Client Update: Indonesia
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OJK's New Rule Tightens Share Buyback and Expands Scope of Disclosure

Indonesia's Financial Services Authority or *Otoritas Jasa Keuangan* ("**OJK**") has enacted several changes on share buyback by public companies. These changes, adopted under OJK Regulation No. 29 of 2023 on Share Buyback by Public Companies ("**New Regulation**"), subject public companies to more stringent provisions compared to the previous framework under OJK Regulation No. 30/POJK.04/2017, most notably on the execution of buybacks, as well as the contents of the public disclosure.

Furthermore, the New Regulation extends the methods to transfer treasury shares[1] and allows for some flexibility by allowing the payment or settlement of certain transactions such as asset acquisition and debt or bonds repayment as one of the purposes of such transfer.

As we will see below, the New Regulation has far-reaching implications. It not only establishes a more rigorous framework for share buybacks but also instil a heightened sense of accountability and transparency within public companies.

[1] Treasury shares mean any shares owned by the company as the result of a share buyback.

Provisions on Buyback Tightened

Previously, a public company was not allowed to buy back its shares if doing so would result in a significant decrease in the company's shares liquidity on the stock exchange. The New Regulation retains this restriction and adds two other restrictions such that a public company intending to conduct a buyback of its shares must ensure that:

(i) The buyback does not occur in parallel with any buybacks under fluctuating market conditions as regulated in OJK Regulation No. 13 of 2023. If the public company wants to conduct a buyback under these circumstances, they have to terminate the regular buyback before conducting the buyback under fluctuating market conditions; and/or

(ii) There are no treasury shares from any previous buyback that have not been transferred by the company within the extended time period.

With respect to timing, the New Regulation also shortens the maximum period for completing buyback from 18 months to 12 months from the date of the approval of the general meeting of shareholders. However, the New Regulation emphasises that the public company can terminate the buyback during this period. A buyback termination must be notified to OJK, and corresponding information must be announced to the public within two business days of termination.

Besides the passing of the 12-month period, a buyback will be complete when:

(i) The number of shares targeted in the buyback have been obtained; or

(ii) The allocated funds have been fully utilised.

As a result of these changes, a public company intending to conduct a buyback must carefully plan its buyback, including making sure that it has adequate funds.

Transfer of Treasury Shares

Transfer methods

In conjunction with tightening the parameters of share buybacks, OJK gives more flexibility in provisions governing the transfer of treasury shares. Previously, there are five means for a public company to transfer/reduce its treasury shares:

(i) Refloating the shares through the stock exchange or outside the stock exchange;

(ii) Withdrawing the shares by conducting a capital reduction;

(iii) Implementing an employee's stock option plan or employee's stock purchase plan;

(iv) Implementing a debt conversion into the company's shares; and/or

(v) Any other methods as approved by OJK.

The New Regulation adds two new alternatives to transfer treasury shares, namely:

(i) Distributing the treasury shares to the existing shareholders in proportion to their ownership; and

(ii) Implementing a payment or settlement of certain transactions like an asset purchase or debt and bonds settlement.

Notably, if a share buyback transfer by way of payment/settlement of certain transactions involve an affiliated transaction, conflict of interest transaction, material transaction, or change in business, the New Regulation mandates strict compliance with the existing regulatory landscape, namely OJK Regulation No. 17/POJK.04/2020 on material transactions and change of business activities, as well as OJK Regulation No. 42/POJK.04/2020 on affiliated party and conflict of interest transactions. This reinforces the commitment to transparency in ensuring that stakeholders are protected.

Pricing

There is no new provision on the buyback price, however, the New Regulation introduces more flexible criteria for the transfer price. It provides the public company with the opportunity to offer discounted price for its treasury shares in the amount of up to 7.5% calculated from the average closing price within the period of:

(i) The last 90 days prior to the transfer of the treasury shares (for the shares that are traded in the market); or

(ii) The last 12 months prior to the last trading day for a public company whose shares are no longer listed or have been temporarily suspended in the IDX.

The discounted price can be applied to a transfer by way of refloating the shares through the stock exchange or outside the stock exchange. There are conditions that must also be met, namely:

(i) It must be carried out within 30 days of the buyback completion;

(ii) It does not occur in parallel with another buyback; and

(iii) The transfer price is equivalent to or higher than the average buyback price.

Extension of period

Despite the above flexibility, there are still some limitations on the transfer of treasury shares to ensure that public companies do not delay the transfer and to maintain the quantity of the publicly traded shares, which may affect the stability of the share price.

Under the New Regulation, OJK would still grant an extension of two years plus another year to transfer all the remaining treasury shares if a public company has not managed to transfer the treasury shares within three years after its buyback. However, to enjoy this allowance, the company must have transferred at least 10% of the treasury shares within the three years period or the share price for the last three years after the completion of buyback must never exceed the average buyback price.

For companies that do not meet one of the above requirements, OJK will only grant one year of extension without the possibility of another extension.

Disclosure and Reporting Requirements

Information is key in the public companies' landscape and the New Regulation enhances and adds to the scope of disclosure required of public companies. The existing framework requires public companies to disclose the salient information regarding their proposed buybacks, such as:

(i) The estimation on the decrease in the public company's revenue as a result of the buybacks, as well as the impact to such company's financing costs;

(ii) Pro forma earnings (per share) of the public company after the implementation of buyback, taking into account the decrease in revenue; and

(iii) Management discussion and analysis regarding the buybacks impact on the business activity as well as business growth of the public company in the future.

The New Regulation expands the above scope and requires them to also disclose, among others, the source of funds for the buyback. A public company must ensure that its source of funds:

(i) Does not and will not significantly affect the financial capability of the company to fulfil its outstanding obligations, e.g., this can be evidenced from the public company's current ratio remaining at more than 110%, as calculated by dividing the current assets with the short-term liabilities as stated in the company's latest publicly available financial statements; and

(ii) Originates from its internal cash and is not the proceeds of its public offering, loan, and/or debt in any form.

The New Regulation also expands the scope of disclosure and reporting in the context of the implementation of buyback and transfer of treasury shares. First, the public company must report the progress of their share buyback as well as the transfer of the treasury shares every six months (as of 30 June and 31 December) to OJK. The report on the transfer of the treasury shares should be done periodically until such transfer is completed and even if no transfer occurs during the relevant period.

Further, when the company proceeds with transferring its treasury shares, it must make certain disclosure depending on the method of transfer:

Transfer Method	Several Key Contents of Public Disclosure
Implementation of an employee's stock option plan or employee's stock purchase plan	(a) Requirements of the employee, director, and/or board of commissioners deemed eligible as recipients of shares. (b) Exercise price or method of calculating share exercise price. (c) Lock-up provisions (if applicable).
Implementation of payment/settlement of certain transactions	(a) Payment/settlement method for the transactions. (b) Elaboration on the type and amount of the transaction. (c) Term of payment for the transaction. (d) Number of shares that will be utilised as payment/settlement for the transaction.
Implementation of debt conversion into the company's shares	(a) The formula for the conversion exercise price. (b) Names of prospective holder(s) or purchaser(s) of the convertible equity-based securities. (c) Conversion exercise period as well as terms and conditions of the convertible equity-based securities. (d) Quantity and amount/value of the convertible equity-based securities.
Proportional distribution of treasury shares to the existing shareholders	(a) Basis for determining the transfer price. (b) Ratio of shares distribution. (c) Distribution date for the shares allocation.

(d) Information on the tax treatment of the distribution of shares transfer, including its impact on shareholders and on the public company.

Key Takeaways

In conclusion, the New Regulation marks a significant step forward in clarifying and strengthening the compliance framework for public companies engaging in share buyback transfers. First, it imposes a heightened standard of prudence upon public companies, mandating meticulous consideration to ensure that buybacks do not compromise their financial stability or disrupt market dynamics. Additionally, by requiring transparent disclosure of funding sources, the New Regulation ensures the seamless availability of buyback funds, facilitating efficient execution without financial constraints.

Moreover, the New Regulation emphasises the importance of timeliness, introducing shortened timeframes for buybacks, expanding the methods of transfer, and mandating punctual and consistent periodical reporting. This underscores the imperative for prompt and consistent adherence to the regulatory guidelines.

Furthermore, the New Regulation incorporates a clear transitional provision. Public companies that have obtained shareholders' approval for share buybacks or are in the process of transferring treasury shares prior to the New Regulation's enactment can continue under the provisions of the previous regulatory framework (OJK Regulation No. 30/POJK.04/2017). This allows for a smooth transition, ensuring that any ongoing processes remain uninterrupted without the need for repeating previously completed procedures.

In essence, the New Regulation not only enhances regulatory clarity and compliance but also promotes market efficiency and stability, safeguarding the interests of both investors and public companies alike.

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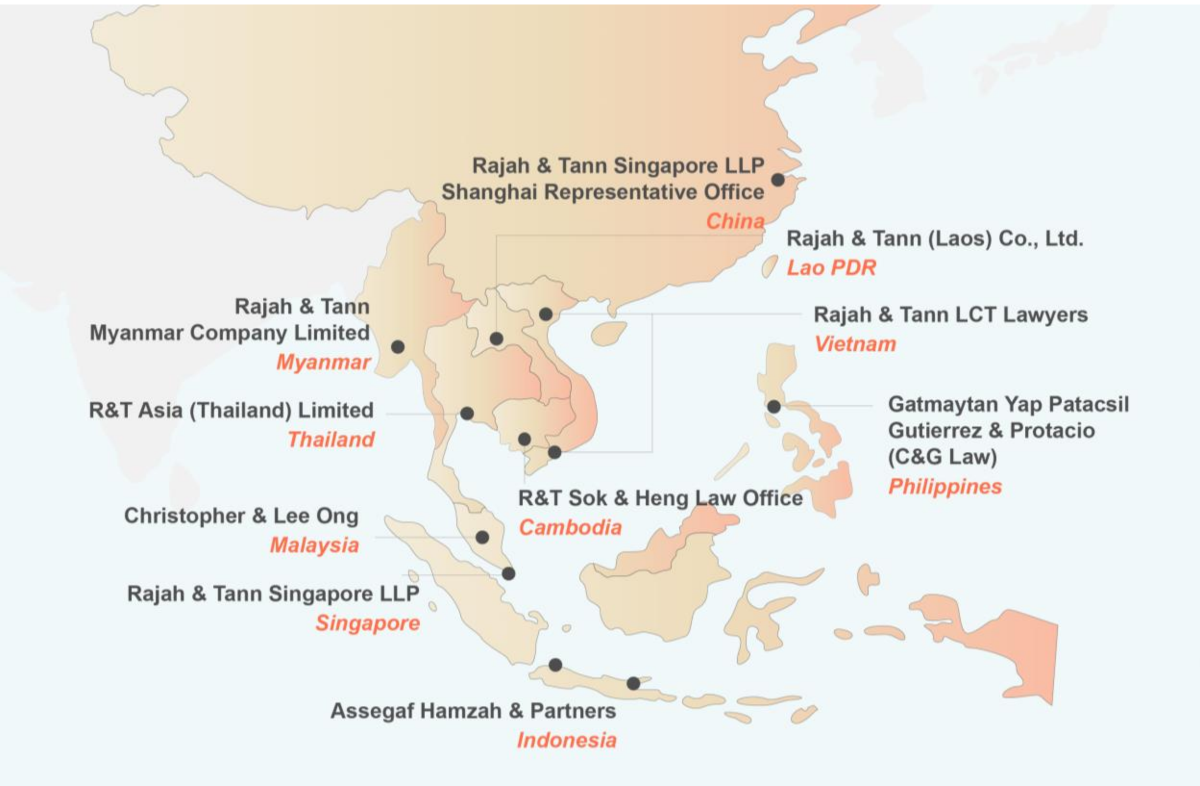

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