

Public mergers and acquisitions in Indonesia: overview

- **Resource type:** Country Q&A
- **Status:** Law stated as at 01-Oct-2015
- **Jurisdiction:** Indonesia

A Q&A guide to public mergers and acquisitions law in Indonesia.

The country-specific Q&A looks at current market activity; the regulation of recommended and hostile bids; pre-bid formalities, including due diligence, stakebuilding and agreements; procedures for announcing and making an offer (including documentation and mandatory offers); consideration; post-bid considerations (including squeeze-out and de-listing procedures); defending hostile bids; tax issues; other regulatory requirements and restrictions; as well as any proposals for reform.

To compare answers across multiple jurisdictions, visit the *Country Q&A tool*.

This Q&A is part of the Practical Law global guide to mergers and acquisitions law. For a full list of jurisdictional Q&As visit www.practicallaw.com/acquisitions-guide.

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M&A activity

1. What is the current status of the M&A market in your jurisdiction?

Despite the slowing economy last year, M&A activity picked up generally at the end of 2014, although not specifically involving public companies. A new president took office in October 2014 and has made increasing infrastructure a key policy objective. This has initially led to increased flows into the equity and bond markets, although the Indonesian markets remain unpredictable as the new president moves to consolidate his power base and put his stamp on policies. Given Indonesia's significant GDP growth and growing middle class, interest in the country is likely to remain strong.

Major public M&A deals in 2014 included:

- Terra Investment Holdings acquiring 53.43% of the shares in PT Cipaganti Citra Graha Tbk, a taxi fleet operator, in October 2014.
- J Trust Co, of Japan, acquiring 99% of the shares in PT Bank Mutiara Tbk, a commercial bank, in November 2014.

2. What are the main means of obtaining control of a public company?

Typically, an acquisition of control over a public company is made by way of a share acquisition from the incumbent controller or by the purchase of shares in a rights offering. A change of control is generally deemed to occur where either:

- More than 50% of shares in the public company are acquired.
- Less than 50% of the shares are acquired, but there is an effective change of control over the management and/or policy-making in the company.

A Mandatory Tender Offer (MTO) is generally required following a change of control arising from an acquisition of shares from an incumbent shareholder, but is not required if the change of control arises from the subscription for newly issued shares in a rights offering.

Other means of obtaining control include mergers and Voluntary Tender Offers (VTO). However, given the regulatory and procedural complexities that a merger will entail (particularly when it involves public companies), mergers are rare except where they occur for regulatory purposes in the banking sector. VTOs are also rare and are more often used by a controlling shareholder to take a public company private and de-list rather than to acquire a controlling stake.

Hostile bids

3. Are hostile bids allowed? If so, are they common?

Acquisitions in Indonesia can be performed through either:

- Direct buyouts from existing shareholders.

- Acquiring newly-issued shares in a rights offering.

Almost all Indonesian public companies have controlling shareholders in place, making hostile takeovers impossible. Direct buyouts require the co-operation of the existing controlling shareholders for the obvious reason that those controlling shareholders must be willing to sell, while rights offerings also require the co-operation of controlling shareholders for the simple reason that they are subject to the approval of a shareholders' meeting, where the controlling shareholders will have a blocking vote.

Regulation and regulatory bodies

4. How are public takeovers and mergers regulated, and by whom?

Takeovers of public companies are principally regulated by

- Law No. 8 of 1995 regarding the Capital Markets.
- Regulations issued by the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK), namely:
 - OJK Regulation No. IX.H.1 regarding Acquisitions of Public Companies; and
 - OJK Regulation No. IX.F.1 regarding Voluntary Tender Offers.

In addition, several other statutes can affect the acquisition of public companies, including:

- The Indonesian Company Law, which sets out procedural requirements for a merger.
- The Indonesian Employment Law, which gives employees the right to resign and receive a severance package where there is a change of control.
- The Indonesian Anti-Monopoly Law, which requires notification to the Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*) (KPPU) for post-acquisition review if certain thresholds are met in combined assets and/or turnover

Rules from the Indonesia Stock Exchange (IDX) regarding securities trading may also be applicable if the shares are listed on the IDX (as almost all public companies are). Most (although not all) shares in public companies are held in scripless form (that is, in non-physical form, without share certificates) which must be deposited in the Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia*) (KSEI). Most transactions by public companies must therefore be settled through the KSEI. Most scrip shares are held by controlling shareholders with longstanding holdings, and these shares would typically be converted to scripless form in the process of consummating any transaction in these shares.

The OJK is responsible for overseeing public companies and capital market activities generally. Other government agencies may have regulatory oversight of a particular transaction depending on the business activities in which the public company engages, for example:

- The OJK oversees the banking industry.
- The Ministry of Transportation supervises the aviation, shipping and land transportation sectors.
- The Ministry of Informatics oversees the telecommunications industry.

Regulations issued by these and other industry-specific government agencies will also impact mergers and acquisitions.

Pre-bid

Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

Indonesian law does not recognise the terms "recommended bid" and "hostile bid".

There are no specific requirements or procedures for due diligence before acquiring an Indonesian public company. However, it is common and best practice for a bidder to perform due diligence on the target company before proceeding with an acquisition.

In practice, the due diligence will cover the following:

- Corporate organisation and general information.
- Compliance with general and industry-specific licensing and reporting requirements.
- Compliance with capital markets reporting requirements.
- Assets owned and leased, including real estate.
- Borrowings.
- Material agreements, including third party contracts, commitments and miscellaneous agreements.
- Litigation and claims.
- Employees, including key employees.

The selling shareholder, being the incumbent controller of the public company, is considered an insider and therefore any sale of shares by that shareholder is subject to OJK Rule No. XI.C.1 regarding Insider Securities Transactions which are not Prohibited. OJK Rule No. XI.C.1 requires any selling shareholder and the buying party to enter into a confidentiality agreement under which the buying party undertakes that any information received (including information from the due diligence process) will be kept confidential and will not be used for any purpose other than a securities transaction with the insider/selling shareholder.

Hostile bid

Indonesian law does not recognise the term "hostile bid". See above, *Recommended bid*.

Public domain

Not all information regarding a public company is publicly available. Under OJK Regulation No. II.A.1 regarding Publicly Available Documents, the following documents can be made available to the public through the Capital Market Information Centre:

- All documents in connection with the registration statement of a public company, including the prospectus, information memorandum and other related documents.
- Annual and financial reports of a public company.
- Other required reports, including:
 - the appointment of a corporate secretary;
 - allocations of securities;
 - any public disclosure that must be announced to the public;
 - public disclosures in connection with certain shareholders;
 - reports in connection with conflict of interest transactions;

- reports in connection with material transactions;
- announcement and disclosure of bonus shares issued by a public company; and
- resolutions of the general meeting of shareholders.

The above information can be found on the Indonesia Stock Exchange website (www.idx.co.id).

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

A prospective controller can announce that it is in negotiations with the seller in a nationally-circulated newspaper. This announcement is typically made if the buyer anticipates an increase in the price of the public company's shares, which will affect the minimum price at which the shares must be purchased by the buyer during any subsequent Mandatory Tender Offer (MTO) process. Once the negotiation process is announced, a 90-day period for determining the MTO price is locked, starting backward from the date on which the announcement is made.

If an announcement is not made, the 90-day period will be calculated backward from the date of the closing (that is, the date on which the acquisition is effective).

To the extent the prospective controller decides not to disclose to the public information resulting from the negotiations, the parties involved must keep confidential the information that results from the negotiations.

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

It is common practice to enter into a memorandum of understanding with key shareholders and public disclosure of the memorandum of understanding is not required.

However, it may become necessary to later disclose the key terms of the memorandum of understanding to the Indonesian Financial Services Authority (OJK). This is typically the case when the buyer must demonstrate to the OJK that there will be no change of control occurring from the transaction and that a Mandatory Tender Offer will therefore not be necessary.

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives) before announcing the bid, what disclosure requirements, restrictions or timetables apply?

In general, a disclosure obligation arises in relation to an interest in securities when an investor reaches 5% of outstanding shares in an Indonesian public company. Once the 5% threshold is reached, any transfer of shares (provided the ownership is still above 5%) must be reported to the Financial Services Authority (OJK).

If the shareholding ownership drops below 5%, the decrease of ownership (for example, the ownership changing from more than 5% to less than 5%) must be reported, after which no reporting is necessary for any transfer of shares (provided the ownership remains less than 5%).

In addition, rules from the Indonesia Stock Exchange (IDX) require public companies listed on the IDX to make public any information relating to investors owning 5% or more of the shares in that public company (available on the IDX website).

The disclosure must be made no later than ten calendar days after the obligation arises by reason of an acquisition or disposition of shares.

Shareholders owning more than 5% of the shares in a public company are identified on the IDX website.

There is no disclosure requirement when the stakebuilding is carried out using derivatives (for example, put/call options). The disclosure obligation will instead arise on the exercise/conversion of the derivatives to shares in the company.

Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Most public companies in Indonesia are controlled by a single majority shareholder who initiates a share sale transaction leading to a change of control that results in a Mandatory Tender Offer. In these cases, there is no agreement between the bidder and the target: only between the seller and the buyer of the transacted shares.

An agreement between the bidder and the target only arises if:

- The acquisition involves a subscription for new shares in a rights offering.
- The bidder acts as a standby purchaser of shares not subscribed by the existing shareholders.

In limited circumstances, Financial Services Authority regulations can require share subscriptions to be carried out by rights offerings to existing shareholders, in which a third party purchaser known as a "standby purchaser" must agree to purchase any shares not subscribed by existing shareholders. In this situation, the public company and the standby purchaser will enter into a Declaratory Undertaking and Standby Buying Agreement (*Pernyataan Kesanggupan Pengambilan Bagian Saham Dan Perjanjian Pembelian Sisa Saham*) (Standby Buying Agreement) under which the standby purchaser agrees to subscribe for all rights issue shares not taken up by the existing shareholders.

It is not possible for the board of directors of a target public company in Indonesia to initiate or formally recommend a bid to either:

- An existing shareholder.
- A third party.

In the case of a Voluntary Tender Offer (VTO), the offer is initiated by the buying investor, not the target company. There is also no formal procedure for the board of directors to recommend for or against the VTO.

Break fees

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

Break fee provisions are not common in Indonesia, although they are permissible.

Committed funding

11. Is committed funding required before announcing an offer?

Committed funding is required before announcing an offer. A party conducting a Voluntary Tender Offer (VTO) must prepare a statement on the availability of funds to settle the VTO, which must be supported by an opinion from the accountant, bank or securities company involved.

In practice, although not expressly required under any regulation, the same also applies to Mandatory Tender Offers.

Announcing and making the offer

Making the bid public

12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

A bid is made public in the case of either a:

- Mandatory Tender Offer (MTO) (which follows a change of control).
- Voluntary Tender Offer (VTO).

MTO

A takeover of a public company triggers an MTO, subject to certain exceptions (*see Question 16*).

The timeline for conducting an MTO is as follows:

- At the latest one business day after taking control, the acquirer must:
 - announce the completion of the takeover in one daily Indonesian-language newspaper with national circulation; and
 - submit the announcement to the Financial Services Authority (OJK).
- At the latest two business days after the announcement of acquiring control, the new controller must submit a public disclosure of the MTO plan to the OJK.
- The new controller must announce the MTO plan in one daily Indonesian-language newspaper with national circulation at the latest two business days after receiving an OJK statement that the acquirer can publish the MTO public disclosure.
- The MTO begins one calendar day after the public disclosure announcement, with a 30-calendar day offering period. The MTO must be settled within 12 calendar days from the closing of the MTO period.
- The new controller must submit a report to the OJK on the results of the MTO at the latest five business days from the end of the settlement period.

VTO

The timeline for conducting a VTO is as follows:

- Prior to the offerer conducting a VTO, the offerer must submit a VTO statement to the OJK and at the same time publish the statement in at least two Indonesian-language newspapers (one of which must be circulated nationally). The following information must be included in the VTO statement:
 - the identity of the target company;
 - the shares to be acquired (including the offer price, time and method of acquisition);
 - the terms and conditions of the VTO;
 - the name of the stock exchange;
 - the calculation of the share price;
 - the information on the offerer;
 - an explanation of any relationship between the offerer and the target company or its affiliates within the last three years;
 - a statement from the offerer on the availability of funds, supported by an opinion from the accountant, bank or securities company involved;
 - a statement of the purpose of the VTO;
 - a statement of total shares owned by the offerer;

- a list of parties that are being compensated by the offerer in connection with the VTO (if any);
 - an explanation of approvals or requirements imposed by the government in connection with the VTO (if any); and
 - any additional information required to ensure that the VTO statement is not misleading.
- The statement of the VTO is effective:
 - 15 calendar days following the date of receipt of the complete VTO statement from the OJK;
 - 15 calendar days following the date of the last changes submitted by the offerer or the submission of other documents requested by the OJK; or
 - following the receipt of a statement from the OJK stipulating that no further changes and/or additional information are required.
 - The VTO offer must be made at the latest two business days following the effectiveness of the VTO statement, and must remain open for a 30-calendar day period (which can be extended for up to 90 calendar days), unless otherwise agreed by the OJK.
 - The VTO must be settled within 12 calendar days after the offer period has lapsed.
 - The offerer must submit a report to the OJK on the results of the VTO within ten business days from the end of the settlement period.

The above timetable cannot be altered (even if there is a competing bid).

Offer conditions

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

Mandatory Tender Offer (MTO)

In most cases, no conditions are applied for an MTO resulting from a change of control. This is because all minority shares are eligible to be offered for purchase by the new controller. The types of conditions to which a takeover offer may be subject generally concern regulatory requirements, depending on the line of business of the target (for example, prior approval from the Financial Services Authority (OJK) is required for an MTO over minority shares in a public commercial bank).

Voluntary Tender Offer (VTO)

For a VTO, which is typically conducted for the purpose of de-listing/going private, conditions include:

- The approval of a general meeting of the shareholders (GM) (simple majority vote, with the GM attended by more than 50% of shareholders with voting rights), (in accordance with the IDX de-listing rule).
- A statement of no objection from the OJK regarding the VTO disclosure of information submitted by the acquiring investor to the OJK (*OJK Regulation No. IX.F.1*).

De-listing/going private

In the most recent cases of public companies going private, the OJK has also required:

- The approval of independent shareholders (simple majority vote, with the GM attended by more than 75% of independent shareholders with voting rights).
- That the VTO be opened to all shares in the public company (regardless of whether they are founding shares or public shares).

The de-listing/going private transaction will only be effective once all of the requirements are fulfilled and the total number of the company's shareholders is fewer than 50.

It is expected that all public shareholders will sell their shares in the VTO during the one-month tender offer period at the price offered by the prospective buyer. In general, the price for the tender offer must be higher than the average of the highest daily trading price on the stock exchange for the 90 calendar days prior to the tender offer announcement.

Once the tender offer process is concluded and the result is that the total number of shareholders has fallen below 50, the company can proceed to change its status to a private company. However, if the target of having fewer than 50 shareholders is not achieved, the company cannot proceed to go private and the VTO process may need to be repeated (subject to the ruling of the OJK). This may involve an increase in the offering price. This can be a difficult process and may come down to chasing individual shareholders to participate in the VTO process.

For information on de-listing, see *Question 21*.

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

There are no specific documents to be provided to the target company's shareholders. The applicable rules only require that:

- The disclosure is submitted to the Financial Services Authority (OJK).
- The disclosure is announced to the public in:
 - one daily Indonesian-language newspaper for a Mandatory Tender Offer (MTO);
 - at least two Indonesian-language newspapers for a Voluntary Tender Offer (VTO).

For the information to be provided in a VTO, see *Question 12, VTO*.

For an MTO, the acquirer must provide information on:

- The shares to be acquired and the target company.
- The identity of the acquirer.
- The total shares owned by the acquirer (if any).
- The method and process of the takeover.
- The matters being negotiated.

Employee consultation

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

The acquisition of an Indonesian company will trigger the right of employees to resign and receive severance packages under applicable Indonesian employment laws.

It is legally required that employees receive notification of an acquisition, although in practice this is not always done in the acquisition of public companies.

Mandatory offers

16. Is there a requirement to make a mandatory offer?

The acquisition of more than 50% of the total issued share capital of the target company or effective change of control over the management and/or policy-making in the company will trigger a Mandatory Tender Offer (MTO) requirement, except for shares held by any of the following:

- A shareholder that participated in the acquisition transaction by the new controller.
- A party that received an offer with the same terms and conditions from the new controller.
- A party simultaneously making an MTO or Voluntary Tender Offer (VTO) for the shares of the same target company.
- A shareholder owning more than 20% of the shares in the target.
- Another controller of the target company.

However, there are a number of circumstances in which the MTO requirement does not apply. These are where the acquisition of shares occurs by any of the following:

- Marriage or inheritance.
- The purchase or acquisition of up to 10% of the shares in a public company within a 12-month period.
- The implementation of the duty and authority of a state or governmental body/agency under the law.
- The direct purchase of shares owned and/or controlled by a state or governmental body/agency as a result of the implementation of the third point above.
- Any final and binding court order or decision.
- A business merger, separation, consolidation or liquidation of a shareholder.
- A grant of shares without consideration in any form.
- The exercise of a security interest for debts specified in credit agreements, as well as for debts within the framework of a restructuring of the public company stipulated by a state or governmental body/agency pursuant to law.
- The acquisition of shares pursuant to a rights issue or issuance of shares without pre-emptive rights.
- The implementation of the policy of a state or governmental body/agency.
- A VTO.

An MTO is also not required where the tender offer may violate applicable laws and regulations (for example, where the acquisition would take foreign ownership of a public company above the permitted threshold specified in the law for a given industry).

If the MTO results in a new controller owning more than 80% of the public company's paid-up capital, the new controller has two years from the completion of the MTO to re-float its shares so that a minimum of 20% of the public company's paid-up capital is owned by the public, with that ownership divided among at least 300 holders.

Consideration

17. What form of consideration is commonly offered on a public takeover?

If the acquisition is by subscription for newly-issued shares, the consideration must be cash. Similarly, in a direct buyout of an existing shareholder triggering a Mandatory Tender Offer, the consideration must also be in the form of cash.

In the case of a Voluntary Tender Offer, the consideration can be in the form of cash or securities.

18. Are there any regulations that provide for a minimum level of consideration?

There are minimum pricing requirements for both a Mandatory Tender Offer (MTO) and a Voluntary Tender Offer (VTO).

MTO

For an MTO triggered by the takeover of a public company, the pricing is based on one of the following, depending on how the change of control arises:

- Where the change of control arises from the direct acquisition of shares of a public company (for example, the acquisition of shares in the public company itself) and the shares are listed and traded on a stock exchange, the pricing follows one of two formulas (whichever results in the higher price):
 - under the first formula, the price is based on the average price of the daily highest price traded on the stock exchange for either the:
 - 90 calendar days prior to the announcement of the closing of the acquisition leading to control; or
 - 90 calendar days prior to the announcement of negotiations leading to the acquisition (if negotiations are announced).
 - under the second formula, the price is based on the actual price of the acquisition leading to control.
- Where the change of control arises from the direct acquisition of shares of a public company and the shares are listed and traded on a stock exchange, but during 90 calendar days prior to the acquisition announcement or prior to the negotiation announcement the shares have not traded on the exchange, the pricing follows one of two formulas (whichever results in the higher price):
 - the average of the highest daily prices traded on the stock exchange during the 12 months preceding the last trading day of the shares; or
 - the actual price of the acquisition leading to control.
- Where the change of control arises from the direct acquisition of shares of a public company that are not listed or traded on a stock exchange, the pricing is determined by either (whichever results in the higher price):
 - the price at which the acquisition leading to control occurred; or
 - the fair price determined by a licensed appraiser.
- Where the change of control arises from the indirect acquisition of shares of a public company (for example, the acquisition of shares in a controlling shareholder of the public company) and the shares in the public company are listed or traded on a stock exchange, the pricing is determined by the average of the highest daily prices traded on the exchange during the 90 calendar days:
 - prior to the acquisition announcement; or
 - prior to the announcement of negotiations.
- Where the change of control arises from the indirect acquisition of shares of a public company and the shares in the public company are listed and traded on a stock exchange, but during 90 calendar days prior to the acquisition announcement or prior to the negotiation announcement, the shares of the company have not traded on the exchange, the minimum pricing is determined by the average of the highest daily prices traded on the exchange during the 12 months preceding the last trading day of the shares.
- Where the change of control arises from the indirect acquisition of shares of a public company that are not listed or traded, the "fair price" will be determined by an appraiser.

VTO

In the case of a VTO, the price must be higher than:

- The previous highest price offered in a VTO by the same party within the 180 calendar days prior to the announcement of the VTO plan.

- If the shares are listed and traded on the stock exchange, the average of the highest daily prices traded on the stock exchange during the 90 calendar days prior to the announcement of the VTO plan.
- The average of the highest daily prices traded on the stock exchange during the 12 months preceding the last trading day of the shares, if the shares have not traded during the 90 calendar days prior to the announcement of the VTO plan.
- If the VTO is offered for shares that are not listed on the stock exchange, the "fair price" determined by an appraiser.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

There are no specific additional restrictions or requirements for foreign bidders, apart from foreign shareholding limitations for certain industries (see *Question 25*).

Post-bid

Compulsory purchase of minority shareholdings

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

The acquirer does not have the right to compulsorily purchase the shares of any minority shareholders who do not accept the offer.

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

There are no such restrictions.

De-listing

22. What action is required to de-list a company?

The requirements to de-list are governed by Indonesia Stock Exchange (IDX) Rule No. I.I on De-Listing and Re-Listing (IDX Regulation).

Under the IDX Regulation, de-listing can be done either:

- Voluntarily.
- At the request of the IDX.

For the general requirements for a public company going private, see *Question 13, De-listing/going private*.

Voluntary de-listing

Under the IDX Regulation, voluntary de-listing is only possible after five years of listing on the IDX and after receiving shareholder approval.

The procedure for a voluntary de-listing comprises the following steps:

- The listed company submits the de-listing plan to the IDX.
- Prior to convening a general meeting of the shareholders (GM) to approve the de-listing, the listed company must make the following information available to the public:
 - the reason for and objective of the de-listing;
 - the party or parties who will purchase the shares of the company; and

- the estimated share purchase price.
- After the GM has approved the de-listing, the company must publish information regarding the procedures for purchasing the shares.
- The listed company must submit a de-listing application to the IDX along with a:
 - report of the share purchases; and
 - an opinion from a legal consultant that the share purchase process has been completed in accordance with applicable regulations.

(Note that the company or some other appointed party must offer to purchase the shares of any dissenting shareholders.)

The pricing for the offer to dissenting shareholders must be the highest of:

- The nominal (par) value of the shares.
- The highest trading price in the regular market during the two years prior to notice of the GM at which the de-listing is approved, plus a premium equal to the interest that would have been earned over the two-year period calculated by multiplying the original initial public offering (IPO) price of the relevant shares by:
 - the average rate of interest of the three-month Bank Indonesia Certificate (SBI); or
 - the interest rate of any Indonesian government bond as of the date of the shareholder resolution approving the de-listing.
- The fair value as indicated by an independent appraiser.

De-listing at request of IDX

The IDX can request that a company de-list if one of the following conditions is satisfied:

- The company is in a condition or experiences an event that has a significant adverse impact on the continuity of the company's business, financially or legally.
- The shares of the company could only be traded in the negotiable market for at least the last 24 months due to the suspension of trading in the regular market or cash market.

Target's response

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

Hostile bids are not recognised in Indonesia. In the case of a Voluntary Tender Offer, there are no formally recognised means by which the target's board can respond.

Tax

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

The transfer of shares in a public company is subject to a 0.1% final tax (0.6% in the case of founding shares) on the sale price for transactions settled through the stock exchange, while capital gains are treated as ordinary income for both resident and non-resident taxpayers settling over the counter.

There are no stamp or other transfer duties.

Other regulatory restrictions

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Specific regulatory approvals prior to the takeover may be required subject to the target company's specific line of business (for example, banks and non-bank financial institutions will require approval from the Financial Services Authority (OJK) before the takeover).

In addition, the Indonesian Competition Law prohibits the merger or consolidation of business entities or an acquisition of shares that may result in monopolistic practices and/or unfair business competition. The Competition Law requires that a filing be made to the Competition Supervisory Commission (KPPU) for the merger or consolidation of business entities and in the acquisition of shares resulting in control if the resulting asset value and/or sales value exceed certain thresholds. This filing must be made to the KPPU no later than 30 business days after the effective date of the merger, consolidation or acquisition. The surviving company or the acquiring company has the obligation to file.

A filing to the KPPU must be made if the merger results in either:

- A combined local asset value of more than IDR2.5 trillion (about US\$229 million) (or if the entities are banks: IDR20 trillion (about US\$2.07 billion)).
- A combined local turnover of more than IDR5 trillion (about US\$518 million).

These minimum thresholds are calculated based on the total asset value and/or sales value of:

- The business entity resulting from the merger, or in the case of an acquisition, the acquiring business entity and the acquired business entity.
- The business entity or entities that control or are controlled (either directly or indirectly) by the business entity resulting from the merger or consolidation, or the acquiring business entity and the acquired business entity.

Guidelines issued by the KPPU clarify that the asset value and/or sales value of any sister companies must be included. Therefore, the Indonesian turnover and assets of any subsidiary companies controlled by the ultimate parent are included in the determination of whether filing thresholds are satisfied.

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

Certain types of businesses in Indonesia are subject to foreign ownership limits.

The government issues and periodically amends the Negative Investment List, which lists most business sectors with restrictions or prohibitions on foreign investment. However, the Negative Investment List is not generally deemed to apply to investment through a capital market transaction (that is, investment through the purchase of shares in a public company). However, while it is clear that the Negative Investment List does not apply to portfolio investors in public companies, there are instances in which the regulator can still deem it to apply to controlling shareholders of public companies whose names are listed in the companies' articles of association.

In some sectors, further restrictions on foreign ownership apply beyond those that are set out in the Negative Investment List (for example, in relation to banking and mining).

However, foreign ownership restrictions are not necessarily consistently enforced in Indonesia, and it is advisable to consult with legal counsel before considering an acquisition of a public company in Indonesia.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

There are no restrictions on the repatriation of corporate profits or exchange control rules restricting the remittance of non-rupiah denominated funds.

However, there is a reporting obligation by financial institutions to the Indonesian central bank of foreign exchange transactions in Indonesia. Banks require customers making transfers of more than US\$10,000 to disclose:

- General information on the residency status of the beneficiary.
- The relationship between the transferor and the beneficiary.
- The purpose of the transfer.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

There are no restrictions or disclosure requirements imposed on persons apart from the general disclosure requirements (see *Question 12*).

Reform

29. Are there any proposals for the reform of takeover regulation in your jurisdiction?

A draft proposal to amend takeover regulations is currently being circulated to concerned parties for their review. The authors understand that the Financial Services Authority is intending to enact a new regulation this year.

The most significant change in the draft amendment being circulated is that new controllers would be limited to the acquisition of 80% of shares in public companies. Under this amendment, if the 80% threshold is breached, a new controller will not be allowed to conduct a Mandatory Tender Offer.

The regulatory authorities

Financial Services Authority (Otoritas Jasa Keuangan) (OJK)

W www.ojk.go.id/

Main area of responsibility. The OJK is authorised to regulate and supervise all activities in the financial services sector, including banks, securities companies and non-bank financial institutions.

Online resources

Financial Services Authority (Otoritas Jasa Keuangan) (OJK)

W www.ojk.go.id/

Description. Official website of the OJK. Publishes laws and regulations applicable to the financial services sector, including banks, securities companies and non-bank financial institutions. The website provides English translations for some (but not all) of the regulations published on the website.

Indonesia Stock Exchange (IDX)

W www.idx.co.id/

Description. Official website of the IDX. Publishes publicly available information and documents of public companies listed on the IDX, including IDX regulations. The website provides English translations for some of the regulations published on the website.

Contributor profiles

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Areas of practice. Banking and finance; foreign investment; M&A; natural resources and energy; project finance; restructuring.

Non-professional qualifications. BA in History, Harvard University; MA in Economics, University of Hawaii; LLB, Atma Jaya University, Jakarta; JD, University of California, Berkeley

Recent transactions

- Acting for Cargill in the acquisition of a group of plantation companies in Indonesia in a transaction valued at US\$600 million.
- Advising PT Suyaraya Investama in joining with CapitalLand in a joint venture for the US\$300 million development of a high-end property comprising offices, apartments and serviced apartments.
- Representing Oiltanking GmbH in a joint venture with a Russian petroleum products trader in the development of a tank farm/terminal facility in Indonesia.
- Representing a syndicate of seven European banks in the court-supervised debt restructuring of PT Berlian Laju Tanker Tbk (BLT). The bank syndicate held US\$500 million of a total US\$2 billion in outstanding indebtedness of the BLT group.
- Acting as Indonesian counsel for a group of US dollars bondholders in a controversial court-supervised debt restructuring of PT Bakrie Telecom Tbk.
- Representing HSBC as the agent for the senior secured lenders in the accession of PT Expro Indonesia to a global re-financing by the Expro Group, a global petroleum exploration and production enterprise.

Languages. English, Indonesian

Professional associations/memberships. International Bar Association; Inter-Pacific Bar Association.

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Professional qualifications. Indonesia, Advocate; Capital Markets Legal Consultant

Areas of practice. Banking and finance; capital markets; foreign investment; mergers and acquisitions.

Recent transactions

- Representing Woori Bank of South Korea in the purchase of a 33% stake in Bank Saudara of Indonesia for approximately US\$60 million.
- Advising on competition concerns in relation to a proposed guaranteed performance service product for a provider of services to the food and beverage industry.
- Representing Bank Mandiri, one of the largest banks in Indonesia, in its acquisition of a general insurance company with AXA.
- Advising Reliance Resources Ltd. on its acquisition of mining assets in Indonesia, as well as the back-door listing of the acquiring company on the Toronto Stock Exchange.
- Representing Kordsa, a Turkish public company, in its acquisition of PT Branta Mulia.
- Acting for Siam Cement Group, one of Thailand's largest companies, in its acquisition of the local presence of Boral (Australia) in Indonesia.
- Advising Robust Resources Ltd. on its divestment of a 22.5% strategic stake in its Indonesian subsidiary mining company to the Salim Group valued at approximately US\$30 million.

Languages. English, Indonesian

Professional associations/memberships. International Bar Association; Inter-Pacific Bar Association; Indonesian Advocates Association; Indonesian Capital Market Legal Consultants.

Resource information

Resource ID: 7-381-2795

Law stated date: 01-Oct-2015

Products: Mergers and Acquisitions multi jurisdictional guide, PLC Cross-border, PLC UK Corporate, PLC UK Finance, PLC UK Law Department, PLC UK Tax, PLC US Corporate and M&A, PLC US Law Department

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