

Acquisition of Public Companies in Indonesia

by *Yohannes Halim*

In supporting the economic process in Indonesia, the Financial Services Authority (OJK) has made changes to the takeover process of a public company. This it has achieved by removing the provisions concerning the extension of the execution time of the obligation to re-share shares in the acquisition process of a public company by a new controller or tender offer. In the previous regulation, namely the Decree of the Chairman of Bapepam-LK Number: KEP-264 / BL / 2011 concerning the Takeover of a Public Company, the authority could extend the time for the implementation of refloat for certain reasons and within a period of 6 months. But in the new rules, namely Article 21 Paragraph (3) OJK Regulation No. 9 / POJK.04 / 2018 concerning Takeover of a Public Company, the provision is deleted. The authority requires new controllers to refloat within 2 years. The obligation to divert shares of a public company must be made within a maximum period of two years after the tender offer has been completed. Article 21 Paragraph (1) stipulates that in the event that the implementation of the tender offer results in a new controlling shareholding of more than 80%, the new controller must refloat in the community at least 20% of the shares. Article 21 paragraph (2) states, that if the takeover results in a new controller having more than 80% of the shares, then it must transfer the shares back to the public with a minimum percentage of shares obtained during the mandatory tender offer.



This provision is different from the Decree of the Chairman of Bapepam-LK Number: KEP-264 / BL / 2011 which required the transfer of shares to the public by at least 300 parties in a maximum period of 2 years. The Chief Executive of the OJK Capital Market Supervisor explained that this policy was issued to provide certainty in the tender offer, especially related to reflotation. So far, there are obstacles in reflotation because prices are not in accordance

with the market interest. So it was extended many times. Now there is no longer a price limit.

The acquisition process aims to save the company. This is the reason that the price at the tender offer must be higher. But so far not a few companies have experienced a crisis so that the movement of shares is still at a lower level, consequently the owners have difficulty selling. However, two

years is an ideal time. This is because two years after the acquisition or when released to the public, the performance and movement of the shares of the public company will improve. The primary reason is that because of the crisis, the stock does not rise, so it cannot sell as it violates the rules. It is this that has led to the change in the rules.

In the event that the implementation of the tender offer results in ownership of the new controller of greater than 80%, the new Controller must transfer the shares of the public company back to the public so that the shares owned by the public must be at least 20%. In the event that a takeover results in the new controller having a public company share greater than 80%, the new Controller is intended to transfer the shares of the public company back to the public with minimally the least percentage of shares obtained at the time of the mandatory tender offer. The obligation to transfer shares of a public company must be carried out within a maximum period of 2 years after the tender offer has been completed.

Guidelines and Procedures for Licensing in Investment in Indonesia

by *Yohannes Halim*

In a developing country like Indonesia, one of the best ways to advance is through the acceleration of investment. So, on June 21, 2018 the Indonesian government made Government Regulation Number 24 of 2018 concerning Electronically Integrated Licensing Services. Government Regulation Number 24 of 2018 regulates the implementation of the Online System Submission (OSS). The OSS system will also be applied to permits that have been issued before the PP was valid and which require new licensing to develop its business. This system was conceived because of the many complaints concerning the handling of licenses which was complicated and took a long time. After OSS was launched, investors could take care of their investment permits quickly; even promised within 1 hour. The Investment Coordinating Board (BKPM) in supporting the implementation of Online System Submission (OSS), has issued BKPM Regulation Number 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities previously regulated in BKPM Regulation Number 14 of 2017 concerning Guidelines and Procedures Investment Licensing and Facilities.

The licensing process will be carried out at the One-Stop Integrated Service Agency (BPTSP). The system in BPTSP will be integrated with the system owned by the Directorate General of Public Law Administration of the Ministry of Law and Human Rights and with the system at the Directorate General of Tax of the Ministry of Finance. System integration is needed in order to take care of business permits and Taxpayer Identification Numbers (NPWP). For business people who take care of licensing with OSS, a Business Registration Number (NIB) will be given in the form of a barcode as an identity for their licensing. After launching later, businesses or investors can arrange permits with the OSS system through the portal www.oss.go.id and can also go directly to the OSS Lounge and the One-Stop Integrated Service (PTSP).

How to access the OSS is quite easy. Investor applicants only need to bring the notarial deed to the One-Stop Integrated Service (PTSP) in the Investment Coordinating Board (BKPM) or related ministries / institutions that already have PTSP. The applicant will be guided by PTSP officers to fill in the element data from the notary deed and administrative column. After the data has



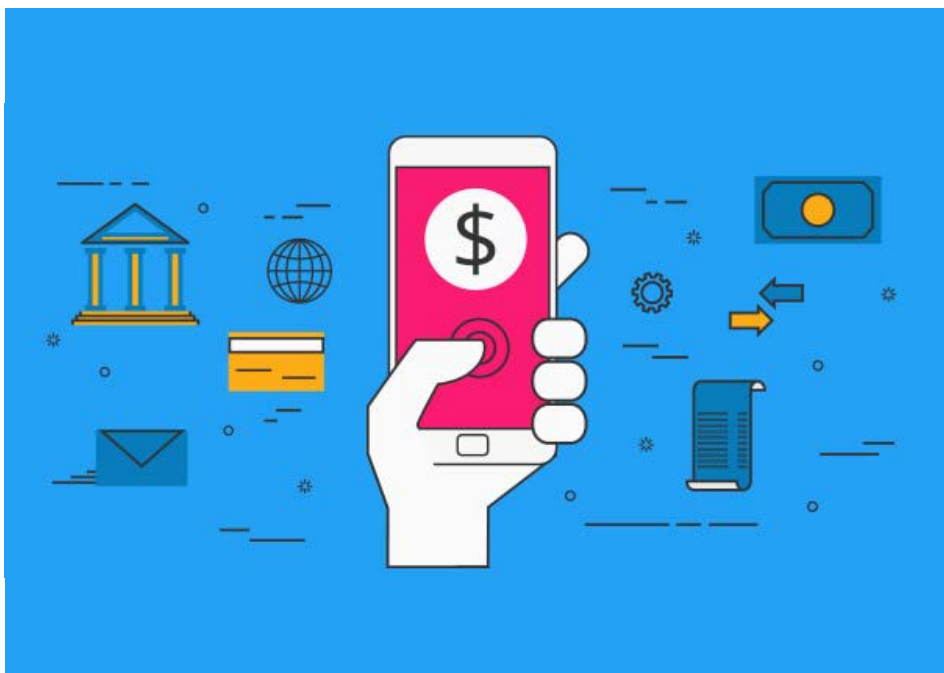
been entered, the system will confirm the data. The system is connected to the database of the Directorate General of Public Law Administration for the approval of business entities. If an individual, the system will be integrated with NIK and confirm the identity of the applicant and the Taxpayer Identification Number. There will also be a Business Registration Number, BPJS, location permits, fiscal facilities, and RPTKA that are already available in the cloud data so that they do not need to be inputted again. With the issuance of BKPM Regulation Number 6 of 2018, all licensing and in-

vestment procedures must follow the OSS provisions, one of which is the obligation to have an Entrepreneurial Registration Number (NIB). NIB is mandatory for business operators who already have API-P and API-U; business actors who propose the issuance of business licenses and / or change the data of business licenses contained in OSS; and businesses that will submit investment permits issued through BKPM PTSP.

Financial Service Authority's Latest Regulation on the Fintech Industry

by Galih Adi Prasetya

The fast growing number of startups in the Financial Technology (“**Fintech**”) industry has prompted the Financial Service Authority of Indonesia (“**OJK**”) as the supervisory body of the financial services sector in Indonesia to issue OJK Regulation No. 13/POJK.02/2018 on The Digital Financial Innovation of the Financial Services Sector (“**POJK 13/2018**”). POJK 13/2018 will act as an umbrella provision of Fintech development in Indonesia and provide detailed provisions on developing Fintech in Indonesia (from the establishment and registration mechanisms of a Fintech business (hereafter also “Fintech”) to maintaining a safe environment for consumers).



The POJK 13/2018 has been promulgated to protect the interests of consumers in order to ensure a conducive eco-system for Fintech. By maintaining this standard, Fintech development will grow and OJK shall be more easily able to supervise the Fintech industry. For example, in POJK 13/2018, any Fintech that wants to conduct its business in Indonesia shall be listed and put in the Regulatory Sandbox to see whether

the Fintech is fit and proper for the Indonesian financial environment or not. This acts as risk mitigation to prevent the failure of a Fintech and protect consumer interests. This process could last up to 1 (one) year and after that the OJK will grant its recommendation for the Fintech to be registered with the OJK. If the recommendation is not given by the OJK, then the Fintech shall submit its new model of industry to

the OJK. Other provisions that show the risk mitigation for consumers are the obligations for a registered Fintech to:

- 1) enlist as a member of a Fintech Association in Indonesia (soon to be established);
- 2) provide secure and comprehensive consumer data security and establish its data center and center for data restoration in Indonesia; and
- 3) conduct anti - money laundering and prevention of terrorism funding programs in financial sectors;

POJK 13/2018 also regulates several administrative sanctions for any Fintech that violates the provisions of this regulation, which consists of a warning letter, fines, nullification of several approvals issued by OJK, and an annulment of OJK's registration for a Fintech product.

Minister of Communications and Information Regulation on the Online Single Submission System (OSS)

by Galih Adi Prasetya

The Ministry of Communications and Information of Republic of Indonesia has recently issued a Minister of Communications and Information Regulation No. 7 of 2018 on Electronic Integrated Business Licensing Services in Communication and Information Sector (“**Minister Regulation No. 7**”). This regulation act as an implementing regulation in order to integrate with the Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services. With the enactment of the Minister Regulation No. 7, the objectives of the government of Republic of Indonesia to have a single and integrated business licensing sector could come in short period.

Regulation No. 7 is not much different to the previous regulations that govern several business licensing procedures in the communications and information sector. One major difference is the obligation for every legal entity that wants to have a Postal Service License; Telecommunication Service License; Broadcasting Service License; and/or Usage of Radio Frequency Spectrum License to use an Online Single Submission System (“**OSS**”) in order to obtain those licenses. Prior to obtaining the licenses, there are several checklists that need to be done by the legal entity called Commitments. By conducting the Commitments and sending it to OSS, the licenses shall be granted to the respective legal entity. The Commitments shall be delivered to OSS within the designated time as set out

in Minister Regulation No. 7. If the legal entity fails to deliver the Commitments to the OSS, then the licenses will be revoked and the legal entity shall redo the procedure from the beginning.

Other than OSS, the removal of *Surat Perintah Pengujian Perangkat* (“**SP3**”) as one of the requirements for any business person that wants to register their own communication or information device also serves as a pivotal change to reduce the duration of business licensing in the communications and information sectors. As for the business person who has already obtained the licenses, they have an obligation to register their licenses with the OSS at the latest 1 (one) year from the enactment of Minister Regulation No. 7.



VSL | LEGAL

Soho Capital, 17th Floor
Jl. Lejtjen. S. Parman Kav. 28
Jakarta 11470, Indonesia

t : +6221-29181342
f : +6221-29181343
info@vsl.co.id
Website: vsl.co.id

This is a digital publication prepared by the Indonesian law firm, VSL LEGAL. It is only intended to inform generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions. Should you have any questions on any matter contained in this publication, or other comments generally, please contact your usual VSL LEGAL contact or email to info@vsl.co.id.