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The Implementation of Risk Management for Non Bank Financial Services Institutions

by Athalia Devina

The Indonesian Financial Services Authority ("**OJK**") has enacted Circular Letter No. 10/SEOJK.05/2016 concerning Guidelines for Implementation of Risk Management and Self Assessment Reports On Implementation of Risk Management for Non Bank Financial Services Institutions ("**Circular Letter No. 10/SEOJK.05/2016**"). This is as mandated in Article 5 (3) and 6 (5) OJK Regulation No. 1/POJK.05/2015, concerning Implementation of Risk Management for Non Bank Financial Services Institutions ("**OJK Regulation No. 1/POJK.05/2015**").

Guidelines for implementation of risk management for non bank financial services institutions are guidelines that function as a standard implementation of risk management which must be conducted by non bank financial services institutions to ensure that all risks or potential risks are measured and controlled properly. Guidelines for implementation of risk management shall contain at least:

1. general implementation of risk management, which contains at least: (a) active supervision of Board of Directors and Board of Commissioners; (b) the adequacy of policies, procedures, and set limit of risks; (c) the adequacy of identification, measurement, monitoring, and controlling risks; (d) information system of risk management; and (e) a comprehensive internal control system;
2. implementation of risk management for each type of risk based on type of non bank financial services institutions, as stipulated in Article 4 of OJK Regulation No. 1/POJK.05/2015.

Guidelines for the implementation of risk management, as referred to in point 1, are prepared and signed by the Board of Directors and approved by the Board of Commissioners. In case non bank financial services institutions already had such guidelines but which were not in accordance with the appendixes, these non bank financial services institutions have to adjust their guidelines.

Self-assessment reports on the implementation of risk management shall contain at least: (a) general information of non bank financial services institutions; (b) financial information per valuation date; (c) summary of self-assessment on implementation of risk management; and (d) description of self-assessment on implementation of risk management for each type of risk. Self-assessment reports on implementation of risk management are prepared and signed by the Board of Directors and approved by the Board of Commissioners. In case the submission of self-assessment reports on implementation of risk management is carried out simultaneously with the submission of the risk assessment report as stipulated in OJK Regulation No. 10/POJK.05/2014 concerning Risk Assessment for Non Bank Financial Services Institutions, self-assessment reports on implementation of risk management do not require the inclusion of features in points (a) and (b).

Non bank financial services institutions shall submit self-assessment reports on the implementation of risk management to the OJK online through a data communication network system of the OJK. In case an OJK data communication network system is not available, self-assessment reports on implementation of risk management must be submitted online via the official electronic mail of the non bank financial services institution to the designated email address, attaching softcopy files of self-assessment reports on implementation of risk management.

The provisions in Circular Letter No. 10/SEOJK.05/2016 came into force on 14th April 2016. Self-assessment reports on implementation of risk management will be submitted for the first time to the OJK in 2017 for the period of 2016.

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The Changes on Standard Profit Margins of Coal for Mine-Mouth Power Plants

by Vinton Rasil Taris

The Minister of Energy and Mineral Resources has enacted Ministerial Regulation No. 9 of 2016 regarding The Procedure of Coal Supply and The Determination of Coal Price for Mine-Mouth Power Plants ("**Permen ESDM No. 9/2016**"), to balance the coal supply and the sustainability of mine-mouth power plants. The issuance of Permen ESDM No. 9/2016 supersedes the previous ministerial regulation No. 10 of 2014 ("**Permen ESDM No. 10/2014"**) which also stipulates the same provision.

The procurement of coal for mine-mouth power plants should be conducted by the terms and conditions under a coal supply agreement between the mining company and the mine-mouth power plant company. Both Permen ESDM No. 9/2016 and Permen ESDM No. 10/2014 stipulate that the pricing of coal shall be done in the following sequence:

a. the calculation of coal base price with consideration to its escalation;
b. the coal base price consists of production cost and margin; and
c. the approval of The Minister of Energy and Mineral Resources to the agreed coal base price.

Permen ESDM No. 9/2016 has added several provisions to the abovementioned sequence. Firstly, the power plant shall be located in the range of 20 (twenty) kilometers from the authorized mining site. Secondly, the production cost shall also cover the transport of coal from processing plant to power plant stockpile.

Thirdly, the profit margin shall be in a range of 15% (fifteen percent) to 25% (twenty five percent). This margin shall be agreed by both mining company and mine-mouth power plant company. If in within 60 (sixty) days after the issuance of Permen ESDM No. 9/2016 or once the negotiation between mining company and mine-mouth power plant company has started, the minister shall reserve the right to determine the margin. In contrast to the new regulation, the previous Permen ESDM No. 10/2014 stipulated that the coal price profit margin shall be 25% (twenty five percent) of the production cost.

In regard to the escalation, Permen ESDM No. 9/2016 sets forth several aspects to determine the calculation of the coal base price, which has to be adjusted annually as of the commercial operation date. Those aspects are as follows:

a. the exchange rate of Rupiah;
b. the price of diesel fuel;
c. the Consumer Price Index; and
d. Regional Minimum Wage.

This new regulation on the profit margin came into effect on 4 April 2016. Pursuant to the Article 15 of Permen ESDM No. 9/2016, at the time of the ministerial regulation coming into force, the approved coal base price, auction results or direct appointments in relation to power purchase agreements remain valid.

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Limitations on Farmland Ownership

by Alfons Emanuel

On 7th April 2016, the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency ("the **Minister**") issued Regulation No. 18 of 2016 on the Management of Farmland Ownership ("**Reg. 2016**") to reduce social gaps, and ensure public welfare and food security.

Reg. 2016 is of relevance to all Indonesian citizens or legal entities who either own, or intend to own, areas of farmland with certain land rights. Essentially, Reg. 2016 serves as further guidance to the current provisions concerning limitations on farmland ownership, stipulated in:

(i) Government Regulation in lieu of Law No. 56 of 1960 on the Determination of Land Areas for Farming Purposes ("**GR 56/1960**"); and
(ii) Government Regulation No. 224 of 1961 on the Implementation of Land Parceling and Compensation ("**224/1961 Government Regulation**").

Reg. 2016 sets out the maximum areas of farmland that individuals or legal entities may own, as follows:

Maximum Farmland of Individuals Area
(i) 20 hectares for non-densely populated areas; (ii) 12 hectares for less-densely populated areas; (iii) 9 hectares for sufficiently-densely populated areas; and (iv) 6 hectares for densely populated areas.

Maximum Farmland of Legal Entities Area
To be specified in accordance with the land entitlements granted to the respective legal entities.

As we can see in the above table, unlike GR 56/1960, Reg. 2016 does not differentiate between wetland (or *sawah*) and dry soil (or *tanah kering*). Reg 2016 also does not define the term "individual". Therefore, there is still doubt whether the term "individual" under Reg. 2016 includes the owner's family or not.

An individual may transfer his/her ownership over farmland to another party, provided that: (i) the transferee is domiciled in the same district as the land location; (ii) the land shall only be utilized for farming purposes. Failure to meet these requirements will result in the inability of such transfer of ownership to be registered at the land agency.

In the event the farmland's owner is not domiciled in the same district as the farmland location, he/she must transfer such land ownership to another party domiciled in the same district as the land; otherwise, the government will acquire the land, subject to terms and conditions stipulated in the 224/1961 Government Regulation.

Please note, the above mandatory transfer is not applicable for the following parties:

a. farmland owners who are domiciled adjacent to the district where their farmland located;
b. farmland owners who carry out state or religious duties;
c. civil servants, military officers and/or other parties equivalent to such positions; or
d. other parties as determined by the Minister.

The farmland owners shall utilize their land in accordance with the land's intended purposes and not later than 6 months since the issuance of the land certificate. In order to comply with this obligations, the owners may cooperate with other parties; provided that the cooperation is in the form of a written agreement.

In performing such cooperation, Reg. 2016 allows owners with a freehold-title to grant a right-to-use to their counterparties. The farmland may also be mortgaged, however, Reg. 2016 does not further regulate this matter. Non-compliance with the limitations and the provision to be domiciled in the same district as the land, may result in the farmland becoming the object of a land-reform program. In this case, the farmland will be distributed to farmers in accordance to the prevailing laws and regulations, i.e., 224/1961 Government Regulation.

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New Procedure for Offshore Loan Reporting Obligations

by Arien Kartika Sari

On 6 April 2016, Bank Indonesia issued a new circular letter with a new and detailed procedure to submit a report after receiving external loans using foreign exchange ("DULN"). This circular letter implements Bank Indonesia Regulation ("**PBI**") No. 16/10/PBI/2014 as amended by PBI No. 17/23/PBI/2015 and revokes Bank Indonesia Circular Letter No. 16/10/DSta dated 26 May 2014. It came into effect on the date of its enactment.

Reporting obligations for Indonesian borrowers receiving loans from offshore lenders is now subject to the new Bank Indonesia Circular Letter No. 18/5/DSta dated 6 April 2016 on Foreign Exchange Offshore Loans ("SEBI No. 18/2016"). The new circular letter introduces several new provisions to report DULN generated from (i) non-revolving loan agreement (ii) surplus between the refinancing facilities and the existing facilities and (Iii) debt securities. DULN must be received through banks in Indonesia (including foreign bank branch offices in Indonesia) which are licensed to conduct banking activities in foreign currency ("Foreign Exchange Bank"). The borrowers are required to report each DULN withdrawal to Bank Indonesia at the latest on the fifteenth day of the following month. This report must include supporting documents showing that the offshore loan has actually been drawn through the qualified banks.

The value of each DULN withdrawal must be equal to the value of each loan withdrawal, and the accumulated value must also have the same value as the commitment in the loan agreement or debt securities. If there is more than Rp50,000,000,- difference between the amount of the drawn DULN and loan, the borrower must explain in writing the cause resulting in such a difference, along with the supporting documents upon submission. SEBI No. 18/2016 gives more detailed steps to determine whether the borrower is obligated to submit the supporting documents if the DULN is received in a currency other than USD, that is, by referring to the Reuters middle rate at the end of the month of the withdrawal, and ultimately to convert the USD amount to Rupiah.

Late submission of the report will result in the borrower deemed to have not received DULN from a Foreign Exchange Bank. Non-compliance to receipt of DULN through a Foreign Exchange Bank is subject to an administrative fine of 0.25% of each loan amount not withdrawn from a Foreign Exchange Bank, up to a maximum of Rp50,000,000,-. SEBI No. 18/2016 also provides a procedure to request an exemption from such administrative fine, provided that the borrower is able to provide proof of compliance with drawing the DULN proceeds from a Foreign Exchange Bank. The borrower may also be subject to more stringent sanctions, such as a written warning and/or notification to the offshore lender and/or relevant institution (if the borrower is a state-owned enterprise) if it does not discharge its administrative sanctions.

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