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CLIENTALERT

OJK Authorizes Share Buybacks of Up to 20% of Issued Capital

Amid a massive hemorrhaging of funds from the Indonesian Stock Exchange (IDX) over the last three months, the Financial Services Authority or *Otoritas Jasa Keuangan* (OJK) moved to staunch the bloodletting on 23 August 2013 by issuing Regulation No. 2/POJK.04/2013 on the buyback of shares in "fluctuative market conditions" (the "**Regulation**"). Under the Regulation, a public company may buy back up to 20% of its issued capital without the necessity of obtaining approval from its Shareholders General Meeting provided that the Indonesia Stock Exchange's Composite Index has declined by 15 percent or more over three consecutive days, or, in a catch-all provision, "in such other circumstances as may be determined by the OJK." In its Circular No. 1/SEOJK.04/2013, the OJK announced that the decline of 23.91% in the IDX's Composite Index between 20 May 2013 and 27 August 2013 came within the definition of "such other circumstances."

This marks the first time such a drastic step has been taken by the authorities since the height of the global financial crisis in 2008.

Under the Regulation, a public company may only conduct a share buyback after submitting disclosures to the OJK and Stock Exchange not later than 7 trading days subsequent to the onset of the "fluctuative market conditions." Such disclosures must set out the following information:

a. estimated schedule and cost of the buyback, and nominal value of the shares to be purchased;

b. estimated decrease in company revenue as a result of the buyback and its impact on company costs;

c. proforma earnings per share after the buyback having regard to the estimated decrease in revenue;

d. limits on the price at which the shares are to be bought back;

e. limits on the duration of the buyback;

f. the buyback method to be employed;

g. a management discussion and analysis on the impact of the buyback on the company's operations and its status as a going concern in the future.

The Regulation sets a maximum period of three months during which a share buyback scheme may be conducted.

The general requirements governing the transfer of treasury shares (shares that have been bought back by the issuing company), as set out in Bapepam-LK Rule No. XI.B.2, also apply to the transfer of treasury shares acquired during fluctuative market conditions.

Despite overriding the normal principles of corporate governance (i.e., the division of authority between the Shareholders General Meeting, Board of Directors and Board of Commissioners), the relaxation of buyback restrictions has been broadly welcomed, with a number of leading state firms already having announced plans to avail of it. However, whether it is sufficient to stop the outflow of funds from the Indonesia Stock Exchange over the mid to longer term remains to be seen.