ADVISORY

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MERGER REPORTABILITY ANALYSIS

Under Government Regulation Number 57 of 2010 and Indonesian Competition Authority (KPPU) Guidelines Number 02 of 2013, the criteria for determining whether a foreign merger (the definition includes a share acquisition) conducted outside Indonesia is reportable under the <u>current Indonesian merger control rule</u> are the following: *(please note that the current merger control rule (post-merger filing) may be changed to a <u>pre-merger approval regime</u> which may come in force in 2018)*:

1. <u>The Asset and/or revenue thresholds</u>

   The value thresholds for a reportable transaction are:

   a. the combined audited value of the Indonesian assets of the transacting parties must exceed IDR 2.5 trillion (approximately USD180 million), but a different asset value threshold applies if the transacting parties are banks; and/or

   b. the combined audited value of the Indonesian sales (turnover) of the transacting parties in Indonesia (excluding exports) must exceed IDR 5 trillion (USD360 million), excluding exports.

   These values are calculated based on the asset and/or sales values of the transacting parties on a company group basis (from the highest HoldCo/parent company down to all the controlled subsidiaries) <u>in Indonesia</u> during the most recent financial year if an audited financial statement is available.

In the event of any meaningful deviation (more than 30%) in the most recent year's value from the 2 (two) preceding years' value, the average value for the 3 (three) most recent years should be calculated, if a financial audited statement is available to determine whether the threshold has been met.

2. <u>The transaction is between non-affiliated parties</u>

   Under the current merger control rule, "affiliated" means (i) the parties are under common control, or (ii) one party controls the other.

3. <u>The transaction will result in a change of control over the target company</u>

   According to the elucidation of Article 5 (4) (b) of GR 57/2010, control is presumed to exist if:

   a. share ownership or control of voting rights in a business entity exceeds 50% (fifty percent); or

   b. share ownership or control of voting rights is less than or equal to 50% (fifty percent) but the shareholder can influence or determine the management policy of the business entity and/or influence and determine the management of the business entity.

4. <u>The transaction has a direct effect on the Indonesian market (Local Effect Test)</u>

The local effect test is satisfied if any of the following conditions exist and a reference to a party should be read as to a party as a group of companies, the highest HoldCo down to all the controlled subsidiaries:

- all the transacting parties do business in Indonesia, either directly or indirectly (for example through controlled subsidiaries);
- one of the transacting parties does business in Indonesia, while the other party has sales to Indonesia;
- one of the transacting parties does business in Indonesia; while the other party does not, but has a sister company or companies doing business in Indonesia.

Failure to notify the KPPU of a reportable transaction within 30 (thirty) working days of closing will result in a fine being assessed of IDR 1 billion (approximately USD 75,000) per day of delay, up to a total fine of IDR 25 billion (approximately USD 1,800,000).

Under the current Indonesian merger control regime, asset transfer transactions and the establishment of greenfield JVs are not reportable. However, this is expected to change under the proposed amendments to the Indonesian Competition Law.

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