



INDONESIA (DOMESTIC FIRMS): An Introduction to Corporate/M&A

Outlook for M&A in Indonesia

The M&A market in Indonesia in 2022 has shown a trend of returning to the number of transactions experienced prior to the COVID-19 pandemic with an increase of 28.7% from the previous year according to the Indonesian Business Market Competition Commission (KPPU).

Alongside projected economic growth in Indonesia, the M&A market is expected to grow further in 2023 including in the consumer protection and energy sectors. The Minister of Finance has determined the 2023 economic growth target at 5.1-5.3%. This target is similar to the economic growth of Indonesia in the first quarter of 2022, as Indonesia's economy rose by 5.01%; the fastest growth in the ASEAN region according to IMF.

Updates on M&A and Foreign Investment Rules

In October 2020, in an effort to resolve the issues of overlapping and contradictory existing legislation, the Indonesian government passed the so-called Omnibus Law on Job Creation (Omnibus Law). After a judicial review, the Constitutional Court ordered the government and the Parliament to "revise" the Omnibus Law, in response to which the government enacted Government Regulation in Lieu of Law No 2 of 2022 (Perppu 2/2022), which essentially restated most of the provisions of the Omnibus Law, with a few drafting improvements and adjustments. The key highlighted points in relation to M&A are set out below.

The Ministry of Energy and Mineral Resources (MEMR) is imposing additional requirements in relation to the M&A in the power generation sector. An independent power producer (IPP) that sells its power to PLN (a state-owned enterprise that carries out power supply in for the public interest) is prohibited from transferring its shares at any time before it reaches the commercial operation date, except for a transfer to an affiliated party in which the transferring shareholders hold more than 90% of shares (subject to PLN's approval). This requires investors to carefully analyse the structure of an M&A transaction to ensure it is in compliance with the above structure.

On foreign investment regulations, through Perppu 2/2022, the government has reduced the number of business sectors that are fully closed for investment from twenty to only six: (i) cultivation and production of class 1 narcotics, (ii) casinos and betting, (iii) fishery of any protected species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (iv) utilisation and collection of certain corals, (v) the chemical weapons industry, and (vi) industry involving chemical materials and substances that may harm the ozone layer.

Perppu 2/2022 also reforms business licensing procedures by introducing a paradigm shift from the conventional licence-based approach, to a risk-based approach, in which businesses only need to obtain the Business Authorisation (Perizinan Berusaha) according to the risk assessment; thus, causing the entire process to become less time-consuming and more cost-efficient.

Neither the Omnibus Law nor Perppu 2/2022 significantly amend Law No 40 of 2007 on Limited Liability Companies, particularly in relation to M&A-related provisions (ie, the general requirements and procedures for M&A and consolidation, such as mandatory quorum and voting requirements for general meetings of shareholders, newspaper announcements, announcements to employees, requirements to use a public notary and so on).

New Energy Legislation and Its Effect on the M&A Market

As the largest electricity consumption among ASEAN nations with massive potential for renewable energy production such as geothermal, hydropower, and solar energy (having the potential to reach 3,000 GW), Indonesia is a promising opportunity for renewable energy investment.

To boost investment in the renewable energy sector, the government issued several regulations related to the energy transition, including Presidential Regulation No 112 of 2022 and Presidential Regulation No 98 of 2021. These regulations are intended to increase investment, accelerate the achievement of renewable energy mix targets and reduce emissions to achieve net zero emissions by 2060. The government has targeted investment in the energy sector amounting to USD33.5 billion in 2023 according to the MEMR. To attract more investors in the renewable energy sector, the government has introduced several measures:

- (i) The application of the highest benchmark or ceiling price scheme, which serves as a point of reference for setting the electricity purchase price. This was intended to replace the previous calculation, which was based on PLN's power generation and which many considered to not be lucrative.
- (ii) Accelerating the termination of existing coal-fired power generation and prohibiting new development of coal-fired power generation (with certain exemptions subject to strict criteria).
- (iii) Granting facilities for companies that invest in renewable energy projects (such as fiscal and licensing facilities).

- (iv) Encouraging businesses to use rooftop solar panels, which, subject to PLN's approval, allows the installation of solar rooftop up to 100% of the connected power capacity as regulated under MEMR Regulation No 26 of 2021. The power generated by businesses from rooftop solar panels could be used to reduce electricity bills.
- (v) In the carbon trading sector, the Minister of Environment and Forestry Affairs issued Regulation No 21 of 2022 as the implementing regulation of Presidential Regulation No 98 of 2021, which require companies from various sectors to reduce their emissions through, purchase carbon credits via a carbon exchange, and invest in renewable energy projects. The emission trading opens the potency of economic value up to USD565.9 billion according to the Co-ordinating Ministry for Maritime Affairs and Investment.
- (vi) The government has recently mandated the Financial Service Authority (OJK) as the supervisory body to manage the carbon exchange in Indonesia. The full infrastructure of emission trading is still being developed pending various technical implementing regulations as, currently, only the coal-fired power generation sector has been regulated under the specific sub-sector regulation.

Challenges of Energy M&A Transactions in Indonesia

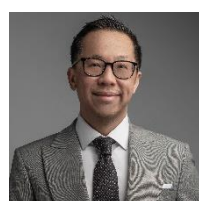
There are some notable existing challenges in the Indonesian energy market that investors need to take into account before doing M&A transactions in the renewable energy sector.

For the installation of solar rooftops, although MEMR Regulation No 26 of 2021 allows businesses to install up to 100% of the connected power capacity, in practice, PLN rarely approves more than 15% of the connected power capacity due to technical and commercial considerations. To accommodate concerns from various stakeholders including investors, the government is planning to amend MEMR Regulation No 26 of 2021. It remains interesting to see how the government will seek to strike the balance between the interests of PLN and those of investors.

Another challenge is the capability of PLN to absorb the power generated by IPPs since PLN could only purchase electricity for projects that have been listed under the RUPTL (a ten-year business plan of PLN for the development of power projects in Indonesia, including power generation, distribution and transmission that has been approved by the MEMR). Hence, understanding the procurement procedures in the power generation sector is essential to minimising investors' risk.

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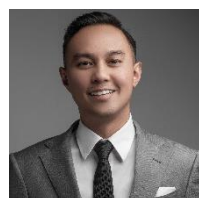
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