

CLIENT UPDATE

18 JANUARY 2016

OJK Issues Series of New Rules on Rights Issues, Disclosure of Information, Utilization of Public Offering Proceeds, and Other Matters

A. Introduction

On 16 December 2015, the Financial Services Authority (*Otoritas Jasa Keuangan* / “**OJK**”) issued the following regulations:

- i. Rule No. 32/POJK.04/2015 on Capital Increases in Public Companies with Pre-emptive Rights. This Rule, which revokes Bapepam Rule No. IX.D.1 on Pre-emptive Rights (Bapepam-LK Chairman’s Directive No. Kep-26/PM/2003), came into effect on 22 December 2016 and is aimed at: (a) enhancing good corporate governance, and (b) improving the quality of information disclosure in connection with rights issues;
- ii. Rule No. 33/POJK.04/2015 on the Content and Form of Prospectuses in Relation to Increases of Capital by means of Pre-emptive Rights Issuance. This Rule, which came into effect on 22 December 2016, expressly revokes Bapepam Rule No. IX.D.3 (Bapepam Chairman’s Directive No. KEP-09/PM/2000).
- iii. Rule No. 30/POJK.04/2015 on Realization Reports on Utilization of Proceeds of Public Offerings, which comes into effect on 16 April 2016 and will revoke Bapepam Rule No. X.K.4 (Bapepam Chairman’s Directive No. KEP-27/PM/2003);
- iv. Rule No. 31/POJK.04/2015 on the Disclosure of Material Information or Facts by Issuers¹ and Public Companies, which comes into effect on 22 December 2016 and expressly revokes Bapepam Regulation No. X.K.1 on Information to be Promptly Disclosed to the Public (Bapepam Chairman’s Directive No. Kep-86/PM/1996).
- v. Rule No. 29/POJK.04/2015 on Issuers and Public Companies Exempted From Reporting and Disclosure Requirements. This is an entirely new regulation which comes into effect on 22 December 2016 ; and
- vi. Rule No. 43/POJK.04/2015 on the Code of Conduct for Investment Managers which comes into effect on 22 December 2016 and expressly revokes Bapepam Rule No. V.G.1 (Bapepam Chairman’s Directive No. KEP-31/PM/1996) and Bapepam Rule No. V.G.3 (Bapepam Chairman’s Directive No. KEP-32/PM/1996).

CLIENT UPDATE

18 JANUARY 2016

In this alert, we confine our discussion to Rule No. 32/POJK.04/2015, Rule No. 30/POJK.04/2015 and Rule No. 31/POJK.04/2015..

B. Key Changes

B.1 Rule No. 32/POJK.04/2015 on Capital Increases in Public Companies with Pre-emptive Rights (“POJK No. 32/2015”)

Although POJK No. 32/2015 essentially reiterates what is contained in Bapepam Rule No. IX.D.1 on Pre-emptive Rights (Bapepam-LK Chairman’s Directive No. Kep-26/PM/2003, dated 17 July 2003) (“**Rule No. IX.D.1**”), it also incorporates a number of changes and new requirements that are applicable to Public Companies, as described below:

i. Payment of Shares

POJK No. 32/2015 acknowledges the payment of shares in-kind, as permitted under Law No. 40 of 2007 on Limited Liability Companies (“**Companies Law**”). Under POJK No. 32/2015, payment in-kind is allowed provided that: (i) it is related to the use of the proceeds, and (ii) an appraiser is appointed to assess the fair value and the fairness of such in-kind contribution. The time between the date of the appraisal report and the payment of shares in-kind should not exceed 6 months.

In addition to in-kind payments, POJK No. 32/2015 allows receivables to be used as payment for shares, provided that such receivables have been disclosed in the Public Company’s most recent audited financial statements.

ii. Disclosure of Information

In addition to the Prospectus that must be prepared in advance of a rights issue, POJK No. 32/2015 requires a Public Company to disclose all relevant information by no later than the date of announcement of the General Meeting of Shareholders (“**GMS**”). Such disclosure must encompass, at a minimum, the following information:

- a. the maximum number of shares with pre-emptive rights that will be issued, including accompanying securities such as warrants or convertible bonds resulting from the exercise of the pre-emptive rights;
- b. estimated timeframe for completion of the capital increase;

CLIENT UPDATE

18 JANUARY 2016

- c. an analysis on the effects of the capital increase on the Public Company's financial condition and on its shareholders;
- d. general elaboration on the proposed use of proceeds; and
- e. information on in-kind contributions, including appraisal reports.

The announcement must (i) be placed in at least 1 (one) daily newspaper with nationwide circulation or be posted on the Stock Exchange website; and (ii) be posted on the Company's website.

iii. General Meeting of Shareholders

POJK No. 32/2015 requires the GMS of the Public Company to be convened prior to the submission of the Registration Statement to the OJK. The time between the granting of approval by the GMS and the coming into effect of the Registration Statement issued by the OJK shall not exceed 12 months. This marks a significant change from Rule No. IX.D.1, under which the Registration Statement must first be declared effective by the OJK before the convening of the GMS.

iv. Registration Statement

Previously, the Registration Statement was to be submitted simultaneously with the announcement of the GMS. Under POJK No. 32/2015, the Registration Statement should be submitted after the GMS, and becomes effective:

- (i) Upon the elapse of:
 - a. 45 days subsequent to the submission of the Registration Statement to the OJK;
 - b. 45 days subsequent to the submission of any changes and/or additional documents to the OJK; or
- (ii) Upon a declaration by the OJK that no further changes and/or documents are required.

v. Commitments by Standby Buyer, Majority Shareholder, and Prospective Assignees of Rights

POJK No. 32/2015 provides greater clarity as regards the requirement that the standby buyer, majority shareholder and a prospective assignee of pre-emptive rights each provide a declaration that they have sufficient funds to exercise their rights or obligation to purchase the remaining shares (as the case may be). This requirement, however, is not applicable where payment is to be made in-kind. The majority

CLIENT UPDATE

18 JANUARY 2016

shareholder is required to submit a declaration as to whether it intends to exercise its rights or to assign them to a third party. If the majority shareholder intends to exercise its rights, it must issue a declaration certifying that it has sufficient funds, supported by evidence from its bank in the form of bank statements or latest account balance. These documents should be submitted at the same time as the submission of the Registration Statement to the OJK.

B.2 Rule No. 30/POJK.04/2015 on Realization Reports on Utilization of Proceeds of Public Offerings (“POJK No. 30/2015”)

The key changes under POJK No. 30/2015 relate to the following matters:

- a. Reporting schedule; and
- b. Procedure for varying the use of proceeds.

Reports must be submitted to the OJK on a semi-annual basis (June 30 and December 31) until such time as the entire proceeds of the public offering have been exhausted. The first report should be submitted on the first reporting date (June 30 or December 31, as the case may be) after (i) the submission date of shares in an IPO or securities in a public offering of debt securities and/or *sukuk*, or (ii) the allotment date for a capital increase conducted through a rights issue.

Reports to the OJK should be submitted using the standard form appended to POJK No. 30/2015.

In the specific case of a Public Company, the utilization of proceeds from a public offering must also be accounted for to the GMS as part of the meeting's agenda. Such accountability report should, at a minimum, contain information on:

- a. The total proceeds of the public offering or rights issue;
- b. The total costs related to the offering;
- c. The proceeds that have been used and what they were used for; and
- d. Unused proceeds and the reasons for their not being used.

In the case of all Issuers, unused proceeds of a public offering should be invested in “safe and liquid financial instruments,” and the Issuer is required to disclose the nature and locations of such investments, the applicable interest rate or profit-sharing arrangements (*bagi hasil*), and whether there is any relationship of affiliation between the company and the party with which the unused proceeds are invested. According to the Elucidation on POJK No.

CLIENT UPDATE

18 JANUARY 2016

30/2015, “safe and liquid financial instruments” include government/sovereign bonds and time deposits. In addition, unused proceeds must be invested in the name of the Issuer and may not be collateralized.

The previous Bapepam Rule No. X.K.4 (Bapepam Chairman’s Directive No. KEP-27/PM/2003) is silent as to when a change in the use of proceeds should be reported to the OJK. By contrast, under POJK No. 30/2015, an Issuer or public company should report a proposed change in the use of proceeds at the same time as the notification of the GMS’s agenda to the OJK.

B.3 Rule No. 31/POJK.04/2015 on the Disclosure of Material Information or Facts by Issuers and Public Companies (“POJK No. 31/2015”)

The key changes in POJK No. 31/2015 relate to the following:

- a. Types of material information or facts that must be disclosed;
- b. Timing for disclosure of material information or facts;
- c. Scope of material information or facts; and
- d. Means of disclosing material information or facts.

POJK No. 31/2015, which came into effect on 22 December 2015, sets out extensive rules on the obligations of Issuers and Public Companies to report to the OJK and promptly disclose material information or facts to the public by no later than the end of the 2nd business day after such material information or facts arise, including but not limited to information or facts related to:

- a. A merger, spin off, consolidation or establishment of joint venture;
- b. Submission of an offer to buy securities issued by another company;
- c. A purchase or sale of company shares that is of material value;
- d. Stock split or merger;
- e. Distribution of interim dividend;
- f. Delisting or relisting on the Stock Exchange;
- g. Income in the form of a dividend that is extraordinary in nature, such as (i) the amount of the dividend obtained is very material compared to the net profit of the company and (ii) the amount of obtained is significantly more or less than the amount of dividend obtained in the preceding years;
- h. Entering into or terminating an important contract;
- i. A new invention or new product that may enhance the value of the company;
- j. The sale of additional securities to the public or on a limited basis, where the amount involved is material;
- k. Change of control, whether direct or indirect, of the Issuer or Public

CLIENT UPDATE

18 JANUARY 2016

- Company;
- l. Change in the Board of Directors and/or Board of Commissioners;
 - m. A buyback or redemption of debt securities and/or sovereign bonds (*sukuk*);
 - n. Purchase or sale of material assets;
 - o. The occurrence of a labour dispute which could affect company operations;
 - p. Material litigation against the Issuer or Public Company and/or a member of its Board of Directors or Board of Commissioners;
 - q. Change of Accountant engaged to audit the Issuer or Public Company;
 - r. Change of Trustee;
 - s. Change of Securities Administration Bureau;
 - t. Change in the Issuer or Public Company's accounting year;
 - u. Change of the reporting currency in the financial statements;
 - v. The Issuer or Public Company has been placed under special supervision by the relevant regulator so as to potentially affect the continuity of the Issuer or Public Company's business;
 - w. The imposition of restrictions on the Issuer or Public Company's business operations by the relevant authorities;
 - x. Material change in, or failure to achieve, published financial projections;
 - y. Occurrence of an event that could materially increase the financial liabilities or materially decrease the income of the Issuer or Public Company;
 - z. Debt restructuring;
 - aa. Suspension or shutdown of all or part of company business segments;
 - bb. Material effects on the Issuer or Public Company due to an event of force majeure; and/or
 - cc. Other material information or facts.

However, there is no threshold given for "material value" in respect of the information or facts that must be reported to the OJK and disclosed to the public. Thus, it is up to the Board of Directors of the Issuer or Public Company to determine whether the particular information or facts are material.

Generally, an Issuer or Public Company is required to report to the OJK and disclose any material information or fact by no later than 2 business days after the emergence of the material information or fact. However, if the material information or fact has become known a third party who is not an insider² of the

CLIENT UPDATE

18 JANUARY 2016

Issuer or Public Company (“**Third Party**”), the Issuer or Public Company should promptly report to the OJK and make disclosure to the public.

POJK No. 31/2015 expands the scope of material information and facts so as to encompass not only material information and facts that arise in the Issuer or Public Company itself, but also material information or facts related to a Controlled Company³ of the Issuer or Public Company. In the event that material information or facts, as listed in POJK No. 31/2015 (with the exception of information or facts related to (i) a stock split or merger, (ii) distribution of interim dividend, (iii) delisting or relisting on the Stock Exchange, (iv) change of Trustee, and (v) change of Securities Administration Bureau), arise in a Controlled Company whose financial statements are consolidated with the Issuer or Public Company, and such Controlled Company is not an Issuer or a Public Company, then the Issuer or Public Company should report to the OJK and disclose such material information or facts to the public. However, if the Controlled Company is also an Issuer or Public Company under the Capital Market Law, then the Controlled Company itself must report the material information or facts to the OJK and make disclosure to the public.

The previous rule, Bapepam Regulation No. X.K.1 on Information to be Promptly Disclosed to the Public (Bapepam Chairman’s Directive No. Kep-86/PM/1996, dated 24 January 1996), is silent on the means by which material information or facts should be disclosed to the public. By contrast, POJK No. 31/2015 provides that the announcement disclosing the information to the public should be (i) posted on the Issuer or Public Company’s website in both Bahasa Indonesia and a foreign language, provided that, in the case of the foreign language version, the announcement shall at least be made in English, and (ii) in the case of an Issuer or Public Company whose shares are listed on the Stock Exchange, it should be posted on the Stock Exchange website or published in 1 (one) Bahasa Indonesia daily newspaper with nationwide circulation. For an Issuer or Public Company whose shares are not listed on the Stock Exchange, the announcement disclosing material information or facts should be (i) posted on the Issuer or Public Company’s website in both Bahasa Indonesia and a foreign language, provided that, in the case of the foreign language version, the announcement is at least made in English, and (ii) published in 1 (one) Bahasa Indonesia daily newspaper with nationwide circulation.

POJK No. 31/2015 requires that the public disclosure shall, at a minimum, contain information on: (i) the date of the relevant event, (ii) the nature of the material information or facts, (iii) a description of the material information or

CLIENT UPDATE

18 JANUARY 2016

facts, and (iv) the impact of the material information or facts.

The material information or facts must be reported to the OJK using the standard form appended to POJK No. 31/2015, and be submitted by a Director or the Corporate Secretary of the Issuer or Public Company. However, the form may only be submitted by the Corporate Secretary based on a written power of attorney granted by the Director.

C. Conclusion

1. POJK No. 32/2015 provides greater clarity on a number of matters related to rights issues, including (i) the payment of shares in-kind, (ii) the use of receivables to pay for shares, and (iii) the declarations that must be provided by the standby buyer, majority shareholder and prospective assignees. However, from the timing perspective, as shareholder approval must be obtained prior to the submission of the Registration Statement, the timeline for completion of a rights issue is now longer than was previously the case.
2. POJK No. 30/2015 provides that reports to the OJK on the utilization of public offering proceeds must be submitted semi-annually (June 30 and December 31) until such time as the entire proceeds of the public offering have been exhausted. This represents a relaxation of the reporting requirement as previously reports had to be submitted on a quarterly basis. It also provides more clarity as to how unused proceeds of a public offering are to be invested.
3. POJK No. 31/2015 provides greater clarity on, among other things, the types of material information that must be disclosed by Issuers or Public Companies, and expands the reporting requirement to not only cover material information or facts related to the Issuer or Public Company itself, but also material information or facts related to consolidated subsidiaries of the Issuer or Public Company.

-
1. Under the Capital Markets Law, (i) an "Issuer" is defined as any Party that conducts a Public Offering, (ii) a "Party" is defined as a natural person, company, partnership, association or any organized group, and (iii) a "Public Offering" is defined as an offering of securities by an issuer for the purpose of their sale to the public in accordance with the procedures set out in the Capital Market Law and its ancillary regulations.
 2. Under POJK No. 31/2015, an "insider" is defined as (i) commissioners, directors or employees of Issuers or Public Companies, (ii) principal shareholders of Issuers or Public Companies, (iii) individual that, due to his position or profession or due to his business relationship with Issuers or Public Companies enables such individual to obtain an insider information, or (iv) a party that within the last 6 months is no longer classified under points (i), (ii) and (iii) above.
 3. A "Controlled Company" is defined by POJK No. 31/2015 as a company which is controlled by the Issuer or Public Company, whether directly or indirectly.

CLIENT UPDATE

18 JANUARY 2016

Contacts



Bono Daru Adji
Partner
Capital Market

D +62 21 2555 7878
F (62) 21 2555 7899
bono.adji@ahp.co.id



Putu Suryastuti
Partner
Capital Market

D +62 21 2555 7810
F (62) 21 2555 7899
putu.suryastuti@ahp.co.id

Our Regional Presence



Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
 9 Battery Road #25-01
 Straits Trading Building
 Singapore 049910
 T +65 6535 3600 F +65 6225 9630
 sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
 Vattanac Capital Office Tower, Level 17, No. 66
 Preah Monivong Boulevard, Sangkat Wat Phnom
 Khan Daun Penh, 12202 Phnom Penh, Cambodia
 T +855 23 963 112 / 113 F +855 963 116
 kh.rajahtannasia.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP
Shanghai Representative Office
 Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
 Shanghai 200021, People's Republic of China
 T +86 21 6120 8818 F +86 21 6120 8820
 cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited
 Office Suite 007, Inya Lake Hotel No. 37, Kaba Aye
 Pagoda Road, Mayangone Township, Yangon, Myanmar
 T +95 9 73040763 / +95 1 657902 / +95 1 657903
 F +95 1 9665537
 mm.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners
Menara Rajawali 16th Floor
Jalan DR. Ide Anak Agung Gde Agung Lot #5.1
Kawasan Mega Kuningan, Jakarta 12950, Indonesia
T +62 21 2555 7800 F +62 21 2555 7899
www.ahp.co.id
** Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.
Phonexay Village, 23 Singha Road, House Number 046/2
Unit 4, Saysetha District, Vientiane Capital, Lao PDR
T +856 21 454 239 F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
Level 22, Axiata Tower, No. 9 Jalan Stesen Sentral 5,
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia
T +60 3 2273 1919 F +60 3 2273 8310
www.christopherleeong.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN | *Thailand*

Rajah & Tann (Thailand) Limited
973 President Tower, 12th Floor, Units 12A-12F
Ploenchit Road, Lumpini, Pathumwan
Bangkok 10330, Thailand
T +66 2 656 1991 F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers
Ho Chi Minh City Office
Saigon Centre, Level 13, Unit 2&3
65 Le Loi Boulevard, District 1, HCMC, Vietnam
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

Hanoi Office
Lotte Center Hanoi - East Tower, Level 30, Unit 3003,
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam
T +84 4 3267 6127 F +84 4 3267 6128
www.rajahtannlct.com

Based in Jakarta, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally, and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Singapore, China, Lao PDR, Vietnam, Thailand and Myanmar, as well as associate and affiliate offices in Malaysia, Cambodia, Indonesia and the Middle East. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Assegaf Hamzah & Partners and subject to copyright protection under the laws of Indonesia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Assegaf Hamzah & Partners.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Assegaf Hamzah & Partners.

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.