DENTONS HPRP

The Government Introduces Multi-Voting Shares for Tech-Based Companies

As an effort to attract more Initial Public Offerings by tech-based company to Indonesia, the government has enacted Financial Authority Regulation No. 22/POJK.04/2021 concerning Implementation of Stock Classification with Multiple Voting Rights by Issuers with Innovation and High Growth Rates Conducting Public Offerings of Equity Securities in the Form of Shares ("**POJK 22/2021**"). As the title indicates, this new regulation allows tech companies planning to engage in public equity securities offerings to offer multiple voting shares ("**MVS**") subject to further conditions.

This new regulatory framework is implemented with the aim of encouraging the deepening of the capital market needed to accommodate issuers with certain characteristics that use technology to create innovation and have a high growth rate to conduct public offerings of equity securities in the form of shares. Furthermore, in an effort to accommodate the issuers with certain characteristics, POJK 22/2021 allows such issuers to conduct public offerings of equity securities in the form of shares.

I. Multiple Voting Shares

In Law No.40 of 2007 concerning Limited Liabilities as amended by Law No.11 of 2020 concerning Job Creation ("**Company Law**"), Indonesia implemented the principle of one share one vote by which each share issued bestows the right to cast one vote, unless the articles of association provide otherwise. However, tech-based companies that wish to raise funds by releasing their shares to the public to keep up with economic advancements risk dilution of the founders' shares and hence loss of the founders' control and the company's vision and mission.

In order to make it easier for tech-based companies to develop and gain funding through the process of an Initial Public Offering without losing the benefits to the founders, the government has enacted a new regulatory framework in POJK 22/2021, which acts as the legal foundation for innovative issuers with strong growth rates that engage in public equity securities offerings to make use of an MVS classification to maintain the control of the company's founders despite the IPO process.

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<u>Criteria for Companies to Have MVS</u>

In order for a company to have MVS, it must meet several criteria, namely:[1]

a. the company uses technology to create product innovations that increase productivity and economic growth and have broad social benefits;

[1] *POJK 22/2021, Art. 3 Paragraph (2).*

b. the company has shareholders who make a significant contribution in the utilization of technology;
c. the company has:
   i. total assets of at least Rp2,000,000,000,000.00 (two trillion rupiah);
   ii. carried out operational activities for at least 3 (three) years prior to submitting the Registration Statement;
   iii. shown a compound annual growth rate of total assets of at least 20% (twenty percent) for the last 3 (three) years; and
   iv. shown a compound annual growth rate of income is of at least 30% (thirty percent) for the last 3 (three) years;
d. the company has never made a Public Offering of equity securities; and
e. the company meets other requirements established by the Financial Service Authority.

<u>Lock-up Period</u>

The implementation of MVS may last for up to 10 (ten) years as from the effective date of the public offering registration statement, which period can be extended for another 10 (ten) years. However, each shareholder with MVS is prohibited from transferring the shares with MVS for 2 (two) years after the Registration Statement becomes effective. Also, a shareholder holding ordinary shares prior to the public offering is also prohibited from transferring the ordinary shares up to 8 (eight) months after the Registration Statement becomes effective if the book value per share based on the latest financial statements is lower than the price of the public offering.

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<u>Ratio of Voting Rights</u>

As a result of the application of MVS, certain shares may bestow the right to cast more votes than ordinary shares, subject to the following ratio:

Percentage of MVS Control	Voting Ratio
10% (ten percent) - 47,36% (forty seven point three six percent) of all issued and fully paid capital	10:1
5% (five percent) or more but less than 10% (ten percent) of all issued and fully paid capital	20:1
3.5% (three point five percent) or more but less than 5% (five percent) of all issued and fully paid capital	30:1
2.44 (two point four four percent) or more but less than 3.5% (three point five percent) of all issued and fully paid capital	40:1

Furthermore, shareholders with MVS either individually or jointly must have more than 50% (fifty percent) of the total voting rights. In the event that the voting rights of shareholders with MVS are not more than 50% (fifty percent) of the total voting rights, the issuer may increase the ratio of the voting rights of shares with MVS to a maximum of 60:1.

<u>MVS Shareholders</u>

POJK 22/2021 provides that MVS is considered as a classification of shares in which 1 (one) share grants more than 1 (one) vote to shareholders. MVS can be introduced by existing shareholders and new shareholders after the public offering as follows:

Existing Shareholders	New Shareholders after Public Offering[3]
Shareholders with MVS for the first time must be parties who have been designated as shareholders with MVS at the general meeting of shareholders and included in the prospectus.	<u>Individual Shareholders</u> An individual shareholder can be a shareholder with MVS if he/she meets the following requirements: a. he/she has been disclosed in the prospectus of the public offering as a party that can own shares with MVS; and/or b. he/she is a member of the board of directors who has made a significant contribution to business growth or the business of the issuer that wishes to implement shares with MVS and has obtained the approval of the independent shareholders at the GMS.

[2] POJK 22/2021, Art. 4 Paragraphs (1) and (2).
[3] POJK 22/2021, Art. 12 Paragraph (5).

	With regard to the implementation of MVS for individual shareholders, it must be noted that these shareholders with MVS either alone or jointly must have voting rights of more than 50% (fifty percent) of all voting rights.[4] <u>Shareholders in the Form of Legal Entities</u> If the shareholder is in the form of a legal entity,[5] there are several requirements, namely: 1. The legal entity must be directly owned by at least 99% (ninety nine percent) of shareholders with MVS and/or parties determined at the GMS as shareholders with MVS but who are no longer shareholders with MVS. 2. The legal entity is obliged to have directors who have expertise in line with the main business activities of the issuer; and 3. The legal entity must be a company whose business activities are in the field of management consulting activities, if it is an Indonesian legal entity.[6]

	However, In the event that a legal entity is established solely for the purpose of raising funds for the issuer, the legal entity must be directly controlled by:[7] 1. A shareholder who has been designated as a shareholder with MVS in the GMS but who is no longer a shareholder with MVS; and/or 2. A shareholder with MVS. Furthermore, legal entities who become shareholders with MVS must submit a report to the Financial Services Authority no later than 10 (ten) days after becoming a shareholder with MVS.[8]

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[4] *POJK 22/2021, Art. 12 Paragraph (2).*
[5] *POJK 22/2021, Art. 12 Paragraphs (1) and (6)*
[6] *POJK 22/2021, Art. 12 Paragraph (6)*
[7] *POJK 22/2021, Art. 12 Paragraph (7)*
[8] *POJK 22/2021, Art. 12 Paragraph (8)*

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