

NEWSLETTER

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RAISING CAPITAL THROUGH AN IPO IN THE U.S.

There are many reasons why an Indonesian company seeking to raise capital may want to undertake an initial public offering (IPO) in the United States. The most obvious reason is that the U.S. securities market is one of the largest sources of capital in the world, but there are other advantages as well. Being listed on a U.S. exchange means the company has met the rigorous qualification standards and reporting requirements mandated by U.S. regulatory authorities, which serves to enhance a company's profile and brand. Further, publicly traded shares can be more appealing than privately held shares when the issuer is trying to use its shares to acquire shares in another company or as share-based compensation to attract key personnel.

While there certainly are benefits to an IPO in the U.S. over other jurisdictions, there are additional burdens that Indonesian companies must be aware of, as well. These include ongoing disclosure and reporting obligations, the Sarbanes-Oxley Act and corporate governance requirements, and high fees and costs. It is worth noting though that, while the disclosure and reporting obligations are generally more onerous than exchanges in other jurisdictions, Indonesian companies that qualify as foreign private issuers (FPIs) under U.S. securities laws are subject to less requirements than domestic issuers.

In addition to weighing the pros and cons, an Indonesian company contemplating an IPO in the U.S. must also consider the minimum entry listing requirements of the U.S. exchange that it wants to list on. For example, both the New York Stock Exchange (NYSE) and NASDAQ Global Select Market have minimum requirements regarding pre-tax earnings, number of shareholders and price per share. Specific rules, however, have been designed to make it easier for FPIs to enter U.S. markets, such as exemption from proxy solicitation provisions and certain reporting requirements. Also, concessions have been made in the rules to recognize the international and local standards of FPIs, such as the choice to use U.S. GAAP, IFRS or local GAAP as a basis of financial statements while domestic issuers must use U.S. GAAP. Additionally, in 2012, President Obama signed into law the Jumpstart Our Business Startups Act, which eliminated or eased certain restrictions to entering the U.S. securities markets for FPIs that are "Emerging Growth Companies" (EGC).

Regardless of whether an issuer is domestic or an FPI and whether it qualifies as an EGC, in order to list on a national securities exchange in the U.S., the Securities Exchange Act of 1934 requires companies to register securities. Furthermore, under the Securities Act of 1933, companies must file a registration statement with the U.S. Securities and Exchange Commission (SEC) in order to publicly offer securities in the U.S.

The registration statement is the responsibility of the issuer but the entire working group for the IPO, including management, auditors, company counsel and investment banks, contributes. One of the first steps in the IPO process is assembling the working group and choosing the investment banker to handle marketing and the underwriting of the IPO. Often, there are several underwriters but the "lead underwriter(s)" advises the issuer on all aspects of the IPO and is closely involved in diligence, drafting the registration statement and pricing the transaction. After engaging underwriters and embarking on the IPO process, a company is considered to be "in registration"

and, from this point until a period of time after the registration statement becomes effective, the dissemination of information by the company and its managers is restricted.

Under the Securities Act, the registration statement must also contain a “prospectus” that describes the issuer and details the offering. The preliminary prospectus will contain substantially all the information that a final prospectus is required to contain but may omit certain information relating to the offering (such as the final offering price).

Once the registration statement is complete and signed off by the company’s management, it is submitted to the SEC. The SEC reviews the registration statement for adequate disclosures and compliance with the SEC regulations. Upon completion of the review, the SEC will issue a comment letter (approximately in 30 days), which includes a description of deficiencies identified and any requests for supplemental information. Once the issuer has resolved the SEC comments, generally through amendments to the registration statement, the issuer typically prints the preliminary prospectus and begins the selling phase of the IPO process – called the “road show.”

The road show is when senior management and the lead investment bank meet with prospective investors and securities analysts to help build interest in the company and the IPO. The lead investment bank will generally manage this process, and will work with the company to create a presentation to be shown along with the prospectus to investors during the road show. The investment bank uses the road show to gauge the level of interest in the issuer’s shares, to help “build a book” of significant investors and to determine the likely IPO price that investors would pay.

When the road show is complete, the offering is priced. Shares cannot be sold until the registration statement is declared effective by the SEC. The declaration of effectiveness is not required until the underwriter is ready to conduct sales. Issuers may request an “acceleration” of effectiveness so that the declaration will coincide with the offering timeline. The company has up to 15 business days after effectiveness to file the final prospectus reflecting the pricing and underwriting details. The offering is formally concluded on the closing date, which is usually 3 to 5 business days after the effective date of the registration statement, and at on that day, the company delivers the registered securities to the investment bank and receives payment for the issue.

Raising capital through an IPO in the U.S. can be a long, arduous and expensive process. However, with the right advisors and sufficient preparation, the returns can be extremely rewarding.

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