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Otoritas Jasa Keuangan issues the Carbon Exchange Rule to Combat Climate Crisis

Introduction

On August 2, 2023, the Financial Services Authority (Otoritas Jasa Keuangan or “OJK”) issued OJK Regulation No. 14 of 2023 concerning Carbon Trading Through Carbon Exchange (the “**Carbon Exchange Rule**”) as further implemented by the OJK Circular Letter No. 12/SEOJK.04/2023 regarding the Operational Procedures of Carbon Trading through the Carbon Exchange (“**OJK Circular Letter 12/2023**”). With the issuance of the Carbon Exchange Rule, carbon trading can now be conducted for both domestic and cross-border transactions.¹

As an implementation of the Financial Omnibus Law under Law No. 4 of 2023, the OJK has the authority to oversee and supervise Indonesia's domestic carbon market.

This article provides an overview of the key principles and requirements of Indonesia's carbon market as regulated under the Carbon Exchange Rule.

1. Carbon units are classified as securities

The Carbon Exchange Rule defines carbon trading as a market-based mechanism to designed to mitigate Green House Gas (“**GHG**”) emissions through the purchase and sale of carbon units². The regulation goes further to define that carbon units are now considered Securities (or Efek) provided they are registered with the National Registry System for Climate Change Control (“**SRN-PPI**”) under the Ministry of Environment and Forestry, as well as with the carbon exchange organizer (“**CE Organizer**”).

Securities are defined as negotiable instruments or investment contracts in either conventional or digital formats, or any other forms compatible with technological progress which confers on the proprietor the entitlement to directly or indirectly obtain economic benefit from the issuer or certain parties based on agreement and any derivative of the security that may be assigned and/or traded in capital markets. In this case, carbon units that can be traded in the carbon exchange are

¹Art. 2 OJK Reg. 14/2023

²Art. 1(8) OJK Reg. 14/2023

only in the form of (i) Technical Approval on Emission Ceiling for Business Actors (Persetujuan Teknis Batas Atas Emisi bagi Pelaku Usaha or "PTBAE-PU") which are approvals on the emission ceilings of GHG for business actors and/or approvals for emission quotas within a certain period of any business actor and (ii) GHG Emission Reduction Certificate (Sertifikat Pengurangan Emisi Gas Rumah Kaca or "SPE-GRK") which are certificates evidencing the reduction of emission by businesses and/or activities that have undergone measurement, reporting and verification as well as being recorded in SRN-PPI in the of registry number and/or code³.

2. Domestic and International carbon trading in Indonesia's domestic carbon market

In addition to domestic carbon units, the Carbon Exchange Rule permits the trading of foreign carbon units within Indonesia's carbon market. These can be foreign carbon units that are either registered with the SRN-PPI or those not registered with the SRN-PPI, provided that their trading on the carbon exchange does not contradict laws and regulations. Unregistered carbon units are eligible for trading if they meet the following requirements:

- a. They must be registered, validated and verified by accredited agencies from international registration system organizers;
- b. They must meet the criteria for trading on a foreign carbon exchange; and
- c. They must comply with other requirements as stipulated by the OJK⁴

It remains to be seen how foreign carbon units are to be traded on the carbon exchange. The Carbon Exchange Rule stipulates that only PTBAE-PU and SPE-GRK are eligible for trading on the carbon exchange, raising questions about the necessity for foreign carbon units to be converted into the Indonesian PTBAE-PU and SPE-GRK. According to OJK Circular Letter 12/2023, for foreign carbon units to be traded on the carbon exchange, the CE Organizer must apply to the OJK by submitting, among others:

- a. Identity of the applicant;
- b. Documents related to the project that generates the carbon units;
- c. Evidence of registration, validation and verification by an accredited agency from an international registration system organizer which concludes that such carbon units fulfill the requirements to be traded on a foreign carbon exchange;
- d. Trading plan for the carbon units;
- e. The results of the assessment by the CE Organizer of the above documents; and
- f. Other documents required by the OJK.

3. Requirements and Licensing for the Carbon Exchange Organizer

The operation of carbon trading through a carbon exchange must be organized by a CE Organizer.⁵ Under the Carbon Exchange Rule, there are several criteria that must be met by CE Organizers to organize a carbon exchange, which include:⁶

³Art. 5 OJK Reg. 14/2023

⁴Art. 3 OJK Reg. 14/2023

⁵Under Article 1 (10) OJK Reg. 14/2023, it is stated that the CE Organizers is the party that organizes and provides the Carbon Exchange.

⁶Art. 6, 7, 11, 14, 19 OJK Reg. 14/2023

- a. CE Organizers are required to organize, provide and utilize an electronic system in the transaction of carbon units continuously.
- b. They are required to be a legally established entity, a Limited Liability Company (Perseroan Terbatas), incorporated in Indonesia.
- c. They are required to have a minimum paid-up capital of IDR 100 billion and the capital is not sourced from loans.
- d. The shares can only be owned by: (i) sui generis institutions (e.g., Bank Indonesia or the Indonesia Investment Authority), (ii) Indonesian citizens/legal entities or (iii) foreign legal entities that are licensed or supervised by the relevant financial authorities in their respective countries. For foreign shareholders, ownership (either direct or indirect): (i) is limited to a maximum of 20% of the total voting rights, (ii) excludes any special rights to nominate the majority of members of the Board of Directors and/or Board of Commissioners or veto rights in the General Meeting of Shareholders regarding the resolution for any significant matters that may affect the company; and (iii) prohibits the use of nominee arrangements.
- e. The shareholders, BOD and BOC members will need to be approved by the OJK through fit and proper tests, and the shareholders are required to meet the financial integrity and feasibility criteria.
- f. They are required to have adequate operational systems, internal controls, and risk management procedures in place.
- g. They are required to administer, store, and maintain all carbon unit trading data for at least 5 years.
- h. They are required to set their own regulations on carbon exchange users, carbon units, their trading, and the supervisory mechanisms.
- i. They are required to have a minimum of two directors (all of them must be domiciled in Indonesia) and two commissioners.

As of 20 September 2023, based on the Decree of the Board of Directors of PT Bursa Efek Indonesia Number Kep-00297/BEI/09-2023, the OJK has granted a business license to PT Bursa Efek Indonesia as the official CE Organizer currently known as IDXCcarbon. IDXCcarbon has been fully operational since 26 September 2023.

4. IDXCcarbon Regulations

Recently, IDXCcarbon has issued several regulations governing the registration of carbon units, carbon unit trading, carbon exchange users, and carbon exchange monitoring.⁷ These regulations have been enacted in order to reinforce and expedite the implementation of the IDXCcarbon.

Several key provisions included in these regulations are:

⁷The IDXCcarbon regulations that were recently issued: (1) IDXCcarbon Board of Directors Decree Number: Kep-00295/BEI/09-2023 on the Regulation on the Registration of Carbon Units at the Carbon Exchange Organizer; (2) IDXCcarbon Board of Directors Decree Number: Kep-00296/BEI/09-2023 on the Regulation on Trading of Carbon Units through the Carbon Exchange Organizer; (3) IDXCcarbon Board of Directors Decree Number: Kep-00297/BEI/09-2023 on the Regulation on Users of Carbon Exchange Services; and (4) IDXCcarbon Board of Directors Decree Number: Kep-00298/BEI/09-2023 on the Regulation on the Supervision of Trading through the Carbon Exchange.

- a. There will be 4 main markets for carbon unit trading: an auction market, a regular market, a negotiated market, and a non-regular market, each of which facilitates the trade of either PTBAE-PU or SPE-GRK, or both, respectively.
- b. Users of the carbon exchange services include (i) emission traders, (ii) non-emission traders, (iii) project owners, and (iv) other parties that have obtained approval from the OJK.
- c. The IDXCarbon stipulates technical requirements and procedures for the registration of carbon units eligible for trading on the exchange.
- d. IDXCarbon will act as a supervisory body to monitor and supervise price and volume fluctuations, frequency of orders, order placements, transactions, transaction patterns and/or other information that may be relevant.

5. Reporting Obligations

CE Organizers are required to fulfill several reporting obligations to the OJK, which include:⁸

- a. Monthly transaction recapitulation report for service users, to be submitted no later than the 5th trading day of the subsequent month;
- b. An annual activity report, including annual financial statements that have been audited by accountants registered with the OJK, to be submitted no later than the end of the 3rd month after the date of the annual financial statements;
- c. Approval and/or rejection of service users and/or changes of service users, to be submitted by the next trading day;
- d. Changes in the organizational structure and/or system, to be submitted by the next trading day;
- e. Violations and sanctions imposed on the service users, to be submitted by the next trading day;
- f. Special events related to disruptions to the trading system and supervision, submitted no later than the end of the same trading day;
- g. The resignations of any member of the BOD and/or the BOC, to be submitted no later than 2 business days after becoming aware of the occurrence; and/or
- h. GMS resolutions must be submitted no later than 2 business days after the GMS date, provided that the notarial deed of the GMS must be submitted to the OJK no later than 2 business days after the deed is received by the CE Organizer.

6. Sanctions

The Carbon Exchange Rule prescribes sanctions for parties involved in violating the trading rules of the carbon exchange. The sanctions can take the form of administrative sanctions or additional sanctions in the form of certain actions by the OJK.⁹

⁸Art. 31 OJK Reg. 14/2023

⁹Art. 33 (1), 33 (3) & 34 OJK Reg. 14/2023. Administrative sanctions and additional sanctions in the form of certain actions are imposed by OJK and may apply to both CE Organizers and sellers of carbon units.

- a. written warning;
- b. fines;
- c. restriction of business activities;
- d. suspension of business activities;
- e. revocation of business license;
- f. cancellation of approval; and/or
- g. cancellation of registration.

Administrative sanctions as referred to in numbers b, c, e, f, and g may be applied with or without initial administrative sanctions in the form of written warnings. Administrative sanctions in the form of fines can be levied independently or jointly with other administrative sanctions ranging from c to g.¹⁰

7. Next steps

As of 30 October 2023, there are already 24 active players in IDXCarbon, whereas there are a total of 3,180 business actors registered with the SRN-PPI. Since its inception, IDXCarbon has seen a total of IDR29,45 billion in transaction volumes, corresponding to 464,843 tons of carbon dioxide. The Ministry of Environment and Forestry estimates that the carbon credit market is worth approximately IDR350 trillion, equivalent to 113,18 gigatons of carbon. Although IDXCarbon is relatively new, daily trading is slowly and steadily increasing in volume. In light of these facts, it is expected that the market will expand quite significantly in the near future.

The OJK is currently in talks with the Ministry of Finance to issue further regulations on carbon tax. Clearer regulations on the trading of foreign carbon units in the IDXCarbon are necessary to be in place to attract foreign companies to list their carbon units on the IDXCarbon.

Key Takeaways

Business actors should be aware that:

- Carbon units are now considered securities and must be registered with the SRN-PPI and the CE Organizer.
- Carbon units traded within the Indonesian domestic carbon market can be domestic or international carbon units.
- The CE Organizer has reporting obligations to the OJK and there are sanctions for non-compliance.

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

¹⁰Art. 33 (6) OJK Reg. 14/2023

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