

Indonesia: Regulatory Updates (Part 1)

In this Legal Update, Rod Brown, Sean Prior and Stanley YP Tan of Mayer Brown JSM, and Fadjar W Kandar and Barryl Rolandi of Kandar & Partners Advocates, summarise a few relevant updates regarding regulations issued by the Financial Services Authority of Indonesia (*Otoritas Jasa Keuangan*, the “OJK”) with respect to banks and public companies.

Banks – Single Presence Policy

The OJK issued Regulation No. 39/POJK.03/2017 on 12 July 2017 regarding Single Ownership of Indonesian Banks (“**Regulation 39**”), replacing Bank Indonesia Regulation Number 14/24/PBI/2012 on the same subject matter. Regulation 39 largely mirrors the regulation replaced which was issued prior to the establishment of the OJK.

Under Regulation 39, a party may become a controlling shareholder of only one bank in Indonesia. This restriction does not apply, however, if a party becomes a controlling shareholder in two banks where (i) each of the two banks engage in activities with different principles (i.e., conventional and syariah), or (ii) one of the two banks is a joint venture bank.

Under Regulation 39, a party would be deemed as a controlling shareholder of a bank if it (be it a legal entity, individual, or a business group) (i) owns 25 per cent or more of the issued shares with voting rights in a bank; or (ii) despite owning less than 25 per cent of the issued shares with voting rights, such shareholder can be proven to have control (whether directly or indirectly) of the bank as determined by the OJK.

In order to fulfil the sole ownership requirement, Regulation 39 prescribes that a controlling shareholder of more than one bank is required to restructure its shares ownership by:

- i. carrying out a merger or consolidation of the

- banks under its control;
- ii. forming an Indonesian bank holding company owned by the controlling shareholder to consolidate and directly control all the banks presently under its control; or
- iii. in the event the controlling shareholder is an Indonesian bank or an Indonesian central government institution, establishing a holding function to consolidate and directly control all the banks presently under its control.

The bank holding company as referred to in option (ii) above will be subject to OJK’s regulation and supervision. This includes the candidates for directors and commissioners being subject to OJK’s fit and proper test.

A controlling shareholder that establishes a holding function under option (iii) above will also be subject to OJK’s regulation and supervision. In the event that the controlling shareholder is an Indonesian bank, the holding function must be led by one of the directors of the controlling shareholder. If the controlling shareholder is an Indonesian central government institution, the holding function must be led by an official appointed by the highest ranking official of the Indonesian central government institution responsible for state-owned banks (currently, that would be the Minister of State-Owned Enterprises).

Regulation 39 came into effect on 12 July 2017.

Public Companies – Report on Ownership in Shares

The OJK issued Regulation No. 11/POJK.04/2017 on Reporting of Ownership or any Changes in Ownership of Shares in Public Companies (“**Regulation 11**”) on 14 March 2017, revoking Regulation No. 60/POJK.04/2015 on the Information Disclosure of Certain Shareholders.

DIRECT OR INDIRECT SHARE OWNERSHIP

Regulation 11 provides that *any member of the board of directors or the board of commissioners* of an Indonesian public company is required to report to the OJK on any of his/her direct or indirect shares ownership in such Indonesian public company, including any subsequent changes to such share ownership.

Separately, *any beneficial owner* who directly or indirectly owns 5% of more of the paid-up capital of an Indonesian public company is also required to report to the OJK, including any subsequent changes affecting 0.5% or more of the Indonesian public company's paid-up capital.

TIMING AND INFORMATION TO BE REPORTED

The relevant reports must be submitted in a prescribed form attached to Regulation 11 no later than 10 days from the effective date of the share ownership or changes thereto.

The report must include information including (i) identity of direct and indirect shareholders; (ii) in the event of an indirect ownership, the details of the ultimate beneficial owner; and (iii) details and purpose of the transaction.

Regulation 11 came into effect on 14 March 2017.

This Legal Update is written by partner, Rod Brown and counsel, Sean Prior, of Mayer Brown JSM and the firm's associate Stanley YP Tan, in conjunction with Kandar & Partners Advocates' managing partner Fadjat W Kandar and partner Barryl Rolandi.

Contact Us

For enquiries related to this Legal Update, please contact the following persons or your usual contact at our firm.

Rod Brown

Partner

T: +65 6327 0636

E: roderick.brown@mayerbrownjism.com

Sean Prior

Counsel

T: +65 6327 0648

E: sean.prior@mayerbrownjism.com

Stanley YP Tan

Associate

T: +65 6327 0652

E: stanley.tan@mayerbrownjism.com

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