



Indonesian Legal Talking Points Indonesian Financial Services Authority (OJK) Regulation No. 17 of 2020

Material Transaction and Change of Business Activity

OJK Regulation No. 17 of 2020 on Material Transaction and Change of Business Activity ("OJK Regulation 17/2020")

In connection with codification and rejuvenation of prevailing laws and regulations, on 20 April 2020, OJK issued OJK Regulation 17/2020 supersedes Bapepam-LK Regulation Number IX.E.2

("Regulation IX.E.2") which is deemed obsolete and no longer relevant to the market needs and applicable practice standards.

According to OJK Regulation 17/2020, it is clear that this regulation seeks to improve the definition and procedure of material transactions, clarifies the substance of regulations, and enhances the effectiveness of regulations in

relation to the improvement of the protection of public shareholders and the quality of information disclosure in Material Transactions and Change of Business Activity.

OJK Regulation 17/2020 Main Provisions:



Materials Transaction

With the objectives referred above, the scope of the Material Transaction is any transaction categorized to (1) one-time transaction or series of transactions for one particular purpose or activity, provided that such transaction has fulfilled certain thresholds as stipulated thereof. Further, this regulation will elaborate more on

the procedure and exemption from the obligations related to the material transactions.



Change of Business Activity

OJK Regulation 17/2020 simplifies and provides clearer term for the change of Business Activity. In relation to the procedure to transform that business activity (including adding a new business activity), OJK Regulation 17/2020 also requires an independent

appraisal report for Public Listed Company to conduct a feasibility study for the change of business activity, which was not covered by the Regulation IX.E.2.



Disclosure

In response to the rapid development of technology, this regulation introduces new mechanism to further clarify the disclosure of information.

Comparison between Bapepam-LK Regulation Number IX.E.2 and OJK Regulation 17/2020

No.	Matters	Regulation IX.E.2	OJK Regulation 17/2020
1.	Value Limitation	<p>In order to be categorized as material transactions, any transaction shall fulfill the following:</p> <ul style="list-style-type: none"> a. participating in a business entity, project, and/or certain business activity; b. purchasing, selling, transferring, or exchanging assets or business segments; c. leasing assets; d. borrowing or lending funds; e. encumbering assets, and/or; f. providing corporate guarantees, with the value of 20% (twenty percent) or more from the Public Listed Company's equity, which is being carried out one-time in a year or in a series of transaction for one particular purpose or activity 	<p>Material transactions are any transactions carried out by publicly listed or controlled companies that meet the value limits which stipulated as follows:*</p> <ul style="list-style-type: none"> a. The value of the transaction is equal with 20% (twenty percent) or more from the Public Listed Company's equity; b. total assets that are the object of the transaction divided by total the Public Listed Company's assets whose value is equal to or more than 20% (twenty percent); c. Net income of object transaction divided by net income of the Public Listed Company whose value is equal to or more than 20% (twenty percent); or d. Operating revenues of object transaction divided with operating revenue of the Public Listed Company whose value is equal to or more than 20% (twenty percent). <p>Note: In the event that of any of the above-mentioned transactions conducted by the Public Listed Company which has negative equity, such transaction will be deemed as material transaction if the value of such transaction is equal with 10% (ten percent) or more from the total assets of such Public Listed Company.</p>

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			<p><i>*thresholds b, c and d above are only applied for any transaction related to acquisition and disposal of company or business.</i></p>
2.	<p>Period of financial statement and appraisal</p>	<p>In order to determine the value of material transaction, Regulation IX.E.2 stipulates that the date of the audited financial statement shall be no later than 12 (twelve) months before:</p> <ul style="list-style-type: none"> a. The date of the transaction in the event that the material transaction is participating in a business entity, project, and/or certain business activity; b. The date of General Meeting of Shareholders (“GMS”) in the event that the material transaction is purchasing, selling, transferring, or exchanging assets or business segments. 	<p>This regulation amends the types of financial statements to be as follows:</p> <ul style="list-style-type: none"> a. audited annual financial statement; b. quarterly financial statements accompanied by an accountant's report on the results of the review or audit; c. audited interim financial statement other than stipulated in point b above. <p>Furthermore, in order to determine the value of any kind of material transaction, the period financial statements date as mentioned above and the date of appraisal of such material transaction shall be no later than 12 (twelve) months before:</p> <ul style="list-style-type: none"> a. The date of transaction, for the material transaction that does not require the GMS approval; or b. the date of the GMS, for any material transaction that requires the GMS approval.
3.	<p>Exemption of material transaction</p>	<p>There are some exemptions provided by Regulation IX.E.2 in relation to the material transaction (e.g. transactions with 99% owned/controlled subsidiary company of such Public Listed Company, transactions which are considered as material business activity of the Public Listed Company, etc. – as further outlined in Point 3 of Regulation IX.E.2).</p>	<p>In principle, the provision of material transactions is similar to those provided under Regulation IX.E.2. However, in the OJK Regulation 17/2020, there are some additional exemptions for Public Listed Company from its obligation in the material transaction, among others:</p> <ul style="list-style-type: none"> a. Transaction conducted through the auction process if the Public Listed Company participates as a participant; b. Transaction conducted by Public Listed Company (as a financial service institution) with the Controlled Company (as sharia financial institution) related to the development of sharia relevant institutions; c. transactions in the context of a restructuring conducted by Public Listed Company which is controlled either

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			<p>directly or indirectly by the Government; and</p> <p>d. Financial Services Institutions, under certain conditions that determined by OJK</p>
4.	Material transaction object	Regulation IX.E.2 sets out some conditions related to material transaction object in relation to the disclosure of information if the Public Company conducted a material transaction but does not require to obtain the GMS approval.	<p>As additions to previous regulation, the OJK Regulation 17/2020 provides additional provisions related to the material transaction object which is relevant to the disclosure of information by the Public Listed Company in conducting material transaction, as follows:</p> <p>a. the purchase or sale of shares which causes the Public Listed Company to gain or lose control of the target company; and/or</p> <p>b. the material transactions that have the potential to cause disruption to the business continuity of the Public Listed Company.</p>
5.	Disclosure of information by the Public Listed Company due to dilution	N/A	<p>The Public Listed Company shall comply with disclosure requirements of the OJK Regulation 17/2020, if a Public Listed Company's stake in its subsidiary Controlled Company is diluted due to additional capital injection carried out at the level of such subsidiary Controlled Company and causes the subsidiary Controlled Company's financial statements are no longer consolidated into/by the Public Listed Company, if the results of the calculation is as follows:</p> <p>a. the total assets of the Controlled Company divided by the total consolidated assets of the Public Listed Company;</p> <p>b. the Controlled Company's net income is divided by the consolidated net income of the Public Listed Company; or</p> <p>c. the Controlled Company's operating income is divided by the consolidated operating revenues of the Public Listed Company,</p> <p>the value is equal to or more than 20%.</p>

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6.	Disclosure	This regulation only regulates that the disclosure of information shall be conducted at least through Indonesian-language daily newspaper with nationwide circulation.	<p>The announcement of the material transaction and change on business activity is divided into two (2) categorize, as follows:</p> <ul style="list-style-type: none"> a. For a Public Listed Company, the announcement must be made through: (i) Public Listed Company’s company website; and (ii) stock exchange website. b. For a non-listed company, the announcement must be made through: (i) Public Listed Company’s website; and (ii) one (1) Indonesian-language daily newspaper with nationwide circulation or website provided by OJK.



Our view



- Subject to the comparison provided on the OJK Regulation 17/2020, we are on the view that the newly enacted regulation broadens its scope of transactions and restrict the limit value certainty and serves as a safeguard for the investor. However, this regulation also provides some relaxations and/or exemptions for Public Listed Company in running its business and it is expected that the relaxations can give refreshments for the Public Listed Company in running its business without worrying that their action will jeopardize the continuation of its business.

- To harmonize the development of technology, OJK Regulation 17/2020 also obliges that the disclosure of information shall also be conducted through the website of such Public Listed Company and stock exchange other than through the newspaper.





Key Takeaways – Practical Considerations

With preference to previous elaborations, below are several key takeaways and practical considerations which you may need to consider:



1. Regulation Harmonization

OJK Regulation 17/2020 provides some comfort level that will strengthen and harmonize the provision in the capital market sector as OJK gradually issue the new regulation to replace Bapepam-LK Regulation which deemed obsolete and not relevant to the current condition. It is expected that the newly enacted regulation may simplify and provide certainty for Public Listed Company in doing the material transactions and provide protection for the public shareholders. However, keeping in mind that there will be a six-month gap prior to all clauses in the new regulation become completely effective, except the provision on financial service institutions under certain conditions and administrative sanctions.



2. Financial Sector

OJK Regulation 17/2020 allows material transaction conducted through the auction process participated by the Public Listed Company and/or also conducted by the Public Listed Company (and/or its Controlled Company) related to sharia financial sector, being exempted by the obligation to use an appraisal and obtain approval from the GMS (Art. 11 of OJK Regulation 17/2020). Such exemption would be argued to enhance the implementation and expansion of financial sectors and also sharia business transactions in Indonesia.



3. Restructuring of State-Owned Enterprise

It is indisputable that relaxation in doing restructuring provided for the Public Listed Company which controlled by the Government (State-Owned Enterprises), without having to comply with its obligation to use an appraisal and obtain approval from the GMS, will make the business continuity more lenient. It has become a common knowledge that there are several State-Owned Enterprises which suffer in running its business. However, that condition shall be conducted more carefully so that it can be effective and efficient and will not be misinterpreted.



4. Period of Financial Statements and Appraisal

OJK Regulation 17/2020 shortens the period time of financial statements to determine the value of the material transaction (given that interim quarterly audited report is allowed, instead of annual or semi-annual audited report) and also make clear interpretations for the types of transactions that can be considered as a material transaction.



5. Disclosure of Information

It is a must for the Public Company to have a well-maintain devoted website in response to the requirement provided for disclosure of information.

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