

OJK's Recent Updates on the Shares Buyback Mechanism of a Public Company ^{P1}

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Introduction

The Indonesian Financial Services Authority (**OJK**) has updated the rules for how a public company (**Company**) can buyback their shares. These new rules are outlined in OJK Regulation Number 29 of 2023 (**OJKR 29/2023**), which replaces the older OJK Regulation Number 30 of 2017 (**OJKR 30/2017**). The new regulation took effect on 29 December 2023.

OJK found that the old rules were difficult to apply, especially concerning setting the price for buybacks, the timing and process for transferring the bought-back shares (known as treasury shares), and the requirements for sharing information about the buybacks.

The new regulation, OJKR 29/2023, is not entirely new but it does make some important changes to tighten up the rules around how companies can buyback their shares. Here are the main changes from the old regulation to the new one:

- **Key amendments:** The document lists the significant changes made to the previous regulation.
- **New provisions:** It also introduces new rules that companies need to follow.

I. Key amendments to OJK 30/2017

No.	Matter	OJKR 30/2017	OJKR 29/2023
1.	Period to complete the buyback	18 months after the date of the Company's general meeting of shareholders approving the buyback (GMS).	12 months after the date of the Company's GMS approving the shares buyback.

No.	Matter	OJKR 30/2017	OJKR 29/2023
2.	Period to transfer the treasury shares	<ul style="list-style-type: none"> - <u>Initial transfer period:</u> Within 2 years at the latest, if the Company has not yet transferred the treasury shares 3 years after the buyback completion period. - <u>Extension:</u> This can be extended for another year if the transfer cannot be completed or has yet to be completed within the initial transfer period. 	<ul style="list-style-type: none"> - <u>Initial transfer period:</u> Within 3 years after the buyback completion period. - <u>Extension:</u> Can be extended for: <ul style="list-style-type: none"> (a) the next 2 years, only if (i) the Company has transferred a minimum of 10% of its treasury shares; <u>or</u> (ii) the Company's share price within 3 years, after the buyback, has not exceeded the average share price of the buyback. If the transfer is yet to be completed within this period, it can be extended again for another year; or (b) another year only, if it does not fulfil the criteria as required for the 2-year extension above.
3.	Period to report to OJK on the result of the buyback	Periodically every 6 months, at the latest on the 15 th of the following month.	Periodically every 6 months with reporting dates of 30 June and 31 December, at the latest on the 15 th of the following month.
4.	Method to transfer the treasury shares	<ul style="list-style-type: none"> (a) sale, through or outside the stock exchange, which can be done without prior approval from the Company's GMS; (b) withdrawn by way of capital reduction; (c) employee and/or management (board of directors and board of commissioners) stock ownership plan; (d) equity conversion; and/or (e) other methods as approved by OJK. 	<ul style="list-style-type: none"> (a) sale, through or outside the stock exchange, which can be done without prior approval from the Company's GMS; (b) withdrawn by way of capital reduction; (c) employee and/or management (board of directors and board of commissioners) stock ownership plan; (d) payment/closing of certain transactions, e.g. assets acquisition, payment, or repayment of debt and obligation; (e) equity conversion issued by the Company;

No.	Matter	OJKR 30/2017	OJKR 29/2023
			<p>(f) proportional distribution of the buyback shares to the shareholders; and/or</p> <p>(g) other methods as approved by OJK.</p>
5.	Additional conditions to extend the period of selling the treasury shares	<p>If the transfer of treasury shares is conducted through a sale, the period to transfer the shares can be extended if:</p> <p>(a) the composite stock price index of the Exchange (<i>indeks harga saham gabungan di Bursa Efek or IHSG</i>) decreased by more than 10% compared to the IHSG on the prior exchange day, for 3 consecutive exchange days;</p> <p>(b) the exchange whereby the shares of the Company are listed and being sold privately;</p> <p>(c) the Company's shares trading is suspended; and/or</p> <p>(d) natural disasters, war, riots, fires, and strikes occur which have a significant impact on the continuity of the Company's business.</p>	<p>If the transfer of treasury shares is conducted through a sale, the period to transfer the shares can be extended, if:</p> <p>(a) the composite stock price index of the Exchange (<i>indeks harga saham gabungan di Bursa Efek or IHSG</i>) decreased by more than 10% compared to the IHSG on the prior exchange day, for 3 consecutive exchange days;</p> <p>(b) the exchange whereby the shares of the Company are listed and being sold privately;</p> <p>(c) The Company's shares trading is suspended;</p> <p>(d) a <i>force majeure</i> occurs which has a significant impact on the continuity of the Company's business (e.g. natural disasters such as earthquakes or floods and non-natural disasters such as disease outbreaks, war, riots, and fires); and/or</p> <p>(e) significantly fluctuating market conditions.</p>
6.	Disclosure requirement regarding the selling of treasury shares	<p>The Company shall disclose to the public and submit the proof of announcement with the supporting documents to OJK at the latest 14 days before the transfer of treasury shares.</p>	<p>(a) The Company shall disclose to the public and submit the proof of announcement with its supporting documents to OJK at the latest 5 business days before the execution of the sale of treasury shares; save for the sale of more than 50% of remaining treasury shares, if the sale mechanism is by way of limited offering, and if the transferee name is yet to be defined.</p>

No.	Matter	OJKR 30/2017	OJKR 29/2023
			(b) If an exception applies, the Company shall only disclose to the public and submit the proof of announcement with its supporting documents to OJK at the latest 2 business days after the execution of the sale of treasury shares.
7.	In regards to the affiliated-party transaction and material transaction	<p>If the transfer of treasury shares:</p> <p>(a) is an affiliated-party transaction without conflict of interest, the Company shall only fulfil the requirements under OJKR 30/2017;</p> <p>(b) is a material transaction, the Company shall only fulfil the requirements under OJKR 30/2017.</p>	<p>When the transfer of treasury shares is conducted using a method other than the payment/closing of certain transactions:</p> <p>(a) if it is an affiliated-party transaction and/or material transaction, and as a transaction without any conflict of interest, the Company shall only fulfil the requirements under OJKR 29/2023;</p> <p>(b) if it is an affiliated-party transaction, material transaction, and/or transaction with a conflict of interest, the Company shall also fulfil the requirements under OJK regulations relating to the affiliated-party transaction and material transaction in addition to OJKR 29/2023.</p>
8.	Sanctions in regard to the violation of OJKR	<p>In terms of violation of OJKR provisions, OJK may impose sanctions in the form of a written warning, payment of a fine, business limitation, business suspension, business licence revocation, approval cancellation, and/or registration cancellation.</p> <p>OJK may also postpone the issuance of the effective registration statement in terms of public offering.</p>	<p>In terms of violation of OJKR provisions, the OJK may impose sanctions in the form of a written warning, payment of a fine, business limitation, business suspension, business licence revocation, approval cancellation, registration cancellation, revocation of the effective registration statement, and/or revocation of individual licences.</p> <p>OJK may also postpone, prohibit, and limit any of the Company's corporate actions.</p>

II. New provisions under OJKR 29/2023

1. The requirement to disclose the buyback source of funds

OJKR 29/2023 requires the Company to disclose the source of funds to conduct the buyback. This disclosure is in addition to other disclosure materials, as under the previous requirements stipulated by OJKR 30/2017 (e.g. buyback timeline, estimated price, method, and management's analysis). It shall be disclosed at the same time as the announcement date of the Company's GMS.

The Company shall ensure that the source of funds fulfils the following requirements:

- a. it does not significantly affect the Company's financial ability to fulfil the obligation that is about to be due, e.g. with the current ratio, calculated from the current asset divided by the short-term liabilities, more than 110% according to the recent and publicly available financial report;
- b. it uses the internal funds of the Company, e.g. from its business activity;
- c. it is not a fund resulting from any public offering; and
- d. it is not a fund sourced from any form of loan and/or debt.

The above-mentioned requirements shall also apply in terms of buyback caused by a significantly fluctuating market condition.

2. Possible discontinuation of the buyback

- a. Early discontinuation due to the Company's decision: OJKR 29/2023 opens a new possibility for a Company to discontinue the buyback process early, before the end of the actual completion period. The Company shall submit to OJK and announce to the public the relevant information relating to such discontinuation, accompanied with the relevant reasoning, by at the latest two working days after it is decided by the Company's board of directors to discontinue the buyback process.
- b. Early discontinuation due to a significantly fluctuating market condition: If the buyback period is not yet completed during a significantly fluctuating market condition, the Company shall discontinue the buyback process, and subsequently submit to OJK and announce to the public the relevant information relating to such discontinuation, accompanied with the relevant reasoning, by at the latest two working days after the decision to discontinue the buyback process.

3. Restriction to conduct buyback in conjunction with the buyback of shares during significantly fluctuating market conditions

The buyback is prohibited from being carried out simultaneously with the implementation of the share buyback during significantly fluctuating market conditions, as referred to in OJK Regulation Number 13 of 2023 concerning Policies to Maintain the Performance and Stability of the Capital Market under Significantly Fluctuating Market Conditions (**OJKR 13/2023**).

In the event that the Company conducts a share buyback under OJKR 13/2023 before the completion of the buyback based on OJKR 29/2023, the Company shall discontinue the implementation of the buyback and perform the disclosure as referred to in point 2 above.

III. Things to note

The new regulation by the OJK is designed to ensure that the process of the Company buying back its shares is transparent and well-regulated, safeguarding the interests of public shareholders. It also legalises the share transfer methods that have been used in practice without formal legal backing. The regulation allows the Company more ways to manage its treasury shares, such as through acquisitions, and clarifies the rules and timelines for these transactions.

Despite the regulation introducing more requirements, there does not seem to be any negative impact on the market's willingness to carry out share buybacks. Our desktop research shows that at least three public companies have planned buybacks since the regulation was put into place.

Furthermore, the regulation gives clarity to public companies that had already received approval from their GMS to buyback shares or were in the process of transferring treasury shares before the regulation started. They can continue with their buyback plans according to the previous regulation, OJKR 30/2017.

This Legal Alert is only intended to give an overview of the new regulatory framework for share buyback of a public company according to OJKR 29/2023. It does not necessarily cover all aspects, especially those that may relate to your specific circumstances or needs. Please do not hesitate to contact us if you need more detailed advice or have specific questions.

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