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ONE BELT ONE ROAD CHINA INVESTMENT
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LexisNexis® Mergers & Acquisitions Law Guide 2018
并购法律指南 2018

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Feature Article
专题

Feature Article: Mechanics of M&A in Indonesia

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A. Regulatory Framework

In general, mergers and acquisitions in Indonesia are governed by the following laws and regulations:

a) Law No. 40 of 2007 regarding Limited Liability Companies ('Company Law') as well as its implementing regulation, i.e. Government Regulation No. 27 of 1998 regarding Mergers, Consolidations, and Acquisitions of Limited Liability Companies ('PP 27');

b) Law No. 25 of 2007 regarding Investment as well as its implementation, i.e. Presidential Regulation No. 44 of 2016 regarding List of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment, Regulation of Head of Investment Coordinating Board (BKPM) No. 14 of 2015 regarding Guideline and Procedure of Principle License in Investment as most recently amended by Regulation No. 8 of 2016, and Regulation of Head of Investment Coordinating Board (BKPM) No. 15 of 2015 regarding Guideline and Procedure of Investment Licensing and Non-Licensing; these laws and regulations only apply to the merger and acquisition transaction which involves a foreign investment;

c) Law No. 5 of 1999 regarding Prohibition of Monopoly and Unfair Business Competition as well as its implementing regulation, among others: Government Regulation No. 57 of 2010 regarding Merger, Consolidation, and Shares Acquisition which may Cause the Monopoly Practice and Unfair Business Competition, Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha* or KPPU), Regulation No. 11 of 2010 regarding Consultation on Merger or Consolidation of Business Entity and Acquisition of Shares in the Company, and KPPU Regulation No. 13 of 2010 regarding Guidelines on Merger, Consolidation of Business Entity and Acquisition of Shares which may cause Monopoly Practices and Unfair Business Competitions, as most recently amended by the KPPU Regulation No. 2 of 2013;

d) Law No. 8 of 1995 regarding the Capital Market as well as several other regulations issued by the Capital Market and Financial Institution Supervisory Agency (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* or BAPEPAM-LK) which is currently known as the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK), such as:

   (i) Financial Services Authority (*Otoritas Jasa Keuangan*) Regulation No. 54/POJK.04/2015 on Voluntary Tender Offers;

   (ii) Rule No. IX.G.1 on Mergers and Acquisition of Public Companies or Issuer Companies as an attachment to the Decree of Chairman of BAPEPAM-LK No. Kep-52/PM/1997;

   (iii) Rule No. IX.H.1 on Public Company Acquisition as an attachment to the Decree of the Chairman of BAPEPAM-LK No. Kep-264/BL/2011;

(iv) Rule No. IX.E.2 on Material Transaction and Change of Main Business as an attachment to the Decree of BAPEPAM-LK No. Kep-614/BL/2011;

(v) Financial Services Authority (*Otoritas Jasa Keuangan*) Regulation No. 31/POJK.04/2015 on Disclosure of Material Information or Fact by Issuers or Public Company; and

(vi) Financial Services Authority (*Otoritas Jasa Keuangan*) Regulation No. 29/POJK.04/2015 on Issuers or Public Company exempted from Reporting and Disclosure Requirement.

These laws and regulations will be applied only if either the target or the purchaser is a publicly listed company;

(vii) Related tax regulations, among others: Law No. 7 of 1983 as currently amended by Law No. 36 of 2008 regarding Income Tax Law; Law No. 8 of 1983 as currently amended by Law No. 42 of 2009 regarding Value Added Tax; Law No. 21 of 1997 as currently amended by Law No. 20 of 2000 on the Acquisition Duty of land and/or building and Government Regulation No. 34 of 2016 on Income Tax of transfer of land and building and conditional agreement and its amendment; and

(viii) Any other specific regulations depending on the nature of business of the target or the purchaser (as applicable), such as banking sector, forestry, mining.

B. Mechanics of Mergers and Acquisitions

Mergers

Company Law and PP 27 define a merger as a legal act which is conducted by one company or more to merge itself into another company which has existed previously and the merging company will then be dissolved.

Since there will be a transfer of assets and liabilities of the merging company into the merged company, the tax aspect of a merger transaction will relate to the following:

(a) Transfer Tax

Transfer tax will be in the form of:

(i) VAT (in the event that one of the parties of the merger is not a registered taxable entrepreneur); and/or

(ii) fees for acquisition of land and building (*bea perolehan hak atas tanah dan bangunan* or BPHTB) if the transfer relates to property/land. At the request of the taxpayer, the Director General of Taxation may grant a BPHTB reduction of up to 50% for land and building rights transfers in business mergers or consolidations at book value;

(b) Income tax as a result of capital gain by the transfer of assets and liabilities of the merging company to the merged company.

Transfers of assets in business mergers must generally be conducted at market value. Gains resulting from this type of restructuring are assessable, while losses are generally claimable as a deduction from income. However, a tax-neutral merger, under which assets are transferred at book value, can be conducted subject to the approval of the Director General of Taxation, in which the merger plan must pass a business purpose test by the Director General of Taxation. As for a tax-driven arrangement, it is prohibited and therefore tax losses from the combining companies may not be passed on to the surviving company.

Acquisitions

In Indonesia, there are two types of acquisitions: shares acquisitions and asset acquisitions. For the purpose of this article, we will only elaborate further on shares acquisitions. Company Law defines a shares acquisition as a legal act conducted by a legal entity or individuals to acquire either all or most of the shares in a

company which may result in a change of control of such company.

A shares acquisition can be achieved by means of:

(a) Transfer of majority shares in the target company to the purchaser

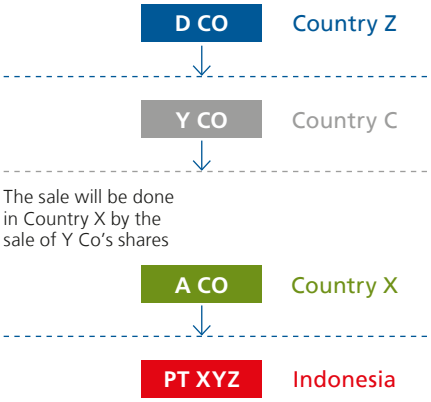
If the acquisition is achieved by a transfer of shares, the seller will have an obligation to pay taxes in relation to the capital gain achieved for such transfer of shares under the following conditions:

(i) if the seller is an Indonesian tax subject, the obligation to pay tax on the capital gains is the seller's obligation. There is no obligation on the part of the buyer to withhold any amount from the sale price;

(ii) if the seller is not an Indonesian tax subject, the resident buyer must withhold 20% of the estimated net income (i.e. the capital gain amounting to 25% of the transaction value) to the seller from the sale of the shares, except where the taxation of capital gains is reserved for the treaty partner by an applicable tax treaty. To obtain the benefit of the applicable tax treaty, the seller must comply with the certification, eligibility, information and reporting requirements in force in Indonesia. Currently, the seller would need to provide a certificate of tax domicile issued by competent tax authority (the Internal Revenue Services) to the purchaser and the company;

(iii) if the target is a publicly listed company, the obligation to pay tax on the capital gains as a result of the transfer of shares will be subject to final income tax at the rate of 0.1% of the gross amount of the transaction, provided that the share being sold is not a founder share. If it is a founder share, then the tax will be added by 0.5% of the nominal value of the shares in the company by the closing of the stock exchange at the end of 1996 or the nominal value of the shares in the initial public offering if the shares of the company are listed on the stock exchange after 1 January 1997.

In relation to this tax obligation, if the seller is a multinational company, they usually prefer to complete the deal outside of Indonesia, in a country which has a favourable tax regime for them, e.g. they usually own the shares in an Indonesian company through their subsidiary in country X ('A Co') which has a favourable tax regulation to them. Once they decide to exit from the Indonesian company, they will do the transaction through A Co so that the sale will be conducted in country X for the purpose of having a lower tax rate rather than doing the transaction in Indonesia.



However, if Country X is a tax haven country, the disposal of shares of A Co in Country X might be subject to tax pursuant to Regulation of Minister of Finance No. 258/PMK.03/2008 regarding Withholding of Income Tax of Article 26 for the Income of Sale or Transfer of Shares as intended under Article 18 Paragraph (3c) of Income Tax Law Which is Obtained by Non-Resident Taxpayer ('PMK 258'). Pursuant to PMK 258, the transfer of shares of a company which was established in a tax haven country and has a special relationship with Indonesian company or permanent establishment in

Indonesia is subject to 20% of the estimation of the net amount. The estimation of the net amount will be calculated as 25% from the sale price. However, if the country origin of the seller has a tax treaty agreement with Indonesia, the withholding of the income tax for the gains will only be conducted once the treaty provides that Indonesia has the right of taxation for this type of transaction. We believe that there is no special rule dealing with the disposal of stock in real property, energy, and natural resources companies.

Under Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah in the Territory of Indonesia ('BI Regulation'), Bank Indonesia requires every business actor to set a price of a good and/or service in Rupiah. In addition to BI Regulation, Bank Indonesia has issued a circular letter No. 17/11/DKSP as the implementing regulation of the BI Regulation on 1 June 2015 ('Circular Letter'). Article 2.A of the Circular Letter clearly mentions that every business actor in Indonesia must set the price of a good and/or service only in Rupiah and is prohibited from setting the price in any other currency (dwual quotation); or

(b) Issuance of new shares in the target company to be subscribed by the new shareholder which dilutes the share proportion of the previous shareholder in the target company.

If the acquisition is achieved by subscription of new shares in the company, the subscription of these new shares will not be subject to tax.

Nevertheless, if such subscription of new shares is based on the conversion of an existing loan (i.e. shareholder loan, advance payment and/or convertible bond), such conversion shall be subject to be taxed (if the amount of advances (shareholder loan) is lower than the value of shares, the difference may be deemed as deemed interest given to the lender, which will be subject to income tax). Further, Government Regulation No. 15 of 1999 stipulates that the conversion of a certain form of claim into shares must be announced in two newspapers.

In the event the conversion of the existing loan comes from offshore, the Regulation of Bank Indonesia (Peraturan Bank Indonesia) No. 16/22/PBI/2014 concerning Reporting of Foreign Exchange Flow Activity and Reporting of the Application of Prudential Principles in Management of Offshore Loan of Non-Bank Corporations ('PBI No. 16/22/PBI/2014') states that an Indonesian company (and individual, as relevant) conducting foreign exchange activities, inter alia, obtaining an offshore loan, must submit foreign exchange traffic reports ('Foreign Exchange Traffic Report') and the application of prudential principles reports ('Prudential Principles Reports') periodically to Bank Indonesia in accordance with the provisions and procedures set forth in PBI No. 16/22/PBI/2014 and subsequent implementing regulations prevailing from time to time.

The Foreign Exchange Traffic Report consists of reports on:

(i) the execution of the loan agreement, the realisation and repayment of the loan thereunder including all payments of interest under the loan agreement;

(ii) foreign exchange activities other than offshore loan conducted by an Indonesian company (which includes a guarantee granted by an Indonesian party in favour of an offshore party); and

(iii) an offshore loan plan. An Indonesian company proposing to obtain an offshore loan must submit certain reports which include information and supporting data on the offshore loan plan for one year (and any amendment to it) e.g. nominal amount of the offshore loan, type of the offshore loan, and the relationship with the creditor.

The Prudential Principles Reports consist of:

(i) the application of prudential principles report;

(ii) the application of prudential principles report which has passed attestation procedure;

(iii) information on the satisfaction of credit rating requirement; and

(iv) financial statements.

Other than the above, the utilisation of certain types of offshore loan, i.e. (i) loans related to project development whose financing is in the nature of '*nonrecourse*', '*limited-recourse*', '*advanced payment*', '*trustee borrowing*', '*leasing*' and so forth; (ii) loans related to project development whose financing is based on 'BOT', 'B&T' and so forth, shall be coordinated under the Team PKLN as required by the Presidential Decree No. 39 of 1991, dated 4 September 1991 concerning Coordination of the Management of Offshore Loan ('Decree No. 39/1991'). Further, article 12 of Decree No. 39/1991 stipulates that the borrower of an offshore loan shall submit a regular report to the PKLN team regarding the performance of the obtained offshore loan.

In addition, article 3 of the Minister of Finance Decree No. KEP-261/MK/IV/5/1973 concerning Rules on the implementation for obtaining offshore loan, as later amended by No. 417/KMK.013/1989 and No. 279/KMK.01/1991 stipulates a regular report regarding offshore loan shall be submitted to the Department of Finance and Bank Indonesia as of the effective date of the loan agreement and subsequently every three months; or

(c) Mandatory Tender Offer for a Publicly Listed Company

If the acquisition transaction occurs in a publicly listed company, it will trigger a mandatory tender offer ('MTO') since there is a change of 'controller' in the publicly listed company. A controller is defined as a party who (i) owns more than 50% of the issued shares in the company; or (ii) has less than 50% of shares but has the means to determine the management and/or policies of the company. However, the change of controller as a result of an issuance of new shares pursuant to a rights issue is exempted from a MTO requirement.

In order to conduct a MTO, the new controller must:

(i) submit a draft announcement of the information disclosure in relation to the MTO along with its supporting documents to the OJK and the target company within two business days after the takeover announcement;

(ii) submit any changes and/or additional information on the draft announcement and its supportive documents within five business days after receipt of the request to change the draft from the OJK (if any);

(iii) announce the information disclosure in at least one Indonesian daily newspaper having national circulation within two business days after receipt of the letter from the OJK stating that the new controller may announce the disclosure of information on the MTO (the new controller must also submit evidence of the announcement in a daily newspaper as mentioned above to the OJK within two business days after the date of the announcement). The announcement of information disclosure in respect of the MTO must include:

- the background of the takeover;
- details of the estimated number and percentage of shares to be purchased;
- details of the number and percentage of shares of the target company that have been acquired, including call option, any rights to receive dividend or any benefit as well as proxy in voting rights in the target company;
- details of the new controller, including name, address, nationality and affiliation relationship with the target company, if any (for individual) or the establishment, capital structure, board of directors and commissioners, shareholding composition, beneficial

owner and affiliation relationship with the target company, if any (for non-individual);

- details of the target company, including name, address, and line of business;
- terms and conditions of the MTO i.e. purchase price and calculation method, MTO period, terms payment, purchase mechanism, and explanation on any governmental approvals that must be obtained in relation to the MTO, if any;
- names and addresses of the capital market supporting institutions or professionals involved in the MTO; and
- any other important information i.e. details of any lawsuit in relation to the takeover and additional information that is required so that the disclosure is not misleading;

(iv) conduct the MTO within a 30-day period as of the day following the date of the announcement of the information disclosure as stated in (iii) above;

(v) make a MTO settlement, with money transfer, at least no later than 12 business days after the end of the MTO period; and

(vi) submit a report on the MTO's result to the OJK within five business days after the end of the MTO settlement. The settlement of the MTO transaction must be made with money settlement as mentioned in (v) above. It cannot be exchanged with a securities settlement.

The price of a MTO transaction is regulated as follows by the regulations regarding the MTO:

(i) in the event the acquisition is directly exercised over shares of a publicly listed company listed and traded at the stock exchange, the lowest MTO price must be at least:

- the average of the highest price of the daily trading at the stock exchange during the last 90 days before the acquisition announcement or the negotiation announcement; or
- the exercise price of the acquisition, whichever is higher;

(ii) in the event the acquisition concerns shares of a publicly listed company listed and traded at the stock exchange, however during the period of 90 days or more before the acquisition announcement or before the negotiation announcement, the said shares were not traded on the stock exchange or its trade was temporarily suspended by the stock exchange, the MTO price must be at least:

- the average of the highest price of the daily trading at the stock exchange during the last 12 months, counted backwards from the last trading day or the day it was temporarily suspended; or
- the exercise price of the acquisition, whichever is higher;

(iii) in the event the acquisition concerns shares of either a publicly listed company or an equity issuer whose shares are unlisted, the MTO price must be at least:

- the exercise price of the acquisition; or
- the fair price determined by the appraiser, whichever is higher;

(iv) in the event the acquisition indirectly concerns shares of a publicly listed company listed and traded at the stock exchange, the MTO price must be at least equal to the average of the highest price of daily trading at the stock exchange during the last 90 days before the acquisition announcement or negotiation announcement;

(v) in the event the acquisition is indirectly exercised over shares of a publicly listed company listed and traded at the stock exchange, but during the last 90 days or more before the acquisition announcement or before the negotiation announcement, was not traded at the stock exchange or its

trade was temporarily suspended by the stock exchange, the MTO price must be at least the average of the highest price of daily trading at the stock exchange during the last 12 months counted backwards from the last trading day or the day the trade was temporarily suspended; and

(vi) in the event the acquisition is indirectly exercised over shares of either a publicly listed company or an equity issuer whose shares are unlisted and not traded on the stock exchange, the MTO price must be at least equal to the fair price as determined by the appraiser.

The period for price determination, as mentioned in (i) and (iv) above, will follow the exercise period of the MTO in the event the exercise of the MTO exceeds the deadline of 180 days as of the negotiation announcement (provided that this MTO price calculation is higher than the MTO price under (i) and (iv) above).

Following the takeover, if a new controller owns more than 80% of paid-up shares of a target company after exercising the MTO, the new controller must transfer a portion of the shares to the public, so that there will be at least 20% shares of the target company owned by at least 300 persons within two years as of completion of the MTO.

In the event the Takeover results in ownership of more than 80% of paid-up shares of the target company, a MTO must still be carried out to give the public shareholders the chance to benefit from the offer price determined under Rule IX.H.1, even though the new controller will later have to divest at least the same percentage of shares it has acquired in the MTO to at least 300 persons within two years.

The above obligations will not apply if the target company undertakes a corporate action (such as a rights issue) which dilutes the new controller's shareholding and results in compliance with the minimum free float requirement as explained above.

If change of control in a publicly listed company results from an issuance of new shares by virtue of the rights issue of a pre-emptive right (which is defined as a right attached to a share enabling the shareholders to purchase new securities, including shares, securities convertible into shares and warrants, before they are offered to other parties), under the Financial Services Authority (*Otoritas Jasa Keuangan*) Regulation No. 29/POJK.04/2015, the requirements to make a MTO are waived.

Prior to making a rights issue, the listed companies (the "**Listco**") must submit a registration statement relating to the rights issue to the OJK at least 28 days before the extraordinary general meeting of shareholders ('Registration Statement'). Under current Indonesian regulations, Listco may not proceed with a rights issue until the Registration Statement (filed with the OJK) becomes effective. Unless stipulated otherwise by the OJK, the Registration Statement will become effective only after the shareholders approve the rights issue at an extraordinary general meeting of shareholders. In practice, the OJK will review and give comments on the Registration Statement document within 28 days.

Before making a rights issue, if a public company seeks to raise a specific amount, Listco must obtain a guarantee from a party, the Standby Purchaser, which agrees to purchase any remaining excess rights shares ('Remaining Excess Rights') at a price which is at least equal to the exercise price. There are no restrictions on the identity of such a party. Any party may act as the Standby Purchaser, including the principal shareholder of Listco.

If, after the excess rights application by the shareholders, there are still Remaining Excess Rights, the Standby Purchaser will be responsible to purchase the Remaining Excess Rights at the exercise price and must pay for the Remaining Excess Rights within two working days after the end of the trading period.

Timeline

The timeline for mergers and acquisitions depends on the complexity of the transaction. For a normal transaction, the process should be completed within two to four months. However, for a complex transaction or a transaction which involves a publicly listed company, the process could take longer.

Employees

Pursuant to article 127 of Company Law, a company must announce to its employees any plan of change of ownership at the latest by 30 days prior to the call of a general meeting of shareholders for the agenda of change of ownership in the company. In general, the employees do not have a direct say in a merger or an acquisition. However, if the merger and/or acquisition results in a change of control in the company, the employees will be entitled to request for a termination and receive severance payment from the company. Pursuant to Law No. 13 of 2003 regarding Manpower ('Labour Law'), once the employees decide to terminate their employment with the company, the company will be required to pay the severance package to the employee, which amounts are regulated under the Labour Law or the company's regulation or the Collective Labour Agreement. The components of the severance package are severance payment, service appreciation payment and compensation payment.

Documentation

In general, the following documents are required to be prepared for a merger and acquisition transaction:

a) announcement of the summary of the merger/acquisition plan to the public through at least one newspaper having nationwide circulation;

b) announcement to the employees in writing;

c) resolution of general meeting of shareholders or circular resolution of shareholders of the company approving the merger/acquisition plan;

d) BKPM's approval on the merger/acquisition plan (applicable only if it involves foreign investment);

e) Notarial deed of acquisition or deed of merger in Indonesian language;

f) approval or receipt of notification in relation to the merger/acquisition from the Ministry of Law and Human Rights;

g) announcement of the result of merger/acquisition in at least one newspaper having nationwide circulation;

h) updated shareholders' register of the company as a result of the merger/acquisition;

i) new share certificates of the shareholders of the company as a result of the merger/acquisition;

j) updated company registration number.

If the transaction involves a merger or an acquisition through an issuance of new shares, a merger/acquisition plan will be required in addition to the abovementioned documents. A merger/acquisition plan should consist of the following information, among others:

a) name and domicile of the merging/acquiring and surviving/acquired entities;

b) the reason behind the merger/acquisition transaction;

c) the method of assessment and conversion of shares of the merging company into the shares of the surviving company;

d) the amount of shares to be acquired (for acquisition transactions only);

e) the readiness of the funding (for acquisition transactions only);

f) draft amendment of the articles of association of the company after the merger/acquisition (if any);

g) financial statement of the merging company (for merger transactions only);

h) further plan or ceasing of business activities of the merging company (for merger transactions only);

i) pro-forma balance sheet of the surviving company/the acquiring company;

j) the manner of settlement on the status, rights, and obligations of the members of the board of directors, board of commissioners, and employees of the merging/acquired company;

k) the manner of settlement on the rights and obligations of the merging company against the third party (for merger transactions only);

l) the manner of settlement on the rights of the shareholders who do not approve the merger/acquisition of the company;

m) the names of the members of the board of directors and board of commissioners of the surviving company as well as their honorariums, salaries and allowances for merger transactions only);

n) the estimated period of entering into a merger/acquisition;

o) the report on the situation, development and result that have been attained of the merging company (for merger transactions only);

p) the main activities of the merging company and the alteration occurred during the current accounting year (for merger transactions only);

q) the detailed issues arising during the accounting year that affect the activities of the merging company (for merger transactions only).

C. Anti-trust Review

Notification to the KPPU of a merger or acquisition transaction is mandatory only when the transaction is not conducted between affiliated companies and the value of assets or the value of sales of the companies involved in the transactions exceeds a certain amount, i.e. (a) if the combined national assets of the parties to the transaction exceed IDR 2.5 trillion (approximately USD 188 million); and/or (b) if the combined national turnover (revenue) of the parties to the transaction exceeds IDR 5 trillion (approximately USD 376 million); and/or (c) if the combined national assets exceed IDR 20 trillion (approximately USD 1.5 billion) once the parties are banking institutions. Combined national assets or national turnover means the total amount of assets and turnover of the parties to the transaction and their parent/subsidiaries in Indonesia. In the event that the abovementioned thresholds are met, then the merger/acquisition transaction must be reported to the KPPU within 30 days of its effective date. Failing to comply with this requirement may result in a sanction in the amount of IDR 1 billion (approximately USD 76 thousand) per day of delay, provided that the maximum administrative sanction that can be imposed due to the delay will not exceed IDR 25 billion (approximately USD 1.88 million). In practice, in 2016, the KPPU imposed fines to a company which failed to submit the notification on time, the total of which was around IDR 8billion for a total of 20 business days delay, or approximately IDR 400 million per business day.

Nevertheless, recently, the KPPU has been taking a stricter approach to business actors' compliance with the notification requirement in respect of their merger, consolidation and share acquisition. The mandatory notification to the KPPU is in place only if the value of the merger, consolidation and share acquisition exceeds the threshold limit as stipulated by the prevailing regulation. The stricter approach is apparent from the KPPU's current uncompromising attitude in imposing fines on companies which are tardy in their compliance with the notification requirement.

The KPPU also provides a chance for business entities conducting mergers/acquisitions to have a pre-consultation with the KPPU in the event that the transaction might be complex, so that

they will have time to evaluate the transaction and provide remedies to the KPPU if the KPPU believes that the merger/acquisition transaction may potentially result in monopoly or unfair business competition.

The KPPU regulations state that once the KPPU has confirmed the submission is complete, it will conduct an initial review, which should be completed within 30 business days as of the confirmation date. If the KPPU concludes that the proposed transaction does not result in a monopoly and/or unfair business competition, it should announce its opinion by the end of the 30-day period. However, if based on its initial review the KPPU finds that (a) the HHI index after the proposed transaction is above 1800 with the delta above 150; (b) the parties concerned or their affiliates have a dominant position, the KPPU will conduct a subsequent review, which should be finalised within 60 business days after completion of the initial review. However, the prevailing legislation is silent on the maximum duration to review the completeness of the submission. Based on our experience, the duration usually depends on the complexity of the overlapping business of the parties concerned, so there is no exact timeline for the KPPU to confirm that the submission is complete.

D. Tax Protection in a Merger/Acquisition Transaction

In the agreement for a merger or acquisition, the parties to the agreement usually put a representations and warranties clause where the seller or the target provides certain representations and warranties to the purchaser in relation to the condition of the stock and/or business asset, such as (a) the seller or the target company has paid all of its tax obligations to the government as of the execution date of the agreement and will provide the purchaser with a list of outstanding tax obligations that may be incurred in the future until the closing date from time to time, (b) in the event that after the closing date, the result of the tax correction made by the authorized agency appears to be beyond the reasonable tax propriety, the seller/the target agrees and binds itself to bear all of the payments in connection to such tax correction provided that such tax correction has resulted from the transaction done by the target company prior to the closing date, (c) the seller/the target company has made all returns, given all notices and submitted all computations, accounts or other information required to be made, given or submitted to any tax authority in accordance with the laws, and all such returns and other documentation were and are true, complete and accurate, (d) the seller/the target company has not carried out, been party to, or otherwise involved in any transaction where the sole or main purpose or one of the main purposes was the unlawful avoidance of tax or unlawfully obtaining of a tax advantage. In addition, the purchaser could also add a tax covenant from the seller to the purchaser as a schedule to the agreement.

Aside from the representations and warranties clause itself, an indemnity or a payment for misrepresentation or incorrect warranties is usually provided for under the agreement. The parties to the agreement can set aside a certain amount of money as a remedy of such misrepresentations or incorrect warranties.

Nevertheless, if the tax issues in the target company are too complicated and too costly to be remedied, the purchaser usually decides not to acquire the shares in the target company but acquire its business instead. In this case, the purchaser usually sets up a new company or acquires a new company with a good record which will further acquire the business of the target company.

E. Recent Developments

The Minister of Finance recently issued a new regulation concerning the utilisation of book value for the transfer and acquisition of assets in the framework of merger, amalgamation,

division, or acquisition of business through the issuance of Minister of Finance Regulation Number 52/PMK.010/2017 (the '**PMK 52**') which revokes the previous regulation (Minister of Finance Regulation No. 43/PMK.03/2008). Comparing to the previous regulation, PMK 52 has a new addition relating to the possibility of using book value for the acquisition of business. Nevertheless, it is only limited for the acquisition of business in the form of a merger between a tax subject who is a permanent establishment running a banking business with a limited liability company in Indonesia where the surviving entity is the limited liability company. The PMK 52 also regulates more detail in the criteria and requirement for the application to the Directorate General of Taxation for this use of book value.

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A. 监管框架

总体而言，在印度尼西亚的企业兼并和收购受到以下法律法规的规范：

a) 2007 年关于有限责任公司的第 40 号法律（«公司法»）及其执行法规，即 1998 年关于有限责任公司兼并、合并与收购的第 27 号政府法规（'PP 27'）；

b) 2007 年关于投资的第 25 号法律及其执行法规，即 2016 年关于禁止投资的和有条件地开放投资的业务领域清单的第 44 号总统条例、2015 年投资协调委员会（BKPM）主席关于主要投资许可指南和程序的第 14 号法规（经过 2016 年第 8 号法规最新修订），以及 2015 年投资协调委员会（BKPM）主席关于许可投资及不许可投资指南和程序的第 15 号法规；这些法律法规仅适用于涉及外国投资的兼并与收购交易；

c) 1999 年关于禁止垄断和不公平商业竞争的第 5 号法律及其执行规范，除此之外还有：2010 年关于可能会引起垄断行为、不公平商业竞争的兼并、合并和股份收购的第 57 号政府法规、商业竞争监督委员会（*Komisi Pengawas Persaingan Usaha* 或 简称为"KPPU"）2010 年关于商业实体兼并与合并及公司股份收购商讨的第 11 号法规，以及 2010 年 KPPU 关于可能会引起垄断行为、不公平商业竞争的兼并与合并及公司股份收购指南的第 13 号法规（经 2013 年第 2 号 KPPU 法规最新修订）；

d) 1995 年关于资本市场的第 8 号法律以及由资本市场和金融机构监督管理机构（*Badan Pengawas Pasar Modal dan Lembaga Keuangan* 或 BAPEPAM-LK）（现称为金融服务管理局，*Otoritas Jasa Keuangan* 或 简称 OJK）颁布的若干其他法规，例如：

(i) 金融服务管理局（*Otoritas Jasa Keuangan*）关于自愿要约收购的第 54 / POJK.04 / 2015 号法规；

(ii) BAPEPAM- LK 主席法令 No. Kep-52/PM/1997 附件 No. IX.G.1 规定，关于公众公司或发行人公司兼并和收购的第 IX.G.1 号法规，随附于资本市场和金融机构监督管理机构第 Kep-52/PM/1997 号局长令；

(iii) 关于公众公司收购的第 IX.H.1 号规则，随附于资本市场和金融机构监督管理机构第 Kep-264/BL/2011 号局长令；

(iv) 关于重要交易和主营业务变更的第 IX.E.2 号规则，随附于资本市场和金融机构监督管理机构第 Kep-614/BL/2011 号局长令；

(v) 关于发行人或上市公司重大信息或事实披露的第 31/POJK.04/2015 号金融服务管理局（*Otoritas Jasa Keuangan*）规则；以及

(vi) 关于发行人或上市公司豁免报告和披露要求的第 29/POJK.04/2015 号金融服务管理局条例。

以上法律法规仅适用于目标对象或购买方是公开上市公司之情况；

(vii) 相关税收规定，其中包括：1983 年关于所得税法的第 7 号法律（目前经 2008 年第 36 号法律最新修订）；1983 年关于增值税的第 8 号法律（目前经 2009 年第 42 号法律最新修订）；1997 年关于土地和 / 或建筑收购费

的第 21 号法律（目前经过 2000 年第 20 号法律最新修订）和 2016 年关于土地和建筑转让所得税的第 34 号政府法规、附条件协定及其修正案；以及

(viii) 任何其他特定法规取决于目标公司或购买方（视情况而定）的业务性质，如银行业、林业、矿业等。

B. 兼并和收购方式

兼并

《公司法》和 PP 27 将兼并定义为：一个或多个公司将其自身并入另一家此前存在的公司的合法行为，且此后兼并公司解散。

由于资产和负债将从被合并公司转移到兼并后的公司，兼并交易所涉及的税务事宜将按下列规定执行：

(a) 转让税

转让税的形式为：

(i) 增值税（合并当事方中，一方为非注册的应纳税企业）；和 / 或

(ii) 土地和建筑收购费（*bea perolehan hak atas tanah dan bangunan* 或 BPHTB）（如果转让涉及财产 / 土地）。应纳税人请求，税务局长可能会就商业兼并或合并中土地和建筑权利转让按照账面价值给予高达 50% 的土地和建筑收购费减免；

(b) 因兼并公司的资产和债务转入兼并后的公司产生的资本收益而计征的所得税。

通常情况下，商业兼并中的资产转让应以账面价值为准。此类重组活动产生的收益可征税，产生的损失通常情况下也可进行索偿，从收入中扣除。然而，按照账面价值转让资产的中性税收兼并活动，可以根据税务局局长的批准进行，在前述审批中兼并计划必须通过税务局局长的商业目的测试。禁止达成税收驱动的安排，进而兼并公司所产生的税务损失不得转移至续存公司。

收购

在印度尼西亚，有两种收购方式：股权收购和资产收购。就本条而言，我们将仅就股权收购进行详细阐述。根据《公司法》，股权收购是一个法人或个人收购一家公司全部或者大部分股权，并且可能导致该公司控制权变更的合法行为。

通过以下方式可以达成股权收购：

(a) 将目标公司大部分股权转让至购买方

如果通过股权转移达成收购，那么根据下列情况，出售方将有义务支付该等股份转让产生的资本利得所应缴纳的税务：

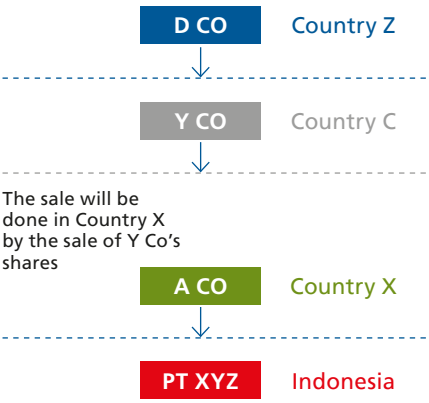
(i) 如果出售方是印度尼西亚的纳税主体，那么出售方有义务支付资本利得税。购买方没有义务从售价扣除任何数额；

(ii) 如果出售方不是印度尼西亚的纳税主体，那么作为纳税居民的购买方必须就该等股权出售向出售方预缴预计净收入的 20%（意即资本利得达到交易价值的 25%），除非资本利得税的税收权通过可适用的税务条约保留给了条约相对方。为了获得可适用的税收条约所规定的利益，出售方必须符合在印度尼西亚有现行有效的认证、资质、信息和报告要求。目前，出售方将需要向购买方和该公司提供税务主管部门（国家税务局）颁发的税务注册地证明。

(iii) 如果目标对象是上市公司，股权转让所导致的资本利得税纳税义务将根据最终所得税计算，假如被出售的该等股权并非创始人的股权，最终所得税等于交易总价的 0.1%。假如前述股权系创始人股权，则税费将在 1996 年年末股票交易所闭市时或者首次公开募股时（如果公司股权在 1997 年 1 月 1 日以后上市）的股票名义价值的基础上上浮 0.5%。

就纳税义务而言，如果出售方是跨国公司，其通常倾向于在印度尼西亚以外的、税制对其有利的国家完成交易，例如，通常它们通过在 X 国的子公司（“A 公司”）持有一家印尼公司的股权，而 X 国的税务法规对它们有利。一旦它们决定退出印尼公司，它们将通过 A 公司进行交易，因此交易在

X 国实施，以达成比在印尼进行交易税率更低的目的。



然而，如果 X 国是个避税国家，根据财政部部长关于非居民纳税人根据《所得税法》第 18 条第 (3c) 段出售或转让股权获得收入而扣缴第 26 条所规定的所得税的第 258/PMK.03/2008 号法规（'PMK 258'），在 X 国对 A 公司股份进行处置可能缴税。依据 PMK 258，在避税国家成立的、并且与印尼公司有特殊关系或在印尼有常驻机构的公司转移股权，需缴纳净额估值 20% 的税额。净额估值按销售价格的 25% 计算。然而，如果出售方本国与印尼有税务协定，那么只有在协定规定印尼有权就此类交易收税时，才会由公司就该等收入缴纳所得税。我们确信没有针对房地产、能源、自然资源公司的股份处置的特殊规定。

根据印度尼西亚银行有关"在印度尼西亚境内强制使用印尼盾"（'BI 法规'）的第 No. 17/3/PBI/2015 号法规，印度尼西亚银行要求所有商业参与者以印尼盾为单位为商品和 / 服务设定价格。除了 BI 法规外，印度尼西亚银行 2015 年 6 月 1 日发行第 17/11/DKSP 号通函（'通函'）作为 BI 法规的实施规则。通函第 2.A 条明确规定，所有商业参与者在印度尼西亚境内只能以印尼盾为单位为商品和 / 服务设定价格，禁止以任何其它货币定价（双重报价）；或

(b) 目标公司发行的供新股东认购的新股，该等股份稀释了目标公司旧股东的持股比例

如果通过认购公司新股的方式完成收购，则认购的这些新股不会被征税。

但是，如果对新股的该等认购行为是基于现存贷款（即股东贷款、预付款和 / 或可转换债券）的转换，此类转换行为应被征税（如果预付款（股东贷款）的金额低于股权价值，差价视为给贷方的认定利息且应缴纳所得税。）。1999 年第 15 号政府法规规定，将特定形式的请求权转换为股权必须在两家报纸公开宣布。

在转换海外现存贷款的情形中，印度尼西亚银行 (*Peraturan Bank Indonesia*) 关于外汇流量活动报告和非银行企业海外贷款管理审慎原则适用报告的第 16/22/PBI/2014 号法规（'PBI No. 16/22/PBI/2014'）规定印尼企业（与个人相对应）进行外汇活动，尤其是取得海外贷款，必须根据 PBI No. 16/22/PBI/2014 规定的条款和流程及其后续不时更新的实施规则，定期向印度尼西亚银行提交外汇流量报告（"外汇流量报告"）和审慎原则适用报告（"审慎原则报告"）。

外汇流量报告包括以下报告：

(i) 贷款协议的签署，放贷和还款，包括根据贷款协议对所有应计利息的支付；

(ii) 由一家印尼公司进行的除海外贷款外的外汇活动（包括一家印尼公司为海外公司之利益而出具的保证）；以及

(iii) 海外贷款计划书。提请获得海外贷款的印尼公司必须提交特定报告，包括海外贷款计划一年内的信息和证明数据（及其任何修改版本），例如海外贷款面额，海外贷款的类型以及与债权人的关系。

审慎原则报告包括：

(i) 审慎原则适用报告；

(ii) 通过认证流程的审慎原则适用报告；

(iii) 满足信用等级要求的相关信息；以及

(iv) 财务报表。

除以上外，特定种类海外贷款的使用，例如：(i) 有关项目开发的贷款，其融资的本质为"无追索权"、"有限追索权"、"预付款"、"信托借款"、"租赁"等；(ii) 基于"BOT"、"B&T"融资有关项目开发的贷款等，应根据 1991

年 9 月 4 日发布的 1991 年关于协调海外贷款管理的第 39 号总统法令（简称“39/1991 法令”）的要求接受海外商业贷款团队协调。39/1991 法令第 12 条规定，海外贷款的借方应当向海外商业贷款团队定期提交有关所获得的海外贷款的使用情况报告。

此外，财政部部长关于获取海外贷款实施规则的第 KEP-261/MK/IV/5/1973 号法规第 3 条（后经第 417/KMK.013/1989 和第 279/KMK.01/1991 号法规修订）规定，必须向财政部和印度尼西亚银行定期提交有关海外贷款的报告，在贷款协议生效日及其后每三个月提交；或

(c) 针对上市公司的强制要约收购

如果一家上市公司发生收购交易，由于上市公司出现“控制人”更改的情形，因此将引发强制要约收购（“MTO”）。控制人的定义是，(i) 持有公司发行的股份超过 50%；或 (ii) 持有公司发行的股份少于 50%，但拥有决定公司经营和 / 或政策的手段的一方。但是，基于配股而发行新股进而导致控制人变更的，可以免除 MTO 要求。

为了进行 MTO，新的控制人必须：

(i) 在接管公布后两个营业日之内向 OJK 和目标公司提交一份关于 MTO 的信息披露公告草案及其证明文件；

(ii) 在收到 OJK 更改草案的要求后五个营业日之内提交公告草案和证明文件的任何变更和 / 或额外信息（若有）；

(iii) 在收到 OJK 说明新控制人需要宣布 MTO 信息披露事项的信件后，两个营业日内在至少一家全国发行的印度尼西亚日报上公布信息披露（新控制人必须同时在两个工作日内向 OJK 提交在前述日报公开宣布的证据）。宣布有关 MTO 的信息披露事项必须包括：

- 接管的背景；
- 预计购买股权数额和百分比的详细信息；
- 目标公司已购股票数额和百分比的详细信息，包括看涨期权、任何获得股利的权利或任何利益以及目标公司表决权的代理权；
- 新控制人的详细信息，包括名称、地址、国籍和与目标公司的所属关系（如有）（就个人而言），或者公司、资本结构、董事会和监事会成员、股权构成、收益所有人、与目标公司的隶属关系（如有）（就非个人而言）；
- 目标公司的详细信息，包括名称、地址和营业范围；
- MTO 的条款和条件，即购买价格和计算方法、MTO 期限、支付条款、购买机制，以及对任何有关 MTO 必须取得的政府批准的解释（如有）；
- 参与 MTO 的资本市场辅助机构或专业人士的名称和地址；以及
- 任何其它重要信息，例如与接管有关的任何诉讼的详细信息，以及防止披露事项被误导的额外信息；

(iv) 在 (iii) 所述的信息披露事项公布日后的 30 天内实施 MTO；

(v) 在 MTO 期限结束后 12 个营业日内进行 MTO 交割处理，包括货币转移；以及

(vi) MTO 交割处理结束后 5 个营业日内向 OJK 提交一份关于 MTO 结果的报告。MTO 交易的交割处理以 (v) 中提及的货币结算方式进行。禁止以有价证券交割来代替。

以下有关 MTO 的法规对 MTO 交易的价格进行了规定：

(i) 如果收购行为直接通过上市公司上市并且在证券交易所交易的股票来执行，最低 MTO 价格不得低于：

- 宣布收购或宣布协商前 90 天内证券交易所每日交易的平均最高价格；或
- 收购的执行价格，取较高者；

(ii) 如果收购涉及上市公司上市并且在证券交易所交易的股票，但是在宣布收购或宣布协商前 90 天，所述股票没有在证

券交易所交易或其交易被证券交易所暂时叫停，则最低 MTO 价格不得低于：

- 前一个交易日或暂时叫停之日前 12 个月内证券交易所每日交易的平均最高价格；或
- 收购的执行价格，取较高者；

(iii) 如果收购涉及的股票所属的公司既非上市公司也非股票未上市的股票发行人，则最低 MTO 价格不得低于：

- 收购的执行价格；或
- 评估人决定的公允价格，取较高者；

(iv) 如果收购间接涉及上市公司上市并且在证券交易所交易的股票，MTO 价格不得低于宣布收购或宣布协商前 90 天内证券交易所每日交易的平均最高价格；

(v) 如果收购系间接通过上市公司上市并且在证券交易所交易的股票执行，但是在宣布收购或宣布协商前 90 天，上述股票没有在证券交易所交易或其交易被证券交易所暂时叫停，MTO 价格不得低于前一个交易日或暂时叫停之日前 12 个月内证券交易所每日交易的平均最高价格；以及

(vi) 如果收购系间接通过上市公司的股份或者股票未上市且未在证券交易所交易的发行人的股份执行，MTO 价格不得低于评估人决定的公允价格。

假如 MTO 的行使时间超过了协商公告中 180 日期限，则此前 (i) 和 (iv) 提到的价格评定期限将根据 MTO 执行期限而定（前提是该 MTO 价格的计算值高于 (i) 和 (iv) 中的 MTO 价格）。

接管后，如果新的控制人在执行 MTO 后持有多于目标公司 80% 的已缴付股票，则新控制人必须将一部分股票向公众转让，因此直到 MTO 完成的两年内目标公司将至少有 20% 的股票由至少 300 人持有。

如果接管导致某方持有多于目标公司 80% 的已缴付股票，则必须继续进行 MTO 使得公众股东有机会从 IX.H.1 规定的售价获利，即使新的控制人在此后两年内必须将其通过 MTO 收购的至少同样比例的股份向至少 300 人转让。

如果目标公司实行了稀释新控制人的股份的法人行为（如权利股发行），并且符合上述最低自由浮动要求，则以上义务不适用。

如果因增发优先股（其定义为使得股东有权优先购买包括股份、可转换为股票和权证的证券在内的新有价证券的附着于股票之上的权利）而发布新行导致一家上市公司控制权变更，根据金融服务管理局 (*Otoritas Jasa Keuangan*) 第 29/POJK.04/2015 号条例，可免于进行 MTO。

增发之前，上市公司（“Listco”）必须在特别股东大会召开的至少 28 天前向 OJK 提交一份有关增发登记声明（“登记声明”）。根据现行印度尼西亚法规，Listco 在登记声明（向 OJK 提交的）生效前不能进行增发。除非 OJK 另行规定，只有当股东在特别股东大会上批准了增发，登记声明才生效。在实践中，OJK 将在 28 日内对登记声明文件进行审查并发表意见。

在增发之前，如果上市公司希望筹集到一定的数额，Listco 必须从一方（即后备购买方）获得担保，该方同意以至少等同于执行价的价格购买任何剩余多余股权（“剩余多余权益”）。对于后备购买方没有身份限制。包括 Listco 主要股东在内的任何一方都可以充当后备购买方。

如果股东申报多余权益后仍然存在剩余多余权益，后备购买方将有义务以合约价格购买剩余多余权益，且必须在交易期限结束后两个工作日内付款。

时间表

兼并和并购的时间表长度取决于交易的复杂程度。通常情况下，整个过程应当在二到四个月间完成。但是，对于复杂的交易或者涉及上市公司的交易，该过程可能更长。

雇员

根据《公司法》第 127 条，公司必须至少在召开全体股东大会商议公司所有权变动议程 30 天以前向其雇员宣布任何有关所有权变动的计划。一般而言，雇员就兼并或收购没有直接的话语权。但是，如果兼并 /

收购结果导致公司控制权变更，雇员有权要求终止并且获得公司向其支付的遣散费。根据 2003 年有关劳动力的第 13 号法律（«劳动法»），一旦雇员决定终止与公司之间的雇佣关系，公司需要支付员工遣散补偿金，补偿金数额根据《劳动法»、公司规章或集体劳动协议而定。遣散补偿金包括遣散费、服务增值金和补偿金。

文件

大体而言，兼并和并购交易需要准备以下文件：

(a) 至少通过一家全国范围发行的报纸公开宣布兼并 / 并购计划概述；

(b) 对员工的书面声明；

(c) 同意兼并 / 收购计划的股东大会决议或公司股东的正式决议；

d) BKPM 对于兼并 / 收购计划的批准（只有在涉及外来投资时适用）；

(e) 印尼语的收购 / 兼并行为公证书；

(f) 法务和人权部有关兼并 / 收购的批准或收到相关通知；

(g) 至少通过一家全国范围发行的报纸公开宣布兼并 / 收购结果；

(h) 更新后的该公司股东名册，以作为兼并 / 收购的成果；

(i) 该公司股东的新股权证书，以作为兼并 / 收购的成果；

(j) 更新后的公司注册号。

如果交易涉及通过发行新股完成兼并或收购，则除以上提到的文件外另需要一份兼并 / 收购计划。兼并 / 收购计划应当包含以下信息：

(a) 兼并 / 收购实体和存续 / 被收购实体的名称和地址；

(b) 兼并 / 收购交易的目的；

(c) 兼并公司股权并入存续公司股权的评估和转换方法；

(d) 拟被收购的股权数额（仅适用于收购交易）；

(e) 出资意愿（仅适用于收购交易）；

(f) 兼并 / 收购后有关公司组织章程的修正草案（如有）；

(g) 被收购公司的财务报表（仅适用于合并交易）；

(h) 被收购公司的未来计划或者终止营业（仅适用于兼并交易）；

(i) 承替公司 / 并购公司形式上的资产负债表；

j) 兼并 / 被收购公司董事会成员、监事会成员和雇员的身份、权利和义务的处理方式；

(k) 合并公司对于第三方权利和义务的交割方式（仅适用于兼并交易）；

(l) 对于不同意公司兼并 / 收购的股东的权益的处理方式；

(m) 存续公司董事会成员和监事会成员姓名及其报酬、薪金和补贴（仅适用于兼并交易）；

(n) 预计进入兼并 / 收购的期限；

(o) 被收购公司已达成的形势、发展和结果的报告（仅适用于兼并交易）；

p) 被收购公司的主要活动和本会计年度发生的变更（仅适用于兼并交易）；

(q) 本会计年度发生的、影响合并公司活动的具体事项（仅适用于兼并交易）。

C. 反垄断法综述

只有当交易在非关联公司之间进行并且交易涉及的资产价值或公司出售价值超过一定数额时，向 KPPU 通知兼并或收购交易才是强制性的，即（a）如果交易各方合并的国家资产（收入）超过 2.5 万亿印尼盾（约合 1.88 亿美元）；和 / 或（b）如果交易各方的兼并全国营业额（收入）超过 5 万亿印尼盾（约合 3.76 亿美元）；和 / 或（c）一旦当事方是银行机构，合并的国家资产超过 20 万亿印尼盾（约合 15 亿美元）。兼并的国家资产或国家营业额是指交易各方及其在印度尼西亚的母公司 / 子公司的总资产和营业额。如果达到上述限额，则必须在合并 / 收购交易生效日后 30 天内向 KPPU 报告。如果不遵守这一要求，会处以罚款，每迟延一天处罚 10 亿印尼盾（约合

76,000 美元），但前提是由迟延而导致的行政处罚最高不得超过 250 亿印尼盾（约 188 万美元）。在实践中，2016 年 KPPU 对未能按时提交通知的公司就共计 20 个营业日的延误处以罚金总额达 80 亿印尼盾，或者每个营业日约 4 亿印尼盾。

然而，KPPU 近期一直在采取更加严格的方式对企业是否兼并、合并和股份收购方面的通知要求进行监管。只有当兼并、合并和股份收购的价值超过现行法规规定的限额时，KPPU 才会强制通知。KPPU 目前对迟延履行通知要求的企业实行罚款，更加严格的监管方式反映出其强硬的态度。

在交易情形复杂的情况下，KPPU 还为进行兼并 / 收购的商业实体提供了向 KPPU 进行预咨询的机会，以便在 KPPU 认为并购交易可能会导致垄断或不公平的商业竞争时，商业实体有时间对该等交易进行评估并向 KPPU 提出补救方案。

KPPU 法规规定，一旦 KPPU 确认提交完成，将进行初步审查，并在确认之日起 30 个营业日内完成。如果 KPPU 认为拟议交易不会造成垄断和 / 或不公平的商业竞争，则应在 30 天期限届满前公布其意见。然而，如果根据初步审查，KPPU 发现：(a) 该交易达成后 HHI 指数高于 1800、增量高于 150; (b) 有关当事方或其附属公司占支配地位，KPPU 将在初步审查完成后 60 个工作日内完成后续审查。然而，现行的立法并没有规定审查呈文完整性的最长期限。根据我们的经验，持续时间通常取决于有关各方重叠业务的复杂性，因此 KPPU 对提交文件完整性的确认没有确切的时限。

D. 兼并／收购交易中的税务保护

在兼并或收购协议中，协议各方在卖方或目标方向买方就股票和 / 或业务资产的状况提供某些陈述和保证时，通常会提出陈述和保证条款，例如因为 (a) 卖方或目标公司在协议签署日前已经向政府缴纳了所有的税收义务，并将向买方提供到截止日前未来可能随时发生的未清偿税务清单，直至完成，(b) 如果在截止日期之后，由被授权机构进行税务调整的结果似乎超出了合理的税收准则，则卖方 / 目标方同意并承担与该等调整相关的全部责任，(c) 卖方 / 目标公司已完成了所有纳税申报，发出所有通告，提交了所有法律要求出具、提交给税务机关的会计核算、账目和其他信息，并且所有这些纳税申报和其他文件都是真实的、完整的、准确的，(d) 卖方 / 目标公司没有履行、参与或以其他方式参与任何以非法避税或非法获得税收利益为单一、主要目的或主要目的之一的行为。此外，购买方还可以将卖方对购买方的税收契约添加到协议的附件。

除了声明和保证条款本身之外，赔偿或者虚假陈述或错误保证所引起的赔偿通常根据协议规定实施。协议各方可以预留一定数额的金钱作为对虚假陈述或错误保证的赔偿。

但是，如果目标公司的税收问题太复杂、成本太高，则购买方通常决定不收购目标公司的股份而收购其业务。在这种情况下，购买方通常会成立一家新公司或者收购一家有良好记录的新公司，以进一步收购目标公司的业务。

E. 最新发展

财政部部长最近发布了一项新的规定，即关于在企业兼并、吞并、分裂或收购的框架中使用账面价值的第 52/PMK.010/2017 号财政部长法规（“PMK 52”），该规定废除了先前的第 43/PMK.03/2008 财政部长法规。与先前的规定相比，PMK 52 新增了有关在企业收购案例中使用账面价值的可能性的内容。不过，这等可能性的发生仅限于一家经营银行业的常驻居民纳税主体与一家印度尼西亚有限责任公司进行兼并且存续实体为该有限责任公司的商业收购。PMK 52 同时就向税务总局申请使用账面价值的标准和要求作出了更多详细规定。

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