

**MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA
CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY
AGENCY**

DUPLICATE OF

**DECISION OF CHAIRMAN OF
CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY
AGENCY**

NUMBER: KEP- 259 /BL/2008

CONCERNING

OPEN COMPANY TAKEOVER

**CHAIRMAN OF CAPITAL MARKET AND FINANCIAL INSTITUTIONS
SUPERVISORY AGENCY,**

- Considering :
- a. that in order to increase open company's shares liquidity and provide higher opportunity for investor to access and or own open company's shares through an orderly, fair and efficient Capital Market, it is deemed necessary to revise rule concerning Open Company Takeover;
 - b. that in order to secure the effectiveness of the implementation of Rule No. IX.H.1 and prevent any damage due to the violation of the rule, it is deemed necessary to stipulate a particular form of sanction in Rule No. IX.H.1;
 - c. that with the consideration mentioned in letter a and letter b, it is necessary to revise Rule No. IX.H.1 Attachment of Decision of Chairman of Capital Market Supervisory Agency No. Kep-05/PM/2002 concerning Open Company Takeover by promulgating new Decision of Chairman of Capital Market and Financial Institutions Supervisory Agency;
- In view of :
1. Law Number 8 year 1995 concerning Capital Market (Statute Book year 1995 number 64, Supplement to the Statute Book Number 3608);
 2. Government Regulation Number 45 year 1995 concerning Capital Market Organization (Statute Book Year 1995 Number 86, Supplement to Statute Book Number 3617) as amended by Government Regulation Number 12 year 2004 (Statute Book Year 2004 Number 27, Supplement to Statute Book Number 4372);
 3. Government Regulation Number 46 year 1995 concerning Capital Market Formal Investigative Procedures (Statute Book year 1995 Number 87, Supplement to Statute Book Number 3618);

**MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA
CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY
AGENCY**

4. Decree of the President of the Republic of Indonesia Number 45/M year 2006.

HAS DECIDED:

To enact : **DECISION OF CHAIRMAN OF CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY AGENCY CONCERNING OPEN COMPANY TAKEOVER.**

Article 1

Provisions concerning Open Company Takeover are regulated in Rule Number IX.H.1 as stipulated in the Attachment of this Decision.

Article 2

With the enactment of this Decision, the Decision of Chairman of Capital Market Supervisory Agency Number Kep-05 /PM/2002 dated 3 April 2002 concerning Open Company Takeover is revoked and declared ineffective.

Article 3

This Decision shall become effective since the date of its promulgation.

In order that all may be informed, it is ordered that this Decision be proclaimed by publication in the State Gazette of the Republic of Indonesia.

Enacted in : Jakarta
Date : 30 June 2008
Chairman of Capital Market and
Financial Institutions Supervisory Agency

Signed

A. Fuad Rahmany
NIP 060063058

**MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA
CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY
AGENCY**

Based on the original documents
Head of General Affairs Division

Signed

Prasetyo Wahyu Adi Suryo
NIP 060076008

ATTACHMENT

Decision of the Chairman of Capital
Market and Financial Institutions
Supervisory Agency (CMFISA)

Number : Kep-259/ BL/2008

Date : 30 June 2008

RULE NUMBER IX.H.1 : OPEN COMPANY TAKEOVER

1. Definitions :

- a. An Open Company is a Public Company or a Company that has conducted Public Offering of shares or other equity securities.
- b. A Person is a natural person, a company, a legal entity, a partnership, an association, or any Organized Group.
- c. An Organized Group is Persons that make a plan, agreement, or decision to cooperate in order to achieve a certain goal.
- d. An Open Company Controller, hereinafter referred to as Controller, is any Person that owns more than 50% (fifty percent) of the overall paid in capital, or any Person that directly or indirectly has the ability to control the management and or the policy of an Open Company
- e. An Open Company Takeover, hereinafter referred to as Takeover, is an activity, either directly or indirectly, that cause changes of Open Company Controller.

2. In the event of a Takeover, the new Controller must:

- a. announce to public and submit to Capital Market and Financial Institutions Supervisory Agency (CMFISA) information concerning the Takeover no later than 2 (two) work days after the Takeover has taken place, which covers:
 - 1) the overall shares acquired and the total ownership; and
 - 2) the identity of the new Controller which consists of name, address, phone number, fax number, business type and the purpose of the control; and
- b. conduct Tender Offer for all the remaining shares, except:
 - 1) shares owned by the shareholder to whom the new Controller conduct the Takeover transaction;
 - 2) shares owned by any other Person that has received an offer with the same terms and conditions from the new Controller;

- 3) shares owned by any other Person who, at the same time, also conducts Tender Offer for the shares of the same Open Company;
 - 4) shares owned by other Major Shareholders; and
 - 5) shares owned by other controller of the Open Company.
3. If the implementation of the Tender Offer that is conducted based on this rule causes the ownership of the new Controller become more than 80% (eighty percent) of the paid in capital of the Open Company, the new Controller must transfer the Open Company shares to the public so that the minimum public ownership is 20% (twenty percent) from the paid in capital of the Open Company and the shares are owned by at least 300 (three hundred) Persons within 2 (two) years after the Tender Offer is completed.
 4. If the Takeover causes the new Controller owns more than 80% (eighty percent) of the paid in capital of the Open Company, the new Controller must transfer the Open Company shares no less than the percentage of shares received during the Tender Offer and the shares must be owned by no less than 300 (three hundred) Persons within 2 (two) years.
 5. The obligation of the Controller to transfer the shares as referred to in point 3 and point 4 does not apply if the Open Company, after the Takeover, conducts corporate action that makes of the requirements as stipulated in point 3 or point 4 fulfilled.
 6. The Tender Offer as referred to in point 2 letter b must start no later than the end of the second work day after the Takeover takes place and must be conducted in accordance with Rule Number IX.F.1 excluding point 16 and point 20. The Tender Offer procedure is initiated by submitting the announcement text concerning the proposed Tender Offer to CMFISA.
 7. A new Controller candidate making any negotiation which may result in a Company Takeover may report to the Target Company, CMFISA, and the Stock Exchange where the Target Company shares are listed, and inform the public.
 8. If the new Controller candidate informs and publishes the negotiation as referred to in point 7, any material progress of the negotiation must be informed to the Persons mentioned in point 7 on a regular basis. Submission of the information must be made no later than the end of the second work days after each step of the progress.
 9. The information that must be submitted referred to in point 7 at least includes:
 - a. estimated number of shares that will be taken over;
 - b. identity of the Person making the takeover, including name, address, phone, facsimile, type of business, and the objectives of company takeover;

- c. method and process of takeover negotiation; and
 - d. takeover negotiation issues.
10. In every Takeover, if there is any contract or activity between Major Shareholders or Controller with the Controller candidate which will result in:
- a. significant use of the Target Company resources;
 - b. any change in agreement or settlement that has been made by the Target Company; or
 - c. any change in operational procedure standards of the Target Company;
- where such things has conflict of interest between the Target Company as well as its shareholders and the Controller as well as Major Shareholders, it must follow the requirements stipulated in Rule Number IX.E.1.
11. The Tender Offer must begin no later than 180 (one hundred and eighty) days since the date of publication as referred to in point 7.
12. The share price of Tender Offer in a Takeover must be determined as follows:
- a. In case the Takeover is conducted directly over shares of the Target Company that are unlisted and not traded on the stock exchanges, the price on the Tender Offer must at least be the same as the price on the takeover that has been conducted or at least be the same as fair price determined by an Appraiser. The price taken must be the highest one;
 - b. In case the Takeover is conducted directly over shares of the Target Company that are listed and traded on the stock exchanges but within 90 (ninety) days prior to the publication as referred to in point 2 letter a or prior the negotiation publication as referred to in point 7, has not been traded on the stock exchanges or its shares trading on the stock exchanges has been temporarily suspended, the price on the Tender Offer must at least be the same as the average of the highest daily share price within the last 12 (twelve) months prior to the last trading day or the day it is temporarily suspended, or the price of the previous take over. The price taken must be the highest one;
 - c. In case the Takeover is conducted directly over shares of the Target Company that are listed and traded in exchanges, the price on the Tender Offer must at least be the same as the average highest daily share price within the last 90 (ninety) days prior to the date of publication as referred to in point 2 letter a or before the negotiation publication as referred to in point 7, or the price of the previous takeover. The determined price must be the highest one.
 - d. In case the Takeover is conducted indirectly over shares of the Target Company that are not listed and not traded on the stock exchanges, the price

on the Tender Offer must at least be the same as the fair price determined by an Appraiser.

- e. In case the Company Takeover is conducted indirectly over shares of the Target Company that are listed and traded on the stock exchanges but within 90 (ninety) days prior to the publication as referred to in point 2 letter a or prior the negotiation publication as referred to in point 7, has not been traded on the stock exchanges or its shares trading on the stock exchanges has been temporarily suspended, the price on the Tender Offer must at least be the same as the average of the highest daily share price within the last 12 (twelve) months prior to the last trading day or the day the trading is temporarily suspended.
 - f. In case the Company Takeover is conducted indirectly over shares of the Target Company that are listed and traded on the stock exchanges, the price on the Tender Offer must at least be the same as the average of the highest daily share price within the last 90 (ninety) days prior to the date of publication as referred to in point 2 letter a or before the negotiation publication as referred to in point 7.
13. If the starting time of the Tender Offer exceeds 180 (one hundred and eighty) days, the period of price determination as referred to in point 8 letter c and letter f above will shift following the starting time of the Tender Offer.
 14. If the exercising price referred to in point 13 is lower than the exercising price referred to in point 12 letter c and letter f, the Tender Offer exercising price will use the exercising price referred to in point 12 letter c and letter f.
 15. Provision referred to in point 2 above is not applicable for Company Takeover resulting from:
 - a. marriage or heritage;
 - b. purchasing or acquiring the Target Company shares within every 12 (twelve) months, in the amount up to 10% (ten percent) of the outstanding shares with valid voting rights;
 - c. exercising duty and authority of a state or governmental body or institution based on law;
 - d. direct purchasing of shares owned and/or held by a state or governmental body or institution as a referred to in point 15 letter c;
 - e. any court decision or verdict that has a permanent legal binding;
 - f. merger of business, divesting, or implementation of shareholder liquidation;
 - g. grant in the form of shares transfer without any agreement to obtain any reward in any form;

- h. guarantee of a certain debt stated in a debt agreement, and guarantee on a debt related to company restructuring that has been stated by a state or governmental body or institution, by laws;
 - i. acquisition of shares as a result of the implementation of Rule Number IX.D.1 and Rule Number IX.D.4;
 - j. acquisition of shares as a result of state or governmental body or institution policy implementation;
 - k. the implementation of Tender Offer that will violate rules and regulation; and
 - l. acquisition of shares through Tender Offer based on Rule Number IX.F.1 that was not conducted to meet the requirement of this Rule.
16. The stipulation as stated in point 2 does not apply to Take Over that is conducted indirectly through other Open Company, with the condition that the contribution of the Open Company to the other Open Company is less than 50% (fifty percent) at the time the Take Over take place based on the other Open Company financial statement.
17. In a Takeover as mentioned in point 15, Person acting as the new Controller must disclose information to the Target Company, CMFISA, and the stock exchange, and inform the public, no later than the end of the second work day after the Take Over, which includes:
- a. the identity;
 - b. the amount and percentage of shares before and after the takeover; and
 - c. any other valid supporting evidences.
18. In a Takeover as referred to in point 15 letter d and letter h, in addition to the information referred to in point 17, Person acting as the new Controller must also disclose the following information :
- a. affiliation relationship (if any);
 - b. reason for the Take Over; and
 - c. the plans of the Person conducting the Take Over toward the Target Company.
19. Information as mentioned in point 8, point 9, point 17, and point 18 must be published in 1 (one) Indonesian language daily newspapers which has a nation wide circulation.

The obligation is not applicable for Person who acts as new Controller as a result of events referred to in point 15 letter a, letter b, letter e, and letter f.

20. By no means of undermining criminal provisions in capital market, the CMFISA may impose sanctions to any Person violating this rule as follows:
 - a. any violation against provision referred to in point 2 letter b, may be imposed with:
 - 1) cancellation of transaction and requirement for the new controller to:
 - a) pay fine, and
 - b) return shares or other equity securities to Persons that become his transaction partner and/or pay any compensation for the loss incurred;
or
 - 2) fines and obligation to conduct Tender Offer;
 - b. any violation against provision referred to in point 2 letter a, point 8, point 17, and point 18 is subject to administration sanction in a form of fine amounting to Rp. 100.000,00 (one hundred rupiah) for each day of lateness in information submission.
 - c. any violation against provision referred to in point 12, point 13, and point 14 is subject to sanction to pay compensation for loss of the Open Company shareholders as a result of the negligence caused by Person conducting Take Over.
 - d. any violation against provision referred to in point 10, is subject to sanction in a form of cancellation of contract or suspension of business activity as stipulated in point 10, and fine.
 - e. any violation against provision referred to in point 3 and point 4, is subject to administrative sanction in a form of fine without undermining the obligation to fulfill the stipulation mentioned in point 3 and point 4.
21. CMFISA may lengthen the period of requirement fulfillment for new Controller as referred to in point 3 and point 4, if the following condition occurs:
 - a. The Stock Exchange where the Open Company shares are listed and traded is closed;
 - b. The trading of the Open Company on the Stock Exchange is suspended;
and/or
 - c. Emergency situation.

Enacted in : Jakarta
Date : 30 June 2008
Chairman of Capital Market and Financial
Institution Supervisory Agency

Signed

A. Fuad Rahmany
NIP. 060063058

Based on the original documents
Head of General Affair Division

Signed

Prasetyo Wahyu Adi Suryo
NIP 060076008