Indonesia Merger and Acquisition Laws, Regulations, and Regulatory Approval Guidelines

1. M&A laws and regulations & regulatory approvals

1.1. What are the principal laws and regulations applicable to M&A transactions in relation to listed and private company in your jurisdiction? What are the major issues dealt with in such laws and regulations?

The provisions on Merger & Acquisition (“**M&A**”) in Indonesia is generally governed under the Law No. 40 of 2007 on Limited Liabilities Companies as amended by Law number 11 of 2020 on the Job Creation (“**Company Law**”).

The statutory formalities for M&A are as follows:

a. Specifically for acquisition transaction, there are two methods of acquisition under the Company Law, i.e., (i) an acquisition by way of subscribing of the newly issued shares of the target company, and (ii) an acquisition by way of purchasing the shares directly by the shareholders of the target company.

1. For the first method, the acquiror of the newly issued shares must first prepare an acquisition plan together with the board of directors (“**BOD**”) of the target company that should include the following information:

1. names and domicile of the acquiror and the target company;
2. reasons and explanations of the BOD of the target company and the acquiror in acquiring the target company;
3. the financial statements for the last accounting year of the target company and the acquiror;
4. procedures for evaluation and conversion of shares of the target company to be acquired against the exchanged shares, if the acquisition is paid with shares;
5. the number of shares to be acquired;
6. financial readiness;
7. pro forma consolidated balance sheet of the acquiror, after the acquisition, prepared in accordance with the general accounting principles applicable in Indonesia;

8. the method of settlement of rights of shareholders disagreeing with the acquisition;
9. the method of settlement of status, rights, and obligations of the members of the BOD, the board of commissioners ("**BOC**"), and employees of the target company;
10. the estimated period of acquisition, including the period of the granting of authorization from the shareholders to the BOD of the target company for the transfer of shares;
11. draft amendment to the articles of association of the company resulting from the acquisition (if any).

The above acquisition plan must also be approved by the BOC of the target company and the acquiror..

While in the second method, there is no requirement for the selling shareholder or the buyer of the shares to prepare an acquisition plan as described above. However, the selling shareholder may need to first offer the sale shares to the other existing shareholders if it is required under the AOA of the target company. Please refer to further elaboration on these two methods of acquisition in our response to question 2.4 below.

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b. Specifically for the merger transaction, the BOD of the merging companies must prepare a merger plan to be approved by both the BOC and the General Meeting of Shareholder ("**GMS**") of each company. The merger plan shall include, among others:

  a. reasons and explanations of the BOD of the merging company who conduct the merger and the requirements of the merger;
  b. procedures for appraising and converting the merging company's shares towards the surviving company;
  c. the draft amendment to the surviving company's articles of association if any;
  d. financial reports including the last 3 (three) years of financial report of each company;
  e. continuation or termination of business activities plan of merging company; and
  f. estimated time period for the implementation of the merger;

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c. The BOD of the company must announce the proposed merger/acquisition in a newspaper having nationwide circulation and to the employees of the

acquired company, 30 days prior to the shareholders' meeting approving the merger/acquisition.

i. The pre-merger/acquisition announcement in the newspaper is meant to provide an opportunity to creditors of the target company/merging company/surviving company to submit their objections to the proposed merger/acquisition. Any creditor may file an objection within 14 days of the announcement. If, after the lapse of the 14 days no objection is received, the creditors will be deemed to have agreed with the merger/acquisition.

ii. With respect to the announcement to the employees, the company in its capacity as employer, shall have the option to terminate their employees and fulfil the severance pay obligations applicable to the relevant employee(s). Further, if the employment terms and conditions are changed post-merger/acquisition (to a position that is less favorable in the perspective of the employees), an employee shall have the right to ask for termination of his/her employment to and to receive severance pay in accordance with the formula prescribed by Law No. 13 of 2003 on Labor as amended by Law No. 11 of 2020 on Job Creation ("**Labor Law**"). The Labor Law does not specify the term "change" in respect of the employment terms and conditions - however, the general understanding is that the employee's right (to ask for termination) would be triggered if the employment terms and conditions are worse than the current terms and conditions.

d. The merger/acquisition must be approved by the shareholders, which can be granted by way of: (i) approval of GMS granted in a physical meeting or (ii) Circular resolutions of the shareholders in lieu of a GMS. In case the approval is granted through circular resolutions, this requires unanimous resolutions/ votes of the shareholders.

e. Subject to the requirement of the seller as stipulated in its AOA, to obtain the necessary corporate approval for the sale shares. If the seller is an Indonesian Company, it will need to observe whether the sale shares constitute more than 50% of net assets of the seller. If yes, then the sales of shares need to be approved by the GMS of the seller. Other corporate approval may also be required depending on the terms of the AOA of the Seller ;

f. Execution of the notarial deeds: (i) deed of statements of shareholders resolutions that approve the merger/acquisition, (ii) deed of acquisition/deed of merger (as relevant), (iii) deed of shares sale and purchase. If the acquisition transaction also include a transfer of minority shares, the said transfer can be made based on a notarial deed of shares sale and purchase or a privately made shares sale and purchase agreement;

g. Notification to the MOLHR by the Notary who assists the transaction. If the merger/acquisition cause any amendment to the AOA of the target company/surviving company and such amendment need to be approved by the MOLHR, the Notary will also need to submit an application to obtain the MOLHR approval on such amendment; and

h. A post-merger/acquisition newspaper announcement within 30 days of the date of the acquisition/merger, and notification to the Indonesian Competition Commission ("**KPPU**") if relevant.

1.2. Are there any foreign investment review required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

In general, there is no specific foreign investment review by the Government Institution with respect to the plan of foreign buyers in M&A. However, there is a fit and proper test requirement for banking and financial industries that applicable for all foreign or local buyer that intend to conduct M&A transaction. The fit and proper test requirement will typically be completed within 1-3 months as of the submission of the application to the relevant authorities (i.e., either Bank Indonesia or Financial Services Authority ("**OJK**")).

For other sectors, foreign investor assisted by the notary may proceed into the M&A and submit the merger/acquisition information (including the new shareholding composition of the target company/surviving company) to the MOLHR system which is integrated with the Online Single Submission ("**OSS**") system maintained by the Capital Investment Coordinating Board (locally known as *Badan Koordinasi Penanaman Modal* or "**BKPM**"). If the shareholding composition does not in line with the maximum shareholding percentage stipulated for the line of business of the target company/surviving company, the OSS system will reject the application. For instance, under PR 10/2021 (as

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amended) the maximum foreign ownership for the line of business of domestic sea transport is restricted up to 49%, therefore if the acquisition/merger causing the foreign ownership in the company to exceeds the said threshold, the OSS system will reject the recordation until the shareholders adjust their shareholding composition.

Accordingly, it is advisable for the foreign investor to independently check whether the intended business field can be owned by foreign investors (or whether there is any maximum shareholding percentage that must be complied with) under PR 10/2021 (as amended) before it proceeds into its investment.

1.3. Are there any merger control required in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

Merger control is generally regulated by Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business as amended by Law No. 11 of 2020 on Job Creation ("**Indonesian Competition Law**"), and its implementation is supervised by KPPU. The Indonesian Competition Law implements a post-transaction notification regime for merger control.

Within the territory of Indonesia, a transaction must be notified to the KPPU only if it meets the following conditions cumulatively:

- a change of control;
- it meets the applicable assets/sales threshold; and
- it is carried out between non-affiliated companies.

a. Change of Control

Under Indonesian Competition Law, a change of control can be the result of a transfer of shares or voting rights above 50% or where the transfer involves 50% or less but there is factual control (an ability to influence or direct the company's policy or management).

b. Asset/Sales Thresholds

The following thresholds apply:

(i) Combined worldwide value of assets following the acquisition exceeds IDR 2.5 trillion; and/or

(ii) Combined <u>Indonesian value of sales</u> following the acquisition exceeds IDR 5 trillion.

Of relevance to the calculation are assets and/or sales in Indonesia of (i) the target company, (ii) the acquirer, (iii) all undertakings that directly or indirectly control or are controlled by the undertaking that carries out the acquisition.

This criterion would also be met if only one party involved in the transaction meets the threshold.

"Target company" will include the target company and its subsidiaries, and the seller (of the shares) not taken into account. However, if the transaction results in a change from single to joint control, we believe that 'the undertakings that directly or indirectly control or are controlled by an undertaking that carries out the acquisition' would include the existing shareholder and its affiliates.

The asset and sales value are calculated based on the latest audited financial report. Sales value includes sales of products produced domestically and imported products. Exported products should be excluded from the calculation.

If the asset or sales value of a party involved in the acquisition has decreased by 30% or more in an accounting year as compared to the year before, the value is calculated on the basis of the average in the past 3 years, or if the decrease has occurred in less than 3 years, the average in the past 2 years.

c. Transaction Between Non-Affiliated Companies

If a transaction is conducted between affiliates, it is exempt (regardless of whether all of the above conditions are met). Indonesian Competition Law stipulates that a company is an affiliate of another if (a) it either directly or indirectly controls or is controlled by that company, (b) it and the other company, directly or indirectly, are controlled by the same parent company, or (c) there is a relationship with a "main principal shareholder" (*pemegang saham utama*).

A transaction that meets the relevant filing criteria should in principle be filed with the KPPU within 30 business days as of the legal effective date of the transaction (post-closing). However, due to the Covid-19 pandemic, the KPPU has granted an additional 30-business day grace period, giving 60 business days in total, for transactions: (i) that were notified to the KPPU after the 30-business day deadline; and (ii) became legally effective: (a) on or after 9 November 2020; or (b) on or before 8 November 2020 and have not yet reached the Commission Hearing stage. Business days exclude Saturdays and Sundays, official national holidays and collective leave days in Indonesia.

Nevertheless, it is advisable for clients to comply with the 30-business day deadline as of the closing of transaction in order to avoid any potential issues. It is unlikely that the KPPU will still grant the grace period after Covid-19. The KPPU will only accept a complete filing submitted during business hours, after which it will state the date of receipt and issue a letter of receipt.

Upon submission of a filing, the KPPU has 60 business days to check the full set of documents submitted and to ask for clarification before declaring the submission complete. After that the KPPU has 90 business days to carry out an initial / comprehensive assessment and issue its Opinion.

For late notification, the KPPU can impose a base penalty of IDR 1 billion (approx. US$ 70,000), plus an element calculated as follows:

- up to 50% of the net profits earned by the undertaking in the relevant market, during the period of the violation; or
- up to 10% percent of the total sales in the relevant market, during the period of the violation.

The KPPU may decide whether the penalty should adopt the first or second alternative above, as well the maximum percentage of net profits, total sales, or a lesser amount, depending on the circumstances of the case. The KPPU has so far imposed penalties for late notification in at least 45 cases, 29 of which occurred in the past two years, showing an increase in enforcement activity.

1.4. Are there any other governmental and regulatory approvals required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

In general, there is no specific approval required for foreign buyers in M&A other

than the approval for the amendments to the AOA regarding the change of status into a PMA Company (as relevant) and the notification to the MOLHR for the new shareholders composition. Besides the MOLHR approval and the notification to the MOLHR, the Company may need to update its information in its OSS System's account.

For certain business fields, such as mining and banking & finance sectors, there are separate governmental approvals and/or notifications required to be obtained and/or submitted to the relevant governmental institutions (such as the Directorate General of Mineral and Coal, Bank Indonesia or the OJK) for the change of the shareholding composition.

2. M&A in relation to listed company

2.1. What are the principle methods of acquisition?

The most common method in the acquisition of a listed company is by acquiring existing shares or subscription of new shares (rights issuance or private placement). Other than these, any other methods resulting the change of control would still constitute as an "acquisition". We elaborate further on the change of control as below.

As regulated under the OJK Regulation No. 9/POJK.04/2018 which came into force on 27 July 2018 concerning Takeover of Publicly Listed Company ("**POJK 9/2018**"), a takeover of a public company is an action, directly or indirectly, in which resulting in a change of controller in such public company ("**Takeover**"). Control over company is based on the ability to determine, either directly or indirectly, the management processes and/or policies of companies and can be proven through possession of certain documents and/or information.

The definition of 'Controller of Public Company' is provided in Article 1 paragraph (4) of POJK 9/2018, namely a party who directly or indirectly:

a. Owns more than 50% (fifty percent) of the entire shares with voting rights which have been paid-up in full; or
b. Has the ability to determine, either directly or indirectly, in any way, the management and/or policy of the public company,

hereinafter shall be referred to as "**Controller**".

It should be noted that 'a party' who performs control abovementioned can be an

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individual, a company, joint venture, association, or Organized Group. Article 1 paragraph (2) of POJK 9/2018 provides that an Organized Group is the party who make plans, deals, or decision to cooperate in achieving a certain goal. Based on this, the concept of Controller of Public Company has been widened, not only applicable to a single person or company but also applicable to several persons. The said plans, deals, or decision to cooperate can be made in writing or verbally.

2.2. In what circumstances (if any) is a mandatory bid obligation incurred?

According to POJK 9/2018, mandatory bid obligation under the Indonesia law is known as Mandatory Tender Offer ("**MTO**") or locally known as *Penawaran Tender Wajib,* which requires the new Controller to buy the remaining shares of the company if a Takeover occurs. The MTO requirement shall apply against all shares of the company except for:

(i) Shares of shareholder that has taken part in the Takeover transaction with the new Controller;
(ii) Shares of other Person that has already received an offer with the same terms and conditions from the new Controller;
(iii) Shares of other Person who, at the same time, is making either a MTO or Voluntary Tender Offer for the same public company's shares;
(iv) Shares of the "Primary Shareholder"[1]; and
(v) Shares of another Controller of the said public company.

2.3. Is there a minimum price at which the offer must be made?

Article 17 of POJK 9/2018 stipulates that the MTO price must be made in accordance with the following:

a. in the event the Takeover is <u>directly</u> exercised over shares of either a public company or an equity issuer which are listed and <u>traded</u> at the stock exchange, the lowest MTO Price must be at least (a) the average of the highest price of daily trading at the stock exchange during the last 90 (ninety) days before the Takeover Announcement (as defined below) or before the Negotiation Announcement (as defined below) (if any), or before disclosure in the event of additional capital without giving right issues, or before disclosure in the event of additional capital with right issues, or (b) the exercised price of Takeover, whichever is higher;

[1] A Person who directly or indirectly has at least 20% voting rights or any lower percentage as determined by OJK's discretion.

b. in the event the Takeover is <u>directly</u> exercised over shares of either a public company or an equity issuer which are listed and traded at the stock exchange, however during the period of 90 (ninety) days or more before the Takeover Announcement or before the Negotiation Announcement, <u>the said</u> shares were <u>not traded</u> at the stock exchange or its trade was temporary suspended by the stock exchange, the lowest MTO price must be at least (a) the average of the highest price of the daily trading at the stock exchange during the last 12 (twelve) months counted backwards from the last daily trading day or the day it is temporary suspended; or (b) the exercised price of Takeover, whichever is higher;

c. in the event the Takeover is <u>directly</u> exercised over shares of either a public company or an equity issuer which are <u>unlisted and not traded</u> at the stock exchange, the lowest MTO price must be at least (a) the exercised price of Takeover; or (b) the fair price determined by the appraiser who is registered at OJK, whichever is higher;

d. in the event Takeover is <u>indirectly</u> exercised over shares of either a public company or an equity issuer which <u>listed and traded</u> at the stock exchange, the lowest 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 (ninety) days before the Takeover Announcement or before Negotiation Announcement (if any), or before disclosure in the event of additional capital without giving right issues, or before disclosure in the event of additional capital with right issues;

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e. in the event of Takeover is <u>indirectly</u> exercised over shares of either a public company or an equity issuer which are <u>listed and traded</u> at the stock exchange, but during the last 90 (ninety) days or more before the Takeover Announcement or before the Negotiation Announcement, was <u>not traded</u> at the stock exchange or its trade was <u>temporary suspended</u> by the stock exchange, the lowest MTO price must be at least the average of the highest price of daily trading at the stock exchange during the last 12 (twelve) months counted backwards from the last trading day or the day the trade is temporary suspended; and

f. in the event Takeover is <u>indirectly</u> exercised over shares of either a public company or an equity issuer which are <u>unlisted and not traded</u> at the stock

exchange, the lowest MTO price must be at least equal to the fair price as determined by the appraiser who is registered at OJK.

2.4. How can the function of the board of directors of the target impact a proposed acquisition?

Under Article 125 of the Company Law, an acquisition can be conducted in two methods:

a. an acquisition by way of subscribing of the newly issued shares of the target company;

b. an acquisition by way of purchasing the shares directly by the shareholders of the target company.

The BOD is unable to object the Takeover done by purchasing the shares directly through the shareholders of the target company.

However, if the Takeover is conducted by subscribing to the newly issued shares of the target company, the process will be more complicated and can only be done with the involvement of the BOD of the target company. In this type of acquisition, both the BOD of the target company and the acquiror are obligated to prepare a draft plan of acquisition which contains among others the reasons and explanation on the acquisition, the financial statement of both parties, the methods of assessment and conversion of shares of the target company, the readiness of funding, the pro forma consolidated balance sheet of the target company, etc. In addition to the requirement of the Company Law, the capital market regulations shall also apply to the acquisition of listed company including the form of acquisition plan and MTO procedure as discussed above.

2.5. What key documentation is needed in the Takeover?

The following documentation is needed for the Takeovers, including:

a. Announcement;

Any prospective new Controller which is undertaking negotiation that may lead to a Takeover, may voluntarily announce the negotiation process on Takeover plan ("**Negotiation Announcement**"), through:

a. 1 (one) Indonesian language daily newspaper which is circulated nationally; or

b. the Stock Exchange's website.

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The new Controller shall make an announcement to public in at least 1 (one) Indonesian daily newspaper having national circulation or website of Stock Exchange and notify the OJK at the latest the next business day after the Takeover (the "**Takeover Announcement**"), which among others includes the following information:

(i) the total number of shares that have been acquired, name of the previous shareholder whose shares was acquired by the new Controller if the Takeover was conducted outside Stock Exchange, Takeover price per share and total number of the new Controller's shares ownership;

(ii) the new Controller's identity including name, address, telephone, facsimile, line of business (if any), composition of its management and supervisors, capital structure and any other equal information if the new Controller is business entity;

(iii) the objective of the control; and

(iv) statement that the new Controller is an Organized Group (in case the new Controller falls under the Organized Group definition).

The new Controller must also submit an evidence of the daily newspaper announcement as mentioned above to OJK within 1 (one) business day after the date of announcement.

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b. Conducting the MTO

The MTO may be undertaken by other parties both for and on behalf of the Controller, on condition that >50% of the shares with voting rights have been fully paid up. There are several requirements for the new Controller in order to conduct the MTO, as follows:

(i) submit an application letter and a draft of announcement of the information disclosure in relation to the MTO along with its supportive documents to OJK and Public company within 2 (two) business days after the Takeover Announcement;

(ii) announce the information disclosure in at least 1 (one) Indonesian daily newspaper having national circulation of website of Stock Exchange, within 2 (two) business days after the receipt of letter

from OJK stating that the new Controller may announce the information disclosure on the MTO (the new Controller must also submit an evidence of the daily newspaper announcement as mentioned above to OJK within 2 (two) business days after the date of announcement);

(iii) conduct the MTO within the period of 30 days as of the announcement of the information disclosure as stated in item b above;

(iv) settle the MTO transaction, by mean of money transfer, at least 12 (twelve) business days after the end of MTO period; and

(v) submit a report on the MTO's result to OJK within 5 (five) business days after the end of the MTO settlement.

c. GMS Resolutions;

A Takeover must firstly be approved by the existing shareholders of in the GMS. Furthermore, it is also considered as a particular change of AOA of the company which, under the Company Law, must obtain approval from MOLHR.

In order to hold a valid GMS, all procedures regulated in the AOA of the company, including but not limited to the delivery of notices of GMS to the shareholders 14 (fourteen) days before the GMS, are complied with. Subject to the possible stricter quorum under the company's AOA, the GMS may be held if certain of the total shares with voting rights present or represented at the GMS and the decision to the Takeover plan will be valid once approved by at least the minimum required of the total votes. The GMS to reduce the capital will be implemented by the creation of minutes of meeting. If all existing shareholders agree with the capital reduction, then the GMS approval can also be conducted by way of Circular Resolution of Shareholders in lieu of extraordinary GMS approving the capital reduction and its methods as discussed above.

Article 9 of POJK 9/2018 stipulates that in the event a public company being a target company, then the said public company, shall not be required to obtain prior shareholders' approval in the GMS for the Takeover, unless it is specifically required under specific law that relevant to business of the public company e.g. the prevailing banking regulations

requires a bank in form of a limited liability company (as a target company) to obtain a prior GMS approval for Takeover.

In the event the new prospective Controller is an Indonesian publicly listed company, such company is not required to obtain prior approval from its shareholders in GMS for the Takeover, unless it is specifically required under specific law that relevant to the business of the new prospective Controller.

There are also certain exemptions for the obligation of the Controller to publish Takeover Announcement and to conduct MTO, which are, among others:

a. pursuant to a final and binding court order or decision;
b. a merger, division, or implementation of liquidation of the shareholder;
c. a grant of shares without an agreement to obtain any consideration whatsoever;
d. the exercise of security for a debt that has been stated in the loan agreement, and also of any security in connection with a public company's restructuring, stipulated by the state or governmental body or institution in accordance with the prevailing laws;
e. Takeover of shares as a result of increase of capital with rights issue, where the existing shareholders obtain the shares by exercising their rights in proportion to their shareholding as implementation of the relevant capital market regulations;

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2.6. Do Takeover documents require pre-approval by any regulatory body prior to publication?

In general, there is no pre-approval of the Takeover documents by any regulatory body required prior to publication. The new Controller or the target listed company in practice may voluntarily consult with OJK with its plan to conduct the Takeover.

3. M&A in relation to private company

3.1. Are there any special rules in relation to the transferring of a business (compare with the simple share or asset Takeover)?

There are no specific provisions in the prevailing laws and regulations in Indonesia which stipulate provisions related to transfer of business in a private company. In general, if shares in a private company have been transferred from

one shareholder to another shareholder which cause the change of majority shareholder, it can be deemed that the business of a company has been transferred and the company is deemed as performing procedure of acquisition under the Company Law as elaborated above.

The main difference between simple share or asset with business transfer or M&A transaction will only be on the requirement to have an announcement. For the assets/business transfer, the company would need to take into account the provisions of the AOA in relation to the disposing assets. If the assets are considered material and meet certain threshold stipulated under AOA, the company would be required to obtain approval from the GMS. In addition, if the capitalization of the company decreases as a result of the assets or business transfer, the company would need to follow procedure for reduction of capital procedure stipulated under the Company Law which involves, among others, announcement and no objections from the creditors and approval from MOLHR.

As for the employee transfer, Generally, Labor Law does not regulate the procedure of an employee transfer. As a matter of concept and practice, the transfer of employment relationship from one company to another requires consent from the employee. There is no requirement for the employer to terminate the employee prior to the transfer. However, the decision will be on the hand of the employee, whether to accept or refuse the transfer. The transfer may not trigger severance payment for a permanent employee if the permanent employee agrees to continue the employment with acknowledgment of seniority and the latest salary and benefits at the new company. Accordingly, the procedure would involve negotiation with all employees to be transferred and in practice the negotiation could be cumbersome for certain business that is labor intensive.

The transfer of business/assets is less common than the shares transfer due to certain procedures that must be followed above and most of licenses issued by the authorities in Indonesia are not permitted to be assigned. Accordingly, the acquiror would need to apply new licenses for its business operation.

3.2. Do labor unit, works councils and other stakeholders (other than the vendors of the target) play a role in M&A?

<u>Labor Unit and Work Council</u>

Labor unit and work councils do not play a role in M&A transaction. Although the company is required to give the M&A announcement to the employees (as mentioned in point 4.1 above), it does not give the right to the employees to reject the M&A transactions. Instead, it may trigger the rights of the company to terminate the employee or rights of the employee to request for employment termination.

The provisions related to employment termination due to M&A is stipulated in the Government Regulation No. 35 of 2021 on Definite Term Employment Agreement, Work Hours and Rest Hours, Outsourcing and Employment Termination ("**GR No. 35/2021**"). The employment termination may only be carried out based on the certain reasons. Specifically for the reason of the employment terms and conditions will be changed post acquisition (to a position that is less favourable in the perspective of the employees), the employees have the right to ask for his/her employment to be terminated and receive severance pay in accordance with the formula prescribed by law. The Labor Law does not specify the term "change" in respect of the employment terms and conditions, however, the general understanding is that the employee's right (to ask for termination) would be triggered if the employment terms and conditions are worse than the current terms and conditions.

The formula to calculate each of severance package component, will depend on the length of service of the employee. Note that only employees employed under an Indefinite Term Employment Agreement (permanent employee) that will be eligible to receive this severance package.

<u>Other Stakeholders of the Company</u>
Other stakeholders (except creditor of the company), who does not have any interest or will not be affected by the M&A transaction, do not play a role in M&A transaction

3.3. What are the minority shareholder principle rights given by law?
In general, the prevailing laws and regulations do not expressly differentiate the rights of a minority shareholder. However, the Company Law highlights provisions which is favorable to minority shareholders and stipulates the rights and protection provided to the minority shareholders, which are as follows:

1. **The right relating to the ownership of the share(s)**
   Article 51 of the Company Law provides that any shareholder will be granted

by evidence of shares ownership. Accordingly, as stated in paragraph (1) of Article 52 of the Company Law, the share(s) gives the shareholders certain rights, among others are, to attend and to vote in the GMS, to receive payments of dividend and the remaining balance resulting from the liquidation of the company (if any) and to carry out other rights as conferred by the Company Law which will be mentioned below.

2. **The right relating to the information disclosed on the Share Register(s) and other corporate documents**

   All companies are required by Article 50 of the Company Law to maintain both a "register of shareholders" and a "special" register. Information on these registers is available for inspection by any shareholder. Furthermore, by submitting a written request to the BOD, the shareholder can also inspect the minutes of the GMS and annual reports as well as to get a copy of the minutes of the GMS and annual reports.

3. **The right of a shareholder to stop "detrimental actions"**

   Any shareholder has the right to file a lawsuit against the company to the court for any damage caused by the acts of the company which is considered to be unfair and unreasonable resulting from any decisions of the GMS, the BOD and/or the BOC (paragraph (1) of Article 61 of the Company Law).

4. **The requirement to purchase shares of a dissenting shareholder**

Article 62 of the Company Law stipulates that if a shareholder does not approve the actions of the Company in the following matters:

(i) amending the AOA;
(ii) transfer or encumbrance of the assets of the company; or
(iii) merger, consolidation, acquisition or division of the company,

such shareholder may require the company to purchase its/his/her shares at a "reasonable price".

This would be an option for a minority shareholder to divest its shares in the company – but only limited in a situation of either the three scenarios. Nevertheless, under the Company Law, a company can only purchase up to a maximum 10% of the total shares issued by the company. In a situation where the shares of a minority are more than 10% shares, in the framework of Article

62 of the Company Law, the company has an obligation to ensure that the remaining shares are purchased by a third party with a reasonable price.

5. Calling a meeting of shareholders

At the request of one or more shareholders who together represent at least 1/10 of the total number of issued shares with valid voting rights (or any smaller amount as provided for in the AOA), the GMS must be conducted, as the provision of paragraph (2) of Article 79 of the Company Law stipulates. Furthermore, the shareholders requesting such GMS can submit a request seeking a permit to call the GMS by herself/himself to the district court (where the company is domiciled) if the BOD or the BOC does not call the requested GMS (paragraph (1) of Article 80 of the Company Law).

Paragraph (2) of Article 79 of the Company Law provides that the right of minority shareholders which represents at least 10% of the total shareholding of a company to request the BOD for an extraordinary GMS ("**EGMS**") to be convened. This provision affirms that a company is entitled to carry out such right. Nevertheless, if the BOD fails to satisfy such request as granted by the right of the aforementioned shareholders, the minority shareholder can seek a court's order to convene an EGMS as its ultimate resort.

Hence, the first layer of the minority rights under the Company Law which serves as a protection for minority shareholder's interests would be based upon the grounds of the abovementioned reasoning. Consequent to the convening the EGMS, it is now left to the attending shareholders to vote in favor of or against the interests of the minority shareholder in the resolution of the EGMS.

However, a resolution can be adopted by a GMS only if it is decided by a simple majority vote. In the case of a deadlock, a second meeting can be held to decide on the issue(s) causing the deadlock. If the meeting cannot resolve the deadlock issue which results in a decision cannot be reached, the proposal will be rejected.

Therefore, the above provision of course is in the least likely to be of an advantage for a minority shareholder.

6. Commencing court proceedings against BOD and BOC

Pursuant to the provisions of paragraph (6) of Article 97 and paragraph (6) of Article 114 of the Company Law, shareholder(s) representing at least 1/10 of the total number of issued shares with valid voting rights may, on behalf of the

company, file a lawsuit to the district court against a member of the BOD and/or the BOC, whose fault or negligence has caused loss to the company.

7. **Interests of minority shareholders in mergers, amalgamations, acquisitions and/or splitting-off**

The company is required to consider the interest of minority shareholders in undertaking mergers, amalgamations, acquisitions of other companies and/or splitting off as stipulated in the provision of paragraph (1a) of Article 126 of the Company Law. Not only the GMS is required to consider such rights, the company is also required to purchase the shares of a dissenting shareholder as stated in the provision of Article 62 of the Company Law as elaborated above.

8. **The right to apply for a judicial inspection of a company, a director and/or a commissioner**

Article 138 of the Company Law provides that shareholder(s) representing at least 1/10 of the total number of issued shares with valid voting rights has/have the right to request the district court to conduct an investigation against the company, a Director and/or a Commissioner, if such shareholder believes that the company or the respective Director/Commissioner has committed an unlawful act that has caused losses to the company, the shareholders, or a third party. Shareholder(s) is/are only permitted to request for such investigation after first having requested the required information from the company, which the company subsequently fails or refuses to provide.

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If a minority shareholder, based on justifiable and reasonable grounds, believes that there is an indication of unlawful act which is detrimental to the company, a minority shareholder or a third party, it can first try to enquire such matter to the company. If the company refuses to or fails to satisfy such enquiry, the minority shareholder can, then, request to the district court to conduct an investigation on the issues enquired.

9. **The right to seek dissolution of the company**

Pursuant to provision of paragraph (1) of Article 144 of the Company Law, one or more shareholders representing at least 1/10 of the total number of issued shares with valid voting rights have the right to submit a request the State Court to dissolve to the GMS to dissolve the company.

10. **Pre-emptive rights**

Any shareholder (including minority shareholders) shall have pre-emptive

rights to subscribe for newly issued shares by the company, as stated in the Article 43 of the Company Law. However, it does not apply in the following circumstances:

(i) If the shares are to be issued to the employees of the company (under the scheme of the employee stocks option program);

(ii) If the shares are to be issued to the bond holder(s) or others instruments which can be converted into shares (which has been approved by the GMS); or

(iii) If the shares are to be issued under the scheme of reorganization/ restructuring of the company (which has been approved by the GMS).

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