

CLIENT UPDATE

OJK's New Regulation Regarding Public Companies' Shareholding Reporting Obligation

The Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) has updated public companies' obligation to report on their shareholding by way of OJK Regulation No. 11/POJK.04/2017 regarding Report on Public Company Ownership or on Every Change in the Share Ownership (the “**Regulation**”).

Enacted on 14 March 2017, the Regulation aims to bring the reporting obligation at par with international standards. Its coverage is a lot wider and more detailed than the previous OJK Regulation No. 60/POJK.04/2015 regarding Information Transparency of Certain Shareholders (the “**Preceding Regulation**”). Below are the changes we have highlighted:

- The Regulation provides definitions of the entities which are subject to the shareholding reporting requirement.
- The reporting obligation applies to direct as well as indirect shareholdings. This was not the case with the Preceding Regulation.
- Under the Regulation, shareholders of public companies which directly or indirectly own 5% (five percent) or more of the total number of the issued shares of the respective companies (“**5% Shareholders**”) are under obligation to disclose their share ownership. This is a stricter requirement than the requirement under the Preceding Regulation.
- The Regulation stipulates that 5% Shareholders are required to report any change (increase or decrease) in their ownership resulting from one or more transactions *only if* the change equals to or exceeds 0.5% (zero point five percent) of the total issued share capital of the company. This is a more relaxed requirement compared to the requirement under the Preceding Regulation which required the disclosure of any change regardless of the size.
- The Regulation expanded the list of items to be reported, to include (i) the percentages of the shareholding before and after the transaction causing the change; (ii) the status of the shareholding, i.e., whether it is direct or indirect shareholding; and (iii) where the shareholding is indirect, information regarding the shareholder being recorded in the list of shareholders for the interest of the beneficial owner. The elucidation of Article 2 paragraph 2 defines “indirect shareholder” as a party owning shares in a public company through another party, which is

actually the “ultimate beneficial owner” of (i) the respective shares and/or (ii) part of the ownership chain leading to the real owner.

- The Regulation requires public companies to set up policies regarding their Directors and Commissioners’ obligation to inform the public company regarding their shareholding in the public company and its changes.
- The timing for the submission of the report to OJK is now set as at the latest 10 (ten) of the occurrence of the ownership or ownership change if the report is submitted by the shareholder; or at the latest 5 (five) days of the occurrence of the ownership or ownership change if the report is submitted by an attorney of the shareholder on the basis of a written power of attorney. The possible submission of the report by an appointed attorney is worth noting.
- Significantly, the Regulation provides that all of the reported information is public information and that copies of the report may be obtained from the OJK. The OJK also has the right to announce imposed administrative sanctions to the public.

The Regulation took effect on the date of its enactment and revoked the Preceding Regulation.

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May 2017

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