Mergers & Acquisitions

Contributing editor
Alan M Klein

2017

GETTING THE DEAL THROUGH

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 1999
Eighteenth edition
ISSN 1471-1230

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Indonesia

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1 Types of transaction

How may businesses combine?

This chapter discusses business combinations involving private limited liability companies (PT) and public companies (PT Tbk). Combination of unincorporated entities (such as partnerships and firms) that are used by professionals to do business (such as attorneys and accountants) are not addressed.

Under Law No. 40 of 2007 on Limited Liability Companies (the Company Law), PTs and PT Tbks may combine by way of acquisition, merger or consolidation.

Acquisition is defined in the Company Law as the acquisition of shares of a target PT resulting in the transfer of control. Acquisition can be accomplished by purchasing existing shares directly from shareholders or by subscription of new shares in the PT. Existing shares can be purchased directly from the shareholders or through the management of the Company. In the latter case it may take longer time.

The Company Law does not provide a definition of 'control' with respect to private PTs, but in practice, 'control' is commonly interpreted to mean the ability to influence the management and policy of the company, which can be evidenced by ownership of more than 50 per cent of shares, control over the majority of voting rights or the ability to appoint key management. Consolidation of a subsidiary's financial statements can be considered de facto evidence of control. However, for PT Tbks, Bapepam-LK Rule No. IX.H.1 on Acquisition of Public Companies explicitly defines 'controlling shareholder' as a party that owns more than 50 per cent of shares, or has the ability to decide on the management or policies of the PT Tbk. Meanwhile, for banks, pursuant to Bank Indonesia (BI) Regulation No. 12/23/PBI/2010 on the Fit and Proper Test, the threshold to be considered a controlling shareholder is lower, with at least 25 per cent of share ownership, or an ability to decide the management or policies of the bank, or both.

Merger is defined as one or more PTs merging into an existing PT (surviving PT). All assets and liabilities, including business operations and financial losses, transfer to the surviving PT by operation of law upon completion of the merger. The merging PTs are dissolved without liquidation. The shareholders of the merging PTs become the shareholders of the surviving PT.

Consolidation is defined as two or more existing PTs combining to form a new PT. All assets and liabilities transfer to the new PT by operation of law. The consolidating PTs are dissolved without liquidation. The shareholders of the consolidating PTs become the shareholders of the new PT.

Mergers and consolidations between Indonesian and foreign entities are not recognised under the law.

The Company Law also recognises business separation in the form of pure demerger (in which all assets and liabilities of a PT are transferred to two or more PTs) and spin-off (transfer of some of a PT's assets and liabilities to one or more PTs), as well as transfer of assets or business.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

General

The primary law covering business combinations is the Company Law, with implementing provisions provided in Government Regulation No. 27 of 1998 on Mergers, Consolidations and Acquisitions.

PT Tbk

Business combinations involving PT Tbks are also subject to Law No. 8 of 1995 on Capital Markets (the Capital Markets Law) and implementing regulations issued by the chairman of the Financial Services Authority (OJK)). OJK assumed the functions, duties and authorities of the Financial Institutions Supervisory Body (Bapepam-LK) as of 31 December 2012. Although Bapepam-LK was replaced by the OJK, all prevailing Bapepam-LK regulations remain in force until replaced or revoked.

Regulations of the Indonesia Stock Exchange apply to the listed shares of PT Tbks.

Foreign capital investment companies (PT PMA)

For PTs with foreign capital investment (PT PMA), Law No. 25 of 2007 on Capital Investment (the Investment Law) and its implementing regulations must be observed, including Capital Investment Coordinating Board (BKPM) Regulation No. 14 of 2015 on Guidelines and Procedures for Investment Principal Licence, as amended by BKPM Regulation No. 8 of 2016, BKPM Regulation No. 15 of 2015 on Guidelines and Procedures for Investment Licences and Non-licences, and Presidential Regulation No. 44 of 2016 on the List of Business Fields Closed, and Business Fields that are Open, with Conditions, for Foreign Investment (known as the Negative Investment List), which prescribes specific foreign shareholding limitations and other restrictions for various sectors based on type of activity and scale of business. The Negative Investment List is subject to amendment from time to time, based on changes in policy and market conditions. Investors from ASEAN member states enjoy a higher percentage of foreign share ownership for certain lines of business, for example, in shipping. For past investments which have been approved, foreign shareholding limitations are grandfathered, unless new provisions are more beneficial for the investors. PMA companies whose shares are listed in the capital market are not subject to the Negative Investment List, although they may still be subject to sector specific shareholding limitations prescribed in other laws (see below).

Acquisition of shares of an existing PT PMA and conversion of a domestic PT to become a PT PMA both require specific approval by BKPM, which will examine the proposed shareholding to determine if it complies with the Negative Investment List and sector-specific limitations on foreign shareholding, such as those that apply in the financial services, transportation, mining, media, public works, and construction, among others. Under the Investment Law, any amount of foreign shareholding (whether at the PT or parent level) makes a PT a PT PMA, which must comply with the rules limiting foreign ownership. For foreign investment channelled through Indonesian venture capital companies, the shares held by those companies must be divested within 10 years.

Antimonopoly laws
Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unfair Business Competition (the Antimonopoly Law) prohibits unaffiliated PTs from any business combination that will lead to a monopoly or unfair competition. If a business combination causes combined asset value or total sales to exceed minimum thresholds, the Commission for Supervision of Business Competition (KPPU) must be notified within 30 working days from the date the business combination takes effect. Government Regulation No. 57 of 2010 on Mergers, Consolidations and Acquisitions that Cause Monopoly Practices and Unfair Business Competition sets minimum thresholds of 2.5 trillion rupiah for combined assets and 5 trillion rupiah for total sales. For the banking sector, the threshold is turnover in excess of 20 trillion rupiah. A draft bill revising the Antimonopoly Law has been under discussion in the House of Representative and is included in the priority list of laws to be issued in 2017.

Specific laws and regulations depending on lines of business
Other laws and regulations may impose specific limitations on shareholding, divestment requirements and shareholder eligibility criteria, depending on the lines of business of the PTs involved. For example:

- Law No. 7 of 1992 on Banking, and its amendment, as well as Bank Indonesia and OJK regulations and decrees, including those governing the fit and proper test for controlling shareholders, single presence policy, and single ownership limitation;
- Law No. 40 of 2014 on Insurance and certain Ministry of Finance and OJK regulations and decrees governing insurance businesses;
- Law No. 4 of 2009 on Mineral and Coal Mining, Government Regulation No. 23 of 2010 on Implementation of Mineral and Coal Mining Business Activities (as lastly amended by Government Regulation No. 1 of 2017) and Minister of Energy and Mineral Resources Regulation No. 9 of 2017 regarding Procedures for Share Divestment and Determination of Share Price – mining is subject to a 'one company, one licence' policy, so merger or consolidation among mining companies is generally not permitted;
- Law No. 13 of 2010 on Horticulture, in which divestment is stipulated, but to date procedural regulations have not been issued; and
- Law No. 36 of 1999 on Telecommunications and Law No. 32 of 2002 on Broadcasting governing media businesses.

3 Governing law

What law typically governs the transaction agreements?

For mergers and consolidations involving Indonesian entities, Indonesian laws typically (although not always) govern the agreements. For acquisitions, the parties may agree on a foreign law to govern the transaction agreements. In either case, Law No. 24 of 2009 on Flag, Language, National Coat of Arms and National Anthem requires that any agreement involving an Indonesian party be written in the Indonesian language (bilingual is acceptable). There is no requirement, however, that Indonesian must be the governing language.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Mergers and consolidations
In a merger or consolidation, the board of directors of each PT involved must prepare a merger or consolidation proposal for approval by their boards of commissioners and shareholders, including, among others:

- procedures for share valuation and conversion;
- method for settling the status, rights and obligations of employees, creditors and dissenting shareholders; and
- three years' financial statements for each PT involved and pro forma financial statement of the surviving company or new consolidated company.

The parties then draft a notarial merger or consolidation deed in Indonesian language, which contains the terms of the plan and the proposed articles of association (AoA) of the surviving or new PT. In a merger, the surviving PT must file the merger deed for approval by the Ministry of Law and Human Rights (MOLHR), if the merger involves an amendment of the PT's AoA, or simply notify the MOLHR if the merger does not involve amendment of the AoA. In consolidation, the new PT must file the consolidation deed for approval by the MOLHR. The amended AoA are then published in the State Gazette.

For merger or consolidation of a PT Tbk, within two working days after the merger or consolidation plan is approved by the boards of commissioners of the relevant companies, a merger or consolidation statement must be filed with the OJK to obtain an effective letter from the OJK.

Acquisitions
In direct acquisition of shares from existing shareholders of the target PT, no acquisition plan is required, usually just a sale and purchase of shares agreement and a notarial deed for transfer of shares after the normal due diligence procedure. For acquisition by subscription of new shares, after due diligence, a subscription agreement will be executed and approved by a general meeting of shareholders. Issuance of new shares requires an amendment of the AoA, which must be approved by the MOLHR and published in the State Gazette.

Direct transfer of shares without amending the AoA needs only to be notified to, rather than approved by, the MOLHR.

The acquisition of a PT Tbk may also be conducted by way of purchasing shares from existing shareholders, or by way of subscription (Rights Issue) with the following provisions:

In an acquisition of a PT Tbk from the existing shareholders, Bapepam Rule IX.H.1 obliges a mandatory tender offer to the public shareholders. In this case, after the acquisition, the acquirer shall purchase the shares owned by the public at a premium price (based on the average trading price for a certain period).

In an acquisition of a PT Tbk by way of Rights Issue, based on OJK Regulation No. 32/POJK.04/2015 on Capital Increase with Rights Issue, the PT Tbk shall firstly submit a Registration Statement to OJK to obtain the effective letter for Rights Issue, and the Rights Issue itself shall be approved by the GMS. In this case, the acquirer shall be exempt from the mandatory tender offer obligation.

A PT Tbk can also increase its capital without pre-emptive rights (private placement), including by way of an Employee Share Ownership Programme or Management Share Ownership Programme, to avoid the lengthy process of Rights Issue. In this case, disclosure of information is required pursuant to OJK Regulation No. 38/POJK.04/2014 on Increase of Capital of Publicly Listed Companies without Pre-emptive Rights. However, the acquirer can only purchase maximum of 10 per cent of the issued and paid-up capital of the PT Tbk.

Foreign investment companies (PT PMA)
Any business combination involving a PT PMA requires prior approval from BKPM. Transfer of shares of a PT PMA and conversion from domestic PT to PT PMA both require BKPM approval before the amended AoA can be submitted to the MOLHR. In the case of conversion to PT PMA, BKPM will issue a principal licence approving the company's status as a foreign investment company. Regarding the Indonesian subsidiaries of a PT PMA, the Investment Law requires all companies with ultimate foreign shareholding to be converted to PMA status, albeit with no stipulated time frame for conversion to be accomplished.

Sector-specific requirements
As noted above, certain fields of business are subject to additional oversight and regulation. For instance:

- financial services companies must obtain approval from the OJK;
- mining companies must obtain approval from the relevant licence-issuing authorities (central or regional governments) and the Ministry of Energy and Mineral Resources; and
- some types of companies may need recommendations from the relevant technical ministry. For example, conversion of a plantation company from a domestic PT to PT PMA because of acquisition by a foreign shareholder requires a recommendation from the Director General of Plantations of the Ministry of Agriculture.

Stamp duty and fees
For private companies, there is no fee charged in relation to a business combination except for the 6,000 rupiah stamp that is affixed to each transaction document.

For PT Tbks in the financial services sector, Government Regulation No. 11 of 2014 on Levies imposes certain fees for business combinations reviewed by OJK based on the type of corporate action performed by the PT Tbk, as follows:

- acquisition through purchase of existing shares: 25 million rupiah fixed fee;
- acquisition through voluntary tender offer to existing shareholders: 25 million rupiah fixed fee;
- acquisition through rights issue: 0.025 per cent of the issuance value with maximum amount of 500 million rupiah; and
- merger or consolidation: 0.05 per cent of the combined asset value of a transaction (based on financial statements), with a maximum amount of 250 million rupiah.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

General
A summary of the merger, consolidation or acquisition plan must be announced in a national Indonesian language newspaper and notified to the employees of each PT involved not later than 30 days before the general meeting of shareholders that will approve the business combination.

The announcement satisfies the requirement to notify creditors, who will have 14 days from the date of the announcement to register their objections. All objections must be settled by the board of directors or presented to the general meeting of shareholders to be resolved before the business combination can proceed.

The PTs are required to make a second announcement in one Indonesian language newspaper within 30 days after the merger, consolidation, or acquisition is completed.

PT Tbks
For PT Tbks, several provisions in OJK require public disclosures in the event of a business combination.

Specific information disclosure on merger or consolidation
OJK Regulation No. 74/POJK.04/2016 requires that the merger or consolidation plan be announced in one nationally circulated Indonesian language newspaper and on the PT Tbk's website. The announcement must include a summary of the following information, inter alia:

- general information of the company (name, domicile, capital structure, management structure, shareholding structure, etc);
- schedule of the merger or consolidation;
- reasons for the merger or consolidation;
- share conversion procedures;
- draft amendment of the AoA of the surviving company or draft deed of establishment of the consolidated company;
- financial statements for each PT involved and pro forma financial statement of the surviving company or new consolidated company (the last two years if the merger or consolidation involves two PT Tbks or the last three years if the merger or consolidation involves a PT Tbk and a private PT);
- independent valuation of the share value and the PTs' assets;
- legal opinion from an independent legal consultant registered with OJK regarding legal aspects of the merger or consolidation; and
- settlement of status, rights and obligations of employees, creditors and minority shareholders.

In the event the merger or consolidation will result in the entering of new controlling shareholder, the merger or consolidation plan shall also include information on the new controlling shareholder.

Specific information disclosure on acquisition from an existing shareholder
At the negotiation stage, the acquirer may (but is not obliged to) disclose to the public and OJK about the negotiation process, including an estimate of the number of shares to be acquired, information about the acquirer, and the negotiation method. The acquirer would then update the public and OJK of any progress in the negotiation process.

After completion, the acquirer is required to announce the information related to the acquisition (total shares acquired, information on the acquirer, and purpose of acquisition) in at least one national Indonesian language daily newspaper and deliver the same to the OJK and the Indonesia Stock Exchange within one working day.

Specific information disclosure on acquisition by way of rights issue
The company must disclose general information during the announcement of GMS and more detailed information in the Prospectus of Rights Issue.

In the GMS announcement, the following must be disclosed, among others:

- number of new shares to be issued;
- approximate timeline;
- analysis on the effect of the rights issue to the company's finances and existing shareholders; and
- general forecast on the purpose of the funds raised under the rights issue.

In the prospectus (which will be issued before and after the book-building), the following must be disclosed, among others:

- use of proceeds;
- debt statements;
- management discussion and analysis;
- risk factors (industry risk, business risk, country risk, shareholding risk, etc);
- business prospects;
- equity;
- financial statement; and
- timeline of rights issue.

After completion, as regulated under OJK Regulation No. 31/POJK.04/05 on Information Disclosure or Material Facts by Issuer or Public Company, the PT Tbk shall announce the business combination in a newspaper and on the company website within two working days.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

For private companies, there is no requirement to disclose shareholdings other than to the MOLHR and the Ministry of Trade. For PT Tbks, OJK Regulation No. 60/POJK.04/2015 on Disclosure of Information on Certain Shareholders ('Bapepam Rule X.M.1') requires both the company and any party obtaining 5 per cent or more of the paid-up shares to report the change of ownership to the OJK within 10 calendar days.

For certain regulated industries, for instance, financial services and mining, additional submissions regarding shareholding are required by the relevant regulator.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Directors and commissioners of a PT have a fiduciary duty to act in good faith for the interests of the PT.

The Company Law requires that a business combination take into account the interests of the PT itself, minority shareholders, employees, creditors, business partners, the public and fair competition in business.

Under the Company Law, the boards of directors of the PTs involved in a business combination are required to prepare a plan of the business combination to be announced to the shareholders, employees and creditors of each PT.

Controlling shareholders do not have similar duties, except for controlling shareholders of PT Tbks, who, in order to avoid insider

trading, must sign a non-disclosure agreement with prospective buyers before due diligence on the PT can commence.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

Shareholder approval by three-quarters of valid votes cast at a general meeting of shareholders attended by at least three-quarters of voting shares is required for all business combinations (including transfer of substantial assets of the PT).

A shareholder who opposes a business combination can require the controlling shareholders (or the PT itself) to purchase their shares at a reasonable price.

Minority shareholders holding at least 10 per cent of shares can request a district court to instruct the PT to provide data and information if there is any suspicion that the PT or its board of directors or board of commissioners may cause damage to the PT, its shareholders, or a third party.

For PT Tbks, the transaction value of the business combination (for a merger or, if the PT Tbk intends to acquire a private company) shall be appraised by an independent appraiser. In the event that based on the appraisal the transaction value of the business combination is not in the normal price range, OJK may not approve the business combination. Further, the shareholders who do not agree to the proposed business combination may object to the transaction by requesting the PT Tbk to buy back their shares, or if the business combination violates any capital market regulations in Indonesia, the objecting shareholders may file to the court.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

Unsolicited transactions are uncommon and difficult to complete for non-publicly listed PTs in Indonesia, because transfer and issuance of shares both require approval by a general meeting of shareholders.

For PT Tbks, an acquirer may launch a voluntary tender offer of shares. Based on OJK Regulation No. 54/POJK.4/2015 on Voluntary Tender Offers (OJK Reg. 54/2015), in order to launch a voluntary tender offer, the acquirer shall first submit a statement of voluntary tender offer to OJK to obtain an effective letter. The statement of voluntary tender offer itself shall include information on the securities that will be purchased, the price, identity of the acquirer, purpose of tender offer and sufficiency of funds to settle the tender offer.

Pursuant to section IV of OJK Reg. 54/2015, the price of the tender offer will depend on the objects of the tender offer (shares, warrants or convertible bonds), as well as their recent trading history.

OJK Reg. 54/2015 provides for a tender-offer period of 30 to 90 days. If no (or an insufficient number of) shares are offered by the existing shareholders, then the tender offer may be cancelled or cannot be completed. During the period of a voluntary tender offer, the PT Tbk is prohibited from performing any transaction with the sole purpose of preventing the change of control that would result from completion of the voluntary tender offer.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

Break-up and reverse break-up fees are determined contractually between the parties to compensate either the seller or the buyer if the deal is terminated. For instance, when a seller signs a letter of intent or enters into a conditional share purchase agreement with a buyer, the seller will require the buyer to put a certain amount on deposit in (normally) an escrow agreement to 'bind' the buyer. If the transaction fails to close, the seller will be entitled to retain the deposit as its break-up fee.

There are no limitations on how a non-publicly listed PT can protect itself from bids by third parties. Under the Company Law, most (if not all) AoAs will have provisions restricting transfer of shares or creating a right of first refusal that requires a shareholder to first offer its shares to the other current shareholders before it can accept an offer from a third party. The other shareholders have the right to maintain their proportional ownership in the PT, which frustrates any attempt at dilution. Moreover, AoAs generally include provisions that require prior approval from a general meeting of shareholders for any transfer of shares or issuance of new shares. With these measures, the PT and the shareholders can prevent undesired bidders from becoming shareholders.

11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

BKPM has the authority to approve or deny business combinations, based on statutory limits on foreign shareholding contained in the Negative Investment List and sector-specific regulations. In addition to foreign shareholding restrictions, the Negative Investment List sets out various requirements for certain lines of business, such as approval from licensing agencies or restrictions as to what type of entity can engage in certain sectors. The Negative Investment List also protects SMEs by reserving certain lines of business only for them. Politically controversial sectors, such as alcoholic beverage production, and sectors affecting security, such as weapons or explosives production, may be closed to investment altogether, or at least subject to more stringent oversight. OJK may require certain disclosures or amendments to filings related to PT Tbks before a proposed business combination can proceed, and with respect to financial services companies, OJK has the authority to approve or deny prospective shareholders based on the outcome of the fit and proper test.

Business combinations involving state-owned enterprises or region-owned enterprises are subject to approval from the Indonesian parliament, the central government, or the relevant regional parliament or regional government, in accordance with their authority.

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

In business combinations involving privately held PTs, the conditions are determined and agreed upon by the parties. Conditions typically pertain to the availability of funding and the allocation of risks and liabilities.

In a mandatory tender offer (an offer to purchase publicly traded shares in connection with acquisition of privately held shares), the offeror is not permitted to impose special conditions, as after the closing of the acquisition, the new controlling shareholder must offer to purchase shares held by the public at a mandatory price. If a mandatory tender offer results in the offeror holding more than 80 per cent of shares in the PT, the offeror is required to refloat enough shares on the stock exchange so that its shareholding will be reduced to 80 per cent, unless the amount it acquired from the previous controlling shareholder was greater than 80 per cent, in which case the offeror need only refloat enough shares to reduce its holding to the amount acquired from the previous shareholder.

In a voluntary tender offer (an unsolicited offer to buy publicly traded shares), the offeror may impose special conditions such as, it will only purchase the shares if a minimum number of shares can be obtained.

In both mandatory and voluntary tender offers, financing for payment of the tendered shares cannot be a condition of the offer.

13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

Availability of buyer's financing is most often included as a condition precedent to the transaction or at least a condition before further negotiations can proceed. For acquisitions of non-publicly listed PTs, the

Update and trends

Mining commodity prices have been elevated since 2016 and are expected to increase throughout this year. However, potential investors must keep aware of the new regulations on divestment. This mandatory divestment applies for all mining companies in Indonesia, including for holders of a contract of work and coal contract of work. The obligation for mining companies to divest foreign shares will be imposed gradually commencing from the fifth year of production up to not more than 51 per cent of their foreign shares by the tenth year.

The latest Presidential Economic Policy Package highlighted e-commerce, a fast-growing sector in Indonesia in recent years. The President is preparing an E-Commerce Road Map to support his vision to make Indonesia the biggest digital economy in Southeast Asia. Implementing regulations on e-commerce are expected to be issued in the near future. In connection with this, new Business Classification Numbers (Klasifikasi Baku Lapangan Usaha-KBLI) are anticipated to accommodate new lines of business, particularly in e-commerce.

The infrastructure budget has significantly increased in 2017. There is a huge push for cooperation between the government and investors for projects in power, roads, transportation, rails, ports, among others.

In banking, the government has, since 2016, encouraged consolidation to maintain sound capitalisation and liquidity. In 2017, OJK identified five commercial banks planning to conduct mergers. The Minister of State-Owned Enterprises (BUMN) announced the 2017 formation of a BUMN holding bank that will hold shares in several BUMNs.

Further, the Minister of BUMN expects that in 2017 several subsidiaries of BUMNs in construction will list their shares on the IDX in order to raise capital for major infrastructure construction.

In the capital market, 15 companies conducted IPOs in 2016. In 2017, IDX is targeting 35 companies to IPO and list shares on the IDX. IDX believes the increase results from many companies postponing their IPO in 2016 owing to unconducive market factors.

To increase the liquidity of shares, IDX is planning to allow penny stock trading in the first semester of 2017.

In 2016, approximately 40 per cent (about 88 million) Indonesians were active internet users (15 per cent increase over 2015). With the increasing numbers of internet technology and mobile phone users, a Financal Technoclogy (Fintech) is expected to open new financing options for the SMEs scattered over thousands of islands in Indonesia. Fintech is also expected to reduce the cost of credit risk assessment by conventional banks and speed up loan distribution in the regions, especially in unbankable areas.

As there is no limitation on the source of funds or types of lenders, Fintech is also expected to channel funds from foreign loans to Indonesia and open up new access for SMEs to foreign credit markets.

parties may agree that the buyer obtaining financing is a condition to the closing of the transaction.

Similarly, obligations of the seller to assist in the buyer's financing, to the extent there are any, will be agreed by the parties. The seller's obligations may include a covenant to maintain the target PT as a going concern and a covenant not to take any action that will reduce the value of the target PT during the transaction period until the closing.

Typically, lenders will conduct limited due diligence to ensure that effective transfer of valid title to the borrower can occur.

If the financing for the transaction originates from offshore loan proceeds (including issuance of convertible bonds to an offshore investor or financer), then the buyer is obliged to (i) report the loan to Bank Indonesia, pursuant to BI Regulation No. 16/22/PBI/2014 on Reporting of Foreign Exchange Flows and Reporting of Implementation of Prudential Principles in the Management of Offshore Loans for Non-bank Corporations (PBI 16/22), and (ii) always comply with the prudential principles regulated under BI Regulation No. 16/21/PBI/2014 on Implementation of Prudential Principles in Managing Offshore Loans of Non-bank Corporations, as amended by BI Regulation No. 18/4/PBI/2016 (PBI 16/21), that includes provisions on liquidity ratio, hedging, and credit rating requirements.

It is common for an investor or financier to impose as a covenant that the borrower will always comply with the requirements of PBI 16/22 and PBI 16/21.

14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

While the Company Law requires business combinations to consider the interests of minority shareholders, in reality, shareholders with 25 per cent of shares or less can be squeezed out, because shareholders with at least 75 per cent of shares have the power to approve a business combination in a general meeting of shareholders.

In order to approve a business combination, the majority shareholders will request the board of directors to convene a general meeting of shareholders. Within 15 days, the board of directors must deliver notice of a general meeting of shareholders to be held at least 14 days after the date of the notice. The notice must be delivered to all shareholders by registered mail or announced in a newspaper. If the board of directors fails to deliver notice of the meeting, the board of commissioners may issue or deliver the notice. If neither the board of directors nor the board of commissioners delivers notice of the meeting, shareholders representing at least 10 per cent of shares can request a district court to allow a shareholder to call the meeting or to order examination of the PT if they can reasonably claim that the company or its directors or commissioners have acted detrimentally to the shareholders or third parties.

Although they may not be able to block a business combination, dissenting shareholders are entitled to demand that the other shareholders (or the PT itself) buy back their shares or find a third-party buyer. A PT may not hold more than 10 per cent of its issued shares as treasury stock.

For PT Tbks, any shareholder (regardless of size of shareholding) can claim for compensation if they suffer damages as the result of a business combination, insofar as such business combination violates capital market regulations in Indonesia.

15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border transactions involving Indonesian PTs must comply with relevant laws and regulations in Indonesia. Acquisition of shares in a PT by a foreign party is subject to the requirements set forth in the Company Law, the Investment Law, the Negative Investment List, the Capital Markets Law (for PT Tbks), as well as regulations of the BKPM and laws governing specific industries such as banking, insurance, mining, media, shipping, etc. Currently, it is not possible to combine (by way of merger or consolidation) a PT and a foreign entity.

As mentioned above, a company listed on the Indonesian capital market (PT Tbk) will be exempted from the foreign investment restriction (except for business sectors that are closed for foreign investment) under the Negative Investment List. However, if a foreign shareholder is mentioned in such PT Tbk's deed, such PT Tbk shall convert into a PT PMA and it shall subject to certain compliance of PT PMA.

16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

To complete a business combination, there are several waiting and notification periods. A newspaper announcement must be made 30 days before the general meeting of shareholders to approve the business combination. After announcement, creditors have 14 days to object. Thereafter, until the date of the general meeting of shareholders, the PTs must settle any creditor objections.

Employees must be notified at the same time the newspaper announcement is made, in effect giving employees 30 days to decide whether they wish to continue or leave employment.

17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

As mentioned earlier, there are specific regulations governing shareholding (particularly foreign shareholding) and procedures for financial services, mining, telecommunications and media companies. Certain other industries are subject to additional regulations such as transportation, shipping, horticulture, and construction. In agriculture, there is a cap on the total number of hectares that can be held by a single 'group' of companies, which serves as a de facto limit on business combinations in the plantation sector. Business combinations in the field of mining and horticulture are subjected to divestment obligations without regard to previously approved foreign shareholding.

18 Tax issues

What are the basic tax issues involved in business combinations?

In a business combination that involves a transfer of assets from one entity to another entity, the potential tax implications include value added tax, income tax and statutory tax on transfer of shares.

If a transfer of shares or assets uses the market value, the margin between the market value and the book value of the assets will be subject to income tax. However, in a merger or consolidation, if the pooling-of-interest method is used for merger between affiliates, where assets of the PTs are combined using the book value, there will not be any income, and as such no income tax will be imposed. Certain conditions must be fulfilled to use this method.

19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

As set out in Law No. 13 of 2003 on Manpower (the Manpower Law), statutory benefits are triggered upon termination of employment in connection with a business combination.

Under the Manpower Law, in a merger, consolidation, acquisition or change of entity status (going public or delisting) employees may elect not to continue their employment, and the employer must pay statutory termination benefits, including basic severance pay, reward for tenure pay, and compensation for fixed allowances.

If the employees decide to continue working for the PT, the employer and the employees can agree to simply continue employment (with all rights, benefits and tenure being sustained), or they can agree to effectively be terminated and rehired by the surviving or new company, meaning that the employees will receive a basic termination package (ie, cash in hand, based on the calculation for voluntary termination), but they will lose all tenure and terms of employment, because employment will have commenced afresh.

Provisions of existing collective labour agreements transfer to the new employer and remain in force until expiration or renegotiation. If two or more collective labour agreements are already in place among merging or consolidating PTs, the most protective provisions will prevail.

In merger, consolidation or change of entity status (but not in acquisition), the employer may initiate termination for redundancy, in which case the employees are entitled to enhanced severance pay, reward for tenure pay and compensation for fixed allowances.

Because employers do not have the right to terminate employment in connection with an acquisition, acquirers often choose to negotiate enhanced termination packages with employees or groups of employees whom they wish to terminate. Alternatively, the employees can be terminated, rehired and later terminated for redundancy after a suitable period of time has elapsed after the acquisition is complete.

Even in cases of voluntary resignation, all termination arrangements must be submitted for approval by the labour court, along with proof of payment of compensation.

Unless stipulated otherwise in the transaction agreements, the Manpower Law places responsibility for employee rights, including rights related to termination, on the new employer (ie, the surviving company, new consolidated company or new ownership of the acquired company).

20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

In bankruptcy, the bankrupt PT is managed by a receiver who is supervised by a judge from the commercial court. All actions of the bankrupt PT must be approved by the receiver. In certain cases, the receiver will need to get approval from the supervising judge and seek advice from a committee of the bankrupt PT's creditors before it can take a proposed action. In bankruptcy, the objective of the receiver is to maximise the bankruptcy estate for the purpose of settling the liabilities of the bankrupt PT. Accordingly, the receiver will determine whether a proposed business combination will be beneficial to the bankruptcy estate.

Indonesia adopts the principle of *actio pauliana*, with the consequence that any transaction conducted up to one year prior to a PT being declared bankrupt can be examined and nullified if it is determined that the transaction was detrimental to creditors or the managers of the PT acted in bad faith to transfer assets of the company.

21 Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

There are no anti-corruption or anti-bribery sanctions related to transactions between private parties if there are no state or regional government funds involved.

Possible economic sanctions and criminal economic sanctions may apply if a business combination breaches the Antimonopoly Law.

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