

## New Regulations Relax Criteria for Foreign-To-Foreign Merger and Charge Filing Fees for Merger Notification



The Indonesia Competition Commission or KPPU has issued a new merger control regulation, namely KPPU Regulation No. 3 of 2023 on the Assessment of Merger, Consolidation, or Acquisition of Shares and/or Asset that could Result in Monopolistic and/or Unfair Business Competition Practices (“**New Merger Regulation**”). Although this New Merger Regulation was only made available on 6 April 2023, it became effective from 31 March 2023.

Under the New Merger Regulation, a notification of foreign-to-foreign merger transaction only needs to be filed with the KPPU if both parties have assets and/or generate sales/turnover in Indonesia. This is a major departure from the previous KPPU Regulation No. 3 of 2019, which mandated filing even if only one party to the transaction had a nexus to the Indonesian market (click [here](#) for the notification criteria in the previous regulation). In addition, the threshold analysis for asset calculation reverts to the Indonesian basis from the worldwide basis.

Several days after publication of the New Merger Regulation, the government introduced a filing fee for merger notification through Government Regulation No 20 of 2023 on Types and Tariffs of Non-Tax State Revenue Applicable to the Commission for the Supervision of Business Competition (“**GR No.**

20/2023”). GR No. 20/2023 was enacted on 5 April 2023, but will become effective 30 days from the enactment date (i.e., 5 May 2023).

Here are the main points of the New Merger Regulation and GR No. 20/2023:

#### 1. Indonesian Basis for Calculation of Asset Value

While the statutory threshold for a notifiable transaction is still determined based on the parties' combined asset or sales values on a group basis, the New Merger Regulation uses the Indonesian basis to calculate the asset value instead of a worldwide basis. This means that fewer deals would qualify as notifiable compared to the situation under the previous regulation.

The scope of the sales value threshold calculation remains unchanged and will continue to be based on either the Indonesian-wide sales or turnover of the relevant parties.

#### 2. Local Nexus Test for Foreign-to-Foreign Transactions

Under the previous merger regulation, the merger filing in Indonesia would be triggered even if only one of the parties has business activities, assets or sales in/to Indonesia. This, combined with the worldwide assets calculation, increased the number of foreign-to-foreign transactions filed to the KPPU despite having no impacts on the Indonesian market.

Now, a foreign-to-foreign transaction will only need to be notified to the KPPU (thus satisfying the local nexus requirement) if it satisfies the double nexus test, namely that **all parties** to the merger must have assets and/or generate sales/turnover in Indonesia. If only one party to the merger has a local nexus, the transaction does not have to be notified to the KPPU.

#### 3. New Online Filing System

Under the New Merger Regulation, parties must file notifications online via the KPPU's website at <https://notifikasi.kppu.go.id>.

The KPPU will only review the online filing on business days from 9 am to 2 pm Western Indonesia Time. Currently, we have no clarity as to how the online system will function because it is not yet operational. Thus, in the meantime, parties can still use the current submission process.

#### 4. Shorter Period for Document Completeness Review

The previous regulation allows the KPPU to review the completeness of documents submitted within 60 business days after a notification is registered. The New Merger Regulation significantly shortens this period to three business days after a notification is registered. During this three-day period, the KPPU will review the completeness of the documents submitted, as well as determine whether the transaction meets all the notification criteria. Assuming that the

transaction is notifiable and the documents are complete, the KPPU will issue a statement letter containing the registration number for the submission.

Note that businesses should ensure that the information and documents filed for their notifications are correct. Inaccurate information or missing documents could cause the registration to be revoked, which could mean that the party has failed to notify the transaction.

## 5. Comprehensive Assessment Hearing

Like the previous regulation, the New Merger Regulation divides assessments into initial and comprehensive. A transaction will be subject to a comprehensive assessment if it leads to a significant change in market concentration. However, unlike the previous merger regulation, the New Merger Regulation is silent on the parameter as to what constitutes “significant change in market concentration”.

In the comprehensive assessment, the KPPU will review whether the transaction will potentially result in anti-competitive impacts on the market. If the KPPU concludes that there are no potential monopoly practices and/or unfair business competition resulting from the transaction, the KPPU will issue a statement letter that clears the transaction.

On the contrary, if the KPPU concludes that there are potential monopoly practices and/or unfair business competition resulting from the transaction, the KPPU will move the case to a commissioner panel hearing. After the hearing, the commissioner panel will:

- (i) determine remedies for the transaction;
- (ii) declare that the transaction will not potentially result in monopoly practices and/or unfair business competition; or
- (iii) proceed to further examination.

If the case goes to the further examination stage, the KPPU investigator must prove that the transaction will result in monopoly practices and/or unfair business competition. The notifying party has the chance to defend the transaction and prove otherwise. The process will resemble a court hearing with examinations and cross-examinations. Finally, the commissioner panel will decide whether the transaction will result in monopoly practices or unfair business competition, and may even unwind the transaction.

## 6. Merger Filing Fee

Under GR No.20/2023, the merger filing fee is a non-tax state revenue. It is calculated with the following formula:

**0.004% x the value of assets or sales turnover that crosses the threshold, whichever is the lower**

The value of assets or sales will be calculated based on the total asset or sales value of the following entities:

- (i) the surviving entity, or the consolidating entity, or the acquiring entity and the acquired entity; and
- (ii) the entities that are directly or indirectly controlled by the surviving entity resulting from the merger, the consolidating entity, or the acquiring entity and the acquired entity.

If both the asset and sales values fulfil the statutory threshold, the filing fee will be calculated using whichever value is lower and payable if the KPPU finds the transaction is notifiable. Nevertheless, GR No. 20/2023 limits the maximum fee at IDR150 million or around USD10,000.

The merger fee can be reduced or fully waived if the transaction fulfills certain considerations, such as:

- (i) it supports the development of micro, small, and medium enterprises;
- (ii) there are circumstances beyond the capacity of the payer or a force majeure event has occurred; or
- (iii) the transaction is a government's policy.

Such partial or full waiver of the filing fee will be further stipulated in a KPPU regulation with prior approval from the Minister of Finance.

## Key Takeaways

Despite the relaxed criterion on foreign-to-foreign deals, businesses can expect a more stringent administrative approach as filing must now be made through an online system. Particular attention should be addressed in compiling and filing the correct information and documents in the notification. Incorrect or missing information and documents may run the risk of a revocation of the registered notification, which may lead to a conclusion that the parties have failed to notify the transaction.

We also expect higher risk transactions to be more scrutinised by the KPPU through tiered layers, the staff, and the commissioner panel. This means that more preparations and resources are needed to convince the KPPU that a transaction does not cause anti-competitive impacts. Furthermore, businesses should be careful in determining which entities should be included in the threshold analysis as it will affect not only its notifiability but also the applicable filing fees. Considering the above, early and prudent assessment to review whether onshore and offshore deals trigger notification obligations to the KPPU is highly advised.

## Contacts



**Vovo Iswanto**  
Partner

D +62 21 2555 9938  
F +62 21 2555 7899  
[vovo.iswanto@ahp.id](mailto:vovo.iswanto@ahp.id)



**Anastasia Pritahayu R. D.**  
Senior Associate

D +62 21 2555 9934  
F +62 21 2555 7899  
[anastasia.pritahayu@ahp.id](mailto:anastasia.pritahayu@ahp.id)



**Aulia Alkausar**  
Senior Associate

D +62 21 2555 9976  
F +62 21 2555 7899  
[aulia.alkausar@ahp.id](mailto:aulia.alkausar@ahp.id)

Umery Lathifa, Herminingrum and Zalfa Attiyah Faradiba Jatmiko also contributed to this alert.

## Regional Contacts

R&T SOK & HENG | *Cambodia*  
**R&T Sok & Heng Law Office**  
T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*  
**Rajah & Tann Myanmar Company Limited**  
T +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

RAJAH & TANN 立杰上海  
SHANGHAI REPRESENTATIVE OFFICE | *China*  
**Rajah & Tann Singapore LLP  
Shanghai Representative Office**  
T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL  
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*  
**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**  
T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*  
**Assegaf Hamzah & Partners**  
  
**Jakarta Office**  
T +62 21 2555 7800  
F +62 21 2555 7899

RAJAH & TANN | *Singapore*  
**Rajah & Tann Singapore LLP**  
T +65 6535 3600  
sg.rajahtannasia.com

**Surabaya Office**  
T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.id

RAJAH & TANN | *Thailand*  
**R&T Asia (Thailand) Limited**  
T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*  
**Rajah & Tann (Laos) Co., Ltd.**  
T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*  
**Rajah & Tann LCT Lawyers**

**Ho Chi Minh City Office**  
T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

CHRISTOPHER & LEE ONG | *Malaysia*  
**Christopher & Lee Ong**  
T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

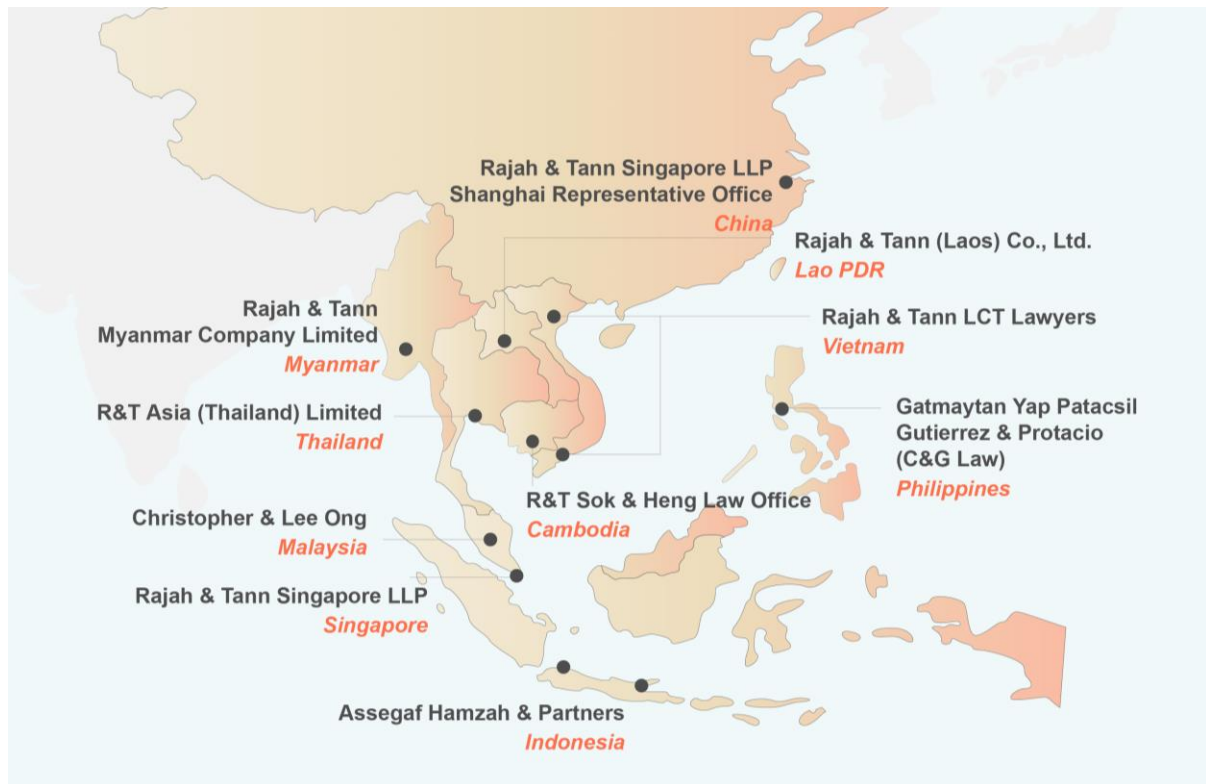
**Hanoi Office**  
T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

## Our Regional Presence



Based in Indonesia, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Assegaf Hamzah & Partners and subject to copyright protection under the laws of Indonesia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Assegaf Hamzah & Partners.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Assegaf Hamzah & Partners.