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# OJK Regulation on Planning and Implementation of Public Companies' GMOS

by Vinton Rasil Taris

In order to protect shareholders' rights, it is important to improve the implementation of a good corporate governance principal. In recognition of this, the Indonesian Financial Service Authority ("**OJK**") has issued Regulation No. 32/POJK.04/2014 ("**Regulation No. 32/2014**") regarding the Planning and Implementation of General Meetings of Shareholders ("**GMOS**"). The Regulation No. 32/2014 supersedes the Capital Market Supervisory Board (BAPEPAM-LK) resolution No. KEP-60/PM/1996 regarding the Planning and Implementation of GMOS.

Based on Article 2 Regulation No. 32/2014, the GMOS governed under this regulation are the annual GMOS and other GMOS. The annual GMOS must be held not later than 6 (six) months after the end of a financial year and other GMOS must be held at any time as deemed necessary by the company (public company). Regulation No. 32/2014 also stipulates the procedures of GMOS, which contain 10 (ten) stages, including the initiation of GMOS to the stages of Resolution and Summary of GMOS. The GMOS of a public company may be held as requested by one shareholder who represents a minimum 1/10 (one per ten) of the total shares issued or more than the total shares with voting rights.

Prior to the GMOS, the company must deliver notification in respect of the GMOS agenda to the OJK in the last five days before the GMOS announcement. If there is any revision to the GMOS agenda, the company must notify such revision to the OJK at least upon the day the GMOS is to be held. Similarly, the resolution and summary of the GMOS must be notified to the OJK and also announced in the media. Regulation No. 32/2014 requires the announcement to be posted in several media,

at a minimum (i) 1 (one) daily newspaper issued and circulated in the domicile or place of business activities of the company; (ii) the stock exchange's websites; and (iii) the company's websites, in Bahasa Indonesia and another foreign language.

In the case of any breach to provisions governed under this regulation, the OJK has set sanctions as specified in the Article 37 Regulation No. 32/2014, which are:

a. A warning letter;
b. Financial penalties to pay a certain amount of money;
c. Business restraint;
d. Business confiscation;
e. Revocation of business licenses;
f. Annulment of approval; and
g. Annulment of registration.

The Regulation No. 32/2014 has been issued and was effective from 8 December 2014. With this regulation, the OJK requires all public companies to adjust their articles of association to comply with Regulation No. 32/2014 within one year from the date the regulation was issued.

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# Swap Hedging Transactions with Bank Indonesia

by Athalia Devina

Bank Indonesia ("**BI**") has enacted Circular Letter No. 16/19/DPM of 2014 entitled Amendment of Circular Letter No. 16/2/DPM, dated 28th January 2014 concerning Swap Hedging Transactions with Bank Indonesia ("**Circular Letter No. 16/19/DPM**"). Circular Letter No. 16/19/DPM came into force on 28th November 2014. In outline, changes are made in 4 groups, namely A.1, B.4.c , C, and D.

The underlying documents owned by the Bank in swap hedging transactions with Bank Indonesia, cover the following:

a. in the case that the underlying transaction is foreign bank loan in the form of a loan agreement, the underlying document must be a loan agreement between the Bank and the creditor of the Bank;
b. in the case that the underlying transaction is foreign bank loan in the form of a bonds issuance, the underlying document includes but is not limited to a sales report of bonds issued by a global custodian;
c. in the case that the underlying transaction is declared operating funds, the underlying document is organized as follows: (i) for declared operating funds that do not change, the underlying document must be a letter of declared operating funds from the head office of the Bank or the Bank itself to the competent authority and (ii) for declared operating funds that have been changed, the underlying document must be an approval letter regarding the change of declared operating funds by the competent authority that must be delivered to the head office of the Bank or the Bank itself.

The Bank which applies for the extension of a hedging contract with BI must fulfill the following requirements: (i) it has a minimum composite rating of 3 (three), (ii) it uses the same type of underlying transaction as listed in the initial hedging contract, (iii) in the case that the underlying transaction as mentioned in point (ii) is owned by the Bank then the nominal value of the extension of the hedging contract with the Bank must not exceed the value of the outstanding foreign bank loan or declared operating funds, (iv) and the extension period of the hedging contract with BI must be the same maximum as the remaining period of the underlying transaction, with a contract extension of no more than 3 (three) years. The extension of the hedging contract can be conducted on 2 (two) working days before the maturity of the contract hedging.

The Bank which applies for the extension of the swap hedging transaction with BI must fulfill the following requirements: (i) it has a minimum composite rating of 3 (three), (ii) it has a valid hedging contract, (iii) it uses the same type of underlying transaction with the same reference number as listed in the hedging contract, (iv) in the case that the underlying transaction as mentioned in point (iii) is owned by the Bank then the nominal value of the extension of the swap hedging transaction with BI must not exceed the value of the outstanding foreign bank loan or declared operating funds, (v) and the extension period of the swap hedging transaction with BI is 3 (three) months, 6 (six) months, 12 (twelve) months or the same as the remaining period of the hedging contract with a minimum extension of 3 (three) months and at the most for 12 (twelve) months. The extension for the swap hedging transaction with BI can be conducted on 2 (two) working days before the maturity of the swap hedging transaction with BI.

The settlement of the extension of the swap hedging transaction with BI can be conducted by netting, including at the extension of the hedging contract. Settlement by netting covers (i) netting for the same nominal value in every renewal, (ii) netting for less than the nominal value in every renewal, or (iii) netting for the nominal value that is commensurable with the outstanding foreign bank loan or declared operating funds in every renewal.

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# Application for an Integrated Aviation License

by Nirmala Adisti Karunia


In January 2015, the Transportation Ministry officially issued Minister Regulation PM 12 year 2015 regarding the application for an Online Aviation License. In practice, it will ease the application for Flight Approval ("**FA**") by Flight Operators and/or Airlines towards the Indonesia Airspace Management System ("**IAMS**") as the system will be modified into an online integrated system, similar to BKPM's One Door Integrated Service. This supersedes the previous system which is still semi-manual. The new system, called Flight Approval Online ("**FAO**") includes tracking workflow, special notification of application status, a 24 hour help-desk and an online payment facility through a bank so that there is more transparency and disclosure in every aspect in aircraft application licenses for the sake of elevating the aircraft safety.

Pursuant to Article 1 paragraph 2 of the aforementioned regulation, the licenses that need to be applied online covers; (1) Commercial Aircraft License, (2) Non-Commercial Aircraft License, (3) Flight Route License, (4) Flight Approval, and (5) General Sales Agent License. As this regulation enters into force, aviation industry stakeholders must take note that a "Flight Route" License will be valid for up to 1 year, but if it is not used for 21 days consequently, it will automatically expire. All the licenses described must be applied for through the government website: http://aol.dephub.go.id - as intended in Article 2 of the regulation.

Based on Article 3 and Article 5, the supervisory body of this online system will be the Airport Authority Office, and it will be obliged to report their supervision each and every month. Beside Airport Authority Office, this regulation states that the online system is integrated with the Airport Business Body, Aviation Business Body, Airport Provider Unit, Navigation Service Provider Unit and Slot Coordination Unit. The application of this regulation is closely related to the Ministry of Transportation Regulation No. PM 13 year 2015 with regard to Airport Slot Time, as both are required by law for an aircraft to fly.

In the future, the Ministry of Transportation will consider imposing similar schemes to ground vehicles, watercraft and train sectors. Such governance is deemed necessary as Indonesia now has an estimated 94 million aircraft passengers, 90 tons of air cargo and 300 million train passengers per year, potentially on the increase. This regulation is one of a series of regulations that has come from the Minister of Transportation in the wake of the loss of an Air Asia flight at the end of last year.

# Procedure for the Implementation of the Usage of State Property

by Athalia Devina

The Minister of Finance has enacted Regulation No. 246/PMK.06/2014 entitled Procedure for the Implementation of the Usage of State Property ("**Regulation No. 246/PMK.06/2014**"). Regulation No. 246/PMK.06/2014 came into force on December 24, 2014. Regulation No. 246/PMK.06/2014 regulates the procedure for the usage of any State Property that is managed by the Manager of that State Property and the User of the State Property or his Proxy. The guidance for the usage of State Property includes (i) the determination of the status of the usage of the State Property, (ii) the determination of the status of the usage of the State Property to be operated by the other party, (iii) the temporary usage of the State Property, and (iv) the transfer of the status of the usage of the State Property.

State Property whose status has been determined by the User of State Property can be operated by another party. The other parties that can operate the State Property are as follows: (i) state-owned enterprises, (ii) cooperatives, (iii) foreign governments, (iv) international organizations, or (v) other legal entities. The period of the usage of the State Property to be operated by another party is (i) at the most 5 (five) years and can be extended if operated by state-owned enterprises, cooperatives, or other legal entities, (ii) at the most 99 (ninety nine) years if operated by foreign governments, and (iii) according to agreements if operated by international organizations.

The written application for the usage of the State Property by another party must be submitted by the User of the State Property to the Manager of the State Property with the following details (i) the data of the State Property, (ii) the other party who will operate the State Property, (iii) the time period for the usage of the State Property, (iv) explanations and considerations concerning the usage of the State Property, (v) the matter of the agreement, and (vi) in the event of the other party collecting any funding from the community, the calculation of estimated operating costs and the amount of levy must be attached.

The following documents must be included along with the application: (i) a copy of decision of the status of the usage of the State Property, (ii) a copy of a letter requesting the operation by the other party to the User of the State Property, and a sufficient legal statement letter from the other party that will operate the State Property. The Manager of the State Property must conduct research based on the application. The Manager of the State Property will determine the usage of the State Property to be operated by another party based on the result of the research. The decision of the Manager of the State Property must regulate at least (i) the data of the State Property, (ii) the time period for the usage of the State Property, (iii) the other party, (iv) the obligations of another party who operates the State Property, (v) the obligation of the User of the State Property to follow up with an agreement, and (vi) the obligation of the User of the State Property to supervise and control the implementation of the usage of the State Property that is operated by another party, included but not limited to the amount of charges made by the other party and the profit made by the other party.

The agreement for the usage of State Property will regulate at least (i) the data of the State Property, (ii) the User of the State Property, (iii) the other party who will operate the State Property, (iv) the designated operation of the State Property, (v) the time period to operate the State Property, (vi) rights and obligations of the User of the State Property and the other party who will operate the State Property, including the obligation of the other party to secure and maintain the State Property, (vii) the termination of the operation of the State Property, and (viii) dispute resolutions. The usage of the State Property by another party will end in the case of (i) expiration of the period for the usage of the State Property as mentioned in the agreement, (ii) unilateral termination of the agreement by the User of the State Property, or (iii) other provisions in accordance with the governing laws and regulations.

# The New Regulation on Capital Increase of a Public Company without Pre-emptive Rights

by Febi Jaya Conggih

In order to enhance the regulation of the capital increase of public companies without pre-emptive rights, the Financial Services Authority ("**OJK**") has issued OJK Regulation No. 38/POJK.04/2014 entitled Capital Increase of a Public Company Without Pre-emptive Rights ("**POJK No. 38/2014**"). POJK No. 38/2014 came into force on 30 December 2014, replacing the previous regulation; the Resolution of the Chairman of the Capital Market and Financial Institution Supervisory Agency No. KEP-429/BL/2009 dated 9 December 2009 on Capital Increase Without Pre-emptive Rights, along with the Regulation Number IX.D.4 as its attachment.

A public company can increase its capital without pre-emptive rights to the shareholders, either to improve its financial position, or for other purposes. Any capital increase without pre-emptive rights must be approved before the General Meeting of Shareholders ("**RUPS**") and is subject to OJK regulations regarding the execution of RUPS and articles of association of the public company.

Capital increase of the public company without pre-emptive rights for the purpose of improving its financial position can be done as long as it meets the following conditions:

1) the public company is a bank that receives a loan from Bank Indonesia or other government agencies of more than 100% (one hundred percent) of the paid-up capital or other conditions that can lead to the restructuring of the bank by government authorities;
2) a non-bank public company that has a negative net working capital and has liabilities exceeding 80% (eighty percent) of the assets of the public company at the time of the RUPS which approved the capital increase without pre-emptive rights; or
3) the public company is unable to meet its financial obligations at maturity to unaffiliated lenders where the unaffiliated lenders agree to receive shares or convertible bonds of the public company to settle the loan.

Capital increase of the public company without pre-emptive rights for purposes other than to improve its financial position, can only be conducted in respect of at most 10% (ten percent) of the paid-up capital of the amendment of the articles of association, having been notified and received by the Minister in charge at the time of the announcement of the RUPS, with the following provisions:

1) Capital increase of the public company without pre-emptive rights in the context of a share ownership program is conducted within two (2) years from the RUPS concerning capital increase of the public company without pre-emptive rights in question; and
2) Capital increase of the public company without pre-emptive rights in the context of a share ownership program is conducted within five (5) years from the RUPS concerning capital increase of the public company without pre-emptive rights in the context of the share ownership program in question.

The payment for shares in a form other than money can only be made in the event of a capital increase of the public company without pre-emptive rights for purposes other than to improve its financial position. The payment for the shares must be directly related to the needs of the public company and it is mandatory to use appraisers to determine their fair value.

Regarding the disclosure of information, the public company that raises its capital without pre-emptive rights must announce information about the capital increase without pre-emptive rights to shareholders in conjunction with the announcement of the RUPS. The announcement must include at least the following:

1) the reason and purpose of the capital increase without pre-emptive rights;
2) the estimation of execution period (if any);
3) the fund utilization plan (if it has been able to be determined);
4) analysis and discussion of management regarding the company's financial condition is open before and after the capital increase;
5) the risk or impact of the capital increase without pre-emptive rights to the shareholders, including dilution;
6) the information in table form about the details of the structure of the share capital before and after the capital increase;
7) a description of the prospective investors (if any), including the presence of affiliation to a public company.

The public company must also announce the capital increase to the public and notify the OJK within 5 (five) working days prior to the capital increase. The announcement must be made in at least one Indonesian language daily newspaper with national circulation or the stock exchange's website and the company's website. The submission of announcement evidence to the OJK prior to the capital increase must be no later than 2 (two) days after the announcement. Furthermore, after implementation of the capital increase, the company is also required to announce the results of this implementation to the public and to the OJK, about the persons making the deposit, the amount and price of shares issued, and the fund utilization plan. Announcement of the implementation of the capital increase must be submitted to the OJK no later than 2 (two) days after the execution of the capital increase.

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