New OJK Regulation Provides Venture Capital Companies with More Investment Opportunities, Investor Safeguards and Open-ended Exit Strategies

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On December 2023, OJK issued a new regulation to govern the business of venture capital companies, replacing OJK Regulation No. 35/POJK.05/2015 of 2015 ("**POJK 35/2015**"). In the newly issued OJK Regulation No. 25 of 2023 ("**POJK 25/2023**"), there are a number of significant changes to the regulation of venture capital business, including the categorization into *Venture Capital Corporation* and *Venture Debt Corporation*, detailed provisions regarding venture fund units and specification on the types of investments that can be made.

General Provisions

POJK 25/2023 provides a few new requirements that should be noted by existing venture capital companies and those who are considering to establish a new venture capital company:

- Although the minimum equity for Venture Capital Corporations remain at IDR 50 Billion, the new regulation introduced a minimum equity of IDR 25 Billion for Venture Debt Corporations and a minimum equity of IDR 10 Billion for syariah business units. Companies who have not fulfilled such minimum requirements must do so before 31 December 2025.
- Companies are required to ensure that their articles of association reflect their business activities and are in accordance with the categorization of Venture Capital Corporations and Venture Debt Corporations in POJK 25/2023. The OJK has yet to clarify whether this means that existing venture capital companies who will continue their business as a Venture Capital Corporation will need to amend their articles of association to expressly include their categorization as a Venture Capital Corporation. This requirement must be fulfilled at the latest 6 months since the ratification of POJK 25/2023, which was on 20 December 2023.
- POJK 25/2023 requires the implementation of guidelines for, among others, asset quality assessment, anti-fraud strategy and, if they provide debt financing, collateral storage and maintenance and collateral execution.

Categorization of Venture Capital Corporation and Venture Debt Corporation

The most significant change introduced in the new OJK regulation is the categorization of venture capital companies into two business models: Venture Capital Corporation and Venture Debt Corporation. Venture Capital Corporations shall focus on direct equity participation, convertible bonds (or *sukuk* for syariah Venture Capital Corporations) and management of venture funds, while Venture Debt Corporations shall focus on purchasing debt instruments issued by startup companies and/or companies in the development stage and/or profit-sharing based financing. Venture Capital Corporations are allowed to conduct the financing activities that Venture Debt Corporations focus on, but Venture Debt Corporations are to focus only on the financing activities mentioned above.

Although the form of investment activities that are reserved for Venture Capital Corporations are generally the same as the equity investments regulated under POJK 35/2015, POJK 25/2023 makes a few notable changes, among others:

1. **Minimum Investment Requirement**: Venture Capital Corporations are required to ensure that at least 51% of their total business activities are in the form of equity participation, convertible bonds and/or convertible sukuk (for syariah Venture Capital Corporations). Previously POJK 35/2015 set the minimum at 15%.

2. **Limit on Related Party Investments**: equity participation and/or convertible bonds or sukuk (or other investment activities as approved by the OJK) are limited to:
   a. For target companies that are related parties: 10% of the Venture Capital Corporation's equity; and/or.
   b. For target companies that are non-related parties: 20% of the Venture Capital Corporation's equity.[1]

   These limitations do not apply to any exceedance that is caused by the increase of the target companies' share value.

3. **Jurisdictional and Time Limitation**: While POJK 35/2015 was silent on the jurisdiction of the target companies, POJK 25/2023 expressly states that direct equity participation shall be made to Indonesian legal entities in the form of limited liabilities companies (*perseroan terbatas*) or non-Indonesian legal entities that have business activities in Indonesia, both with a maximum investment period of 10 years. Investments in the form of convertible bonds have the same jurisdictional limitation but have no time limitation. Once the convertible bonds are converted into direct equity participation, such investment shall be subject to the same provisions applicable to equity participation under POJK 25/2023.

4. **Listed Companies**: POJK 25/2023 now allows for equity participation investments in companies that are listed on the stock exchange at a maximum of 10% of total equity participation investments.

5. **Divestment**: In addition to the previously regulated public offerings, private placement and buybacks, divestments may now also take form of liquidation and other corporate acts as long as it is in line with the prevailing regulations on limited liability companies.

The regulation of Venture Debt Corporations is not as extensive as that of Venture Capital Corporations. Generally, Venture Debt Corporations are only allowed to provide financing for micro, small or medium enterprises, startup companies and/or companies in the development stage.[2] Venture Debt Corporations may work together with other companies to provide channeling or joint financing. The companies that Venture Debt Corporations may work together with are limited to those that are regulated and supervised by the OJK, including other venture capital companies, micro financial institutions, multi-finance companies, banks and/or any other financial institutions that are allowed by law to give channeling and/or joint financing schemes.

POJK 25/2023 sets the financing limit for Venture Debt Corporations as follows:

a. For debtors who are related parties: 10% of the Venture Debt Corporation's equity;
b. For each debtor who is a non-related party: 20% of the Venture Debt Corporation's equity;
c. For a group of debtors who are non-related parties: 25% of the Venture Debt Corporation's equity.

Other than the above, POJK 25/2023 also regulates the categorization of loan quality and the obligation to have reserve funds.

Venture Funds

POJK 25/2013 also introduces a more detailed regulation of venture funds. Venture Capital Corporations who may manage venture funds are subject to more strict requirements, including having at least one manager with an investment manager representative license, a standard operational procedure regarding the management of venture funds, and an organizational structure that includes, among others, teams dedicated to research, risk management, internal audit IT and anti-money laundering, terrorism and weapons of mass destruction.

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[1]Article 17 paragraph (8) of POJK 25/2023 elaborates on what constitutes a 'related party' for the purpose of the above provision, which includes among others, the Venture Capital Corporation's controlling party, controlled party, a controlling party of the Venture Capital Corporation's controlled party, and parties related to the board of directors and board of commissioners of the Venture Capital Corporation.

[2]Article 66 of POJK 25/2023 defines of micro, small and medium for the purpose of this provision as:
- Micro business: maximum capital of IDR 1 Billion (not including land and building) or annual sales of less than IDR 2 Billion
- Small business: capital of more than IDR 1 Billion but not exceeding IDR 5 Billion (not including land and building) or annual sales of more than IDR 2 Billion but not exceeding IDR 15 Billion;
- Medium business: capital of more than IDR 5 Billion but not exceeding IDR 10 Billion (not including land and building) or annual sales of more than IDR 15 Billion but not exceeding IDR 50 Billion.

A significant addition in POJK 25/2023 is the detailed regulation of venture fund unit holders ("**VF Unit Holders**"). The new regulation provides that Venture Capital Corporations may only obtain funding from VF Unit Holders that are:

a. Indonesian or foreign legal entities;
b. Individuals who has a minimum total net assets of IDR 100 Billion not including land and building assets;
c. Central, local or foreign governments; or
d. Multilateral organizations.

POJK 25/2023 also elaborates on the different rights of the VF Unit Holders, including ownership rights, information rights and a detailed procedure for the general meeting of VF Unit Holders. Another provision of note regarding venture funds is the limitation on investments to affiliated parties, which is limited to 20% of the venture fund's net assets. This provision does not elaborate on what constitutes an affiliated party, but expressly exempts affiliation caused by ownership or equity participation from the government.

In general, the new POJK 25/2023 provides new opportunities for investments and exits for venture capital companies, while also safeguarding investor interests with limitations and detailed procedures in the management of venture funds in favor of its unit holders. This will hopefully provide sufficient legal certainty to boost investor confidence so that they will directly invest in Indonesian funds instead of channeling their investments through foreign funds.

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The article above was prepared by Dentons HPRP's lawyers