Private Equity

Contributing editor
Bill Curbow

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GETTING THE DEAL THROUGH

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Private Equity 2018

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Fourteenth edition

Getting the Deal Through is delighted to publish the fourteenth edition of *Private Equity*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Croatia, Israel and Korea. The report is divided into two sections: the first deals with fund formation in 19 jurisdictions and the second deals with transactions in 21 jurisdictions.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bill Curbow of Simpson Thacher & Bartlett LLP, for his continued assistance with this volume.

GETTING THE DEAL THROUGH

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Indonesia

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Formation

1 Forms of vehicle

What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

Currently private equity funds are not specifically regulated; private equity funds are set up outside Indonesia and then subsequently invested in the Indonesian portfolio or target company (which may be an operating company, holding company or listed company). Offshore private equity funds sometimes set up a limited liability company (PT) in Indonesia or a representative office to ease and support their efforts to find lucrative deals, or to act as a liaison office or for monitoring their portfolio.

A PT as a portfolio or target company can be in the form of a privately owned or publicly listed company. Law No. 40 of 2007 regarding Limited Liability Company (the Company Law) defines a PT as a legal entity that forms a partnership of capital, established by an agreement, performs business activities with all of its authorised capital divided into shares and fulfils the requirements as provided for in the Company Law and its ancillary regulations. It means PT has a legal entity and recognises the separation assets and liabilities between the shareholders and PT. As a consequence, shareholders and management boards (ie, the board of directors) of PTs shall not be personally liable for a binding agreement entered into in the name of the PT and, specifically for shareholders, they shall not be liable for PTs' losses extending beyond the value of shares he or she owns. However, to a certain extent, the shareholders or board of directors may be assumed liable for any loss within the PT if they have conducted activities in bad faith or have violated their fiduciary duty.

For certain investments, private equity may invest via discretionary funds in the form of mutual funds or venture capital or through portfolio investment on the Indonesian stock exchange in order to manage the restrictions on foreign ownership under the negative list regulation.

2 Forming a private equity fund vehicle

What is the process for forming a private equity fund vehicle in your jurisdiction?

As it is not specifically regulated, a private equity fund is normally formed outside Indonesia. The fund subsequently may form a PT in Indonesia to support its investments in the country.

In brief, the process for establishing a PT pursuant to the Company Law involves the following steps:

- reserve the name of the company;
- filing to the Indonesian Investment Coordinating Board (BKPM) if the PT is a foreign investment company;
- signing of the deed of establishment;
- filing for certificate of company domicile;
- filing for taxpayer registration number and taxable entrepreneur confirmation number;
- opening bank account and capital injection;
- filing for Ministry of Law and Human Rights (MOLHR) approval of the deed of establishment;
- registering the company office;
- announcement of the deed of establishment by MOLHR; and
- filing for a business licence (ie, BKPM business licence if the PT is a foreign investment company or a trade business licence if the PT is a local company).

It takes approximately two months for companies to obtain a legal entity and four months to be ready to commence commercial business activities.

It is free of charge to establish a new company, except for the costs involved in reserving the name of the PT and in notarising documents.

Note that if the PT is established with the status of foreign investment company because of foreign equity participation, any investment made by such PT will be considered as foreign investment and foreign ownership restrictions may be applicable for certain lines of business.

For non-conventional structures, a fund can also be established in the form of a limited participation collective investment contract (KIK-UPT). KIK-UPTs are regulated under the Financial Services Authority (OJK) Regulation No. 37/POJK.04/2014 on Mutual Fund in the Form of Limited Participation Collective Investment Contract (OJK Regulation 37). The formulation of a KIK-UPT is subject to OJK Regulation 37 and relevant regulations on the mutual fund and it must be registered with the OJK. The fund must be managed by a qualified investment manager, having net asset value of at least 1,000 rupiah as a start and based on a collective investment contract that meets requirements stipulated under OJK Regulation 37. Distinguished features of a KIK-UPT compared with a conventional mutual fund are that this fund can only invest in debt securities not offered by an IPO and equity securities that are not issued by a publicly held company.

3 Requirements

Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

Generally a private equity fund vehicle does not need a custodian, administrator or a corporate secretary unless the form of it is KIK-UPT or a mutual fund, in which case it must have a bank custodian and fund manager who are licensed under the OJK. It should also maintain books and records and have a registered office.

If the private equity fund vehicle is in the form of a PT, it must have a registered office and its board of directors must maintain the shareholders register, books and records under the Company Law. The failure to maintain and keep those records could constitute negligence on the part of the board of directors for which they are personally and jointly liable for any losses that may be suffered.

4 Access to information

What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

The MOLHR provides a database consisting of general information of companies, which can be requested by the public. This database is

automatically updated every time the PT deals with the MOLHR for any corporate actions (eg, transfer of shares, change of capitalisation) involving the notary that has access to the database.

The information provided by the MOLHR is limited to general information related to the company such as the shareholders, amount of shares and line of business of the company. The information may not include the portfolios of the private equity. It should also be noted that the quality or reliability of the information contained in the MOLHR database is not yet conclusive, and there is always a risk that the registry has not been updated with the most recent information. Furthermore, there is a risk that the company profile may not reflect any legal issues or non-compliance of past corporate actions. To access the information, an online request to the MOLHR and payment of a fee are required.

As for mutual fund KIK-UPTs, the investment manager must comply with mandatory disclosures stipulated under capital market regulations including disclosure of information on the product structure and risk assessment to its potential investor.

5 Limited liability for third-party investors

In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

Any investors, including third-party investors, shall be respected as a matter of Indonesian laws as long as they have invested and have interest in Indonesian companies. However, under the Company Law, the investor or shareholder shall not be liable for the company's losses extending beyond the value of shares he or she owns.

The Company Law recognises the concept of piercing of the corporate veil. Under this concept a shareholder of a PT shall not be personally liable for the consequences of binding agreements entered into in the name of the PT and shall not be personally liable for the PT's losses extending beyond the value of shares he or she owns. However, there are some exceptions to this general rule in the following cases (the piercing of the corporate veil concept):

(i) the PT does not have the status of a PT as a legal entity;
(ii) the relevant shareholder, either directly or indirectly, appropriates the PT in bad faith for his or her personal benefit;
(iii) the relevant shareholder is complicit in an unlawful act committed by the PT; or
(iv) the relevant shareholder, either directly or indirectly, unlawfully utilises the PT's assets, causing such assets to be rendered insufficient to pay off the debts of the PT.

In the case of (ii), (iii) and (iv), the Company Law provides that the burden of proof is with the third party intending to raise a claim against the shareholders of the company concerned. Nevertheless, as court decisions are not a matter of public record in Indonesia it is not clear how frequently the corporate veil has been pierced in the courts.

A shareholder's liability may exceed the capital paid on all of the shares he or she owns if it is substantiated that, inter alia, the shareholder's personal assets are commingled with the company's assets, or the company is established solely as a vehicle for manipulation by the shareholder in pursuit of his or her own benefit, as intended by (ii) and (iv).

6 Fund manager's fiduciary duties

What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

In the case of mutual funds and KIK-UPTs, pursuant to OJK Regulation No. 43/POJK.04/2015 regarding Code of Conduct of Fund Managers (POJK No. 43), fund managers shall carry out their work based on the following principles:

- integrity;
- professionalism;
- prioritising customers' interests;
- monitoring and supervising;
- ensuring sufficient resources;
- protecting customers' assets;
- disclosure;
- avoiding any conflict of interest; and
- compliance.

These are fundamental principles so they may not be waived or exempted by agreement entered by and between the fund manager and investor. On the other hand, for privately held companies, there is no strict principle relating to fiduciary duty. Fiduciary duty can be modified as long as it does not result in the piercing of the corporate veil as discussed in question 5.

7 Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

Indonesian laws do not explicitly recognise gross negligence or ordinary negligence. However, it is adopted from relevant doctrine in the field of civil law and up to the sole discretion of the judges to determine certain circumstances in which the limitation of liability may be acceptable.

8 Other special issues or requirements

Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

The restriction factors stated in the negative list of investment (which was last revised on 12 May 2016 pursuant to the Presidential Regulation No. 44 of 2016 Regarding Lists of Business Fields That Are Closed to Investment and Business Fields That are Conditionally Open for Investment) should be considered when doing business in Indonesia.

Conditionally open business fields are specified business fields that investors may engage in with specified conditions. The aforementioned conditionally open lines of business are as follows:

- those that are reserved for micro, small and medium-sized enterprises and cooperatives;
- those for which a partnership is required;
- those for which certain shareholding arrangements are required;
- those that may be conducted only in certain locations; and
- those for which a special licence is required.

The negative list restrictions feature prominently in the structuring of acquisitions, as well as considerations such as exit method, dividend repatriation and tax.

9 Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

Pursuant to Indonesian bankruptcy law, from the point of a bankruptcy declaration, the debtors (in this case the institutional sponsors) are no longer entitled to all of their assets. Afterwards, the assets and the business of the institutional sponsors will be managed by receivers or curators.

In the event of change of control or restructuring, the company has to make sure there is no negative covenant regarding such transactions. After completing the transactions, the company must submit a report to the MOLHR regarding the change of control or the restructuring. Furthermore, the transaction that may result in the change of control is also subject to certain requirements (eg, newspaper announcement) under the Company Law.

Regulation, licensing and registration

10 Principal regulatory bodies

What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

The OJK is an independent institution whose functions are to establish an integrated regulatory and supervisory system for all activities in the financial services sector, including banking, capital market, insurance, pension funds, financing institutions and other financial services institutions. Therefore, if a private equity fund conducts business activities in such sectors or has become a publicly held company and subject to capital market regulation, then it will also be supervised by the OJK.

With respect to inspection rights, the OJK as a regulatory body may conduct supervision, inspection, investigation, consumer protection and other actions towards financial services institutions, subjects, or supporting activities to a private equity fund.

For investors, in the forum of a general meeting of shareholders, shareholders are entitled to have access to any information relevant to the company from the board of directors or the board of commissioners to the extent relevant to the agenda of the meeting and not in contravention of the interest of the company.

11 Governmental requirements

What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

Investment in certain sectors (including banking, insurance, mining and finance) requires advance approval from the competent government authority and if it involves foreign capital an approval from BKPM may be required. A foreign sponsor may also consider forming a venture capital company (VCC) if it wishes to have significant portfolios in micro, small or medium-sized businesses that are closed or conditionally open for foreign investment as any investments made by VCC will be considered as local investment.

A VCC is known as a business entity that conducts financing activities or capital participation in a micro, small or medium-sized business that needs financial support to grow. A VCC can be established in the form of a PT, a cooperative or a limited partnership company and it must secure a business licence from the OJK prior to engaging in venture capital business. A VCC in the form of a PT has a minimum paid-up capital requirement of 50 billion rupiah. In general a VCC may conduct the following business activities:

- a venture capital business, which refers to provisions regarding investment capital or financing facilities to individuals, cooperatives, micro, small or medium-sized business;
- venture fund management;
- fee-based services, including consultation services on the management, accounting, administration and marketing of financial products such as insurance or mutual funds; and
- other activities approved by the OJK.

12 Registration of investment adviser

Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

Under Indonesian law, there is no requirement for a private equity fund's manager, or any of its officers, directors or control persons to register as an investment adviser.

Investment managers that manage securities in capital market or KIK-UPTs are subject to compliance with capital market regulation. Among other things, they must be registered with the OJK and be a member of the investment managers association. Furthermore, the investment manager representative or individual who is in charge of the investment management business must also hold certification recognised by the OJK and be experienced in the capital market industry.

For VCCs, at least one of the members of the board, director or party who manages the investment must have a minimum of two years' operational experience either in a VCC, bank or other financial institution.

13 Fund manager requirements

Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

In terms of a publicly held company, the fund manager shall be a member of the investment managers association, which has a code of conduct and is recognised by the OJK under POJK No. 43. Furthermore, investment manager representatives must comply with OJK Regulation No. 25/POJK.04/2014 regarding Licensing of Investment Manager Representative (POJK No. 25). POJK No. 25 provides that investment manager representatives must meet integrity requirements, competency requirements, have experience of working in financial institutions in Indonesia for foreigners and must not hold a position in another financial services institution.

14 Political contributions

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

Under the Law on Corruption Eradication, companies are not permitted to give or promise something to a civil servant or state apparatus with the aim of persuading them to carry out, or not carry out, an action because of their position. In such circumstances, the related parties will be punished with imprisonment or fine sanctions, or both.

15 Use of intermediaries and lobbyist registration

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

Such activities have not yet been regulated.

16 Bank participation

Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

Bank Indonesia has monetary policy to restrict certain transactions involving banks. These policies include the restriction on banks on owning productive assets in the form of shares and maintaining foreign exchange deposits at certain levels. Indonesian banks are also prohibited from extending credit for acquiring marketable securities (stocks, bonds and commercial paper). These policies are expected to mitigate the risk of spread of the global financial crisis in Indonesia .

Taxation

17 Tax obligations

Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Please describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

Yes, private equity fund vehicles, as well as the fund distributed to investors in the form of dividends, will generally be subject to taxation. If it is

formed as mutual funds, the benefit distributed by the mutual funds to the unitholder may be exempt from income tax.

18 Local taxation of non-resident investors

Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

An individual investor is regarded as tax-resident if he or she fulfils any of the following conditions:

- he or she resides in Indonesia;
- he or she is present in Indonesia for more than 183 days in any 12-month period; or
- he or she is present in Indonesia during a fiscal year and intends to reside in Indonesia.

Indonesia imposes withholding tax of 20 per cent on interest or dividends payable to non-residents, unless the non-resident has a permanent establishment in Indonesia (in which case, the tax rate for residents would apply). If the non-resident is a resident of a country with a double taxation treaty with Indonesia, the withholding tax could be lower (subject to completion of Form DGT-1). See question 21.

19 Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

There are no special tax rules for private equity in Indonesia. A private equity fund vehicle set up in Indonesia or with effective management in Indonesia must obtain a taxpayer identification number and will generally be subject to the normal 25 per cent income tax rate. As for resident taxpayer investors, they are subject to normal withholding tax of 15 per cent on interest or dividend.

If private equity funds are incorporated abroad, they would generally be subject to 20 per cent withholding tax for income in the form of dividends, interest or royalties but this rate can be reduced via an applicable tax treaty. With regard to the capital gain, there would be 5 per cent withholding tax upon the gross sale proceeds of shares unless a relevant and applicable tax treaty waives it.

20 Organisational taxes

Must any significant organisational taxes be paid with respect to private equity funds organised in your jurisdiction?

Organisational tax is not recognised in Indonesia.

21 Special tax considerations

Please describe briefly what special tax considerations, if any, apply with respect to a private equity fund's sponsor.

With respect to the private equity fund's sponsor, there is a tax issue to consider in the event of the transfer of shares. The transfer of shares may result in the payment of income tax as a result of capital gain, which shall be borne by the seller, under the following conditions:

- if the seller is an Indonesian tax subject, the obligation to pay tax on the capital gains is the seller's. The rate would generally be 25 per cent for corporate taxpayers and up to 30 per cent for individual taxpayers. There is no obligation on the part of the buyer to withhold any amount from the sale price; and
- if the seller is not an Indonesian tax subject, the resident buyer must withhold 20 per cent of the estimated net income (ie, the capital gain amounting to 25 per cent of the transaction value) to the seller from the sale of the shares, except where the taxation of capital gains is reserved for the treaty partner by an applicable tax treaty. To obtain the benefit of the applicable tax treaty, the seller must comply with the certification, eligibility, information and reporting requirements in force in Indonesia. Currently, the seller would need to provide to the purchaser and the company a certificate of tax domicile issued by a competent tax authority (the Internal Revenue Services).

22 Tax treaties

Please list any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

Currently Indonesia has approximately 60 tax treaties with other counties such as Australia, China, Germany, Hong Kong, Japan, Korea, the Netherlands, Singapore and the US. The purpose of these treaties is generally to avoid double taxation and to prevent fiscal evasion with respect to taxes on income and capital. Principally these treaties regulate which income or capital should be taxed by a country to avoid double taxation.

23 Other significant tax issues

Are there any other significant tax issues relating to private equity funds organised in your jurisdiction?

Tax consideration may shape the exit option. Typically, private equity exits are done via IPO. This exit route is attractive, tax-wise. The sale of shares listed in an Indonesian exchange is subject to a favourable tax rate of 0.1 per cent (with an additional 0.5 per cent founder tax). Another common exit strategy would be the sale of investment instruments (eg, shares, warrants, convertible bonds, etc) in the offshore holding company (which normally resides in a low tax jurisdiction).

Selling restrictions and investors generally

24 Legal and regulatory restrictions

Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

The negative list restriction factors, as mentioned in question 8, should be considered in the offer and sale of interests. In addition, funds sold or transferred to any investors must be registered or notified to the MOLHR.

However, the restriction on the negative list may be anticipated by gaining capital from other sources such as venture capital whose business activities are to conduct financing activities and capital participation in other companies.

Alternatively, the company can also make an investment through a stock exchange (capital market) since the capital participation publicly held company is deemed as a national investment, which is not subject to the negative list. In the event the offer of investment is made to more than 100 parties or sold to more than 50 parties or via mass media, the public offering procedures must be observed and it would be subject to mandatory disclosure, which covers all information regarding the issuer itself and the securities to be offered. The issuer must also submit a registration statement in the Indonesian language to the OJK.

25 Types of investor

Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

Pursuant to the Investment Law, domestic investors and foreign investors who make investments in the form of a PT are prohibited from entering into an agreement or making a statement asserting that share ownership in a PT is for and in the name of another person (nominee arrangement). If nominee arrangements must be made (normally if investors wish to circumvent the foreign ownership restriction), they should be very carefully structured to avoid possible arguments of violation of Indonesian laws and regulations on foreign investment.

26 Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

Every change in the ownership, board of directors or board of commissioners of a PT (including a PT that engages in private equity funds) must be reported or notified to the MOLHR. This is an administrative requirement that does not affect the validity of such changes.

As for mutual funds, there is no specific requirement to notify government agencies on the identity of investors. However any changes to composition portfolios and management control are subject to disclosure requirement and approval from the OJK.

Specifically for VCCs, changes regarding companies' organisational structure, business activities or address must be submitted to the OJK within the following period:

- 15 days after any changes to a company's organisational structure have been approved or administered by the MOLHR;
- 10 days after any changes made to a company's address (headquarters or branch offices); and
- each time a company intends to engage in a new type of business activity.

The company is also required to submit a self-assessment report that covers the implementation of good corporate governance principles and this report must be finished by the end of the fiscal year and submitted no later than 30 April of each year to the OJK.

27 Licences and registrations

Does your jurisdiction require that the person offering interests in a private equity fund have any licences or registrations?

Generally in direct investment, there is no need for the person offering interests in a private equity fund to have a licence or registration. However, when a transaction is conducted in the capital market area, the person must have a licence and be recognised by the OJK.

28 Money laundering

Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

Pursuant to the Anti-Money Laundering Law, any entity (including a private equity fund) is obliged to report to the relevant authority (in this case the Centre for Financial Transaction Reporting and Analysis (PPATK)) if there are any suspicious or unusual transactions. The report may be in the form of records, disclosure of identities, etc. After reporting, the PPATK will take further action and may request additional information.

Exchange listing

29 Listing

Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

Private equity funds in the form a PT or mutual funds may be listed on a stock exchange and become a publicly held company or exchange traded funds. The advantage of being a publicly held company is that the liquidity of capital can be increased as it attracts retails investment.

However, the disadvantage of being a publicly held company is the relative expense of maintaining it as it becomes subject to various capital market compliance requirements (eg, disclosure requirements) before entering into particular transactions.

The principal initial and ongoing requirement for listing is by submitting a registration statement to the OJK along with supporting documents. Afterwards, the company must conduct an IPO to sell its shares to the public in a stock exchange.

30 Restriction on transfers of interests

To what extent can a listed fund restrict transfers of its interests?

Generally, there is no prohibition on any party making certain restrictions; however, if the listed fund is an exchange traded fund, interest in such funds can be freely transferred to any investor.

Participation in private equity transactions

31 Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

Some of the regulatory restrictions are, among others, as follows:

- any agreement with an Indonesian party would need to be translated pursuant to article 31 of Law No. 24 of 2009 (the Law on Flag, Language, Emblem, and National Anthem);
- Law No. 13 of 2003 (the Labour Law) contains provisions that give the right of employees to terminate their employment and ask for severance payment in the case of change of control;
- article 28 of Law No. 5 of 1999 (the Anti-Monopoly Law) provides that some joint ventures may be subject to mandatory merger control requirements; and

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- Bank Indonesia Regulation No. 17/3/PBI/2015 provides that the rupiah must be used in certain cash and non-cash transactions occurring in the territory of Indonesia, apart from certain exempted transactions.

32 Compensation and profit-sharing

Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

If the private equity fund is set up in Indonesia, the sponsor's ability to take profit from the fund may be in the form of management or transaction fees or a bonus that may be subject to transfer pricing regulations and a debt-to-equity ratio. The interest payment to the sponsor having control over the fund may also be constructed as dividend payment. The dividend payment (annual or interim) from a PT should observe the 20 per cent mandatory reserve as required by the Company Law.

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