

May 2024 Vol. 2

ATD LAW in association with MHM Legal Insights

Key Contacts



Abadi Abi Tisnadisastra

☎ +62-811-183-700 (Indonesia)

✉ abadi.t@mhm-global.com



Alfa Dewi Setiawati

☎ +62-811-1923-4002 (Indonesia)

✉ alfa.s@mhm-global.com



Faiz Naufaldo

☎ +62-811-1923-4009 (Indonesia)

✉ faiz.n@mhm-global.com

Updated Requirements for Holding and Pledging of Shares in Public Companies

Introduction

The Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") has enacted OJK Regulation No. 4 of 2024 on Reports of Ownership or Any Ownership Changes in Public Company Shares and Reports on Activities of Pledging Public Company Shares ("**OJK Reg. 4/2024**") to revoke the previous regulation, OJK Regulation No. 11 of 2017 on Reports of Ownership or Any Ownership Changes in Public Company Shares ("**OJK Reg. 11/2017**"). OJK Reg. 4/2024 was enacted to incorporate changes made to the reporting obligations for shareholders of a public company within Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ("**Law No. 4/2023**"). The main changes include the introduction of the reporting obligation for the pledging public company shares, reporting requirements for changes in shareholding percentages based on voting rights and the establishment of the electronic reporting system. OJK Reg. 4/2024 shall be effective on 28 August 2024, 6 (six) months after its enactment.

We highlight below several notable provisions stipulated under OJK Reg. 4/2024:

I. Reporting Obligations for Ownership or Changes in Ownership of Public Companies' Shares

A. Criteria of Reporting Obligations for Ownership or Changes in Ownership of Public Companies' Shares

OJK Reg. 4/2024 adjusts the criteria for parties that are obligated to file a report to OJK on the ownership or changes in ownership of public companies' shares, details of which are set out below:¹

- a. Members of the board of directors or board of commissioners that directly or indirectly owns voting rights over shares of a public company;
- b. Parties (entities or individuals) that directly or indirectly own voting rights over at least 5% of the shares;

¹Article 2 of OJK Reg. 4/2024.

- c. Parties (entities or individuals) that are considered a controlling shareholder of a public company;
- d. Parties (entities or individuals) that decrease their ownership of voting rights over shares to less than 5% (parties that already own less than 5% of the shares are not subject to these reporting obligations).

With regard to the reporting party, if the parties holding shares in the publicly listed company are part of an organized group, the reporting may be carried out by a shareholder appointed to represent the organized group.

The requirement to report a change in shareholding percentage has been amended from number of shares to number of voting rights. Additionally, the minimum change in shareholding percentage that must be reported is now one percent, as opposed to the previous amount of 0.5%. The calculation of changes in the abovementioned voting rights are rounded down to the nearest percentage in the event of any fraction of a whole number. The timeline for reporting the shareholding change is now reduced to five days compared to the previous timeline of ten days after the change in shareholding occurs.

B. Reports on Ownership or Changes in Ownership of Public Companies' Shares

OJK Reg. 4/2024 also expands the information required to be included in the reports of ownership or changes in ownership of public companies' shares. The report shall now include, at a minimum, the following information:²

- a. Name, domicile and nationality;
- b. Name of the public company's shares (i.e., ticker code);
- c. Number of shares and ownership percentage of shares with voting rights over shares of the public company before and after the transaction;
- d. Type of transaction undertaken;
- e. Number of shares purchased, sold or transferred;
- f. Information on the classification of shares;
- g. Purchase or sale price per share, if the change in ownership is due to a payment transaction;
- h. Transaction date;
- i. Purpose of transaction;
- j. Shareholding status, either direct or indirect;
- k. Information on shareholders who are listed in the shareholders register of the public company for the interest of the beneficial owners, if there is any indirect shareholding;
- l. Name(s) of the shareholder(s) who act(s) as proxy in the reporting to another party and a statement declaring the report is made by a proxy in accordance with a power of attorney granted by a shareholder, if the shareholding report is delegated; and

²Article 4 (1) of OJK Reg. No. 4/2024.

- m. Information on the details of members of the organized group, if it is a shareholding report by an organized group.

Aside from the above, if the report is made by a controlling shareholder of a public company, the controlling shareholder shall also include an explanation on whether or not they will maintain their control within the public company.³

The attachment of OJK Reg. 4/2024 includes the form of the report on change of shareholding.

The above reporting obligation does not apply in the event of a change of shareholding due to (i) a rights issue, (ii) private placement or (iii) transactions carried out by the public company without the transactions by the shareholders.

II. Reporting Obligation for Activities of Pledging Public Companies' Shares

A. Criteria of Reporting Obligations for the Pledging of Public Companies' Shares

OJK Reg. 4/2024 requires shareholders of public companies to report any activities relating to pledging public companies' shares.⁴ The pledging of shares of a public company includes cases where shareholders wish to pledge shares that they own within a public company.⁵ Shareholders of a public company must report their activities if:⁶

- a. Number of shares pledged equates to at least 5% shares with voting rights over other shares; and/or
- b. 'Changes to the percentage unit' of previously pledged shares (fractions will be rounded down to the nearest whole number).

To further elaborate, OJK Reg. 4/2024 states that this reporting obligation shall only apply if a shareholder has pledged at least 5% shares on any one occasion, or as part of an accumulation of several occasions of pledging public company shares.⁷ The obligation to report any 'changes to the percentage unit' of previously pledged shares, occurs where 'changes to the percentage unit' is defined as a change to the whole number before the decimal point.⁸ The percentage determination should also be rounded down to the nearest whole number in the case of any fractions. Therefore, shareholders are obligated to report any changes to at least 1% of their previously pledged public company shares.⁹

B. Reports on Activities of Pledging Public Companies' Shares

Reports on the pledging of public companies' shares shall be submitted to OJK, and the report shall include at least the following:¹⁰

³Article 4 (1) of OJK Reg. No. 4/2024.

⁴Article 6 (1) of OJK Reg. No. 4/2024.

⁵Article 1 number 6 of OJK Reg. No. 4/2024.

⁶Article 6 (2) and (4) of OJK Reg. No. 4/2024.

⁷Article 6 (3) of OJK Reg. No. 4/2024.

⁸Elucidation of Article 6 (4) of OJK Reg. No. 4/2024.

⁹Elucidation of Article 6 (5) of OJK Reg. No. 4/2024 provides a further explanation in which if the change in the percentage of guaranteed public company shares is a fractional number, therefore the percentage shall be rounded down to determine whether there is a change in percentage. (If the change does not equate to at least 1%, therefore shareholders are not obligated to report to OJK).

¹⁰Article 6 (7) of OJK Reg. No. 4/2024.

- a. Name, domicile, and nationality;
- b. Name of the public companies' shares which are pledged (i.e., ticker code);
- c. Number of shares and ownership percentage of shares which are pledged;
- d. Amount of the loan secured by the pledged shares;
- e. Type of transaction/event that results in a change in the number of shares pledged (if there is a change in the number of shares pledged);
- f. Date of the agreement and the term of the agreement; and
- g. The nature of the affiliate relationship between parties engaging in activities of pledging public companies' shares, if any affiliate relationship exists.

The attachment of OJK Reg. 4/2024 includes the form of the report of pledging public company shares.

III. Submission of Reports

Previously OJK Reg. 11/2017 required reports to be submitted in writing directly to OJK.¹¹ Now, OJK Reg. 4/2024 stipulates that reports shall be submitted through OJK's electronic reporting system. However, as of the date of this newsletter, OJK has yet to establish an electronic reporting system. Therefore, OJK Reg. 4/2024 sets transitional provisions to support the transition of the submissions of reports. These transitional provisions regarding the submission of reports include:

- a. Reports on ownership or any ownership changes and activities of pledging public companies' shares are to be submitted to OJK through printed documents or electronic documents; and
- b. Reports on both any change in shareholding and the pledging of public company shares must be submitted within a maximum of 5 (five) business days after the transaction has been executed.

Once OJK's electronic reporting system has been established, the provisions on report submissions shall be as follows:

- a. Reports on ownership or any ownership changes and the pledging of public companies' shares must be submitted through OJK's electronic reporting system; and
- b. Reports must be submitted within a maximum of 3 (three) business days after the occurrence of changes in ownership of voting rights over shares or any change in shareholding of voting rights over the shares of public companies or the signing of agreements relating to the pledging of public companies' shares.

Furthermore, OJK Reg. 4/2024 also mentions that the electronic reporting system is to be further regulated. As of the date of this newsletter, the OJK has not launched the online system for reporting.

¹¹Article 2 (4) of OJK Reg. No. 11/2017.

IV. Sanctions

OJK Reg. 4/2024 applies administrative sanctions for failure to comply with the reporting obligations on change of shareholding and pledging shares in public companies. Administrative sanctions shall be imposed by OJK in the form of:¹²

- a. Written warnings;
- b. Fines;
- c. Restrictions of business activities;
- d. Suspension of business activities;
- e. Revocation of business licenses;
- f. Cancellation of approvals; and/or
- g. Cancellation of registrations.

Sanctions may also be imposed on any parties which caused the failure to comply with the reporting obligations above.

In addition to these administrative sanctions, OJK may also take other measures against parties that do not comply with the reporting obligations, such as prohibiting members of the board of directors, members of the board of commissioners and/or shareholders of non-compliant public companies from becoming a main party (e.g., controlling shareholder, BOD or BOC member etc.) within a financial service institution.¹³

V. Key Takeaways

OJK Reg. 4/2024 emphasizes transparency and accountability in the management and reporting of changes in shareholding and related activities of publicly listed companies. It reflects an ongoing commitment to upholding best practices in financial governance and protecting the interests of all market participants, especially public/minority shareholders. The implementation of OJK Reg. 4/2024 regulations on the electronic reporting system is highly anticipated to fully streamline the new reporting obligations.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

Contact Us

Public Relations
atdmhm_jakarta_info@mhm-global.com
+62-21-3021-2222
atdmhm.com
www.mhmjapan.com

¹²Article 9 (4) of OJK Reg. No. 4/2024.

¹³Article 10 of OJK Reg. No. 4/2024.