

Client Alert



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New OJK Rule on Capital Market Investment Products in Support of the Tax Amnesty Law

Recent Developments

To encourage investors to invest in Indonesian capital market investment products and to support the implementation of Law No. 11 of 2016 on Tax Amnesty ("**Tax Amnesty Law**"), the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* - "**OJK**") recently issued OJK Rule No. 26/POJK.04/2016 on Capital Market Investment Products in Support of the Tax Amnesty Law ("**OJK Rule No. 26/2016**"). One of the primary intentions of the new rule is to reduce regulatory requirements for some capital market investment products so that Indonesian investors relying on the Tax Amnesty Law would consider investing their funds in those investment products.

Our client alert on the Tax Amnesty Law can be accessed [here](#).

What's New

We set out below a summary of the key changes in the new regulation.

- **Securities Account Opening**. When opening a securities account to:
 1. invest in mutual funds;
 2. engage an investment manager in managing their securities portfolio (one-on-one fund management agreement);
 3. invest in Asset Backed Securities (*Efek Beragun Aset* - "**EBA**") in the form of Collective Investment Contracts ("**CIC**");
 4. invest in EBA in the form of Participation Letters;
 5. invest in Real Estate Investment Funds (*Dana Investasi Real Estate* - "**DIRE**") in the form of CIC; and
 6. invest in securities traded on or outside the stock exchange,

investors who have been granted tax amnesty must at least submit their tax amnesty decision letter as part of their account opening application to the financial services providers. Under the elucidation of OJK Rule No. 26/2016, investors who have been granted tax amnesty are not obliged to submit KYC documents required under OJK Rule No. 22/2014.

- **Funds Managed by Investment Managers.** OJK Rule No. 26/2016 regulates several forms of mutual funds managed by investment managers. Below are additional provisions or changes for each form of mutual funds.
 - **Limited Participation Mutual Funds (*Reksadana Penyertaan Terbatas - "RDPT"*) in the Form of CIC**
 - RDPTs in the form of CIC are regulated under OJK Rule No. 37/2014. OJK Rule No. 26/2016 provides more time to submit most of the supporting documents for the registration of RDPTs in the form of CIC than was provided in OJK Rule No. 37/2014. OJK Rule No. 26/2016 requires the supporting documents (except RDPT disclosure and the biography of employees of the investment managers) to be submitted at the latest 10 working days after RDPT invests in the target company.
 - OJK Rule No. 26/2016 gives RDPTs in the form of CIC (i) more time to invest in the target company (i.e., up to 1 year after the registration date) and (ii) subject to certain requirements, a longer period to place funds in a deposit if RDPT has not made any investments in the target company (i.e., up to 1 year after the registration date). If an RDPT does not invest in the target company within that 1-year period, it must be dissolved (this was initially 6 months).
 - For RDPTs that have not made any investments in the target company, OJK Rule No. 26/2016 has now increased the maximum amount of funds that these RDPTs may place in a deposit (i.e., may exceed 10% of the total net value of the mutual funds), provided that the funds are placed in a deposit of a designated bank appointed by the Minister of Finance ("**Designated Bank**").
 - **One-On-One Fund Management Agreement**
 - OJK Rule No. 26/2016 stipulates a lower minimum amount of the initial fund managed under the fund management agreement (i.e., Rp.5,000,000,000). The previous minimum was Rp.10,000,000,000.
 - OJK Rule No. 26/2016 now regulates that investments in deposit certificates can exceed 25% of the funds under management, if the investment is made in deposit certificates of Designated Banks.

- ***Asset Backed Securities in the form of CIC***
 - OJK Rule No. 26/2016 reduces the requirements for the registration of EBAs in the form of CIC in OJK. Investment managers must now at least submit the following documents only:
 1. The CIC of EBA.
 2. The final draft of the prospectus (stamped and signed).
 3. A specimen of EBA certificate.
 - But investment managers are now required to obtain and keep certain documents related to the registration of EBA (including a legal opinion on EBA, financial statements of EBA and rating results of EBA).
- ***Real Estate Investment Funds in the form of CIC***
 - OJK Rule No. 26/2016 also reduces the requirements for documents to be submitted to OJK for the registration statement of DIREs in the form of CIC to only the following documents:
 1. The CIC, along with its digital format.
 2. The prospectus (stamped and signed), along with its digital format.
 - But investment managers are now required to obtain and keep certain documents related with the registration statement of the DIRE. Those documents include the property management agreements, valuation results, legal opinion and due diligence report on the DIRE and lease agreements for the properties.
- ***Registration Statement for the Public Offering of Asset Backed Securities in the form of Participation Certificates***
 - OJK Rule No. 23/POJK.04/2014 on the Guidelines and Reporting of Asset Backed Securities in the Form of Participation Letters ("**OJK Rule No. 23/2014**") previously set out the minimum documents that had to be submitted to OJK. OJK Rule No. 26/2016 requires an issuer to submit at least the following documents only:
 1. EBA transactions document which has been notarized by a notary registered at OJK.
 2. The final draft of the prospectus (stamped and signed).
 3. A specimen of EBA certificate.
 - But EBA issuers are now required to obtain and keep certain documents related with the registration statement of EBA. Those documents include a legal opinion on the issuance of

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EBA, an auditor's opinion on the accounting aspects of the issuance of EBA, rating results and the underwriting agreement (if any).

- **Miscellaneous.** After the holding period¹ of the Tax Amnesty Law ends, investors may continue their investments in capital market investment products regulated under OJK Rule No. 26/2016.

Conclusion

There are significant changes in the current regulatory framework for the above capital market investment products, specifically in relation to the documents required for the registration statement. These changes may incentivize investment managers to launch more investment products and investors to invest more in those investment products.

¹ Under Tax Amnesty Law, the holding period is at least 3 years from the transfer of funds to Indonesia territory or from the issuance of tax amnesty notification letter from the Minister of Finance.