Global Public M&A Guide - Indonesia

Effecting a Takeover

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# 4. Effecting a Takeover

[Last updated: 1 January 2025, unless otherwise noted]

**4.1 Triggering a "Takeover"**

Under OJK Regulation No. 9/POJK.04/2018 dated 27 July 2018 on Takeovers of Public Companies, ("**Regulation 9/2018**"), a "takeover" of a public company is defined as an action directly or indirectly causing changes to the controller(s) of the public company. The controller of a public company is defined as the party(ies) that:

owns more than 50% of the total issued and paid up share capital, directly or indirectly; or

has the ability to determine, directly or indirectly, in any manner whatsoever, the management and/or the policies of the public company.

Regulation 9/2018 provides examples of documents or information evidencing control of the management of public companies. These documents or information include:

an agreement between the shareholders that provides a shareholder with more than 50% of the voting rights in the public company

a document that provides, or information that shows, the authority of a shareholder to regulate the financial and operational policies of the public company based on the articles of association or an agreement

a document that provides, or information that shows, the authority of a shareholder to appoint or dismiss most members of the Board of Directors and the Board of Commissioners

a document that provides, or information that shows, that a shareholder has the majority voting rights in the Board of Directors and Board of Commissioners meetings, and hence controls the public company

a document that provides, or information that shows, other authority that indicates control over the public company

Any actions that result in a change in the controller(s) of a public company will trigger a mandatory tender offer. An increase in an investor's shareholding, where the investor is already a controller of a public company, does not constitute a change in control requiring a tender offer to be made (please see below).

**4.2 Takeover to be followed by mandatory tender offer ("MTO")**

Unless the takeover falls under an exemption, it must be followed by an MTO for all of the remaining shares, except for the:

shares owned by the selling shareholder(s);

shares owned by another party(ies) that the acquirer has offered to purchase under the same terms and conditions;

shares owned by other parties that are also undertaking a (different) tender offer on the shares of the  target company (a competing tender offer);

shares owned by the principal shareholder(s), i.e., shareholders directly or indirectly holding 20% shares of the public company; and

shares owned by other controlling shareholders of the target company.

The MTO process (submission of MTO statement to OJK, information disclosure, etc.) must start within two working days after the takeover announcement and must be implemented in accordance with Regulation 9/2018. The timeline for an MTO is as illustrated below.

**4.3 Requirement to divest**

Under Regulation 9/2018, if, as the result of the MTO being made after the takeover, the new controller owns more than 80% of the total paid-up capital of the target company, the new controller must, within two years after the completion of the MTO, transfer some of its shares to the public so that at least 20% of the total paid-up capital of the target company are owned by the public.

Regulation 9/2018 also stipulates that if, as a result of the takeover, the new controller owns more than 80% of the total paid-up capital of the target company, the new controller must, within two years after the completion of the MTO, transfer to the public at least the same amount of shares as it purchased during the MTO so that these shares are owned by the public.

The distinction between these two scenarios is that, in the first, the new controller does not obtain more than 80% in the initial takeover. In the latter scenario, the new controller does obtain more than 80% in the initial takeover.

**4.4 Voluntary tender offers**

A tender offer could be made without acquiring an initial controlling stake in a public company. Under OJK Regulation No. 54/POJK.04/2015 on Voluntary Tender Offers, a voluntary tender offer ("VTO") is defined as an offer made through the mass media to acquire equity securities through the purchase or exchange of other securities. Aside for acquiring shares, this VTO provision is also relevant for a "go private" process, which is discussed below.

**4.5 Reporting of Share Ownership**

Under the Capital Markets Law and OJK Regulation No. 4 of 2024 on Reports on Ownership of, or Any Change of Ownership of, Shares in Public Companies and Reports on the Activities of Encumbering Public Company Shares ("**Regulation 4/2024**"), the following parties must report the ownership of voting rights over shares and any changes to this ownership within five business days after the transaction date (with the transaction date counted as day one):

Members of the board of directors and board of commissioners who directly or indirectly hold shares with voting rights;

Parties (including an organized group)[[1]](file:///C:/Users/bmskbd/Downloads/Indonesia%20chapter%20-%20Global%20Public%20MA%20Handbook%232.docx#_ftn1) that directly or indirectly hold at least 5% shares with voting rights;

Parties (including an organized group) that directly or indirectly control a public company; and

Parties that inherit shares with voting rights

The reporting obligation is not applicable:

To a change of ownership of shares with voting rights that occurs as a result of corporate actions conducted by public companies (a) in the form of capital increase either with or without the granting of pre-emptive rights or (b) without any transactions undertaken by shareholders;

To a change in the decimal places only in the percentage of ownership of shares with voting rights (e.g., it does not apply to a change of ownership percentage from 6.1% to 6.99%, but would apply to a change from 6.1% to 7%); and

To holders of shares with no voting rights.

Regulation 4/2024 provides a template to report shareholdings to the OJK. The report must include the following information, among others:

Name, address and nationality of the Reporting Party;

Name of the public company;

Number and percentage of shares with voting rights, both before and after the transaction;

Type of transaction (e.g., inheritance or grant);

Number of shares transacted;

Classification of shares;

Sale or purchase price;

Date of transaction;

Purpose of transaction;

Status of ownership (i.e., direct or indirect); and

Information whether the shareholder acts for the interest of Its beneficial owners, if there is an indirect share ownership.

Other than the above shareholding reporting requirement, any shareholder who encumbers 5% or more of the shares with voting rights must report that it has done so.

[1] Organized group means parties who are planning, agreeing or deciding to cooperate to achieve certain objectives.

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