

New Financial Sector Omnibus Law: Capital Market, Money Market, and Forex Market

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The Indonesian government recently introduced a new omnibus law to regulate the financial sector. Law No. 4 of 2023 on Financial Sector Development and Reinforcement (Pengembangan dan Penguatan Sektor Keuangan – “**P2SK Law**”) was enacted on 12 January 2023. The P2SK Law amends 17 laws in the financial sector, including the Banking Law, Capital Market Law, Futures Trading Law, Sovereign Debt Instruments Law, Insurance Law, and Currency Law, as well as the laws on Bank Indonesia and the Financial Services Authority (view our previous Advisory on [Fintech Innovation](#) and [Financing Service Businesses](#)).

As the P2SK Law brings significant changes to the financial sector, we continue our Advisory series that focuses on the P2SK Law’s chapter V that amends the Capital Market, Money Market and Foreign Currencies Market.

A. Amendments to capital market regulations

Broadly speaking, supervisory authority over capital market activities now shifts from the Capital Market Supervisory Agency (*Badan Pengawas Pasar Modal* – “**Bapepam**”) to the Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”). Under the P2SK Law, the OJK is now authorized to license and supervise the activities of companies going public and those already publicly listed.

The OJK's new capital market authorities are, among other things:

1. Setting terms and procedures for Registration Statements that must be submitted by prospective listed companies, including verification, approval, postponement, cancellation or revocation of the declaration of effectiveness of a Registration Statement, as well as postponement of public offerings;
2. Overseeing mandatory reports submitted by publicly-listed companies, stock exchange operators, clearing guarantee institutions, central securities depositories and settlement institutions, mutual funds, securities companies, investment managers/advisors, and securities administration bureaus; and
3. Overseeing and controlling capital market activities, such as execution of pre-emptive rights, conflict of interest, tender offers, mergers, consolidations, acquisitions, initial public offerings, and delisting activities.

Significantly, the P2SK Law introduces the application of personal liability, both individually and collectively, for members of the board of directors, board of commissioners, shareholders, or affiliated parties of a party/company that is licensed or approved by the OJK to operate on the stock market, in cases where losses are incurred by the party/company, its customers, and/or its financiers or investors if the losses are due to the following actions:

- (i) use of the party/company in bad faith for their personal benefit;
- (ii) collaboration in any unlawful act conducted by the party/company;
- (iii) spending of the party/company's assets in bad faith, causing the party/company to be unable to meet any of its payment obligations; or
- (iv) non-compliance or negligence in carrying out their duties in line with prevailing laws.

The P2SK Law broadens regulations on insider trading in the capital market. Previously, parties that unlawfully obtained insider information, such as by stealing, were subject to insider trading restrictions under the capital market law. Now, the P2SK Law imposes trading restrictions on any party that possesses any insider information and is likely to be aware that the information is non-public. Parties that fail to comply with the insider trading restrictions under the capital market law will be subject to the applicable sanctions.

With the enactment of the P2SK Law, parties that are not listed on the stock exchange are now allowed to conduct capital market provider activities, including providing systems and/or facilities that connect parties trading securities or financial instruments in the capital market or organized financial markets. Another change concerns which entities can act as intermediaries in the Indonesian capital market. Previously, only licensed securities

companies were authorized to act as securities brokerage intermediaries on the stock exchange, but now other parties may also become dealers. The P2SK Law does not further elaborate on this matter and we can expect to see a more specific OJK regulation on this soon.

A further change under the P2SK Law concerns the activities of mutual funds (*reksa dana*). Previous prohibitions on mutual funds from directly borrowing and/or lending money, as well as purchasing shares or participation units in other mutual funds, have now been revoked. However, the obligation of a mutual fund to keep all its assets in a custodian bank remains.

Separately, new prohibitions have been implemented. The P2SK Law prohibits investment managers to be affiliated with custodian banks unless the affiliation is due to government ownership or equity participation. Moreover, no party is allowed to own shares in and/or control more than one futures company, whether directly or indirectly, except through share ownership or equity participation by the government.

Also, the P2SK Law adds an obligation for publicly-listed companies to treat their public shareholders as being positioned one level down from concurrent creditors and above controlling shareholders, if a company's assets are distributed due to liquidation. Therefore, in the event of liquidation, after payment to creditors, the public shareholders will be entitled to be prioritized over the controlling shareholders (i.e., the non-public shareholders).

B. New money market and foreign exchange market regulations

The P2SK Law introduces a new securitization structure to reinforce the money market industry, namely:

a. Money Market and Foreign Exchange Market Activities

Activities in the money market and foreign exchange market consist of:

- Issuance of money market instruments; and
- Transactions in the money market and foreign exchange market.

Every issuance of money market instruments requires a license from the central bank, Bank Indonesia. The central bank's authorities do not apply to money market instruments that are issued and guaranteed by the central government.

Parties allowed to conduct activities and transactions in the money market and foreign exchange market include money market and foreign exchange market entities, supporting institutions, and other related parties.

b. Financial Instrument Management Agency / Special Purpose Vehicle

A Special Purpose Vehicle (“**SPV**”) is an Indonesian limited liability company created to hold legal title to assets that belong to legal entities, enabling the SPV to use various types of assets in addition to receivables as underlying assets for securitization. An SPV has the following characteristics:

- It has one or more shareholders;
- It is managed by a Financial Services Institution governed by the OJK or an appointed party;
- Its authorized capital is governed by the OJK;
- It has at least one director and one commissioner;
- Its shareholders and/or corporate bodies are prohibited to conduct a corporate action in the form of merger, acquisition, consolidation, and/or dissolution of the SPV without prior approval from the OJK;
- Its shareholders are prohibited to transfer the SPV’s shares without prior approval from the OJK;
- Its shareholders are responsible for the business activities of the SPV; and
- When assets are transferred to the SPV for securitization, the SPV becomes the legal owner of the assets, for the interest of the beneficiary owner.

c. Trust Fund Manager / Trustee

A trustee can be in the form of legal entity or individual. A trustee has the following characteristics:

- assets provided to the trustee for the purpose of asset management are not considered the trustee’s assets and should be reported separately from the trustee’s assets;
- the beneficiary owner is considered the legal owner of the assets managed by the trustee;
- the beneficiary owner is entitled to receive the benefit of the assets in accordance with the asset management agreement; and
- if the trustee is insolvent, the assets will not form part of its bankruptcy assets.

d. Supervisory authorities

Under the P2SK Law, the supervisory authorities over financial derivatives related to the money market and foreign currencies market will shift from the Commodity Futures Trading Supervisory Agency (*Badan Pengawas Perdagangan Berjangka Komoditi* – “**Bappebti**”) to Bank Indonesia. Within 24 months, Bappebti will hand over supervision responsibilities and authority to Bank Indonesia. This is still subject to the adoption of a supporting government

regulation, which must be issued within six months of the P2SK Law's enactment.

C. Closing

Given the enactment of the P2SK Law, we can expect that many new regulations in the financial sector, including on the capital market, money market and foreign exchange market, will be issued by the relevant authorities to further implement the relevant provisions under the P2SK Law. Participants in these industries should anticipate compliance changes and prepare to quickly adapt to any necessary adjustments.

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