PANORAMIC

FINANCIAL SERVICES M&A 2024

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LEXOLOGY

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Quick reference guide enabling side-by-side comparison of local insights, includinginto the market and policy climate; key legislation; required regulatory consents and filings; ownership restrictions; directors and officers' issues; foreign investment restrictions; competition law and merger control issues; deal structures and strategic considerations; tax; ESG, public relations, political and policy risk management; shareholder activism; due diligence, including in relation to emerging technologies; pricing and financing; purchase price adjustments; deal terms (including reps and warranties, indemnities and closing conditions); dispute resolution; and current trends.

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Indonesia

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ABNR

Summary

MARKET AND POLICY CLIMATE

Market climate

1 How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

During 2023, M&A activities increased to some extent, including financial services M&A transactions. The majority of financial services M&A transactions in Indonesia were led by both foreign and domestic investors.

No information is publicly available on the total number and deal volume of M&A activity in the financial services sector. However, according to the Financial Services Authority (OJK) report for the third quarter of 2023, OJK received a total of 18 applications in non-banking financial institutions, and eight of these were completed.

The above data includes inbound and outbound M&A transactions. However, it can be assumed that the actual number of M&A transactions in Indonesia was greater than notified to the Indonesian competition authority (KPPU).

In addition, ABNR assisted the following major financial services M&A transactions:

- an 80 per cent interest in PT Batavia Prosperindo Finance Tbk by Woori Card Co Ltd;
- an 80 per cent interest in PT Tifa Finance Tbk by the Korea Development Bank;
- an 80 per cent interest in PT Finansia Multi Finance by KB Kookmin Card Corp;
- acquisition by Industrial Bank of Korea (IBK) and subsequent merger of PT Bank Agris Tbk and PT Bank Mitraniaga Tbk to become PT Bank IBK Indonesia Tbk;
- acquisition by APRO Financial Ltd and subsequent merger of Indonesian publicly listed lenders PT Bank Dinar Tbk and PT Bank Oke Indonesia; and
- acquisition by Shinhan Bank Co Ltd and subsequent merger of PT Bank Metro Express and PT Centratama Nasional to become PT Bank Shinhan Indonesia.

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

Government policy has been to strengthen and create a conducive investment climate for M&A activity in the financial services sector. On 12 January 2023, Law No. 4 of 2023 on Financial Sector Development and Reinforcement, dubbed the Omnibus Law for the Financial Sector (Omnibus Financial Law) was enacted. This law serves as an omnibus law for all legislation related to the financial sector in Indonesia.

Further, a set of regulations, including for the banking and financial institutions sector, has also been issued by the authorities to provide greater certainty for financial institutions, investors and related parties.

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 | What primary laws govern financial services M&A transactions in your jurisdiction?

The financial services sector comprises three main subsectors:

- banking;
- non-banking financial institutions, including insurance, pension funds, securities companies, multi-finance companies, venture capital companies and other financial institutions; and
- capital markets, including securities companies, securities brokers and asset management companies, to which regulations at national and sectoral level apply.

Within the context of M&A transactions, the provisions concern M&A procedures, shareholding requirements, capitalisation structure, foreign investment restriction, requirements for shareholders, reporting obligations, soundness levels and risk management, and fit and proper tests (FPTs) for controlling shareholders and members of the board of directors (BOD) and the board of commissioners (BOC).

For certain financial institutions (banking, insurance and capital markets), the provisions on M&A transactions are set out at both national (law and government regulations) and sectoral levels (Financial Services Authority (OJK) and other authority regulations). For other financial institutions, including multi-finance, venture capital companies, microfinance, fintech, peer-to-peer lending, equity crowdfunding, non-bank payment system providers and other financial institutions, the provisions on M&A transactions are set out at sectoral level (in OJK or Bank Indonesia (BI) regulations).

In addition, financial services M&A in the capital market sector must also comply with the procedures and requirements in capital market regulations issued by OJK, the Indonesian stock exchange, the Indonesian Clearing and Guarantee Corporation and the Indonesian Clearing and Guarantee Institution.

Regulatory consents and filings

4 | What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

In accordance with the applicable laws and regulations in financial services, the following are typical approvals required for financial services M&A transactions:

- approval of the acquisition plan by the BOD and BOC of the target company;
- approval by creditors or interested parties (if applicable);
- approval by a general meeting of shareholders (GMS) of the target company;
- corporate approval of the acquirer (if applicable);
- approval by the relevant financial services authorities in the jurisdiction of the foreign acquirer (if applicable);
- OJK approval on the proposed M&A transaction and an FPT of the prospective controlling shareholder(s) (PSP). A PSP is defined as an individual, legal entity or a group of companies that owns 25 per cent or more of the issued shares with voting rights or owns less than 25 per cent of the issued shares with voting rights but exert direct or indirect control over the financial services institution; and
- if the target company is publicly listed, it must also comply with the procedures under the capital market regulations.

The approvals above are required for a financial services M&A transaction regardless of the deal structure.

Ownership restrictions

5 | Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

There are specific requirements on the types of entity and individuals that are wholly or partly permitted to own financial institutions in Indonesia, depending on the financial institution concerned.

Specifically, for the banking sector (commercial banks), OJK Regulation No. 56/POJK.03/2016 on Share in a Commercial Bank (the Bank Share Ownership Regulation) sets out maximum shareholdings for:

- banks or other non-banking financial institutions: 40 per cent of the bank's capital;
- an individual non-financial legal entity: 30 per cent of the bank's capital; and
- individual shareholders: 20 per cent of the bank's capital (25 per cent of a sharia's bank capital).

However, these limitations do not apply to banks that had existing shareholders above the thresholds before the issuance of the Bank Share Ownership Regulation, as long as the bank has a health rating of 1 or 2. This exception is voided should any of the following occur:

- the bank's health rating deteriorates to level 3, 4 or 5 for three consecutive assessment periods; or
- a shareholder above the threshold voluntarily sells its shares to another party.

Should either of the above occur, the bank must adjust its shareholding composition to conform with the share ownership limits under the Bank Share Ownership Regulation.

In addition, the above limits are not applicable to:

- central government; and
- institutions functioning to manage or salvage the bank from insolvency.

For non-banking financial institutions, certain requirements apply, depending on their type. For example, the majority of the shares in insurance companies must be held by an insurance company with similar business, or by a parent company, one of whose subsidiary companies is engaged in a similar insurance business sector. Further, foreign ownership in insurance and multi-finance companies by foreign individuals can only be undertaken via transactions in the securities exchange.

Directors and officers – restrictions

6 Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

Directors and commissioners of a financial institution must undergo FPT approval by OJK. During the FPT process, OJK will assess various aspects of applicant directors or commissioners, which includes their integrity, financial reputation and competence. A director or commissioner applicant must also have experience in banking or non-banking financial services institutions or another relevant sector, proven by:

- relevant experience at a non-banking financial services institution; or
- experience in a position relevant to the assignment or employment plan of the party concerned.

Depending on the type of the financial institution and its requirements, the director or commissioner may be either an Indonesian or foreign citizen, except for certain positions that cannot be occupied by foreigners. All directors must reside in Indonesia, and requirements on the composition and position of BOD and BOC members also apply.

Specific personnel or officials of each financial institution are subject to OJK rules and regulations, and those of the professional association concerned.

Directors and officers – liabilities and legal duties

7 What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

In respect of directors and officials, Indonesian law on limited liability companies provides for a mandatory two-tier management system comprising a BOD and BOC. The BOD is fully responsible for management of the company. The primary duties of the BOC are to supervise the way the BOD discharges its management responsibilities and to advise the BOD.

Further, the articles of association (AoA) of a company typically require that decisions of the BOD require prior approval of the BOC or a GMS to limit the authority of the BOD over certain external matters of the company.

In the event of a potential financial services M&A transaction, the BOD and BOC of the target company and the prospective controller (if an Indonesian company) play a significant role in the implementation of an M&A transaction. As part of its management duties, the BOD must:

- ensure that the M&A transaction is in the interests of the company, in accordance with its AoA;
- ensure that the implementation of the M&A transaction complies with the applicable laws and AoA regulations; and
- deal with the prospective acquirer and the shareholders, and liaise with the consultant and authorities on the proposed M&A transaction. The BOC must supervise and provide advice and approval for financial services M&A transactions.

Foreign investment

8 What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

The foreign investment restriction would depend on specific financial services sectors. The following are the foreign investment restrictions on banking and non-banking financial institutions:

Financial services sector	**Maximum foreign investment**
Banking	99 per cent
Multi-finance	85 per cent, and no limitation applicable to a publicly listed multi-finance company
Venture capital company	85 per cent
Insurance company	80 per cent
Non-banking payment system providers	85 per cent, with 51 per cent of voting rights held by Indonesian shareholders
Peer-to-peer lending	85 per cent

Securities companies	85 per cent, with no limitation applicable to a publicly listed securities company

Generally, other than certain administrative requirements, there is no specific rule for acquirers based outside Indonesian jurisdiction. All applications are assessed in the same manner. If, as assessed by the financial services authorities, the application, the supporting documents necessary, and other requirements can be fulfilled by the prospective controllers, the financial services authorities will issue their approval.

Competition law and merger control

9 What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

A financial services M&A transaction may be subject to merger control notification as stipulated under Law No. 5 of 1999 on Monopolistic Practices and Unfair Business Competition, as amended by Law No. 6 of 2023 on Enactment of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation as a Law (Job Creation Law) (Indonesian Competition Law) and its implementing regulation, KPPU Regulation No. 3 of 2023 on the Assessment of Mergers and Consolidations of Undertakings or Acquisition of Shares in a Company that May Result in Monopolistic Practices and/or Unhealthy Competition (KPPU Reg. 3/2023), the details of which are further elaborated under Merger Control Guidelines issued on 6 October 2020 (the Merger Control Guidelines).

If a financial services M&A transaction fulfils certain criteria under the Indonesian Competition Law, KPPU Reg. 3/2019 and Merger Control Guidelines, it may be subject to mandatory merger notification to the KPPU.

Under the Competition Law, a company is required to report mergers and acquisitions to the KPPU, so long as the transaction meets the following thresholds (on a cumulative basis):

- The transaction resulted in a change of control. A change of control can be the result of a transfer of shares or voting rights above 50 per cent or actual control (ability to influence or direct the company's policy or management).
- The transaction meets the assets or sales thresholds:
  - combined Indonesian asset value of the acquirer, its ultimate parent entity (UPE), and all the controlled subsidiaries of the UPE; and the target and its controlled subsidiaries, exceed 2.5 trillion rupiah (approximately US$157 billion); or
  - combined Indonesian sales value of the acquirer, its UPE and all the controlled subsidiaries of the UPE; and the target and its controlled subsidiaries exceed 5 trillion rupiah (approximately US$314 billion).
- The transaction has nexus or direct impact on the Indonesian market. For nexus criteria in foreign-to-foreign transactions, this is amended from the previous *single nexus* to *dual nexus*. Hence, unlike in the previous regime where filing is required as

long as either party or its subsidiaries have sales or assets in Indonesia, now both parties (or their respective subsidiaries) must have sales or assets in Indonesia.

- The transaction is carried out between non-affiliated companies. If the transaction is conducted between affiliates, the transaction is exempt (regardless of whether all variables are met). A company is an affiliate of another if
  - it either directly or indirectly controls or is controlled by that company;
  - it and the other company, directly or indirectly, are controlled by the same parent company; or
  - there is a relationship as a 'main principal shareholder' (*pemegang saham utama*).

The transaction is not carried out to implement prevailing laws and regulations. This criterion is based on article 50 of the Indonesian Competition Law and restated in the Guidelines. The Guidelines do not provide any further details, but based on the territorial principle, it can be assumed that 'prevailing laws and regulations' are those prevailing in Indonesia.

The business entity has an obligation to notify KPPU when the merger or acquisition becomes effective. The business entity also has a right to consult with KPPU before the merger or acquisition becomes effective (pre-evaluation), under the condition that the company meets the threshold as mentioned above, but the notification must be submitted at the latest 30 business days from the date on which the merger or acquisition is effective.

KPPU has the authority to impose monetary fines from 1 billion to 25 billion rupiah per day of non-performance on a business entity that does not fulfil the applicable reporting obligations.

On a separate note, we highlight that the KPPU is now requiring the notifying party to pay a notification fee. The fee will be payable to the KPPU if it finds the transaction notifiable. However, the KPPU requires the notifying party to pay the maximum fee upfront and return the excess (if any) after the notification has been accepted by the KPPU. If the KPPU finds that the transaction is not notifiable, the fee will be fully reimbursed.

The value is calculated based on the following formula: 0.004 per cent × the value of assets or sales in excess of the notification threshold, whichever is lower.

The value of assets or sales is calculated based on the total asset or sales value of:

- the acquiring entity and the acquired entity; and
- the undertakings that are directly or indirectly controlled by the acquiring entity and the acquired entity.

The maximum fee for one filing is 150 million rupiah (approximately US$10,000) per filing, which must be paid upfront (any excess thereof will be returned by the KPPU after acceptance of the filing).

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

10 What structures are commonly used for financial services M&A transactions in your jurisdiction?

Share deals are used mainly for financial services M&A transactions in Indonesia, rather than asset deals. The structure for a share deal is either via purchase of the shares of the target company from existing shareholders (Option 1) or subscription to new shares issued by the company (Option 2).

The timeline, legal requirements, documentation and acquisition structure for the purchase of existing shares, and subscription to new shares, are much the same. An M&A transaction in a publicly listed company will take longer than for a non-listed company. Option 1 procedures are rather simple compared with those for Option 2.

In Option 1, a potential buyer may deal directly with existing shareholders on the proposed acquisition transaction; in Option 2, the potential acquirer must deal with the target company. In Option 1, there will be no change in the equity and capital of the target company, as the consideration for the purchase price goes to the seller; in Option 2, the target company will enhance its capital and equity as the injection of capital goes to the target company.

A merger is generally straightforward, and no particular structure is commonly used in a financial services merger. However, particularly for a banking M&A, the Financial Services Authority (OJK) implements a structure aimed at encouraging foreign investment in the Indonesian banking industry by allowing the normal 40 per cent foreign ownership cap in the banking sector to be bypassed by means of a three-stage process involving the acquisition by a foreign investor of two or more Indonesian banks and the subsequent merging of the acquired banks to form a new entity.

Time frame

11 What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

In general, it takes around nine to 12 months to complete a financial services M&A transaction. This is determined largely by the time spent on a due diligence investigation and negotiations over the transaction documents. A financial services M&A transaction will require prior approval from OJK, and the new controlling shareholder will also need to undergo an OJK fit and proper test (FPT). This may take around one to three months to complete upon the submission of complete documents and applications.

Tax

12 What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

In an M&A transaction, the investor will need to know not just the assets of the target company but all its liabilities, including for tax liabilities. The target company may be subject to an Indonesian tax authority audit that covers the five years from the filing of a tax return.

It is, therefore, crucial for an investor to carry out a thorough tax due diligence investigation on the target company and obtain extensive indemnities and warranties from the seller on its tax liabilities. The Indonesian tax authorities scrutinise the tax compliance of companies in Indonesia quite thoroughly, which can trigger an audit.

ESG and public relations

13 | How do the parties address the wider public relations issues in financial services M&A transactions ? Is environmental, social and governance (ESG) a significant factor?

There has been an increase in concern over the implementation of ESG in the financial sector, which has resulted in due diligence of M&A transactions focusing also on ESG factors and related attainment of targets.

From a regulatory perspective, the OJK has released its Sustainable Finance Roadmaps Phase I (2015–2019) and Phase II (2021–2025) as initial steps to increase financial institutions' awareness and capacity for ESG compliance. OJK also requires submission to it by financial services providers of a sustainable finance action plan or sustainability report.

Political and policy risks

14 | How do the parties address political and policy risks in financial services M&A transactions?

Most investors recognise that political and policy uncertainties in Indonesia may lead to drastic changes in rules and regulations. To mitigate the risks that might arise, it is common for an investor to include a condition precedent in an M&A transaction document related to a change in law that may impact implementation of the transaction. An investor would therefore have the flexibility to decide whether to conclude the transaction should a new policy or regulation not be favourable to the investor or the business.

Recent trends also include the use of representation and warranties insurance, which provides sellers with a 'cleaner' exit and investors with protection over and above breach indemnity typically included in a transaction document should a seller breach representation or warranties, including changes to political and policy risk that may materially impact completion of the transaction.

Shareholder activism

15 |

How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Indonesian law recognises and protects minority shareholder rights in an M&A transaction, in that a minority shareholder that does not approve the M&A transaction may require the company to purchase their shares at a reasonable price. Because under Indonesian company law a target is only allowed to buy back shares of up to 10 per cent of the total issued and paid-up capital of the target, the target might need to find a buyer (which could be the investor) to purchase the minority shareholder's unsold shares. However, conclusion of the share buyback will not halt the M&A process.

Despite the above, shareholder activism in financial services M&A transactions is not prevalent, especially for transactions that involve public companies where minority shareholders are relatively passive. However, when acquiring a publicly listed financial services company, the new controller is required to carry out a tender offer (for the existing public shares that remain, and which are not exempted from sale by the capital market rules).

Third-party consents and notifications

16 What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Aside from prior approval from the OJK, each M&A transaction will need to take into account the interest of the target company's creditors and employees, and for such purposes the company involved will need to announce the acquisition or merger plan in a newspaper.

If creditors do not object to the acquisition or merger within 30 days of the announcement, they will be deemed to have approved the transaction. However, if an objection is submitted by creditors, the transaction cannot be concluded until the objection is resolved by the company. If the acquisition or merger results in a change of the terms and conditions of employees, they will be entitled to seek termination of their employment and be entitled to a severance package as stipulated in the labour laws and regulations.

DUE DILIGENCE

Legal due diligence

17 What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

Since financial services are a heavily regulated sector in Indonesia, legal due diligence of a financial services M&A transaction involves extensive review. Apart from the corporate aspects of the target, which include the rights of the seller over the target's shares, the investor should also check compliance of the target with the requirements established by the prevailing financial sector laws and regulations (to ensure the target has obtained the required operating licence or permit, and whether it has submitted all activity reports required, including regulatory approval of products or services (where necessary).

A review of the target's material contracts is also important, to identify potential liabilities or associated risks. Other aspects typically examined during legal due diligence also include:

- entitlement over assets;
- IT and cooperation with an IT provider (if relevant);
- perfection of security on each loan provided to customers (as relevant); and
- existence of disputes that may have a material impact on the target.

Other due diligence

18 What other material due diligence is required or advised for financial services M&A transactions?

Financial and tax due diligence is also required to assess the soundness of the target and its business. The combination of legal, financial and tax due diligence will provide a complete overview of the financial state of health of the target and assess the efficiency of the structure for the proposed transaction.

Emerging technologies

19 Are there specific emerging technologies or practices that require additional diligence?

To date, no notable emerging technologies or practices in the financial sector require additional diligence, other than general due diligence, on the use of IT by the target to support their business and any cooperation arrangements entered into with IT providers.

PRICING AND FINANCING

Pricing

20 How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Apart from using the price to book value ratio, typically, the target's price will be based on multiples of EBITDA (earnings before interest, taxes, depreciation and amortisation) to assess the enterprise value of the target. The multiplication can vary depending on the size of the business, customer base (including its potential growth), interest rate, collectability of existing loan products, etc. In practice, collectability of loan products becomes a key factor in determining the enterprise value of the target.

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

Given that completion of financial services M&A transactions may take some time (6–9 months) and other events can occur from the execution of a conditional share purchase agreement until the closing date, purchasers tend to opt to incorporate adjustment of net value against the initial purchase consideration. The covid-19 pandemic has also given rise to a net value adjustment approach, as some target companies' assets have been affected by the economic slowdown and repayment liabilities for loans or financing.

Financing

22 | How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

The acquisition of shares is by way of a sale-and-purchase of shares agreement or capital injection in the financial sector typically funded by the acquirer's internal fund. The Financial Services Authority (OJK) banking division requires the new controller or acquirer to prepare and submit a statement in an OJK fit and proper test that states that the funds used to acquire the bank do not originate from any loan or financing facility whatsoever from banks or other parties in Indonesia, or from or for the purpose of money laundering.

The OJK's approach to the prohibition on using loans or any type of financing to acquire banks' shares is replicated in most financial services institutions. Thus, financing arrangements in acquiring financial services institutions are not an option in Indonesia.

DEAL TERMS

Representations and warranties

23 | What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

In financial services M&A transactions, sellers are requested to provide full-blown representations and warranties in greater detail to purchasers, as the financial services sector is highly regulated by the government (Financial Services Authority (OJK) and Bank Indonesia (BI)). The typical representations and warranties in financial services M&A transactions are as follows:

- capacity and authority;
- title to shares;
- organisation, capitalisation and shareholding;
- licences and compliances;

- books, records and accounts;
- suspension of payments and bankruptcy;
- litigation and investigation;
- material contracts and transactions with related parties;
- taxes;
- employment matters;
- title to assets;
- intellectual property; and
- anti-bribery and anti-money laundering arrangements.

Indemnities

24 | What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

The financial services industry is considered a highly regulated sector and proper compliance with the rules issued by OJK and BI is considered a result of satisfactory due diligence and completion of M&A transactions. Financial services companies that have been incorporated and in operation for more than 15 years may have some non-compliance issues that may attract administrative sanctions from written warnings to revocation of business licence.

In the past year, we have seen the OJK revoke the business licences of financial services companies (finance companies, insurance companies, securities companies, etc.). Thus, it is advisable that clients implement fully fledged indemnities ranging from a survival period (at least five years for tax matters, and without limit for title to shares or ownership), with a maximum or capped amount of claim up to the value of the transaction and special indemnity for any non-compliance that can cause suspension of business activity or revocation of business licence.

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

As financial services M&A transactions may take some time (6–9 months) to complete, normally purchasers may require confirmatory due diligence to be completed at least 30 working days prior to the expected closing date to confirm the accuracy of the target company's books and records, as well as of the materials provided by the sellers or the target company as of the last fiscal quarter end immediately preceding the expected closing date.

Generally, this confirmatory due diligence will focus on whether there has been a deterioration of the target company's assets (consumer loans, financing or other material contracts considered target company assets) or fraud, wilful misconduct, gross negligence or transactions entered into other than in the ordinary course of business consistent with past practice.

In addition, the success of an FPT and approval of change of control by the new controller must be a key prerequisite before the parties can close an M&A transaction in financial services. No other business sector is required to undergo an FPT before an M&A transaction can be concluded.

Interim operating covenants

26 What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Typically, purchasers would request that the sellers run the target company's business as usual, without any major changes in the ordinary course of business, consistent with past practice. The covenants usually found in the financial services M&A transactions include:

- to maintain the number of employees and key employees working in the target company;
- not to declare or distribute a dividend or interim dividend to any party;
- not to carry out corporate action that might adversely affect a proposed M&A transaction;
- not to amend or propose to amend the target company's articles of association that results in a change in the nature of the business of the target company;
- not to make or acquire a loan or issue a commitment for a loan, take action that would result in the release of collateral or a guarantee or otherwise restructure a loan other than in the ordinary course of business consistent with past practice, or as approved by the purchasers;
- not to amend any tax return in any respect, make or change any tax election, adopt or change any accounting method with respect to taxes, settle or compromise any tax claim or assessment, surrender any right to claim a refund or any taxes, or consent to any extension or waiver of the limitation period applicable to any tax claim or assessment without the consent or request of the purchaser;
- except for payment obligations under the terms and conditions of the loan agreements to which the company is a borrower, not to pay, discharge, settle, compromise or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), including taking any action to settle or compromise any litigation in each case, involving monetary damages in excess of X amount per claim or X amount in the aggregate, other than the payment, discharge, settlement, compromise or satisfaction in accordance with their terms of liabilities reflected or reserved against in the company's accounts and books, or agree or consent to the issuance of any injunction, decree, order or judgment restricting or otherwise affecting in any manner its business or operations; and
-

not to amend, enter into, renew or terminate any material contract, which may or may not have an adverse effect on the company, without the consent or request of the purchaser.

DISPUTES

Common claims and remedies

27 What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

Prior to convening a general meeting of shareholders (GMS), the target companies will prepare and announce the proposed M&A transaction in specified newspapers. The announcement is intended to enable concerned parties to find out about the plan and submit objections if they feel that their interests will be harmed.

Creditors who object to a proposed M&A transaction must submit an objection to the target company within 14 days of the announcement, and the GMS of target company must settle all creditor claims before it can conclude the M&A transaction. If creditors' claims are not settled, the GMS cannot resolve the M&A transaction and it must be halted. Although this is very rare (we have experienced one such transaction in the past 10 M&A transactions), the target company and the sellers must provide a workable solution acceptable to the purchasers.

If, for whatever reason, the target company's GMS cannot support the proposed M&A transaction, a good-faith purchaser may extend the target completion date or terminate the M&A transaction and claim a penalty from the sellers, which ranges from 5–10 per cent of the transaction value.

Dispute resolution

28 How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

As Indonesia follows freedom of contract and choice of forum, parties are free to choose the law to govern the contract or agreement and the forum to hear and resolve disputes that arise in financial services M&A transactions. Parties sometimes opt for Indonesian law to govern and foreign arbitration to resolve disputes.

The Singapore International Arbitration Centre (SIAC) is the most commonly used foreign arbitration tribunal in contracts that involve foreign parties and an SIAC award is recognised and enforceable in Indonesia.

Pursuant to article 66 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (the Arbitration Law), the award of an international arbitration board can be recognised and enforced within the territory of the Republic of Indonesia if the following requirements are met:

- the award is issued by an arbitrator or arbitrator tribunal in a country with which Indonesia has a treaty, whether bilateral or multilateral, regarding the recognition and the enforcement of international arbitral awards;
- the award, pursuant to Indonesian law, pertains to matter that falls within the domain of commercial law;
- the award does not violate any rules of public order;
- the award can be enforced by an Eksekuatur (a writ of execution) of the Chairman of the Central Jakarta District Court; and
- the award in a case which involves the state of the Republic of Indonesia as a party to the case can only be enforced by the Eksekuatur of the Chairman of the Supreme Court.

UPDATE AND TRENDS

Trends, recent developments and outlook

29 What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

Subsequent to many successful acquisitions of financial services companies by financial conglomerates, the Indonesian market has seen many seamless integrations of e-commerce transactions and financial services as digital transactions have penetrated daily life. We believe that there will be many more acquisitions (or integrations) of financial institutions or other financial supporting institutions to achieve seamless integrations created by financial services across all business sectors, from e-commerce to farmers, schools and government agencies in the future.

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