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Client Update: Indonesia

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Multi-Voting Shares: Sweetener for Tech Start-Up IPOs?

On 1 December 2021, the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) issued the long-anticipated regulation governing the implementation of classes of multiple voting rights share ("**MVS**") under OJK Regulation No. 22/POJK.04/2021 ("**Regulation**").

As the title of the Regulation suggests, MVS can only be implemented by issuers deemed as having innovation and high growth rate, specifically technology start-ups that intend to do an initial public offering ("**IPO**") in Indonesia. Usually, there are concerns among start-up founders when conducting an IPO because of the potential dilutive effect on the founder's ownership in the company, which in turn diminishes the founder's ability to retain control of the company. By issuing the Regulation, the OJK signals to start-up founders that they can protect their vision after IPO. Concurrently, the Regulation also gives certainty to the public on who holds control over the company.

As we discuss below, the Regulation sets out the requirements for the implementation of the MVS, obligations imposed on the MVS holders, and specific requirements for the MVS issuer in implementing corporate actions such as private placement and rights issue.

Issuer Eligibility Criteria

An issuer that intends to implement MVS must fulfil the below criteria:

(1) Utilises technology to create product innovation that enhances productivity and economic growth, as well as social benefit;

(2) Has shareholder(s) that provide significant contribution in technology utilisation;

(3) Has:

   (a) A total asset of at least IDR 2 trillion;

   (b) Conducted operational activities for at least three years before the date of the registration statement;

(c) A compound annual growth rate of total assets of at least 20% within a three-year period; and

(d) A compound annual growth rate of revenue of at least 30% within a three-year period;

(4) Is not an existing issuer who has conducted public offer of equity securities; and

(5) If relevant, satisfies any other criteria as determined by the OJK.

With respect to the last point, it is worth noting that the OJK may impose any other criteria at its own discretion. As at the date of this client update, the OJK has not issued any circular letter on these other criteria.

In addition to the above criteria, the issuer must regulate the terms of the MVS in its articles of association.

Term of MVS

Under the Regulation, an issuer's MVS may only be valid for 10 years following the effective date of the issuer's IPO registration statement. Upon extension, the issuer may extend the MVS' validity for another 10 years, subject to approval from its independent shareholders in a general meeting of shareholders.

Lock-Up

In addition to the above limit, the Regulation prohibits MVS holders from transferring all or part of their MVS for two years after the effective date of the IPO registration statement.

Besides regulating lock-up for MVS holders, the Regulation also prescribes a lock-up on the issuer's existing ordinary shareholders. If the book value per share recorded in the issuer's latest financial statement is lower than the IPO price, then all existing ordinary shareholders of the issuer must not transfer all or part of their shares in the issuer for eight months after the effective date of the IPO registration statement.

Transfer of MVS

After the end of the MVS lock-up period, any MVS holder that intends to transfer its MVS must:

(1) Offer the shares to other MVS holder(s) of the issuer; and

(2) Inform the OJK and the issuer of its intention to transfer the MVS at the latest two business days before the transfer of the MVS.

The issuer will also be required to disclose the proposed transfer of the MVS at the latest one business day after receiving information of the transfer from the MVS holder.

Ratio Tiering

An issuer that implements MVS must implement a voting ratio of the MVS against the ordinary shares in the following proportion:

Percentage of MVS Ownership in the Issued and Paid-up Capital of the Issuer	Voting Rights Ratio (MVS : Ordinary Shares)
Between 10% and 47.36%	10:1
Between 5% and 10%	20:1
Between 3.5% and 5%	30:1
Between 2.44% and 3.5%	40:1

The above requirement implies that the minimum economic percentage owned by all MVS holders in the issuer must be at least 2.44%.

The adjustment of the voting rights ratio will be done automatically, without requiring the issuer to amend its articles of association and will be calculated on each recording date of a general meeting of shareholders.

If the voting rights of the MVS holders become lower than 50% of all voting rights, then the voting rights ratio can be increased to up to 60:1 within six months after the MVS holders' voting rights fall below 50%, subject to the approval from the issuer's independent shareholders.

Eligible MVS Holders

Initial MVS holders must be determined in a general meeting of shareholders and disclosed in the IPO prospectus.

In addition, not everyone can become an MVS holder after the IPO. MVS holders must be:

(1) Those who have been disclosed in the IPO prospectus as parties who are eligible to become an MVS holder; and/or

(2) Members of the board of directors who have made significant contribution to the business growth of the issuer and who have been approved by the independent shareholders of the issuer in the general meeting of shareholders.

If any of the MVS holder is an entity, such entity must:

(1) At least 99% owned directly by an MVS holder and/or a party who was previously designated as an MVS holder in a general meeting of shareholders but is no longer an MVS holder;

(2) Has a director whose expertise is aligned with the core business of the issuer; and

(3) If the entity is an Indonesian entity, be a company engaged in management consultancy business.

Moreover, if the above entity is established solely for fundraising purposes, such entity will also have to be directly controlled by:

(1) Shareholders who have been designated as MVS holders in a general meeting of shareholders but are no longer an MVS Holder; and/or

(2) Those who have been disclosed in the IPO prospectus as parties who are eligible to become an MVS holder; and/or

(3) Members of the board of directors who have made significant contribution to the business growth of the issuer and who have been approved by the independent shareholders of the issuer in the general meeting of shareholders.

All MVS holders must have the same mission and act in concert in the general meeting of shareholders of the issuer. The MVS holders must also enter into a shareholders' agreement that sets out each MVS holder's commitment in implementing their vision and mission with respect to the issuer.

Lastly, the issuer must submit information on the MVS holders to the OJK when it files the IPO registration statement. These information must include:

(1) A statement letter from one or more MVS holder concerning its contribution to the issuer;

(2) Evidence of contribution from MVS holders to the issuer; and

(3) A copy of the shareholders' agreement among the MVS holders, setting out their commitment in implementing their vision and mission.

Sunset Policy

The MVS will convert into ordinary shares if:

(1) The MVS holder passed away or is declared to be under conservatorship and within six months the MVS is not transferred to another MVS holder or to a party who has been stipulated as parties eligible to hold MVS;

(2) The MVS holder transferred their MVS to other parties who have not been designated as eligible to hold MVS in the IPO prospectus;

(3) The MVS holder, jointly or severally, holds not more than 50% of the total voting rights in the issuer, and such condition is not rectified within six months after its occurrence;

(4) The MVS period has expired;

(5) If the MVS holder is a legal entity, it no longer fulfils the eligibility criteria as described above; or

(6) If the MVS holder is a director of the issuer, they no longer serve as a director in the issuer or can no longer carry out his duties as a director pursuant to the decision of a relevant institution (including OJK).

A change of control in the issuer that occurred due to the conversion of the MVS into ordinary shares as set out above will be exempted from the mandatory tender offer requirement under the law, except if the new controller has an active role in actions that lead to the conversion of the MVS into ordinary shares.

Corporate Actions by MVS Issuer

In addition to the terms and conditions of the MVS, the Regulation sets out specific requirements for MVS issuer in convening a general meeting of shareholders and further capital increase:

General meeting of shareholders

The attendance and voting quorums in a general meeting of shareholders convened by an MVS issuer must generally adhere to the existing OJK Regulation No. 15/POJK.04/2020.

Moreover, the general meeting of shareholders must be attended by holders of ordinary shares that represents at least 5% of all voting shares of all shareholders other than the MVS holders.

Further, an MVS holder will only be able to cast one vote per share for the following agenda (subject to other agendas as stipulated in the issuer's articles of association):

(1) Any amendment to the issuer's articles of association that must be approved by the Ministry of Law and Human Rights (except for amendment to authorised capital);

(2) The appointment or dismissal of an independent commissioner;

(3) The appointment or dismissal of an accounting firm that will provide audit services on historical financial information; and

(4) The bankruptcy or dissolution of the issuer.

Rights issue

If the issuer intends to conduct a rights issue, then aside from fulfilling the OJK regulation on rights issue, the issuer must also submit the following documents to the OJK as part of its rights issue registration statement:

(1) A statement letter from the MVS holder(s) stating its intention to exercise or not to exercise the rights;

(2) A statement letter of funds sufficiency from the MVS holder(s) (if the MVS holder intends to exercise its rights); and

(3) Document evidencing the availability of funds to support the statement letter.

If the rights arising out of the MVS is exercised by any party other than the MVS holder, the shares obtained as a result of the rights exercise will become ordinary shares.

Private placement

An MVS issuer that intends to do a private placement issuance of shares can now issue up to 10% of its current issued and paid-up capital by obtaining approval from its general meeting of shareholders.

This is a more relaxed requirement compared to the current private placement regulation under POJK 32/POJK.04/2015 as amended by POJK No. 14/POJK.04/2019, which requires independent shareholders' approval in a general meeting of shareholders. In addition, the 10% private placement limit must be exercised within one year upon receipt of the shareholders' approval, which is significantly shorter than the two-year deadline imposed by the private placement regulations for listed companies.

An MVS issuer can also issue more than 10% of its current issued and paid-up capital in the private placement provided that such issuance is not more than 20% of its current issued and paid-up capital and the issuer has obtained approval from its independent shareholders in a general meeting of shareholders.

Further, the MVS issuer may implement a share award program, provided that:

(1) The issuer has obtained the general meeting of shareholders' approval before the IPO;

(2) The share ownership program is disclosed in the IPO prospectus;

(3) The share ownership program is allotted for up to 15% of its issued and paid-up capital within 10 years after the effective date of the IPO registration statement; and

(4) The number of shares issued annually is a maximum of 1.5% of its issued and paid-up capital, and the share award must be exercised within five years since the start of the share award program.

An MVS issuer may also conduct private placement for the purpose of listing in other jurisdiction's stock exchanges, provided that:

(1) The MVS issuer has obtained the general meeting of shareholders' approval before the IPO;

(2) This plan is disclosed in the IPO prospectus;

(3) The issuance of the new shares to be listed in a foreign stock exchange must be completed within two years after the effective date of the IPO registration statement; and

(4) The issuance is limited to 10% of the issued and paid-up capital of the issuer at the time of the capital increase.

Conclusion

Joining other countries that have adopted MVS scheme to enable their start-ups to enter into capital markets, the Regulation signals Indonesia's readiness to embrace the expansion of many of its homegrown unicorns. It also demonstrates OJK's willingness to accommodate the needs of tech start-ups to list their shares in Indonesia, while also protecting the interest of public shareholders.

In line with the Regulation, the Indonesia Stock Exchange ("**IDX**") has also issued the new listing regulation on 21 December 2021 to accommodate the listing of tech start-ups in the IDX. We will discuss this new listing regulation in a separate client update.

For now, we expect that the Regulation will encourage home grown unicorns to consider listing their shares in the IDX, which in turn will support economic growth in Indonesia.

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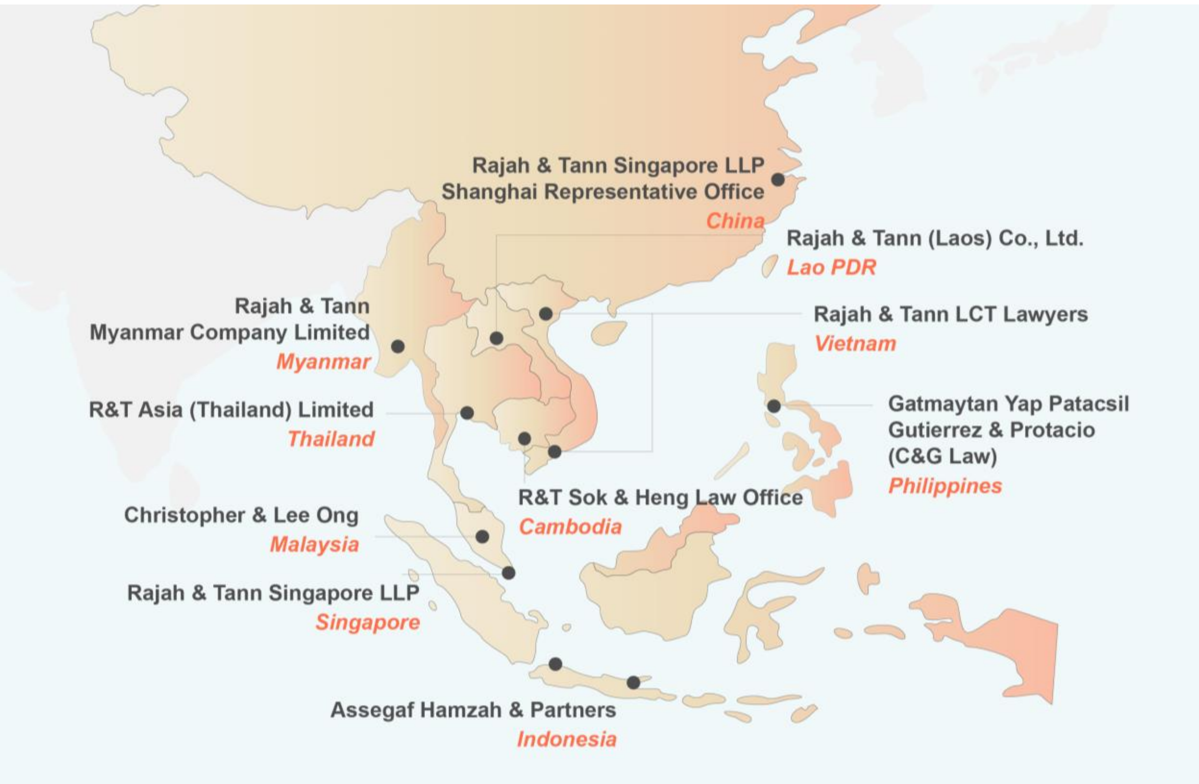

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