

## DX Amends Equity Securities Listing Rules

The Indonesia Stock Exchange (“**IDX**”) recently amended Rule No. I-A 2004 on the Listing of Equity Securities other than Shares issued by Listed Companies<sup>1</sup> (the “**Previous Rule**”) through the issuance of IDX Rule No. I-A 2014<sup>2</sup> (the “**Amended Rule**”). Effective as of 30 January 2014, the Amended Rule introduces a number of significant changes to the Previous Rule, as discussed below.

### Scope of Amended Rule

The Amended Rule contains both new requirements as well provisions carried over from the Previous Rule and incorporated in Appendix 2 of the Amended Rule. The changes include the following:

- a. Additional requirements for listed companies to be continuously listed on the IDX (continuing obligations).
- b. Additional provisions concerning IDX Circular No. SE-003/BEI/07-2008, dated 24 July 2008, on Elucidation of the Regulations for Preliminary Listing on the IDX.

A new IDX Rule No. I-I (on corporate actions by listed companies issuing equity securities) is to be prepared in which the current rules regulating the issuance of additional shares by a listed company will be incorporated. In addition, further separate IDX Rules will be issued in the near future governing special requirements for the listing of mining companies, and oil and gas companies, respectively.

As mentioned above, the Amended Rule contains set of provisions governing continuing obligations (see Section V). There are several requirements set out in Section V dealing with a range of listing-related issues that were not covered by the Previous Rule. In relation to the free float, there is a continuing obligation to have at least 50 million shares listed on the IDX and a minimum of 7.5% of total issued share capital. There is also a continuing obligation to maintain a minimum of 300 shareholders holding securities accounts with exchange members (i.e., securities companies and custodian banks). The transitional provisions provide for a grace period of 24 months for compliance with the new requirements subsequent to the Amended Rule entering into effect.

### Initial Listing Requirements

The most significant changes in the Amended Rule are to initial listing requirements. First, there is a change in terminology from “unaffiliated director” in the Previous Rule to “independent director” in the Amended Rule. Second, the Amended Rule also imposes a number of additional requirements: a) the company is obliged to immediately form an audit committee upon the submission of the listing application, instead of 6 (six) months after the listing has been finalized; b) the company is obliged to have an internal audit unit established at the time its listing application is submitted; c) if the securities listed are not assigned a nominal or par value at the time of listing, the initial price will be a minimum of Rp 100. Third, there are additional rules stipulating that a) the securities underwriting agreement in the event of a public offering must be in full commitment,<sup>3</sup> both in the case of listings on the Primary Board as well as the Development Board; b) under the Previous Rule, “free float” refers to the portion of shares that is held by non-controlling shareholders, while under the Amended Rule it is defined is the portion of shares that is held by neither the controlling shareholder<sup>4</sup> nor principal shareholders<sup>5</sup>.

## **Listing Requirements for Primary Board and Developing Board**

### Primary Board:

There is an additional provision which stipulates that for listings on the Primary Board, the company must have booked an operating profit for at least the last accounting year. Also, there is a free float requirement for the Primary Board as follows: minimum of 300 million shares and:

*≥ 20% for companies with an equity value before the IPO of less Rp 500 billion*

*≥ 15% for companies with an equity value before the IPO of Rp 500 billion–Rp 2 trillion*

*≥ 10% for companies with an equity value before the IPO of more than Rp 2 trillion*

### Development Board:

The free float requirement in the case of the Development Board is as follows: minimum 150 million shares and:

*≥ 20% for companies with an equity value before the IPO of less than Rp 500 billion*

*≥ 15% for companies with an equity value before the IPO of Rp 500 billion–Rp 2 trillion*

*≥ 10% for companies with an equity value before the IPO of more than Rp 2 trillion*

The Amended Rule also includes a transitional provision for a company intending to list its shares or which had submitted its securities listing application at the time of the issuance of the Amended Rule. In such a case, then all the preceding provisions of the Previous Rule concerning the free float will apply, as long as there is no change in the date of the financial statements relied upon when applying for the securities listing.

### **Continuing Obligations**

Section V also requires that a minimum of 30% of the total membership of a listed company's board of commissioners be made up of independent commissioners. Should a vacancy arise among the ranks of the independent commissioners, the listed company must fill the vacancy at the next GMS or not later than 6 months counting from the date on which the vacancy arose. As previously mentioned, the listed company must also have 1 (one) independent director.

As regards the maximum number of terms that may be served by independent commissioners and directors, the Amended Rule provides that they may serve a maximum of two consecutive terms in office. This stipulation comes into effect on 31 July 2014. In addition, the IDX has issued a Circular<sup>6</sup> to further explain the matter. In the case of independent commissioners and directors whose terms of office end prior to 31 July 2014, the terms they have already served will not be included in calculating whether they can serve a further term(s). In other words, they start with a clean slate on 31 July 2014 and are eligible to serve a further two terms. However, in the case of an independent commissioner or director who is still in office on 31 July 2014, he or she may serve out their term, which shall then be counted as one term for the purposes of the determining whether he or she is eligible to serve a further term.

In addition, the listed company must have an audit committee (to be established when the company submits its listing application) and an internal audit unit, and appoint a corporate secretary.

In relation to the audit committee, internal audit unit and corporate secretary, the listed company is required to provide reports and documents related to the work carried out by these bodies. Should the IDX at any time request such reports or documents, the listed company must deliver such reports / documents by not later than 2 (two) working days after receiving the request.

## Transfer of Listing to Primary Board

The Amended Rule makes significant changes to the rules governing the transfer of a listing from the Development Board to the Primary Board. Under the Previous Rule, in order for a listed company to transfer its listing to the Primary Board, it had to submit a transfer request to the IDX, accompanied by all of the documents needed to show the fulfillment of the transfer requirements. Under the Amended Rule, the IDX has the authority to transfer a listing from the Development Board to the Primary Board, without the necessity of a transfer request from the Listed Company, based on the IDX's own assessment as regards the fulfillment of the listing transfer requirements. The Amended Rule also provides that as the corporate annual financial statements are normally submitted at the end of March, listing transfers should be conducted in May.

As mentioned in the opening paragraph above, a number of provisions from the Previous Rule remain in effect, as set out in Appendix II to the Amended Rule, such as the rules governing the procedures and fees for the listing of the additional shares.

## Related Development

In response to stakeholder criticism of the new rules restricting the terms of independent commissioners and independent directors, as reported by [hukumonline.com](http://hukumonline.com), OJK Chairman Muliaman D. Hadad agreed that a maximum term of four years in a private company is controversial. While he said that the OJK would discuss these concerns with the IDX, he also acknowledged that restrictions on the terms of independent commissioners and directors were necessary so as to maintain their impartiality.

<sup>1</sup> IDX Board of Directors Resolution No. Kep-305/BEJ/07-2004 dated 19 July 2004.

<sup>2</sup> IDX Board of Directors Resolution No. Kep-0001/BEJ/0-2014 dated 20 January 2014.

<sup>3</sup> Full commitment means that the underwriter must subscribe to any unsold shares based on its underwriting commitment.

<sup>4</sup> According to Bapepam Rule No. IX.H.1, a controlling shareholder is defined as a shareholder that holds more than 50% of the issued capital of a public company, or a shareholder with the ability to determine, either directly or indirectly, the management and/or policy of a public company in any way

<sup>5</sup> According to the Elucidation on article 1 of the Capital Markets Law, a principal shareholder is defined as a shareholder that holds at least 20% of the voting rights arising from all of the shares issued by a listed company or such lesser amount as may be prescribed by the OJK

<sup>6</sup> IDX Board of Directors' Circular No. SE-00001/BEI/02-2014

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