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Indonesia Introduces Regulation On Equity Crowdfunding

OJK closed 2018 by issuing the long-awaited equity crowdfunding regulation. Under Regulation No. 37/POJK.34/2018 (“**POJK 37**”), the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) regulates the direct offering of shares to investors (“**Equity Crowdfunding**”) through an open electronic system platform (“**Platform**”). POJK 37 became effective as of 31 December 2018. This regulation is ultimately aimed to boost economic growth in Indonesia by providing access to start-up companies and small medium enterprises in raising funding electronically for the development of their business.

Below we provide a general overview of POJK 37.

Scope

POJK 37 applies to any offering of shares or other equity securities (as determined by OJK) by an issuer (“**Issuer**”) directly to investors through an electronic platform that is managed and operated by a provider (“**Provider**”). The offering of a company’s equity securities through Equity Crowdfunding is not considered as a public offering as defined under Law No. 8 of 1995 on Capital Market (“**Capital Market Law**”) if: (a) the offering is performed through a Provider licensed by OJK, (b) the offering is conducted within a maximum of 12 months, and (c) the total funds raised do not exceed IDR 10 billion (or any other threshold amount determined by OJK) on an annual basis. Further, the Issuer is not deemed as a public company under the Capital Market Law if the number of shareholders of the Issuer is less than 300 and the paid-up capital of the Issuer is less than IDR 30 billion.

The parties involved in the Equity Crowdfunding will be subject to OJK’s supervision, particularly the capital market department.

Provider

Prior to providing Equity Crowdfunding service, a Provider must obtain a license from OJK and be registered as an Electronic System Provider at the Ministry of Communication and Informatics. In addition, the Provider must be an Indonesian limited liability company or a cooperative. OJK also opens a possibility for a securities company to obtain a license from OJK to act as a Provider. When applying for a license to OJK, the Provider must have at least IDR 2.5 billion in paid-up capital (for a company) or own capital (for a cooperative). Further, it must also have qualified human resources with IT background and legal skill to ensure that it can conduct a review on the Issuer. The Provider may also facilitate a trading feature within the Platform to allow the investors to trade the shares issued by the Issuer.

Besides the management and operation of the Equity Crowdfunding, a Provider is not allowed to perform other business activities except for: (i) underwriting, brokerage, and/or investment management if the Provider is a securities company, and (ii) provider of information technology-based services registered at and/or licensed by OJK. POJK 37 also sets out specific obligations of the Provider to ensure the

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capability of the Provider, successful implementation of the Equity Crowdfunding, and protection of both the Issuer and the investors.

Any Provider that has performed Equity Crowdfunding Services prior to issuance of POJK 37 is prohibited from entering into new contracts with the Issuer until it obtains a license from OJK.

Issuer

An Issuer must be an Indonesian limited liability company that is not:

- (a) a company controlled either directly or indirectly by any business group or conglomerates;
- (b) a public company or subsidiary of a public company; and
- (c) a company whose assets exceed IDR 10 billion (including lands and buildings).

When an Issuer intends to offer its shares, it must provide to the Provider several documents and information covering, among others, its establishment and articles of associations, amount and purpose of the raised funds, major risks faced by the Issuer, business plan, and financial statements.

An Issuer is only allowed to offer its shares through one Provider at the same time. The maximum funds to be raised by each Issuer within a 12-month period is IDR 10 billion and OJK gives the freedom for the Issuer to raise this amount through one or more offerings. An Issuer may also set a minimum amount of funds to be raised, failing which the offering would be automatically null and void.

Although the Issuer is not required to file a registration statement to OJK, the Issuer is required to file its annual report to OJK. Lastly, While POJK 37 does not address anything regarding foreign ownership of the Issuer, the Issuer remains subject to President Regulation No. 44 of 2016 on negative investments list.

Investor

Under POJK 37, investors who can buy shares through Equity Crowdfunding must have the capability to buy the shares and the capability to analyse investment risks. Further, unless the investor is a legal entity and has experience in investment in the capital market as evidenced by ownership of a securities account for at least two years prior to the Equity Crowdfunding, the following criteria will apply:

- (a) for investors whose annual income is not more than IDR 500 million, such investors can only purchase shares through Equity Crowdfunding at the maximum 5% of their annual income; and
- (b) for investors whose annual income is more than IDR 500 million, such investors can only buy shares through Equity Crowdfunding at the maximum 10% of their annual income.

However, it remains unclear how these criteria are enforced against the investors and the party responsible for it.

In conclusion, POJK 37 provides an alternative source of funding for small and medium scale enterprises that are not yet able to enter the capital market. Often, Equity Crowdfunding can also be the first step for these enterprises to conduct an initial public offering.

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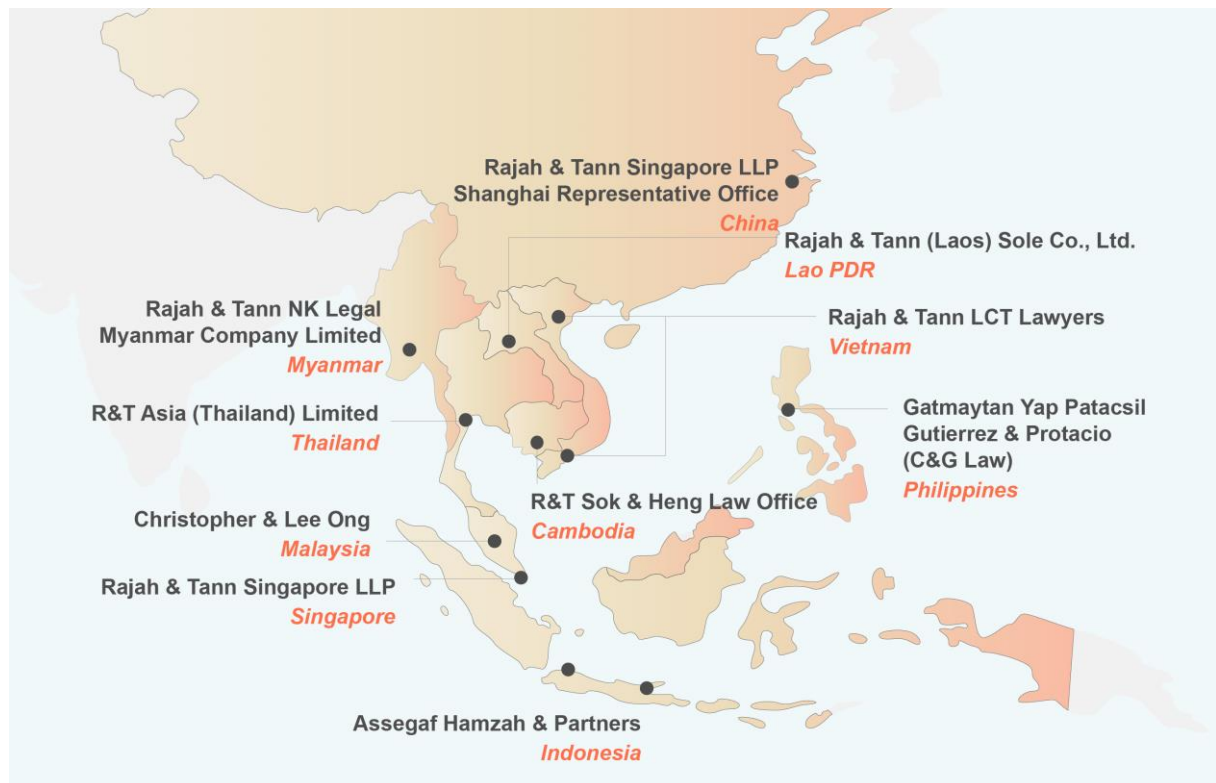
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