

IN-DEPTH

# Initial Public Offerings

INDONESIA



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# Initial Public Offerings

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Contributing Editor

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In-Depth: Initial Public Offerings (formerly The Initial Public Offerings Law Review) introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes across key jurisdictions worldwide. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

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# Indonesia

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## Summary

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## Introduction

The Indonesia Stock Exchange (IDX) is currently the only stock exchange in Indonesia.

The trends in Indonesia's initial public offering (IPO) market demonstrated a significant growth in 2023. There were 80 IPOs in 2023 (and 60 IPOs in 2022), showcasing an increase in both new listings and fund raised compared to 2022. Although no record-breaking numbers in terms of fund raised in 2023, among the 80 IPOs in 2023, PT Amman Mineral Internasional Tbk was able to secure a position in the Asia's top-10 IPO listings and the largest IPO in Southeast Asia by managing to raise approximately 10.73 trillion rupiah. In the first half of 2024, the IPO activities in Indonesia are dominated by the materials and energy sectors, with PT Ancara Logistics Indonesia Tbk's IPO as one of the largest contributors in the materials sector by raising approximately 879.91 billion rupiah.

Aside from IPO activities, in February 2024, the Indonesian Financial Services Authority (OJK) introduced a new reporting obligation related to share pledges on listed shares through OJK Rule No. 4 of 2024. The IDX also introduced a new stock split and reverse stock split regulation through IDX Rule No. I-I on Stock Split and Reverse Stock Split by Listed Companies that Issue Equity-Type Securities, as attached to Decree of the Board of Directors of the IDX No. Kep-00044/BEI/04-2024 in April 2024. Lastly, the IDX updated the watchlist board regulation through IDX Rule No. I-X on Placement of Equity-Type Securities on the Watchlist Board, as attached to Decree of the Board of Directors of the IDX No. Kep-00076/BEI/06-2024 (IDX Watchlist Board Rule) in June 2024 to conform with recent market developments.

## Governing rules

The Indonesian IPO market is primarily regulated by Law No. 8 of 1995 on the Capital Market as amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (the Capital Market Law), the rules of the OJK and IDX Rule No. I-A on Listing of Shares and Equity-Type Securities other than Shares Issued by Listed Companies, as attached to Decree of the Board of Directors of the IDX No. KEP-00101/BEI/12-2021 (the IDX Listing Rule).

Only Indonesian companies (PT) that are established and exist under the laws of Indonesia may list shares on the IDX.

Several kinds of securities may be listed on the IDX, such as shares and bonds. This description focuses on the listing of shares.

Currently, there are four boards on the IDX where issuers may list their shares:

- the Main Board, which is generally used for listings by companies that meet the core business activities, financial, net tangible asset, shareholder and profit standards required for listing on the Main Board of the IDX;
- the Development Board, which is generally used for listings by companies that cannot meet the core business activities, financial, net tangible asset, shareholder and profit standards required for the Main Board;

- the Acceleration Board (only small and medium-sized enterprises (SMEs) are eligible to be listed on this board), which is aimed at listings by SMEs that cannot meet the requirements for listing on the Development Board or Main Board; and
- the New Economy Board, which is used for listings by companies that utilise technology to create innovative products or services and fits the listing criteria on the Main Board.

Depending on the size of the IPO, in carrying out their IPO and listing shares on the IDX, Indonesian issuers may seek to offer their shares internationally under Regulation S or Rule 144A of the US Securities Act of 1933 (as amended). This is typically done if the IPO reaches approximately US\$100 million. Dual listings by Indonesian issuers in their IPOs are rare in Indonesia. An example is PT Telkom Indonesia (Persero) Tbk, which lists their shares on the IDX and American depository receipts on the New York Stock Exchange. From a regulatory perspective, Indonesian companies cannot only choose to list their shares in an offshore stock exchange – they must also list their shares on the IDX, as required by the OJK.

The operation of securities trading at the IDX is conducted through the Jakarta Automated Trading System (JATS). The trading of securities on the IDX is divided into three markets: the regular market, the negotiated market and the cash market.

The regular market is the mechanism for trading stock in standard lots on a continuous auction market during exchange hours. Auctioning takes place according to price priority and time priority. Price priority gives priority to buying orders at a higher price or selling orders at a lower price. If buying or selling orders are placed at the same price, priority is given to the buying or selling according to the time the order is placed. Negotiated market trading is carried out by direct negotiation between members of the IDX; between clients through one member of the IDX; or between a client and a member of the IDX. Negotiated market trading does not use round lots.

Transactions on the IDX (1) regular market are settled no later than the second trading day after the transactions were executed; (2) negotiated market are settled based on an agreement between the selling and buying exchange members or on the same trading day for the transactions executed on the last trading days, and are settled per transaction; and (3) cash market is settled on the same trading day.

## ii Overview of listing requirements

The prospective listed company must submit a registration statement to the OJK, consisting of documents such as the prospectus, audited financial statements, a legal due diligence report and a legal opinion, and other documents as may be required by the OJK. One of the requirements for listing is that the OJK declares the registration statement effective. The IDX Listing Rule (for listings on the Main Board and Development Board), the IDX Acceleration Board Rule (for listings on the Acceleration Board) and the IDX New Economy Board Rule (for listings on the New Economy Board) stipulate that a company is deemed qualified to undertake an initial listing on the IDX if it fulfils the requirements outlined in the table below.

Main Board		Acceleration Board	
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	Development Board		New Economy Board
Its registration statement is declared effective by the OJK.	Its registration statement is declared effective by the OJK.	Its registration statement is declared effective by the OJK.	Its registration statement is declared effective by the OJK.
It has conducted commercial operational activity in the same core business for at least 36 consecutive months and recorded profits from the past year.	It or its subsidiary has conducted commercial operational activity in the same core business for at least 12 consecutive months.	It has conducted commercial operational activity.	It has conducted commercial operational activity in the same core business for at least 36 consecutive months and recorded profits from the past year.
It has audited financial statements for the last three financial years, and the audited financial statements for the last two financial years and the last interim audited financial statement (if any) has obtained an unqualified opinion.	It has audited financial statements for the last financial year and the last interim audited financial statement (if any) has obtained an unqualified opinion.	It has audited financial statements for the last financial year or since the date of the prospective listed company's establishment (for prospective listed companies that have been established for less than a year), which have obtained an unqualified opinions.	It has audited financial statements for the last three financial years, and the audited financial statements for the last two financial years and the last interim audited financial statement (if any) has obtained an unqualified opinion.
It has generated revenue for the last three financial years.	It has generated revenue for the past financial year; or a prospective listed company that suffers losses or has not made profits or operated for the last two years must:	A prospective listed company that suffers losses or has not made profits must have operating profits based on its financial projection at the latest at the end of the sixth	It has generated revenue for the last three financial years.

	<ul style="list-style-type: none"> <li>• have operating profits and net profits based on its financial projections at the latest at the end of the second financial year after its listing; or</li> <li>• for a prospective listed company that engages in activities that require a long period of time to reach break - even, have operating profits and net profits based on its financial projections at the latest at the end of the sixth financial year after listing.</li> </ul>	financial year after its listing.	
<p>It satisfies any of the following requirements:</p> <ul style="list-style-type: none"> <li>• having profit before tax in the past financial</li> </ul>	<p>It satisfies any of the following requirements:</p> <ul style="list-style-type: none"> <li>• having net tangible assets of at least 50</li> </ul>	Not applicable.	<p>It satisfies any of the following requirements:</p> <ul style="list-style-type: none"> <li>• having profit before tax in the past financial year and net</li> </ul>

<p>year and net tangible assets of at least 50 billion rupiah;</p> <ul style="list-style-type: none"> <li>• having accumulated profit before tax in the past two financial years of at least 100 billion rupiah and a share capitalisation value of at least 1 trillion rupiah;</li> <li>• having revenue in the last financial year of at least 800 billion rupiah and a share capitalisation value of at least 8 trillion rupiah;</li> <li>• having assets in the past financial year of at least 2 trillion rupiah and a share capitalisation value of at</li> </ul>	<p>billion rupiah;</p> <ul style="list-style-type: none"> <li>• having accumulated profit before tax in the past two financial years of at least 10 billion rupiah and a share capitalisation value of at least 100 billion rupiah;</li> <li>• having revenue in the past financial year of at least 40 billion rupiah and a share capitalisation value of at least 400 billion rupiah;</li> <li>• having assets in the past financial year of at least 250 billion rupiah and a share capitalisation value of at least 500 billion rupiah; or</li> <li>•</li> </ul>		<p>tangible assets of at least 250 billion rupiah;</p> <ul style="list-style-type: none"> <li>• having accumulated profit before tax in the past two financial years of at least 100 billion rupiah and a share capitalisation value of at least 1 trillion rupiah;</li> <li>• having revenue in the last financial year of at least 800 billion rupiah and a share capitalisation value of at least 8 trillion rupiah;</li> <li>• having assets in the past financial year of at least 2 trillion rupiah and a share capitalisation value of at least 4</li> </ul>
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<p>least 4 trillion rupiah; or</p> <ul style="list-style-type: none"> <li>• having cash flow from cumulative operating activities in the past two financial years of at least 200 billion rupiah and a share capitalisation value of at least trillion rupiah.</li> </ul>	<p>having cash flow from cumulative operating activities in the past two financial years of at least 20 billion rupiah and a share capitalisation value of at least 400 billion rupiah.</p>		<p>trillion rupiah; or</p> <ul style="list-style-type: none"> <li>• having cash flow from cumulative operating activities in the past two financial years of at least 200 billion rupiah and a share capitalisation value of at least 4 trillion rupiah.</li> </ul> <p>In addition, it also satisfies the following requirements:</p> <ul style="list-style-type: none"> <li>• having a high income growth;</li> <li>• utilise technology to create innovative products or services that increase productivity and economic growth; and</li> <li>• engaging in business sector as determined by the IDX.</li> </ul>

<p>The total number of free float shares<sup>2</sup> after a public offering, or where the prospective listed company is a public company within five trading days prior to the listing application, is at least 300 million and:</p> <ul style="list-style-type: none"> <li>• at least 20 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is less than 500 billion rupiah;</li> <li>• at least 15 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is</li> </ul>	<p>The total number of free float shares after a public offering, or where the prospective listed company is a public company within five trading days prior to the listing application, is at least 150 million and:</p> <ul style="list-style-type: none"> <li>• at least 20 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is less than 500 billion rupiah;</li> <li>• at least 15 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is</li> </ul>	<p>The total number of shares owned by non - controlling shareholders or non - principal shareholders (minority shareholders) of the prospective listed company after the public offering period must be at least 20 per cent of the company's issued shares on the issued and paid - up capital.</p>	<p>The total number of free float shares-<sup>[1]</sup> after a public offering, or where the prospective listed company is a public company within five trading days prior to the listing application, is at least 300 million and:</p> <ul style="list-style-type: none"> <li>• at least 20 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is less than 500 billion rupiah;</li> <li>• at least 15 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is</li> </ul>
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<p>between 500 billion and 2 trillion rupiah; or</p> <ul style="list-style-type: none"> <li>at least 10 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is more than 2 trillion rupiah.</li> </ul>	<p>between 500 billion and 2 trillion rupiah; or</p> <ul style="list-style-type: none"> <li>at least 10 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is more than 2 trillion rupiah.</li> </ul>		<p>between 500 billion and 2 trillion rupiah; or</p> <ul style="list-style-type: none"> <li>at least 10 per cent of the proposed listed shares of the company for prospective listed companies whose total equity prior to the public offering is more than 2 trillion rupiah.</li> </ul>
<p>The total number of shareholders with securities accounts at the securities exchange member is at least 1,000, provided that:</p> <ul style="list-style-type: none"> <li>for a prospective listed company conducting an IPO, the total number of shareholders is the number of total shareholders following the</li> </ul>	<p>The total number of shareholders with securities accounts at the securities exchange member is at least 500, provided that:</p> <ul style="list-style-type: none"> <li>for a prospective listed company conducting an IPO, the total number of shareholders is the number of total shareholders following the completion</li> </ul>	<p>The total number of shareholders with securities accounts at the securities exchange member is at least 300, provided that it is the total number of shareholders following the completion of the IPO.</p>	<p>The total number of shareholders with securities accounts at the securities exchange member is at least 1,000, provided that:</p> <ul style="list-style-type: none"> <li>for a prospective listed company conducting an IPO, the total number of shareholders is the number of total shareholders following the completion</li> </ul>

<p>completion of the IPO; and</p> <ul style="list-style-type: none"> <li>• for a prospective listed company that was originally an unlisted public company, the total number of shareholders is the total shareholders as of, at the latest, one month prior to the listing application.</li> </ul>	<p>of the IPO; and</p> <ul style="list-style-type: none"> <li>• for a prospective listed company that was originally an unlisted public company, the total number of shareholders is the total shareholders as of, at the latest, one month prior to the listing application.</li> </ul>		<p>of the IPO; and</p> <p>for a prospective listed company that was originally an unlisted public company, the total number of shareholders is the total shareholders as of, at the latest, one month prior to the listing application.</p>
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The IDX requires all companies wishing to list their shares on the IDX to undertake company listings, except for banks, where 1 per cent of the paid-up capital may not be listed on the IDX.

There are certain maintenance requirements to be met after the initial listing to maintain a listing on the IDX. For example, to maintain a listing on the Main Board, Development Board and New Economy Board, under the IDX Listing Rule, the maintenance requirements are as follows:

1. free float shares: at least 50 million shares and at least 7.5 per cent of the total listed shares of the listed company; and
2. the total number of shareholders with securities accounts at the securities exchange member is at least 300.

In addition to the above, the IDX requires additional listing maintenance requirements that are related to, among other things, the company's equity and free float share capitalisation value.

### iii Overview of law and regulations

The IPO market is primarily regulated under the Capital Market Law, OJK's rules (applied to the public offering process) and the IDX Listing Rule (applied to the listing process).

## Capital Market Law and OJK's public offering rules

Under the Capital Market Law, a public offering of securities may only be made by an issuer that has submitted a registration statement and obtained a declaration of effectiveness from the OJK. The definition of 'public offering' within the meaning of the Capital Market Law will be deemed to have been made if, among other things, an Indonesian or foreign issuer makes an offering of securities in Indonesia where:

- the offer is made by using the mass media;
- the offer is made to more than 100 parties in Indonesia (regardless of whether they are Indonesian citizens or foreign nationals domiciled in Indonesia); or
- the offer is made to fewer than 100 parties in Indonesia but results in sales to more than 50 parties in Indonesia (regardless of whether they are Indonesian citizens or foreign nationals domiciled in Indonesia).

For the purpose of the public offering rule, Indonesian law does not generally distinguish between different types of investors.

## IDX Listing Rule

The requirements for a company seeking a listing on the IDX are set out in the IDX Listing Rule and summarised in Section II.ii above. The IDX will consider whether a listing application satisfies the listing requirements set out in the IDX Listing Rule and will decide whether to issue a listing approval. A listing application should be submitted to the IDX concurrently with the submission of the IPO registration statement documentation to the OJK.

# The offering process

## i General overview of the IPO process

A prospective listed company must engage an underwriter, an auditor, a legal consultant and a notary. They may also engage a share registrar to administer their shares after the IPO and an independent appraiser if the IPO's use of proceeds is for acquiring certain assets. All capital markets supporting professionals involved in an IPO (ie, Indonesian legal consultants, notaries, auditors and underwriters) must be OJK-registered or licensed parties.

International investment banks as international selling agents and an international legal counsel should be engaged if the IPO involves an international offering pursuant to Regulation S or Rule 144A of the US Securities Act of 1933 (as amended).

The underwriter will lead the IPO process, including assisting the prospective listed company in liaising with the OJK and the IDX throughout the IPO process, including deal with the preparation of domestic offering documents and the selling and offering of the shares. An auditor is required to provide audited financial statements, which are used for

the IPO. A separate auditor will be needed to audit the IPO proceeds and report them to the OJK. A legal consultant is required to assist the prospective listed company with, among other things, the due diligence exercise and rendering a legal opinion. The notary will assist in preparing the notarial deeds of the IPO documentation (eg, the minutes of shareholders' meeting for approving the IPO and the domestic underwriting agreement).

If the IPO involves an international offering, the international legal counsel will, among other things, lead with preparing the international offering memorandum. In addition to the domestic underwriting agreement, additional transaction documents would be needed for the international offering, such as an international selling agency agreement between the local underwriter and the international selling agents and an international coordination agreement between the prospective listed company, the domestic underwriters and the international selling agents.

Following the IPO preparations, the IPO process formally begins with the submission of the registration statement to the OJK. Under OJK Rule No. 7/ POJK.04/2017 on Documents of Registration Statement in the Context of Public Offering of Equity Securities, Debt Securities, or Sukuk (OJK Rule 7/2017), the application must be supported by, among other things:

1. a cover letter, which follows the format required under OJK Rule 7/2017;
2. the prospectus, abridged prospectus and initial prospectus;
3. information on the timeline of the IPO;
4. a copy of the latest articles of association;
5. the latest audited financial statements, a comfort letter from the auditor and pro forma financial conditions reviewed by the auditor;
6. the legal due diligence report and legal opinion on the prospective listed company and its subsidiaries; and
7. the underwriting agreement.

In addition to the documents and information specifically required under OJK Rule 7/2017, the OJK has discretion to request additional documents and information.

Below is summary of the regulatory timeline of an IPO.

Prior to effective statement

*OJK assessment*

Following the submission on the above, the process will start with OJK assessing the submission and revert with comments. Within 10 business days of the OJK issuing its comments, the prospective listed company must provide its response to the OJK. This back-and-forth process usually happens two to three times, subject to how many issues were raised or assessed by the OJK.

*Announcement of abridged prospectus and book-building period*

After the above process, to the extent that the OJK has no further comments, the OJK would permit the prospective listed company to announce its abridged prospectus in newspapers, which the prospective companies must announce within two business days of the OJK issuing its permission. Following this announcement: (1) the prospective listed company must submit the evidence of such announcement to OJK within two business days of the announcement; and (2) the book-building period begins and this will last at least seven business days and up to maximum of 21 business days.

#### *Effective statement*

Once the book-building period ends, the prospective listed company must submit information on pricing based on the book-building to the OJK. To the extent no further information is required by the OJK, it then issues its IPO effective statement letter.

#### After effective statement

##### *Public offering period and publication of revised abridged prospectus*

The initial public offering period must begin no later than two business days after the IPO effective statement is issued. The public offering period lasts for at least three business days and a maximum of five business days. Concurrently with the public offering period, within one business day following the effective statement, the prospective listed company must also publish the revised abridged prospectus or any other additional information (for the book-building period) and submit evidence of publication to OJK within two business days of the publication.

##### *Allotment, refund, listing and public offering report*

The allotment process must be conducted after the public offering period ends. The refund and distribution of securities is conducted after the allotment period ends, but no later than listing day. The listing day must occur on the second business day after the public offering period ends.

Aside from the above process, the underwriters must submit a report on the IPO result to the OJK no later than five business days after the allotment date.

##### *Audit report*

Lastly, a report on the IPO result by an auditor needs to be submitted to the OJK no later than 30 business days after the end of the public offering period.

The OJK requires an issuer to allocate a certain portion for pooling allotment based on the category of public offering, including for investors subscribing securities with a maximum

value of IDR 100 million per investor (namely retail investors). The IPO categories set by the OJK are as follows:

	IPO value/size	Pooling allotment portion (whichever is higher)
Category I	IPO ≤ IDR 250 billion	≥ 15 per cent or IDR 20 billion
Category II	IDR 250 billion < IPO ≤ IDR 500 billion	≥ 10 per cent or IDR 37.5 billion
Category III	IDR 500 billion < IPO ≤ IDR 1 trillion	≥ 7.5 per cent or IDR 50 billion
Category IV	IPO > IDR 1 trillion	≥ 2.5 per cent or IDR 75 billion

If an oversubscription occurs in the pooling allotment, an adjustment must be made in accordance with the amount subscribed by the investors in the pooling allotment versus the minimum allocated portion applicable for the pooling allotment.

The adjustment may be sourced from the following:

1. fixed allotment portion;
2. shares owned by existing shareholders that are not subject to a lock-up period;
3. new shares issued by the issuer (other than the shares that were already issued in the public offering); and
4. existing buy-back of shares owned by the issuer.

## ii Pitfalls and considerations

The following are the key issues to consider in an IPO.

### Pre-IPO restructuring and lock-up issues

Generally, an IPO would involve a pre-IPO restructuring, where, among other things, a prospective listed company would undertake a capital restructuring.

If, as a result of the capital restructuring, any shareholder of the prospective listed company is receiving new shares of the prospective listed company below the IPO price within six months before the submission of the relevant IPO registration statement to the OJK,



the shares of the prospective listed company held by that party will be subject to an eight-month lock-up (and this would prevent any secondary offering of existing shares on the IPO), starting from the date the registration statement is declared effective by the OJK. In addition, as a matter of policy, from our experience the IDX will also require the controlling shareholder of the prospective listed company to be subject to a twelve-month contractual lock-up period.

Further, the OJK will impose such a lock-up on any shares of the prospective listed company held by such a party (regardless of whether the shares were obtained as a result of the capital restructuring or the shares were held prior to the capital restructuring).

#### Use of proceeds

The use of proceeds needs to be considered as this might affect the registration statement documentation.

For example, this might affect the disclosure in the prospectus and the prospective listed company may need to obtain a fairness opinion. Information on other sources of funds must also be disclosed if the fund, as result of the IPO, is insufficient.

#### Disclosure requirements

The prospective listed company will need to disclose any information that may affect the price of its securities or the decision of investors in the prospectus.

Further, if the IPO involves an international offering, the disclosure in the relevant Indonesian prospectus must be substantially the same as the disclosure in the offering circular used for the international offering.

#### Negative covenants on distribution of dividends

The OJK would require that all negative covenants that may affect public shareholders to be deleted from agreements and commitments of the prospective listed company.

#### Fees

##### *Annual listing fee and additional listing fee on Main Board, Development Board and New Economy Board*

Under the IDX Listing Rule, the annual listing fee is calculated based on the latest share capitalisation value of the listed company. For every 1 billion rupiah of share capitalisation value, the annual listing fee is 500,000 rupiah, with the minimum listing fee being 50 million rupiah and the maximum being 250 million rupiah.

The fees for additional listing of shares (eg, for new shares issued through a rights issue) are calculated based on the share capitalisation value of the publicly listed company. For every 1 billion rupiah of share capitalisation value, the fees for additional listing of shares is 1 million rupiah, with the minimum fees for an additional listing of shares being 10 million rupiah and the maximum being 150 million rupiah.

*Annual listing fee and additional listing fee on Acceleration Board*

Meanwhile, on the Acceleration Board, the IDX Acceleration Board rule stipulates that listed companies must pay an annual listing fee and fees for additional listing of shares (e.g., for new shares issued through a rights issue). The annual listing fee on the acceleration board is 250,000 rupiah, and the fee for an additional listing of shares is 250,000 rupiah for each corporate action.

All annual listing fees (be it resulting from the listing on the Main Board, Development Board or Acceleration Board) must be paid in advance by the listed company for a period of 12 months from January to December and, subject to certain exceptions, must be received by the IDX at the latest at the end of the exchange day in January.

### iii Considerations for foreign issuers

This is not applicable as only Indonesian companies that are established and existing under the laws of Indonesia may list shares on the IDX.

## Post-IPO requirements

Following the IPO process, the following need to be complied with by publicly listed companies.

### i Companies good corporate governance

#### Board of directors and board of commissioners

Public companies must comply with OJK Rule No. 33/POJK.04/2014 on the Board of Directors and Board of Commissioners of Issuers or Public Companies (OJK Rule 33/2014).

#### *Eligibility requirements*

Pursuant to OJK Rule 33/2014, each board of directors (BOD) and board of commissioners (BOC) of any public companies must have at least two members, and one of them must be appointed as president director or president commissioner, respectively.

OJK Rule 33/2014 regulates that the term period for the members of the BOD and the BOC in their respective positions is a maximum of five years or until the closing of the annual GMS at the end of a one-term period.

Under OJK Rule 33/2014, a commissioner or a director may hold dual positions, as outlined in the table below.

Commissioner	Director

As a director in a maximum of two other issuers or public companies.	As a director in another issuer or public company.
As a commissioner in a maximum of two other issuers or public companies (or four other issuers or public companies if the commissioner does not hold a dual position as a director in any other issuer or public company).	As a commissioner in a maximum of three other issuers or public companies.
As a member of a committee in a maximum of five other issuers or public companies provided that the commissioner is be a director or commissioner in the relevant other issuer or public company.	As a committee member in a maximum of five other issuers or public companies provided that such director is be a director or commissioner in the relevant other issuer or public company.

#### *Obligation to have independent commissioners*

Under OJK Rule 33/2014, every public company must have independent commissioners, the number of which must be at least 30 per cent of the total number of the commissioners.

Under OJK Reg. 33/2014, an independent commissioner must not:

1. work at or have the authority and responsibility to plan, lead, control or supervise the public company within the last six months, except for the reappointment as an independent commissioner of the public company in the next period;
2. have, either directly or indirectly, shares in the public company;
3. be affiliated with the public company, the commissioners, the directors or the principal shareholders<sup>[2]</sup> of the public company; and
4. have any business relationship, either directly or indirectly, relating to the business activities of the public company.

#### GMS

A GMS of a public company is subject to OJK Rule No. 15/POJK.04/2020 on the Planning and Convening of the General Meeting of Shareholders of Public Companies (OJK Rule15/2020).

OJK Rule 15/2020 requires that:

1. a GMS notification be submitted to the OJK no later than five business days before the GMS announcement is made, excluding the date of the GMS announcement;
- 2.

- a GMS announcement be published at the latest 14 days prior to the date of the GMS invitation, excluding the date of the GMS announcement and the date of the GMS invitation; and
3. a GMS invitation be published, at the latest, 21 days prior to the date of the GMS, excluding the date of the GMS invitation and the date of the GMS.

The process for calling a public company GMS takes around 45 calendar days (unless the articles of association require a longer period).

Shareholders whose names are listed in the company's register of shareholders on one day before the date of the invitation to a GMS are entitled to attend and vote in the GMS.

A GMS is chaired by an appointed member of the BOC. If all members of the BOC are not available, the GMS is chaired by an appointed member of the BOD. If all BOD and BOC members are not available, then the GMS will be chaired by an appointed shareholder. Public companies must prepare the minutes of each GMS and a summary of the minutes of each GMS, which are typically prepared by an appointed notary registered in the OJK. A summary of the minutes must be announced through one Indonesian language daily newspaper having national circulation, the IDX's website (if a listed company) and the public company's website within two business days after the GMS. The minutes of a GMS must be submitted to the OJK no later than 30 days after the GMS.

#### Audit committee

Public companies are obliged to have an audit committee. The audit committee is formed by the BOC to support the tasks and duties of the BOC. The audit committee should consist of at least three members who are independent commissioners, and other members that originate from outside the public companies. An independent commissioner must act as the chair of the audit committee.

Under the Capital Market Law, 'principal shareholder' is defined as a party that either directly or indirectly owns at least 20 percent of the voting rights of a company's issued shares.

#### Nomination and remuneration committee

Under OJK Rule No. 34/POJK.04/2014 on Nomination and Remuneration Committees of Public Companies (OJK Rule 34/2014), public companies must have a nomination and remuneration function, performed by the BOC. The BOC may establish a nomination and remuneration committee to implement this function. A nomination and remuneration committee must have at least three members.

#### Internal audit unit

OJK Rule No. 56/POJK.04/2015 on Formation and Guidelines of Internal Audit Charters (OJK Rule 56/2015) requires public companies to have an internal audit unit that is responsible for providing advice, assurance and consultation that is independent and objective in nature, with the purpose of increasing the value and improving the operational

activities of companies, through a systematic approach, by evaluating and increasing the effectiveness of risk management, control and the corporate governance processes.

The number of internal auditors in the internal audit unit will be adjusted based on the scale and the complexity level of the public company's business. Under OJK Rule 56/2015, an internal audit unit must consist of at least one internal auditor. If there is only one internal auditor, that auditor will also act as the chair of the internal audit unit.

#### Corporate secretary

In the implementation of good corporate governance principles under OJK Rule No. 35/POJK.04/2014 on Corporate Secretaries of Issuers and Public Companies (OJK Rule 35/2014), the OJK requires every issuer and public company to have a corporate secretary. The corporate secretary is appointed and terminated based on the decision of the BOD.

#### i Material transactions, affiliated party transactions and conflict of interest transactions

When carrying out transactions, public companies will need to consider and comply with OJK Rule No. 17/POJK.04/2020 on Material Transaction and Changes of Business Activities (the Material Transactions Rule) and OJK Rule No. 42/POJK.04/2020 on Affiliated Party Transactions and Conflict of Interest Transactions (the Affiliated Party Transactions Rule).

#### Material transactions

In general, any transaction by a public company with a value of more than 20 per cent of the equity of that public company, whether in one or a series of transactions, is a material transaction that is subject to the requirements under the Material Transaction Rule. Unless exempted, the public company must, among other things, make a public disclosure on the transaction and have the transaction be supported by a fairness opinion issued by an independent appraiser. If the value reaches more than 50 per cent of the public company's equity, then the prior approval of the GMS is required, unless exempted. Different thresholds for certain transactions or public companies with negative equity are applied. In some specific transactions, independent shareholder approval is required.

#### Affiliated party transactions

An affiliated party transaction is defined as each activity or transaction that is conducted by a public company or a controlled company of a public company:

1. with an affiliate of the public company or an affiliate of the members of the BOD, the members of the BOC, the principal shareholders or controller of the public company; or
2. for the interest of the affiliate of the BOD members, BOC members, the principal shareholders or the controller of the public company.

Generally, when carrying out an affiliated party transaction, unless exempted, the public company must, among other things, undertake a procedure in accordance with the public company's internal policy to ensure that the affiliated party transaction is implemented in accordance with common business practice, make a public disclosure on the transaction and have the transaction be supported by a fairness opinion issued by an independent appraiser. The public company must obtain independent shareholders' approval if, among other things, the value of the affiliated party transaction exceeds the threshold of a material transaction that requires GMS approval (as stipulated in the Material Transactions Rule).

#### Conflict of interest transactions

Based on the Affiliated Party Transactions Rule, a 'conflict of interest' is defined as a difference between the economic interest of the public company and the personal economic interest of members of the BOD, members of the BOC, the principal shareholder or the controller that may jeopardise the public company.

If a transaction is a conflict of interest transaction (and not considered an exempted conflict of interest transaction), the public company must, among other things, disclose the transaction to the public, use an independent appraiser to determine the fair value of the object as well as the fairness of the conflict of interest transaction and obtain independent shareholders' approval. The exemptions provided under the Affiliated Party Transactions Rule include a transaction with a subsidiary owned at least 99 per cent by the public company and a transaction carried out by the public company as a result of the implementation of regulations or court decisions.

#### ii Disclosures on material information and facts

The public companies also need to disclose any material information and facts to the public that may affect, among other things, the value of the company's securities or the decision of investors. This disclosure is different from the disclosures under the Material Transactions Rule and Affiliated Transactions Rule. This disclosure is required under OJK Rule No. 31/POJK.04/2015 on Disclosures of Material Information or Facts by Issuers or Public Companies (OJK Rule 31/2015).

Under OJK Rule 31/2015, any time there is an event, material information or fact that may, among other things, affect the value of the company's securities or the decision of investors, the public company must make a disclosure at the latest at the end of the second business day after the decision or the occurrence of an event, material information or fact.

## Outlook and conclusions

On 28 February 2024, the OJK enacted OJK Rule No. 4 of 2024 on the Reports on Ownership of or Any Ownership Changes in Public Companies Shares and Reports on Activities of Pledging Public Companies Shares (OJK Rule 4/2024), that will be effective starting from 28 August 2024. This new regulation replaces the OJK Rule No. 11/POJK.04/2017 on the Reports of Ownership or Any Changes to the Ownership of Shares in Public Companies.

The enactment of OJK Reg 4/2024 shortens the current time frame to report the changes of share ownership, from within 10 business days to five business days after the effective date of such changes. The OJK Reg 4/2024 also introduced a new reporting obligation, which mandates the shareholders of public companies who pledge at least 5 per cent of the voting shares to report their share pledge activities to the OJK within five business days after the effective date of the share pledge activities. This amendment not only provides more transparent share activities on the Indonesian capital market sector, but also enhances the OJK's supervisory role towards the financial environment through the improvement of information disclosure and reporting process.

In terms of IPO activities, given the transition year of 2024, the IDX faces downturn in IPO activities compared to 2023, let alone the declining performance of some newly listed shares throughout the first semester of 2024. We believe that this is due to the upcoming transition period as the new president-elect has been announced to the public. Therefore, potential issuers might postpone its listing to the second semester of 2024 or the first semester of 2025 to see how the new regime will affect the market policies. As the second half of the year has begun, the IDX anticipates more IPOs to be performed until the end of this year as IDX recorded an upturn performance in the IPO activities during the beginning of this period..

## Endnotes

- 1 The IDX Listing Rule defines 'free float shares' as: shares owned by a shareholder that holds fewer than 5 per cent of the total listed shares; shares not owned by a controlling shareholder and an affiliate of the listed company; shares not owned by a commissioner or director of the listed company; and shares not part of the treasury shares of the listed company. ^ [Back to section](#)
- 2 Under the Capital Market Law, 'principal shareholder' is defined as a party that either directly or indirectly owns at least 20 percent of the voting rights of a company's issued shares. ^ [Back to section](#)



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