

NEWSLETTER

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OJK ISSUES REGULATION ON EQUITY CROWDFUNDING

The Financial Services Authority (*Otoritas Jasa Keuangan*/"OJK") has issued regulation on Equity Crowdfunding, i.e. OJK Regulation No. 37/POJK.04/2018 concerning Equity Crowdfunding ("**POJK No. 37/2018**") which has been in force since 31 December 2018.

POJK No. 37/2018 sets out the terms and conditions for companies (particularly start-up companies) which intend to gain capital by way of fundraising with a concept of offering equity securities directly to investors through online platform operated by an equity crowdfunding operator ("**Equity Crowdfunding**"). The type of equity securities that are allowed to be offered in an Equity Crowdfunding platform are shares, whether conventional shares or sharia-based shares.

Furthermore, POJK No. 37/2018 stipulates that the Equity Crowdfunding activity is a part of financial services that is classified as a capital market sector, therefore certain capital market provision are specifically addressed in the POJK No. 37/2018.

POJK No. 37/2018 stipulates that an Equity Crowdfunding activity will not be considered as public offering as described under the Law No. 8 year 1995 concerning Capital Market ("**Capital Market Law**") insofar that the following provisions are fulfilled:

1. The offering of shares is performed by a licensed Operator.
2. The maximum offering period of the offered shares is 12 months.
3. The total amount of funds received from the offering is not more than IDR 10 billion, unless determined otherwise by OJK.
4. An Issuer will not be considered as public company as described under the Capital Market Law with the conditions that: (i) the number of shareholders of the Issuer is not more than 300 parties; and (ii) the issued and paid-up capital of the Issuer is not more than IDR 30 billion.

Basically there are three main parties which are involved in the Equity Crowdfunding activity, i.e. the Issuer, the Investor and the Operator. The notable key points of each party are as follows:

Operator

An operator is the entity who provides, administering and operating the Equity Crowdfunding services through online platform owned by the Operator ("**Operator**"). The general requirements to be an Operator under POJK No. 37/2018 are as follows:

1. a legal entity, whether a limited liability company (PT) or a cooperative (*koperasi Jasa*);
2. must have at least IDR 2.5 billion in issued and paid-up capital;
3. registered as an electronic system provider at the Ministry of Communications and Informatics; and

4. Obtained business license as an Equity Crowdfunding Operator issued by OJK (“**Operator License**”).

Furthermore, the obligations that must be fulfilled as an Operator under POJK No. 37/2018 are as follows:

1. conduct review on the Issuer, which includes at least:
 - a. the Issuer’s legality which consists of the ratification as a legal entity, the organs of the Issuer as a company, legal aspects of capital increase, Issuer’s restrictions, and licenses related to the Issuer’s business activities and/or projects that will be funded by the proceeds from shares offered through Equity Crowdfunding platform; and
 - b. documents and/or information that must be submitted by the Issuer to the Operator as stipulated in POJK No. 37/2018;
2. maintain confidentiality, integrity and availability of personal data, transaction data, and financial data;
3. use an escrow account to receive funds collected from the offering;
4. utilize a data center and disaster recovery center located in Indonesia;
5. fulfill the minimum standard of information technology system, information technology safeguard, disruption and failure of the system and transfer of information technology system management;
6. implement the basic principles of Users' protection; and submit periodic reports to OJK, including mid-year reports, annual reports and incidental reports.

As an addition, there is no limitation for foreign ownership to conduct business in Indonesia as Operator.

Issuer

The issuer is the entity offering its shares through the Operator by means of the Equity Crowdfunding Service (“**Issuer**”). An Issuer must be in the form of limited liability company (PT) that must fulfill the following criterias:

1. The Issuer is not controlled, whether directly or indirectly, by a business group or conglomerates.
2. The Issuer is not a public company or a subsidiary of a public company.
3. The Issuer’s total assets shall not exceed IDR 10 billion (excluding land and property).

The Issuer must register the ownership of shares of the Investor in the shareholders register. The Issuer is also obliged to submit an annual report to OJK which includes the realization of the use of offering proceeds.

Investor

The Investor is the party who purchases the Issuer's shares through the Operator ("**Investor**"). To be an Investor in the Equity Crowdfunding, Investor must fulfill the following criterias:

1. Investor with income of up to IDR 500 million per year may purchase shares in a maximum value of 5% of their total income per year.
2. Investor with income of more than IDR 500 million per year may purchase shares in a maximum value of 10% of their total income per year.

However, the above criterias do not apply to Investor: (i) in the form of a legal entity; and (ii) having experience in the capital markets (proven by ownership of securities accounts for at least 2 years prior to the Equity Crowdfunding offering).

The other notable provisions under POJK No. 37/2018 that must be highlighted either as an Operator, Issuer or Investor in an Equity Crowdfunding activity are as follows:

Equity Crowdfunding Agreements

POJK No. 37/2018 sets out the underlying agreements governing the Equity Crowdfunding activity, which are as follows:

1. Agreement between Operator and Issuer ("**Operator-Issuer Agreement**")

Operator-Issuer Agreement must include at least the following provisions: (i) commission and fee amount; (ii) penalty (as applicable); (iii) amount of funds that will be collected and shares offered; (iv) rights and obligations; and (v) dispute resolution clause.

2. Agreement between Operator and Investor ("**Operator-Investor Agreement**")

Operator-Investor Agreement can be made standard where Investor can express their consent electronically. Operator-Investor Agreement may include a provision for Investor to grant a power of attorney to the Operator to act as a proxy for Investor in his/her capacity as the shareholder of certain Issuer, including attending General Meetings of Shareholders and to represent in the execution of certain deeds and other related documents.

Offering through a Platform

An Issuer can only conduct the share offerings with one Operator at the same time. The maximum funding that can be received through the Platform is limited to IDR 10 billion within a period of 12

months. Within that period, the offering can be done more than once with an offering period of 60 days for each offering.

Issuer is able to set a minimum target funding during an offering. If the minimum target funding is not achieved during the offering period, the offering will be cancelled and the Issuer must return the received funds to the Investor.

The purchase of shares is done by Investor transferring funds to the agreed escrow account based on the Operator-Investor Agreement. The Operator should transfer the funds to the Issuer at the latest 21 days after the end of an offering period. After receiving the funds, the Issuer will have five days to distribute the shares to the Operator, where the Operator will have 10 days after receiving the shares to redistribute the shares to Investor. The distribution of shares can be physically delivered (for scrip shares) or by electronic delivery through a custodian by opening a securities account (for scripless shares).

Transition Period

Operators, which have been operating their Platforms prior to the issuance of POJK No. 37/2018, are required to apply for the Operator License to OJK by the latest six months after the date of POJK No. 37/2018 has been in force.

Sanctions

OJK may impose administrative sanctions for any violation of POJK No. 37/2018 (i.e. warning letters, fines, limitation of business activity, suspension of business, revocation of business license, cancellation of approval and cancellation of registration).

If you have any queries or would like us to assist you with any aspects of compliance with POJK No. 37/2018, please feel free to contact our office.