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Multiple Voting Shares: New Feature for Listed Tech Companies

The development of technology has positively impacted Indonesia's economic condition, and this has induced the emergence of tech start-up companies that create innovations with high productivity and growth. The combination of innovations, markets and fundings has transformed such start-ups into companies with large capital and eventually into unicorns. These unicorn companies, or so-called "*new economy*" companies, enable a vast opportunity for growth in the future, considering its immense space to improve their business. With this condition, the Indonesian Financial Services Authority ("**OJK**") deems it necessary to utilise such development to also deepen the capital market sector in Indonesia through the involvement of the unicorn companies in the initial public offering ("**IPO**") in the Indonesia Stock Exchange ("**IDX**"). However, one of the main concerns of the unicorn companies typically lies in their nature, which relies heavily on their founders' capability and capacity to develop their business. These companies may hesitate to become listed companies since it may dilute the founders' control over the company afterwards.

On 2 December 2021, OJK issued the OJK Regulation No. 22/POJK.04/2021 on the Implementation of Shares Classification with Multiple Voting Rights by Issuer with Innovation and High Growth Rate that Conduct the Public Offering of Equity Securities in the form of Shares ("**OJK Regulation 22/2021**"). This regulation primarily aims to encourage Indonesian unicorn companies to go for an IPO in Indonesia. One of the key features introduced in OJK Regulation 22/2021 is the multiple voting shares ("**MVS**") concept that will be applicable in the company with innovation and a high growth rate that will conduct an IPO. The purpose of MVS is to protect the vision and mission of the company. Thus, the founder could protect their interest in developing the business. With the MVS concept, founders will have special voting rights beyond their nominal value of the ownership in the company. The introduction of MVS adopts the international best practices that enable "new economy" companies to participate in the public offering through IPO. Stock exchanges in other jurisdictions such as HKEX, NYSE, and Nasdaq already have the policy to support the implementation of the MVS for "*new economy*" companies.

Under OJK Regulation 22/2021, MVS are defined as shares classification, where one share gives more than one voting rights to the shareholders that have fulfilled the requirements ("**MVS**"). Such a feature is a breakthrough since Indonesian company law only recognised the "one share one vote" concept over the years. The voting right ratio between MVS shareholders and non-MVS shareholders in the company is determined by the share composition of the MVS shareholders in the issued shares of the

company. By having more voting rights, the founders will still control the company although they are no longer a substantial shareholder. The founders with their capability and capacity will still be able to drive the growth of the company.

Further, the requirements of a party that can be an MVS shareholder shall be included in the articles of association of the company that implements the MVS. The MVS implementation within the company shall apply up to ten years from the effective date of the registration statements of the public offering. Such a period may be extended once up to another ten-year period that shall be approved by the Independent Shareholders in the General Meeting of Shareholders.

The MVS shareholders are prohibited from transferring part or all (either share that were already owned prior to the public offering **or** shares that have been acquired in the public offering as an MVS) of its MVS ownership for two years after the registration statements of the IPO are effective. Also, the non-MVS shareholders that own the shares of the company issuing the MVS prior to IPO with the book value per shares is less than the public offering price are subject to an eight-month lock-up period. All shares issued by the company with MVS that are subject to the lock-up period shall be issued by an issuer and be kept in scripless form and deposited in a special escrow account with the Indonesian Central Securities Depository ("**KSEI**"). KSEI is expected to issue an implementing regulation pertaining to the special escrow account.

PT GoTo Gojek Tokopedia Tbk, a holding company resulting from a merger of two Indonesia unicorns, Gojek and Tokopedia, was listed earlier this year and has implemented the MVS. It is expected that more "companies with innovation and a high growth rate" will list their shares in the IDX. The entrance of those companies to the IDX is expected to provide more investment options in the companies with large capitalisation to the investors.

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Aldi Prapanca has substantial experience in various types of the capital market, mergers and acquisitions, and general corporate work. He has profound expertise in mutual fund products. He has been involved in major transactional transactions involving the assets management companies and the listed companies such as initial public offering, debt or equity securities issuance. He is a reliable lawyer to structure complex transactions, draft and negotiate transactional documents, and assist in accomplishing the transactions.

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