



The Monthly Report of Finance Companies

by Athalia Devina



The Indonesian Financial Services Authority (“**OJK**”) enacted Circular Letter No. 3/SEOJK.05/2016 Year 2016 concerning the Monthly Report of Finance Companies (“**Circular Letter No. 3/SEOJK.05/2016**”), as mandated in Article 2 (6), 4 (6), and 10 OJK Regulation No. 3/POJK.05/2013 concerning the Monthly Report of Non Bank Financial Services Institutions.

The monthly report of Finance Companies (“**Monthly Report**”) is the financial statement prepared by finance companies for the OJK, which cover the period from the first until the end of the month and they will be presented and submitted to OJK in the format and procedures determined by the OJK. The Monthly Report consists of the following matters:

1. statement of financial position;
2. comprehensive income statement;
3. cash flow statement;
4. conformity analysis report of assets and liabilities; and
5. other report.

Finance companies are obliged to submit the Monthly Report to the OJK no later than the 10th of the following month. The submission of the Monthly Report can be conducted online or offline.

Finance Companies will appoint directors or similar officers who will be responsible for the preparation and presentation of the Monthly Report. Appointed directors or similar officers will appoint compilers to compile, verify and submit the Monthly Report. Finance companies must report any changes in directors or similar officers and/or compilers in accordance with the format stipulated in Circular Letter No. 3/SEOJK.05/2016.

The failure to report may be subject to administrative sanctions in the form of a written warning. This administrative sanction will be handed down in the following stages:

1. The first written warning is imposed for a period of fulfillment of the obligation to submit the Monthly Report no later than 30 (thirty) calendar days after the enactment the first written warning;
2. If within the period referred to in point 1 the obligation to submit the Monthly Report has not been fulfilled, the OJK will imposed the second written warning with a period of fulfillment of the obligation to submit the Monthly Report no later than 30 (thirty) calendar days since the enactment of the second written warning;
3. If within the period referred to in point 2 the obligation to submit the Monthly Report has not been fulfilled, the OJK will impose the third written warning with a period of fulfillment of the obligation to submit the Monthly Report no later than 30 (thirty) calendar days since the enactment of the third written warning.

Circular Letter No. 3/SEOJK.05/2016 shall come into force on 1st June 2016. The obligation of finance companies to submit the Monthly Report until the reporting period of May 2016 will still be conducted in accordance with the shape, structure and procedure of submission of reports as stipulated in the Circular Letter No. 6/SEOJK.05/2013 concerning the Monthly Report of Finance Companies (“**Circular Letter No. 6/SEOJK.05/2013**”). Circular Letter No. 6/SEOJK.05/2013 will be revoked and declared no longer valid when Circular Letter No. 3/SEOJK.05/2016 comes into force.

Indonesian Government to License OTT Services

by Arien Kartika Sari

Following the recent debacle surrounding Netflix and other app-based transportations in Indonesia, the Minister of Communications and Informatics (“MOCIT”) has recently issued Circular Letter No. 3 of 2016 on Over-The-Top (OTT) Application and Content Providers (“CL”) in response to the public’s aspiration for the government to create new regulations to legalize the current tech-savvy lifestyle. With the fourth largest human population in the world, Indonesia is one of the most active internet users globally, and the country is very keen on supporting tech companies as part of its movement to develop a ‘digital economy’.

The CL cited it aims to give OTT service providers advance warning of the upcoming regulations surrounding the business, as well as acting to provide enough time for them to prepare and adjust their current business operations. The CL provides 3 key definitions:

1. App-based Internet: telecommunications services provided through internet protocols in the form of short messages, voice and video call, online messaging, financial and commercial transactions, data storage and collection, games, social networking and media and all of its derivatives;
2. Internet-based Content: provision of all forms of digital information, whether in writing, audio, visual, animation, music, video, film, games or a combination of part and/or all of them, whether through streaming or download, all of which use IP-based telecommunication networks;
3. OTT Services: provision of the App-based Internet and/or Internet-based Content.

The most notable issue in this regulation is the obligation for OTT Service Providers to have a presence in Indonesia, whether it is an onshore or offshore OTT Service Provider. An onshore OTT Service Provider can either be an individual or an entity, though it does not have to be a legal entity. Similarly, an offshore OTT service provider can be an individual or an entity, provided that it has a ‘permanent establishment’ or *Badan Usaha Tetap* (“BUT”) in Indonesia, in matters pursuant to the applicable Indonesian tax laws and regulations. This provision means that offshore OTT service providers will be subject to all Indonesian regulations regarding taxation and will be treated as if they are Indonesian taxpayers. They must comply with all obligations under Indonesian taxation laws, from registration with the tax office to obtaining a tax identification number (NPWP), keeping books and records, as well as filing, collecting and settling any taxes payable.

The CL sets out the following obligations expected from any OTT service provider:



- a. Compliance with the laws of anti-monopoly and unfair business practices, trading, consumer protection, intellectual property rights, broadcasting, film, advertising, pornography, anti-terrorism, taxation, and other prevailing laws and regulations;
- b. Providing data protection in accordance with Indonesian laws and regulations;
- c. Providing content filtering in accordance with Indonesian laws and regulations;
- d. Providing censorship mechanisms in accordance with Indonesian laws and regulations;
- e. Utilizing national payment gateways by an Indonesian legal entity;
- f. Utilizing Indonesian IP domain numbers;
- g. Providing access for lawful interception for the purpose of criminal law investigation in accordance with Indonesian laws and regulations;
- h. Providing service information and/or guidance in Bahasa Indonesian in accordance with Indonesian laws and regulations.

Furthermore, OTT service providers are prohibited from providing services that contain:

- a. Values which conflict with the Indonesian Five Basic Principles (Pancasila) and the 1945 Constitution which threaten the unity of the Republic of Indonesia;
- b. Topics that are prone to raising conflicts between groups, ethnicities, religions, races, debasing, demeaning, and/or tainting a religion;
- c. Promote violence, abuse of drugs, pornography, gambling, threats, defamation, hate speech, and violation of intellectual property rights; and/or
- d. Conflict with the prevailing laws.

Due to the lack of regulating provisions, for the time being only Japanese app-based messaging service Line Corp has complied with the new policy by registering a permanent establishment. Other OTT Service Providers are expected to follow through as regulations surrounding this issue develop.

Mandatory Investment for Non-Bank Financial Service Institutions

by Vinton Rasil Taris

In facing global economic hurdles, it is important for the government to gather domestic investors to participate in national development. The role of domestic investors is to support the funding of a long-term development program by their investment in the state securities aspect of the program. The characteristics of non-bank financial service institutions and the state securities program are compatible, since they both share the characteristics of long-term investors. To promote such long-term investment by non-bank service institutions, the Chairman of Board of Commissioners of the Financial Services Authority (Otoritas Jasa Keuangan or “OJK”) enacted Regulation No. 1/POJK. 05/2016 regarding the State Securities Investment for Non-Bank Financial Service Institutions on January 11, 2016 (“**POJK No. 1/2016**”).



Pursuant to the Article 2 of POJK No. 1/2016, non-bank financial service institutions, which include life insurance companies; general insurance and reinsurance companies; underwriting companies; pension funds; employment-social security bodies; and health-social security bodies are obliged to invest in state securities. The investments which are governed under POJK No. 1/2016 must comply with the following requirements:

No.	Non-Bank Financial Institutions	Minimum Requirement for State Security Investment	Investment Stages (deadline)
1.	life insurance companies (including company with sharia principle)	30% of all company investments.	a. 20% prior to December 31, 2016; and b. 30% prior to December 31, 2017.
2.	general insurance and reinsurance companies (including company with sharia principles)	20% of all company investments.	a. 10% prior to December 31, 2016; and b. 20% prior to December 31, 2017.
3.	underwriting companies (including company with sharia principle)	20% of all underwriting company investments.	
4.	pension funds	30% of all pension fund investments.	a. 20% prior to December 31, 2016; and b. 30% prior to December 31, 2017.
5.	Employment-social security operation bodies	a. 50% of employment social security fund investments; and b. 30% of employment social security fund investments.	Prior to December 31, 2016.
6.	Health-social security operation bodies	30% of health social security fund investments.	

Subsequent to the enactment of POJK 1/2016, provisions regarding the minimum requirement of non-bank financial institutions state security investment, will be subject to POJK 1/2016. According to Article 5 of POJK 1/2016, any non-compliances with Articles 2 and 3 will be penalized with administrative sanctions, including (i) a written warning; (ii) re-assessment of controlling shareholders, board of directors, board of commissioners; and

(iii) prohibition on being a controlling shareholder, on the board of directors, board of commissioners, and any executive board lower than the board of directors.

Bank Business Plan

by Delvi

The Financial Services Authority has issued a new regulation regarding the Bank Business Plan - the Financial Services Authority Regulation No. 5/POJK. 03/2016 ("**POJK No. 5/2016**"). POJK No. 5/2016 replaces Bank Indonesia Regulation No. 12/21/PBI/2010 concerning the Bank Business Plan ("**PBI No. 12/2010**"). After the enactment of POJK No. 5/2016, the implementing regulations of PBI No. 12/2010 will still be applicable, as long as they do not contravene POJK No. 5/2016.

According to Article 5 POJK No. 5/2016, the business plan should consist of an executive summary, a management strategy policy, the application of risk management and the bank's recent performance, a financial statement forecast and assumptions used, ratios forecast and certain other posts, a funding plan, a fund investment plan, a capital participation plan, a capitalization plan, organization improvement and human resources, a product issuance plan and/or office network changes, and other information. The requirement for capital participation will consist of business fields, estimation of funds to be invested, percentage of ownership, including the controlling aspects, and a spin off plan for sharia business activities. Under the PBI No. 12/2010, a capital participation plan is not required.

The Business plan is to be drafted by the Board of Directors (BOD) and approved by the Board of Commissioners (BOC). The business plan must consider external and internal factors that might affect the business continuity of the bank, prudential principles, implementation of risk management and banking soundness principles. In the event a bank has a sharia business unit, the business plan should also include a specific business plan for the sharia unit, which forms an integral part of the business plan.

The Bank is obliged to report the business plan, the realization of the business plan (quarterly and semesterly) and the supervision of the business plan. The realization of the business plan must consist of an explanation regarding its achievement and the follow up for it, an explanation regarding deviation, financial ratios and specific posts, and other information. Supervision of the business plan must consist of its implementation either



quantitatively or qualitatively, and monitoring of factors that affect bank performance, and efforts to improve bank performance. According to Article 28 POJK No. 5/2016, if the Bank fails to comply with the obligation to report, administrative sanctions will be imposed in a form of penalty of IDR 1 million per working day. In addition, if the Bank does not comply with this regulation, the following measures shall be imposed:

- warning letter;
- downgrading of bank's soundness level;
- freezing of certain business activities;
- inclusion of bank's management and/or shareholders on the list of parties who are automatically disqualified for the fit and proper test.

The difference, according to POJK No. 5/2016, is that sanctions will be imposed by the OJK, while according to PBI No. 12/52010, sanctions will be imposed by Bank Indonesia.