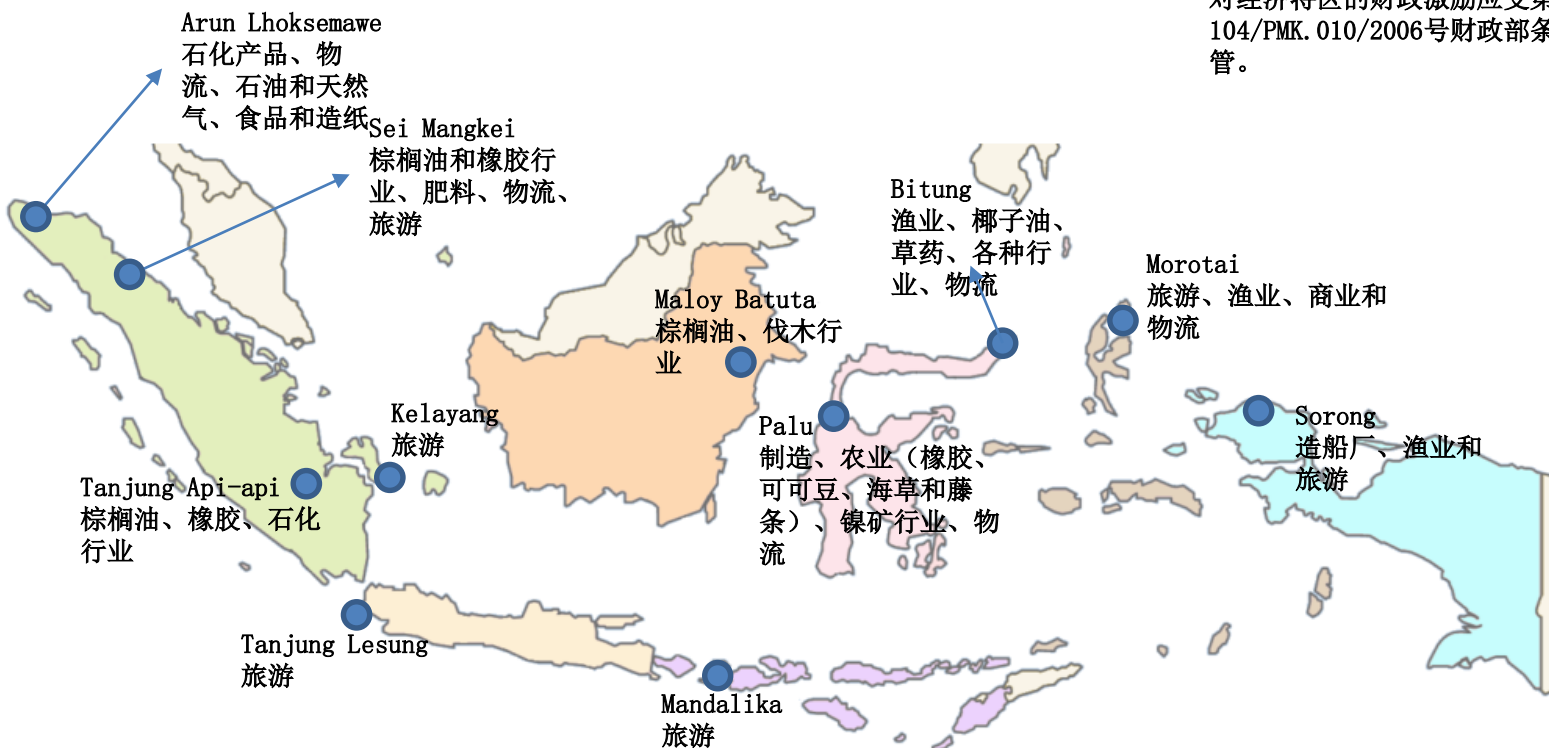


Special Economic Zones

经济特区

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Special Economic Zones (经济特区)



对经济特区的财政激励应受第104/PMK. 010/2006号财政部条例规管。

激励措施:

所有货物的进口关税、增值税、进口所得税（第22条）、奢侈品营业税以及消费税均是在免税期（如公司的业务范围与经济特区的核心活动一致）或税收减免（其他业务范围）的基础上豁免。



Special Economic Zones

经济特区

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- Designed to support development of nationally important strategic industries
- 旨在支持国家重要战略产业的发展
- Offer industry specific incentives in line with SEZ's focus industry
- 根据经济特区的重点行业提供行业特定激励措施
- Excellent infrastructure
- 基础设施齐全
- Wide range of fiscal, labor and regulatory/licensing facilities available
- 可提供广泛的财政、劳动和监管/许可便利
- Strategic locations close to key land, air and sea transportation routes
- 战略位置优越，靠近海陆空交通要道
- Exempt from foreign-investment restrictions that apply in other sectors
- 豁免政策，无需遵守适用于其他行业的外国投资限制条件

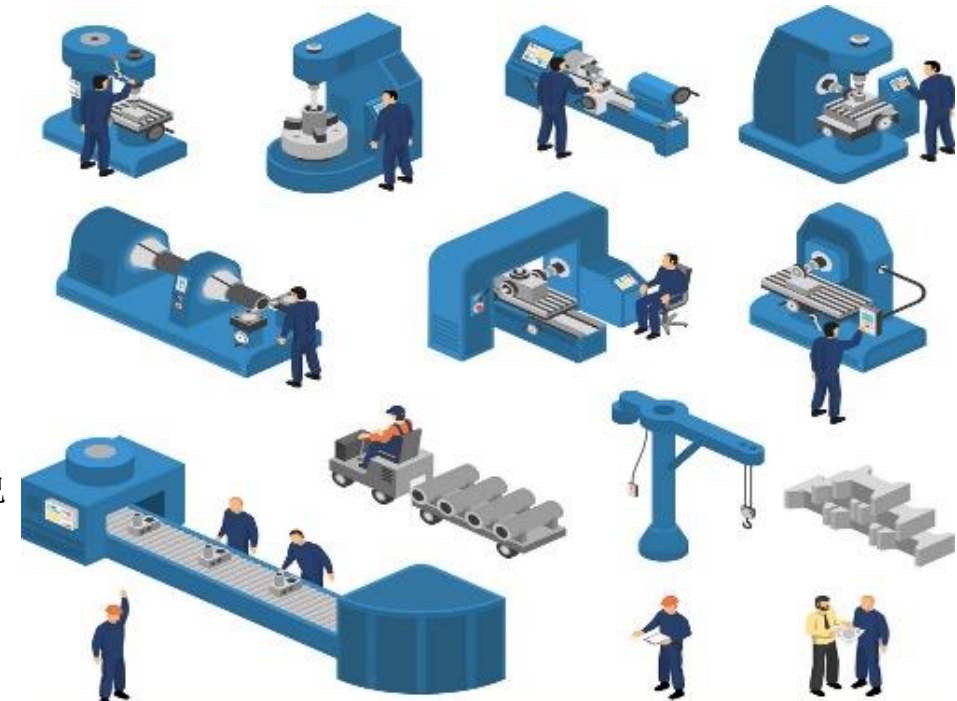


Special Industrial Zones

经济特区

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- Designed to support industrial development at the regional level
- 旨在支持区域工业发展
- Good infrastructure and facilities to support industrial operations
- 旨在支持工业运营的完善基础设施设备
- Specialize in particular industries
- 专注于特定行业
- Good transport links
- 交通便利
- Wide range of fiscal and other incentives available, including corporate income tax reductions, VAT exemptions and exemptions from import and export duties
- 提供广泛的财政和其他激励措施，包括企业所得税减免、增值税减免和进出口税减免



- Indonesia-China Comprehensive Strategic Partnership envisages enhanced cooperation in the fields of industry, infrastructure development in the transportation sector, financial services, tourism, education, and the creative industries.
- 印度尼西亚-中国全面战略伙伴关系预期将在工业、运输行业基础设施发展方面、金融服务、旅游、教育和创意产业等领域加强合作。
- ASEAN- China Free Trade Area (ACFTA) has resulted in zero tariffs being imposed on 6,682 tariff posts in 17 sectors.
- 东盟-中国自由贸易区（ACFTA）使17个行业中6,682个税目实现了零关税。
- Indonesia has Free Trade Agreements with some 20 non-ASEAN nations
- 印度尼西亚与约20个非东盟国家签订了自由贸易协定。



Indonesia is GSP Beneficiary Nation

印度尼西亚是普惠制受益国

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Chinese firms that establish manufacturing bases to Indonesia can benefit from Indonesia's status as a beneficiary nation under the U.S.'s Generalized System of Preferences (GSP), provided that a 35% rules-of-origin requirement is satisfied. GSP promotes economic development by eliminating duties on thousands of products exported to the US from designated beneficiary countries.

选择印尼建立生产基地的中国企业可以从印尼作为美国普惠制（GSP）受益国中获益，但前提是须满足35%原产地规则要求。普惠制通过取消从指定受益国出口到美国之数千种产品的关税来促进经济发展。

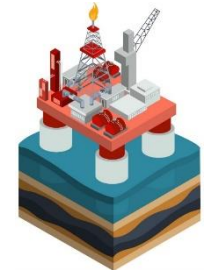


Abundant Natural Resources

自然资源丰富

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- World's largest producer of nickel
- 全球最大镍生产国
- World's largest palm-oil producer
- 全球最大棕榈油生产国
- World's 2nd largest producer of tin
- 全球第2大锡生产国
- World's 5th largest producer of coal
- 全球第5大煤炭生产国
- World's 11th largest gold producer and 9th largest copper producer – Indonesia's Grasberg mine is the 3rd biggest copper mine in the world and the biggest gold mine in terms of output and size
- 全球第11大黄金生产国和第9大铜生产国--印尼格拉斯伯格矿山是全球第3大铜矿山，也是产量和规模最大的金矿山
- World's 11th largest natural gas producer and 5th largest LNG exporter
- 全球第11大天然气生产国和第5大液化天然气出口国
- World's 14th largest producer of bauxite
- 全球第14大铝土矿生产国



COVID-19 and Force Majeure

新冠肺炎与不可抗力

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COVID-19 → failure to fulfil contractual obligations in commercial agreements, while relying on a claim of force majeure

新冠肺炎→以不可抗力为由，拒绝履行商业协议中的合同义务。



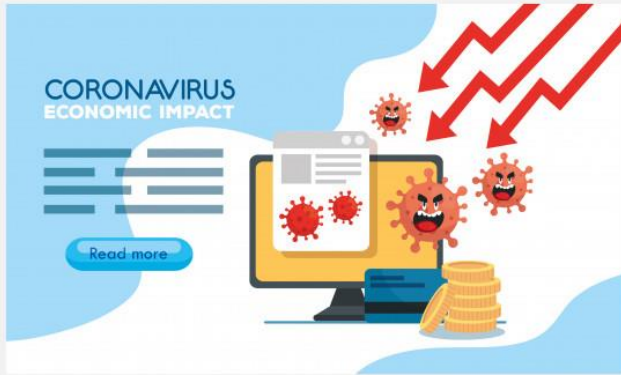
Indonesian law does not define force majeure in detail, apart from a somewhat generic reference in Articles 1244 and 1245 of the Indonesian Civil Code (“ICC”)

除《印度尼西亚民法典》(“ICC”)第1244条和第1245条较为笼统地提述外，印度尼西亚法律没有详细界定不可抗力。

COVID-19 and Force Majeure

新冠肺炎与不可抗力

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A force majeure event is ultimately subject to interpretation by the court in accordance with the force majeure wording in the contract. If a party legitimately claims force majeure, performance of that party's obligations may be suspended until the end of the force majeure event.

不可抗力事件最终要由法院根据合同中不可抗力措辞进行解释。如果一方当事人合法地主张不可抗力，则该方当事人的义务可以暂停履行，直至不可抗力事件结束。

If interpretation of the validity of the force majeure event leads to a difference of views or disagreement between the contracting parties, it may be resolved through dispute resolution.

如果对不可抗力事件之有效性的解释导致合同双方意见分歧或不一致，可通过争议调解的方式予以解决。



COVID-19 and Force Majeure

新冠肺炎与不可抗力

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Force majeure can be recognized under Indonesian law, if the defaulting party can prove the following:

根据印度尼西亚法律，如果违约方能够证明以下情况，则可认定为发生不可抗力事件：

- The event was unforeseeable; 该事件是不可预见的;
- The event was: 该事件:
 - beyond the defaulting party's control; and 超出违约方的控制范围; 及
 - not caused by the defaulting party; 非违约方造成;
- The event prevented the defaulting party from performing its obligation; and 该事件使违约方无法履行其义务; 以及
- The defaulting party acted in good faith; 违约方本着善意行事;

As long as one party is prevented from continuing to perform its obligations by force majeure, the other party may suspend the performance of its obligations.

只要一方当事人因不可抗力而无法继续履行其义务，另一方当事人可以中止履行其义务。



COVID-19 and Force Majeure

新冠肺炎与不可抗力

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The Indonesian Government enacted a series of regulations declaring Covid-19 a “non-natural national disaster”.

印度尼西亚政府颁布了一系列条例，宣布新冠肺炎为“国家非自然灾害”。



This stimulated debate among businesspeople and lawyers on whether or not this really meant that the pandemic was a force majeure event.

此举引发了商界人士和律师的争论，即这是否实际上意味着此次疫情乃不可抗力事件。

However, senior government ministers have stated that the regulations cannot be relied on as a ground for force majeure. Therefore there remains doubt whether the government had intended that the pandemic be considered sufficient in itself to declare force majeure.

但是，政府高级官员表示，不能将该类条例作为不可抗力的理由。因此，政府是否打算将此次疫情本身视为足以宣布不可抗力的理由，仍然存在疑问。



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