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New Mandatory Reporting for Shareholders of Public Companies

インドネシア金融庁は、上場企業の株式保有報告要件を大幅に改定する新しい規則を発表し、同規制は 2024 年 8 月 28 日に施行されます。同規則は、株式保有関係の透明性を高め市場の健全性を強化することを目的とするものであり、主要な変更点として、①報告義務の基準が株式数から議決権比率に変更され議決権を持たない株式は 5% 以上でも報告の対象外となる、②株式担保の際の報告義務が新たに追加された、③報告期限が 10 日から 5 営業日に短縮された、などが挙げられます。

Introduction

As part of its ongoing efforts to modernize and enhance transparency within Indonesia's financial markets, the Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”) has issued a new set of guidelines that significantly revise the reporting requirements for share ownership in public companies. These new guidelines, promulgated under the OJK Regulation No. 4 of 2024 on Reporting of Share Ownership or Change of Ownership of Shares in Public Companies and Report for Share Pledging Activities in Public Companies (“**POJK 4/2024**”), are set to replace the previous framework established by the OJK Regulation No. 11/POJK.04/2017 (“**POJK 11/2017**”). POJK 4/2024 came into effect on August 28, 2024.

POJK 4/2024 marks a pivotal shift in the reporting obligations imposed on shareholders of public companies in Indonesia. The regulation is designed to bolster transparency and provide stakeholders with more comprehensive and accurate information regarding share ownership and encumbrances.

New calculation formula based on voting rights

One of the most substantive changes introduced by POJK 4/2024 is the revision of the calculation method for determining the shares that are subject to reporting. Historically, reporting obligations were triggered based on the number of shares owned. However, under POJK 4/2024, the focus shifts to the percentage of shares with voting rights held by a shareholder. Consequently, shares without voting rights are not considered, even if they represent more than 5%.

Under POJK 4/2024, the following parties are subject to the ownership reporting requirement:

- (a) Any directors or commissioners holding shares with voting rights, either directly or indirectly;
- (b) Any party, either directly or indirectly, who:
 - (i) Holds at least 5% shares with voting rights, or

(ii) Controls the public company

Under POJK 4/2024, for reporting purposes, “controller” of a public company is defined as a controller with ownership of either more or less than 5%.

This is a different take on defining controller of a public company. For comparison, under OJK Regulation No. 9/POJK.04/2018 on Takeover of Public Companies, “controller” is defined as a party(ies) that meets any of the following criteria:

- owns, directly or indirectly, more than 50% of the total issued and paid-up share capital; or
- has the ability to, directly or indirectly, determine, in whatever manner, the management and/or the policies of the public company.

For shareholders, this means a more nuanced approach to compliance, where the actual influence on company decisions, rather than just the number of shares, determines reporting obligations. Shareholders of a public company, particularly those holding shares with varying voting rights, must now consider their total voting power rather than merely their share quantity. For instance, in a scenario where a public company’s shares are divided into classes with differing voting rights, a shareholder may control a significant portion of voting power without holding a commensurate number of shares. This regulatory shift aims to ensure that the reporting regime more accurately reflects the shareholder’s true influence on corporate governance.

In line with the new calculation formula, the information required for reporting has also been adjusted. While the list of required information remains largely the same, there are some new items that must also be disclosed, including:

- (a) The number of shares and the corresponding voting rights percentage, both before and after the transaction
- (b) The type of transaction
- (c) The number of shares purchased, sold, or transferred
- (d) Details on the share classification
- (e) If the report is made by the controller of the public company, the controller must state whether it will retain control or not

New reporting requirement for share encumbrance

In addition to altering the calculation method for reporting obligations, POJK 4/2024 introduces a new requirement for reporting of share encumbrances in a public company. Under this provision, any form of share encumbrances must be reported to the OJK. This addition to the reporting requirement appears to increase transparency around the obligations and risks associated with shares in public companies.

The reporting for share encumbrance must follow the form that is provided in POJK 4/2024, which include the disclosure of:

- (a) The identity of the shareholders (name, residence, and nationality)
- (b) The name of the public company whose shares are encumbered
- (c) The number of shares and the percentage of share ownership that are encumbered
- (d) The value of the loan secured by the encumbered shares
- (e) The type of transaction or event that resulted in a change in the number of encumbered shares, if there

is a change

- (f) The date and term of the agreement
- (g) The nature of the affiliate relationship between the parties involved in the encumbrance, if any

As reporting on share encumbrances is a new requirement, shareholders are advised to closely monitor any encumbrances and ensure that all necessary reports are submitted to the OJK within the required timeframe. From a lenders' perspective, lenders may now consider including encumbrance reporting to the OJK as conditions for the financing they provide.

Deadlines and reporting portal

While POJK 11/2017 allowed shareholders 10 calendar days to report changes, POJK 4/2024 reduces this timeframe to 5 business days only. This new timeline applies to both changes in ownership and share encumbrance reporting.

POJK 4/2024 also mandates the OJK to create an electronic portal where shareholders can submit their reports online. Although, as of the date of this alert, the OJK has not yet launched the online portal, and no technical guidelines have been provided. This will be a development that remains to be seen in the upcoming months.

Once the online portal is operational, the 5 business days deadline will be further shortened to 3 business days.

Exceptions

Under POJK 4/2024, changes in ownership of voting rights as a result of the following events are exempted from the reporting requirements:

- (a) Corporate actions by the public company in the form of capital increases with or without granting pre-emptive rights (rights issue or private placement)
- (b) Corporate actions by the public company that do not involve shareholder transactions

Sanctions

Similar to POJK 11/2017, POJK 4/2024 prescribes a range of administrative sanctions for non-compliance, including:

- (a) Written warning
- (b) Administrative fines
- (c) Limitation of business activities
- (d) Suspension of business activities
- (e) Revocation of business licenses
- (f) Revocation of approvals
- (g) Revocation of registrations

Following another similar approach from POJK 11/2017, the OJK reserves the right to impose any other sanctions it deems necessary and to publicize and announce these sanctions to the public.

Conclusion

The issuance of POJK 4/2024 stems from the broader mandate established by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, which seeks to modernize Indonesia's financial regulatory

framework. POJK 4/2024 underscores the importance of transparency, accountability, and robust supervision within the financial markets. By implementing more stringent reporting requirements and focusing on voting rights, the OJK is ensuring that the market operates with greater clarity and fairness, fulfilling its legislative intent to enhance market integrity.

Moreover, the issuance of POJK 4/2024 reflects the OJK's strategic initiative to enhance the quality of information disclosure by specific shareholders and to strengthen the oversight of share ownership reports. These targeted measures are designed to ensure that Indonesia's regulatory framework not only meets global benchmarks but also provides comprehensive coverage of all relevant shareholder activities within public companies.

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India

Significant Beneficial Ownership – Impact of Recent RoC Order on MNCs

2024 年 5 月、デリーおよびハリヤナの会社登記官は、LinkedIn のインド法人及びその役員に対して、重要な実質的所有者の開示義務違反を理由に制裁金を課した。インドの会社法では 2017 年に「重要な実質的所有者」という概念が導入され、会社はこれに該当する個人を会社登記官に対して報告する義務があるところ、今回の決定は、インドで事業を行う多国籍企業にも広く適用される可能性があり、各企業は取締役会の構成を再評価し、CEO や上級管理職が実質的所有者に含まれ開示義務の対象とならないか改めて精査することが望ましいと言えます。

In May 2024, the Registrar of Companies of Delhi and Haryana (“RoC”) issued an order (“Order”) imposing penalties against LinkedIn India Information Private Limited (“LinkedIn India”) and its directors along with Mr. Ryan Roslansky (Global CEO of LinkedIn) and Mr. Satya Nadella (CEO of Microsoft Corporation) for violating the provisions related to identification and disclosure of significant beneficial ownership under Section 90 of the Companies Act, 2013 (“Companies Act”). The Order has far reaching implications for global companies operating in India with parent companies outside India. This article sets out the key findings of the Order.

Requirements under the Companies Act:

Section 90 of the Companies Act which deals with the concept of ‘significant beneficial ownership’ was introduced pursuant to the Companies (Amendment) Act, 2017 following the recommendations of the Financial Action Task Force. Under Section 90, a significant beneficial owner has been defined to mean an individual, who acting alone or together, holds, directly or indirectly, beneficial interests of not less than 10% shares in the reporting company or voting rights in such shares or rights to participate in the dividends arising from such shares, or holds the right to exercise, or actually exercises ‘significant influence or control’ over the company. The Companies (Significant Beneficial Ownership) Rules, 2018 (“SBO Rules”), clarify that ‘significant influence’ shall mean the power to participate in the financial and operating policy decisions of the company either directly or indirectly.

Accordingly, the law requires taking into account both objective and subjective analysis of significant beneficial ownership. *Objective* test is based on the actual shareholding of the individual in question and whether he/she directly (or together with indirect holdings) holds 10% percent or more of the shares. Under the subjective test, the determinative factor is whether the individual in question has the right to exercise, or actually exercises significant influence or control in any manner, other than through direct holdings.

Pursuant to the Companies Act read with the SBO Rules, the primary responsibility lies on the individual who holds or acquires significant beneficial interest to make the declaration to the company. The company in turn must maintain a register of such individuals who have made declarations. Further, every company maintaining such a register is also required to file details of the significant beneficial owners with the Registrar of Companies.

In addition to the above, the Companies Act also imposes a secondary responsibility on the company to take necessary steps to identify a significant beneficial owner and require such individual to comply with the above requirements. A company must give notice to any such individual whom the company knows or has reason to believe is a significant beneficial owner, has or is likely to have knowledge of a significant beneficial owner or has been a significant beneficial owner in the preceding three years. Such an individual must reply to the notice within 30 days, and if they fail to do so or provide unsatisfactory information, the company is required to approach the National Company Law Tribunal with a request to restrict the right of transfer of such person’s shares or even suspend all rights attached to such shares.

RoC’s Order

In light of the aforementioned background, the RoC conducted an investigation into the significant beneficial ownership of LinkedIn India and upon completion of its investigation passed the Order penalizing LinkedIn India and its directors along with Mr. Ryan Roslansky and Mr. Satya Nadella, with a cumulative amount of INR 2,710,800 on the grounds that they failed to declare their significant beneficial ownership in LinkedIn India.

While adjudicating the penalty in the above matter, the RoC adopted the subjective route to understand whether

any 'control' is being exercised by any natural person through 'significant influence'. To analyze the subjective route, the RoC focused on three factors/tests to identify the significant beneficial owners of LinkedIn India:

(i) Holding - subsidiary relationship test

LinkedIn India had disclosed in its financial statements that LinkedIn Corporation is its holding company despite LinkedIn Corporation not having any upstream shareholding in LinkedIn India and the shareholding of LinkedIn India being held by Microsoft Corporation post LinkedIn Corporation's acquisition by Microsoft Corporation. The RoC concluded that LinkedIn Corporation exercises significant influence or control over LinkedIn India despite not having any direct shareholding and it did so by exercising significant influence over the board of directors of LinkedIn India. Since the board of directors of LinkedIn Corporation and LinkedIn India was common, the RoC concluded that Mr. Ryan Roslansky, CEO of LinkedIn Corporation, was in fact exercising significant influence over the company since he enjoyed the overall leadership role in LinkedIn Corporation and therefore held him to be a 'significant beneficial owner' of LinkedIn India. It further relied on annual filings of Microsoft Corporation with the US Securities and Exchange Commission to find that Mr. Ryan Rolansky is also a part of the senior leadership of Microsoft Corporation and ultimately reports to Mr. Satya Nadella, CEO of Microsoft Corporation. On this basis, the RoC concluded that Mr. Satya Nadella is also liable to be disclosed as a significant beneficial owner of LinkedIn India.

(ii) Reporting Channel test

The RoC noted that the directors of LinkedIn India are in essence employees of Microsoft Corporation, holding significant positions, and Microsoft Corporation enjoys a 'right to reject' the directorship of its employees in LinkedIn India. On this basis, such employees were considered as nominees of Microsoft Corporation in LinkedIn India to represent its interests and exercise significant influence. It was also noted that the directors of LinkedIn India were appointed with no remuneration as they were remunerated from Microsoft Corporation. Accordingly, it was inferred that the reporting channels in the entire structure ran up to Mr. Ryan Roslansky or Mr. Satya Nadella who had the right to exercise significant influence unless decided otherwise through their board of directors.

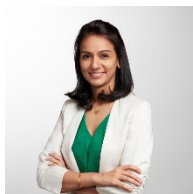
(iii) Financial Control test

Lastly, it was noted that the treasurers of LinkedIn India, including operating signatories and bank guarantee signatories, were employees of Microsoft Corporation. LinkedIn India had adopted a resolution that any decision of its board of directors shall not override the decisions of the treasurer of Microsoft Corporation in relation to financial control. This formed the basis of the RoC's conclusion that the financial control of LinkedIn India was in the hands of Microsoft Corporation.

Conclusion

The Order has been criticized for having cast the net of significant beneficial ownership too wide by bringing within its ambit CEOs and directors who are merely performing their supervisory roles and have no actual shareholding in the Indian company or are otherwise exercising any special rights through contractual arrangements. Following the Order, the Registrar of Companies in different parts of India have passed orders against multiple companies on account of defaults in making filings identifying their significant beneficial owners. While the orders are all case-specific and may well be reversed in appeal, given the current wide interpretation of significant beneficial ownership, companies will need to evaluate their board governance structures to determine if CEOs or other senior ranking management personnel (including at holding company levels) could be categorized as significant beneficial owners and require declarations to be made.

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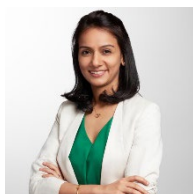


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