Update – New OJK Regulations on Substantial Shareholding Reporting and GMS Procedure

1. Introduction

On 14 March 2017, the Financial Services Authority (*Otoritas Jasa Keuangan*, the **OJK**) issued Regulation No.11/ POJK.04/2017 on Reporting of Substantial Shareholdings in Public Companies (**POJK 11/2017**). This new regulation revokes and replaces Regulation No.60/POJK.04/2015 on Disclosing Information on Certain Shareholders (**POJK 60/2015**). On the same day, OJK also issued Regulation No.10/POJK.04/2017, an amendment to Regulation No.32/POJK.04/2014 (**POJK 32/2014**), on General Meetings of Shareholders of Public Companies (**POJK 10/2017**). POJK 10/2017 added three new articles to the existing regulations on general meetings of shareholders (**GMS**) under POJK 32/2014. These two new OJK regulations came into effect immediately.

POJK 11/2017 now obliges reporting of substantial shareholding and of any change of 0.5% or more of the shareholding by anyone who directly or indirectly holds 5% or more of the total issued shares in a public company. The regulation explicitly says that ultimate beneficial owners (**UBOs**) are (now) required to report their shareholding.

Not many changes were introduced under POJK 10/2017. It adds three new articles to POJK 32/2014, two of which relate to the procedure for change in entitlements under certain classes of shares in a public company. The other new article relates to the procedure for appointing independent public accountants by public companies.

2. POJK 11/2017

In many ways POJK 11/2017 is similar to POJK 60/2015 that it revokes. POJK 11/2017 however introduces the following critical changes to the rule on reporting of substantial shareholding:

(a) Any Party[1] who owns a 5% or more shareholding in a public company (whether directly or indirectly[2]) must report their shareholding and any changes to their shareholding in the public company at the latest 10 calendar days after it acquired such shareholding or after a change to its shareholding occurred. POJK 11/2017 specifies that a change to the shareholding needs only be reported if it amounts to 0.5% or more of the total issued shares in the public company. Previously, under POJK 60/2015, there was no such threshold.

Given that the obligation for UBOs to report their substantial shareholdings is only introduced by POJK 11/2017, most if not all UBOs have yet to report their substantial shareholdings in public companies in Indonesia to OJK. POJK 11/2017 however does not contain any transition provision to deal with this. Therefore, it is unclear whether, following the issuance of POJK 11/2017, all UBOs that currently hold 5% or more of the shares must report their substantial shareholding to OJK immediately OR only if/when their shareholdings change by 0.5% or more. We discussed this with an OJK officer and understand that OJK currently adopts the latter view.

In addition, POJK 11/2017 effectively requires UBOs to report their substantial shareholding once they accumulate 5% or more of shares in a public company. While it is not clearly stated in the regulation, we believe this would catch UBOs that hold 5% or more shares in a public company through numerous SPVs. We also discussed this with the OJK officer who confirmed our view.

(b) POJK 11/2017 obliges Directors and Commissioners of a public company to inform the company of his/her shareholding in and any changes to that shareholding in the company at the latest three calendar days after he/she acquires the shares or the change of shareholding has occurred. This is in addition to the Directors' and Commissioners' obligation to report to OJK within ten calendar days after he/she acquires the shares or the change of shareholding has occurred. Please note that for Directors and Commissioners there are no thresholds of 5% and 0.5%, so even one share will trigger the reporting obligation.

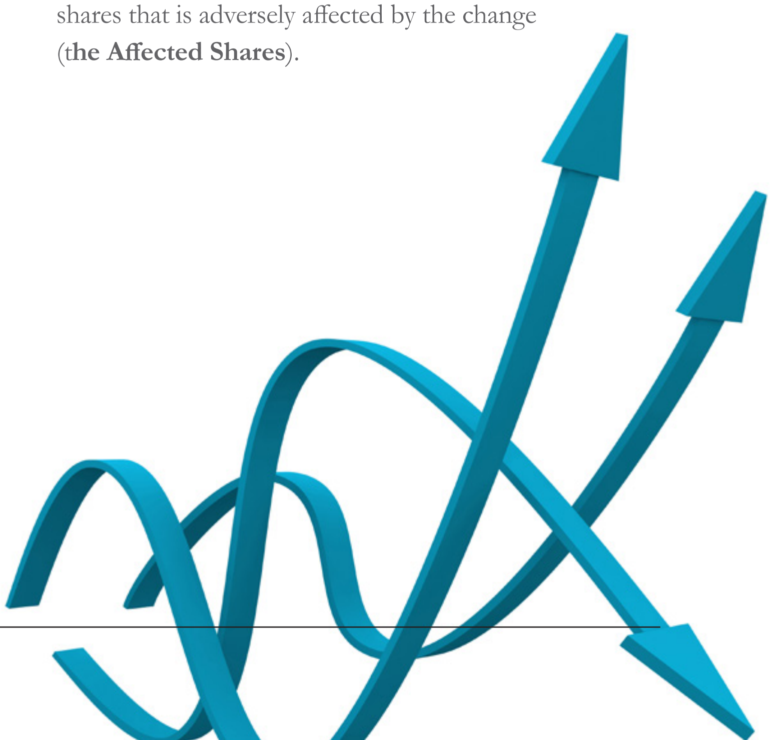
(c) POJK 11/2017 provides a prescribed form of the report.

3. POJK 10/2017

POJK 10/2017 supplemented POJK 32/2014. Nothing in POJK 32/2014 is revoked by POJK 10/2017. Therefore, these two regulations shall be read together. These are the key features under POJK 10/2017:

(a) POJK 10/2017 adds new Article 29A and Article 29B to POJK 32/2014.

Article 29A provides that if a listed company has more than one class of share, change to the rights and entitlements under the shares would have to be carried out in accordance with the procedure set out in the article. The article provides a detailed procedure (including quorum and votes required) for the General Meeting of Shareholders (**GMS**) that must be held to seek approval from the holders of the class of shares that is adversely affected by the change (**the Affected Shares**).



1 The term "**Party**" is now defined in Article 1(3) of POJK 11/2017, as any individual, corporation, joint venture, association or organised group.

2 The term "**indirectly**" is explained under elucidation of Article 2(2) of POJK 11/2017, which means any party (which is the UBO of the shares) who holds shares in a public company through another party.

Article 29B further provides that if the Affected Shares happen to be non-voting shares, the holders of the non-voting shares will nevertheless be entitled to attend and vote at the GMS.

It is interesting that OJK introduces these provisions with respect to public companies having different classes of shares that give different rights and entitlements to its holders (and not only differ in the nominal value). To date, generally, only publicly listed state-owned companies have different classes of shares with the so-called 'golden share' held by the Government of Indonesia that gives it the nomination rights to the Board of Directors and Board of Commissioners, plus certain veto rights. In our discussion with the OJK officer, we were told not to read too much into it and that they do not necessarily signify a change to how OJK feel different classes of shares in public companies.

(b) POJK 10/2017 also adds Article 36A, which sets out the procedure for appointing and dismissing the public accountant who will audit the public company.

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