

Indonesia: Amendment of the Capital Markets Law - Issues relating to Securities and Public Offering

In brief

On 12 January 2023, the Government of Indonesia enacted Law No. 4/2023 on Development and Strengthening of the Financial Sector (Pengembangan dan Penguatan Sektor Keuangan). This law amended several laws, including capital markets law, which was regulated under Law No. 8/1995 on Capital Markets.

In this alert, we highlight some changes with respect to the definition of securities and public company, as well as public offering related matters.

Contents

Highlights

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a. Amendment relating to definition of "Securities"

The previous capital markets law defined "securities" as commercial paper, i.e., promissory notes, commercial paper, shares, bonds, debentures, collective investment contract participation units, futures on securities and every derivative of securities.

After the amendment, the definition has become commercial paper or **investment contracts in conventional and digital form as well as any other forms** in accordance with technology developments that give rights to the owner to, directly or indirectly, **obtain economic benefits** from the issuer or from certain parties based on agreements, and **every derivative of securities**, which can be transferred or traded on the capital market.

The amended capital markets law provides a broader definition of "securities". The new definition covers various contemporary products, such as digitalized forms of securities under investment contracts. The new law has also determined that carbon units fall under the definition of "securities". This provides further clarity that the issuance and trading of carbon units will fall under the supervision of OJK. This also indicates that it is likely that the Indonesia Stock Exchange will become the exchange that will facilitate the trading of carbon units.

It is possible that the definition will be broadened even further, as the amended capital markets law provides that the OJK has the authority to determine other instruments as "securities".

b. Amendment relating to definition of "Public Company"

The previous capital markets law defined "public company" as a company whose shares are owned by at least 300 shareholders and has paid-up capital of at least IDR 3 billion, or the number of shareholders and paid-up capital determined by a government regulation.

After the amendment, the definition has become a company with **the number of shareholders and paid-up capital determined by an OJK regulation**. OJK Regulation No. 3/POJK.04/2021 on Conducting Activities in the Capital Markets Sector provides a similar definition of "public company" to that provided under the previous capital markets law, i.e., a company whose shares are owned by at least 300 shareholders and has paid-up capital of at least IDR 3 billion. But since now OJK has the authority of determine a different threshold, it is possible for OJK to determine a different threshold if OJK considers the existing threshold is no longer appropriate.

c. Amendment relating to procedure of registration statement

Under the previous capital markets law, the registration statement of a public offering became effective 45 days after the submission of a duly completed registration statement (that is if OJK did not provide any comments or require any further documents/information on the registration documents) or on an earlier date if it was declared effective by OJK.

After the amendment, a registration statement becomes effective 20 business days after the submission of a duly completed registration statement (that is if OJK does not provide any comments or require any further documents/information on the registration documents) or on an earlier date if it is declared effective by OJK.

The aim of the amendment under the amended capital markets law is to reduce the timeframe for a prospective issuer to obtain an effective statement if OJK does not respond to its registration statement.

d. Exemption of public offering requirements

Under the previous capital markets law, a public offering could only be conducted after the submission of a registration statement to OJK, and a public company could only offer or sell securities to the public after the registration statement became effective. The following were exempt from those requirements: (i) offerings of debt securities with maturities of no more than one year, **(ii) issuance of deposit certificates, and (iii) issuance of insurance policies.**

Under the amended capital markets law, **the exemptions in items (ii) and (iii) above are removed, and new exemptions are added**, namely offerings of **(i) islamic bonds with maturities of no more than one year, (ii) debt securities and islamic bonds (sukuk) issued by the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan) specifically to be offered to professional investors and (iii) securities specifically regulated under the law.**

The amendment also increases criminal sanctions for public offerings that do not comply with the requirements to (i) submit a registration statement to OJK and (ii) obtain effective status for the registration statement. Previously, any violation of the public offering requirements was subject to a maximum 10 years of imprisonment and monetary fines with a maximum amount of IDR 15 billion. Under the amended capital markets law, those violations are subject to a term of between **five and 15 years imprisonment and monetary fines of IDR 5 billion minimum up to IDR 150 billion maximum.**

Contact Us



Iqbal Darmawan
Partner
Jakarta
iqbal.darmawan@hhplawfirm.com



Hanny Marpaung
Senior Associate
Jakarta
hanny.marpaung@hhplawfirm.com



Bryan Sonny Wisaksono
Associate
Jakarta
bryan.wisaksono@hhplawfirm.com

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