Private Equity

Contributing editor
Bill Curbow

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GETTING THE DEAL THROUGH

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Private Equity 2018

Contributing editor

Bill Curbow

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Preface

Private Equity 2018
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

London
February 2018

Indonesia

Freddy Karyadi and Mahatma Hadhi
Ali Budiardjo, Nugroho, Reksodiputro

1 Types of private equity transactions

What different types of private equity transactions occur in your jurisdiction? What structures are commonly used in private equity investments and acquisitions?

Indonesia's private equity market is relatively small compared to the more developed markets of China and India. The private equity capital is also relatively low relative to the country's overall economy and the size of the stock market.

Private equity transactions in Indonesia commonly utilise mezzanine debt instruments, convertible debt instruments and equity purchase, as well as financing based on profit or revenue sharing.

2 Corporate governance rules

What are the implications of corporate governance rules for private equity transactions? Are there any advantages to going private in leveraged buyout or similar transactions? What are the effects of corporate governance rules on companies that, following a private equity transaction, remain or later become public companies?

Indonesian law does not recognise specific corporate governance rules for private equity business activities. Law No. 40 of 2007 on the Limited Liability Company (the Company Law) has guidelines relating to corporate governance in general. Corporate governance rules are only mandatorily adopted in certain sectors, particularly commercial banking, financial services, publicly listed companies and also for state-owned entities. Therefore, since it is not generally applicable for all sectors, a private equity company may adopt its own corporate governance rules which should be in line with the Company Law and it may be attractive to investors and can increase the accountability of the fund management once the company becomes a public company.

3 Issues facing public company boards

What are some of the issues facing boards of directors of public companies considering entering into a going-private or private equity transaction? What procedural safeguards, if any, may boards of directors of public companies use when considering such a transaction? What is the role of a special committee in such a transaction where senior management, members of the board or significant shareholders are participating or have an interest in the transaction?

There is a high bar to clear to complete a 'going-private' process (ie, where the intention is to no longer be a public company and no longer be subject to various capital market regulations) and the capital market authority is generally reluctant to allow delisting.

In many cases of voluntary delisting, the delisting is carried out with a going-private plan. The decision of the Jakarta Stock Exchange (currently known as the Indonesian Stock Exchange) No. 1-1 on the Delisting and Relisting of Shares in the Stock Exchange provides that to delist its shares to the stock exchange, a company must obtain an approval from its general meeting of shareholders (GMS). In cases where companies delisted and went private (eg, PT Bank Ekonomi Raharja, PT Merck Sharp Dohme Pharma and PT Unitex), they were required by Indonesia's capital market regulator, the Financial Service Authority (OJK), to achieve an approval from a quorum of at least 75 per cent attendance of total independent shareholders and simple majority approval of the independent shareholders.

Regulation No. 1-1 also requires the company or other party to purchase all shares of shareholders who reject the approval for delisting at the minimum price as stipulated in the regulation.

In addition, an extensive disclosure requirement, tender offer of the remaining shares and stock exchange rules with respect to delisting would need to be followed. In practice, public-to-private transactions are not common in Indonesia.

4 Disclosure issues

Are there heightened disclosure issues in connection with going-private transactions or other private equity transactions?

A public company that intends to go private must first submit a letter to the OJK, with a copy going to the stock exchange, regarding its intention and its reason for doing so.

The going-private process can potentially be deemed as a conflict-of-interest transaction, in which case it requires the relevant parties to follow procedures regulated under Regulation No. IX.E.1 on Affiliated Transaction and Conflict of Interest of Certain Transaction attached to the Decision of the Chairman of Bapepam (now the OJK) No. KEP-412/BL/2009 (Regulation IX.E.1). Such procedures are, among other things, to obtain the approval of independent shareholders and an independent party rendering an independent opinion. After all of the procedures are complied with, the going-private process must follow OJK Regulation No. 54/POJK.04/2015 dated 23 December 2015 on Voluntary Tender Offers.

Based on Law No. 8 of 1995 on Capital Market, and its implementing regulations on disclosure of information (OJK Regulation No. 31/POJK.04/2015 dated 16 December 2015 on Disclosure of Information or Material Fact by Issuer or Public Company), the public company must report to the OJK and publicly announce its decision to go private within two business days as of the material fact that the decision has been made.

Once the company has changed its status from public to private, article 62 of Company Law will apply to the public shareholders who do not want to sell their shares through a tender offer. The company must buy their shares at par value. This requires dissenting shareholders to be bought out after a resolution of a general meeting of shareholders.

Conflict of interest

In order to go private, a public company must comply with Regulation IX.E.1, which defines a conflict of interest as 'the difference between the company's economic interests and the economic interests of its directors, commissioners, main shareholders or affiliates'.

The public company must obtain independent shareholder approval in a general shareholders' meeting and must provide the following, among other items:

- a description of the transaction including the following:
  - the transaction to be undertaken (ie, to go private);
  - the value of the transaction;

  - the names of the parties conducting the transaction and their relationship with the company; and
  - the nature of the conflict of interest of the parties involved in the transaction;
- a summary of the appraiser's report including the following:
  - the identity of the parties;
  - the valuation object;
  - the purpose of the valuation;
  - the assumption;
  - the approach and valuation method;
  - the concluded value; and
  - the opinion on the fairness of the transaction;
- a description of the general meeting of shareholders planned to be held if the required quorum of attendance by independent shareholders is not achieved at the first meeting, a statement on eligibility to vote on the proposed transactions and the required favourable votes at each meeting;
- explanations, considerations and reasons for the transaction to be conducted compared to a similar transaction that does not have a conflict of interest;
- a plan and data of the public company;
- a statement from the board of commissioners and the board of directors stating that all material information has been disclosed and the information is not misleading; and
- a summary or expert and independent consultation, if required by the OJK.

Generally, the GMS must be attended by more than 50 per cent of independent shareholders, and approved by more than 50 per cent of all shares held by the independent shareholders.

Tender offer

As part of the going-private process, the OJK requires the controlling shareholders to undertake a tender offer to buy out the public shareholders as stipulated under Regulation IX.F.1, which defines the term as 'an offer through mass media to acquire equity-linked securities (eg, shares) by purchasing or exchanging with other securities'.

Announcements

A party conducting a tender offer must announce its intention in at least two Indonesian-language newspapers, one with national circulation. The tender offer statement must comprise the following:

- the name and address of the target company;
- a detailed description of the shares that will be the object of the tender offer, comprising the following:
  - the price of the tender offer;
  - the time and date the tender offer will be conducted; and
  - the procedure of tender offer;
- requirements and conditions of the tender offer;
- the name of the stock exchange where the shares are traded;
- the calculation result of the price of the shares;
- the name, address and nationality of the offeror and its affiliation in relation to the tender offer and notification on whether any of the following relate to the offeror:
  - if he or she has ever been declared bankrupt;
  - if she or she has ever been a director or a commissioner guilty of causing a company to go bankrupt;
  - if he or she has been convicted of a financial crime; or
  - if he or she has been ordered by the court or any other authorised agency to stop activities in relation to the shares;
- the description on the relationship, contract and material transaction between the public company and its affiliations during the previous three years, for example, the following:
  - sale and purchase contracts;
  - agency relationship; and
  - management relationship;
- a statement from the offeror on the availability of sufficient funds to complete the tender offer supported by the opinion of the accountant, bank and securities company;
- a statement on the purpose of the tender offer and the plan for the company after the tender offer is conducted, including the plan to change the capitalisation structure, dividend policy and change of management;
- a description on the amount and percentage of shares owned directly or indirectly by the offeror including the option to buy or the right over dividends and other benefits and the power of attorney to vote in the GMS;
- a list of names and addresses of parties that receives a reward from the offeror in relation to the offer; and
- other material information.

Purchase price

Regulation IX.F.1 explicitly provides that the purchase price offered in the tender offer must be higher than the following:

- the highest tender offer price submitted by the same offeror during the 180 days prior to the date of announcement;
- if the tender offer is addressed to shares listed and traded on the stock exchange, the average highest daily market price in the stock exchange during the 90 days before the date of announcement;
- if the shares are not traded in the stock exchange during the 90 days before the date of announcement, the average highest daily market price in the stock exchange during the 12 months leading up to the shares' last day of trading; and
- if the tender offer is addressed to shares that are not listed in the stock exchange, a reasonable price decided by the appraiser.

If the board of directors or board of commissioners of the company undergoing the going-private process know, or have sufficient reason to believe, that the information stated in the tender offer is incorrect or misleading, then the company is obliged to make an announcement relating to its objection on the tender offer statement. The announcement must be made in at least two newspapers, one with a national circulation, at least 15 days prior to the end of tender offer period.

The offeror (ie, the controlling shareholder) is prohibited to buy or sell the offered equity-linked securities within 15 calendar days before the announcement of the tender offer plan, up to the end of the tender offer period.

From the date of the announcement of the tender offer plan up to the end of the tender offer period, the target company must not conduct any transactions aiming to prevent the change of the controlling party of the target company (as a result of the execution of the tender offer).

See also question 3.

5 Timing considerations

What are the timing considerations for a going-private or other private equity transaction?

Taking into account shareholders' meetings, tender offer processes, appraisal reports, conflict of interest disclosure and compliance and crossing via the stock exchange, a going-private transaction takes roughly around eight to nine months.

For private equity transactions, the rough timing would be around four to five months for equity and around three to four months for debt.

6 Dissenting shareholders' rights

What rights do shareholders have to dissent or object to a going-private transaction? How do acquirers address the risks associated with shareholder dissent?

See question 4.

7 Purchase agreements

What notable purchase agreement provisions are specific to private equity transactions?

In order to keep up with the international standard, the following are the features that are frequently included in the governance agreement of private equity investments in Indonesia:

- conditions precedent for closing to ensure delivery of various original documents and corporate approvals are complete;
- representation, warranties and indemnities from the target company and seller in connection with the following:
  - due incorporation;
  - title warranties of shares; and

- constitutional documents, registers, books and records. If the investor requests more, these may be expanded to include the following:
  - financial warranties;
  - financial indebtedness;
  - real property and leases (if applicable);
  - assets;
  - material contracts;
  - employees;
  - dispute proceedings;
  - tax warranties; and
  - anti-bribery or anti-corruption;
- covenants (positive) relating to various outstanding documents, actions, performances from the seller. Sometimes these may also be mentioned in the conditions subsequent;
- covenants (negative) relating to restriction to the seller such as non-solicitation, non-competition, non-disclosure, etc; and
- indemnity for non-compliance before closing.

In relation to tax, the seller provides certain representations and warranties to the purchase in relation to the condition of the stock or business asset, such as the following:

- the seller or the target company has paid all of its tax obligation to the government as of the execution date of the agreement and will provide the purchaser with a list of outstanding tax obligations that may incur in the future;
- in the event that, after the closing date, the result of the tax correction made by the authorised agency appears to be beyond the reasonable tax propriety, the seller agrees and binds itself to bear all of the payments in connection to such tax correction provided that such tax correction is resulted from the transaction completed by the target company prior to the closing date;
- the seller or the target company has made all returns, given all notices and submitted all computations, accounts or other information required to be made, given or submitted to any tax authority in accordance with the law and all such returns and other documentation were and are true, complete and accurate; and
- the seller or the target company has not carried out, been party to or otherwise been involved in any transaction where the sole purpose was the unlawful avoidance of tax or unlawfully obtaining a tax advantage.

In addition to this, the purchaser could also add a tax covenant from the seller to the purchaser as a schedule to the agreement. Aside from the representations and warranties clause itself, indemnity or the payment for misrepresentation or incorrect warranties is usually also regulated under the agreement. The parties to the agreement can state a certain amount of money as a remedy for such representations or incorrect warranties.

8 Participation of target company management

How can management of the target company participate in a going-private transaction? What are the principal executive compensation issues? Are there timing considerations for when a private equity buyer should discuss management participation following the completion of a going-private transaction?

Normally, the management of a target company is rather passive in a going-private transaction as the transaction is initiated by the controlling shareholder (or new controlling shareholder). In Indonesia, the principal executive compensation during the going-private transaction is generally not a major issue as unlike management of public companies in certain jurisdictions, the outstanding stock option for management would be minimal. The timing consideration is also an immaterial issue.

9 Tax issues

What are some of the basic tax issues involved in private equity transactions? Give details regarding the tax status of a target, deductibility of interest based on the form of financing and tax issues related to executive compensation. Can share acquisitions be classified as asset acquisitions for tax purposes?

Normally the target is an Indonesian corporate tax resident that is subject to 25 per cent corporate income tax. The income tax is generally imposed upon the net profit (the revenue less allowable deductible expenses relating to generating taxable income including interest).

Interest tax relief for acquisitions can be obtained if the acquisition would result in the acquirer owning under 25 per cent in shares of the target company. However, the withholding of taxes on interest payment cannot be easily avoided. The debt to equity ratio (generally at 4:1) should also be observed in order to enable the interest relief to be obtained.

With regard to tax issues related to executive compensation, basically the compensation is treated as normal taxable income (the individual income tax rate is progressive from 5 per cent up to 30 per cent) when all conditions to receiving the compensation are met.

Share acquisition could not be classified as asset acquisitions for tax purposes.

10 Debt financing structures

What types of debt are typically used to finance going-private or private equity transactions? What issues are raised by existing indebtedness of a potential target of a private equity transaction? Are there any financial assistance, margin loan or other restrictions in your jurisdiction on the use of debt financing or granting of security interests?

Utilisation of debt is normally in the form of convertible bonds or loan plus warrants, which have a feature that may offer an alternative to an investor wishing to invest in a sector where certain equity limitations are imposed upon foreign ownership or to erode some of the investor's profits. The main issues would relate to the debt to equity ratio, security sharing, cross default and payment waterfall.

Any financial assistance offered by the company would be analysed from the prism of the ultra vires and corporate benefit limitations (ie, whether such financial assistance goes beyond the scope of the object and purpose of the company and whether such assistance benefits the company). Indonesian commercial banks are generally prohibited from providing loans to purchase shares for speculative purposes.

With regard to foreign offshore loans, Bank Indonesia imposes an obligation to apply the prudential principle for non-banking corporations. This prudential principle requires non-banking corporations to comply with the mandatory hedging ratio, liquidity ratio and credit rating. Although there are certain exemptions, in general, this policy creates a hurdle for using debt to finance going-private or private equity transactions.

11 Debt and equity financing provisions

What provisions relating to debt and equity financing are typically found in going-private transaction purchase agreements? What other documents typically set out the financing arrangements?

Normally, the Asia Pacific Loan Market Association standard for facility agreement would be used as a reference for financing documentation. Standard provisions in the financing documentation would include definition, interpretation, purpose of the loan, conditions precedent to drawdown, events of default, collateral, representations and warranties, covenants, boiler plate provisions (notices, dispute resolutions, governing law, severability, language, etc) and countersign mechanism.

See also question 7.

12 Fraudulent conveyance and other bankruptcy issues

Do private equity transactions involving leverage raise 'fraudulent conveyance' or other bankruptcy issues? How are these issues typically handled in a going-private transaction?

The fraudulent conveyance would normally appear where the debt of the new controlling shareholder (which is used to finance the acquisition) is pushed down to the target company, which most of the existing creditors of the target company would object to. In the majority of such cases, the target and new controlling shareholder will re-negotiate with the existing lenders of the target and offer some sweetener to them (such as additional collateral, guarantee, etc). Furthermore, if the transfer of debt occurs within one year before the company's bankruptcy, such transfer of debt can be nullified if it is considered detrimental to the existing creditors on the basis of Indonesian fraudulent conveyance laws as stipulated under articles 41 and 42 of the Indonesian Bankruptcy Law and articles 1341 and 1454 of the Indonesian Civil Code.

Private equity firms may also invest in a special situation target (ie, a target facing financial difficulties, which may cause insolvency or substantial debt restructuring) to get the best price for its investment.

13 Shareholders' agreements and shareholder rights

What are the key provisions in shareholders' agreements entered into in connection with minority investments or investments made by two or more private equity firms? Are there any statutory or other legal protections for minority shareholders?

The shareholders' agreements cover the agreed features between the shareholders (although sometimes the company signs and acknowledges this). The negotiable points commonly include the following:

- the shareholders' rights to nominate the members of the board of directors and board of commissioners;
- quorum and voting requirements for the GMS;
- details of reserved matters;
- pre-emptive rights and shareholders' loans;
- certain restrictions on the transfer of shares of the company (eg, rights of first refusal, rights to match, tag-along, drag-along, change of control, etc); and
- dispute resolutions (Mexican stand-off, Russian roulette, etc).

Indonesian company law provides certain protection to minority shareholders (depending on the shareholding percentage). The protection may include the following:

- rights to access the company's books;
- rights to request his or her shares to be bought back;
- rights to veto on certain corporate actions such as merger, liquidation, change of constitutional documents and disposal of material assets;
- rights to file court claims for damages against directors or commissioners;
- rights to seek dissolution of the company;
- rights calling a meeting of shareholders; and
- pre-emptive rights, etc.

14 Acquisitions of controlling stakes

Are there any legal requirements that may impact the ability of a private equity firm to acquire control of a public or private company?

There are several procedures under the Company Law that must be observed in the event of acquisition. The takeover or acquisition of a controlling interest in any Indonesian company must be approved by its shareholders, be published in an Indonesian newspaper and requires settlement of objections that creditors may have. An abridged acquisition plan must be published in a newspaper and submitted to all employees. A complicated objection procedure applies: any creditor (which may include employees) may file objections to the board of directors, but if these are not settled they must be submitted to the shareholders' meeting that must approve the acquisition.

Further to the above, according to Government Regulation No. 57 of 2010 on Merger, Consolidation of Business Entity and Acquisition of Shares which may cause Monopoly Practice and Unfair Business Competition, there are certain reporting requirements for an acquisition (and subscription of shares) that results in a change of control of an Indonesian company (if certain thresholds are met).

In addition, as mentioned in question 5, investment in certain sectors (such as banking, insurance and finance) require prior approval from the relevant government authorities.

An approval from the Investment Coordinating Board would also be required in the case of direct investment by a foreign investor. This approval is commonly granted by taking into account the negative list, which is a list issued by the Indonesian government classifying business activities that are entirely closed or open for investment with certain conditions,for example, the following:

- limitations on foreign ownership;
- requirements for local partnership;
- limited permitted locations; and
- requirements of special licences or recommendation.

The position of listed companies and foreign ownership rules has been in a state of change for the past few years. Recently, based on BKPM Regulation No. 13 of 2017 concerning the Guidance and Procedures of Investment Licensing (Regulation 13/2017), which became effective on 2 January 2018, if a foreign investor purchases shares of a domestic investment company that has listed its shares in the Indonesian stock exchange, resulting in the name of said foreign investor being stated in the deed of such domestic investment company, then the legal status of such domestic investment company shall be changed into a foreign investment company. In practice, there are a number of precedents where publicly listed companies with a foreign shareholding (either directly or indirectly and non-portfolio) exceed the limitations set out under the negative list.

The source of funds to finance the investment can be from equity or a combination of equity and loan. A foreign direct investment is required to have the following:

- a minimum total investment (excluding land and buildings) of 10 billion rupiah;
- a minimum issued and paid-up capital of 2.5 billion rupiah; and
- a minimum share participation of a shareholder of 10 million rupiah.

Additional rules apply to public companies. Pursuant to Rule No. IX.H.1 on Public Company Acquisition, as attached to the Decree of Chairman of Bapepam-LK No. KEP-264/BL/2011 dated 31 May 2011, the transfer of shares of a public company leading to an acquisition results in the new controller having the following obligations:

- make an announcement to the public in at least one Indonesian daily newspaper with national circulation and notify the OJK at least one business day after the takeover (the takeover announcement), which, according to item 3.a.1 of Rule IX.H.1 includes the following information:
  - the total number of shares that have been acquired and total number of the new controller's shares;
  - the new controller's identity including name, address, contact details, line of business (if any) and the objective of the control; and
  - a statement declaring that the new controller is an organised group (only relevant if the new controller falls under the organised group definition);
- submit evidence of the daily newspaper announcement to the OJK within two business days of the date of the announcement;
- conduct a mandatory tender offer (MTO), according to item 3.a.2 of Rule IX.H.1. This MTO must extend to the shares owned by all shareholders other than those owned by the following:
  - any shareholder that has taken part in the takeover transaction with the new controller;
  - any other person that has already received an offer from the new controller with the same terms and conditions;
  - any other person who, at the same time, is making either an MTO or voluntary tender offer for the target company shares;
  - the 'primary shareholder'; and
  - another controller of the target company; and
- submit a report to the OJK and a public announcement on the acquisition, as required under OJK Regulation No. 31/POJK/04/2015 on Disclosure of Information or Material Facts By Public Listed Companies.

15 Exit strategies

What are the key limitations on the ability of a private equity firm to sell its stake in a portfolio company or conduct an IPO of a portfolio company? In connection with a sale of a portfolio company, how do private equity firms typically address any post-closing recourse for the benefit of a strategic or private equity buyer?

Indonesia's capital market regulator has mandated minimum free float requirements (ie, the total number of shares owned by 'non-controlling shareholders' and 'non-substantial shareholders') at IPO of between 10 and 20 per cent.

If the investor contemplates an exit by way of the sale of shares in a stock exchange in Indonesia (for example, via the Indonesia Stock Exchange (IDX)), this sale would be taxed at a favourable rate (0.1 per cent of the sales proceeds amount (plus 0.5 per cent 'founder' tax)).

The other limitation is a lock-up for the founder meeting certain conditions (see question 16).

In relation to the sale of a portfolio company, private equity firms typically address any post-closing recourse for the benefit of a strategic or private equity buyer via a put option, management seat control and certain conditions for qualifying IPO situations.

The exit also can be structured by IPO at offshore level depending on the commercial consideration and tax treatment.

16 Portfolio company IPOs

What governance rights and other shareholders' rights and restrictions typically survive an IPO? What types of lock-up restrictions typically apply in connection with an IPO? What are common methods for private equity sponsors to dispose of their stock in a portfolio company following its IPO?

Generally, other than rights of first refusal, most governance rights and other shareholders' rights and restrictions typically survive an IPO. The public company would be subject to various additional good corporate governance obligations such as ensuring the presence of an independent commissioner and director, audit committee and other committee, corporate secretary, etc.

Post-IPO, OJK regulations require an adjustment towards the newly listed company's articles of association to conform to the requirements under the regulations. The shareholders' agreements may state that its terms will survive post-IPO, however, in the event of conflicting provisions between the articles of association and the shareholders' agreement, Indonesia's courts would generally give credence to the articles rather than the terms of the shareholders' agreement. Thus, in the case of a dispute, the investors' rights under the shareholders' agreement would be enforced under contract law, rather than under the Company Law, and depending upon its governing law, often at a venue outside of Indonesia's court system. These foreign court judgments, however, cannot be enforced directly in Indonesia.

For this reason, the preferred dispute resolution mechanism in a contract involving a foreign investor is to utilise arbitration in an internationally recognised arbitration venue. Singapore is the most prominent venue, and arbitration conducted there would adopt the rules of the Singapore International Arbitration Centre. Another alternative dispute resolution mechanism is the Indonesian National Arbitration Board.

If a foreign investor successfully obtains an arbitral award offshore, enforcement against the Indonesian party requires registration and enforcement of the award through the Indonesian courts. In practice, it is rarely possible to obtain an injunction or other forms of specific performance against an Indonesian party in Indonesia. In general, awards of damages against an Indonesian party is the best outcome one can expect for a breach of contracts action.

Furthermore, a party that acquires shares or other equity securities from issuers with a price, conversion value or executing price below the IPO price during the six months prior to submission of a registration statement to the OJK, is prohibited from transferring some or all ownership of the shares and the other equity securities until eight months after the effectiveness of the registration statement.

An exit is typically done by way of public offering of stock in the local stock market (eg, IDX).

17 Target companies and industries

What types of companies or industries have typically been the targets of going-private transactions? Has there been any change in focus in recent years? Do industry-specific regulatory schemes limit the potential targets of private equity firms?

There is no particular industry that has been the target of going-private transactions. However, several sectors in Indonesia remain attractive for private equity investment, including IT and internet-based industry, consumer, healthcare, banking and financial services, oil and gas and mining.

Investment in certain industries may require prior approval, licensing or notification.

18 Cross-border transactions

What are the issues unique to structuring and financing a cross-border going-private or private equity transaction?

The investment structures adopted in cross-border private equity transactions in Indonesia are mostly shaped by the relevant business fields of the target, because of restrictions imposed by the negative list. This causes various structures to be explored, such as synthetic equity or quasi equity before the target goes public, venture capital structure, backdoor listings, mutual funds, back-to-back loans, etc.

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19 Club and group deals

What are some of the key considerations when more than one private equity firm, or one or more private equity firms and a strategic partner or other equity co-investor is participating in a deal?

When more than one private equity firm (including strategic partner or other equity co-investor) participates in a club or group deal, the value that each private equity firm can bring to the table and whether such values complement one another must be a consideration of the deal. The value is not limited to the amount of investment but also other contributions such as products or services marketing.

A club arrangement is often contemplated in a master investment or consortium agreement, which provides sharing of costs and returns, exclusivity and decision-making between investors.

20 Issues related to certainty of closing

What are the key issues that arise between a seller and a private equity buyer related to certainty of closing? How are these issues typically resolved?

The key issues that arise between a seller and a private equity buyer related to certainty of closing are normally related to valuation, fulfilment of conditions precedent, compromised control sharing and exit strategy. The discussions between the parties throughout all stages of negotiation are essential in agreeing the key terms and in avoiding any of the parties losing face.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
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