

# Public mergers and acquisitions in Indonesia: overview

Freddy Karyadi and Kartika Budianti Lestari, Ali Budiardjo Nugroho Reksodiputro

[global.practicallaw.com/7-381-2795](https://global.practicallaw.com/7-381-2795)

## M&A ACTIVITY

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

President Joko Widodo has made a commitment to boost economic growth in Indonesia by pursuing the following initiatives:

- Launching the Online Single Submission (OSS) system in 2018, which introduced an integrated and primary gateway access licensing system for businesses in Indonesia. The launching of the OSS system constitutes a fundamental overhaul of Indonesia's business licensing regime. The essential idea is that all necessary business and operating licences, from both central and local government, should eventually be capable of being obtained online using the OSS system portal.
- Enacting the Omnibus Law to Eliminate Statutory Obstacles to Investment. This is due to be implemented early in 2020. The Omnibus Law would replace more than 50 laws that currently influence the permit processes regarding investment.
- Abolishing the Negative Investment List which is currently stipulated under Presidential Regulation No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment. This is due to be implemented early in 2020.

These initiatives recently helped to foster the development of M&A deals in Indonesia, especially the acquisition of Indonesian companies by foreign investors.

Recent major public deals include:

- The acquisition of PT Bank Permata, Tbk by Bangkok Bank Public Company Limited.
- The subscription of shares of Bank Yudha Bakti by a financial technology company, Akulaku.
- The global acquisition of GE Power.
- The proposed acquisition of PT Bank Muamalat Indonesia, Tbk. by Al Falah Investment, Pte Limited.
- In addition, there has been the potential acquisitions of Indonesian multi-finance and insurance companies by foreign investors which are due to be completed in early 2020.

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

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

Share acquisition in a publicly listed company will trigger a mandatory tender offer if there is a change of control. A party has control of a company when either:

- It owns more than 50% of the issued shares in the company.
- It has less than 50% of shares but can determine the management and/or policies of the company.

If a change in control results from issuing new shares under a rights issue, this is exempted from the mandatory tender offer requirement.

## HOSTILE BIDS

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

The concept of hostile bids is not common. Most publicly-listed companies have a controller and any acquisition will need the approval of and/or co-operation from the existing controller. A hostile acquisition may also be subject to the approval of a general meeting of the shareholders (which will be governed by the existing controller).

## REGULATION AND REGULATORY BODIES

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

Mergers and acquisitions are governed by the following laws and regulations:

- Law No 40 of 2007 on Limited Liability Companies (Company Law) and its implementing regulation.
- Law No 25 of 2007 on Investment and its implementing regulations (which only applies to transactions involving foreign investment).
- Law No 5 of 1999 on Prohibition of Monopoly and Unfair Business Competition and its implementing regulations.
- Law No. 13 of 2003 on Manpower.
- Law No 8 of 1995 on the Capital Markets (Capital Markets Law) and other regulations issued by the Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK) including:
  - OJK Regulation No 54/POJK.04/2015 on Voluntary Tender Offers;
  - OJK Regulation No 74/POJK.04/2016 on Mergers and Acquisition of Public Companies;
  - OJK Regulation No 9/POJK.04/2018 on Public Company Acquisition;

- Rule No IX.E.2 on Material Transactions and Change of Main Business Activities;
- OJK Regulation No 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies; and
- OJK Regulation No 29/POJK.04/2015 on Issuers and Public Companies Exempted From Reporting and Disclosure Requirements.
- Various tax laws.
- Any other regulations depending on the nature of the business of the target or the purchaser such as banking, forestry and mining.

## 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**

Diligence enquiries on the following should generally be made before making a recommended bid:

- Corporate documents/articles of association (articles) of the target, including the deed of establishment up to any latest amendments made to the target's articles.
- Operational and ancillary licences (which will depend on the business activities of the target).
- Compliance with capital markets requirements (as applicable).
- Existing agreements, including with facilities, customers, vendors, lenders, investors, and other third parties.
- Employment matters, including compliance with prevailing laws and regulations.
- Assets owned by the target.
- The target's financial capability, including its tax exposure.
- The arrangement among the shareholders.
- Litigation matters.

##### **Hostile bid**

Indonesian law does not recognise the term "hostile bid" but voluntary tender offers can be used instead (*see Question 12*).

##### **Public domain**

The following documents are available to the public (*Decision of the Chairman of Bapepam No. 39-PM-1997, Rule No II.A.1*):

- The appointment of a corporate secretary.
- Allocations of securities.
- Any disclosure that must be announced to the public.
- Public disclosures in connection with certain shareholders.
- Reports in connection with conflict of interest and/or affiliated parties' transactions.
- Reports in connection with material transactions.
- Announcement and disclosure of bonus shares issued by a public company.
- Resolutions of the general meeting of the shareholders.

## 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 a seller in a nationally-circulated newspaper. This announcement is usually 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?**

Obtaining a memorandum of understanding and/or undertaking from key shareholders is common practice in Indonesia. However, any memorandum will be subject to disclosure requirements.

##### **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?**

##### **Disclosure requirements**

No reporting is necessary for any transfer of shares amounting to less than 5% of the ownership of the company. However, an obligation to disclose an interest in securities arises when an investor acquires 5% of the total issued shares in an Indonesian public company. When an investor reaches the 5% threshold, any share transfer must be reported to the Financial Services Authority (OJK). When the shareholding falls below 5%, it must also be reported to the OJK.

The Indonesia Stock Exchange (IDX) rules also require listed companies to publicly announce any information on investors owning 5% or more of its shares. This announcement is available on the IDX website.

Disclosures must be within ten calendar days from the date the obligation arose (such as an acquisition or disposition of shares).

##### **Restrictions**

The Capital Markets Law prohibits the use of non-public material information (inside information). With respect to an issuer, anyone

---

who has inside information is prohibited from buying or selling securities belonging to:

- The issuer.
- Any other company engaged in transactions with the issuer.

"Insiders" (that is, persons with inside information) include and are limited to the following persons (*Article 95, Capital Markets Law*):

- Commissioners, directors or employees of an issuer.
- Major shareholders of an issuer.
- Individuals who, due to their position or their business relationship with an issuer, have access to inside information.
- An individual who within the last six months was a person defined above.

However, the Capital Markets Supervisory Agency, *Badan Pengawas Pasar Modal* (BPPM) has issued a regulation exempting certain securities transactions from falling into the category of insider trading. A transaction will be exempt if it is made (*Decision of the Chairman of Bapepam No. Kep-58/PM/1998, dated 2 December 1998*):

- Between insiders of the same issuers with the same inside information and realised outside the capital market.
- Between an insider of issuers with inside information and a non-insider realised outside the capital market and satisfies all of the following conditions:
  - the insider first gives all the inside information to the non-insider;
  - the non-insider does not use the information, other than for transactions of securities with the insider;
  - the non-insider makes a written statement to the insider providing the information, certifying that the information received will be kept secret and will not be used for purposes other than transactions with the insider; and
  - the non-insider does not execute any transaction in respect of the relevant securities for a period of six months from receipt of the information, other than for transactions with the insiders.

Insiders and other parties undertaking securities transactions must report the transactions to the Capital Markets Supervisory Agency no later than ten days after it takes place.

### **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?**

---

In Indonesia, an agreement is made between the bidder (as buyer) and the existing shareholders (as sellers). An agreement between the bidder and the board of the target will only apply if:

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

Typically, share subscriptions will be offered first to the existing shareholders. Where a third-party purchaser acts as standby purchaser, he must agree to buy any shares that are not taken up by the existing shareholders. In this situation, he must execute a Declaratory Undertaking and Standby Buying Agreement

(*Pernyataan Kesanggupan Pengambilan Bagian Saham dan Perjanjian Pembelian Sisa Saham*).

### **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 fees are uncommon but are not prohibited. An arrangement to implement a break fee will be based on an agreement between the parties.

### **Committed funding**

---

#### **11. Is committed funding required before announcing an offer?**

---

Committed funding is required before announcing an offer. A statement of the availability of funds must be prepared by any party conducting a voluntary tender offer. This statement must be supported by an opinion from an involved party such as a bank or securities or accounting firm.

## **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?**

---

### **Mandatory tender offer**

To conduct a mandatory tender offer (MTO), the bidder (who will be the new controller) must:

- Submit a draft announcement of the MTO along with its supporting documents to the Financial Services Authority (OJK) and the target within two business days after the takeover is announced.
- Submit any changes and/or additional information on the draft announcement and its supporting documents within five business days after receiving a request to change the draft from the OJK (if any).
- Announce the MTO plan in at least one Indonesian daily newspaper with national circulation within two business days from receipt of a letter from the OJK stating that the new controller can announce the plan. The new controller must also submit evidence of the announcement in a daily newspaper to the OJK within two business days after the date of the announcement. The announcement of the MTO plan 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 in the target that have been acquired including call options, any rights to receive dividends or any benefits as well as proxy voting rights;
  - details of the new controller, including its name, address and nationality. It must also disclose its affiliation with the target company (if any, for an individual) or its establishment, capital structure, board of directors and commissioners,

---

shareholder composition, beneficial owner and affiliation with the target (if any, for a corporate entity);

- details of the target company, including name, address, and line of business, terms and conditions of the MTO (purchase price and calculation method), MTO period, payment terms, purchase mechanism, and explanation of 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 like details of any lawsuit in relation to the takeover and additional information required so that the disclosure is not misleading.
- Conduct the MTO within 30 days from the day after the announcement of the MTO plan.
  - Make an MTO settlement by money transfer, at least no later than 12 business days after the end of the MTO period.
  - 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. It cannot be exchanged with a securities settlement.

### **Voluntary tender offer**

When making a voluntary tender offer (VTO), the offeror must submit a VTO statement to the OJK and publish it in at least two national newspapers on the same day, before the VTO begins. Information included in the VTO statement must cover the:

- Identity of the target.
- Shares to be acquired including the offering price, time and manner of acquisition.
- VTO terms and conditions.
- Stock exchange name.
- Share price calculation.
- Information on the offeror.
- Explanation of any relationship between the offeror and the target or its affiliates for the last three years.
- Statement of fund availability, supported by an accountant, bank or securities company.
- Statement of purpose of the VTO.
- Statement of total shares owned by the offeror.
- List of parties compensated by the offeror in relation to the VTO.
- Explanation of and approvals or requirements imposed by the government in relation to the VTO.
- Additional information required to ensure that the VTO statement is not misleading.

The VTO statement becomes effective either:

- 15 calendar days from receipt of the complete VTO statement by the OJK.
- 15 calendar days from the date of submission of the last changes from the offeror or other documents requested by the OJK.
- Following receipt of the statement by the OJK which stipulates that no further changes or additions are required.

A VTO offering must be submitted within two business day after the VTO statement becomes effective. The offer must remain open for 30 calendar days and can be extended to 90 calendar days unless determined otherwise by the OJK. At the end of this period, the VTO

must be settled within 12 calendar days. The offeror must submit a report to the OJK on the results of the VTO ten business days after the end of the settlement period.

### **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)?**

---

For share transfers, there are no conditions applied to a mandatory tender offer which results in a change of control. This is because all minority shares are also eligible to be purchased by the new controller.

A takeover offer can be subject to several conditions or regulatory requirements depending on the target's line of business. In some cases (and subject to due diligence), there are certain pre-conditions that must be satisfied by the target before transferring its shares. These pre-conditions mostly relate to licensing compliance and/or notification reports.

### **Bid documents**

---

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

---

There are no specific documents for the target's shareholders but the bidder must provide the following:

- The disclosure submitted to the Financial Services Authority (OJK).
- The public announcement of the disclosure in one daily national newspaper (for a mandatory tender offer (MTO)) or at least two newspapers (for a voluntary tender offer (VTO)).

Information that must be provided for an MTO includes the:

- Number of shares to be acquired and the target company.
- Identity of the bidder.
- Manner and process of the takeover.
- Specific matters under negotiation.

### **Employee consultation**

---

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

---

A company must announce to its employees any planned change of ownership at least 30 days before calling a shareholders' meeting to discuss it (*Article 127, Company Law*). Typically, employees do not have a direct say in a merger or an acquisition but if it results in a change of control, they are entitled to request termination and receive a severance payment from the company.

Once an employee decides to terminate his employment with the company, it must pay the severance package to the employee in the amount determined either by the company's regulations, or its collective labour agreement or the law (*Law No 13 of 2003 regarding Manpower (Labour Law)*). The components of a severance package include the severance payment, a service appreciation payment and a compensation payment.



---

## Mandatory offers

---

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

---

A mandatory tender offer (MTO) will be automatically triggered when there is a change of controller. A controller is a party who either owns more than 50% of the issued shares in the company or owns less than 50% of shares but can determine its management and/or policies. There is an exception for shares held by any of the following:

- A shareholder that participates in the acquisition by a 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 a voluntary tender offer (VTO) for the shares in the same target.
- Another controller of the target.

There are some circumstances in which acquiring shares will not trigger an MTO. These include:

- Inheritance or marriage.
- Purchasing or acquiring no more than 10% of shares in a public company in a 12-month period.
- Any implementation of the duty and authority of the state or a government agency/body under law.
- Owned and/or controlled shares that are purchased directly by the state or a government agency/body as the result of the implementation in the third point above.
- A court order or decision that is final and binding.
- The merger, separation, consolidation or liquidation of a shareholder.
- Granting shares without any form of consideration.
- Exercise of security interest on debts in credit agreements and debts within the framework of public company restructuring stipulated by the state or a government agency/body under applicable laws and regulations.
- Acquisition of shares in accordance with a rights issue or issuance of shares without pre-emptive rights.
- Implementation of policy by the state or a governmental body/agency.
- A voluntary tender offer.

An MTO is also not required when the tender offer might violate any applicable national laws and regulations.

If an MTO results in the bidder gaining control of more than 80% of the public company's paid-up share capital, it must re-float its shares within two years so at least 20% of the company's paid-up share capital is owned by the public and divided among at least 300 shareholders.

## CONSIDERATION

---

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

---

Where there is a direct buyout from an existing shareholder or a bid for newly-issued shares, the consideration must be in cash.

In a voluntary tender offer, the consideration can be either cash or securities.

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

---

The price of a mandatory tender offer (MTO) transaction is regulated as follows:

- Where there is an acquisition of shares in a public company listed and traded on the stock exchange, the lowest MTO price must be the higher of:
  - the average of the highest price in daily trading on the stock exchange in the last 90 days before the acquisition or negotiation announcement; or
  - the exercise price of the acquisition.
- Where the acquisition concerns shares in a public company listed and traded on the stock exchange, but where the shares have not been traded for 90 days before the takeover (or trading has been suspended), the MTO price must be the higher of:
  - the average of the highest price in daily trading on the stock exchange during the last 12 months, counted back from the last day of trading or the day that trading was temporarily suspended; or
  - the exercise price of the acquisition.
- Where the acquisition concerns shares in either a publicly listed company or an equity issuer whose shares are unlisted, the MTO price must be the higher of:
  - the exercise price of the acquisition; or
  - the "fair price" determined by an appraiser.
- Where the acquisition indirectly concerns shares in a public company listed and traded on the stock exchange, the MTO price must be at least equal to the average of the highest price of daily trading on the stock exchange in the last 90 days before the acquisition or negotiation announcement.
- Where the acquisition is indirectly exercised over shares in a public company listed and traded on the stock exchange, but whose shares have not been traded for the last 90 days or more before the acquisition or negotiation announcement, or where trading has been temporarily suspended, the MTO price must be at least the average of the highest price of daily trading on the stock exchange in the last 12 months counted back from the last trading day, or the day the trade was temporarily suspended.
- Where the acquisition is indirectly exercised over shares in either a publicly listed company or an equity issuer whose shares are unlisted and are not traded on the stock exchange, the MTO price must be at least equal to the "fair price" determined by an appraiser.

The pricing of a voluntary tender offer (VTO) must exceed:

- The previous highest price offered by the same party in a 180 calendar day period before the announcement of the VTO plan.
- The average of the highest daily prices traded on the stock exchange for 90 days before the VTO announcement (if the shares are listed and traded on a stock exchange).
- The average of the highest daily prices traded on a stock exchange for the last 12 months calculated on the last days of the trading shares if the shares are not traded on a stock exchange for 90 days before the VTO announcement.
- A "fair price" determined by an appraiser if the VTO is for a company not listed on the stock exchange.

---

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

---

There are no additional restrictions or requirements for foreign bidders apart from the limitations on foreign ownership of certain industries regulated by the Indonesian Investment Board (BKPM) in the negative investment list (see *Question 26*).

**POST-BID  
Compulsory purchase of minority shareholdings**

---

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

---

The bidder does not have the right to compulsorily purchase shares from any remaining minority shareholders who do not accept the offer.

**Restrictions on new offers**

---

**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 restrictions on launching a new offer or buying the target's shares.

**De-listing**

---

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

---

De-listing can be done either voluntarily or at the request of the Indonesia Stock exchange (IDX) (*IDX Decree No Kep-308/BEJ/07-2004 on Rule No 1.1 on De-Listing and Relisting*).

Voluntary de-listing is only permitted after the company has been listed for at least five years and it is approved by the company's shareholders under the IDX Regulation. The procedures are as follows:

- A de-listing plan must be submitted to the IDX.
- Information must be released to the public before approval from the shareholders' meeting including:
  - the reason for and objective of the de-listing;
  - details of the purchasing party;
  - the estimated share purchase price.

After obtaining shareholders' approval to de-list, the company must publish information on share purchase procedures. The company must submit a de-listing application to IDX along with a list of share purchases and a legal consultant's opinion that the process has been completed according to applicable laws and regulations.

There are a few formulas used to determine the right pricing to offer to dissenting shareholders. The final price is the highest price calculated from the:

- Nominal value of shares.
- Value decided by an independent appraiser.
- Highest trading price in the regular market for two years before the shareholders' approval for de-listing, along with a premium equal to interest that would have been earned over two years, calculated by multiplying the original initial public offering price

of the shares by either the average rate of Bank of Indonesia interest over three months or the interest rate of any Indonesian government bond on the shareholders' approval date.

There are two circumstances under which the IDX can request a company to de-list:

- The company is in a condition or experiences an event that has a significant adverse effect on the continuity of the business of the company, either financially or legally.
- The company's shares were only traded on a negotiable market within the last 24 months due to suspension of trading in the regular 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. There are no recognised ways for a target's board to respond to a voluntary tender offer.

**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?**

---

Tax payable on a capital gain resulting from the transfer of shares will be subject to final income tax at 0.1% of the gross amount of the transaction for non-founding shares. Certain tax treaties provide an exemption of this tax.

Founder shares are subject to an additional 0.5% on the nominal value of the shares in the company by close of the stock exchange at the end of 1996, or the nominal value of the shares in the initial public offering if they are listed on the stock exchange after 1 January 1997.

**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?**

---

There are some specific regulatory approvals that must be complied with depending on the target's line of business (for example, banks require approval from the Financial Services Authority).

The Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*) (KPPU) only needs to be notified of a merger or acquisition when the transaction is not conducted between affiliated companies and the value of the assets or the value of sale exceeds the following amounts:

- Where the combined national assets of the parties to the transaction exceed IDR2.5 trillion.
- Where the combined national turnover (revenue) of the parties to the transaction exceeds IDR5 trillion.
- Where the combined national assets exceed IDR20 trillion and the parties are banking institutions.

Combined national assets or national turnover includes the total amount of assets and turnover of the parties to the transaction and their parents or subsidiaries in Indonesia.

If any of the above thresholds are met, the transaction must be reported to KPPU within 30 days of its effective date. Failure to

---

comply with this requirement can result in a fine of IDR1 billion for each day of delay. The maximum administrative fine cannot exceed IDR25 billion.

In 2014, the KPPU only imposed fines on four companies that failed to submit the notification on time, at a total of IDR8.25 billion for 41 delay days (about IDR200 million a day). The KPPU has recently been taking a stricter approach to compliance with the notification requirement and has adopted a more uncompromising attitude to imposing fines on companies that report late. In 2016, the KPPU increased some of the fines and in one case, a late-reporting company was made to pay IDR2 billion for four days of delay.

The KPPU provides a chance for businesses conducting mergers or acquisitions to have a pre-consultation with it where the transaction might be complex. This gives the company time to evaluate the transaction and provide remedies to the KPPU if it believes that the deal will potentially result in a monopoly or unfair business competition.

The KPPU regulations state that once the KPPU confirms that submission is complete, it will conduct an initial review within 30 business days. If the KPPU concludes that the proposed transaction does not result in a monopoly and/or unfair business competition, it will announce its opinion by the end of the 30-day period. However, after its initial review the KPPU will conduct a further review lasting 60 business days if:

- The Herfindahl-Hirschman Index after the proposed transaction is above 1,800 (with the delta above 150).
- The parties or their affiliates have a dominant position.

The prevailing legislation is silent on the maximum duration for reviewing the completeness of the submission. Based on experience, the duration usually depends on the complexity of the overlapping business of the relevant parties, so there is no exact timeline for the KPPU to confirm that the submission is complete.

Furthermore, the New Merger Control Guidelines as stipulated under KPPU Regulation No 3/2019 on the Assessment of Mergers and Consolidations of Undertakings or Acquisition of Shares in a Company that May Result in Monopolistic Practices and/or Unhealthy Competition provides that a transfer of assets (with or without shares) is tantamount to an acquisition of shares. The transfer will therefore need to be notified to the KPPU if the following conditions and thresholds are met:

- Where the sale/asset thresholds apply, which are a:
  - combined asset value exceeds IDR2.5 trillion (in the banking sector, the threshold is IDR20 trillion); and/or
  - combined sales value exceeds IDR5 trillion.
- Where the transfer will have a direct impact on Indonesian market.
- Where the transfer was conducted between non-affiliated companies.

---

## **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?**

---

Some types of business in Indonesia are subject to limitations on foreign ownership under the Negative List. Typically, capital markets transactions (through purchasing shares in a public company via stock exchange) are not affected by the Negative List. However, there are some instances where the regulator can deem the Negative List to apply to the controlling shareholders of public companies listed in the articles of association.

There are some restrictions on foreign ownership that are regulated separately from the negative investment list, stipulated by government agencies/bodies, such as banking and mining. Enforcement of foreign ownership restrictions is not consistent, so it is wise to consult with legal counsel before planning to acquire an Indonesian public company.

---

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

---

There are no restrictions on repatriation of profits or exchange control rules for foreign companies. However, almost all types of facility agreement relating to, or in the form of a foreign exchange, must be reported to the Indonesian Central Bank.

---

## **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?**

---

In addition to the general disclosure requirements (see Question 12), the Capital Markets Law specifically prohibits any insider in possession of inside information from buying or selling any of the public company's shares/securities, or from buying or selling the shares/securities of another public company that performs transactions with the first public company.

The Indonesian Capital Markets Law also prohibits any insider from providing information to any party that it suspects may use the information to buy/sell securities. In this context, an "insider" may include any of the following:

- Any commissioner, director or employee of the issuer or public company.
- The main shareholder of the issuer or public company.
- Any individual who, due to their position (in an organisation, institution or governmental body) or profession or due to their business relationship) with the issuer or public company (whether working together or a customer, supplier, contractor or creditor, enables such person to obtain inside information.
- Any party who, within the last six months, has since become no longer one of the three types of individual listed above (for example, a director of the issuer or public company who resigns on 1 January will still be considered an insider until 30 June of that year).

"Inside information" is material information regarding an event, occurrence or fact that may affect the price of the securities concerned at the stock exchange and/or investor decision, prospective investor or other party with an interest over such information or fact that is not yet publicly available.

Notwithstanding the above prohibitions, certain exceptions are provided under OJK Rule No 78/POJK.04/2017 on Securities Transaction that are Not Prohibited for Insiders. For example, there is generally no violation of insider trading when:

- The securities transaction was conducted between insiders over the counter.
- The securities transaction was conducted between an insider and a non-insider over the counter, and was conducted in the following manner:
  - the insider disclosed all inside information to the non-insider;
  - the non-insider used the inside information for no other purpose than to complete the securities transaction;

- the non-insider provided a written statement to the insider confirming the confidentiality of the inside information and that it would not use the information for any purpose other than to complete the securities transaction; and
- the non-insider did not buy or sell any securities of any company that was involved in a "transaction" with the company within six months as of receiving the information (other than to complete the contemplated securities transaction with the insider).

## REFORM

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

There has been some discussion about amending the mandatory tender offer regulations since 2016. However, there is no certainty about when new regulations will be enacted. Furthermore, as mentioned in *Question 1*, there has been some discussion and information from the government about enacting the Omnibus Law and abolishing the Negative List. If both actions are carried out by the government, this will indirectly affect takeover regulation in Indonesia.

## Practical Law Contributor profiles

### Freddy Karyadi, Partner

Ali Budiardjo Nugroho Reksodiputro

**T** +62 21 2505125/5136  
**F** +62 21 2505001/5121  
**E** fkaryadi@abnrlaw.com  
**W** www.abnrlaw.com

### Kartika Budianti Lestari, Associate

Ali Budiardjo Nugroho Reksodiputro

**T** +62 21 2505125/5136  
**F** +62 21 2505001/5121  
**E** klestari@abnrlaw.com  
**W** www.abnrlaw.com

**Professional qualifications.** Indonesia, advocate

**Areas of practice.** Capital markets; M&A; taxation; banking and corporate finance.

**Languages.** Indonesian, English

**Professional associations/memberships.** Indonesian Advocates Association; Indonesian Capital Market Legal Consultants; Association of Indonesian Advocates; Indonesian Tax Consultant Association; International Fiscal Association; International Federation of Accountants.

#### Publications

- *Getting the Deal Trough: Acquisition Finance.*
- *LexisNexis Merger and Acquisition Law Guide.*
- *The International Comparative Legal Guide to: Mining Law.*
- *The International Comparative Legal Guide to: Securitization.*
- *The International Comparative Legal Guide to: Project Finance.*
- *The International Comparative Legal Guide to: Corporate Tax.*
- *Getting the Deal Trough - Acquisition Finance.*
- *The Littler Mendelson Guide to International Employment and Labour Law.*
- *Transfer Pricing and Tax Avoidance.*

**Professional qualifications.** Indonesia, advocate

**Areas of practice.** M&A; financing transactions; company restructuring; general corporate, investment and infrastructure projects.

**Languages.** Indonesian, English

**Professional associations/memberships.** Indonesian Advocates Association.

#### Publications

- *The International Financial Law Review: New Draft Bank Legislation.*
- *The International Law Office: Direct Election and Appointment of Independent Electricity Producers by PLN.*