

# Enhancing Public Companies: a Comprehensive Overview of OJK Regulation No. 45 of 2024

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In light of the amendments to Law No. 8 of 1995 on Capital Markets ("**Capital Markets Law**") brought about by Law No. 4 of 2023 on Financial Sector Development and Strengthening ("**P2SK Law**"), the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") introduced OJK Regulation No. 45 of 2024 on the Development and Strengthening of Issuers and Public Companies ("**OJK Reg 45/2024**") on December 31, 2024. This regulation marks a pivotal shift in how public companies must operate, providing clearer guidelines to enhance their competitiveness in the capital markets. By aligning with the revised Capital Markets Law, OJK Reg 45/2024 introduces critical changes that require immediate attention and adaptation from businesses, ensuring more efficient market practices and positioning Indonesian companies for global prominence.

This regulation encompasses five key updates, significantly impacting registration processes for a public offering, go-private procedures, corporate governance, disclosure obligations, and the position of public shareholders in liquidation. Below are the highlights:

## **Streamlined Timelines for Submission of Registration Statements**

Under previous regulations, such as Regulation No. IX.A and OJK Regulation No. 32/POJK.04/2015, OJK was required to issue an effective statement within 45 days after receiving a complete registration statement or amendments. However, with the enactment of the P2SK Law in 2023, the timeline was reduced to 20 business days for both initial submissions and any additional revisions.

OJK Reg 45/2024 formally codifies this change, replacing the outdated 45-day timeline with the new, faster 20-business-day rule. This change was first set in Article 74(1) of the amended Capital Markets Law, which laid the foundation for the shorter timeline, and OJK had already begun implementing it informally.

Issuers must now adjust to this faster regulatory pace, ensuring efficient preparation and timely submissions to take full advantage of the new

opportunity. With less time to work through the process, early preparation for the initial registration statement submission is essential. By preparing for the submission well in advance, issuers can streamline the review process, allowing further revisions from OJK to be addressed more precisely and without the pressure of last-minute bottlenecks.

## **Changes on Go Private Procedures**

OJK Reg 45/2024 also brings significant updates to the go-private procedures, expanding the scope of conditions under which a public company may transition to a private company. Previously outlined in OJK Regulation No. 3/POJK.04/2021 on Implementation of Capital Market Activities ("**OJK Reg No. 3/2021**"), the new rules make it clearer that a public company can go private in three ways: (1) voluntarily, (2) based on OJK's order, or (3) based on PT Bursa Efek Indonesia ("**IDX**")'s order (if IDX intends to delist the company's shares).

### **1. Going private voluntarily**

Essentially, the process for a voluntary transition to a private company remains similar to the rules set out in OJK Reg 3/2021. A public company that wishes to change its status to a private entity must apply to OJK for

the revocation of its public company registration statement and meet certain key conditions:

a. GMS Approval: The public company must obtain approval from its independent shareholders at a General Meeting of Shareholders (“GMS”). Unless otherwise specified in the company’s Article of Association, according to OJK Regulation No. 15/POJK.04/2020 on Planning and Implementation of GMS for Public Companies, this GMS must be attended by more than 50% of the company’s independent shareholders, and more than 50% of those present must approve the proposal. After receiving shareholder approval, the company has 12 months to complete the transition to a private company.

b. Share Buyback until the number of shareholders amounts to fewer than 50 parties or otherwise determined by OJK: The company is required to repurchase shares from public shareholders until the number of shareholders is reduced to fewer than 50, or another threshold set by OJK.

Under OJK Reg 45/2024, the share buyback must be completed within 12 months following the announcement of the information disclosure and the GMS announcement, which is a slight revision from the previous regulation requiring completion within 18 months.

The company may be exempt from this obligation if a third party commits to conducting a tender offer for all the shares owned by public shareholders, thereby reducing the number of shareholders below 50.

c. Information Disclosure: the company must disclose all relevant information to both the public and OJK simultaneously at the same time as the GMS announcement.

## 2. Going private by OJK Order

Under OJK Reg 45/2024, certain situations can compel the OJK to order a public company to go private. These circumstances include among others, the company’s licenses being canceled or revoked, the company no longer operating for at least 3 years, and/or it being declared bankrupt. While these circumstances largely mirror those outlined in the previous regulation, OJK Reg 3/2021, OJK Reg 45/2024 introduces a new condition: if a company fails to meet the requirements for the listing or re-listing of its securities on the IDX,

OJK can step in and order the company to go private.

Once OJK issues the order, IDX is required to suspend trading of the company’s shares immediately no later than the next trading day after the receipt of OJK’s order, which is also copied to IDX. Following this, the company must undergo a go-private process which is very similar to that for voluntary go-private. This includes obtaining approval from the shareholders through a GMS, conducting a share buyback to reduce the number of shareholders to fewer than 50 or another number determined by OJK, and disclosing the situation publicly. However, unlike the voluntary go-private process, OJK Regulation 45/2024 specifies that the timeline and procedure for the buyback under OJK orders must follow the schedule and procedures set by OJK. Additionally, public disclosure of the situation must be made no later than two working days after receiving the OJK order.

OJK Reg 45/2024 introduces a new timeline that was not included in OJK Reg 3/2021, which states that the company must begin the go-private process:

- within 30 days of receiving OJK’s order; and
- by notifying OJK of the GMS agenda to change the company’s status from public to private.

After these steps are completed, the public company must seek approval from the Minister responsible for legal affairs to amend its articles of association, reflecting its transition from a public to a private company. The company must also submit the approval, along with the final shareholder composition and evidence of compliance with its obligations to OJK, IDX, and KSEI no later than 14 days after the date of ministerial approval.

Within 14 days of the submission, OJK will revoke the company’s public registration and instruct IDX to delist the company’s shares. Simultaneously, KSEI will remove the company’s securities from collective custody.

Based on the above timeline, the tender offer in a going private process ordered by OJK can only be carried out after the GMS. This is due to the regulatory obligation for the public company to submit the GMS agenda promptly within two days of receiving the OJK order. As a result, conducting the tender offer beforehand may not be a viable option. This approach highlights a key distinction from a voluntary tender offer.

### 3. Going private by IDX Order

In addition to OJK's directives, the IDX has the authority to revoke a public company's listed securities if specific conditions significantly disrupt the company's business continuity or if it fails to meet listing requirements.

Upon such an order, IDX must inform OJK of the planned go-private process. While OJK Reg 3/2021 allowed for this notice to be issued within two business days after the event or condition occurred, OJK Reg 45/2024 refines the timeline as follows:

- a. After a condition arises that substantially affects the company's business continuity or if it fails to meet IDX's listing requirements;
- b. Following the IDX Board of Directors' decision to delist the company's shares;
- c. Before the delisting decision becomes effective.

To carry out the go-private process as instructed by IDX, OJK Reg 45/2024 requires a public company to first obtain approval from its shareholders through a GMS. When announcing the GMS, the public company must also disclose all relevant information to both the public and OJK simultaneously, at the same time as the GMS announcement.

Similar to the voluntary go-private process, OJK Reg 45/2024 shortens the share buyback period from 18 months (under OJK Reg 3/2021) to 12 months after the disclosure and GMS resolution are announced. However, this obligation can be waived if a third party commits to making a tender offer to reduce the number of public shareholders below 50.

A crucial update in OJK Reg 45/2024 provides that companies whose shares have been delisted by IDX must initiate the go-private process within 30 days of the delisting decision. This is marked by notifying OJK of the GMS agenda to change the company's status from public to private.

While OJK Reg 45/2024 came into effect at the end of 2024, companies currently in the process of relisting their shares on IDX before the regulation's enactment are exempt from the obligation to convert to private status. This exemption remains until IDX formally rejects their relisting application.

#### Expanded Responsibilities for Public Company Controllers

Another of the most significant changes introduced by OJK Reg 45/2024 is the expanded accountability for controllers of public companies

(*Pengendali Perusahaan Terbuka*). Previously, under OJK Reg 3/2021, the responsibility for corporate losses primarily fell on the Board of Directors ("**BoD**") and/or the Board of Commissioners ("**BoC**"), and only in cases where such losses happen due to specific circumstances—such as bad faith, involvement in unlawful acts, or misuse of company assets.

Now, OJK Reg 45/2024 goes further by holding controllers directly accountable for losses arising from similar misconduct. Beyond this, controllers are also mandated to actively participate in key corporate governance matters, for **at least** the following:

1. ensuring the GMS is conducted;
2. attending the GMS;
3. safeguarding the public company's business continuity, and
4. overseeing the appointment of directors and commissioners.

This expanded role signals a clear directive: controllers can no longer adopt a passive stance—they must take an active role in the company's governance and operations.

#### Immediate reporting of material information or facts

Under the P2SK Law, issuers and public companies now face a more stringent requirement: they must disclose material information or facts to OJK and the public *as soon as possible*. OJK Reg 45/2024 takes this a step further by clarifying exactly what "as soon as possible" means. The clock starts ticking as soon as the issuer or public company becomes aware of—or should have reasonably known—about material facts. These include situations where:

1. The company becomes aware of an event or fact that hasn't been disclosed to shareholders yet,
2. It understands the reasons, implications, and impact of the event, and/or
3. The information could potentially influence the price of the company's securities.

OJK Reg 45/2024 also sets a firm deadline: disclosure must happen before 9:00 AM WIB (GMT +7) on the following business day. This is a major shift from previous rules, OJK Regulation No. 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies, which allowed up to two working days to disclose such information. The intent behind this change is clear: in today's dynamic market, delays in sharing critical information can distort trading and undermine investor trust.

## **Public Shareholders' Prioritized Position in Liquidation**

Another noteworthy provision introduced by OJK Reg 45/2024 is the clarified position of public shareholders during a public company's liquidation. While this was initially regulated under the P2SK Law, the law only broadly established that public shareholders rank below concurrent creditors but above non-public shareholders when residual liquidation assets are distributed. OJK Reg 45/2024 takes this a step further by providing detailed criteria to ensure that only specific public shareholders qualify for this preferential treatment. To be eligible, public shareholders must:

1. Own less than 5% of the company's issued and fully paid shares.
2. Not serve as members of the board of directors, board of commissioners, controlling shareholders, key employees, or their affiliates; and
3. Not act as nominees for any of the above parties.

For companies with multiple voting shares, the 5% threshold is determined based on the total voting rights of the shareholder or according to the specific provisions set out in the company's articles of association, rather than solely on the percentage of shares owned.

This addition reinforces the protection of minority public shareholders, offering clearer guidelines to ensure fairness and transparency in liquidation proceedings. It's a key update that issuers should incorporate into their governance and compliance strategies.

## **Conclusion**

With the significant updates introduced by OJK Reg 45/2024, it's crucial for businesses to stay ahead by closely monitoring how the OJK interprets and enforces these changes. Companies must reassess their corporate structures, strategies, and compliance processes to align with new requirements. This could include reviewing any ongoing or upcoming transactions involving public companies as well as indirect shareholdings in an issuer or public company, and to adapt promptly to the updated timelines and governance responsibilities.

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*The article above was prepared by Dentons HPRP's lawyers*

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