



Legal English Handbook Vol. 3

GET TO KNOW

INITIAL PUBLIC OFFERING

English Development Division ALSA LC UB

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INTRODUCTION

Assalamualaikum Wr. Wb
Shalom,
Om Swastiastu,
Namo Buddhaya,

First of all, let us praise the Almighty God, Allah SWT, for His blessings and mercy, we are here, happy, and healthy. Sholawat and greetings, we do not forget to extend to our Great Prophet, Muhammad SAW, who has guided us from the dark age to the bright era.

Asian Law Students' Association Local Chapter Universitas Brawijaya is one of the 14 Local Chapters of Asian Law Students' Association National Chapter Indonesia. In line with ALSA's Vision and Objectives that is listed in ALSA Constitution, ALSA Local Chapter Universitas Brawijaya always focuses on the main objective of ALSA which is focusing one's self on the global development to reach the promising future of Asia, to promote legal awareness, to implement the awareness and social responsibility as law students.

To achieve those objectives, ALSA Local Chapter Universitas Brawijaya is making serious efforts to improve and develop understandings and appreciation towards different law system in each ALSA's members countries, to make law students be internationally minded, socially responsible, academically committed, and legally skilled. Also, as a place to strengthen friendship between law students who is also members of ALSA and to exchange informations and knowledge about legal issues in their country. Regarding all of this has been concluded in the 4 pillars of ALSA and should and should have been in the hearts and souls of every ALSAians.

Lastly, I am pleased to introduce the Legal English Handbook of ALSA Local Chapter Universitas Brawijaya so that you may comprehend by this handbook. This handbook is to be a thorough and guide to ALSA Local Chapter Universitas Brawijaya and other connected topics.

I hope that this Legal English Handbook will foster the formation of positivity and facilitate the realization of all good intentions. Finally, I hope that we can all continue to build, encourage, and bring students for a better developed Indonesia.

Wassalamualaikum Wr. Wb.,
Shalom,
Om Shanti Shanti Shanti Om,
Namo Buddhaya
Salam kebajikan.
Together will be,
Connected as One,
ALSA, Always be One!



INTRODUCTION

To start with, let us praise the Almighty God for His blessings and mercy, we are able to publish this Legal English Handbook. I am Fachri Al-Hadid Indra, the person in charge of August's Legal English Handbook issue. I would like to thank all of my fellow colleagues in the English Development Division for making this issue possible.

ALSA Legal English Handbook is an activity held every 3 months by the English Development Division. This activity will be in the form of a booklet that contains everything about legal English, be that a piece of general knowledge about legal English, or even a detailed study about the latest and relevant topic in the legal field and packed with glossaries related to the topic in English.

The stock exchange market involves complex procedures and terms that might only a few groups of people know. These days, the stock exchange is getting easier to access and is reaching every group of people in the world, thanks to the vast technological developments. There are many terms and procedures in the stock exchange, one of them is the Initial Public Offering. Before you buy your first asset, this handbook will be your walkthrough in understanding Initial Public Offering through the law aspects.

Therefore, I hope this issue can expand your knowledge and be beneficial.

Wassalamualaikum Wr.Wb,
Shalom,
Om Shanti, Shanti, Shanti Om,
Namo Buddhaya.
Together Will Be,
Connected As One,
ALSA, Always Be One!





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DEFINITION

An initial public offering (IPO) is a process by which a private company can go public by selling its stock to the public. This can be a new, young company, or an older company that decides to go public and goes public as a result. Companies can raise equity capital through an IPO by issuing new shares to the public, or existing shareholders can sell their shares to the public without raising new capital. Companies that issue shares publicly are not required to return capital to public investors. The company which offers its shares, known as an 'issuer', does so with the help of investment banks.

After an IPO, the company's shares are traded in the stock exchange market in the respective country. Those shares can be further sold by investors through secondary market trading. An IPO is a big step for a company as it provides the company with access to raising a lot of money. This gives the company a greater ability to grow and expand. The increased transparency and share listing credibility can also be a factor in helping it obtain better terms when seeking borrowed funds as well.

When a company reaches a stage in its growth process where it believes it is mature enough for the rigors of Indonesian Law regulations along with the benefits and responsibilities to public shareholders, it will begin to advertise its interest in going public. Typically, this stage of growth will occur when a company has reached a private valuation of approximately \$1 billion, also known as unicorn status. However, private companies at various valuations with strong fundamentals and proven profitability potential can also qualify for an IPO, depending on the market competition and their ability to meet listing requirements.

Without a guarantee of getting the shares

The biggest risk factor in applying for an IPO is that companies are not guaranteed to receive the shares. The mechanism of buying Pre-IPO shares distribution is subscription based, which means that any number of individuals can apply for it.

Getting less than the offered rate

When buying Pre-IPO shares, the person or the companies run the risk of receiving less sum than the amount invested. This is because the actual price of the Pre-IPO shares is determined only after it is listed and there are many cases where the listed price of the share turned out to be less than the purchase price. If such a thing happens with your selected company, you will inevitably lose the invested principal amount.

The number of variables determined by the profitability of your investment

Not all Pre-IPO shares from different companies can give good returns since the price of the IPO is determined by several different factors, such as the fragility of that industry, its past performance, the performance of an affiliated company, and so on. A problem in any of the determining variables can reduce the IPO price, thus reducing your overall returns. This unpredictability of IPO shares in India is one of its greatest risk factors.

External influences can affect the price

Companies do their business in areas where government legislation plays a definitive role. buy Pre-IPO shares in India in such companies, you again enter into an uncertain territory since the legislation is not in your control and may change under the present political discourse.

Money gets locked for some time

Once the person or the company buys Pre-IPO shares, the money will remain with the company till the prices of the shares are determined and listed. Thus, by investing in Pre-IPO shares, you inevitably reduce your liquidity.




LEGAL BASIS

Initial Public Offering or Go Public is a share offering activity carried out by an Issuer to sell to the public based on Law Number 8 of 1995 Regarding Capital Market Law and its implementing regulations. Precisely it is regulated in Article 1 Paragraph 15 which in that paragraph explains that a Public Offering is a securities offering activity carried out by an Issuer to sell securities to the public which procedures are then regulated in this Law and its implementation.

Based on Article 1 Number 8 of Law Number 40 of 2007 Limited Liability Companies Law, the meaning of a Public Company is a company that meets the criteria for the number of shareholders and paid-in capital under the provisions of the laws and regulations in the Capital Market. Meanwhile, to become a Public Company, Article 1 Point 22 of Capital Market Law explains "Public Company is a Company whose shares are owned by 300 (three hundred) shareholders and have a paid-up capital of at least Rp.3,000,000,000, - (three billion rupiahs) or several shareholders and paid-up capital determined by government regulation."

Due to the digital transformation in society and the need for information technology in terms of making it easier for companies to carry out activities, there is also a need for regulations that help facilitate supervision. In this case, the provisions are regulated in POJK No. 41/POJK.04/2020 concerning the Implementation of Public Offering Activities of Equity Securities, Debt Securities, and/or Sukuk Electronically. Electronic Public Offering is marked by the presence of a system called the Electronic Public Offering System or further known as the “e-IPO System” which has been regulated in the provisions of Article 1 number 5 of POJK 41 of 2020 which defines the e-IPO System as an information technology system and/or the means used to carry out the activities in the Public Offering. The e-IPO system must cover all activities in the Public Offering and must produce reports related to the Public Offering activities (Article 12 of Financial Service Authority Republic Indonesia Regulations (Peraturan Otoritas Jasa Keuangan/POJK) Number 41/POJK.04/2020), Allotment of Securities, and settlement of orders for Securities.

Apart from the Law, the provisions regarding the Simple Share Offering are also regulated in the provisions of Financial Service Authority Republic Indonesia Regulations (Peraturan Otoritas Jasa Keuangan/POJK) Number 7/POJK.04/2017 concerning Registration Statement Documents for Public Offering of Equity, Debt Securities, and/or Sukuk (Islamic bonds). This regulation specifies arrangements for registration statement documents in the context of a public offering as well as the form and content of the prospectus and brief prospectus regarding debt securities and shares. Broadly speaking, POJK No. 7/POJK.04/2017 trimmed a number of documents, including those related to the use of financial statements for prospectuses of debt securities and/or Islamic bonds which were previously three years old, now only the last two years or since their establishment if less than two years. Meanwhile, for an equity prospectus, financial data for the last three years is sufficient and was previously requested for the last five years. According to Article 4 of POJK No. 7/POJK.04/2017, a public offering of more than one type of securities can be submitted in one prospectus at a time. This means if the issuer is going to issue shares but at the same time the issuer wants to issue bonds, then the prospectus can be combined into one.



Development of Information Technology is able to provide access to the public to information and financial transactions, so it is necessary to have an Electronic Public Offering System developed based on internet technology to expand public opportunities to become investors in the primary securities market. The system is also based on and designed to improve efficiency, effectiveness, transparency, and accountability in the overall implementation of Public Offering activities.

Based on the above background, in order to encourage public participation and efforts to improve efficiency, transparency, and accountability in Public Offering, it is necessary to make arrangements for the implementation of Public Offering activities of Equity Securities, Debt Securities, and/or Sukuk electronically, by issuing Regulations Financial Services Authority concerning the Implementation of Public Offering Activities of Equity Securities, Debt Securities, and/or Sukuk Electronically. Electronic Public Offering System hereinafter referred to as Electronic Indonesia Public Offering (e-IPO).

In essence, all companies that meet the requirements set by an independent institution that has the task of regulating, supervising, inspecting, and investigating the financial services sector in Indonesia, can issue shares, bonds, and their derivatives and then sell them to the public. In other words, all companies have the potential to become issuers. With this initial public offering, issuers that manage to go public will benefit because apart from being able to grow large due to an injection of capital from the public, their names will certainly be increasingly known to the public. Even people who own shares of the company in question can become loyal customers.



PRECONDITIONS

There are a few requirements that need to be fulfilled by companies before they want to file for an IPO. All that requirements start from "the emissions requirements into the hands of investors, such as the stage of emissions discussed at the meeting Business of Shareholders (Rapat Umum Pemegang Saham), the evaluation by the Financial Services Authority (Otoritas Jasa Keuangan), examine documents, prospectus review, then, if the document is complete, it will proceed to the stage of open hearings followed by the Financial Services Authority (OJK), the company in question, as well as other institutions involved, followed by the permit requirements, related to the issuer's prospectus for investors, then proceed with the sale and purchase of shares and bonds in the primary market (Primary) to the secondary market."²

Basically, there are three requirements:³

1 Organized and Complete Company Leadership Structure

These first conditions can be shown by the fact that the company with a legal entity as Incorporated Company or Perseroan Terbatas (PT), has an independent commissioner, there are committees and internal audits, and the position of company secretary is filled.

2 Fulfillment of Accounting and Finance

The Company has tangible net assets of at least Rp5,000,000,000 (five billion rupiahs) with the audited financial report for the last financial year obtaining an Unqualified Opinion from a public accountant registered with the Financial Services Authority (OJK).⁴ This second condition can be fulfilled when the company has been operating for at least 12 (twelve) months so that the company's accounting and financial calculations have been neatly arranged and managed.⁵

3 Minimum Limit of the IPO Shares Offered Selling at least:⁶

150 million shares or 20% of the number of shares issued for equity less than Rp500,000,000 (five hundred billion Rupiah);
15% of the number of shares issued for equity starting from Rp. 500,000,000 (five hundred billion Rupiah) up to Rp. 2,000,000,000,000 (2 trillion Rupiah); 10% of the number of shares issued for equity of more than IDR 2,000,000,000,000 (2 trillion Rupiah). The number of public shareholders should be at least 500 holders.

3. Mohammad Yan Yusuf, 2022, Tiga Syarat Suatu Perusahaan untuk IPO dan Prosesnya (online), <https://www.idxchannel.com/amp/yuknabungsaaham/tiga-syarat-suatu-perusahaan-untuk-ipo-dan-prosesnya>, accessed 21 August 2022.

4. Dina Lathifa, 2021, Perusahaan Go Public: Ini Manfaat, Syarat, dan Proses Pengajuannya (online), <https://www.online-pajak.com/tentang-efiling/perusahaan-go-public>, accessed 21 August 2022.

5. *Ibid.*

6. *Ibid.*

TYPES OF INITIAL PUBLIC OFFERING

The initial Public offering is a beneficial way wherein numerous growth-driven corporations offer their stocks to the public to elevate capital and fuel their future growth. The procedure is simple: the business enterprise sells its securities to the major public. While the public buys stocks of their company's fairness, the enterprise receives a capital improvement.

Therefore, all the people who have invested in a selected enterprise have the opportunity to acquire the fortunes of the company, which is equal to their shareholding. If a business enterprise performs nicely and earns significant income, people, in turn, get massive money from their stocks. If all goes well, the relationship between the company and the public is mutually beneficial.

TWO TYPES OF IPO

Fixed Price Issue

A fixed price issue means the company sets a fixed price for all the shares and mentions it in the offer document. Underneath the fixed price issue, the business enterprise sets a fixed rate at which all their stocks could be offered to the investors. To make this occur, a business enterprise hires a merchant banker, an entity to appraise and decrease the extent of risk for a company. The merchant banker reveals the whole current value of a company along with its future prospectus. Other than finding, they also make a risk overview of all the investments and the way it might reimburse the investors when they face such tremendous risk. After analyzing and going through extensive research, they determine the fee of a specific share that must be fixed which will improve large capital for his or her company. In this type of IPO, all investors recognize the rate of a selected share determined through the company before the company enters the public. They pay the entire fixed fee while subscribing to the IPO of a particular company.

Book Building Issue

The book building issue means the company does not fix the price, but it has price bands. The price is discovered only after generating and recording the demand of an investor.

Within the book building issue, the charge is released at some point in the system of IPO. The company sets no fixed fee on this method, but there are different price bands. The lowest price band is called the “floor charge,” and the highest price band is called the “cap price.” However, buyers interested in buying the shares need to bid within a demanding time before the company sets the price. But, the bidding is finished within the range of 20% set with the aid of the enterprise or inside a fee band. In addition, the employer wishes to clarify the number of shares they desire to sell to the buyers. Ultimately, the final rate depends absolutely on the bids the corporation obtains from the investors.



PROCEDURES OF IPO

Submission of Registration Statement to OJK to become a public company and be listed on the Indonesia Stock Exchange, the company must apply for shares listing and complete the relevant paperwork, including the company profile, financial report, legal opinion, financial predictions, etc. In addition, the company must submit a request for collective depository (scripless) share registration to Indonesia Securities Central Custody or Kustodian Sentral Efek Indonesia (KSEI). The Indonesia Stock Exchange will evaluate the application and ask the company to submit its profile, business plan, and public offering strategy. Indonesia Stock Exchange will also visit the company to understand more about the business and the IPO plan. If all requirements are met, Indonesia Stock Exchange will issue a Shares Listing Preliminary Agreement within ten business days of obtaining the necessary documentation.

Public Offering, Shares Listing, and Trading in IDX

The public offering may last between one and five business days. If investor demand exceeds the number of shares offered (oversubscription), allocation will be necessary. The investor's funds for the non-executable order must be returned (refunded) following allocation. KSEI will electronically distribute the shares to the investors (not in the form of a certificate). Together with its supporting documents, such as the effective letter of Registration Statement, prospectus, and report of shareholders composition, the firm submits its listing application to the Indonesia Stock Exchange. The Indonesia Stock Exchange will give listing approval and announce the trading ticker code and listing of the company's shares. The ticker code will be widely recognized by investors trading firm shares on the Indonesia Stock Exchange. After listing on the Indonesia Stock Exchange, investors will be able to trade the company's shares through a brokerage or securities firm registered as an Indonesia Stock Exchange Exchange Member.

Preliminary Preparation and Documents Preparation In the preliminary phase, the firm must establish an internal team, enlist external partners to assist with the IPO process, obtain shareholder approval on the IPO plan and amendment of the articles of association, and prepare the paperwork to be presented to Indonesia Stock Exchange and OJK.

Submission of Application of Shares Listing Preliminary Agreement to IDX in order to become a public company and be listed on the Indonesia Stock Exchange, the firm must apply for shares listing and complete the necessary documentation, such as the company profile, financial report, legal opinion, financial projections, etc. Additionally, the company must apply for collective depository (scripless) share registration to Indonesia Securities Central Custody or Kustodian Sentral Efek Indonesia (KSEI). The Indonesia Stock Exchange will assess the application and invite the firm, the underwriter, and capital market supporting specialists to provide a presentation on the company's profile, business plan, and public offering strategy. Indonesia Stock Exchange will also visit the company and seek extra information (if necessary) to learn more about the business and the IPO plan. If all requirements are met, Indonesia Stock Exchange will issue a Shares Listing Preliminary Agreement within 10 Exchange working days of receiving the completed paperwork.

LOCK-UP PERIOD

Lock Up Period is a period of locking in which investors or shareholders are prohibited from selling shares. Lock Up shares are used for investment managers of companies that are IPO or going public. Lock Up shares for companies whose IPO aims to maintain the amount of money for sustainable growth. In addition, Lock Up also serves to keep the business model running well.

The lock-up is widely used for IPO shares. This means that the major shareholder may not sell their shares for a predetermined time after the company's IPO. IPO shares are usually 'locked' within 90-180 days (3-6 months), up to 1 year. Generally, it applies to major shareholders, such as company founders, owners, managers, and company employees, as well as large investors or venture capitalists. After the lock-up ends, IPO shares can be traded.

The purpose of locking up IPO shares is to prevent flooding of the market with additional shares to sell, thereby depressing share prices. The reason is that the controlling shareholder or large shareholder if they immediately sell the IPO shares due to the absence of a lock-up, can cause a stock price correction. If this happens, it will be detrimental to all shareholders. Usually, after the end of the lock-up, the stock price will experience a permanent decline of around 1-3%. Depends on company fundamentals.

Investors can see this from two perspectives. If there is a decline in stock prices after the stock lock-up, it can be an opportunity to buy stocks at temporarily depressed prices. On the other hand, it could be a sign that the IPO stock price is too expensive. The possibility of the start of a long-term decline in share prices. Lock-up must have an agreement. This means that venture capitalists, executives, and company insiders must sign a lock-up to prevent excessive selling pressure in the first few months of trading after the IPO. All shareholders who come from inside the company will be given the same period of time to lock up shares. But there are also differences. Details of the lock-up are always included in the company's prospectus.

GLOSSARY

Private Company

A firm held under private ownership. Private companies may issue stock and have shareholders, but their shares do not trade on public exchanges and are not issued through an initial public offering (IPO). As a result, private firms do not need to meet the Securities and Exchange Commission's (SEC) strict filing requirements for public companies. In general, the shares of these businesses are less liquid, and their valuations are more difficult to determine.

Stock

The ownership element in a corporation usually divided into shares and represented by transferable certificates.

Equity

Ownership of assets that may have debts or other liabilities attached to them. Equity is measured for accounting purposes by subtracting liabilities from the value of the assets.

Shareholders

A shareholder is a person, company, or institution that owns at least one share of a company's stock or in a mutual fund. Shareholders essentially own the company, which comes with certain rights and responsibilities.

FSA

Financial Services Authority is an Indonesian government agency that regulates and supervises the financial services sector. Its head office is in Jakarta. The OJK is an autonomous agency designed to be free from any interference, having functions, duties, and powers to regulate, supervise, inspect, and investigate.

Sukuk

Which means legal instrument/cheque is the Arabic name for financial certificates, also commonly referred to as "sharia-compliant" bonds.

Cum Divident

A stock is cum dividend, which means "with dividend," when a company has declared that there will be a dividend in the future but has not yet paid it out. A stock will trade cum dividend until the ex-dividend date.

Allotment

Refers to the systematic distribution or assignment of resources in a business to various entities over time. Allotment generally means the distribution of equity, particularly shares granted to a participating underwriting firm during an initial public offering (IPO).

Bonds

also known as fixed income instruments – are used by governments or companies to raise money by borrowing from investors. Bonds are typically issued to raise funds for specific projects. In return, the bond issuer promises to pay back the investment, with interest, over a certain period.

Liability

Liabilities are settled over time through the transfer of economic benefits including money, goods, or services. Recorded on the right side of the balance sheet, liabilities include loans, accounts payable, mortgages, deferred revenues, bonds, warranties, and accrued expenses. Liabilities can be contrasted with assets

Shares

Shares are units of equity ownership in a corporation. For some companies, shares exist as a financial asset providing for an equal distribution of any residual profits, if any are declared, in the form of dividends. Shareholders of a stock that pays no dividends do not participate in a distribution of profits.

Capital market

Capital markets are where savings and investments are channeled between suppliers and those in need. Suppliers are people or institutions with capital to lend or invest and typically include banks and investors.

RUPS

A shareholders' meeting is a meeting held by the shareholders of a company to discuss the arrangements of the company or to vote in the election of board members. The shareholders should participate in the meeting in person; however, shareholders or proxy holders who are unable to be physically present may vote remotely.

p.a (per annum)

Means once per year or paid annually.

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THANK YOU

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