Indonesia: Amendment of the Capital Markets Law - New post IPO compliance requirements

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 relating to post-IPO obligations (i.e., share ownership reporting, disclosure of material information and insider trading).

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Highlights

1. **Amendment relating to shares ownership reporting obligations**

   Under the previous capital markets law, the parties in (a) and (b) below had to report their shareholdings in a public company and changes in such shareholdings to OJK within 10 calendar days after the date of acquisition of shares or the change of ownership:

   (a) Each director or commissioner of a public company that held any shares, directly or indirectly, in that public company.

   (b) Each party that had direct or indirect ownership of a minimum of 5% of the paid-up capital in a public company.

   Each party in (a) was required to report any change in share ownership, while each party in (b) was required to report any change of 0.5% or more in share ownership, in a public company.

   Following the amendment, the reporting window is shortened from 10 calendar days to five working days. Further, the new law only requires a report if the ownership of shares comes with voting rights (kepemilikan hak suara atas saham). Shares without voting rights are excluded for the purpose of this reporting. It is now explicitly stated under the amended capital markets law that OJK may determine a stricter reporting deadline.

   The amended capital markets law has yet to be followed by the issuance of implementing rules on the relevant provision (or at least amendment of the existing implementing rule, i.e., OJK Regulation No. 11/POJK.04/2017 on Reports of Ownership or Any Changes to the Ownership of Shares in Public Companies). Therefore, it remains to be seen how OJK would invoke this amendment in practice, as there are some contradictions between the amended capital markets law and the existing rules.

2. **Amendment relating to disclosure obligation of material information or facts**

   Previously, any event giving rise to material information or facts that may influence the value of securities of a public company had to be reported by the public company to OJK and announced to the public within two business days after the event occurred.

   After the amendment, the report to OJK and the disclosure to the public must be made as soon as possible after the event occurs. Taking a cautious view, this can mean that the reporting/disclosure should be made within two days or even on the same day of the occurrence of the event. In its elucidation, the rule has acknowledged that the dynamic development of the market requires faster disclosure of information than the previous practice.

   It remains to be seen whether OJK will amend the current relevant implementing regulation (OJK Regulation No. 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies) or issue a new regulation regarding this amended disclosure obligation.

3. **Amendment relating to insider trading**

Previously, any party that sought to obtain insider information and then lawfully obtained that information was exempted from the insider trading prohibition that applies to insiders if the information was provided by the public company without restrictions.

After the amendment, the above exemption no longer exists. Every person who has, and should have known that any information is, insider information will be subject to general insider trading prohibitions under Articles 95 and 96 of the capital markets law.

Furthermore, the amended capital markets law also increases criminal sanctions for insider trading. Previously, any violation of the prohibition of insider trading 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.

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