

November, 2024 No.91

This issue covers the following topics:

India

India's Competition Law Update: The Deal Value Threshold and its Implications for M&A

Shejal Verma

Indonesia

Indonesia's Constitutional Court Calls for a Proper Manpower Law

Luciana Fransiska

India

India's Competition Law Update: The Deal Value Threshold and its Implications for M&A

2024年9月10日のインド競争委員会（企業結合）規則の施行により、企業結合届出に関して新たな取引額基準のルールが導入された。今回の取引額基準の導入により、200億ルピー（約2.4億米ドル）を超える大規模なM&Aで対象会社がインド国内に実質的な事業を有している場合には、インド競争委員会への事前の通知義務が課されるなど重要な変更がなされている。

Background

On September 9, 2024, the Ministry of Corporate Affairs notified certain provisions of the Competition (Amendment) Act, 2023 ("**2023 Amendment Act**") and introduced the deal value threshold for combinations under the Competition Act, 2002 ("**Competition Act**"). Pursuant to the 2023 Amendment Act, the Competition Commission of India ("**CCI**") introduced the Competition Commission of India (Combinations) Regulations, 2024 ("**Regulations**") effective from September 10, 2024 (together with the 2023 Amendment Act, the "**Revised Competition Law**"). The deal value threshold adds a new layer of scrutiny for mergers and acquisitions that meet specific financial thresholds specified under the Competition Act.

This article explains the deal value threshold and what businesses need to consider to ensure compliance with the Revised Competition Law.

Deal Value Threshold: An Overview

Under the Revised Competition Law, the CCI now mandates prior notification for combinations (as defined in the Competition Act) that meet the following conditions:

- The transaction value exceeds INR 20 billion (approximately USD 240 million); and
- The target enterprise has a "substantial business operations in India"

This introduces a deal value threshold—an additional criteria alongside the previously existing tests based on the size of the parties' assets and revenues both within India and worldwide. Where the transaction satisfies the above parameters, such transaction will require prior approval of the CCI, regardless of the size of the target enterprise in India.

Substantial Business Operations in India

For the deal value threshold to apply, the target company must have "substantial business operations in India" ("**SBOI**"). The CCI defines SBOI based on whether the target enterprise is engaged in digital services or other

services:

- For a business engaged in digital services¹, the SBOI test is met if: (a) The number of its business users or end users in India is 10% or more of its global number of such users; or (b) Its gross market value (GMV) for 12 months preceding the relevant date² in India is 10% or more of its total global GMV; or (c) Its turnover during the preceding financial year in India is 10% or more of its global turnover.
- For a business engaged in non-digital services, the SBOI test is met if: (a) Its GMV for 12 months preceding the relevant date in India is 10% or more of its total global GMV and more than INR 5 billion; or (b) Its turnover during the preceding financial year in India is 10% or more of its global turnover and more than INR 5 billion.

What is Included in Transaction Value?

The Revised Competition Law clarifies that the “value of transaction” includes every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise, and includes:

- Consideration for any covenant, undertaking, obligations or restrictions imposed on seller or any other person, if such consideration is agreed separately
- Consideration for all inter-connected steps and transactions
- Consideration payable during two years from the date on which the transaction would come into effect for arrangement(s) entered into as a part of the transaction or incidental thereto including technology assistance, licensing of intellectual property rights, usage rights of any product, service or facility, supply of raw materials or finished goods, branding and marketing
- Consideration for call option and shares to be acquired assuming full exercise of such option
- Consideration payable, as per best estimates, based on the future outcome specified under the transaction documents

More importantly, if the value of transaction cannot be established with reasonable certainty, by the board of directors or any other relevant approving authority of the person obligated to file notification to the CCI, the value of the transaction may be considered as exceeding the deal value threshold.

Exemption for Small Mergers: De Minimis Rule

Under the previous regulatory framework, a de minimis exemption allowed certain small combinations (where the target enterprises’ assets in India were under INR 450 crore or its revenue in India was below INR 1,250 crore) to be exempted from prior approval of the CCI. However, with the introduction of the deal value threshold, the de minimis exemption does not apply if the transaction satisfies the conditions of the deal value threshold.

Conclusion - Key Implications for M&A Transactions

The introduction of the deal value threshold marks a significant shift in how large-scale M&As will be assessed, bringing several key considerations for businesses to address:

- **Advance Notification Requirements:** Combinations that meet the new deal value threshold must submit a prior notification to the CCI. The transaction cannot be completed until the CCI has granted approval.
- **Impact on Digital Services and Global Transactions:** Companies, particularly in the digital sector or operating in multiple jurisdictions, must now carefully assess whether their business operations in India qualify as

¹ “Digital services” means the provision of a service or one or more pieces of digital content, or any other activity by means of an internet whether for consideration or otherwise to the end user or business user, as the case may be.

² Relevant date means the date on which the approval of the proposal relating to merger or amalgamation is accorded by board of directors or the date of execution of agreement or the date of such other document for acquisition or acquiring of control referred to in sub-section (2) of Section 6 of the Competition Act.

substantial and meet the SBOI test under the Revised Competition Law.

- Increased Scrutiny for High-Value Transactions: The CCI's ability to review high-value transactions, including those that might not have triggered scrutiny under traditional asset- or revenue-based tests, signals a shift towards a more comprehensive competition review process, particularly for large or complex international deals.
- Strategic Planning for M&A Deals: Companies, especially those with significant operations in India or those planning cross-border deals, must be ready to revise their strategies and timelines to ensure compliance with the Revised Competition Law.

[Author]



Shejal Verma (Nagashima Ohno & Tsunematsu)

shejal_verma@noandt.com

Shejal is a lawyer in the Tokyo office. She is qualified in India and the UK. She has experience in a range of corporate law matters, including cross-border M&A, joint ventures, corporate restructuring, private equity investments and business/asset acquisition transactions.

Indonesia

Indonesia's Constitutional Court Calls for a Proper Manpower Law

2024年10月31日、インドネシア最高裁判所は、雇用創出に関する法律（通称オムニバス法）による労働法の改正が憲法が保障する労働者の権利を侵害するという原告の申立ての一部を認め、現行労働法の21カ所について修正する旨の判決を下した。雇用主としては今回の最高裁の判断に沿った対応が即日求められることになり、実務にも大きな影響のある判決であることから本稿で概説する。

Background

On 1 December 2023, a group of petitioners which comprised various worker federations such as the Labour Party, the Federation of Indonesian Metal Workers (*Federasi Serikat Pekerja Metal Indonesia* or FSPMI), the Confederation of All Indonesian Workers' Unions (*Konfederasi Serikat Pekerja Seluruh Indonesia* or KSPSI), the Confederation of Indonesia United Workers (*Konfederasi Persatuan Buruh Indonesia* or KPBI), the Confederation of Indonesian Trade Unions (*Konfederasi Serikat Pekerja Indonesia* or KSPI), an employee of PT Lawe Adya Prima and an employee of PT Indonesia Polymer Compound (together the "**Petitioners**") submitted a petition to the Indonesia's Constitutional Court (*Mahkamah Konstitusi* or "**MK**") for seeking more robust protections for workers.

The purpose of this petition was to request MK to review several provisions under Law No. 13 of 2023 on Manpower as amended by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law ("**Manpower Law**") which were in direct contradiction with the worker's rights as stipulated under Article 27 paragraph (2) and Article 28D paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia. The Petitioners argued that the challenged provisions created legal uncertainty and negatively affected employees' rights.

After hearing and considering the issues pleaded by the Petitioners in the proceedings, on 31 October 2024, MK finally rendered its decision in Case No. 168/PUU-XXI/2023 ("**MK Decision No. 168/2023**"), in which they partially granted the judicial review petition requested by the Petitioners. Overall, out of a total of 69 requests, 21 points were granted and reinterpreted by MK, while the other 48 requests were rejected. These rulings amend and rectify certain provisions of the Manpower Law.

Key Takeaways

Below is the summary of significant changes made to the Manpower Law based on MK Decision No. 168/2023:

Employment of Foreign Workers

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
42 paragraph (1)	MK Decision No. 168/2023 clarifies that the Foreign Worker Utilization Plan (<i>Rencana Penggunaan Tenaga Kerja Asing</i> or RPTKA) which is a mandatory document that employers must obtain before employing foreign workers in Indonesia must be legalized by the Minister of Manpower.
42 paragraph (4)	Furthermore, MK Decision No. 168/2023 emphasizes that while the employment of foreign workers is generally allowed, priority must be given to Indonesian workers, especially for roles that do not require special skill or expertise. In essence, the employment of foreign workers must be based on clear and measurable needs and must ensure decent opportunities for Indonesian workers.

Fixed-Term Employment Agreement

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
56 paragraph (3)	Manpower Law provides that there are 2 (two) types of Fixed-Term Employment Agreement (<i>Perjanjian Kerja Waktu Tertentu</i> or “ PKWT ”), namely a PKWT based on a certain period of work and a PKWT based on the completion of particular work. While a PKWT based on a certain period of work is limited to a maximum of 5 (five) years including any extension, the period of PKWT based on the completion of particular work is determined under the PKWT agreed between the employer and the employee. Now, MK Decision No. 168/2023 specifies that a PKWT based on the completion of particular work shall also be for a maximum of 5 (five) years, including any extension. By requiring this explicitly at the level of law, any implementing regulations of the Manpower Law must adhere to such provision.
57 paragraph (1)	MK Decision No. 168/2023 emphasizes that a PKWT “must be made in writing” using the Indonesian language and Latin script. These requirements are essential to ensure clarity and transparency in employment terms, safeguarding both employers’ and employees’ rights.

Outsourcing

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
64 paragraph (2)	MK Decision No. 168/2023 adds that the scope of work for outsourcing employees must be in accordance with the type and field of outsourcing work agreed in the written outsourcing agreement. It puts a clear standard in place regarding the types of work that can be outsourced, while outsourced workers will only work on the outsourced works as agreed under a written outsourcing agreement. Furthermore, the role of the Minister of Manpower in determining what jobs can be outsourced is also clarified. This will provide greater clarity on what is and is not allowed in outsourcing practices.

Employee’s General Rights (i.e., Rest Days and Sabbatical Leaves)

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
79 paragraph (2) letter b	MK Decision No. 168/2023 now clearly requires a minimum of one day off per week for six-day workweeks and two days off for five-day workweeks.
79 paragraph (5)	MK Decision No. 168/2023 also indicates that certain companies are required to provide long breaks or extended leave as stipulated in the employment agreement, company regulations or collective labor agreement.

Wages and Minimum Wages

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
88 paragraph (1)	In terms of wages, MK Decision No. 168/2023 further explains indicators of wage eligibility, which includes essential needs such as food and beverages, clothing, housing, education, health, recreation, and old-age security.
88 paragraph (2)	To determine wage policies, the central government now must include the regional government through the regional wage councils in formulating wage-related policies.
88 paragraph (3) letter b	MK Decision No. 168/2023 clarifies the formula for calculating minimum wages, considering the interests of both employers and employees, and the principle of proportionality to ensure the decent livelihood of the employees.
88 C	The existing provision remains the same, but MK Decision No. 168/2023 further adds that the Governor is obliged to determine the sectoral minimum wage in the provincial area and can do so for regencies/cities.
88 D	Under the Manpower Law, the minimum wage calculation formula shall consider variables of economic growth, inflation, and certain index. MK Decision No. 168/2023 further clarifies that a certain index is a variable that represents the contribution of labor to the economic growth of the province or regency/city by taking into account the interests of companies and workers/laborers as well as the principle of proportionality to meet the decent living needs (KHL) of workers/laborers.
88 F	The phrase “in certain circumstances” is now further defined by MK Decision No. 168/2023. What is meant by “in certain circumstances” includes, among others, natural or non-natural disasters, including extraordinary conditions of the global and/or national economy as determined by the President in accordance with the prevailing laws and regulations.
90 A	Trade unions/labor unions can now be involved in the process of determining wage above the minimum wage. It is important to maintain the balance of the bargaining positions between employers and employees.
92 paragraph (1)	When determining wage structures and scales, the employers shall consider factors such as the company’s ability and productivity as well as the employee’s position, job category, length of service, education, and competency.
98 paragraph (1)	MK Decision No. 168/2023 further requires that wage councils that actively participate should be formed to determine wage-related policies and develop wage systems.

Termination of Employment and Employment Dispute Resolution

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
95 paragraph (3)	MK Decision No. 168/2023 significantly affects the employment termination process, particularly in cases of bankruptcy and liquidation of the employers. MK mandates that the employee’s claims for payment must be prioritized over most other creditors, including secured creditors. On the other hand, payment of other rights

	<p>upon employees shall be prioritized over all creditors (including other preferred creditors), except for secured creditors.</p> <p>Secured creditors are creditors that have collateral rights over certain assets of an employer (e.g., mortgage, pledge, fiduciary security). Other rights in this case include severance pay, service pay, religious festive benefits, and compensation for leave right, provided that it is stipulated under the employment agreement or company regulation. In essence, in cases of bankruptcy and liquidation, the priority ranking for payment shall be as follows: (i) employees' wages, (ii) secured creditors, (iii) other rights of employee, (iv) other preferred creditors, and lastly (v) other creditors (i.e., unsecured creditors).</p>
151 paragraph (3)	MK Decision No. 168/2023 emphasizes that layoff is a last resort in terms of employment termination. MK mandates that disputes between employers and employees must be settled through bipartite negotiations in a deliberative manner for consensus. If the negotiations fail, the termination process shall go through all stages of the industrial relations dispute resolution procedures.
151 paragraph (4)	Employment termination can only occur after obtaining a final and binding decision from the relevant industrial resolution institution. In other words, MK requires that until a final and legally binding decision is reached by the industrial relation court, the employee is still legally under the employment relationship with the employer. With this ruling, now an employer may not simply terminate the employment by only delivering a notice of termination to the relevant employee.
157 A paragraph (3)	MK Decision No. 168/2023 clarifies in this provision that before obtaining a final and binding decision from the relevant industrial resolution institution that approves the employment termination, an employee and employer are still legally under the employment relationship with the employer. Accordingly, the rights and obligations of the employer and the employee remain applicable until the employment termination is effective.

Termination Benefits

Relevant Article of Manpower Law	Summary of MK Decision No. 168/2023
156 paragraph (2)	Previously, Manpower Law only stipulated that severance pay was calculated based on the stipulated provision of Article 156 paragraph (2). In other words, the termination payment amount was fixed based on the formula under such provision. MK Decision No. 168/2023 now adds the phrase "at least" which allows the employer to provide more (but not less) termination payment than the required amount according to the formula given under the Manpower Law. With this ruling, the employees are now entitled to receive their severance pay at a higher rate and standard than those determined beforehand to meet their living needs.

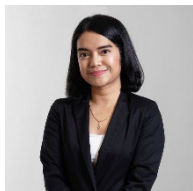
Conclusion

MK was of the view that there might be inconsistencies and overlapping provisions under the Manpower Law and Job Creation Law which has resulted in confusion and difficulties for the public in understanding its provisions. Thus, under MK Decision No. 168/2023, MK mandates the legislators to promptly draft a new manpower law in 2 (two) years. MK believes that any issues, conflicts, and inconsistencies of substance in the Manpower Law should

be reorganized and corrected immediately. All judiciary and government levels are also requested to align their rulings and legal provisions accordingly.

As outlined in the summary above, it is clear that MK Decision No. 168/2023 significantly affects employers in several ways. It is important for employers to understand, adapt, and proactively address the potential implications moving forward. In the meantime, employers are advised to pay close attention to these amendments while managing and handling their employee-related matters.

[Author]



Luciana Fransiska (Nagashima Ohno & Tsunematsu Singapore LLP)

luciana_fransiska@noandt.com

Luciana is an Indonesian qualified attorney in the Singapore Office. She graduated from the Faculty of Law University of Indonesia with Cum Laude predicate in early 2014 and obtained her LL.M degree in 2020 with distinction from Tilburg University, the Netherlands.

Prior to joining NO&T, Luciana worked at one of the most prominent law firms in Indonesia. She has extensive experiences in representing both private and public companies on mergers & acquisitions transactions, foreign direct investment and other general corporate matters. Her clients include companies from various industries, including consumer goods, mining, real estate and TMT.

[EDITORS' PROFILES]

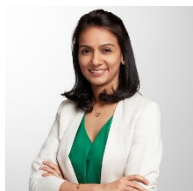


Nobuo Fukui (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

nobuo_fukui@noandt.com

Nobuo Fukui is a partner at Nagashima Ohno & Tsunematsu and a representative of its Singapore Office (Nagashima Ohno & Tsunematsu Singapore LLP). He has been stationed in Singapore since 2013 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries.

He is a graduate of the University of Tokyo (LL.B., 2001) and Duke Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Widyawan & Partners (Jakarta) from 2010 to 2013, focusing on Indonesian legal practice, and he has extensive legal experience in the Indonesia related transactions.



Rashmi Grover (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

rashmi_grover@noandt.com

Rashmi Grover is an attorney in the Singapore Office. She is qualified in India and the UK. Her areas of practice include mergers and acquisitions, private equity and general corporate. She has extensive experience working in the Indian market and advising clients on corporate commercial and finance transactions including transactions involving mergers, acquisitions, formation of joint ventures, private equity investments, business/asset acquisition transactions, regulatory filings and debt issuances.

This newsletter is given as general information for reference purposes only and therefore does not constitute our firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our firm's official view. For any specific matter or legal issue, please do not rely on this newsletter but make sure to consult a legal adviser. We would be delighted to answer your questions, if any.

www.noandt.com

NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan

Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com



Nagashima Ohno & Tsunematsu, based in Tokyo, Japan, is widely recognized as a leading law firm and one of the foremost providers of international and commercial legal services. The firm's overseas network includes locations in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi, Jakarta* and Shanghai. The firm also maintains collaborative relationships with prominent local law firms. The approximately 600 lawyers of the firm, including about 50 experienced lawyers from various jurisdictions outside Japan, work together in customized teams to provide clients with the expertise and experience specifically required for each client matter. (*Associate office)

Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41

Singapore 049909

Tel: +65-6654-1760 (general)

Fax: +65-6654-1770 (general)

Email: info-singapore@noandt.com

Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhira Tower at EmQuartier

689 Sukhumvit Road, Klongton Nuea

Vadhana, Bangkok 10110, Thailand

Tel: +66-2-302-4800 (general)

Fax: +66-2-302-4899 (general)

Email: info-bangkok@noandt.com

HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower

29 Le Duan Street, District 1

Ho Chi Minh City, Vietnam

Tel: +84-28-3521-8800 (general)

Fax: +84-28-3521-8877 (general)

Email: info-hcmc@noandt.com

Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building

16 Phan Chu Trinh, Hoan Kiem District

Ha Noi City, Vietnam

Tel: +84-24-3266-8140 (general)

Fax: +84-24-3266-8141 (general)

Email: info-hanoi@noandt.com

Jakarta Office (*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401

Jalan Jenderal Sudirman Kav. 40-41

Jakarta 10210, Indonesia

Tel: +62-21-25098080 (general)

Fax: +62-21-25098090 (general)

Email: info-jakarta@noandt.com

Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road

Xuhui District, Shanghai 200031, China

Tel: +86-21-2415-2000 (general)

Fax: +86-21-6403-5059 (general)

Email: info-shanghai@noandt.com

For more details on our global practice

If you would like to receive future editions of the NO&T Asia Legal Review by email directly to your Inbox, please fill out our newsletter subscription form at the following link: https://www.noandt.com/en/newsletters/nl_asia_legal_review/

Should you have any questions about this newsletter, please contact us at [<asia-legal-review@noandt.com>](mailto:asia-legal-review@noandt.com).

Please note that other information related to our firm may be also sent to the email address provided by you when subscribing to the NO&T Asia Legal Review.