

Foreign Investment Regulation and M&A Transactions in Indonesia

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M&A Transactions in Indonesia

Regulatory Framework

Company Law: Law No. 40 of 2007 regarding Limited Liability Company

Investment Law: Law No. 25 of 2007 regarding Capital Investment

Manpower Law: Law No. 13 of 2003 regarding Manpower

Capital Market Law: Law No. 8 of 1994 regarding Capital Market
(if M&A transaction involves a public company)

Anti-Monopoly Law: Law No. 5 of 1999 regarding Prohibition on Monopolistic Practices and Unfair Business Competition

Industry-specific Laws & Implementing Regulations of the above

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Approvals, Requirements and Policies

Foreign Investment M&A

- Foreign investment M&A transaction can only target a limited liability company (*perseroan terbatas* or PT)

Negative Investment List (DNI)

- Sets foreign ownership limitations based on business field classifications
- (i) Open for 100% for foreign investment; (ii) open for foreign investment with limitations; or (iii) closed for foreign ownership

BKPM Approval

- Prerequisite for every M&A transaction involving foreign investment (except for financial services companies)
- Can only be obtained if any foreign investment requirements under the DNI are satisfied

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Approvals, Requirements and Policies

Corporate Approvals

- Prerequisite for M&A transaction under the Company Law and under company's Articles of Association (e.g. shareholder approvals, right of first refusal, newspaper announcement, etc.)

MOLHR Approval / Notification

- M&A transaction will involve amendment of company's Articles of Association; Minister of Law and Human Rights (MOLHR) approval/notification is required

Anti-Monopoly Compliance

- If certain thresholds are met, the transaction must be reported to the Competition Supervisory Committee (*Komisi Pengawas Persaingan Usaha* or KPPU)

Approval from Relevant Ministries

- No specific regulations on cross-border transactions, but prior approval or recommendation from other relevant ministries might be required (e.g. energy, oil & gas, and mining sectors)

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Approvals, Requirements and Policies

Employment

- Notification to employees if change of control M&A
- Employee right to resign and receive severance following change of control M&A transaction

Transaction Involving Financial Institutions

- Banks, insurance and securities companies are subject to foreign ownership rules imposed by OJK
- Prior approval from OJK also required (no BKPM approval in this case)

Transaction Involving Public Companies

- Transactions involving public companies must also comply with requirements under the Capital Market Law and OJK regulations (generally no BKPM approval in this case)

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Possible Challenges and Obstacles

- ❑ Dynamic and unpredictable changes to the Negative Investment List



e.g. foreign ownership limitation in distribution sector



* Foreign ownership may be 100% if the distributor distributes products manufactured by its other Indonesian entity affiliates. BKPM policies are changing continually on this subject.

- ❑ Manpower Issues

Failure to craft an approach to the labor unions or employees regarding proposed acquisition will ultimately create obstacles for the closing of the acquisition

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Possible Challenges and Obstacles

- ❑ Other challenges that might be faced:
 1. Legal uncertainty due to constant policy changes
 2. Complicated bureaucracy
 3. Lack of coordination between central and local governments
 4. Dynamic changes of law and ambiguity of Indonesian laws and regulations

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Possible Challenges and Obstacles

- ❑ Administration of President Joko Widodo (Jokowi) is trying to improve the ease of doing business in Indonesia and mitigate the challenges commonly faced when investing (including conducting M&A transactions) in Indonesia



“What we need to do is improve ease of doing business in this country. Ministerial regulations should always refer to the objective. They should not scare investors away” – President Jokowi in a cabinet meeting on July 24, 2017. Following this statement, he criticized several ministries for making policies and regulations that defeat the above aim.

Current Regulatory Environment - Tepid

- ❑ Little impact from Jokowi's 2016 economic policy reform packages
- ❑ Infrastructure investment is inching forward (like Jakarta traffic)
- ❑ Corporate profitability down
- ❑ Despite new regulations, few PPP projects have materialized
- ❑ SOEs remain dominant
- ❑ Some quiet signs that government recognizes greater need for foreign investment

M&A Future Trends

- ❑ Indonesia is an attractive market for the acquisition of banks, insurance companies and other financial institutions to capture benefits of a growing middle class
- ❑ There has been a shift in the investors coming into Indonesia, and now China, Thailand and South Korea are some of the biggest foreign investors



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