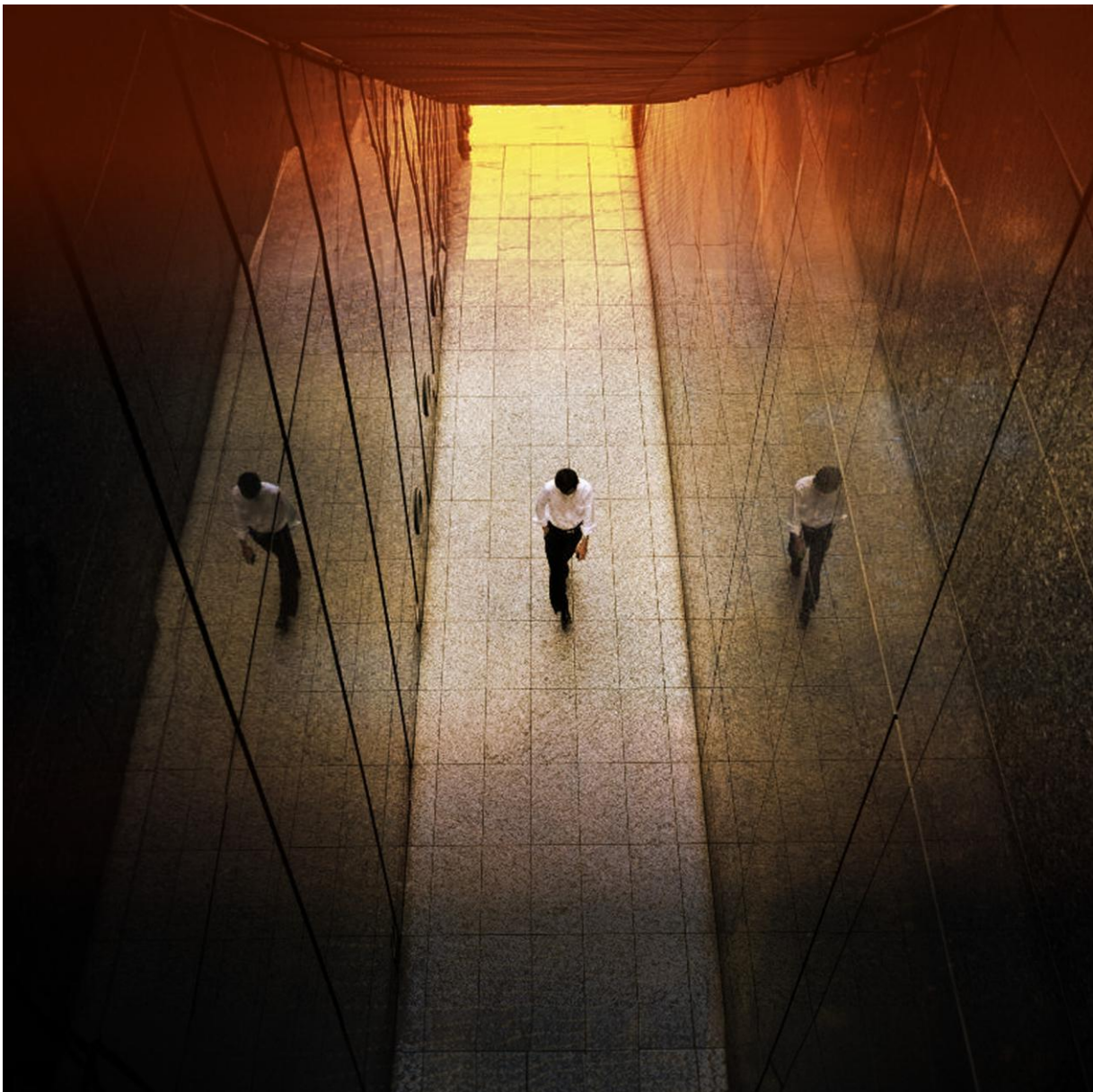


CAPITAL MARKET

OJK Regulation No. 45 of 2024: A Framework for Strengthening Corporate Governance and Streamlining the Public Offering Process



The year 2023 marked a turning point for Indonesia's financial sector with the enactment of the "omnibus law for the financial sector", officially known as Law No. 4 of 2023 on Financial Sector Development and Reinforcement ("**PPSK Law**"). This landmark legislation replaces 1 law and amends 16 laws, including the law governing capital markets, to modernise and strengthen the financial sector (for an overview of the PPSK Law, you can revisit our previous client alert [here](#)).

Following the enactment of the PPSK Law, Indonesia's Financial Services Authority ("**OJK**") has taken steps to align its regulations with the new framework. In 2024, this has included issuing a series of new regulations, including OJK Regulation No. 45 of 2024 on Development and Reinforcement of Issuers and Public Companies ("**Regulation**"). The Regulation targets issuers and public companies, introducing important changes to their governance to align with the PPSK Law.

This client alert highlights the key changes introduced by the Regulation. We examine these notable updates below.

Greater Accountability for Controllers

The Regulation expands the responsibilities of controllers of public companies. Controllers who often have significant ownership in a company and play a key role in determining the policy of a public company either directly or indirectly through its representative (e.g. board members), are now formally given specific responsibilities by the OJK. These specific responsibilities include ensuring the public company holds its annual general meeting of shareholders ("**GMS**") and that the company continues to operate successfully. The controllers are also responsible for appointing the public company's board of directors and board of commissioners.

While the day-to-day management of the public company still rests with the board of directors, these new rules mean that controllers can be held directly accountable if they fail to fulfil their responsibilities. For example, if a public company does not hold its annual GMS, the OJK may directly impose sanctions against the controller. Possible penalties are written warnings, fines, restriction or suspension of the company's business activities. In some cases, the OJK may even revoke the company's business licence or cancel its effective registration statement.

In addition to these administrative sanctions, the regulation opens the possibility for other parties to sue controllers for unlawful acts if their actions or omissions harm the company. This could include situations where the controller's failure to ensure the company's continued operation leads to losses.

It is worth noting that the OJK's ability to impose certain sanctions, such as revoking a business licence, on controllers who do not hold licenses from the OJK raises some questions about how these penalties will be enforced in practice.

Additionally, the Regulation maintains the provisions on "piercing the corporate veil", which were previously outlined in OJK Regulation No. 3/POJK.04/2021. These provisions outline when a controller can be held directly responsible for a public company's losses. A controller can be held liable for losses by the company's independent shareholders (through a resolution in an independent GMS), the OJK (through a decree), or a court (through a court decision).

Streamlining the Public Offering Process

The Regulation also streamlines the public offering process. It updates the timelines for key steps in the process, such as the initial offering and review of the company's disclosures as governed under Bapepam-LK No. Kep-122/BL/2009 of 2009 and OJK Regulation No. 51/POJK.04/2016, respectively. These changes are designed to make the process more efficient and align with the PPSK Law.

Here are the key changes:

- **Minimum period for preliminary offering (bookbuilding)**

The bookbuilding process has been streamlined. The minimum bookbuilding period has been reduced to 3 business days with a maximum of 20 business days. The bookbuilding period starts once the OJK gives the green light and the company has published the preliminary prospectus, abridged prospectus, or disclosure of information to the public. This gives more efficiency to the companies in setting the timeline for their public offering.

- **Effective period of registration statement and period for OJK to request for additional information or change**

To align with the 20-business day period established under the PPSK Law, the OJK has streamlined the deadlines for the effective period of a registration statement and the period for the OJK to request additional information or changes. This update replaces the relevant provisions previously outlined in Bapepam-LK No. Kep-122/BL/2009 of 2009 and OJK Regulation No. 51/POJK.04/2016.

As a result, the OJK now has a clear deadline of 20 business days from the submission of a complete registration statement to declare a registration statement effective. Additionally, the OJK must request any additional information or changes to the registration statement within 20 business days of the initial submission. This streamlining provides a clearer timeline and reduces the potential for conflicting regulations.

Changes to "Go Private" and Buyback Requirements

The Regulation introduces important changes to the rules and timelines for "go private" and buyback by revoking the relevant provisions previously governed under OJK Regulation No. 3/POJK.04/2021.¹ While many of the requirements remain similar to the previous rules (click [here](#) to read our previous client alert on go private and buyback), here are some notable updates:

- **Clearer timeframes for going private**

The Regulation sets specific deadlines for companies to complete the process of going private, whether it is voluntary or mandated by the OJK or the Indonesia Stock Exchange ("IDX"). For instance, if a company is going private due to an OJK order or delisting by the IDX, it must initiate the change of status within 30 days of the order or delisting. This involves submitting the agenda for the GMS on the change of status to the OJK. In the case of delisting by the IDX, the public company also has a separate deadline of 60 business days from the enactment of the Regulation to initiate this change.

- **New rules for incomplete go private plans**

If a public company announces its plan to go private but does not complete the process within 12 months, it must disclose this information in its annual report and explain the reasons for the delay at the next GMS. However, the company is not required to get independent shareholder approval again as long as it started the go private process (e.g. buyback or tender offer process) within 12 months of the initial approval. This provides more flexibility for companies while still maintaining transparency.

- **Shorter deadline for buyback**

¹ The revoked provisions are Articles 64 to 69 on go private, Articles 73 to 78 on buyback, Article 79 on tender offer price, and Article 80 on disclosure of information for go private and buyback.

Public companies now have 12 months (down from 18 months) to complete the buyback of shares when going private voluntarily or due to delisting by the IDX. This encourages a more efficient process.

New Deadlines for Reporting Key Information

The Regulation introduces a tighter deadline for public companies to report and disclose material information by revoking the relevant provision previously governed under OJK Regulation No. 31/POJK.04/2015. This information must now be reported more quickly than before.

Previously, public companies had two business days to disclose such information. Now, they must do it:

- **Immediately**

As soon as they become aware or are reasonably expected to become aware of the material information or facts. The elucidation portion of this Article explains that "immediately" means the issuer and public company must immediately take a step or action as necessary to disclose the material information or facts to the public.

- **By the next trading day**

Before the IDX opens the following business day.

This stricter deadline means that companies have less time to assess whether information is "material". Additionally, while the deadline also allows disclosure by the next trading day, the requirement to also disclose information "immediately" implies that the disclosure must be made *earlier than the next trading day*. This means that, if possible, companies should disclose the information even sooner. To avoid any issues, companies should prioritise disclosing information immediately.

To help ensure timely disclosure, especially for major transactions like mergers or acquisitions, public companies can prepare draft reports in advance. This allows them to disclose the information as soon as it becomes available.

Protecting Public Shareholders in Liquidation

The Regulation clarifies how assets are distributed among shareholders if a public company goes through liquidation. Under the PPSK Law, public shareholders are prioritised over non-public shareholders when it comes to receiving any remaining assets after the creditors have been paid. Thus, in light of the Regulation, the distribution priority is preferred creditors (e.g. unpaid wages and taxes), separatist creditors (e.g. collateral right holders), concurrent creditors, public shareholders, and finally, non-public shareholders.

The Regulation defines "public shareholders" as those who:

- Own less than 5% of the total issued and paid-up shares of the company;
- Not a director, commissioner, major shareholder, controller, or key employee of the company;
- Not an affiliate of a director, commissioner, major shareholder, controller, or key employee of the company;² and
- Not a nominee of a director, commissioner, major shareholder, controller, or key employee of the company.

² Key employees are those who hold positions one level below the board of directors in a public company.

For companies with a dual-class share structure with multiple voting rights, the definition of a public shareholder is based on voting rights or as specified in the public company's articles of association.

Other Notable Changes

The Regulation outlines specific conditions under Article 20 for companies that are delisted by the IDX:

- When a public company does not meet the IDX's listing requirements; or
- When the public company is facing significant challenges that affect the continuity of its business operations.

In these cases, the company or its controller may be required to buy back shares from public shareholders.

Although the obligation to buy back the shares is applicable for both cases above, there is a new provision, Article 8, which is open for multiple interpretation. This article states that the situation for the controlling shareholders to buy back shares will arise under certain conditions, such as:

- Failure to hold annual GMS or submitted required reports for the past two years prior to being delisted;
- Violations of capital markets laws and regulations, especially if the controller benefits from or causes the violation; and
- Other situations determined by the OJK.

In such cases, the company or its controller may be required to buy back shares from public shareholders. It is worth noting that the Regulation's wording on these conditions could be interpreted in different ways. It is unclear whether the buyback requirement applies *only* in the specific situations mentioned in Article 20 or if it also extends to other circumstances where a company is delisted (which could be due to conditions listed in Article 8). Further clarification from the OJK would be beneficial to ensure consistent application of these rules.

Key Takeaways and Next Steps

The Regulation introduces important changes for issuers, public companies, and controllers in Indonesia. These changes aim to strengthen corporate governance, streamline the public offering process, and enhance the protection of public shareholders.

Issuers and public companies should carefully review the new requirements and adjust their internal processes accordingly. This includes:

- Ensuring compliance with the updated timelines for public offerings and go private transactions.
- Implementing procedures for the prompt disclosure of material information.
- Understanding the expanded responsibilities of controllers.

By proactively addressing these changes, companies can mitigate regulatory risks and demonstrate their commitment to good corporate governance.

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