



Asian Corporate Governance Association

June 24, 2008

Achmad Fuad Rahmany
Chairman
Capital Market Supervisory Agency
Republic of Indonesia

By email

Dear Mr Fuad Rahmany,

Proposed New M&A Rules in Indonesia

We understand from media and market reports that the Capital Market Supervisory Agency (Bapepam) will shortly introduce changes to the rules governing mergers and acquisitions in Indonesia. Given the potentially far-reaching impact of these changes on fundamental shareholder rights and protections in Indonesia, we strongly urge Bapepam to delay taking any action on this issue until the proposed rules have been announced in detail and a formal market consultation carried out. Such an approach, we believe, would be in the best long-term interests of Indonesia's capital markets and all stakeholders.

While details of the rule changes are limited, we wish to express serious reservations about certain aspects of the planned changes, in particular the following two points:

- A suggestion that the threshold for general offers should be raised from the current level of 25% to 50%.
- The possibility that offerors may not be required to purchase 100% of a company in a general offer. Instead, they would only need to buy 80%, but could continue to purchase additional shares on-market, if they chose.

We believe that both rules potentially benefit controlling shareholders at the expense of minorities. The first proposed rule change would make it much easier for effective changes in control to occur (at thresholds below 50%), while at the same time denying minority shareholders the right to sell their shares also to the new controlling shareholder at the offer price. This right is well recognised in all jurisdictions in Asia, with general-offer thresholds set at between 25-30% in most countries. We recommend that Indonesia continues to align its general-offer rules with regional and international standards.

The second proposed rule change, we understand, has been designed with a laudable objective in mind—to maintain a public float of between 10-20% in a company that is subject to a takeover and thereby ensure that quality companies remain listed on the stock market. In practice, however, it would mean that minority shareholders could only sell



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part of their stock to a new controlling shareholder (with a stake of 50% or more) at the offer price—a “partial” as opposed to a “general” offer. The remainder could only be sold, if at all, in the market at a price almost certainly discounted. This would result in minority shareholders being caught in stocks with significantly reduced trading liquidity, resulting in larger than normal buy-sell spreads and abnormal volatile price movements. It would also mean that Indonesia’s M&A rules were out of alignment with other Asian takeover codes, which have been designed to ensure that minorities receive terms at least as favourable as the major selling shareholder.

The second rule, furthermore, would create artificial barriers to the legitimate privatisation of listed companies. In such situations, we believe that minority shareholder interests are better protected through rules that allow them to approve, through an independent vote in an extraordinary general meeting, the terms of the privatisation.

One aspect of the proposed rule changes that is likely to be well-received by investors, however, is the plan to amend the pricing of general offers from the current 90-day-high rule to either the average of 90 days or the offer price, whichever is higher. This change should more accurately reflect the fair value of a stock and limit the scope for manipulation of the share price just before a takeover.

ACGA would welcome the opportunity to provide a more detailed response to a market consultation on this issue. Please let us know how we can be of assistance.

Yours truly,

A handwritten signature in blue ink, appearing to read 'J. Allen', is written over a light blue horizontal line.

Mr. Jamie Allen
Secretary General
Asian Corporate Governance Association
Hong Kong



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About ACGA

The Asian Corporate Governance Association (ACGA) is an independent, non-profit membership association dedicated to promoting long-term improvements in corporate governance in Asia through research, advocacy, and education.

ACGA carries out independent research in 11 major Asian markets. It engages in a constructive and informed dialogue with regulators, issuers, institutional investors and other key interest groups on significant corporate governance issues affecting the region. And it organises educational events, including an annual conference, to raise awareness and contribute to the reform momentum.

ACGA is funded by annual contributions from more than 70 corporate members based around Asia and other parts of the world, including Australia, Canada, Holland, the UK and the US. Total assets under management by ACGA members amount to more than US\$5 trillion globally.