Capital Markets
Jakarta

# Client Alert

May 2019


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# OJK Now Requires Independent and Unaffiliated Shareholders' Approval For Public Companies' Non-Preemptive Rights Issuances

The Financial Services Authority (*Otoritas Jasa Keuangan* - "**OJK**") issued Rule No. 14/POJK.04/2019 on Amendment to Rule No. 32/POJK.04/2015 ("**POJK 32/2015**") on Increase of Capital of Public Companies With Preemptive Rights ("**POJK 14/2019**"). The rule came into effect on 30 April, but a copy of this rule was only been made available to the public recently.

POJK 14/2019 consolidates POJK 32/2015 and POJK No. 38/POJK.04/2014 on Increase of Capital of Public Companies Without Preemptive Rights ("**POJK 38/2014**") by revoking POJK 38/2014, and amending the provisions that were contained in POJK 38/2014 and incorporating them into POJK 32/2015.

## What's New?

POJK 14/2019 tightens the shareholders' approval requirement for a non-preemptive rights issuance ("**NPR**") of a public company that is not in financial distress to protect independent and unaffiliated shareholders' interests. Under POJK 14/2019, a public company is deemed to be in financial distress in the following circumstances:

1. For a bank, the bank received a loan from Bank Indonesia (the central bank) or other government agency amounting to more than 100% of the bank's paid up capital or the bank is in a condition that could lead to the bank being restructured by a government agency.
2. For a non-bank, the company has negative net working capital and liabilities of more than 80% of the company's assets.
3. For both banks and non-banks, the entity fails to satisfy its financial liabilities to its non-affiliated creditor and such creditor agrees to take shares or convertible bonds as settlement of the liability.

For a public company that is not in financial distress, the 10% in two years limitation on capital increase in an NPR still applies.

## Key Provisions

Unlike under POJK 38/2014, POJK 14/2019 makes a distinction in the shareholders' approval required in an NPR of:

1. a public company in financial distress
2. a public company not in financial distress

Both NPRs must be approved by the public company's general meeting of shareholders ("**GMS**"). But for a public company NOT in financial distress, POJK 14/2019 requires the public company to obtain the approval of its independent shareholders and unaffiliated shareholders in a GMS under the following quorum and voting requirements:

| First GMS | | Second GMS | | Third GMS | |
|---|---|---|---|---|---|
| **Quorum Requirement** | **Voting Requirement** | **Quorum Requirement** | **Voting Requirement** | **Quorum Requirement** | **Voting Requirement** |
| More than 50% of the total shares held by independent shareholders and unaffiliated shareholders with valid voting rights | More than 50% of the total shares held by independent shareholders and unaffiliated shareholders with valid voting rights | More than 50% of the total shares held by independent shareholders and unaffiliated shareholders with valid voting rights | More than 50% of the total shares held by independent shareholders and unaffiliated shareholders with valid voting rights attending the GMS | As determined by the OJK | More than 50% of the total shares held by independent shareholders and unaffiliated shareholders with valid voting rights attending the GMS |

If the quorum requirement in the first GMS is not satisfied, the public company may convene a second GMS. If the quorum requirement in the second GMS is not satisfied, the public company may convene a third GMS. If the quorum requirement is satisfied (in any of these GMSs) but the voting requirement is not satisfied, the GMS is deemed to have disapproved the NPR.

## Moving Forward

This change in essence means that public companies' controlling and affiliated shareholders will now not be able to vote in a GMS to approve an NPR, which makes it challenging for public companies not in financial distress to carry out an NPR going forward.

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