Indonesia - OECD Corporate Governance Policy Dialogue

Transparency of Backdoor Listings

AGENDA

Organised with the support of the Government of Japan

30 October 2014
Indonesia
BACKGROUND

Back-door listings can occur through reverse mergers or takeovers, mechanisms not normally subject to the due diligence afforded to traditional IPOs. In a reverse merger, a private company acquires control of a shell company that is already registered with the regulator so the process of registering with the regulator is avoided. It typically results in the owners and management of the private operating company having actual or effective voting and operating control of the combined company; through such a transaction, the private company becomes a company with registered securities without filing a registration statement with the regulator.

A new comparative research "A Global Survey of Rules on Backdoor Listings" will be used as background paper for this seminar. The paper discusses whether it is necessary to promulgate special rules and regulations for backdoor listings. Comparative analysis show that regulatory responses vary depending on each country’s respective experience with backdoor listings. For example, the US introduced more stringent and complex rules and procedures for reverse mergers due to scandals surrounding backdoor listings involving Chinese companies, whereas Sweden which has minimal experience with backdoor listings opted for a more moderate (hybrid) approach that combines case-by-case determination of the applicable rules with a system designed to create awareness among investors about suspicious backdoor listing activities. In Indonesia, the regulators, Otoritas Jasa Keuangan (OJK or Indonesia Financial Services Authority) and the Indonesia Stock Exchange is of the view that adopting a less stringent approach is justified given that the rules and regulations applicable to the process that eventually lead to a backdoor listing in Indonesia require compliance with IPO-style disclosures and transparency rules and regulations.

The seminar will discuss the different approaches which regulators have adopted for backdoor listings, given their regulatory structure and experience with backdoor listings. The expected outcome will include best practices and considerations for Indonesia in formulating their own policies on the transparency of backdoor listings.

Guidance for moderators, speakers, commentators and participants

Moderators are invited to encourage open discussion among all participants, to maintain the focus on the topic of their session and to be strict in managing time. The objective is to encourage the exchange of views and experience on these issues among all participants. Speakers should help frame the discussion by providing an analysis of the issues discussed. Panelists are expected to highlight the main challenges related to the topic, provide responses to the questions posed, and illustrate with their country experience. Presentations should last no more than 15 minutes each. If power point presentations are used, please limit the number of slides to 8-12 and circulate descriptive documentation in advance. All participants are encouraged to actively and openly participate in discussions to provide valuable inputs to meet the objectives of the discussion.
DRAFT AGENDA

8:30 - 9:00 Registration

9:00 – 9:30 OPENING REMARKS

- **Ms. Etty Wulandari**, Senior Advisor, Capital Market Supervision, OJK
- **Mr. Takahiro Yasui**, Head, Special Projects and Outreach Unit, Directorate for Financial and Enterprise Affairs, OECD

(Followed by Group Photo)

9:30 – 11:00 SESSION 1 – International Experience and Indonesia’s Regulatory Response to Backdoor Listings

**Issues:** There are currently no special backdoor listing rules in Indonesia. OJK and the Indonesia Stock Exchange adopt a less stringent approach for backdoor listings. Backdoor listing transactions in Indonesia often include a rights issue procedure to raise capital or enable a new shareholder to acquire control of an already listed company. The rules and regulations applicable to the process that eventually lead to a backdoor listing in Indonesia require compliance with IPO-style disclosures and transparency rules and regulations. Should Indonesia maintain this approach? Has it been effective? Or should Indonesia introduce regulations specifically for backdoor listings?

**Moderator:** **Ms Fianna Jurdant**, Senior Policy Analyst, OECD

**Speakers:**
- **Mr. Hoesen**, Director of Listing, Indonesia Stock Exchange
- **Prof. Dr. Erik P.M. Vermeulen**, Department of Business Law, Tilburg University, The Netherlands

11:00 – 11:30 Coffee/Tea Break

11:30 – 13:00 SESSION 2 – Disclosure and Transparency in Backdoor Listings – How to Protect Shareholders?

**Issues:** Incoming businesses using shells often fail to disclose audited financial accounts and frequently provide insufficient disclosure around future business models, plans or funding. Shareholders need to ensure they are getting full disclosure from the incoming company. The concern is that shareholders might not be getting the information they require to be informed about the company changing its business plan and the risks of the new business. What should shareholders look out for and demand?
Moderator: Mr. Gonthor R. Aziz, OJK’s Director of Capital Market Regulation, OJK, Indonesia

Speakers:

- Ms. Annika Poutiainen, Consultant in securities markets regulation, Member of the Swedish Securities Council and the Consultative Working Group for Corporate Finance Standing Committee of the European Securities Markets Authority (ESMA), Sweden
- Mr. Patrick Yu, Vice President, Compliance and Monitoring, Listing Department, Hong Kong Exchanges and Clearing Limited, Hong Kong, China

13:00 – 14:15 Lunch

14:15 – 15:45 SESSION 3 – Role of Gatekeepers in Backdoor Listings

Issues: Auditors, research analysts, investment banks have a role in advising and alerting red flags in relation to backdoor listings. The role of gatekeepers becomes even more significant when the regulatory authority adopts a less stringent approach to backdoor listings. How can gatekeepers play an effective role to ensure backdoor listings are done properly with shareholder protection intact?

Moderator: Mr. Takahiro Yasui, Head, Special Projects and Outreach Unit, Directorate for Financial and Enterprise Affairs, OECD

Speaker:

- Ms. Maylanie N. Priscilla, Partner, Capital Market Practice Group, Hermawan Juniarto, Indonesia
- Mr. Indra Safitri, Chairman of Association of Capital Market Legal Consultants, Indonesia
- Ms. Véronique Bruneau Bayard, Director, Labrador Conseil, France

15:45 – 16:15 Coffee/Tea Break

16:15 – 17:45 SESSION 4 – Future Trends in Backdoor Listings and Policy Implications

Issues: Some studies have shown that backdoor listing activities have decreased due to negative publicity, the introduction of more stringent rules, increased enforcement and regulatory scrutiny. However in countries like Australia, there is a growing number of enterprises using backdoor listing as a perceived faster and cheaper means of achieving listing. What are the possible trends in backdoor listings, its implications on corporate governance policies, and what should be the focus of regulators moving forward?
Moderator: Mr. Gonthor R. Aziz, OJK’s Director of Capital Market Regulation, Indonesia

Speakers:
- Ms. Kate O’Rourke, Senior Executive Leader, Corporations, Australian Securities and Investment (ASIC)
- Mr. Akira Nozaki, Senior Policy Analyst, Corporate Affairs Division, OECD

17:45 – 18:00 CLOSING REMARKS

- Ms Fianna Jurdant, Senior Policy Analyst, OECD
- Ms. Etty Wulandari, Senior Advisor, Capital Market Supervision, OJK, Indonesia
Dr. Etty Retno Wulandari is currently the Senior Advisor in Capital Market Supervision in Indonesia Financial Services Authority (OJK). She is in charge for the development of corporate governance and accounting in Indonesia. She holds a Ph.D degree in Accounting from Nanyang Business School, Nanyang Technology University, Singapore. Her thesis received “2006 Outstanding International Accounting Dissertation Awards” from American Accounting Association (AAA).

She’s a member of Indonesian Financial Accounting Standards Board (DSAK-IAI) in 2004-2013; and jury for Annual Report Award (ARA) since 2004.

She is also a lecturer in University of Indonesia and an active speakers in various conferences and seminars in corporate governance, accounting, capital market areas.

She represents OJK in OECD Corporate Governance Committee Meeting, Asian Roundtable on Corporate Governance, and ASEAN Capital Market Forum (ACMF).
Mr. Yasui is Head of the Special Projects and Outreach Unit of the Directorate for Financial and Enterprise Affairs, supervising and contributing to analysis and policy dialogues, notably with Asian economies, on financial matters including banking, insurance and financial market development and corporate governance.

Prior to joining the OECD in July 2014, Mr. Yasui had a long career in the Ministry of Finance, Japanese Government. In recent years, he held the position of Director of Corporate Tax Policy Division in the Tax Bureau of the Ministry as well as Director at the National Tax Agency. He also worked for the Financial Services Agency as Head of the Insurance System Planning Office and as Director for Research and Foreign Operations at the Inspection Bureau.

Earlier in his career, Mr. Yasui also held the post of Senior Policy Analyst in the Directorate for Financial and Enterprise Affairs of the OECD. In that capacity, he was engaged in outreach activities on financial and enterprise sector development, and was involved in setting up the Asian Roundtable on Corporate Governance.

Mr. Yasui, a Japanese national, has a Bachelor in Law from the University of Tokyo and an MBA from the Graduate School of Business, Stanford University.
Hoesen

Indonesia


He was previously a President Director of Indonesian Central Counterparty (KPEI), 2009 – 2012. He has held the positions of Director at KPEI, 2005 – 2009 and Head of Guarantee and Risk Management Division at KPEI, 1996 – 2005.

Actively involved in several national and international capital market activities, from 1994 until now. Obtained his Bachelor Degree from Universitas Padjajaran Bandung, 1990, and Master of Financial Management from Pelita Harapan University, 2005
Mrs. Jurdant advocates better corporate governance standards and practices globally. For 15 years, she has analysed and compared corporate governance frameworks and practices around the world, in diverse countries such as Russia and China. Under the auspices of the OECD Corporate Governance Committee, since 2006 she manages the regional Asian Roundtable on Corporate Governance and bilateral programmes with China, India and Indonesia. These high level hubs advance corporate governance reforms among a network of influential decision-makers on complex subjects, such as transparency, minority shareholder protection, as well as board nomination and election.

Mrs. Jurdant develops policy recommendations and advice to support reforms in Asia. She has produced numerous reports and articles on corporate governance and spoke in conferences around the world on the subject. In 2012, she prepared the report “Reform Priorities in Asia: Taking Corporate Governance to a Higher Level”, endorsed on a consensus basis by 13 Asian economies. She worked closely with the Chinese regulator on their self-assessment of corporate governance of listed companies in China, using for the first time an international standard. She led the Asian Task Force to develop the “Guide to Fighting Abusive Related Party Transactions in Asia”, agreed and used by a number of jurisdictions.

Prior to the OECD, Mrs. Jurdant was a trade specialist at the US Embassy in Paris; she prepared market research and identified partners to help American companies develop in France. Mrs. Jurdant holds a Masters degree in international relations with a specialisation in international law and economics from Boston University. She is a recipient of the “Rising Star of Corporate Governance” award and is a member on the Rising Star Selection Committee of the Millstein Center for Global Markets and Corporate Ownership at Columbia Law School.

Mrs. Jurdant is a member of the French Institute of Directors (IFA); the International Corporate Governance Network (ICGN) Shareholder Committee drafting team on diversity; the European Professional Women’s Network (EPWN) Think Tank Group and Mentoring Programme. She is married and has two children. Mrs. Jurdant is a citizen of the United States and France; she was born in the former USSR. She is fluent in Russian, English and French.
Erik P.M. Vermeulen is Professor of Business and Financial Law at Tilburg University and Tilburg Law and Economics Center (TILEC) in the Netherlands. He is also Senior Counsel Corporate/Vice President at Group Legal of Philips in the Netherlands, where he advises on corporate governance issues, including the global corporate structure of the Philips Group of companies. In addition to the focus on corporate governance, he has extensive experience in mergers and acquisitions, venture capital and private equity transactions, and general corporate and securities law matters. He has worked on international projects related to corporate venturing activities, corporate venture capital and spin-out transactions. Philips’ anchor investment in a transatlantic venture capital fund through which it complements its long-term open innovation strategy in the healthcare sector is an illustrative example. Corporate governance and venture capital are common themes in his lectures in the International Business Law Program (of which he is the Director) at Tilburg University. He has also taught these topics at Ghent University in Belgium, Pontificia Universidad Javeriana, Universidad Icesi and Universidad Externado in Colombia, Interdisciplinary Center (IDC) Herzliya in Israel, Kyushu University and Kobe University in Japan, the University of Liechtenstein and TIASNimbas Business School, Brabant Center for Entrepreneurship and Duisenberg School of Finance in the Netherlands. He is a frequently invited speaker at international conferences and seminars. Professor Vermeulen has written extensively in the area of corporate and partnership law, corporate governance, joint ventures, venture capital and innovation, including alternative stock markets. His papers and books have been widely published by leading publishers, such as Oxford University Press and Kluwer Law International. His current research looks at corporate governance, value creation and innovation. It is about the role of corporate governance in promoting the competitiveness and innovative capacity of both listed and non-listed companies. Professor Vermeulen has worked on national and international projects for organizations, such as the European Commission, the OECD, the Dutch Development Finance Institution and local governments in the Netherlands, concerning financial and venture capital markets, corporate law, and corporate governance.
Gonthor R. Aziz

Indonesia

Gonthor R. Aziz was inaugurated as Head of Service Sector Corporate Finance Bureau, Bapepam-LK since February 25, 2011. He earned his law degree from University of Pancasila and Master Degree in Laws from American University, Washington D.C, USA.

In 2013, Mr. Aziz was appointed as the Director of Communication and International Affairs in Indoensia Financial Services Authority.

Currently, Mr. Aziz is the Director of Capital Market Regulation in Indoensia Financial Services Authority.
Annika Poutiainen is an expert and consultant in securities markets regulation and a member of the Swedish Securities Council and the Consultative Working Group for Corporate Finance Standing Committee of the European Securities Markets Authority (ESMA).

In her previous role, Annika was Head of Surveillance and led the NASDAQ OMX market surveillance team in the Nordic region. The primary goal of the market surveillance function is to maintain and enhance public confidence in the securities market by high quality trading and issuer surveillance. In addition to monitoring that participants adhere to applicable rules and enforcing the rules in order to ensure a level playing field for market participants, NASDAQ OMX Nordic Surveillance function also develops rules and regulations regarding listing and issuers and is in charge of the process for listing new instruments.

Prior to NASDAQ OMX Annika headed a unit supervising, among others, the exchanges and clearing houses at the Swedish Financial Supervisory Authority. Annika is a Finnish lawyer and an English Solicitor. Prior moving to Stockholm in 2005, Annika worked for five years in London City for an international law firm. Annika has authored academic articles in the Butterworths Journal of International Banking and Financial Law and other finance journals.
I joined the Listing Department of the Hong Kong Stock Exchange in 2000 and have since then assumed diverse roles and functions across the department. I am currently a Vice President in its Compliance and Monitoring team which specializes in regulating about 1,900 companies listed in Hong Kong and monitoring their compliance with the Listing Rules and corporate governance standards. I am conversant with the rules for and structures of different types of corporate transactions, including mergers and acquisitions, backdoor listings, spin-offs, fund raisings and corporate restructuring. I have also extensive experience in vetting IPO applications and play significant roles in policy developments and other business initiatives of the Listing Department.

In the earlier stage of my career, I had worked in PricewaterhouseCoopers and Morgan Stanley between 1995 and 1998, before I went to the United States for a graduate degree.

I hold a Bachelor degree in Business Administration (Accounting and Finance) from The University of Hong Kong and a Master of Business Administration degree from The University of Southern California in Los Angeles, the United States.
Maylanie N. Priscilla graduated from the Faculty of Law at the University of Trisakti in 1995 and obtained her master degree from the University of Melbourne, Australia, in 2000. Currently, she is Head of Capital Market Practice Group at Hermawan Juniarto in Jakarta, Indonesia.

Maylanie has more than thirteen years of professional experience advising in capital market transactions. Her practice areas include representing foreign, domestic companies and State Owned Enterprises in various capital market transactions. Maylanie also involved in numerous notable Initial Public Offering (IPO), Bond Issuance, Right Issue, Merger and Acquisition, and Privatization in Indonesia.

She has also involved in the preparation of Corporate Governance Manual issued by the International Finance Corporation (IFC) and Indonesia Financial Service Authority. She is a member of Indonesian Bar Association (Perhimpunan Advokat Indonesia –PERADI) and Association of Capital Market Legal Consultants (Himpunan Konsultan Hukum Pasar Modal – HKHPM) in Indonesia.
Indra Safitri
Indonesia

Indra holds a law degree from the Faculty of Law of the University of Indonesia (1989) and a Magister of Management of School of Management of PPM (2011), and is Certified Professional Risk Management Professional licensed by LSPMR (2009) and Qualified Internal Auditor (QIA) of YPIA (2010).

Indra Safitri has been a Senior of Counsel of MDC since February 2012, Indra specializes in Securities Litigation and Financial Dispute, Good Corporate Governance & Legal Risk.

Mr. Safitri was recently elected the Chairman of HKHPM (Association of Capital Market Legal Consultants), serving for the period 2012-2015. Previously, Mr. Safitri was instrumental in a number of key initiatives of HKHPM, including the pioneer project to train lawyers as prospectus drafters as part of a joint continuing legal education program between HKHPM and Bapepam LK.
Having trained as a lawyer, Véronique practiced for several years with leading international law firms (Norton Rose and Clifford Chance) both in Paris and London where she specialized in corporate finance. She then founded France Proxy, a corporate governance consultancy firm which assists companies with all aspects of their governance issues (drafting governance documents, corporate governance audits, board evaluation, preparing shareholder meetings etc.). She is now the managing director of Labrador Conseil, the advisory department of Labrador, a company specializing in regulated information in France and the United States. Labrador Conseil advises French and American blue chip companies on all corporate governance, regulatory and social and environmental responsibility issues.

She holds a Masters degree in Economics and Management, a Masters degree in Business Law and a Professional Postgraduate degree in European and International Business Law, and was admitted to the Paris bar as a French lawyer (avocat).

She has written numerous articles on corporate governance and is a regular conference speaker in France and abroad (Euronext, Paris Europlace, OECD…). She lectures in corporate governance at the HEC Paris business school.

Véronique is a member of the French Institute of Directors (IFA) and has participated, in France and elsewhere in Europe, in several working groups on various corporate governance issues.
Kate O'Rourke is the Senior Executive Leader of the Corporations team at ASIC, with Jane Eccleston. This team is responsible for operational, project-based and policy work at ASIC relating to corporations. This includes issues concerning mergers & acquisitions, fundraisings, related party transactions and corporate governance.

In her role as head of the Corporations team, Kate is responsible for ensuring corporations in Australia conduct their corporate finance transactions in Australia in accordance with ASIC’s 2 key priorities:

- Australian financial markets are fair and efficient
- Australian investors and financial consumers are confident and informed.

ASIC pursues these priorities by setting rules, standards and expectations, engaging with industry and stakeholders, considering waiver applications, reviewing disclosure documents, conducting surveillances, pursuing enforcement and providing policy advice to government.

Prior to joining ASIC, Kate was an associate with Sullivan & Cromwell, working in both their New York and Sydney offices. Kate holds a Master of Laws from New York University, and a Bachelor of Laws (Honours) and a Bachelor of Economics (Social Science) (Honours) from the University of Sydney.
Mr. Akira Nozaki, Senior Policy Analyst, Corporate Affairs Division, joined the OECD’s Directorate for Financial and Enterprise Affairs in 2011. Participating in peer reviews under the OECD Corporate Governance Committee, most recent thematic reports include: “Related Party Transactions and Minority Shareholder Rights” (OECD 2012), “Board Nomination and Election” (OECD 2012), and “Supervision and Enforcement on Corporate Governance” (OECD 2013, forthcoming).

Mr. Akira Nozaki held the position of Deputy Director in the corporate accounting and disclosure division of the FSA Japan from 2007 to 2011.