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Client Alert
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Supreme Court Issues New Regulation on Appeals to KPPU Decisions

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On 9 August 2019, the Supreme Court issued its regulation No. 3 of 2019 on the process of examining an objection to decision of the KPPU. This regulation replaces Supreme Court Regulation No. 3 of 2005 on the same subject.

Under Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition ("**Antimonopoly Law**"), a business actor who is found guilty by the Business Competition Supervisory Commission ("**KPPU**") may file an objection to the District Court. Under Supreme Court Regulation No. 3 of 2005, the District Court's trial is limited to assessing the files of the KPPU, much like the practice of a High Court that is trying an appeal against a District Court decision. However, if the District Court finds that the KPPU has not sufficiently examined certain issues, the District Court may remand the case back to the KPPU for a round of additional examination, during which examination the District Court trial is suspended. After the KPPU has finished this additional examination, the District Court trial resumes until it makes its decision.

A party who is dissatisfied with a decision of the District Court may file cassation to the Supreme Court on legal (not factual) grounds. The Supreme Court decision is final and binding. However, in practice business actors that are dissatisfied with Supreme Court decisions have submitted civil review petitions to the Supreme Court to try to overturn the Supreme Court's cassation decisions. This is an extraordinary legal recourse which is allowed under very specific grounds only, e.g. the finding of new material evidence. Civil review does not affect the binding nature of the Supreme Court cassation decision but if successful, the Supreme Court's civil review decision can and does overturn its previous cassation decision on the same case.

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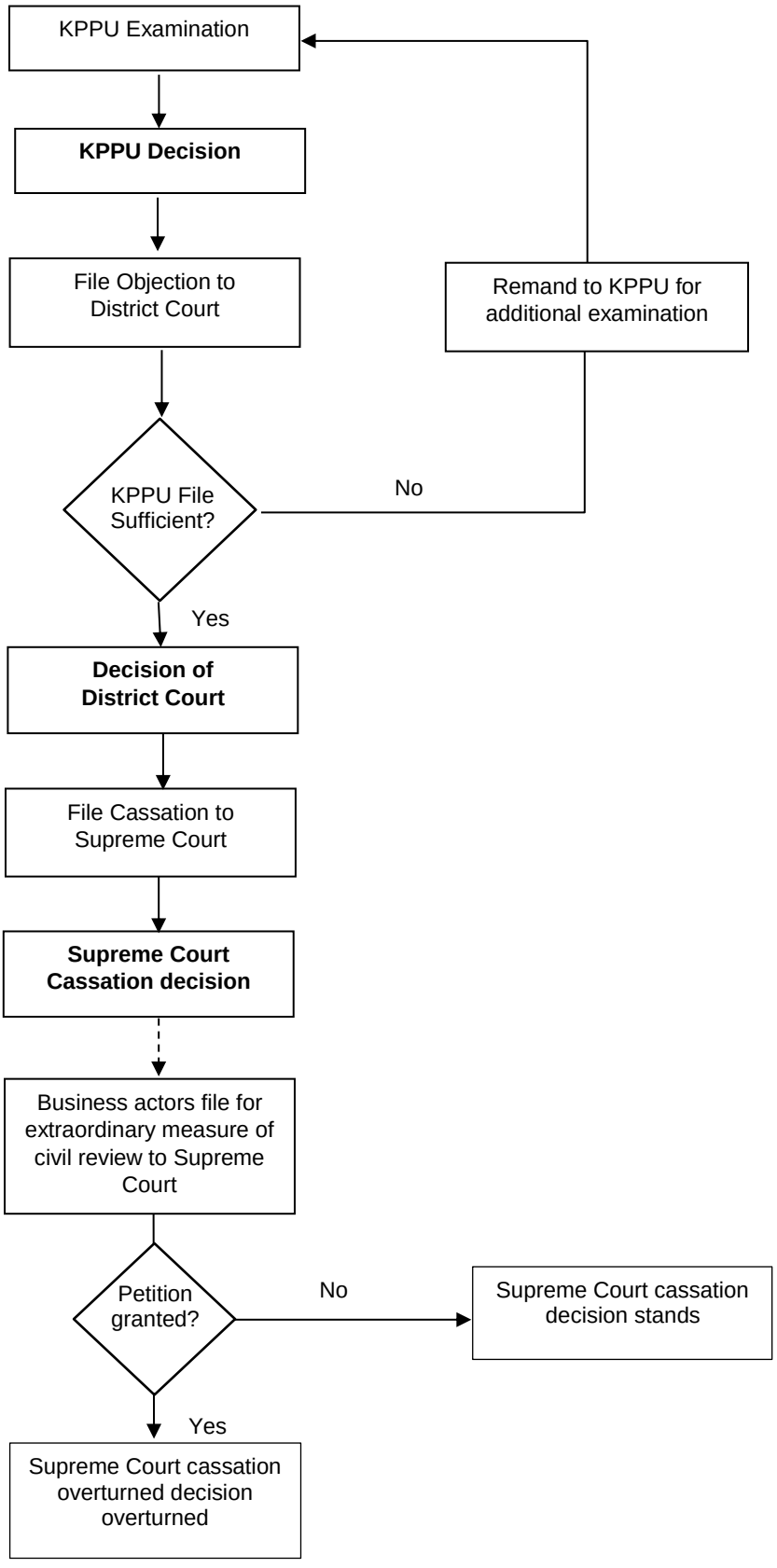
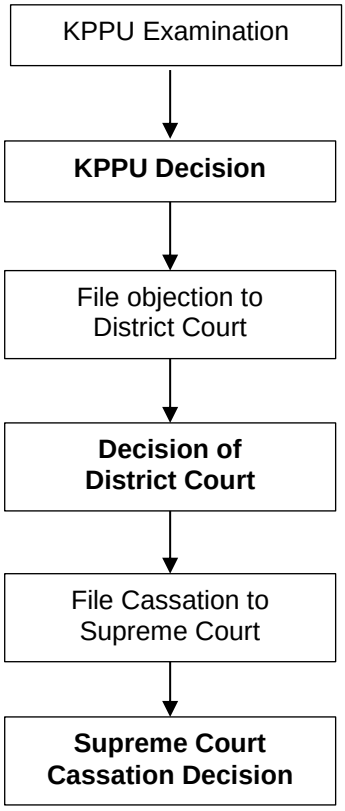
The past practice of appeal against KPPU decisions can be illustrated as follow:



Supreme Court Regulation No. 3 of 2019 revokes the District Court's authority to of remand cases back to KPPU for additional examination while affirming that the District Court's trial must be based on the KPPU files only. Further, this Regulation provides that cassation is the final remedy available; civil review is no longer available. Thus, under this regulation, the appeal process against KPPU decisions can be illustrated as follow:



In effect, Supreme Court Regulation No. 3 of 2019 restricts all examination of facts to the KPPU examination stage, prior to objection to the District Court. This is particularly concerning because business actors have long complained about lack of due process and transparency at the examination stage. The KPPU has promised reform in their examination practice to achieve more fairness. It appears that while these reforms are ongoing businesses have no option but to try to maximize their factual arguments at the KPPU examination stage.

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