

Indonesia: KPPU sets out tests for change of control in M&A deals

In brief

Following its launch in April 2023, the online notification form introduced by KPPU sets out a new set of tests for determining whether, and to what extent, a change of control has occurred in a non-majority acquisition. We summarize below these tests to help you understand how KPPU will view and assess change of control in non-majority acquisitions.

Contents

A set of questions to determine whether the baton of control has passed

A set of questions to determine whether the baton of control has passed

The assessment on change of control under the previous regulation, i.e., KPPU Regulation No. 3 of 2019 relied heavily on the 2020 Guidelines, which provided a general benchmark to determine whether the baton of control has passed to a party that acquires less than 50% of the voting rights in the target.

Since the KPPU Regulation No. 3 of 2023 came into force on 31 March this year, and the online notification form was launched in April 2023, KPPU has not released any guideline other than the [General FAQ](#) and the guideline to fill in the online notification form (only available for registered users and in Indonesian language). If the notifying party says that it didn't acquire a majority of the shares in the target, the form will ask the following questions:

1. Are there reserved matters that must be approved by the acquirer?
2. Are there certain matters relating to management of the target that must be unanimously approved by all shareholders?
3. Does the acquirer appoint the president director of the target?
4. Does the acquirer appoint a majority of directors of the target?
5. Does the acquirer appoint the finance director of the target?
6. Does the acquirer appoint the operations director of the target?
7. Does the acquirer appoint a majority of the commissioners of the target?
8. Do directors appointed by the acquirer have veto rights over matters to be decided by the Board of Directors of the target?
9. Are decisions of the Board of Directors of the target taken by a simple majority?
10. Are decisions of the Board of Commissioners of the target taken by a simple majority?

The form simply asks for a "yes" or "no" response to each question. This set of questions indicates the scope of the assessment KPPU will do to determine whether the baton of control has passed in a non-majority stake acquisition.

Contact Us



Mita Djajadiredja
Partner
Jakarta
mita.djajadiredja
@hhplawfirm.com



Dyah Ayu Paramita
Associate Partner
Jakarta
dyahayu.paramita
@hhplawfirm.com

© 2023 HHP Law Firm. All rights reserved. In accordance with a common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent in such a law firm. Similarly reference to an "office" means the office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

