



PwC Indonesia Legal Alert

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Regulatory updates on
delisting mechanism ^{P1}

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Summary

The Indonesia Stock Exchange (IDX) introduced Regulation No. I-N in May 2024, updating delisting and relisting mechanisms to enhance investor protection. The regulation requires compliance with both IDX and Financial Services Authority (OJK) rules. Voluntary delisting needs independent shareholder approval, a public share buyback, and a delisting fee. Forced delisting occurs due to financial or legal issues, with IDX informing OJK and converting the company to private status. The regulation aims to ensure careful consideration of delisting decisions, promoting market stability and transparency.

Introduction

In May 2024, the Indonesia Stock Exchange (*Bursa Efek Indonesia* or “**IDX**”) issued a new regulation, Decree of the Board of Directors of Indonesia Stock Exchange No. Kep-00054/BEI/05-2024 regarding Regulation No. I-N on Delisting and Relisting (“**IDX Regulation I-N**”), which governs the new mechanism of delisting and relisting of shares and debt-linked securities or sukuk. This regulation revoked the previous regulations stipulating the same under (i) Decree of the Board of Directors of the Jakarta Stock Exchange Number: Kep-308/BEJ/07-2004 dated 19 July 2004 regarding Regulation Number I-I on Delisting and Relisting of Shares on the Stock Exchange and (ii) Decree of the Board of Directors of PT Surabaya Stock Exchange Surabaya Number SK-023/LGL/BES/XI/2004 dated 25 November 2004 regarding Regulation No. I.A.7 on Delisting.

According to IDX Regulation I-N, this regulation was enacted to align with the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) Regulation No. 3/POJK.04/2021 on the Implementation of the Capital Market Activities (“**OJK Regulation 3/2021**”). The primary purpose of the new regulation is to enhance investor protection in the event of a delisting.

Delisting refers to removing a publicly listed company's shares from a stock exchange, rendering them unavailable for trading. Delisting can occur for several reasons, including:

1. **Voluntary delisting:** A publicly listed company may voluntarily apply to delist its shares from the stock exchange. This decision could be driven by various strategic reasons, such as a merger or acquisition, going private, or restructuring.
2. **Forced delisting:** IDX or OJK, as the regulatory bodies, may force a publicly listed company to delist its shares if it fails to meet the regulatory requirements or listing standards, thereby ensuring the integrity of the stock exchange.

On another note, "Relisting" is the process by which a previously delisted company's shares are re-admitted to trading on IDX.

This legal alert focuses on the delisting mechanism, providing a high-level overview of the process to enhance understanding.

Requirements of stock delisting

The process of stock delisting involves more than just adhering to the regulations set forth in IDX Regulation I-N; it also requires compliance with the procedures for converting a publicly listed company to a private company as specified in the OJK Regulation 3/2021. Initially, OJK must revoke the effectiveness of the Registration Statement¹ of a publicly listed company before any stock delisting from IDX can take place. According to the OJK Regulation 3/2021, whether it is a voluntary or forced delisting, IDX can only proceed with delisting shares after receiving an official directive from OJK.

Mechanism or procedures

1. Voluntary delisting

According to the OJK Regulation 3/2021, a publicly listed company seeking to voluntarily convert to a private company must:

- a) obtain the approval from independent shareholders in the General Meeting of Shareholders ("**GMS**");
- b) conduct a buyback of all shares that are owned by the public shareholders, so that the number of shareholders becomes less than 50 (fifty) parties or other numbers that are stipulated by OJK, which must be completed no later than 18 (eighteen) months after the announcement of information disclosure (letter c) below)²;
- c) announce information disclosure to the public; and
- d) submit an application for revocation of the Registration Statement, including supporting documents such as a statement letter from IDX confirming the publicly listed company has met its obligations, proof of payment for any administrative sanctions or fines to OJK, etc.

Once the application for revocation of the Registration Statement is fully received, OJK will revoke its effectiveness within 14 (fourteen) business days and issue a letter instructing IDX to delist the stock. IDX must complete the stock delisting within 14 (fourteen) business days after receiving OJK's letter.

¹ Registration Statement is a document that must be submitted to the OJK by issuers for the purpose of public offering or public companies.

² The obligation to buyback of all shares that are owned by the public shareholders could be exempted if there is a party conducting a voluntary tender offer for all shares owned by public shareholders so that the number of shareholders becomes less than 50 (fifty) parties or other numbers that are stipulated by OJK.

Regarding stock delisting, based on IDX Regulation I-N, there are additional requirements for a voluntary delisting that should be fulfilled by a public/listed company, namely:

- a) its shares have been listed in the IDX for at least 5 (five) years;
- b) it has completed all obligations to IDX based on the IDX Regulation I-N;
- c) it has paid the delisting fee amounting to 5 (five) times the last annual listing fee.

The delisting fee in point c) above has been revised with the implementation of the IDX Regulation I-N. Previously, the delisting fee was twice the amount of the last annual listing fee, which is significantly lower than the current rate.

2. **Forced delisting by IDX**

IDX's decision to enforce the delisting of a publicly listed company is due to:

- a) the company experiencing a significant condition or event that negatively impacts its business continuity, either financially or legally, and the company is unable to demonstrate adequate signs of recovery;
- b) the company failing to meet the listing requirements on the IDX; and/or
- c) the company's shares being suspended from trading in the IDX markets, for at least the last 24 (twenty-four) months.

According to the OJK Regulation 3/2021, if a publicly listed company encounters the situation described in points a) and b), IDX must inform OJK within no more than 2 (two) business days following the event and prior to executing a stock delisting due to failure to meet the listing requirements. Before proceeding with the stock delisting, IDX is required to submit an application to OJK to change the company's status from public to private. The criteria outlined in the OJK Regulation 3/2021 for converting a publicly listed company to a private one also apply to forced delisting carried out by the IDX (see No.1 above, except the obligation to obtain the approval of Independent Shareholders in the GMS).

3. **Forced delisting by OJK**

The delisting of shares by OJK's order refers to the OJK Regulation 3/2021. Under certain circumstances, OJK may direct a publicly listed company to change its status to a private company. This directive must be copied to the IDX, which is then required to halt trading of the company's shares as soon as possible, no later than the next trading day. The transition from publicly listed company to private company status must be accompanied by actions from the publicly listed company, among others:

- a) obtaining approval from the GMS;
- b) announcing the status change to the public within 2 (two) business days of receiving OJK's order; and
- c) conducting a buyback of all shares owned by public shareholders, reducing the number of shareholders to fewer than 50 (fifty) or another number specified by OJK, in accordance with the procedures and time period determined by OJK³;

³ The obligation to buyback of all shares that are owned by the public shareholders could be exempted if there is a party conducting a voluntary tender offer for all shares owned by public shareholders so that the number of shareholders becomes less than 50 (fifty) parties or other numbers that are stipulated by OJK.

Once the publicly listed company provides proof of fulfilling these obligations, OJK will revoke the effectiveness of the company's Registration Statement. Subsequently, OJK will issue a letter instructing IDX to proceed with the stock delisting, which IDX must complete the delisting no later than 14 (fourteen) business days after receiving OJK's instruction.

Requirements of Debt-Linked Securities or Sukuk Delisting

Based on the IDX Regulation I-N, the delisting of debt-linked securities or sukuk can occur for several reasons, including:

1. Voluntary delisting

The issuer can only apply for the voluntary delisting if it has obtained the approval of the General Meeting of Bondholders and/or the General Meeting of Sukuk Holders. The issuer shall also complete all obligations to IDX based on the IDX Regulation I-N to apply for the delisting.

2. Forced delisting by IDX

IDX's decision to enforce the delisting of the debt-linked securities or sukuk is due to:

- a) the issuer experiencing a significant condition or event that negatively impacts its business continuity, either financially or legally, and the company is unable to demonstrate adequate signs of recovery;
- b) has passed a period of 6 (six) months since IDX announced the condition of inability to fulfill the payment obligations (default) on the debt-linked securities or sukuk of the issuer; and/or
- c) the issuer failing to meet the listing requirements on the IDX.

3. Maturity of the debt-linked securities or sukuk

The debt-linked securities or sukuk have matured and repaid or have been settled through corporate actions carried out by the issuer.

Conclusion

With the implementation of the OJK Regulation 3/2021 and the IDX Regulation I-N, stock delisting is recognised as a complex procedure that requires significant funds due to the buyback obligation. Additionally, the increase in delisting fees is intended to encourage listed companies to make more thoughtful and deliberate considerations before proceeding with any delisting, thereby promoting a more stable and accountable market environment. The IDX Regulation I-N also aims to strengthen investor protection by imposing a public disclosure obligation on companies regarding their delisting decisions, ensuring greater transparency for all stakeholders.

This Legal Alert is intended to provide an overview of delisting and relisting mechanisms. It may not cover all related aspects. Please do not hesitate to contact us if you require more detailed advice or have specific questions.

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