

## Comparison of Asian merger control regimes

	Brunei <sup>1</sup>	Cambodia <sup>2</sup>	China	Hong Kong <sup>3</sup>	India	Indonesia	Japan	Kazakhstan	Laos <sup>1</sup>	Malaysia <sup>4</sup>	Mongolia
Is filing mandatory?	X	N/A	○	X	○	○	○	○	○	X	○
Is filing pre-merger/suspensory?	X	N/A	○	X	○	X	○	▲ <sup>5</sup>	▲ <sup>5</sup>	X	○
Can fines be imposed for failure to file/‘gun-jumping’?	X	N/A	○	X	○	▲ <sup>6</sup>	○	○	▲	X	○
Does the competition authority monitor/catch missed filings?	N/A	N/A	○	X <sup>7</sup>	○	○	○	X	N/A	X	○
Is the fact of filing published?	X	N/A	○	▲ <sup>8</sup>	○	○	○	X	▲	○	X
Is there a local effects test for ‘foreign-to-foreign’ mergers if thresholds met?	X	N/A	X	X	○	○	X	○	▲	○	○
Is there a change of control test?	○	N/A	○	○	▲ <sup>9</sup>	○	X	○	▲	○	X
Are non-‘full function’ joint ventures caught?	X	▲	○	X	○	○	○	○	▲	X	▲ <sup>10</sup>
Does the authority meet decision deadlines in practice?	N/A	N/A	○	X <sup>11</sup>	○	▲ <sup>12</sup>	○	▲ <sup>13</sup>	N/A	▲	○
Is there an accelerated procedure for less problematic transactions?	X	N/A	○	X	○ <sup>14</sup>	○ <sup>15</sup>	○	X	X	X	X
Are non-competition issues taken into account in review?	○	N/A	○	X	▲	○	X	X	○	▲	○
Does the authority accept remedies in practice?	▲	N/A	○	○	○	○	○	○	N/A	▲	X
If so, is there a preference for behavioural over structural remedies?	▲	N/A	X	X	X	○	○	X	N/A	▲	X
Is it possible to implement elsewhere while review is pending?	○	N/A	X	○	X	○	X	○	▲	▲	X
Is the authority’s decision published?	X	N/A	▲ <sup>16</sup>	▲ <sup>8</sup>	○	▲ <sup>17</sup>	▲ <sup>18</sup>	▲ <sup>18</sup>	▲	▲ <sup>19</sup>	○
Can parties request redaction of confidential information from decisions?	N/A	N/A	○	○	○	▲	○	X	▲	▲	○

○ Yes | ▲ Qualified yes or position unclear | X No | N/A Not applicable

## Comparison of Asian merger control regimes (Continued)

	Myanmar <sup>3</sup>	Pakistan	Philippines	Singapore	South Korea	Sri Lanka <sup>2</sup>	Taiwan	Thailand	Vietnam
Is filing mandatory?	▲	○	○	X	○	▲	○	○	○
Is filing pre-merger/suspensory?	▲	○ <sup>5</sup>	○	X	▲ <sup>5</sup>	▲	○	▲ <sup>5</sup>	○
Can fines be imposed for failure to file/‘gun-jumping’?	▲	○	○	N/A <sup>20</sup>	○	▲	○	○	○
Does the competition authority monitor/catch missed filings?	N/A	○	○	○	○	N/A	▲	▲	○
Is the fact of filing published?	▲	X	X	○	X	▲	▲ <sup>21</sup>	○	▲
Is there a local effects test for ‘foreign-to-foreign’ mergers if thresholds met?	▲	X	○	X	X	▲	○	X	○
Is there a change of control test?	▲	○	○	○	X	▲	X	X	○
Are non-‘full function’ joint ventures caught?	▲	○	○	X	○	▲	○	X	○
Does the authority meet decision deadlines in practice?	N/A	○	○	○	▲ <sup>22</sup>	N/A	○	○	X
Is there an accelerated procedure for less problematic transactions?	▲	X	○ <sup>23</sup>	X	○	▲	○	X	X
Are non-competition issues taken into account in review?	▲	X	▲ <sup>24</sup>	X <sup>25</sup>	X	▲	▲	○	○
Does the authority accept remedies in practice?	N/A	X	○	○	○	N/A	○	N/A	○
If so, is there a preference for behavioural over structural remedies?	N/A	X	▲ <sup>26</sup>	X	○ <sup>27</sup>	N/A	X	N/A	○
Is it possible to implement elsewhere while review is pending?	▲	○	▲	○	X	▲	X	○	X
Is the authority’s decision published?	▲	○	○	○	▲ <sup>28</sup>	▲	▲ <sup>21</sup>	○	▲ <sup>29</sup>
Can parties request redaction of confidential information from decisions?	▲	○	○	○	○	▲	○	X <sup>30</sup>	▲

○ Yes | ▲ Qualified yes or position unclear | X No | N/A Not applicable

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(Continued)

## Footnotes

1. Merger control regime enacted but not yet in force.
2. Merger control regime not yet enacted (position to be clarified by implementing regulations), but there are merger control laws within specific industries and procedural requirements to effect mergers.
3. Merger control regime currently applies to telecommunications sector only.
4. Merger control regime applies to aviation, communications and multimedia sectors only. A proposed general mandatory and suspensory merger control regime (for anticipated mergers that cross the prescribed thresholds) had been published for consultation on 25 April 2022. The proposed regime encapsulates various forms of mergers including combinations, amalgamations, direct or indirect acquisitions of control over equity or assets and creation of full function joint ventures. The regime has yet to be enacted as at December 2022.
5. Filing is post-closing in certain circumstances.
6. Fines can be imposed for failure or delay to file.
7. The authorities will keep themselves informed about merger activities for example by monitoring the media and/or through information or complaints from third parties.
8. Only filings made under 'formal decision route' are published.
9. Thresholds can still be met without change of control.
10. Law is silent as to whether JVs need to be notified at all.
11. There are no deadlines for decisions.
12. The authority tends to follow the stricter deadline under new regulations although in some filing there is a possibility for delay in the issuance of the ruling.
13. If analysis of state of competition in a market is required, then review of filing may be extended by no more than one year.
14. The green channel route is available for transactions where parties and their respective group entities / affiliates that meet certain materiality thresholds exhibit no horizontal overlaps or vertical or complementary relationships.
15. Although in practice local counsel was not aware if the authority has gone through an accelerated procedure in reviewing the notifications.
16. Only prohibition decisions and remedy decisions are published in full, but the authority publishes lists of unconditionally cleared transactions periodically.
17. Unclear if decisions will be published under the new regulations.
18. Publication at the authority's discretion of significant cases only.
19. Malaysian Aviation Commission publishes decisions on its website.
20. The competition authority may impose a penalty for failure to file if they subsequently investigate and find that the merger causes a substantial less of competition.
21. Simplified filings or decisions waiving jurisdiction are not published in the form of press release or for public consultation. But the Taiwan Fair Trade Commission ("TFTC")'s annual report would include a list of simplified filings reviewed during the year.
22. Effective deadline may be extended in practice by issuing RFIs.
23. Accelerated merger review procedure could be temporarily suspended as a result of the community quarantine because of the Covid-19 pandemic.
24. The Philippine Competition Commission also considers consumer protection, as one of the objectives of the authority.
25. Although consideration of non-competition issues is not part of the review process, if the competition authority has indicated it intends to issue an unfavourable decision, the parties could apply to the Minister for Trade & Industry to exempt the merger from the prohibition under the Competition Act on grounds of any non-competition public interest consideration.
26. Strong preference for structural remedies for horizontal mergers.
27. The Korea Fair Trade Commission ("KFTC")'s Guidelines on the Imposition of Remedies states that remedies shall be structural in principle and behavioural remedies can be used to supplement the structural remedies, unless structural remedies are not available or effective. However, in practice, the Korea Fair Trade Commission does have shown a preference for behavioural remedies.
28. Written decisions for cases that went through the KFTC hearing are published, while issuance of press releases is at the authority's discretion for significant cases only.
29. Brief announcements about the transaction and the decision of the authority are published but no details are provided about the authority's assessment or analysis.
30. Decisions are issued on a no-name basis, for example, using initials when referring to respective parties.