



## Companies' Material Transactions and Changing Business Activities: New Regulations for Companies

by Athalia Devina



Image source: <http://atacomunicacao.com.br/wp-content/uploads/2019/05/core-business-mantenha-o-foco.png>

The Indonesian Financial Services Authority (OJK) has enacted new regulations that apply to state owned public companies relating to any material transactions that they are planning to carry out and to any amendment in their business activities (**Regulation No. 17**).<sup>\*</sup> Regulation No. 17 replaces previous regulations on the topic.<sup>\*\*</sup>

There are several key differences between Regulation No. 17 and the previous regulations.

When a public company intends to carry out a material transaction or change its business activities, Regulation No. 17 now puts into place new public announcement obligations which vary for different types of public companies. The obligations are differentiated based on whether the public companies are listed or not listed on the stock exchange, whereas previously, the obligations were applicable to any public company. Under Regulation No. 17, a public announcement will be announced on:

- a website of the public company and a website of the stock exchange for the public company that is listed on the stock exchange; and
- a website of the public company and one Indonesian language daily newspaper with national circulation or the website provided by the OJK for the public company that is not listed on the stock exchange.

The OJK may also determine whether a public company is also a financial service institution will be deemed as in certain conditions or not. If that public company is deemed as in certain conditions, it will be exempted from the announcement/transparency obligations relating to material transactions. However, it is obliged to report the material transaction to OJK by no later than 2 (two) business days after the date of the relevant material transactions.

Regulation No. 17 broadens the definition of "business activities" to those activities that are listed in the state-owned public company's articles of association. The previous regulations defined "business activities" as the primary business activities of the state-owned company. With this broader definition, therefore, Regulation No. 17 expands the scope of a state-owned public company's announcement/transparency obligations.

Regulation No. 17 also extends the definition of "material transaction" to include transactions carried out by public companies that have negative equity if the transaction is equal to 10% of the public company's equity or more. Consequently, even transactions carried out by companies with negative equity may attract the transparency/announcement obligations set out in Regulation No. 17.

Under Regulation No. 17, a state-owned public company no longer needs to use the services of a public appraiser or obtain approval from a general shareholders' meeting when carrying out any activities that would constitute a restructuring of itself.

Under Regulation No. 17, there are, however, circumstances in which a public company must now obtain the approval of an independent general meeting of shareholders. These circumstances include when a planned material transaction:

- is proposed with an affiliated company/party;
- conflicts with the interests of the public company proposing the transaction; and/or
- has the potential to disrupt the business continuity of the proposing public company.

In the event that public company is diluted due to capital increase made by the controlled company and resulted in the financial statement of the controlled company is no longer consolidated, the public company must perform its obligation under Regulation No. 17 if the calculation result of the following items is equal to or more than 20%:

- the total assets of the controlled company divided by the total consolidated assets of the public company;
- the net income of the controlled company divided by the consolidated net income of the public company; or
- the revenue of the controlled company divided by the consolidated revenue of the public company.

Under Regulation No. 17, the board of directors (BOD) of the public company must call for general meeting of shareholders to approve the not-taking-part of the public company in the capital injection of the controlled company once the ownership of the public company in the controlled company is diluted. This provision may cause an issue if the general meeting of shareholders of the public company insists that the BOD participate in the capital raising of the controlled company. By that time, the capital raising process might have been completed and it would be too late for the BOD of the public company to take part.

Regulation No. 17 will come into force on 21 October 2020.

<sup>\*</sup> OJK Regulation No. 17/POJK.04/2020 concerning Material Transactions and Changes in Business Activities.  
<sup>\*\*</sup> Regulation IX.E.2, Decree of the Head of Capital Markets and Financial Institutions Supervisory Agency No. KEP-614/BL/2011 of 2011 concerning Material Transactions and Changes in Primary Business Activities.

## New Requirements on Annual Financial Reporting

by Melisa Kristian

On 19 March 2020, the Minister for Trade enacted new regulations relating to annual financial reporting by businesses (the **Regulations**).<sup>\*</sup>



Image source: <https://i1.wp.com/www.learnlit.com/wp-content/uploads/2018/06/Financial-Reporting-Definition-Objectives-and-Importance-learnlit.jpg>

The Regulations require that businesses, established in accordance with the laws of Indonesia and located in Indonesia, must submit their annual financial reports to the Minister for Trade.

Annual financial reports must be prepared in accordance with financial accounting standards established by regulation or a professional accountant organisation in Indonesia, which has been approved by the government of Indonesia.

Prior to submission, annual financial reports must be audited by a public accountant and approved in accordance with the applicable corporate governance procedures of the company (e.g a general meeting of shareholders for a limited liability company). The annual financial report must be submitted no later than 6 months after the end of the relevant financial year.

An annual financial report may be submitted by uploading the document to the Integrated Licence Information System, which is now integrated into the Online Single Submission system. The directorate general of domestic trade will issue proof of submission, which can be used by public accountants as supporting documentation in reporting its business activities to the Minister for Finance.

The information in an annual financial report is deemed to be public information. The information may be obtained by public and state institutions.

The Regulations set out administrative sanctions for failure to comply.

<sup>\*</sup> Minister Regulations No. 25 of 2020.



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## Covid-19: Tax Incentives for Businesses

by Shaskia Putri Ramadhani

To underpin the economy during the Covid-19 pandemic, the Indonesian government has issued new regulations to support the continuity of business in bonded zones; specific areas designated for industrial activity (the **MOF Regulations**).\*



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The MOF Regulations set out a number of different incentives for specific facilities and/or companies operating in bonded zones. These include measures such as:

- deferred import duty and no import tax for companies that import goods to prevent the transmission of the coronavirus including disinfectants, masks, personal protective equipment, body temperature gauges, etc; and
- certain tax exemptions relating to value added tax and sales tax in relation to certain imported goods and goods intended for export.

Only minimal administrative requirements are needed to apply to qualify for the tax exemptions, and as such, failure to carry them out may lead to the company no longer being eligible.

The MOF Regulations came into effect on 13 April 2020.

\* The Minister for Finance Regulation No. 31/PMK.04/2020 Year 2020 concerning Additional Incentives for Companies Receiving Facilities in Bonded Zones and/or Ease of Importing For Export Purposes For Handling The Impact of the Coronavirus Disease 2019 Disaster.

## Covid-19: Facilitating the Business of Running a Public Company

by Galih Adi Prasetya



Image source: <https://italy.com/wp-content/uploads/2018/02/27-1024x500.png>

On 20 April 2020, the Financial Services Authority of the Republic of Indonesia (**OJK**) enacted new regulations introducing new flexibility in relation to general meetings of shareholders for public companies (**Regulations**).\*

The Regulations allow general meetings of shareholders for public companies (**GMOS**) to be held via electronic methods (**e-GMOS**). The details of how this may be done are set out in the e-GMOS Regulations.\*\* Various safeguards are in place around the manner in which these electronic meetings may be held including the requirement that a physical meeting must take place between at least the head of the meeting, one member of the Board of Directors or Commissioners and a financial professional. However, pursuant to a Circular letter recently released by the OJK, the obligation for physical meetings has been suspended during the pandemic. These measures will ensure that vital business decisions can be made without being hampered by administrative requirements that may be difficult to comply with during lockdown. Further, at the time of writing, KSEI, the company responsible, has not yet established the e-voting platform. Consequently, the e-GMOS may be held using the current e-proxy system. KSEI expects the e-GMOS platform to be fully functional by May 2020.

The Regulations also:

- set out stricter rules relating to any announcement that a GMOS will not be held;
- gives the OJK flexibility to require public companies to hold GMOS in certain circumstances, for example, significant market fluctuations;
- allows the Board of Commissions to organise a GMOS, whereas in the past this would have only been possible if a shareholder request for a GMOS was denied by the Board of Directors; and
- provides new flexibility on how GMOS results may be announced, now including via website;

The Regulations came into force on 21 April 2020 and public companies must amend their Articles of Association to reflect the new rules within 18 months.

\* Financial Services Authority Regulation No. 15/POJK.04/2020 of 2020 on Planning and Performing General Meetings of Shareholders for Public Companies.

\*\* Financial Services Authority Regulation No. 16/POJK.04/2020 of 2020 on the Implementation of General Meetings of Shareholders for Public Companies by Electronic Methods.