

Is there Room for Cartel and Collaboration in the New Normal?



Among the many devastating impacts, the Covid-19 outbreak has demonstrated how a pandemic can have a significant and adverse effect on economic activities, both from supply and demand perspectives. Market distortion, disruption of supply-chain and increasing demand for various healthcare products and services are among the main issues sparked by the pandemic.

In responding to these issues, businesses might have contemplated certain collaborative measures to aid in alleviating shortage, ensuring that the public receives reliable supply, helping themselves survive, and even achieve efficiency. However, businesses must be aware that the implementation of those joint measures are not without potential legal implications as they may be recognised as anti-competitive conduct under Indonesian Competition Law.

We made this crucial issue the main topic in our recently held webinar, where Mr. Kurnia Toha, the Chairman of the Indonesia Competition Commission (KPPU) participated as one of the panellists. Below are some of the key takeaways on any collaborative business measures, particularly those taken during this pandemic:

1. despite the absence of any regulations and guidelines on antitrust immunity or cooperation between businesses outside the merger control's scope, the Chairman of KPPU expressed his support for businesses considering collaborative measures that may be beneficial to the country and aid the government in dealing with the current health and economic crisis;
2. the measures taken must have justifiable economic and legal reasons that may outweigh the potential adverse effects of the collaboration;
3. businesses seeking guidance are welcome to consult with the KPPU on their proposed collaboration;

4. businesses are advised to come fully prepared with a comprehensive analysis of the proposed collaboration, including its potential public benefits and impacts before reaching out to the KPPU; and
5. if the KPPU deems that there are sufficient and justifiable reasons, it is committed to being supportive and will issue a “comfort letter” for the proposed arrangement.

This unprecedented gesture by the KPPU will undoubtedly be welcomed and appreciated by businesses. It is worth noting that some types of joint measure can help businesses thrive during this pandemic, while also benefitting to the public when implemented appropriately.

In this respect, we recommend that businesses consider this option based on intensive planning. Given that the KPPU’s prior approval is needed to implement a proposed collaboration that may conflict with Indonesian Competition Law, businesses are strongly advised to carefully prepare their proposal to ensure that the economic and legal benefits of the proposed collaboration are captured to the satisfaction of the KPPU.

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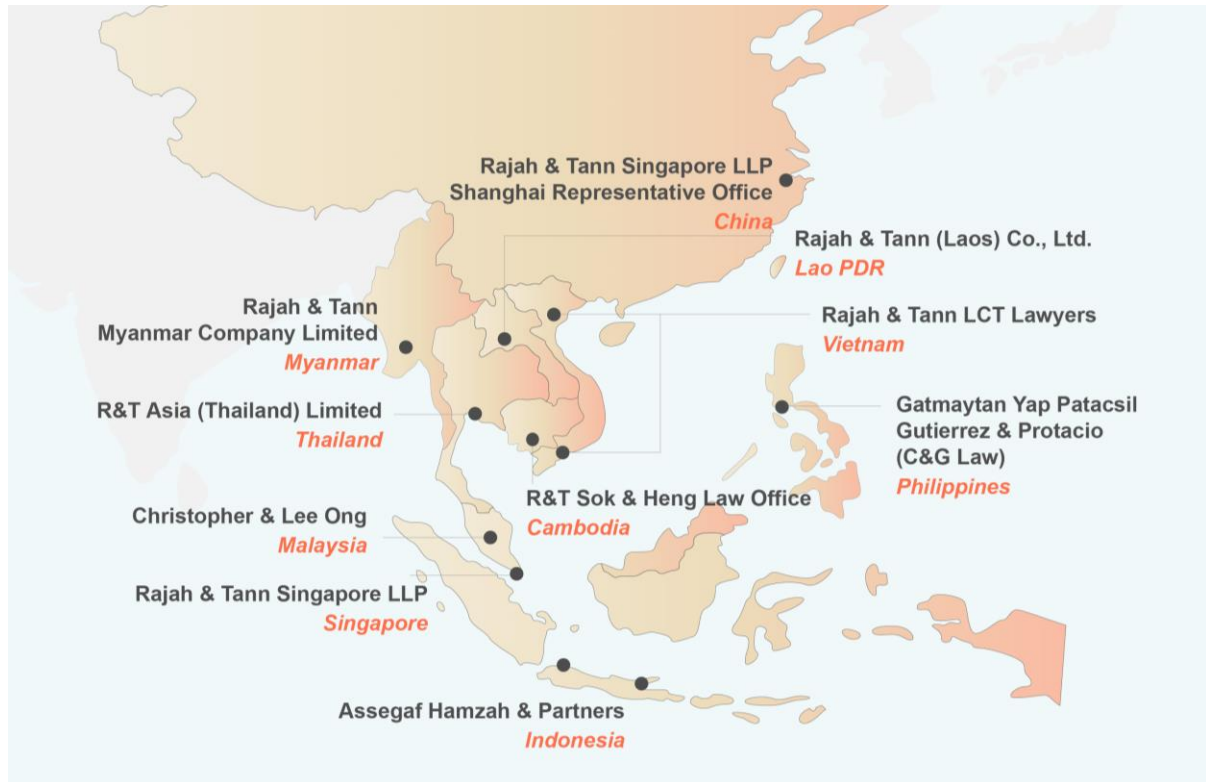
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