



PwC Indonesia Legal Alert

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Securities Offerings that are
Non-Public Offerings ^{P1}

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Introduction

At the end of 2022, OJK issued OJK Circular Letter No. 33/SEOJK.04/2022 on the Implementation Guidelines of Securities Offerings that are Non-Public Offerings ("**OJK Letter 33/2022**") to accommodate the needs of the capital market industry and parties conducting securities offerings that are non-public offerings. Despite the fact that OJK Letter 33/2022 is not a newly issued regulation by OJK, this regulation is still relevant and important to watch out for, especially for a publicly listed company that desires to conduct a non-public offering in connection with the share ownership program that meets the criteria under OJK Letter 33/2022.

As the implementing regulation of OJK Regulation No. 29/POJK.04/2021 on Offerings that are Non-Public Offerings, OJK Letter 33/2022 stipulated that certain securities offerings that fulfil the public offering criteria – i.e., (i) have a total value of more than IDR 5 billion, (ii) are conducted once or several times within a 12-month period, and (iii) are conducted within the territory of the Republic of Indonesia or to Indonesian citizens using mass media or offered to more than 100 parties or have been sold to more than 50 parties – are deemed as non-public offerings¹, which are conducted by:²

- a) publicly listed Indonesian companies carrying out the public company share ownership program;
- b) supranational institutions carrying out bonds/*Sukuk* offerings;
- c) foreign companies that have been listed on the stock exchange carrying out the foreign company share ownership program;
- d) parties carrying out securities offerings for market penetrations/deepening;
- e) parties carrying out securities offerings to support the government's policies.

¹ Article I.2 of OJK Letter 33/2022.

² Article I.3 of OJK Letter 33/2022.

Requirements

Parties that are going to conduct securities offerings that are non-public offerings are required to submit certain documents to OJK, that are: (i) an application letter for stipulation as an offering that is a non-public offering, according to the format provided by OJK; and (ii) an information memorandum.³

Information Memorandum

The information memorandum must contain details or material facts regarding the securities offering and be made in such a way that it is clear, communicative, and not misleading⁴. It must include, among others:⁵

- a) the date of the securities offering or distribution;
- b) a statement that immediately grabs the reader's attention, essentially stating that:
 - i. OJK does not give any statement of approval, nor does it state the accuracy or adequacy of the contents;
 - ii. the party conducting such offering is solely responsible for the accuracy of all the information contained therein; and
 - iii. the securities offering does not constitute a public offering as referred to in capital market law.
- c) information/details concerning the party conducting such an offering.

OJK Letter 33/2022 also stipulated the minimum contents to be included in the information memorandum of securities offerings that are non-public offerings (i.e., types of securities to be offered, total size, price, use of proceeds, risk factors, etc), both for bonds offerings and share ownership programs. An information memorandum for foreign company share ownership programs, if not prepared in Indonesian, must also be made available in Indonesian.⁶

Procedures

The required documents, as outlined above, must be submitted electronically to OJK⁷ through OJK's integrated licensing and registration system named SPRINT (*Sistem Perizinan dan Registrasi Terintegrasi*). OJK may request changes and/or additional information and completeness of other documents to support the review process.⁸ Such a request must be submitted to OJK within 20 working days.⁹ Parties that do not respond within the given period are deemed to cancel their securities offering.¹⁰ Then, OJK may give a stipulation that the securities offering is a non-public offering after the documents are received in a complete manner or reject the application.¹¹

The securities offering can only be carried out after OJK's stipulation has been obtained and must be conducted within 12 months after such stipulation.¹²

³ Article II.1 of OJK Letter 33/2022.

⁴ Article II.2 of OJK Letter 33/2022.

⁵ Article II.3 of OJK Letter 33/2022.

⁶ Article II.5.c of OJK Letter 33/2022.

⁷ Article III.2 of OJK Letter 33/2022.

⁸ Article III.3 of OJK Letter 33/2022.

⁹ Article III.4 of OJK Letter 33/2022.

¹⁰ Article III.5 of OJK Letter 33/2022.

¹¹ Article III.6 and III.8 of OJK Letter 33/2022.

¹² Article III.7 and III.9 of OJK Letter 33/2022.

Afterward, the party conducting a securities offering that is a non-public offering must announce the information memorandum no later than two working days before the offering, while the evidence of such an announcement must be conveyed to OJK within two working days after the offering.¹³ If the securities offering is a granting of options, the same announcement applies, although there is no obligation to re-inform at the time of the exercise of such options into shares.¹⁴

Conclusion

OJK Letter 33/2022 made it possible for publicly listed companies to implement the share ownership program without fulfilling the requirements and procedures of public offerings, although it exceeds the maximum value of the IDR 5 billion threshold. Further, based on our understanding of OJK Letter 33/2022, this regulation also aims to protect the employees' interests, considering that these employees will become public shareholders of the public company later.

Nonetheless, OJK Letter 33/2022 did not stipulate a timeframe for OJK to respond to the submission of the required documents for obtaining a stipulation of the securities offerings that are non-public offerings. Unlike a registration statement, which will become effective by itself on the 20th business day if OJK does not do anything, this may potentially cause timeline uncertainty for parties that intend to conduct securities offerings that are non-public offerings.

This Legal Alert is only intended to provide an overview of securities offerings that are non-public offerings. It may not cover all aspects related. Please do not hesitate to contact us if you need more detailed advice or have specific questions.

¹³ Article III.10 of OJK Letter 33/2022.

¹⁴ Article III.11 of OJK Letter 33/2022.

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