

Indonesian
See Also: KEP-264/BL/2011

Type: REGULATION (PER)
By: THE CHAIRMAN OF THE CAPITAL MARKET AND FINANCIAL
INSTITUTION SUPERVISORY BOARD
Number: IX.H.1
Date: MAY 31, 2011 (JAKARTA)
Title: TAKING OVER OF OPEN COMPANY

1. GENERAL PROVISIONS

Referred to herein as:

- a. Open Company shall be the Issuer which has made Equity Securities Public Offering or Public Company.
- b. Organized Group shall be the Parties preparing the plan, agreement, or decision for cooperation to achieve certain aims.
- c. Open Company Controller, further referred to as Controller, shall be the Party having more than 50% (fifty percent) shares of the whole fully paid-in shares, or the Party having the capability directly or indirectly decide, by any means whatsoever, the management and/or policy of the Open Company.
- d. Take Over shall be the action, directly or indirectly, causing change to the Controller.
- e. Compulsory Tender Offer shall be the offer to buy the remaining shares of the Open Company required to be implemented by the new Controller.

2. NEGOTIATION IN THE CONTEXT OF TAKE OVER

- a. The new Controller Candidate making negotiation which can result in the Take Over being able to announce the said negotiation in not less than in one daily Indonesian language newspaper with national circulation, as well to submit the said announcement to the Open Company to be taken over, Bapepam-LK and Stock Exchange in which the shares of the Open Company to be taken over are listed.

- b. In the event that the new Controller announces and submits negotiation information as intended in letter a, then each information on the development of negotiation, including the postponement and/or cancellation of the plan for the Take Over, shall be required to be announced in not less than in one daily Indonesian language newspaper with national circulation, as well as to be informed to the party as intended in letter a. The announcement and submission of the said information shall be made by no later than in 2 (two) work days after the existence of the development of the said negotiation.
- c. The information announced and submitted as intended in letter a should cover:
 - 1) the estimate of the total shares and name of the Open Company to be taken over;
 - 2) identification of the new Controller candidate covering the name of the Party, address, telephone, facsimile, type of business, as well as the aim of control;
 - 3) the number of Securities owned by the new Controller candidate (if any);
 - 4) plan, agreement, or decision to cooperate between the parties in the Organized Group in the context of the control of the Open Company (if any);
 - 5) procedures and process of negotiation on the Take Over; and
 - 6) materials for negotiation on take over.
- d. In the event that the new Controller candidate decides to not announce the negotiation as intended in letter a, then the new Controller candidate including the parties involved in the negotiation, shall be required to keep the result of the said negotiation confidential.

3. TAKE OVER OF OPEN COMPANY

- a. The party making the Take Over shall be required to meet the following provisions:
 - 1) announcing in not less than in one Indonesian language daily newspaper with national circulation, as well as submitting to Bapepam-LK in respect of the event on the Take Over by no later than one work day after the Take Over, the information covering:
 - a) the whole total shares taken over and total ownership of the shares;
 - b) identification covering the name of the Party, address, telephone, facsimile, type of business (if any), as well as aim of control; and

- c) statement that the new Controller shall be the Organized Group, in the event that the new Controller is an Organized Group; and
- 2) implementing Compulsory Tender Offer, except on:
 - a) the share owned by the Shareholder which has made the Take Over transaction with the new Controller;
 - b) the share owned by other Party which has acquired the offer with the same terms and conditions from the new Controller;
 - c) the share owned by other Party which at the same time also makes Compulsory Tender Offer or Voluntary Tender Offer or the share of the same Open Company;
 - d) share owned by Major Shareholder; and
 - e) share owned by other Controller of the said Open Company.
- b. The Open Company taken over shall not be required to obtain approval from the shareholders in the General Meeting of Shareholders (RUPS), except if the said approval is required by the laws and regulations specifically regulating the business field of the Open Company taken over.
- c. In the event that the Take Over is made by Open Company, then the said Open Company shall not be required to obtain approval from the shareholders in the RUPS in respect of the Take Over, except if the said approval is required by the laws and regulations specifically regulating the business field of the Open Company making the Take Over.
- d. In each Take Over, if between the Major Shareholders or Controller and the new Controller candidate making a contract or activity causing the existence of:
 - 1) the use of resources of the Open Company to be taken over in material amount;
 - 2) change of agreement which has been prepared by the Open Company to be taken over; or
 - 3) change on the standard operating procedures of the Open Company to be taken over.

in which the said cases represent Affiliated Transactions or transactions containing Conflict of Interest, the provision of Regulation Number IX.E.1 must be met.

4. IMPLEMENTATION OF COMPULSORY TENDER OFFER

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- a. In implementing Compulsory Tender Offer, the new Controller shall be required to meet the following provisions:
- 1) to submit the announcement text on transparency of information in the context of Compulsory Tender Offer together with its supporting documents to Bapepam-LK and the Open Company taken over, by no later than 2 (two) work days after the announcement on the Take Over as intended in number 3 letter a point 1);
 - 2) to submit the amendment and/or supplement to the information on the announcement text in the context of the Compulsory Tender Offer together with its supporting documents as intended in point 1) in the period of not later than 5 (five) work days after the receipt of the Bapepam-LK request, if Bapepam-LK request the new Controller to prepare the amendment and/or supplement to the said information;
 - 3) to announce the transparency of information in the context of Compulsory Tender Offer in one daily newspaper with national circulation by no later than 2 (two) work days after the receipt of the letter from Bapepam-LK stating that the new Controller can announce the transparency of information in the context of the Compulsory Tender Offer;
 - 4) to perform the Compulsory Tender Offer during the term of 30 (thirty) days as of one day after the announcement as intended in point 3);
 - 5) to settle the Compulsory Tender Offer transaction by means of submitting the money by no later than 12 (twelve) days after the term of the offer as intended in point 4) has terminated; and
 - 6) to submit report on the result of the Compulsory Tender Offer to Bapepam-LK by no later than 5 (five) work days after termination of the transaction settlement as intended in point 5).
- b. The announcement on transparency of information in the context of Compulsory Tender Offer as intended in letter a point 3) must contain the following information:
- 1) background of take over;
 - 2) information share covering:
 - a) explanation on total and percentage of share to be purchased; and
 - b) total and percentage of the share of the Open Company taken over, directly or indirectly owned by the new Controller, including the option to buy or the rights to acquire dividend or other advantage as well as the authority to use vote in the RUPS of the Open Company taken over;

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- 3) explanation on new Controller, covering:
 - a) in the event that the Take Over is made by individual person, it shall be an obligation that information in respect of the name, address, nationality, and his Affiliated relation to the Open Company (if any);
 - b) in the event that the Take Over is made by other Party other than the individual person, it shall be an obligation that information on the establishment, business activity, capital structure, board of directors and board of commissioners structure, shareholders structure, beneficial owner, and its Affiliated relation with the Open Company (if any);
 - 4) explanation on the Open Company taken over, covering the name, address, as well as business activities;
 - 5) provisions and requirements of Compulsory Tender Offer, covering:
 - a) purchase price as well as its method of calculation;
 - b) implementation period;
 - c) provision for payment;
 - d) mechanism of purchase; and
 - e) explanation on the approval or requirements stipulated by the Government required to be met in relation to Compulsory Tender Offer (if any).
 - 6) list of names and institutions and/or Capital Market Supporting Profession involved in Compulsory Tender Offer; and
 - 7) other important information:
 - a) description on legal claim in relation to the Take Over (if any); and
 - b) additional information required in order that transparency of information in the context of Compulsory Tender Offer is not misleading,
- c. The price for the purchase of shares of Open Company taken over in Compulsory Tender Offer, shall be stipulated with the following provisions:
- 1) In the event that the Take Over is made directly on the shares of the Open Company listed and traded in the Stock Exchange, then the price for the purchase of share shall be not less than as much as:
 - a) the average price of the highest price for the daily trading in the Stock Exchange during the last 90 (ninety) days:

- (1) prior to the announcement of the Take Over as intended in number 3 letter a point 1); or
 - (2) prior to the announcement on negotiation as intended in number 2 letter a, (in the event of announcing the negotiation); or
 - b) price of Take Over already made.
- whichever is higher.
- 2) in the event that the Take Over is made directly to the shares of the Open Company listed and traded in the Stock Exchange, however during 90 (ninety) days or more before the announcement of the Take Over as intended in number 3 letter a point 1) or before the announcement on negotiation as intended in number 2 letter a, not being traded in the Stock Exchange or its trading temporarily stopped by the Stock Exchange, then the purchase price of share shall at least be as much as:
 - a) the average price of the highest price for the daily trading in the Stock Exchange in the period of the last 12 (twelve) months retroactively calculated from the last trading day or the day in which its trading has temporarily been stopped; or
 - b) the price of the Take Over which has been made.
- whichever is higher.
- 3) in the event that the Take Over is made directly on the shares of the Open Company not listed and not traded in the Stock Exchange, then the price for the purchase of shares shall be not less than as much as:
 - a) the price of the Take Over which has been made; or
 - b) the fair price stipulated by Appraiser;
- whichever is higher.
- 4) In the event of the Take Over is indirectly made on the share of the Open Company listed and traded in the Stock Exchange, then the lowest price for the purchase of the shares shall be not lower than the average price of the highest daily trading price in the Stock Exchange during the last 90 (ninety) days:
 - a) prior to the announcement on the Take Over as intended in number 3 letter a point 1); or
 - b) prior to the announcement on negotiation as intended in number 2 letter a (in the event of announcing the negotiation);

- 5)
 - in the event that the Take Over is indirectly made on the share of the Open Company listed and traded in the Stock Exchange, however during 90 (ninety) days or more prior to the announcement on the Take Over as intended in number 3 letter a point 1) or prior to the announcement on negotiation as intended in number 2 letter a, not being traded in the Stock Exchange or its trading is temporarily stopped by the Stock Exchange, then the lowest purchase price of the share shall be the average price of the highest price of the daily trading in the Stock Exchange in a period of the last 12 (twelve) months retroactively calculated from the last trading day or the day in which its trading has been temporarily stopped; or
 - 6)
 - in the event that the Take Over is indirectly made on the share of the Open Company not listed and not traded in the Stock Exchange, then the lowest purchase price of the share is the same as the offer price stipulated by the Appraiser.
- d. In the event that the Party making the Take Over announces the negotiation as intended in number 2 letter a and the commencement of implementation of Compulsory Tender Offer exceeds the time limit of 180 (one hundred and eighty) days as of the said announcement on negotiation, then the time for deciding the price of the Compulsory Tender Offer as intended on letter c point 1) and letter c point 4) shall move following the time period for the implementation of Compulsory Tender Offer,
- e. In the event that the implementing price as intended in letter d is lower compared to the implementing price as intended in letter c point 1) and letter c point 4), then the implementing price of the Compulsory Tender Offer should use the implementing price as intended in letter c point 1) and letter c point 4).
- f. The Party making the Compulsory Tender Offer shall be prohibited from stipulating different definition and requirements based on the grouping or position of the Party becoming the shareholder, except if difference on certain rights or advantage affixing on the intended share is available.

5. OBLIGATION FOR RE-ASSIGNMENT OF SHARES

- a. In the event that the implementation of Compulsory Tender Offer causes the ownership of share by the new Controller to be more than 80% (eighty percent) of the paid in capital of the Open Company, then the new Controller shall be required to re-assign the share of the said Open Company to the community that the share owned by the community shall be not less than 20% (twenty percent) of the paid-in capital of the Open Company and owned by not less than 300 (three hundred) Parties in the term of not more than 2 (two) years as of the implementation of the Compulsory Tender Offer has been completed.

- b. In the event of the Take Over causes the new Controller to be in the ownership of the Open Company's share of more than 80% (eighty percent) of the paid in capital of the Open Company, the intended new Controller shall then be required to re-assign the share of the said Open Company to the community with the total of not less than the percentage of share acquired at the time of the implementation of the Compulsory Tender Offer and being owned by not less than 300 (three hundred) Parties in the term of not more than 2 (two) years;
- c. The obligation to re-assign the share by the new Controller as intended in letter a and letter b shall not be effective if after the Take Over has taken place, the Open Company implements corporate action which causes the meeting of the requirements as regulated in letter a or letter b;
- d. Bapepam-LK can extend the term for the implementation of the obligation for re-assignment of the share as intended in letter a and letter b, if the following conditions occur:
 - 1) Composite Share Price Index (IHSG) in the Stock Exchange decreases exceeding 10% (ten percent) during 3 (three) sequent exchange days;
 - 2) the Stock Exchange in which the shares of the Open Company are listed and traded, is closed;
 - 3) the trading of shares of the Open Company in the Stock Exchange is stopped;
 - 4) natural disaster, war, riot, fire, and/or strike, significantly influencing the continuity of the Open Company's business;
 - 5) the price of share in the re-assignment period shall never be the same or higher than the price of Compulsory Tender Offer; and/or
 - 6) the new Controller has made the effort to re-assign the share, however the obligation as intended in letter a and/or letter b is not met.
- e. Postponement of the obligation for re-assigning the share as intended in letter d point 5) and point 6) can be given by Bapepam-LK with the following procedures:
 - 1) The new Controller shall submit the application for postponement of obligation for re-assignment of the share to Bapepam-LK in no later than one work day after the termination of the obligation term for re-assignment of share as intended in letter a and letter b;

- 2) The application as intended in point 1) for the condition as intended in letter d point 5) shall be attached with data and information on the price of share proving that the price of share on re-assignment period shall never be the same or higher than the price of the Compulsory Tender Offer;
- 3) The application as intended in point 1) for the condition as intended in letter d point 6) shall be attached with explanation on:
 - a) the effort which has been made in relation to the implementation of the obligation for re-assignment of share; and
 - b) difficulty experienced in the implementation of the obligation for re-assignment of share.
- f. Postponement of the obligation for re-assigning the share as intended in letter d point 5) and point 6) shall be given for a term of 6 (six) months after the date of issue of the approval for postponement of the obligation for re-assigning the shares by Bapepam-LK.
- g. In the event that after the termination of the term as intended in letter f, the obligation for re-assigning the share can not be implemented or can not yet be implemented, the new Controller can re-submit the application for postponement as regulated in letter e.
- h. The application for postponement as intended in letter g can be implemented if the condition as intended in letter d point 5) and/or point 6) can be met.
- i. Bapepam-LK can give re-postponement or decide other action in accordance with their authority on the application as intended in letter g.
- j. The new Controller shall be required to report the development on the meeting of the obligation for re-assignment of share to Bapepam-LK periodically every 3 (three) months (March, June, September, and December) by no later than on the 10th work day of the following month.
- k. Information on the development in meeting the obligation for re-assignment of share as intended in letter j, shall at least contain:
 - 1) the total and percentage of all the shares re-assigned until the report period; and
 - 2) the number of shareholders of the Open Company taken over until the report period.

6. EXCEPTION

- a. Provisions as intended in number 3 letter a shall be ineffective if:
 - 1) Take Over occurs due to marriage or inheritance;

- 2) Take Over by the Party which previously does not have the share of the Open Company occurring due to purchase or acquisition of share of the Open Company every 12 (twelve) months, in the total of not more than 10% (ten percent) of the total share in circulation with the rights for legal vote;
 - 3) Take Over occurs due to the implementation of duties and authorities of the government or state agencies or institutions based on laws;
 - 4) Take Over occurs due to direct purchase of shares owned and/or controlled by the government or state agencies or institutions as the implementation of the provision as intended in point 3);
 - 5) Take Over occurs due to the stipulation or decision of the court having permanent legal power;
 - 6) Take Over occurs due to the business merger, segregation of business, dissolution of business, or implementation of liquidation of the shareholders;
 - 7) Take Over occurs due to the existence of grant representing the submission of shares without the agreement to get compensation in any form whatsoever;
 - 8) Take Over occurs due to the existence of certain debt security stipulated in the loan agreement, as well as debt securities in the context of the restructure of Open Company as stipulated by the government or state agency or institution based on laws;
 - 9) Take Over occurs due to the acquisition of shares as the implementation of Regulation Number IX.D.1 and Regulation Number IX.D.4;
 - 10) Take Over occurs due to the implementation of policy of government or state policy;
 - 11) Compulsory Tender Offer, if implemented shall be contradictory to the laws and regulations; and
 - 12) Take Over occurs due to the implementation of Voluntary Tender Offer based on Regulation Number IX.F.1.
- b. Provision as intended in number 3 letter a shall not be effective for the Take Over directly made through other Open Company, with the provision that contribution of the Open Company's income to the intended other Open Company is less than 50% (fifty percent) at the time of the implementation of the Take Over based on consolidated financial statements of the other Open Company.

- c. In the event that the Take Over occurs as intended in letter a, then the new Controller shall be required to announce in at least one Indonesian language daily newspaper with national circulation, as well as to submit the said information to the Open Company taken over, Bapepam-LK, as well as the Stock Exchange in no later than 2 (two) work days after the Take Over, among others covering:
 - 1) identity of the new Controller;
 - 2) name and percentage of share of the Open Company taken over prior to and after the Take Over; and
 - 3) evidence of legal supporter.
- d. In the event that the Take Over occurs as intended in letter a point 4) and letter a point 8), then besides the information as intended in letter c, the new Controller shall also be required to implement transparency of information in respect of:
 - 1) affiliated relationship (if any);
 - 2) reason for Take Over; and
 - 3) plan of the new Controller on the Open Company taken over.
- e. The obligation to announce in the newspaper as intended in letter c shall not be effective for the Party becoming the new Controller as the result as intended in letter a point 1), letter a point 2), letter a point 5), and letter a point 6).

7. CLOSING PROVISION

- a. The evidence from advertisement as regulated in this Regulation must be submitted to Bapepam-LK by no later than 2 (two) work days after the said advertisement is disclosed in the newspaper.
- b. The Take Over made by the Open Company with value meeting the criteria for Material Transaction as intended in Regulation Number IX.E.2, other than being required to follow this Regulation shall also be required to meet Regulation Number IX.E.2.
- c. Continuous transactions made between the new Controller and the Open Company taken over prior to the implementation of the Take Over and meeting the criteria for Affiliated Transaction and/or transaction containing Conflict of Interest as intended in Regulation Number IX.E.1, shall be exempted from meeting the obligation of Regulation Number IX.E.1 until the renewal of the agreement in the intended transaction.

- d. Without prejudice to the criminal provision in the field of Capital Market, the Capital Market and Financial Institution Supervisory Board shall have the authority to impose sanction on each Party violating against the provision of the Regulation hereto including the Party causing the violation to happen, as follows:
- 1) Violation against the provision of number 3 letter a point 2), can be imposed with:
 - a) cancellation of transaction and obligation for the new controller to:
 - 1) pay penalty; and
 - 2) reimburse the share to the Party becoming the transaction counterpart and reimburse the loss arising; or
 - b) penalty and obligation to implement Compulsory Tender Offer.
 - 2) Violation against the delay in submitting information as intended in number 2 letter b, number 3 letter a point 1), number 4 letter a point 1), number 4 letter a point 3), number 6 letter c, and number 6 letter d shall be imposed with administrative sanction in the form of penalty of Rp100,000.00 (one hundred thousand Rupiah) for each day of the delay.
 - 3) Violation against the provision of number 4 letter c, number 4 letter d, and number 4 letter e shall be imposed with sanction to pay reimbursement to the shareholder of the Open Company as the result of negligence of the Party making the Take Over.
 - 4) Violation against the provision as intended in number 3 letter d, shall be imposed with cancellation of contract or termination of activities as intended in number 3 letter d, as well as being imposed with penalty.
 - 5) Violation against the provision as intended in number 5 letter a and number 5 letter b. shall be imposed with administrative sanction in the form of penalty without reducing the obligations in implementing the provision of number 5 letter a, and number 5 letter b.

Stipulated in Jakarta
On May 31, 2011

The Chairman of the Capital Market and Financial Institution Supervisory Board

Signed

Nurhaida
NIP 195906271989022001

Copy conformed to original

Head of General Affairs Department

Signed

Prasetyo Wahyu Adi Suryo

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Note

Source: LOOSE-LEAF REGULATION OF THE CHAIRMAN OF THE CAPITAL
MARKET AND FINANCIAL INSTITUTION SUPERVISORY BOARD YEAR
2011