

OJK Announced Guidelines to Implement Offerings Classified as Non-Public Offerings



As a follow-up to OJK Regulation No. 29/POJK.04/2021 on Offerings Classified as Non-Public Offering (“**Regulation**”), the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) has issued Circular Letter No. 33/SEOJK.04/2022 on Guidelines for Implementing Securities Offerings Classified as a Non-Public Offering (“**Circular Letter**”).

When the OJK issued the Regulation in 2021, the OJK increased the value threshold of a non-public offering to IDR5 billion from IDR1 billion. Moreover, to be classified as a non-public offering, the offering, which may be a single or a series of offerings, must be conducted within 12 months. Nonetheless, OJK is authorised to stipulate a different value threshold in certain events. In this respect, the Circular Letter provides guidance on the procedure for a higher value non-public securities offering (more than IDR5 billion). In addition, the Circular Letter reiterates that such an offering must be conducted (whether as a single or a series of offerings) within a maximum of 12 months after the issuance of OJK’s decision and in the territory of the Republic of Indonesia or to the Indonesian citizens (wherever they are domiciled) using mass media or offered to more than 100 parties or sold to more than 50 parties.

Application

The procedures in the Circular Letter apply to:

1. Indonesian public companies with a share ownership program;
2. Foreign companies listed in any stock exchange, including the Indonesia Stock Exchange, with a share ownership program;

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3. Supranational agencies (e.g. the World Bank, the International Monetary Fund, the Asian Development Bank, and the Islamic Development Bank) offering debts and/or sukuk;
4. Any parties offering securities for the purpose of market penetration; and
5. Any parties offering securities to support a government's policy.

With respect to parties listed in the first and second point, a share ownership program means a program offering a public company's equity securities to its and its subsidiaries' employees, directors, and/or commissioners. In this case, the public company as the issuer has conducted a public offering, and the offered shares may be the company's primary or treasury shares.

Meanwhile, the OJK does not further explain or determine the parties listed in the fourth and fifth points.

Documentation Required

The Circular Letter regulates that a party conducting any of the above transactions must submit the securities offering documents to the OJK ("**NPO Documents**"). The NPO Documents include at least:

1. an application letter for the non-public offering; and
2. an information memorandum detailing the information or material facts regarding the securities offered, which must be made in a clear, communicative, and not misleading manner.

This is a new requirement for a non-public offering and, in our view, a slightly unusual one. Taking the share ownership program as an example, it used to be the case that a public company was only required to obtain approval from its independent shareholders to offer shares to its employees and management. Now, a public company will have to prepare an information memorandum as if the company is conducting an initial public offering. The company will have to prepare, among others, information on the offering date or distribution date, an overview of the material financial data, and the risk factors, all of which require the engagement of a third party, like a financial advisor and a legal consultant. In addition, as the offering is only offered to the employees and management, preparing an information memorandum containing information on the company seems excessive.

Moreover, different types of information may be required depending on the type of non-public offering. For instance, a public company with a share ownership program will have to provide information such as the size of the program and implementation mechanism, a summary of the program requirements, and the criteria for employees' eligibility.

Going forward, it is crucial for the company to carefully review the Circular Letter as it contains detailed information on the material facts that must be included in the information memorandum.

Submission Procedure

In addition to detailing the documentation, the Circular Letter also sets out a general procedure for a non-public offering.

No.	Action	Timeline/Deadline	Remarks
1	The party to submit the NPO Documents to the OJK.	-	For now, it seems that the NPO Documents must be submitted physically,

No.	Action	Timeline/Deadline	Remarks
			except if the OJK has prepared a system for electronic submission.
2	The OJK may request revision and/or additional information, including other documents.	-	The Circular Letter does not specify the deadline as to when the OJK must request such revision or additional information.
3	The party to submit the revision and/or additional information, including other documents, to OJK.	Within 20 business days after the party receives OJK's request.	If the party fails to comply with OJK's request, the OJK will deem the submission cancelled.
4	Assuming that OJK has received all the NPO Documents, the OJK approves the non-public offering.	-	The party must carry out the offering within 12 months after the date of OJK's decision.
5	The party provides the information memorandum to the prospective buyers.	No later than two business days before the date of the non-public offering.	<p>If the non-public offering involves the granting of options, the information memorandum must be provided to the potential recipients of the options within two business days before the options are granted.</p> <p>Please note that the party is only required to provide the information memorandum once, and there is no requirement to update or provide another information memorandum when the options are exercised.</p>
6	The party must submit evidence to the OJK that it has given the information memorandum to the prospective buyers.	Within two business days after the date of the non-public offering.	-

Specifically, for a public company that intends to implement a share ownership program, it will also be required to obtain approval of the share ownership program from its independent shareholders (as regulated under OJK Regulation No. 14/POJK.04/2019).

Unfortunately, the Circular Letter does not specify the maximum period for the entire submission procedure. Therefore, parties must keep this in mind and be flexible in their proposed offering.

What Now?

The Circular Letter undoubtedly contains onerous requirements for parties conducting a non-public offering, most notably the requirement to prepare an information memorandum. From a buyer's perspective, this is beneficial as buyers would be privy to information they would otherwise not have. However, in any event, this has always been the case even before the Circular Letter, e.g. a company wanting to implement a share ownership program will prepare some disclosure containing financial information on the company and employees' eligibility—although not as detailed as an information memorandum.

In any event, parties wanting to carry out a non-public offering will have to review the Circular Letter's requirements carefully. If they decide to proceed, close coordination and maintaining an open line of communication with the OJK would be vital to ensure a successful closing.

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