



INDONESIA'S OJK ISSUES NEW RULE ON PUBLIC COMPANY TAKEOVER

On 25 July 2018, the Indonesian Financial Services Authority (OJK) issued OJK Rule No. 9/POJK.04/2018 on Public Company Takeovers (OJK Rule 9/2018), which revokes the Head of Capital Market Supervisory Board and Financial Institution (Bapepam-LK) Rule No. IX.H.1 on this subject (Rule IX.H.1).

We outline the implications of this new rule.

Changes

Under OJK Rule 9/2018, key changes to the public company takeover provisions include:

- Limiting the exemption on the public announcement and Mandatory Tender Offer (MTO) requirements in relation to a takeover that is carried out through the exercise of a rights issue, or as a result of an increase of capital without pre-emptive rights.
- A new exemption on the takeover requirements for an acquisition that has been previously announced in a Initial Public Offering (IPO) prospectus of a public company.
- A new provision which allows an MTO to be carried out by a subsidiary of the new controlling shareholder, provided that the new controlling shareholder holds a majority of the shares in the subsidiary.
- Tighter requirements on the sell-down period.
- Clarification on the definition of controlling shareholders.

Exemptions on public announcement and MTO requirements

Rights issue

Under OJK Rule 9/2018, the exemption to the public announcement and MTO requirements on a takeover that is carried out pursuant to a rights issues contained in Rule IX.H.1 is no longer available to a standby purchaser that buys the rights to subscribe for shares from existing shareholders.

As a result of this change, the exemption now only applies to existing shareholders who exercise their pre-emptive rights in proportion to their shareholding.

Increase of capital without pre-emptive rights

OJK Rule 9/2018 also amends the provisions of the previous rule regarding the exemption from the public announcement and MTO

requirement for takeover as a result of the subscription of shares by a party in a public company without pre-emptive rights.

The exemption now only applies for a takeover as a result of an increase of capital without pre-emptive rights if the transactions are undertaken as part of a debt restructuring with the purpose of improving the financial position of a public company that is suffering financial distress.

New exemption

OJK Rule 9/2018 introduces a new exemption on a public company takeover from the public disclosure and MTO obligation which apply to a takeover that has been disclosed in an IPO prospectus to the extent that the disclosure was made in accordance with OJK regulations.

For this exemption to apply the takeover transaction must be carried out by no later than a year after the issuance of an effective statement.

Implementation of MTO

OJK Rule 9/2018 also introduces a new provision in relation to the obligation to implement an MTO following a takeover transaction.

The new rule provides that the new controlling shareholder has the right to appoint another party to carry out the MTO on its behalf.

The appointed party must be a subsidiary of the new controlling shareholder, with more than 50% of shares of the subsidiary being owned by the new controlling shareholder either directly or indirectly.

Sell-down requirements

Under the new rule, the sell-down requirement which requires any holder of shares in excess of 80% of the shares of a public company following a change of control to sell down its shares to the public to a 80% holding within two years of the MTO.

This new rule removes the extension period to the sell-down period that could previously be granted under the previous rule.

Redefining "Controlling Shareholder"

OJK Rule 9/2018 redefines the term "Controlling Shareholder" as a party that directly or indirectly holds more than 50% of the total issued shares with voting rights or has the ability to determine, directly or indirectly, in any way the management and/or policy of the public company.

To further clarify the definition, the phrases "directly or indirectly" and "with voting rights," which were not included in the previous provision, are now added.

The rule also seeks to clarify the phrase "the ability to determine, directly or indirectly, in any way the management and/or policy of the public company" by providing that this could be evidenced by any document and/or information, including:

- any agreements with other shareholders that enables a shareholder to have more than 50% of the voting rights.
- any authority to manage financial and operation under the public company's articles of association or agreements.
- any authority to appoint or dismiss majority member of the board of directors and the board of commissioners of the public company.
- any powers to control a majority of the votes in a board of directors' or a board of commissioners' meeting enabling them to control the public company.
- any other powers indicating control over the public company.

Provision	OJK RULE 9/2018	RULE IX.H.1
Extension of the mandatory sell-down period	<p>There is no provision on the extension of the mandatory sell-down period.</p>	<p>Obligation to Transfer Shares Provisions: Number 5 letter d.</p> <p>The Capital Market Supervisory Body and Financial Institution may extend the period of execution of the obligation to redistribute shares or mandatory sell-down period under certain conditions.</p>
MTO by Appointed Party	<p>Article 8.</p> <p>An MTO can be conducted by another party appointed by the new controller, as long as the new controller owns, directly or indirectly, more than 50% of the shares of the appointed party.</p>	<p>N/A</p>
Exemption on MTO	<p>Article 23 letter i.</p> <p>Takeover occurs because of the acquisition of shares by shareholders who exercise their rights in accordance with the portion of their shareholdings as stipulated in OJK Regulation regarding capital increase of Public Company with pre-emptive rights.</p>	<p>Exemption Provisions: Number 6 letter a point 9.</p> <p>Takeover occurs due to the acquisition of shares as the implementation of Bapepam-LK Rule Number IX.D.1". This may include shareholders right to exercise pre-emptive right and additional rights from shareholders that can be transferred to other party (e.g. buying rights from other shareholders).</p>
	<p>Article 23 letter j.</p> <p>Takeover that occurs due to the acquisition of shares by the Party in the implementation of increasing capital in order to improve the financial position as stipulated in OJK Regulation regarding capital increase of a Public Company without pre-emptive rights.</p>	<p>Exemption Provisions: Number 6 letter a point 9.</p> <p>Takeover occurs due to the acquisition of shares as the implementation of Bapepam-LK Rule Number IX.D.4. This may include the implementation of increasing capital without pre-emptive right with the reason other than to improve the financial position of the company.</p>
	<p>Article 23 letter n.</p> <p>Takeover that has been disclosed in the general offering of equity securities as long as the disclosure has fulfilled the provisions as stipulated in OJK Regulation regarding the form and contents of the prospectus and concise prospectus in the context of a public offering of equity securities carried out no later than 1 (one) year after effective registration statement.</p>	<p>N/A</p>

How can we help you?

We will continue to monitor developments in this arena. With Indonesia-qualified lawyers based in both Singapore and Jakarta, we are well-positioned to assist you, providing both legal and practical advice as to how the introduction of OJK Rule 9/2018 may affect your business.

Should you have any queries, please do not hesitate to contact the authors of this briefing:



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