

The Wait is Over: Indonesia's Carbon Exchange Can Now Open for Business

Indonesia's efforts to achieve a greener future have taken a significant step forward as a new regulation on carbon trading comes into play, drawing a positive initial response from businesses. However, as is often the case, whether it proves to be smooth and efficient will depend on the finer details and implementation.

The Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”) Regulation No. 14 of 2023 on Carbon Exchange (“**POJK 14/2023**”) is being touted as a milestone in fulfilling Indonesia's commitment to reduce greenhouse gas (“**GHG**”) emissions by an unconditional 31.89% 2030.

POJK 14/2023 sets out provisions for the Carbon Exchange – a system overseeing carbon trading operations and documentation of carbon unit ownership – as mandated by Article 26 of Law No. 4 of 2023 on the Development and Reinforcement of the Financial Sector (*Pengembangan dan Penguatan Sektor Keuangan* – P2SK Law).

At first glance, POJK 14/2023 seems to emphasize provisions on licensing, requirements, and obligations relevant to Carbon Exchange Operators rather than focusing on the carbon trading scheme in the exchange market.

Following are some key provisions of POJK 14/2023.

I. Trading Carbon Units

POJK 14/2023 clearly establishes carbon units^[1] as securities (*efek*), allowing their trade within the carbon exchange upon registration with: (i) the National Registry System for Climate Change Control (*Sistem Registri Nasional Pengendalian Perubahan Iklim* – “**SRN PPI**”), and (ii) the Carbon Exchange Operator.

Notable points on the exchange of carbon units under POJK 14/2023 include:

(i) **Carbon units traded by the Carbon Exchange Operator comprise:** Technical Approval of Carbon Cap for Businesses (*Persetujuan Teknis Batas Atas Emisi bagi Pelaku Usaha – “PTBAE-PU”*); and Certificate of GHG Emission Reduction (*Sertifikat Pengurangan Emisi Gas Rumah Kaca – “SPE-GRK”*).

Additionally, other carbon units determined by relevant ministries or satisfying certain criteria set out by the OJK can also be traded on the Carbon Exchange.

(ii) **Foreign carbon units can be traded on the Carbon Exchange regardless of registration with the SRN PPI.** However, if the foreign carbon units are not registered with the SRN PPI, they will require: Registration, validation, and verification by an internationally accredited institution; Compliance with qualifications for trading in foreign carbon exchanges; and (c) Fulfillment of additional requirements set by the OJK.

~~Registration of the Carbon Exchange Operator with the OJK is required for the Carbon Exchange Operator to be able to trade carbon units on the Carbon Exchange.~~

II. Carbon Exchange Operator

The Carbon Exchange Operator must be in the form of a limited liability company in Indonesia and obtain a Carbon Exchange Operator license issued by the OJK.

Foreign investment restrictions: POJK 14/2023 seems to restrict the involvement of foreign entities in the operations of the Carbon Exchange. This is indicated in the regulation’s control over the maximum permissible foreign ownership of a Carbon Exchange Operator, which is 20% (both directly and indirectly). Moreover, POJK 14/2023 only recognizes *sui generis* (distinctive) institutions and Indonesian nationals/entities as having special rights or reserved prerogatives, such as the appointment of the Carbon Exchange Operator’s board of directors (BOD), board of commissioners (BOC), and veto rights.

Capital requirements: The minimum issued and paid-up capital of a Carbon Exchange Operator is IDR 100 billion,^[2] which must not be sourced from a loan.

Management bodies: POJK 14/2023 also provides specific requirements for the management structure of a Carbon Exchange Operator. These include:

- (i) The tenure of both the BOD and BOC is 4 years, with the option for a single extension.
- (ii) The BOD and BOC must have a minimum of 2 members.
- (iii) Certain restrictions are imposed on the BOD and BOC members, including a prohibition on holding shares in the Carbon Exchange Operator, whether directly or indirectly.

Other restrictions: If a Carbon Exchange Operator wishes to engage in another endeavor, such as activities related to derivative products utilizing carbon units as underlying assets, it

must first obtain approval from the OJK. Furthermore, the regulation explicitly forbids a Carbon Exchange Operator from conducting carbon trading transactions for its own benefit through the very system it oversees.

III. Operation and Monitoring

During its operation, a Carbon Exchange Operator must provide systems and facilities to support carbon trading; maintain internal operations and manage risks; keep and maintain records of carbon trading activities for at least five years; establish standard operational procedures; and provide support for the OJK to monitor its activities.

IV. Sanctions

The OJK has the authority to impose administrative sanctions including written warnings, fines, curtailment, suspension, revocation, and cancellation of business permits, as well as annulment of business registrations. These sanctions must be publicly announced by the OJK. In addition, the OJK can take specific actions against parties found to be in breach of the provisions of POJK 14/2023.

With the advent of POJK 14/2023, the first tangible framework has emerged for businesses to provide and participate in carbon trading activities in Indonesia. The OJK plans to fully implement the Carbon Exchange in September 2023. Companies aspiring to engage in carbon trading in Indonesia should start seeking reliable legal advice for full understanding and compliance with all requirements. Further information on the general carbon trading regulatory framework in Indonesia can be accessed [here](#).

[1] A Carbon Unit serves as evidence of carbon ownership, taking the form of a certificate or technical approval denoting the equivalence of 1 tonne of carbon dioxide recorded in the SRN PPI.

[2] Note that under the Indonesian Company Law, at least 25% of a company's authorized capital is to be issued and paid up.

If you have any questions, please contact:

1. [Frederick Simanjuntak](mailto:frederick.simanjuntak@makarim.com), Partner (frederick.simanjuntak@makarim.com)

