

IDX Enacts Regulation on Free Float for Companies with Multi-Voting Shares



Late last year, both the OJK (Indonesia's Financial Services Authority) and the Board of Directors of the IDX (Indonesia Stock Exchange) issued regulations in anticipation of the major tech IPOs that were slated to occur in 2022. These two regulations were OJK Regulation No. 22/POJK.04/2021 ("**OJK Regulation 22/2021**") on multiple voting rights shares of issuers with innovation and high growth rate (click [here](#) to read our previous client alert) and Decree of the Board of Directors of the IDX No. Kep-00101/BEI/12-2021 on Regulation No. I-A on the requirements to list shares in the IDX ("**New Listing Regulation**").

Now, as a follow-up and to complement the foregoing regulations, the IDX has issued another decree, namely Decree of the Board of Directors of IDX No. Kep-00014/BEI/03-2022 ("**Decree**"). We take a closer look at the Decree below.

Background

In practice, the Decree complements the implementation of multiple voting rights shares under OJK Regulation 22/2021, which subject the shareholders holding common shares or non-multiple voting rights shares of a company to a lock-up of eight months after the OJK issues the effective statement for the initial public offering ("**IPO**") **if** the book value of the shares based on the company's latest financial statements is lower than the IPO price ("**Lock Up Shares**"). Further, OJK Regulation 22/2021 also requires the shares of a public company to either be:

1. Converted into scripless shares and be deposited into an escrow account at the depository and settlement institution (in this case, KSEI) ("**Escrow Account**"); or
2. If the Escrow Account is not ready, the shares can be kept in scrip form, and the share registrar or the company must administer the shares by themselves.

According to the Decree, shares can be calculated as part of the free float shares if they fulfil the following:

1. Such shares are owned by a shareholder holding less than 5% of the total listed shares of the company;

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2. Such shareholder is not a controller or affiliate of the company;
3. Such shareholder is not a director or commissioner of the company; and
4. Such shares are not the result of a share buyback by the company (treasury shares).

Although the Decree leaves room for multiple interpretations on whether the form of free float shares must be scripless or not, in several discussions, IDX confirmed its position that the free float shares must be in scripless form. The IDX's view creates a gap between OJK Regulation 22/2021 and the New Listing Regulation as the former allows Lock Up Shares to be in scrip form. Consequently, before the issuance of the Decree, Lock Up Shares in scrip form cannot be categorised as free float shares.

Where Does the Decree Fit In?

Under the Decree, the IDX provides an exemption for the public company that implements multiple voting rights shares whereby the scrip shares can be counted as part of the free float shares as long as the Escrow Account is not yet available and the shares in scrip form fulfil the four criteria mentioned above.

However, please note that the above criteria will only apply until the end of the lock-up period as mentioned in OJK Regulation 22/2021, namely eight months after the OJK issues the effective statement for the IPO registration statement. After the expiry of the lock-up period, the free float shares must fulfil the following requirements under the New Listing Regulation:

1. Such shares must consist of at least 50 million shares and amount to a minimum of 7.5% of the company's listed shares;
2. Such shares must be owned by 300 shareholders, each of whom holds a Single Investor Identification (SID); and
3. If applicable, such shares must be converted into scripless form.

Conclusion

The first company that implemented the requirements under these three regulations was Indonesia's largest tech company, PT GoTo Gojek Tokopedia Tbk ("**GoTo**"), in their widely anticipated IPO. While we have yet to see other companies implementing the multiple voting rights shares and free float requirements in their IPOs, it is likely that GoTo's IPO will set the precedent for future IPOs in Indonesia, especially for tech companies.

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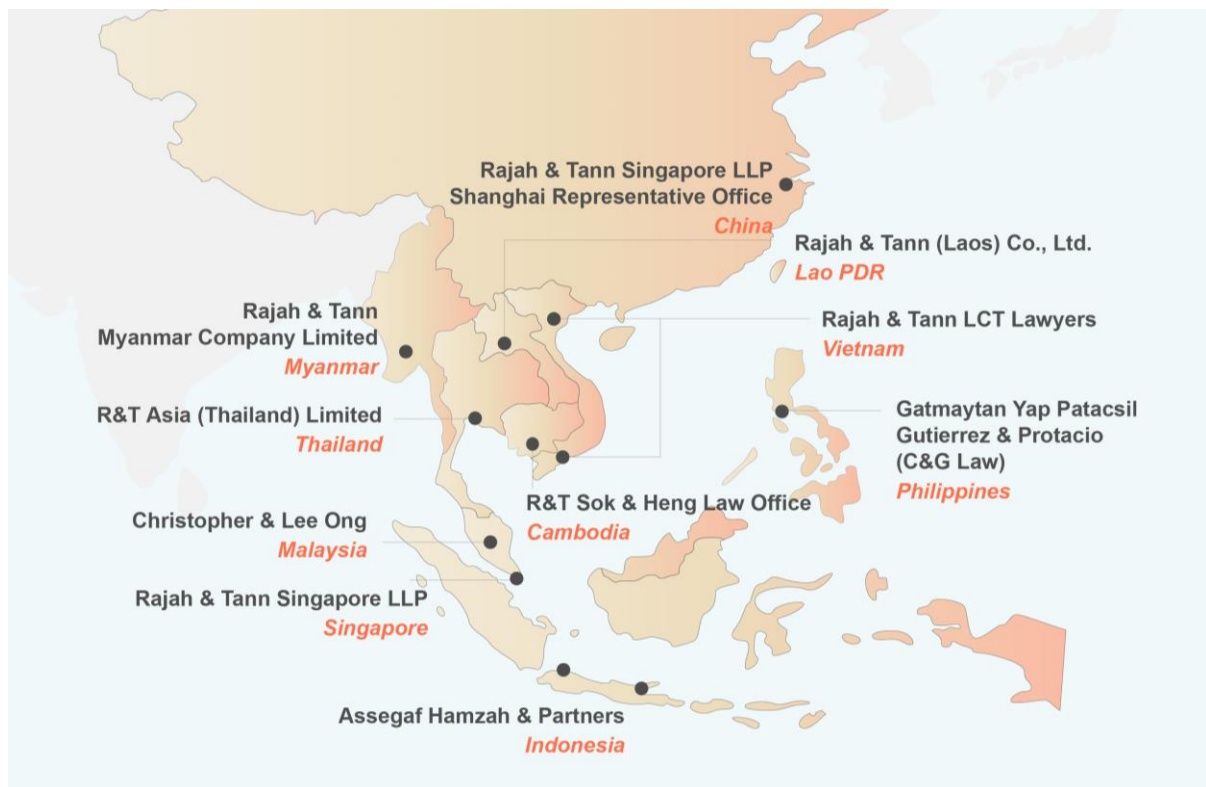
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