



## **Percentage of Shares of a Controlling Shareholders in a Case of Acquisition of a Public Company**

When acquiring shares in a Public Company, there are certain provisions on the percentage of shares that can be considered as a controlling shareholder. These provisions are regulated under Financial Service Authority Regulation Number 9/POJK.04/2018 concerning Public Company Acquisition (“**POJK No. 9/2018**”). POJK No. 9/2018 regulates the process that must be carried out by the prospective new controller before and after the acquisition process occurs.

Acquisition is defined as an actions, either directly or indirectly, resulting in a change in Controller (Article 1 number 5 of POJK No. 9/2018). In relation with the acquisition resulted in the transfer of control or changes in control of the public company, Article 1 number 4 of POJK No. 9/2018 elaborates that the controllers are:

- a. owns more than 50% (fifty percent) of fully paid-up shares in a publicly listed company; or
- b. having the ability to determine, either directly or indirectly, through any means, the management and/or the policy of the Public Listed Company.

Thus, the percentage of shares that can be considered as controllers is more than 50% of all fully paid shares or if the controllers have the ability to take part, whether it is directly or indirectly, in any way the management of the public company, even if the controllers has less than 50% of fully paid shares.

In relation to the control over a public company based on the ability to determine, either directly or indirectly, in any way the management and/or the policy of a Public Listed Company, it can be proven by documents and/or information showing that a party exercises control over a public listed company (Article 2 of POJK No. 9/2018. A point to be noted, there are provisions in certain business fields that regulate the criteria for controllers that are different from the criteria set out in the POJK No. 9/2018.

For further information, the new prospective controller who conducts negotiations that may result in an acquisition, may announce the negotiation of a proposed acquisition. In the event that a new prospective controller decides to announce the acquisition negotiations, Article 4 paragraph (2) of POJK No. 9/2018 states that the announcement must be made at least through:

- a. 1 (one) daily newspaper in Indonesian with national circulation; or
- b. Stock Exchange website.

The information contained in the announcement as referred to in Article 4 paragraph (2) of POJK No. 9/2018, must at least include:

- a. the name of the Public Company to be taken over;
- b. estimated number of shares to be taken over;



- c. the identity of the new prospective controller, which includes the name of the new prospective controller, address, telephone, electronic mail, and business activities, if the new prospective controller is a business entity;
- d. the number of securities owned by the new prospective controller, if it already has the securities of a Public Company that will be taken over;
- e. control objectives;
- f. a plan, agreement, or decision to cooperate between the parties in the Organized Group in the context of controlling the Public Company, if the acquisition is carried out by the Organized Group and there are plans, agreements, or decisions made by the Parties in the Organized Group;
- g. the manner and process of the acquisition negotiations; and
- h. acquisition negotiation materials.

### **HOW CAN TJAGER RURU & REKAN (“TRR”) LAW FIRM HELP YOU?**

TRR Law firm is as one of Leading Indonesian Corporate Legal Services and commercial consulting in Indonesia. TRR Law firm have extensive experience in corporate and commercial law, investment law, capital market law, banking law, Merger and Acquisition, labor law, intellectual property law and versatile legal matter. We assist foreign investors in establishing their business in Indonesia through various forms of investment pursuant to the prevailing laws and regulations in Indonesia. Our knowledge, experience, and connections will help you to protect your business and avoid any legal troubles and business interruption.

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