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Indonesia

Mergers & Acquisitions

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Indonesia.

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Indonesia: Mergers & Acquisitions

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

M&A in Indonesia is generally under the authority of the Ministry of Law and the Ministry of Investment (formerly known as the Investment Coordinating Board). However, other government institutions can also be involved depending on the status and business activities of the target company. If the target company is a listed company, then the Financial Services Authority (*Otoritas Jasa Keuangan* / OJK) would also be involved.

The key regulations for M&A in Indonesia are:

a. Law No. 40 of 2007 on Limited Liability Companies, including its amendment, Law No. 6 of 2023 (“**Indonesian Company Law**”),
b. Law No. 25 of 2007 on Investment, including its amendment, and its relevant and applicable BKPM Regulations,
c. Law No. 8 of 1995 on the Capital Markets, including its amendment and other related regulations issued by the OJK, among others:
    1. OJK Regulation No. 54/POJK.04/2015 on Voluntary Tender Offers (“**POJK No. 54/2015**“),
    2. OJK regulation No. 74/POJK.04/2016 on Mergers and Acquisitions of Public Companies, as partially revoked by OJK Regulation No. 58/POJK.04/2017 on Electronic Submission of Registration or Submission of Corporate Action,
    3. OJK Regulation No. 9/POJK.04/2018 on Acquisition of Public Companies (“**POJK No. 9/2018**”),
    4. OJK Regulation No. 17/POJK.04/2020 on Material Transactions and Change of Main Business Activities,
    5. OJK Regulation No. 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies, as amended by OJK Regulation No. 45 of 2024 on Development and Strengthening of Issuers and Public Companies, and
    6. OJK Regulation No. 29/POJK.04/2015 on Issuers and Public Companies Exempted from Reporting and Disclosure Requirements,
d. Law No. 5 of 1999 on Prohibition of Monopoly and Unfair Business Competition, including its amendment,
e. Other specific regulations depend on the nature of the target company's business.

2. What is the current state of the market?

During the last few years, the Indonesian government has been issuing many regulations which aim to ease licensing procedures in Indonesia and attract more investors. The first one is the infamous Omnibus Law[1] that was issued in 2020 and deemed a major amendment to Indonesian laws and regulations. This seems to bring a positive impact on Indonesia's investment progress, including the investment made through an acquisition transaction. Following the Omnibus Law, the Indonesian government issued many other regulations which also aim for the unification and legal certainty for the publics and business actors, among others Law No. 4 of 2023 on Development and Strengthening of the Financial Sector, as completed by the relevant Constitutional Court decision (“**Law No. 4/2023**”) and Law No. 7 of 2021 on the Unification of Tax regulations as lastly amended by Law No. 6 of 2023.

The market for mergers and acquisitions (M&A) transactions experienced a period of stagnation in 2024 due to the recent change in presidential leadership. The market generally anticipates a delay of several months, as the new president will likely form a new cabinet that may influence government policies. This is expected to continue until the issuance of the Mid-Term National Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* – RPJMN). The RPJMN serves as a guiding framework for the government's development initiatives in Indonesia, which will necessitate the participation of business actors. Business actors may also consider and utilize the RPJMN as a factor in their business decisions, including in the context of M&A transactions. As of the publication of this article, the government regulation for the RPJMN for the years 2025 to 2029 has not yet been issued.

Footnote(s):

[1] The Omnibus Law has been replaced by*Peraturan Pemerintah Pengganti Undang-undang No. 2 Tahun 2022 tentang Cipta Kerja, which has been legalized into law under Law No. 6 of 2023.*

3. Which market sectors have been particularly active recently?

As the fintech industry getting more popular in recent years, M&A transactions was revolving around this sector. However, due to the winter tech that affects the tech companies and start up all over the world, there is less M&A transactions involving tech companies in 2023-2024. The business players tend to move back to the old fashion business.

Concerns and awareness regarding environmental protection and sustainable development have garnered increasing attention from various stakeholders, including governments, financial institutions, and society. These factors have influenced the policies implemented and enforced by the Indonesian government, including any incentives that investors may benefit from. In response to the recent ESG initiative, certain environmentally friendly industries, such as electric vehicles, experienced significant popularity. Consequently, the renewable and non-renewable energy sectors also garnered considerable traction. One noteworthy aspect concerning the renewable and non-renewable energy sectors is that the Indonesian government mandates that any proceeds generated from the exportation of natural resource commodities (*devisa hasil ekspor dari barang ekspor sumber daya alam*) ("**DHE SDA**") be deposited in either the Indonesian Export Financing Agency or Indonesian Foreign Exchange Banks ("**Indonesian Financial System**"). Currently, the DHE SDA must be deposited in a special account designated for DHE SDA within the Indonesian Financial System, with a minimum deposit of 30% of the total amount for a period of at least three months as of the deposit date. However, there is information indicating that the threshold will be increased, requiring exporters to deposit 100% of their foreign exchange revenue from exporting natural resource commodities within Indonesia for a minimum of one year.[2]

In the peer-to-peer lending sector (which were also a popular business pre-Covid 19), the OJK has issued Regulation No. 10/POJK.05/2022 of 2022 on IT-Based Co-Financing Service as lastly half repealed by OJK Regulation No. 43 of 2024 on the Development of the Quality of Human Resourced of Financing Institutions, Venture Capital Companies, Microfinance Institutions, and Other Financial Service Institutions ("**POJK No. 10/2022**"), which stipulates the peer-to-peer lending companies' paid-up capital must be minimum of IDR 25 billion with maximum foreign investment of 85% of the Company's paid up capital. This new regulation creates another checklist for the investor or new player to conduct any M&A over peer-to-peer lending companies.

Further, POJK No. 10/2022 stipulates that any change of ownership and merger of a peer-to-peer lending company must first obtain approval from the OJK. However, at the same time, this POJK No. 10/2022 provides lock up period within 3 (three) years after the issuance of peer-to-peer lending companies license from OJK, which prohibit any changes of shareholding composition that may cause new shareholder(s) and/or change of controlling shareholder. This clause might create another hold in conducting M&A transaction to follow such lock up period.

Footnote(s):

[2] https://jakartaglobe.id/special-updates/airlangga-hartarto-announces-100-export-proceeds-deposit-requirement-for-natural-resources?form=MG0AV3

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

On the last few years, the government have issued several policies that may positively contribute to the M&A activities in Indonesia. Among others is the new policies for banking sectors and insurance sectors:

1. Banking Sector

The OJK in 2020 issued Regulation No. 12/POJK.03/2020 on Consolidation of Commercial Banks, which sets out that banks must fulfil the minimum core capital (*modal inti*) requirement of IDR 3 trillion. Failure to fulfil such capitalization requirements under the regulation may result in a bank having to conduct M&A transactions with other banks to fulfil the capitalization requirements.

Other new regulation in the financial sector is Law No. 4/2023. Law No. 4/2023 provide policies and regulations which may influence certain businesses in the financial sector to conduct M&A. Among others, is by providing authority to OJK to deliver a written order to financial service agencies to conduct M&A. A concrete example provided under Law No. 4/2023, is the OJK's authority to requests Conventional or Syariah Principle Banks to conduct mergers with other Conventional or Syariah Banks, if it is deemed to be having difficulties which threatens its business continuity.

Another related regulation is OJK Regulation No. 12 of 2023 on Syariah Business Unit, amended by OJK Regulation No. 2 of 2024 on the Application of Syariah Governance for Syariah Commercial Banks and Syariah

Business Units ("**POJK No. 12/2023**"). Generally, POJK No. 12/2023 was issued to encourage syariah business unit to carry out various developments and adjustment in business procedures to strengthen institutional aspects and to improve the national syariah banking industry. A concrete example is that Conventional Banks that: (i) owned syariah business unit with assets exceeding 50% of the total asset of the Conventional Banks or (ii) if the syariah business unit's assets have exceed Rp. 50,000,000,000,000 (fifty trillion Rupiah), is required to conduct a spin-off to the syariah business unit.

Lastly, in the year of 2022, the OJK issued Regulation No. 22 of 2022 on Equity Investments by Commercial Banks as lastly half repealed by OJK Regulation No. 26 of 2024 on the Expansion on Banking Business Activities ("**POJK No. 22/2022**") which promotes new norm which permitted commercial bank to invest in other companies in the financial technology sector. Previously, commercial banks were merely allowed to invest in certain range of sectors, namely financial institution (e.g. banks, venture capital, securities). The investment by the bank may be conducted either directly or indirectly through the stock market. Moreover, under POJK No. 22/2022 it is stipulated that the investments by the bank shall be long term investment. With regards to this new norm, this leads into the M&A transaction plan over financial technology companies by the commercial banks. This provides another opportunity for other types of M&A transactions in the next 2 years over the financial technology sector. We can see that in the future both Commercial Banks and financial technology will somehow meet and merge their business core to serve more customers with a touch of technology.

2. Insurance Sector

Lastly, in December 2023, OJK issued OJK Regulation No. 23 of 2023 on Business and Institutional Licensing of Insurance Companies, Syariah Insurance Companies, Re-insurance Companies and – Syariah Reinsurance Companies, which on 20 June 2025 would be half repealed by OJK Regulation No. 34 of 2024 on Development of Human Resource Quality for Insurance Companies, Guarantee Institutions, Pension Funds, and Specialized Institutions in the Fields of Insurance, Guarantee, and Pension Funds ("**POJK No. 34/2024**"), annulling the OJK Regulation No 67/POJK.05/2016 ("**POJK No. 23/2023**").

The most recent regulation sets out an increase in the minimum equity as follows:

- Conventional Insurance (an increase from IDR 150 billion to IDR 1 trillion);
- Syariah Insurance (an increase from IDR 100 billion to IDR 500 billion);
- Conventional Re-insurance (an increase from IDR 300 billion to IDR 2 trillion); and
- Syariah Reinsurance (an increase from IDR 175 billion to IDR 1 trillion).

Furthermore, OJK also issued three new regulations in relation to insurance business:

- Firstly, the OJK Regulation No. 24 of 2023 on Business and Institutional Licensing for Insurance Broker Companies, Reinsurance Broker Companies, and Insurance Loss Appraisal Companies, requires adjustments in the Company other than increasing the minimum paid-up capital, which on 20 June 2025 would effectively be half repealed by POJK No. 34/2024. The Regulation contains revisions to improve the reporting mechanism and identification of foreign ownership and requires separation of main functions in the organizational structure.
- Second, OJK Regulation No. 27 of 2023 on Implementation of Pension Fund Business, which on 20 June 2025 would effectively be half repealed by POJK No. 34/2024, further regulates investments of pension funds through additional requirements on competency of pension fund administrators and placement of investments that tend to be high risk.
- Lastly, OJK Regulation No. 20 of 2023 on Insurance Products Linked to Syariah Credit or Financing and Syariah Suretyship or Suretyship Products, has regulated more optimal mitigation mechanism on risk exposure borne by insurance companies.

The significant increase of minimum paid-up capital would require a significant capital injection, resulting in insurance companies to more likely to conduct a merger or acquisition to collectively fulfil the requirement. In response to its membership in the G-20, the Indonesian government, through the Ministry of Finance, recently adopted the implementation of the Global Minimum Tax by issuing a local regulation pertaining to the global minimum tax. This regulation may also serve as a factor in the selection of jurisdiction for M&A activities among business actors.

5. What are the key means of effecting the acquisition of a publicly traded company?

Control over a publicly listed company can be gained by either acquiring existing shares or subscribing to new shares by purchasing offered rights.

Shares acquisition in a publicly traded company will

trigger a mandatory tender offer if there is a change of control. The regulation defines control as (i) having more than 50% of the issued shares in the company with voting rights, or (ii) having less than 50% of shares in the company but having the power to determine (either directly or indirectly) the management or policies of the company.

The POJK No. 9/2018 elaborates certain conditions in which the shares control will not trigger a mandatory tender offer, among others: (i) the acquisition resulted from marriage or inheritance; (ii) the acquisition resulted from court decision that are final and binding; (iii) the acquisition resulted from the private placement in order to improve the financial position of the target company as regulated under the relevant OJK regulation; (iv) the acquisition results from a rights issue, where the shareholders obtain shares by exercising their rights in proportion to their shareholding, (v) the acquisition results from an increase of capital without pre-emptive rights in the context of debt restructuring where the public company is in financial distress.

6. What information relating to a target company is publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

For private target companies, the publicly available information would be limited to (i) the corporate information of the company which can be obtained from the Minister of Law system and (ii) the litigation information of the target, if any, as published in the online registers of the courts having jurisdiction over the target's domicile (the Case Search Information System or locally known as *Surat Informasi Penelusuran Perkara*). However, there are a few downsides to using this publicly available information as there is a possibility that the information contained on the website is not updated.

For listed target companies, in addition to the general information that is available as stipulated above, the following information/documents are also available for the public:

- the appointment of a corporate secretary,
- allocations of securities,
- any disclosure that must be announced to the public,
- public disclosures concerning certain shareholders,
- reports concerning conflict of interest transactions,
- report concerning material transactions,
- announcement and disclosure of bonus shares,
- resolution of the general meeting of the shareholders,
- audited financial statement and annual report of the target.

7. To what level of detail is due diligence customarily undertaken?

Investors usually carry out due diligence on legal, finance, and tax matters of the target company for M&A transactions. Some technical due diligence might be required if the target company involves certain specific activities. For example, if the target company involves in the IT industry, the investors may require additional due diligence on the IT system and personal data protection policy of the target company.

For the legal due diligence in Indonesian M&A transactions, full-blown due diligence covering corporate documents, licenses, manpower, material agreements, assets, insurance, environmental compliance, litigation and court searches are usually required.

8. What are the key decision-making bodies within a target company and what approval rights do shareholders have?

The organs of an Indonesian limited liability company consist of (i) a general meeting of shareholders, (ii) the board of directors, and (iii) the board of commissioners. The general meeting of shareholders is the highest organ in which the Indonesian Company Law regulates that certain actions of the company must be approved by the general meeting of shareholders. Some of the matters that require approval from the general meeting of the shareholders, according to the Indonesian Company Law are:

- Shares buyback,
- Amendment of the company's authorized and issued capital,
- Amendment of the company's articles of association,
- Merger, consolidation, acquisition, division (spin-off),
- Filing for the company's bankruptcy,
- Extension of the company's duration,
- Dissolution, and
- Transfer or encumber the company's assets having a value of more than 50% of the total asset of the company.

On the other hand, the board of directors and the board of commissioners are part of the management of the company. The Indonesian Company Law regulates a two-tier management system consisting of the Board of Directors (**BOD**) and the Board of Commissioners (**BOC**). The BOD is fully responsible for the management of the

company, having the authority to represent the company and to perform the day-to-day management of the company. The BOC is mandated to supervise the BOD in performing its duty and to provide advice to the BOD.

9. What are the duties of the directors and controlling shareholders of a target company?

See the elaboration in question number 8. In general, the directors of the company are responsible for the operation of the target company. As for the controlling shareholders, their vote would be required to fulfill the quorum requirement for certain actions that need to be determined by the general meeting of shareholders, as required under the Indonesian Company Law.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

Specific to an M&A transaction, the Indonesian Company law protects the rights of the employees and the minority shareholders. For employees, Indonesian Company Law requires the company to inform the employees before the occurrence of an M&A transaction. The purpose is to ensure that the employees can request termination (with payment of their severance payment package) if they do not agree to work under the new management following the M&A transaction.

As for the minority shareholders, the Indonesian Company Law specifically regulates that the company must consider the interest of a minority shareholder in undertaking M&A transactions. The Indonesian Company Law even regulates that the company is required to purchase the shares of dissenting minority shareholders in an M&A transaction.

11. To what degree is conditionality an accepted market feature on acquisitions?

It is common for M&A transactions in Indonesia to have a conditionality clause. If the target company's activities require approval from a specific government institution for the completion of the M&A transaction (for example banks, fintech companies, and finance companies would need the OJK's approval), the approval would be stated as the condition for completion. Other than that, the parties usually include the required target company's shareholders' approval, the result of their negotiation and the due diligence issues as the conditions for the completion of the transaction.

Further, certain approval from stakeholders such as lender and main business partners may also be relevant. Due to this reason, under the Indonesian Company Law, the company which conducts M&A must make an announcement in newspaper, both prior and post M&A by the virtue of notifying stakeholders. Particular for certain industries or pre-Initial Public Offering (IPO) target which are subject to lock up, the parties may consider certain transition form of instrument before the entire steps of transaction could be completed.

As such, the parties to the M&A transactions usually execute the so-called conditional shares sale and purchase agreement. Under the so-called conditional shares sale and purchase agreement, various indemnities clauses and also representations and warranties will have major impact towards the transaction. Further in various events, if the previous shareholders sell 100% of their shares, they will also be requested to various undertaking which hold them to conduct the same business for certain period of times and to solicit certain members of key persons.

Further, in the event that the M&A will result the joint venture between the existing shareholder and the new shareholder/investor, the investor usually will stipulate provision regarding lock-up period for the founder of the company as an addition obligation towards the various matters of indemnities clauses. After the completion, they will execute a deed of restatement of shareholders (in which approving the acquisition) and the deed of acquisition before the notary, as required by Indonesian Company Law. For the acquisition, the company will need to obtain approval of Ministry of Law or Receipt of Notification. Later, the company will also conduct post-acquisition announcement within 30 days as of the Ministry of Law Receipt of Notification / Approval (to the extent applicable).

12. What steps can an acquirer of a target company take to secure deal exclusivity?

It would be up to the negotiation between the parties. The common effort to secure deal exclusivity in Indonesia is to insert exclusivity and break-up clauses in the agreement. The exclusivity clause would clearly regulate that the sellers are prohibited to hold any negotiation with other parties concerning the acquisition of the target company starting from the signing of the term sheet up to a certain deadline as agreed between the parties. To ensure that the sellers would abide by the exclusivity clause, the acquirer sometimes also adds a break-up clause in the agreement, which requires the sellers to pay for certain fees if they decide to not pursue the

transactions after the signing of the term sheet or the conditional shares sale and purchase agreement.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

See the response in question 12 concerning the break-up clause in the agreement.

14. Which forms of consideration are most commonly used?

Cash is the most common consideration used between the parties in an M&A transaction in Indonesia. Aside from cash, the consideration may also be in the form of new shares issued by the acquirer for the seller as method of the payment or the combination of cash and new shares. In practice, M&A transactions in Indonesia, the acquirer may also give earn out to provides protection for both parties due to the uncertainty of any potential future but not proven yet upside affecting the agreed valuation.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

For a general acquisition transaction, the Indonesian Company Law requires the company to announce the acquisition plan in a daily newspaper 30-day before the shareholders approve the transaction (either via a general meeting of shareholders or a circular resolution of shareholders). If the target company is a publicly listed company, additional public disclosure would be required. For an acquisition of listed companies transaction that requires a Mandatory Tender Offer (**MTO**), an announcement of the MTO plan must be made in: (i) at least one daily newspaper or (ii) the Indonesian Stock Exchange (*BEI*) website, within two business days after obtaining an announcement approval from the OJK. On the other hand, for a Voluntary Tender Offer (**VTO**) transaction, the offeror must submit a VTO statement to the OJK and publish it in at least two daily newspapers on the same day as the submission day to the OJK.

For a non-acquisition transaction (acquiring a minority stake in a target company), no mandatory public disclosure is required if the target is a private company. On the other hand, if the target company is a publicly listed company, public disclosure should be made if the acquisition involves at least 5% shares in the company.

OJK Regulation No. 4 of 2024 on Reports on Ownership of or Any Ownership Changes in Public Company Shares and Reports on Activities of Encumbering Public Company Shares requires any party to report to the OJK upon the changes of ownership for the minimum of 5% or more paid-up shares in the public company, either directly or indirectly.

16. At what stage of negotiation is public disclosure required or customary?

If the target is a private company, there is no requirement to make a public disclosure concerning the negotiation between the parties. On the other hand, if the target is a publicly listed company, the bidder may (but is not obliged) to make a public disclosure that it is in a negotiation with the seller. The announcement can be made in a national newspaper or on the Indonesian Stock Exchange (*BEI*) website. If the bidder decides to make the announcement, it must:

a. also submit the announcement to (i) the target company, (ii) OJK, and (iii) the stock exchange where the target company is listed on the same day as the announcement date[3], and
b. update the information concerning the negotiation via the national newspaper or the stock exchange's website.

In the event that the bidder decides to not announce the negotiation, the regulation requires all parties to keep the confidentiality of the negotiation process.

One of the bidder's reasoning to make a public disclosure concerning the negotiation is if it anticipates an increase in the price of the target's shares which may affect the minimum consideration price of the MTO (see further elaboration in Question number 19). If an announcement is made, the calculation formulas to determine the minimum price of MTO would kick in once the negotiation is announced.

Footnote(s):

[3] The submission to the stock exchange is not required if the announcement is made on the stock exchange's website

17. Is there any maximum time period for negotiations or due diligence?

The laws do not set a hard deadline for the period of negotiations or due diligence between the parties.

Therefore, it would be up to the commercial discussion and agreement between the parties.

18. Is there any maximum time period between announcement of a transaction and completion of a transaction?

Generally, there is no maximum time period between the announcement of a transaction and completion of a transaction. Further, generally, there are no obligations under the Indonesian law to announce any ongoing transaction.

While there is no time period between the announcement of a transaction and completion of a transaction, there are a few things worth noting:

a. For public companies, POJK No. 9/2018 governs a provision relating to the announcement of an ongoing transaction. Under POJK No. 9/2018, the regulation does not oblige any party to announce the negotiation process. It only governs the rights of the parties to announce the negotiation process of an acquisition of a public company, in order to calculate the Average Trading Price (as defined below) of a public company. See the response in question 19 for further elaboration on this matter.
b. For both public company and private company, under the Indonesian Company Law, the Board of Directors of the surviving company, the Board of Directors of the Company resulting from consolidation and/or the Board of Directors of the Company which shares are acquired ("**Transaction**"), are required to publish the result of the Transaction within at the latest by 30 (thirty) days as of the effective date of the Transaction in 1 (one) or more newspaper.

19. Are there any circumstances where a minimum price may be set for the shares in a target company?

For both a private target company and a public target company, the parties are generally free to decide the price of the transaction due to the freedom of contract principle that is adopted by Indonesian law.

However, if the target company is a publicly listed company, an MTO obligation is required to be conducted by the new controlling shareholder. The regulations set certain formulas to determine the consideration price in an MTO. As the calculation formula would vary, usually the price of the MTO would depend on: (i) the average price of the highest daily trading price on the Indonesian Stock Exchange within a period of last 90 days[4] ("**Average Trading Price**"); or (ii) the price of the acquisition.

The bidder is required to make an MTO with the highest price among the Average Trading Price of the price of the acquisition. For example, if the Average Trading Price of PT A Tbk is Rp. 1,000, and the price of the acquisition if Rp. 2,000, the bidder is required to conduct an MTO for PT A Tbk at Rp. 2,000 since the price of the acquisition is higher than the Average Trading Price. Vise versa, if the Average Trading Price of PT A Tbk is Rp. 2,000, and the price of the acquisition is Rp. 1,000, the bidder is required to conduct an MTO for PT A Tbk at Rp. 2,000 since the Average Trading Price is higher than the price of the acquisition.

If the bidder decided to make a public disclosure regarding its negotiation with the seller, the 90 days period will be counted before the public disclosure regarding the negotiation. However, if the bidder decided not to make any disclosure regarding the negotiation, the 90 days period will be counted before the announcement of acquisition.

While there is no minimum price may be set for the shares of a company, parties in a transaction must consider the tax aspect when conducting a sale and purchase of shares. According to Minister of Finance Regulation No. 79 of 2023 on Appraisal Procedures for Tax Purposes ("**MoF No. 79/2023**"), the directorate general of tax may conduct an appraisal to determine the value of, among others, intangible assets and business. The appraisal to determine the value of an intangible assets and business may be conducted for the implementation of supervision, examination, transfer price agreements, and others. The appraisal result shall be used as, among other things: (i) basis for calculating payable tax and (ii) basis for determining a fair transfer price. Therefore, parties in a transaction cannot agree to an unreasonable low price to avoid their tax obligations.

Footnote(s):

[4] There are 4 situations to calculate the start of the 90 days period. The common situation is the 90 days period before the public disclosure regarding the negotiation, or 90 days period before the announcement of acquisition.

20. Is it possible for target companies to provide financial assistance?

It is not common for the target companies to provide financial assistance to the acquirer in purchasing shares in the company as this would not be in the interest of the

company. It can also be challenged that the financing is deemed as a furtherance of the objects of the company (or the *Ultra Vires Doctrine*) considering that the target company would not obtain any commercial benefit from the transaction. However, it is possible that certain target companies may provide financial assistance for the acquirer with the note that the financial assistance shall be structured properly by the target companies.

21. Which governing law is customarily used on acquisitions?

Indonesian law acknowledges the concept of freedom of contract. Under the freedom of contract principle, parties are free to choose the governing law applicable to their contracts – they may choose whichever law they prefer as long as there is a connection point between the selected law with the matter and the subject of the contract. If the parties to the transaction are all Indonesian parties, they usually choose Indonesian law as the governing law. However, if there are foreign parties, the foreign parties usually choose either Singapore Law or English Law to be used as the governing law of the contract.

22. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

If the buyer (the bidder) decides to make public disclosure concerning the negotiation process for the purchase of shares in a publicly listed company (as referred to in Question 16), it must provide among others the following information:

a. Name of the target company to be acquired;
b. The estimated number of shares to be acquired,
c. Its identity (e.g., name, address, contact number, business activities),
d. The number of existing shares owned by the bidder in the target company, (if any),
e. The purposes of the acquisition and the acquisition plan,
f. The cooperation plan, agreement, or decision between the Organized Group Parties if the acquisition is carried out by the Organized Group Parties,
g. The means and process of the negotiation, and
h. The negotiation material.

23. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

If the transfer of shares would result in an acquisition transaction, the transfer of shares agreement must be made in a notarial deed, as regulated under the Indonesian Company Law. Otherwise, a privately executed agreement would be sufficient to govern the transaction between the parties.

The parties to the transaction should also observe and comply with the Indonesian Language Law requirement which requires the Indonesian version of an agreement made with Indonesian parties. The Indonesian Language Law requirement further regulates that if the agreement is made between Indonesian parties, the agreement must be made in the Indonesian language. Otherwise, if there is a foreign party to the agreement, the agreement can be signed in a foreign language and Indonesian language (with the foreign language as the governing language).

Unlike other countries which require stamp duty charges for an acquisition transaction, Indonesian law does not require such charges. Indonesian law only requires the party to affix a duty stamp sticker (for IDR 10,000,-) on the signatory page of the transfer agreement. In addition to this, the selling shareholders would be subject to income tax regulation should there is any profit being made as a result of the acquisition transaction.

For the listed shares of a public company, transfer of shares is effectively completed upon the crossing mechanism in the stock exchange via the appointed securities companies. The transferred shares would then be recorded in the Indonesia Central Securities Depository (*Kustodian Sentral Efek Indonesia* / KSEI).

Foreign taxpayers who sold their shares in Indonesia are subject to Article 238 Minister of Finance Regulation No. 81 of 2024 on Taxation Provisions for the Implementation of the Core Tax Administration System ("**MoF No. 81/2024**") which states that the income from a sale of company shares obtained by foreign taxpayers (other than permanent establishment) will be subject to a final tax of 5% of the selling price ("**Income Tax**"). The company may only record the deed of transfer of rights to shares if the foreign taxpayer has proven that the Income Tax has been paid in full by a submission of a copy of the proof of withholding or collection of Income Tax.

Further, the Minister of Finance also governs regarding the sale or transfer of shares in a special purpose company or conduit company ("**SPV**") as reflected under Minister of Finance Regulation No. 258/PMK.03/2008 of 2008 on Withholding of Article 26 Income Tax on Income from the Sale or Transfer of Shares as Referred to in

Article 18 paragraph 3C of Income Tax Law Received or Obtained by Foreign Taxpayers (**"MoF No. 258/2008"**). MoF No. 258/2008 governs that a party may choose to establish an SPV for the purpose of selling or transferring company shares established or domiciled in a tax haven country which has a special relationship with an entity established or domiciled in Indonesia or a permanent establishment in Indonesia. The sale or transfer of shares in an SPV shall be subject to an income tax of 20% of the estimated net income and the estimated net income shall be 25% of the selling price. Thus, the income tax shall be 5% of the selling price.

24. Are hostile acquisitions a common feature?

No, hostile acquisition is not formally recognized under Indonesian law.

Generally, Indonesian Company Law provides certain level of protective procedures for acquisition. Indonesian Company Law requires that the quorum to conduct a general meeting of shareholders to approve (i) a merger must be at least ¾; and (ii) acquisition must be at least ¾, of the votes casted in the meeting. If general meeting of shareholders will convey its decision through a circular resolution, 100% of the shareholders must provide their approval to the acquisition. This criteria creates certain level of protection over the minority shareholders of the Indonesian Company.

Indonesian law also obliges the company which will undergo acquisition to conduct announcements in newspapers, prior and after the acquisition process, to ensure that all related parties (including shareholders, creditor, and employee) to be aware of the acquisition and may deliver any objections if the acquisition is deemed to cause harm to their interests.

Although hostile acquisition is not recognized under Indonesian law, there are other method which may resemble hostile acquisition, namely VTO method for public listed companies.

VTO method in Indonesia is govern under POJK No. 54/2015, where VTO is defined as a voluntary offer by a party to acquire equity securities issued by the target company by the way of purchasing or by exchanging with other securities through mass media. To conduct voluntary tender offer, the acquirer shall submit the voluntary tender offer statement to the stock exchange, target company, and other party which has announced voluntary tender offer (if any). The voluntary tender offer in Indonesia may be conducted within or outside stock exchange.

25. What protections do directors of a target company have against a hostile approach?

Generally, the directors would simply implement his / her obligations under the company law where any director shall uphold fiduciary duty and protect the best interest of the Company when the hostile approach appears. It is not clear on whether these principles should be interpreted in what extent to prevent the hostile takeover. However, Director shall take into account various issues (e.g. employees, lenders, etc) for any acquisition in any communication and discussion during the hostile process.

26. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

See the response in question 5 concerning the trigger of a mandatory tender offer in a publicly listed company.

27. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

In addition to the general rights of a shareholder as regulated by the Indonesian Company Law, i.e., the rights of casting votes and receiving dividends (or liquidation proceeds of the company), the Indonesian Company Law also provides additional rights to the minority shareholders, among others:

a. The right to stop "detrimental actions" – the Indonesian Company Law regulates that any shareholders have the right to file a lawsuit against the company to the court for any damage caused by the acts of the company which is considered to be unfair and unreasonable resulting from any decisions of the General Meeting of Shareholders, the Board of Directors and/or the Commissioners,
b. The right to sell its shares in a dissenting opinion in a General Meeting of Shareholders – the Indonesian Company Law states that if a shareholder does not approve the actions of the company in (i) amending the articles of association, (ii) transfer or encumbrance of the assets of the company or (iii) merger, consolidation, acquisition or division of the company, such shareholder may require the company to purchase its/his/her shares "at a reasonable price",
c. The right to call for a shareholders' meeting – at the request of one or more shareholders who together represent at least 1/10 of the total number of issued

shares with valid voting rights (or any smaller amount as provided for in the articles of association), a general meeting of shareholders must be conducted,

d. The right to commence court proceedings against Directors or Commissioners – the Indonesian Company Law regulates that shareholder(s) representing at least 1/10 of the total number of issued shares with valid voting rights may, on behalf of the company, file a lawsuit to the district court against a member of the Board of Directors and/or the Board of Commissioners, whose fault or negligence has caused loss to the company,
e. The right to apply for a judicial inspection of a company, a director and/or a commissioner – the Indonesian Company Law states that shareholder(s) representing at least 1/10 of the total number of issued shares with valid voting rights has/have the right to request the district court to investigate the company, a Director and/or a Commissioner, if such shareholder believes that the company or the respective Director/Commissioner has committed an unlawful act that has caused losses to the company, the shareholders, or a third party,
f. The right to seek dissolution of the company – the Indonesian Company Law regulates that one or more shareholders representing at least 1/10 of the total number of issued shares with valid voting rights have the right to submit a request to the GMS to dissolve the company,
g. Pre-emptive rights – the Indonesian Company Law states that any shareholder (including minority shareholders) shall have pre-emptive rights to subscribe for newly issued shares by the company except for certain conditions[5].

Lastly, the shareholders of a company may also regulate their rights and obligations in a shareholders' agreement. The content and level of protection would depend on the commercial discussion between the parties. As we observed, we note that the common additional protections requested by minority shareholders in a shareholders agreement are among others (i) reserved matters – so that the majority shareholders would still require approval from the minority shareholders for certain important matters, (ii) tag-along right – so that the minority shareholders would have an option to tag along once the majority shareholders sell their shares to a third party, (iii) right of first offer or refusal – so that the minority shareholders would get an offer first once the majority shareholders decide to sell its shares in the company.

Footnote(s):

[5] If the new shares are to be issued (i) to the employees, (ii) to the bondholders, or (iii) are under the scheme of reorganization/restructuring

28. Is a mechanism available to compulsorily acquire minority stakes?

For private limited liability companies, a shareholders agreement may contain a drag-along clause that obligates minority shareholders to sell their shares in conjunction with the majority shareholders' shares when the majority shareholders sell to a new party. Conversely, the same agreement may also regulate a tag-along clause, which allows minority shareholders to request the exercise of their tag-along rights to sell their shares collectively when the majority shareholders sell to a new party.

For listed limited liability companies, there is typically no shareholders' agreement between the shareholders. Additionally, there is no specific regulation comparable to the drag-along clause in a shareholders' agreement. However, minority shareholders are protected under various regulations, such as the Indonesian Company Law and POJK 9/2018. Under POJK 9/2018, a mandatory tender offer (MTO) obligation is required to be conducted by the new controlling shareholder. An MTO is an offer to purchase the remaining shares of a public company that must be made by the new controller. The public shareholders are granted the rights (not an obligation) by the new controlling shareholders of a public company to sell their shares at a specified price. This mechanism serves as a safeguard for public shareholders who disagree with the change of control in a public company. For further information regarding MTO, please refer to the response in question concerning the public disclosure of an MTO and question 19 regarding the price of the MTO.

Apart from the above, under the Indonesian Company Law, if a shareholder rejects certain major agenda in the shareholders meeting and such shareholder has shares representing 10% or more voting rights, he/she/it may request for the Company to buy back their shares at the fair market price.

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