

Client Update: Indonesia

30 August 2021

OJK Reaffirms Relaxation to Listing Requirements



Early this month, OJK, Indonesia's Financial Services Authority, issued Circular Letter No. 20/SEOJK.04/2021 in response to the impact brought by the current pandemic towards the capital market sector. The Circular reaffirmed the validity of past relaxations provided by OJK, in addition to introducing new relaxations. While the Indonesian capital market sector has seen some highs during the recent months, OJK still views those certain relaxations are necessary to safeguard the performance and stability of the capital market, specifically issuers and public companies.

We detail these relaxations below.

Validity of Financial Statements and Appraisal Report

Under the Circular, financial statements are now valid for eight months – an extension of two months from the previous validity of six-month. Financial statements that enjoy this extension are those used for the following purposes:

1. registration statement for IPOs, rights issue, and debt securities issuance;
2. quasi reorganisation;
3. merger and consolidation of public companies;
4. material transaction and change of business activity (except to determine the materiality value of a transaction); and
5. affiliated party transaction and conflict of interest transaction.

For the registration statement, the relevant issuer must also disclose the latest summary of its financial data if the financial statements used in the registration statement process exceeds six months after the reporting period.

Similarly, appraisal reports are now valid for eight months.

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Book Building Period and Postponement of Public Offering

The Circular Letter extends the maximum book building period in a public offering from 21 business days to 42 business days after the abridged prospectus is announced, OJK's announcement that the issuer may conduct book building, and/or publication of information concerning the public offering.

Further, issuers that have obtained an effective statement may postpone or cancel their public offering with OJK's approval. To postpone, the issuer must announce the postponement and restart of the public offering in at least one Indonesian newspaper with national circulation, the issuer's website, or the underwriter's website.

Submission of Periodic Reports

The deadline to submit annual financial statements, annual report, and the audit committee evaluation report has been extended by two months after the respective deadlines. The deadline to submit interim financial statements, on the other hand, has been extended by one month after the designated deadline.

General Meeting of Shareholders

The deadline for public companies to hold their annual general meeting of shareholders ("GMS") has been extended from six months to eight months after the end of the company's financial year. Further, the obligation to convene a GMS approving the resignation or suspension of a director or commissioner is extended from 90 days to 150 days after receipt of the resignation request or decision to suspend.

Additional Condition for Capital Increase without Pre-emptive Rights

In addition to the specific conditions for a capital increase to improve the financial conditions of a public company as regulated under OJK Regulation No. 32/POJK.04/2015 (as amended by OJK Regulation No. 14/POJK.04/2019), the Circular Letter allows a capital increase without pre-emptive rights by a public company that experiences the following financial conditions as a result of the pandemic.

The existence of a financial condition is determined based on the following parameters:

1. the company has (a) a current ratio of below 110% based on the latest publicly available financial statements whereby the current ratio is calculated based on the current assets divided by short liabilities, (b) liability that exceeds 70% of the value of its assets based on the latest publicly available financial statement, and (c) experienced a decrease in revenue compared to the previous financial year (based on a comparison of its annual financial statements);
2. the company is a financial service institution experiencing certain conditions as determined by OJK;
3. the capital increase is conducted in the context of government funding support for the implementation of the national economic recovery program (*Program Pemulihan Ekonomi Nasional*); and/or
4. the company has failed or may fail to pay its outstanding obligations to creditors, both unaffiliated or affiliated, due to government ownership or share participation.

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OJK may also determine other parameters besides the preceding parameters. If a capital increase is conducted in the context of any of the preceding parameters, the company does not have to obtain prior approval from its independent shareholders.

Electronic Reporting System and e-IPO

The Circular Letter further enhances the electronic reporting system by allowing issuers to submit additional information on the shelf public offering of debt securities and/or *sukuk*. In addition, issuers and public companies can also submit the following reports through the electronic reporting system:

1. report on the ownership or change in share ownership of directors, commissioners and parties owning at least 5% of the public company's paid-up capital;
2. disclosure of information on the acquisition of public companies, mandatory tender offer statement, and report on the result of the tender offer;
3. report on the result of the public offering, report of the allotment manager report, and the accountant's opinion on the execution of securities subscription and allotment; and
4. disclosure of information and announcement about other parties in relation to the information on the issuer or the public company.

With regards to points 1 to 4 above, the issuer or public company may assist other parties in submitting the above reports. Meanwhile, with regards to the e-IPO system, which was introduced last year, the Circular Letter allows companies to opt-out of e-IPO if, based on IDX's consideration, the e-IPO system cannot be implemented in the public offering due to the interest and the number of orders. Here, OJK will exempt the issuer from the obligation to utilise the e-IPO system. In such case, the public offering will be subject to the prevailing laws and regulations on the registration procedure in the capital market sector, and must follow the procedures relating to allotment and adjustment of allotment of securities under OJK Regulation No. 41/POJK.04/2020 and Circular Letter No. 15/SEOJK.04/2020.

Transfer of Shares Resulting from Buybacks

Lastly, the Circular Letter allows a public company that conducted a buyback of shares and intending to sell the shares to extend the period to fulfil the transfer obligation if OJK determines that the market is experiencing significant fluctuation. The calculation of the period will resume once OJK determines the market to have stabilised. The extension that will be granted will equal the required period under the prevailing regulation *plus* the period of fluctuation.

Conclusion

Public companies and issuers will undoubtedly benefit from the Circular Letter, especially in light of the ongoing pandemic. The issuance of the Circular Letter demonstrates OJK's responsiveness in monitoring the development of the pandemic and its impact on the capital market sector. The Circular Letter also addresses concerns of issuers and public companies relating to the pandemic.

However, because OJK has not specified the validity of these relaxations, we advise that issuers and public companies regularly check for further updates from OJK.

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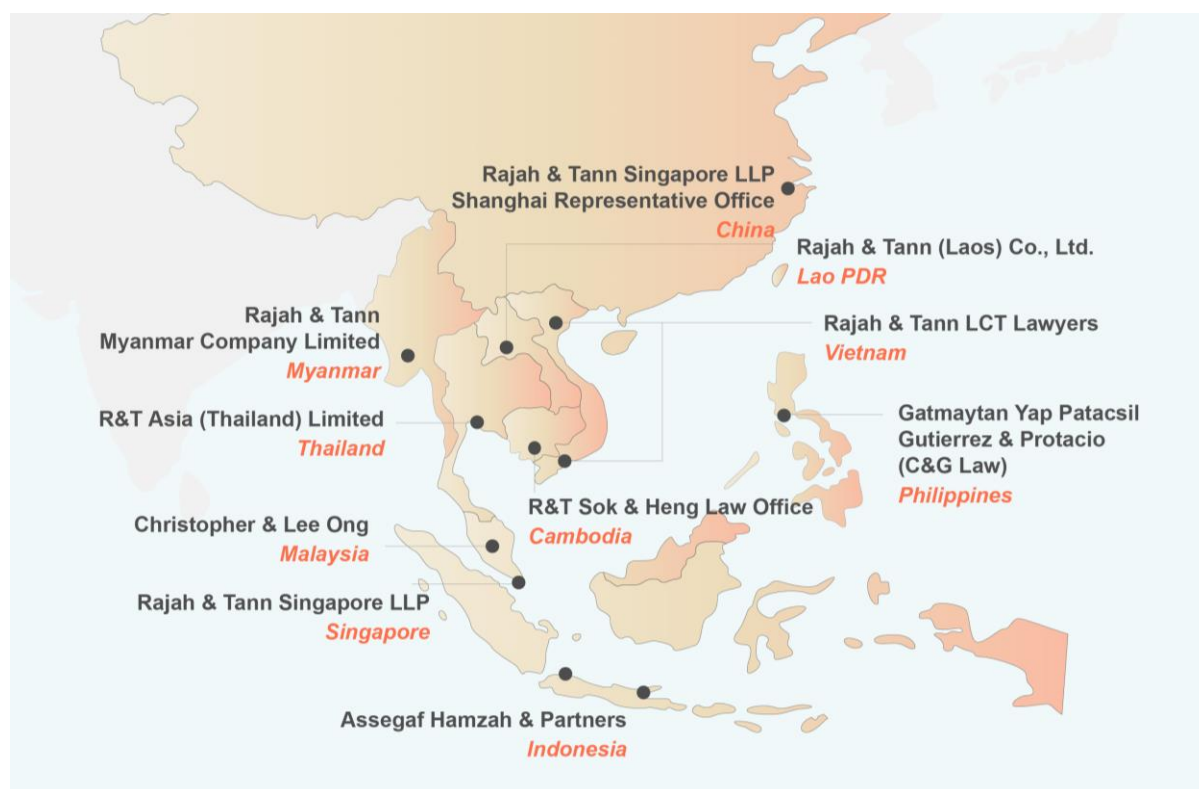
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