



# Private Placements in Indonesia

**SSEK Legal  
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# Private Placement is not defined under Indonesian law.

General restrictions on public offerings apply.

# Relevant Rules and Regulations

- Law No. 8 of 1995 on Indonesian Capital Market (**“Capital Market Law”**)
- Law No. 21 of 2011 on Financial Services Authority (**“OJK Law”**)
- Regulation No. IX.A.5 on Offerings that Are Not Public Offerings (**“Regulation IX.A.5”**)
- OJK Regulation No. 11/POJK.04/2017 on Disclosure on Shareholding or Change in Shareholding in Public Companies (**“POJK 11/2017”**)

# Public Offering vs. Private Placement

- No prohibition on private placements
- Any offering of securities in Indonesia will be a public offering and therefore subject to registration upon the fulfilment of certain elements

“Public Offering is the offering of Securities conducted by an Issuer to sell Securities to the public based on the procedures regulated in the Capital Market Law and its implementing regulation.”

# Public Offering

- Elements of public offering:
  1. Offering of securities made:
    - a) In the territory of the Republic of Indonesia; or
    - b) To Indonesian citizens (wherever located).
  2. By:
    - a) Using mass media;
    - b) Offering the securities to more than 100 parties;  
or
    - c) Selling the securities to more than 50 parties.

# Public Offering

- “Mass media” is newspapers, magazines, movies, television, radio, and other electronic media, as well as letters, brochures and other printed goods distributed to more than 100 parties.
- Offering does not need to be registered if the amount of such offering is less than Rp.1 billion (approximately USD 75,000), irrespective of the 100/50 test.

# Public Offering

- The 100/50 test applies as long as the offering period has not ended. Offering period continues unless interrupted for a 12-month period.
- If it takes five years (or any amount of time) to reach 100 offerees or 50 buyers, then such offering will continue to be a private offering. If such offering is then suspended for at least one year, any offering thereafter will be considered a new offering.

# Public Offering

- Generally speaking, Indonesian law does not differentiate between potential investors in conducting offering.
- Indonesian banks can offer foreign funds to sophisticated investors if they obtain a license to do so from OJK. However, such foreign funds must be registered before they can be so offered by the bank; to date, OJK has not established any procedures to accommodate registration of foreign funds.



# Reverse Inquiry

- No explicit recognition of reverse inquiry under Indonesian law
- May be used to avoid the “marketing” element of public offering, subject to the 100/50 test
- An “offer” under Regulation IX.A.5 is a solicitation, either directly or indirectly, expressly or implied, to perform a certain transaction

# Marketing of Funds

- Funds are considered as securities under Indonesian Capital Market Law.
- The Indonesian capital markets laws and regulations are silent with regard to marketing materials other than a fund's prospectus for public offering of Indonesian registered securities.

# Marketing of Funds

- No specific language or legends are required in the marketing materials (with the exception of a prospectus for public offering of Indonesian registered funds)
- It is advisable to include the following wording in the materials if no public offering is intended:

*“This [Prospectus] does not constitute an offer to sell nor a solicitation to buy securities in Indonesia.”*

# Marketing of Funds

- Fund managers need to obtain a license from OJK before they can offer funds in Indonesia. The funds offered must also be Indonesian registered funds.
- There are no rules pertaining to the licensing of offshore fund managers offering offshore funds in Indonesia
- There are no rules pertaining to the registration of offshore funds

# Marketing of Funds

- No violation of the Capital Market Law as long as the offshore funds offered do not trigger the public offering requirement
- Reverse inquiry may be used to avoid the “marketing” element of a public offering, subject to the 100/50 test

# Disclosure of Share Ownership of Public Companies

- A party that owns at least 5% shares of a public company (directly or indirectly) must report such share ownership to OJK
- Any change over share ownership in a public company amounting to at least 0.5% must also be reported to OJK

# Disclosure of Shares Ownership of Public Companies

- The director and commissioner of a public company must inform the OJK of their ownership of a public company's shares
- The reporting must be done at least 10 days from the date of the transaction, or 5 days if such reporting is done by a proxy





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