

# Initial Public Offerings

*Contributing editors*

Joshua Ford Bonnie and Kevin P Kennedy



2018

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DEAL THROUGH

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*Contributing editors*

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# Indonesia

Pheo M Hutabarat and Rosna Chung

Hutabarat, Halim & Rekan

## Market overview

### 1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The level of market capitalisation in Indonesia has varied from US\$2 million to US\$386 million; 15 companies listed their shares on the Indonesian Stock Exchange (IDX) in 2016, and by mid-May 2017, seven companies had listed their shares on the IDX.

### 2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Issuers are usually limited liability companies established in Indonesia. As well as being listed on the IDX, some domestic companies also list their shares overseas; but recently, domestic companies have tended to list at home rather than overseas. Overseas companies do not list in the Indonesian market. The underlying regulation for this is not yet in existence.

### 3 What are the primary exchanges for IPOs? How do they differ?

In the past, there were two stock exchanges in Indonesia: the Jakarta Stock Exchange and the Surabaya Stock Exchange. In 2007 these exchanges merged to become the IDX, which is currently the only stock exchange in Indonesia.

## Regulation

### 4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Indonesian Financial Service Authority (OJK) is the regulatory and enforcement agency dealing with IPOs. The OJK is a government body that was formed in 2012 to replace the Capital Market and Financial Institution Supervisory Agency. The OJK has the authority to regulate and supervise activities in the financial sector including: banking, financial markets, insurance and reinsurance, pension funds, financing institutions, and other types of financial service institution. The OJK has the authority to issue rules and regulations, including rules on IPOs, and can also impose sanctions, such as: written warnings, fines, restrictions on business activities, temporary suspension of business activities and revocation of business licence.

In addition to the OJK, the IDX, which is a self-regulating organisation, is also authorised to issue rules and regulations including listing regulations, and to impose sanctions, such as: written warnings, fines, temporary suspension of trading of the listed company's shares or forced delisting. Pursuant to IDX Regulation No. I-1 on Delisting and Relisting of Securities, forced delisting can only take place in very limited circumstances, and a breach of the listing regulations is not among these – at least not directly. Persistent breaches of the IDX Regulations may, however, lead to a forced delisting by IDX.

### 5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Issuers must seek authorisation from the OJK and IDX for a listing. A company must undertake any actions necessary for going public, such

as obtaining approval from its shareholders and preparing documents in accordance with all of the requirements determined by the OJK and IDX.

## OJK

Prior to having the shares listed, the company must obtain approval from the OJK by submitting a registration statement and supporting documents to the OJK. These documents include:

- a letter of introduction of registration statement;
- a prospectus;
- an abridged prospectus;
- a preliminary prospectus for early bookbuilding (if any);
- a schedule for the IPO;
- a sample of the securities letter;
- a photocopy of the latest articles of association that has received approval from the Minister of Law and Human Rights of the Republic of Indonesia (MoLHR) or a notification of amendment of articles of association has been received by MoLHR;
- audited financial statements for the past three years, audited by a public accountant presented in accordance with the provision of:
  - laws and regulations in capital market governing the presentation and disclosure of financial statement of public listed company; and
  - laws and regulations in capital market regulating accounting guidelines for securities companies;
- comfort letters from the auditors;
- a management letter in the accounting sector, issued in accordance with capital market laws and regulations pertaining to the guidelines for the preparation of a management statement in accounting;
- a prospective financial statement in the form of financial forecast including the public accountant's report on the financial forecast;
- a legal due diligence report and legal opinion issued by a capital market legal consultant;
- curricula vitae of the members of the board of directors and the board of commissioners;
- an underwriting agreement (if any);
- a structure that describes the position of the company vertically from individual shareholders up to subsidiaries at the very latest level, and the position of the company horizontally;
- a statement letter issued by the company;
- a statement letter issued by the capital market supporting profession;
- a statement letter issued by the underwriter (if any); and
- any other documents requested by OJK.

Upon reviewing the registration statement, the OJK will give approval to the company to announce its prospectus or abridged prospectus, or to commence bookbuilding. If, upon thorough review of the documents attached to the registration statement, the OJK does not have any further questions and does not find any factors that could cause harm to public shareholders, it will usually issue a letter declaring the registration effective.

The registration statement will become effective based on the following provisions, on the basis of:

- the lapse of:

- 45 days from the receipt by the OJK of the completed registration statement that is having covered the whole criteria stipulated in the regulation; or
- 45 days after the latest amendment submitted by the company or requested by the OJK has been met; or
- a statement from the OJK that there is no further amendment or supplement required to the information.

The OJK may request a change or additional information on registration statement under the following:

- within a period of 45 days after the submission of the first registration statement, the OJK can request for change or additional information needed to complete the registration statement or that any information or material facts for investors or public are disclosed;
- any changes or additional information requested by OJK after a period of 45 days after the submission of the first registration statement, must be based on the consideration that the changes and/or additional information are required to disclose all information or material facts to investors and public;
- all changes or additional information submitted to OJK must first obtain a response from OJK before registration statement is declared effective; and
- any request that require changes or additional information on the registration statement shall cause the change of the submission date of the registration statement.

The OJK may suspend public offering upon issuance of notification to the company and underwriters, if it is concluded that:

- the registration statement, prospectus or other documents submitted as a part of the securities registration process includes the information or material facts that are:
  - false, misleading, or ignore material facts necessary at the time in accordance with the condition at the time the statements are made; or
  - to be untrue, misleading, or ignore material facts owing to the change of circumstances and additional information needed to improve such condition is not communicated to the public; and
- the company or other parties affiliated with the company in public offering has violated Law No. 8 of 1995 on Capital Markets and its implementing regulations; or
- each company or other parties affiliated with the company does not submit changes or additional information requested by OJK.

## IDX

In addition to the OJK, a company whose shares are to be listed in the IDX must first obtain approval from the IDX by submitting an application and attaching documents evidencing that the company has complied with the IDX requirements, including the following:

- the issuer has independent commissioners, the number of which representing at least 30 per cent of the total members of the board of commissioners;
- the issuer has an independent director;
- the issuer has an audit committee and has an internal audit unit;
- the issuer has appointed a corporate secretary;
- the minimum nominal value of the shares of the issuer is at least 100 rupiah;
- an indication as to whether the issuer will issue a warrant together with the initial listing of the shares;
- the exercise price of the warrant must be at least 90 per cent of the offer price or the initial price of the shares and must be at least the same as the nominal value of the shares; and
- the issuer must enter into a full-commitment underwriting agreement with the underwriter.

In addition to these requirements, an issuer that intends to list its shares on the main board of the IDX must also satisfy the following requirements:

- the issuer has conducted its operational activities within the same core business for at least 36 consecutive months;
- the issuer was in profit in its latest financial period;

- the financial statement of the issuer has been audited for at least three consecutive years where the latest two-year audit report and the latest interim audit report (if applicable) was issued with an unqualified opinion; and
- based on the latest audited financial report, the net tangible assets of the issuer are at least 100 billion rupiah.

If the issuer wishes to register its shares on the developing board of the IDX, it must comply with the following requirements:

- the issuer must have conducted its operational activities in the same core business for at least 12 consecutive months prior to the date on which the application is submitted;
- the last audited financial statement for the latest financial year and the interim audited financial report (if applicable) must have been approved unqualified;
- the issuer owns at least 5 billion rupiah-worth of net tangible assets; and
- if the issuer has not made a profit or has operated for less than two years, it must:
  - at the latest by the second financial year after being listed on the IDX, have made a profit or a net profit based on its financial projections; and
  - if the issuer is operating in a line of business that requires longer to move into profit, such as infrastructure or public service-related businesses, the issuer must gain business profit and net profit at the latest by the end of the sixth financial year, as indicated in its financial projection.

The IDX will review the application and, within 10 working days, issue a letter to either grant approval in principle or to reject the listing of shares on the IDX. Once the IDX has issued in-principle approval, the IDX and issuer will enter into a preliminary listing agreement. In the event that the issuer's registration statement at the OJK has been effective, the issuer will submit a listing application to the IDX, in which case the IDX will approve the listing within, at the latest, five working days after its receipt.

## 6 What information must be made available to prospective investors and how must it be presented?

The issuer is required to issue a prospectus containing any information needed to be presented to potential investors. This information includes:

- a covering page containing:
  - the effective date;
  - the offering period;
  - the allotment period;
  - the date of refund;
  - the date of delivery of securities;
  - the recording date;
  - basic information on the issuer, such as line of business, address and contact details, logo (if any), website address, addresses of plant and representative office (if any), and the main business activities of issuer;
  - the name of the stock exchange on which the shares will be listed;
  - the type of offering, including the number and description of the shares, and their nominal value and price;
  - the name of the underwriter;
  - the place and date on which the prospectus will be issued;
  - the following OJK statement in capital letters: OJK OFFERS NO OPINION ON THESE SECURITIES OR ON THE VALIDITY OR COMPREHENSIVENESS OF THE INFORMATION CONTAINED IN THIS PROSPECTUS. ANY REPRESENTATIONS TO THE CONTRARY CONSTITUTE A VIOLATION OF THE LAW. THIS PROSPECTUS IS IMPORTANT AND NEED IMMEDIATE ATTENTION. SHOULD THERE BE ANY DOUBT ON ANY ACTION THAT WILL BE TAKEN, YOU ARE ADVISED TO CONSULT WITH THE COMPETENT PARTY;
  - the statement by the issuer and the underwriter (if any) in capital letters stating that they will bear full responsibility on the accuracy of all information and truthfulness of opinion disclosed in the prospectus as follow: ISSUER AND UNDERWRITER

(if any) ARE FULLY RESPONSIBLE FOR THE VALIDITY AND ACCURACY OF ALL MATERIAL INFORMATION AND FACTS AND THE TRUTHFULNESS OF THE OPINIONS EXPRESSED IN THIS PROSPECTUS; and

- the table of contents;
- the summary of prospectus;
- information on the public offering;
- the intended use of the proceeds;
- capitalisation and indebtedness;
- selected financial highlights;
- management discussions and analysis;
- the risk factor;
- the significant subsequent event after the date of independent auditor report;
- a description of the issuer’s business, financial conditions and business prospects;
- equity;
- the dividend policy;
- the tax policy;
- the summary of the underwriting contract (if any);
- the names of the capital market supporting profession involved in the IPO;
- the important information in articles of association and other important provisions related to the shareholders;
- the terms for shares’ booking;
- the distribution of the prospectus and forms to purchase shares;
- legal opinion;
- financial statement; and
- the valuation report and expert report (if any).

**7 What restrictions on publicity and marketing apply during the IPO process?**

The issuer is restricted from publishing any information on the plan for the IPO before it has obtained approval from the OJK that it may commence the bookbuilding process, or publish any information related to the IPO.

**8 What sanctions can public enforcers impose for breach of IPO rules? On whom?**

Pursuant to article 106 of Law No. 8 of 1995 on Capital Market, any violation of the IPO rules, such as conducting a public offering without first obtaining approval from the OJK, may lead to imprisonment or a fine being imposed by the OJK.

**Timetable and costs**

**9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.**

The following table indicates the estimated time frame of the IPO process in Indonesia:

Activities	Time and notes
Business and legal due diligence	1-3 months + ongoing
Financial due diligence	1-3 months + ongoing
Property valuation	1-3 months + ongoing
Preparation of accounts, profit and cash flow forecast, financial forecast model	1-3 months + ongoing
Preparation of prospectus	1-3 months + ongoing
Submission of registration statement to the OJK by issuer	Submitted together with the listing application form required by the OJK
OJK reviews and asks for clarification and additional information No. 1	
Issuer responds and submits additional documents and information to the OJK	10 working days after receiving the OJK’s letter
OJK reviews and asks for clarification and additional information No. 2	
Issuer responds and submits additional documents to OJK	7 working days after receiving the OJK’s letter
OJK grants approval to publish abridged prospectus	
Publication of abridged prospectus	2 working days after receiving the OJK’s letter

Activities	Time and notes
Bookbuilding period	To commence from the publication of abridged prospectus until the submission of pricing information to OJK
Issuer submits evidence of abridged prospectus publication to OJK	2 working days after the publication
Issuer submits information on pricing and other disclosure information to the OJK	7-21 working days from the date the abridged prospectus was published
OJK issues effective letter	
Issuer publishes revision or addition to the abridged prospectus	1 working day after the date of the OJK’s effective letter
Issuer commences the public offering period	1-5 working days from the date when the revised abridged prospectus was published
Shares allotment	2 working days after the end of the public offering period
Refund or distribution of shares	2 working days after the date of shares allotment
Listing of shares at IDX	1 working day after the refund or distribution of shares
Report on the IPO result	5 working days after the shares allotment

**10 What are the usual costs and fees for conducting an IPO?**

Based on Regulation No. I-A attached to Decision Letter of the Board of Directors of IDX No: Kep-00001/BEI/01-2014 on Registration of Shares and Equity Type Securities, the listing fees are as stated below. Also, the other IPO fees and expenses stated hereunder are based on the disclosure of IPO expenses published by the issuers on the IDX website.

Description	Typical cost
<b>Initial listing fee</b>	
Main board	Between 25 million and 250 million rupiah
Development board	Between 25 million and 150 million rupiah
<b>Annual listing fee</b>	
Main board	Between 50 million and 250 million rupiah per year
Development board	Between 50 million and 250 million rupiah per year
Underwriter’s fees	Between 0.3 per cent and 3.25 per cent of the total IPO proceeds received by the issuer
Counsel’s fees	Between 0.14 per cent to 1.85 per cent of the total IPO proceeds received by the issuer
Accountant fees	Between 0.1 per cent to 0.9 per cent of the total IPO proceeds received by the issuer

**Corporate governance**

**11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?**

To comply with good corporate governance, the IPO issuer is required at all times to comply with the following requirements:

- to have independent commissioners comprising at least 30 per cent of the members of the board of commissioners; and any independent commissioner may only serve for two consecutive serving terms;
- to have at least one independent director; and any independent director may only serve for two consecutive serving terms, and can be re-appointed provided that such independent commissioner declares that he or she will remain independent of the general meeting of shareholders;
- to have an audit committee;
- to have a corporate secretary; and
- to have an internal audit unit.



**12 Are there special allowances for certain types of new issuers?**

Smaller or growth companies with net tangible assets of at least 5 billion rupiah, which have complied with IDX listing requirements, may list their shares on the development board. The listing fees for the development board are lower than for the main board, as described in question 10.

**13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?**

Indonesian company law stipulates anti-takeover devices through the pre-emptive rights requirements, in which case any issuance or transfer of shares must first be offered to the existing shareholders. Other possible defences are to apply the management stock option plan or employee stock option plan, where the management or employee of the target company have the right to request that the shares to be sold or newly issued shares be first offered to them.

**Foreign issuers****14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?**

To date, the government has not issued any regulations to enable foreign issuers to list their shares on the IDX.

**15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?**

To the best of our knowledge there is no restriction on selling the shares of foreign issuers whose shares are listed outside Indonesia to Indonesian investors.

**Tax****16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?**

Pursuant to Law No. 7 of 1983, as last amended by Law No. 36 of 2008 on Income Tax, dividends received by domestic legal entities, co-operatives, state-owned companies, or regional government-owned companies from their shared ownership in a limited liability company incorporated in Indonesia are exempt from income tax if the dividends derive from retained earnings, and the state-owned companies or regional government-owned companies own at least 25 per cent shares in the company that distributes dividends.

Based on Decision of the Minister of Finance of the Republic of Indonesia No. 651/KMK.04/1994 dated 29 December 1994 on types of particular investment that will provide income to a pension fund, and are not deemed as income tax objects, such income received by a pension fund the incorporation of which has been authorised by the

Minister of Finance will not attract income tax if such income has been received from capital investment or from dividends received from shares of a public company listed at the IDX.

Pursuant to Government Regulation No. 41 of 1994 regarding Withholding Tax on Income from Share Trading Transactions on the Stock Exchange dated 23 December 1994, and its amendments in Government Regulation No. 14 of 1997 dated 29 May 1997, the sale or transfer of shares that are listed on an Indonesian stock exchange is subject to final withholding tax of 0.1 per cent of the gross amount of the transaction value, which should be withheld by the broker handling the transaction. An additional 0.5 per cent final tax (amounting to a total tax of 0.6 per cent) is imposed on the share value for the holding of the founder shares (except for the founder shares of a mutual fund). The imposition of 0.5 per cent withholding tax will occur at the time of the initial public offering for shares traded on the stock exchange on or after 1 January 1997. The imposition of 0.5 per cent withholding tax on the founder shares is not compulsory. The tax regulations provide an option for the taxpayer to elect to substitute the 0.5 per cent additional final tax with the taxation of actual capital gains (if any) resulting from the sale of the founder shares subject to the normal tax rates (progressive rate with a maximum of 25 per cent for corporate taxpayers or 30 per cent for individual taxpayers). Currently, the tax regulations for listed shares do not contain any provision in respect of treaty protections. In practice, the 0.1 per cent final withholding tax is applied irrespective of whether there are treaty exemptions. The Indonesian tax authorities have a general rule regarding refunds, which may be used in the case of an applicable treaty exemption.

**Investor claims****17 In which form can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?**

In practice, IPO investors can file a lawsuit against an issuer if it appears that there is misrepresentation of information in the prospectus and certain required disclosure documents in connection with the IPO.

A misrepresentation is defined as an untrue statement of a material fact or an omission to state a material fact that is required to be stated, is necessary to prevent a statement that is required to be stated, or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made. There is, however, no regulation available to accommodate non-judicial resolution for any complaints addressed by IPO investors.

**18 Are class actions possible in IPO-related claims?**

Class actions are regulated by Regulation of Supreme Court No. 1 of 2002 on Proceeding of Class Action (PERMA No. 1/2002). Pursuant to PERMA No. 1/2002, a class action is a proceeding in which one or more representatives of a group of individuals will submit a lawsuit for him or herself and at the same time represent that group of individuals with the same grievance or argument based on the same event. PERMA No. 1/2002 allows a class action to be filed on any subject matter provided that the matter meets the qualifications in the regulation,

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including: it would not be an efficient use of resources for all the lawsuits to be filed individually or jointly in one lawsuit, there is similarity of substantial fact, event and legal basis used, and similarity of the type of lawsuit among the representative of the group and its member and the representative of the group has the integrity to protect the interest of the members that he or she represents. The judge can suggest to the group representative that they change their lawyer if the lawyer performs an action that does not protect the interests of the group's members. In view of the foregoing, class actions on IPO-related claims are perfectly possible.

**19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?**

In the past, a class action was filed in relation to the IPO process of a state-owned company, among others, concerning the determination of the price of the shares offered to the public by the issuer, in which a lawsuit was filed against the issuer and the Capital Market and Financial Services Supervisory Agency, along with a request to cancel the IPO process. The case was rejected by the court, however, given that other parties are not included as defendants, such as the House of Representatives and the underwriters.



## Getting the Deal Through

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