

OJK Simplifies the IPO Process and Enhances Disclosure

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New regulations issued by the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* “**OJK**”) aim to increase the number of public offerings in Indonesia by (1) shortening the regulatory review period by adopting a parallel submission process for OJK and IDX and (2) simplifying certain OJK submission requirements. In addition, new disclosure requirements are expected to further improve the regulatory landscape for offerings by enhancing the quality of disclosure to better protect investors. The new disclosure requirements generally bring the disclosure closer in line with disclosure standards in offering documents used for international tranches offered under Regulation S and/or Rule 144A of the U.S. Securities Act of 1933 (“**Reg S/Rule 144A offering documents**”).

On 14 March 2017, OJK issued OJK Regulation No. 7/POJK.04/2017 on Registration Statement Documents in Public Offerings of Equity Securities, Debt Securities or Sukuk (“**POJK 7/2017**”) and OJK Regulation No. 8/POJK.04/2017 on The Form and Substances of Prospectus and Abridged Prospectus in Public Offering of Equity Securities (“**POJK 8/2017**”). POJK 8/2017 became effective on 14 March 2017 whilst POJK 7/2017 is expected to come into effect in September 2017.

Measures Adopted to Expedite the Offering Process.

The new regulations introduce several amendments which aim to expedite the time it takes to bring an offering to market

Shortening the overall review period with a parallel review process

POJK 7/2017 enables the submission of the registration statement to OJK to be made simultaneously with the submission to the Indonesian Stock Exchange (“**IDX**”). The previous regulation required separate and sequential submissions, first to IDX and then to OJK. POJK 7/2017 enables parallel review by removing the requirement to include in the OJK submission the preliminary listing agreement, which is issued by the IDX upon its preliminary approval. This could shorten the review process for initial public offerings (“**IPOs**”) by up to three to four weeks.

Simplified financial disclosure

POJK 8/2017 reduces the requirement for financial-related disclosure requirements from five years to three years for key financial highlights, production capacity and sales data. This change brings the disclosure more in line with the disclosure standards typical of Reg S/Rule 144A offering documents.

Simplified legal due diligence

POJK 7/2017 also simplifies the legal due diligence in respect of the corporate capital history for the Indonesian counsel legal opinions, which are required to be submitted to the regulator as part of the review process. The regulation now only requires the legal opinions, and accordingly, the corresponding prospectus disclosure, to cover the review of (i) the deed of establishment and the latest articles of association; and (ii) any changes to the capital structure and share ownership for the latest three years for equity offerings and two years for debt offerings. Previously, the legal opinions and related offering disclosure covered the period since establishment of the issuer. However, we note that the standard for due diligence for an IPO, as issued by the Association of Capital Markets Lawyers in Indonesia (the “**Association**”) still requires the full review of corporate documents since the establishment of the issuer. The Association has yet to revise the standard to bring it in line with POJK 7/2017, although this would be expected in due course.

Enhancing Quality of Disclosure

POJK 8/2017 introduces additional disclosure requirements to enhance the quality of disclosure and formalizes in the rule certain disclosure requirements, which were formerly included in offering documents as result of OJK practice.

The new requirements provided by POJK 8/2017 will bring the disclosure in Indonesian prospectuses more in line with the disclosure included in Reg S/Rule 144A offering documents. The new requirements should also increase overall consistency between the Indonesian prospectuses and Reg S/Rule 144A offering documents.

The following table describes some of the key changes.

Disclosure Item	New requirement under POJK 8/2017	Notes
Existing Share Capital	Disclosure of (i) the total treasury shares owned by the issuer, its acquisition value and any plan to resell such treasury shares; and (ii) any outstanding options to acquire the issuer’s shares (including warrants or any other convertible securities) held by the employees, management or shareholders.	This regulation formalizes what was previously required by the OJK in practice.

Offering Structure	If the public offering is conducted simultaneously with a private placement by directors, commissioners or shareholders of the issuer, disclosure of certain additional information, including a statement that (i) the expenses will be divided proportionally based on the combined offering size of the primary and secondary shares; and (ii) in case of a downsize in the offering, the allotment manager will prioritize the issuer's portion.	Previously the division of expenses and the final decision for the combined offering would be based on the commercial agreement between the Company and the vendor(s). POJK 8/2017 provides more clarity on the two matters and mandates that the decision must prioritize the interest of the issuer. However, the new regulation is unclear as to what expenses should be shared proportionally amongst the parties, and accordingly, we expect further clarification will be needed.
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Use of proceeds	Adoption of detailed disclosure in relation to the specified use of proceeds (e.g., acquisition details, detailed description of bank loans or financings being repaid with proceeds).	This regulation formalizes what was previously required by the OJK in practice.
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Management's Discussion and Analysis ("MD&A")	A comprehensive analysis of the financial performance of the issuer/issuer group, which includes a year-on-year discussion of the financial performance over the last three years (or since establishment, if less than three years). In particular, the regulations require explanations of the causes and effects of any change in performance.	The revised MD&A requirements significantly enhance the disclosure relating to the issuer's historical financial performance.
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	If relevant, a segment discussion, covering (i) production, (ii) sales and revenues, (iii) contribution of sales to revenues and profit, (iv) profitability and (v) any changes in production capacity.	This new requirement now brings the local disclosure closer in line with the segment disclosure included in a Reg S/Rule 144A offering document.
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Controlling Shareholders	Disclosure of any potential new controlling shareholder as a result of the IPO.	Previously, OJK would not allow a change of control immediately following an IPO. This new disclosure requirement suggests that OJK may allow an acquisition of a company through an IPO process which results in a change of control immediately after the IPO.
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Subsidiary and associated company disclosure

Enhanced disclosure in relation to material subsidiaries and information on associated companies. The new disclosure requirements are only applicable to any subsidiary or associated company which contributes 10% or more of the total assets, total liabilities, or gross profit (loss) in the issuer's latest consolidated audited accounts.

The previous regulation did not expressly provide any materiality thresholds, leaving issuers to make a determination. This in practice meant that issuers provided disclosure about all consolidated subsidiaries, regardless of materiality. This new requirement clarifies that OJK does not require immaterial consolidated subsidiaries to be included in the disclosure.

Competing Business

Disclosure of a conflict of interest, and mitigating steps that will be taken, where a director, commissioner, controller, ultimate shareholder or any of their respective affiliates is engaged in a business similar to that of the issuer's.

Previously, there was no explicit requirement to disclose this type of related party conflict of interest. Interestingly, this new provision does not introduce more stringent requirements for potential competing business interests of related parties that could give rise to a conflict of interest, such as requiring an undertaking to prioritize the business of the issuer or a right of first refusal from the controlling shareholders to the issuer for any potential new projects.

Underwriting

Description explaining the approach or method for determining the share price, including factors and parameters used.

At this stage, it is not clear what additional disclosure will be required, or the level of specificity.

Underwriting Arrangements

POJK 8/2017 now allows a partial underwriting or no underwriting for Indonesian IPOs. Where there is no underwriting or a only a partial underwriting, the issuer must disclose the following: (i) minimum use of proceeds that will be achieved based on the confidence of the management; (ii) prioritization of the use of proceeds; and (iii) the risk of, and the management's plans in the case of, an unsuccessful or downsized offering.

The previous regulation required the entire offering to be underwritten by local banks. For offerings which include an international tranche, it has been common practice for the Indonesian underwriting agreement to be entered into by the Indonesian underwriters who would in turn enter into a selling agency agreement with the international banks in respect of the international tranche. However, this approach requires the Indonesian underwriters to assume the full underwriting risk of the offering from the point the registration statement is

declared effective by OJK, subject to very limited termination rights under Bapepam-LK Regulation No. IX.A.2 on The Procedures for Registration in the Framework of Public Offering.

POJK 8/2017 opens the possibility for the local banks to partially underwrite the offering (i.e., the Indonesian tranche), while the international banks could in theory, enter into a separate agreement directly with the issuer to underwrite or sell the international tranche. However, it remains to be seen how this will be implemented in practice by OJK and further clarifications may be required.

Financial Statements

Where audited interim financial statements are provided, issuers are now required to present a comparative unaudited prior period.

Previously, the rule was silent as to the prior comparative period.

Pro forma Financials

Present pro forma financial information if the issuer conducts a transaction which significantly impacts the assets, liabilities, and/or results of operations, and such transaction occurs after the latest audited financial period.

Previously, there was no specific requirement to include pro forma financial information. The current requirement does not address what would constitute a significant impact and further guidance may be required.

Conclusion

The changes in POJK 7/2017 and POJK 8/2017 aim to shorten the timeline to take an Indonesian offering to market and to simplify certain OJK submission requirements. The changes also enhance disclosure standards to further protect investors and bring the disclosure standards closer in line with those of Reg S/Rule 144A offering documents. With the implementation of these changes, OJK aims to further develop the legal landscape for Indonesian capital markets and, as a consequence, expects the number of companies conducting public offerings in Indonesia will increase over time.

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