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Client Update: Indonesia

2 April 2024

Navigating the Change in Share Ownership Reporting under OJK Regulation No. 4 of 2024

Starting on 28 August 2024, shareholders of a public company will be subject to a potentially game-changing set of requirements on the reporting of ownership or changes in ownership of a public company's shares and encumbrances of a public company's shares. These requirements, which are introduced by the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") in February 2024 under OJK Regulation No. 4 of 2024 ("**POJK 4/2024**"), will be based on the calculation of **valid voting rights** over a public company's shares as opposed to the calculation of the number of shares.

POJK 4/2024 revokes OJK Regulation No. 11/POJK.04/2017 ("**POJK 11/2017**"). Additionally, POJK 4/2024 serves as the implementing regulation for the provision on the report of changes of ownership in a public company under Law No. 4 of 2023 on the Development and Strengthening of Financial Sector.

Besides introducing a new calculation rule based on valid voting rights, POJK 4/2024 also regulates new matters, such as ownership from inheritance, reporting exemption, reporting of encumbrance, and shortened reporting period.

Report on Ownership and Changes in Ownership of Public Company's Shares

In our view, POJK 4/2024 is the government's response to development in the country's regulatory landscape, particularly the recent allowance for issuing multiple voting shares in a public company. Where there are multiple voting shares, it makes sense for ownership percentages of shareholders to be calculated based on their valid voting rights instead of the number of shares held by them (which was the calculation rule under POJK 11/2017).

Despite the change in essence – voting rights from number of shares – the rule for reporting under POJK 4/2024 remains essentially the same as that under POJK 11/2017. Under POJK 4/2024, the following parties must submit a report to the OJK within five business days of changes in the ownership of voting rights (including by way of acquisition):

(a) Each director or commissioner of a public company holding any voting rights, directly or indirectly, in the relevant public company; and

(b) Each party with a direct or indirect ownership of:

  (i) At least 5% of voting rights; and

  (ii) Control over the relevant public company.

Parties falling under sub-point (b) above must report any changes in their voting right percentage, rounded down to the nearest percentage. Additionally, if a party holding at least 5% voting rights decreases their voting rights to less than 5%, it must also report the same to the OJK. If these parties are in an organised group, the report can be submitted by one representative shareholder.

With respect to the type of information that must be reported, POJK 4/2024 contains a template of the report. While the information required to be in the template generally remains unchanged from POJK 11/2017, POJK 4/2024 also requires the report to detail:

(a) The number of shares and voting right percentage before and after the transaction;

(b) The type of transaction;

(c) The number of shares purchased, sold, or transferred;

(d) The classification of shares;

(e) The controller's information;

(f) The name of the shareholder providing the power of attorney (if relevant); and

(g) The details of the organised group (if relevant).

Another category of parties that are subject to this reporting requirement are those that inherit voting rights. This group was not covered under the previous reporting framework under POJK 11/2017.

Reporting Exemptions

Changes in the share ownership of a public company will be exempt from the above reporting obligation if it results from a corporate action. Examples of corporate actions given in POJK 4/2024 are:

(a) A capital increase through rights issue or private placement that causes a dilution in share ownership; or

(b) A transaction executed by the shareholders, such as a share buyback.

Report on Encumbrance of Public Company's Shares

Previously, there was no requirement for shareholders of a public company to report the creation of encumbrances over their shares despite the potential of encumbrances triggering a change of control in the public company. Now, to protect minority shareholders' interest in the potential change of control if the creditor executes its rights over encumbrances, OJK requires shareholders of a public company to submit a report to the OJK within five business days after signing the relevant security documents for:

(a) Any encumbrance on its shares if the number of shares subject to one or more encumbrance(s) reaches at least 5% of shares with voting rights in the public company; and

(b) Any changes to the percentage of shares being encumbered (in this case, any decimals will be rounded down to the nearest percentage).

The report must follow the format specified in POJK 4/2024, which consists of the following information:

(a) The identity of the shareholder;

(b) The name of the public company;

(c) The number of shares and percentage of encumbered shares;

(d) The value of the loan secured by the encumbrance;

(e) The type of transaction/occurrence causing a change in the number of encumbered shares (if relevant);

(f) The date of agreement and its term; and

(g) Any affiliated party relationship between the security grantor and the security grantee.

Electronic Reporting

As of the date of this alert, the OJK has yet to establish an electronic reporting system that will allow parties to submit their report online. There is also no further details on the electronic reporting system in POJK 4/2024. Nonetheless, if the OJK establishes this system, the submission period for the reports on ownership or change in ownership and encumbrance will be shortened to three days from the date of the relevant event.

Key Takeaways

POJK 4/2024 embodies the objectives of Law No. 4 of 2023, aimed at developing and strengthening Indonesia's financial sector, particularly in the capital market arena. This effort is demonstrated through stricter policies on information disclosure requirements regarding public company shares ownership or changes of ownership. Notable among these policies are the shortened reporting timeframe and a more detailed reporting requirement compared to the previous regulatory framework.

Furthermore, a distinguishing feature of POJK 4/2024 is the inclusion of provisions concerning reporting for encumbrances on public company shares. These provisions are prompted by past instances where shareholders engaged in activities without requisite reporting, leading to risks in case of default and subsequent execution of encumbrance, hence may potentially trigger a change of control. This measure serves to mitigate risks such as abrupt changes of control lacking supervision by shareholders and regulators.

Additionally, to ensure shareholders' certainty, POJK 4/2024 also addresses specific conditions such as inheritance-related ownership, exemptions from reporting requirements, and the establishment of an electronic reporting system. In essence, POJK 4/2024 not only enhances regulatory clarity and adherence but also fosters market efficiency and stability, thereby safeguarding the interests of investors and public companies alike.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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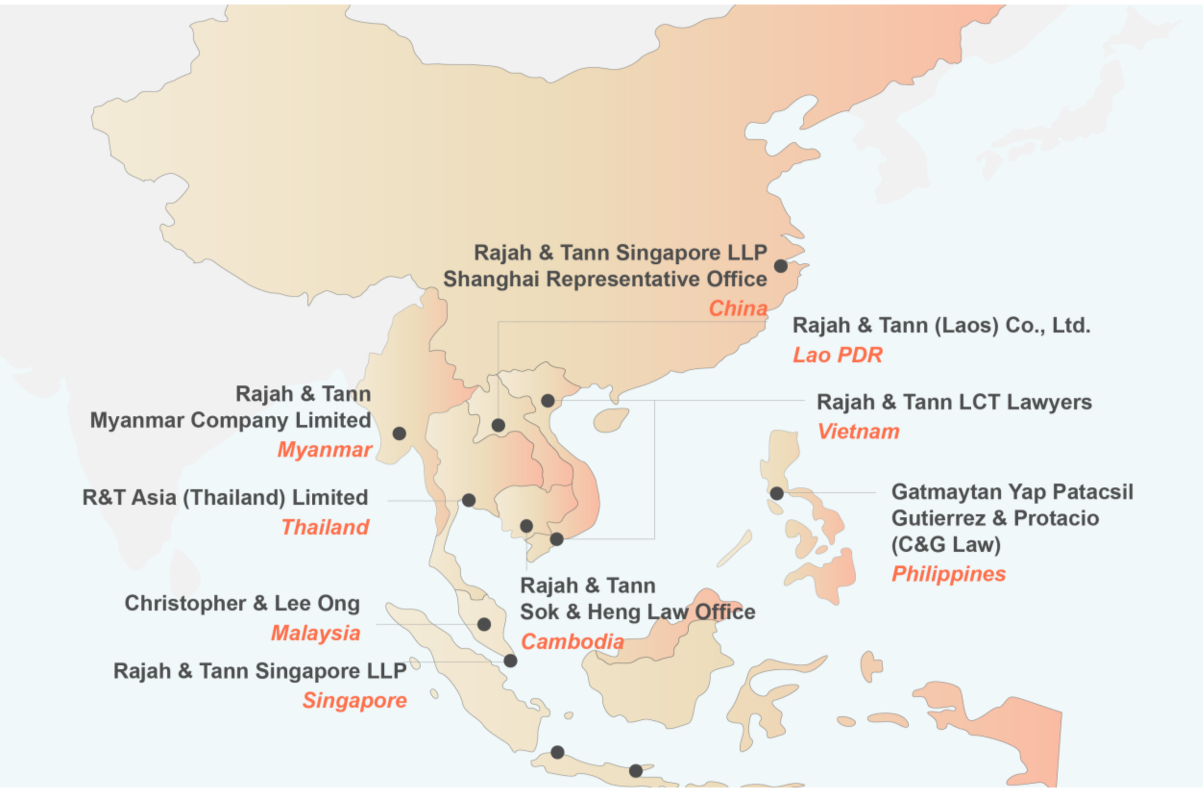

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