



Good Corporate Governance of Finance Companies

by Athalia Devina

The Indonesian Financial Services Authority (“OJK”) has enacted OJK Regulation No. 30/POJK.05/2014 entitled Good Corporate Governance of Finance Companies (“OJK Regulation No. 30/POJK.05/2014”). The enactment of OJK Regulation No. 30/POJK.05/2014 is motivated by the desire to be able to align with other companies in ASEAN in the framework of the ASEAN Economic Community.

The principle of good corporate governance includes (i) transparency, (ii) accountability, (iii) responsibility, (iv) independence, and (v) fairness. The implementation of good corporate governance aims to (i) optimize the value of the finance company for the stakeholders, in particular debtors, creditors, and / or other stakeholders, (ii) improve the management of the finance company in a professional, effective, and efficient manner, (iii) improve the compliance of the organ of the financial company and Shariah Supervisory Board including ranks below it in order to make decisions and perform actions based on high ethical standards, compliance with laws and regulations, awareness of corporate social responsibility towards stakeholders and environmental sustainability, (iv) embody a more healthy, reliable, trustworthy, and competitive finance company, and (v) improve the contribution of the finance company to the national economy.

Article 5 of OJK Regulation No. 30/POJK.05/2014 stipulates that the shareholders through the GMOS must make sure that the operation of the finance company is based on good finance business practices. Shareholders have a new responsibility under this article. Before the enactment of OJK Regulation No. 30/POJK.05/2014, Article 3(1) of Law No. 40 of 2007 entitled Limited Liability Company, provided that shareholders of the company would not be personally responsible for commitments made on behalf of the company and losses of the company exceeding the value of controlled shares.



The finance company is required to undertake risk management to identify, assess, and monitor business risks effectively. Risk management should be adjusted to objectives, business policies, size and complexity of the business and the ability of the finance company. Directors of the finance company must implement effective and efficient internal controls to provide reasonable assurance that operations are carried out in accordance with the objectives and business strategy, as well as the articles of association and other internal company rules and regulations.

OJK Regulation No. 30/POJK.05/2014 came into force on 19th November 2014 with the following transitional provisions: (i) for the Board of Directors of the Finance Companies who have had concurrent positions as directors at other companies before the enactment of OJK Regulation No. 30/POJK.05/2014, the provision stipulated in Article 9(1) shall apply 3 (three) years after OJK Regulation No. 30/POJK.05/2014 came into force, (ii) for a finance company which has obtained a business license before the enactment of OJK Regulation No. 30/POJK.05/2014, the provisions stipulated in Article 23, Article 28(1), and Article 58(1) shall apply 2 (two) years after OJK Regulation No. 30/POJK.05/2014 came into force, and (iii) for a finance company which has obtained a business license before the enactment of OJK Regulation No. 30/POJK.05/2014, the provisions stipulated in OJK Regulation No. 30/POJK.05/2014 shall apply 1 (one) year after OJK Regulation No. 30/POJK.05/2014 came into force except for the provisions stipulated in Article 23, Article 28(1), and Article 58(1) as mentioned in point (ii).

Capital Ownership Requirements for Transportation Sector Enterprises

by Rio Rahmat Hidayat



The Indonesian Minister of Transport has enacted Regulation No. PM.45 Year 2015 concerning Capital Ownership Requirements in Transportation Sector Enterprises ("Permenhub 45/2015"). Compliance with the capital requirements set forth in this regulation is necessary to obtain an operation permit in the transportation sector (Shipping, aviation and railways).

By the enactment of Permenhub 45/2015 concerning newly established transportation enterprises, the deed of establishment should now include the capital requirements set forth in this regulation and have been audited by a registered public accounting firm. Transportation enterprises that have already obtained the permit prior to this regulation are required to adjust their capital holdings within a maximum period of 3 years.

According to Permenhub 45/2015, to obtain a license in the field of transportation, each enterprise needs to fulfill the capital ownership and/or paid-up capital requirements, which are stipulated in Permenhub 45/2015 as follows:

Shipping Sector

Type of License	Requirements
1. Marine Transport Business License / Surat Izin Usaha Perusahaan Angkutan Laut (SIUPAL)	- Has an authorized capital of at least Rp50,000,000,000.- and a paid up capital of at least Rp12,500,000,000.-
2. Harbor Permit / Izin Kepelabuhan	- Has a paid up capital of at least Rp25,000,000,000.- for special terminal location placement permit, construction and operation of special terminal permit and private terminal for own interests permit - Has a paid up capital of at least Rp1,000,000,000,000.- for main port - Has a paid up capital of at least Rp 200,000,000,000.- for truly port - Has a paid up capital of at least Rp25,000,000,000.- for transportation port
3. Salvage Permit and/or Underwater Working Permit / Izin Salvage dan/atau Izin Pekerjaan Bawah Air	- Has an authorized capital of at least Rp3,000,000,000.- and a paid up capital of at least Rp750,000,000.- for general company. - Has an authorized capital of at least Rp6,000,000,000.- and a paid up capital of at least Rp1,500,000,000.- for a joint venture company
4. Ship Crew Placement Services Permit / Izin Penempatan Awak Kapal	- Has an authorized capital of at least Rp3,000,000,000.- and a paid up capital of at least Rp750,000,000.-
5. Dredging and Reclamation Permit / Izin Pengerukan dan Reklamasi	- Has a paid up capital of at least Rp25,000,000,000.-

Aviation Sector

Type of License	Requirements				
1. Air Transport Enterprise License / Izin Badan Usaha Angkutan Udara	<table border="1"> <thead> <tr> <th>Scheduled air transport service:</th> <th>Non-scheduled air transport:</th> </tr> </thead> <tbody> <tr> <td>- Has a paid up capital of at least Rp500,000,000,000.- for scheduled commercial air transport with a capacity of more than 70 seat. - Has a paid up capital of at least Rp300,000,000,000.- for scheduled commercial air transport with a capacity of less than 70 seat.</td> <td>- Has a paid up capital of at least Rp300,000,000,000.- for non-scheduled commercial air transport with a capacity of less than 70 seat. - Has a paid up capital of at least Rp150,000,000,000.- for non-scheduled commercial air transport with a capacity of less than 70 seat. - For commercial cargo transport, should have a paid-up capital of at least Rp100,000,000,000.- - For commercial air transport conducting flight school (flying school), should have a paid up capital of at least Rp75,000,000,000.-.</td> </tr> </tbody> </table>	Scheduled air transport service:	Non-scheduled air transport:	- Has a paid up capital of at least Rp500,000,000,000.- for scheduled commercial air transport with a capacity of more than 70 seat. - Has a paid up capital of at least Rp300,000,000,000.- for scheduled commercial air transport with a capacity of less than 70 seat.	- Has a paid up capital of at least Rp300,000,000,000.- for non-scheduled commercial air transport with a capacity of less than 70 seat. - Has a paid up capital of at least Rp150,000,000,000.- for non-scheduled commercial air transport with a capacity of less than 70 seat. - For commercial cargo transport, should have a paid-up capital of at least Rp100,000,000,000.- - For commercial air transport conducting flight school (flying school), should have a paid up capital of at least Rp75,000,000,000.-.
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2. Airport Enterprises License / Izin Badan usaha Bandar Udara	- Has a paid up capital of at least Rp500,000,000,000.- for domestic airport. - Has a paid up capital of at least Rp1,000,000,000,000.- for international airport.				
3. Known Shipper or Known Consignor license / Izin Pengirim Pabrikasi	- Has a paid up capital of at least Rp25,000,000,000.-				

Railways Sector

Type of License	Requirements
1. Public Railway Infrastructure Business License / Izin Usaha Penyelenggaraan Prasarana Perkeretaapian Umum	- Has a paid up capital of at least Rp250,000,000,000.- for urban area. - Has a paid up capital of at least Rp1,000,000,000,000.- for intercity area.
2. Public Railway Facility Business License / Izin Usaha Penyelenggaraan Sarana Perkeretaapian Umum	- Has a paid up capital of at least Rp150,000,000,000.- for urban area. - Has a paid up capital of at least Rp250,000,000,000.- for intercity area.

Pursuant to Article 18 Permenhub 45/2015, each enterprise that has already obtained their license is obliged to submit their financial statements, audited by a registered public accounting firm, at the latest every April 14 to the Director General.

Besides the aviation sector, the provision of capital requirements in the field of shipping and railways are also governed by Permenhub 45/2015, where the capital requirements contained in this regulation are in addition to the administrative and technical requirements that are set by the Ministry Regulation.

Any enterprise that violates the provisions of the above-mentioned capital ownership requirements will be subject to written administrative sanctions, license suspension or license revocation.

The Updated Requirements for a Financing Company Business License in Indonesia

by Nirmala Adisti Karunia

By virtue of the Indonesian Financial Services Authority (“OJK”) Regulation No. 28 Year 2014, the OJK now affirms the rules and regulations regarding the business license and the institutional status of a financing company. This OJK regulation (hereafter “the OJK regulation”) is intended to complement the Minister of Finance Regulation No. 84 year 2006, as it comprises special provisions. Notwithstanding that some provisions remain unchanged from the Minister’s Regulation, the OJK Regulation has some additions that elaborate the rules and governance related to both a standard financing company and a Sharia financing company.

The OJK Regulation stipulates that a financing company can only start their business activity if they have already obtained a business license issued by the OJK. This is a substantial change because in the previous regulation, the one who authorized the issue of a financing company license was the Minister of Finance rather than the OJK. New points that we can find in the OJK Regulation concern the rules regarding the Sharia Business Unit (“Unit Usaha Syariah”), addressing the financing company that carries out Sharia funding activity, the rules of the use of foreign workers in a financing company, exceptions that are applicable to a financing company in the fields of electricity and shipping, and the rules regarding conversion of a financing company to a Sharia Financing Company.

The OJK regulation also updates the administrative requirements for the establishment of a financing company. If a limited liability company or a cooperative intends to apply for a financing company business license, Article 4 paragraph 2(c) states that it must provide the following documents: (1) Articles of Association of the respective limited liability company which has been ratified by an authorized government agency, (2) List of shareholders with details of the amount of shares owned by the shareholders respectively, (3) The data of the shareholders, (4) Legalized copy of paid up capital payment evidence in the form of a term deposit on behalf of the company in a commercial bank which is still valid at the time of application, (5) Initial financial report of the company, (6) Proof of certification in accordance with the OJK Regulation, (7) Proof of operational readiness, (8) The first 2 years’ work plan which comprises of a study of market feasibility and economic potential, (9) Plan of finance distribution and statement of financial position, (10) A copy of the cooperation agreement between Indonesian and foreign party if there is any, (11) Document of the use of the contract as intended for a Sharia financing company, (12) Structure of organization with description of task, authority, responsibility and work procedure, (13) Guidelines for knowing the consumer’s principle, and (14) Guidelines for good corporate governance.

In the event that the shareholder is a legal entity, it should provide data of shareholders which comprise the following documents: (1) Statement letters from the board of directors which states that the paid up capital is not derived from a loan, money laundering, is not listed as bad credit nor listed as non-pass list (“Daftar Tidak Lulus



(DTL)”) in the banking sector, (2) Statement letter showing that the shareholder has not been convicted of a criminal offence in the economic sector in the last 5 years, (3) Statement letter showing that it has not been convicted of a criminal offence based on a court decree in the last 5 years, (4) Statement letter showing that it has never been declared bankrupt and (5) Statement letter showing that it not been a controlling shareholder in a financing company with a revoked license due to a violation in the last 5 years. If the shareholder is an individual, the same requirements apply with the addition of the provision of taxpayer identification and copy of their identity card.

Alongside the required documents as described above, the application must be accompanied by a competency and appropriateness assessment of the candidate from the directors, commissioners, controlling shareholders and the board of the Sharia supervisor (in the event that it is a Sharia financing company). After all of the documents have been submitted, the OJK will announce the outcome, whether it is acceptance or rejection, within 30 days of the complete application being received. The prospective financing company should also take note that according to Article 6 of the OJK Regulation, a financing company which has already obtained a business license from the OJK should carry out its business activity within 2 months since the date the business license was issued by the OJK, otherwise it will subject to administrative sanctions, such as license revocation in accordance with Article 76 of the OJK Regulation.

In the case that the financing company is partially owned by foreign parties, the government through the OJK seeks assurance that the maximum ownership of foreign shareholders, indirectly or directly, is 85 % of the paid up capital. This provision was actually already set out in the previous regulation, the Minister of Finance Regulation No. 84 Year 2006, but the government intends through the updated requirements to reiterate this stipulation because in practice, there are many financing companies who did not comply with the regulation.¹ Regarding the structure of capital, if the financing company is in form of a limited liability company, it must satisfy the paid up capital minimum requirement of Rp100.000.000.000, and Rp50.000.000.000 on condition that the legal entity is in the form of a cooperative.

¹ <http://finansial.bisnis.com/read/20141119/89/274170/industri-multifinance-ojk-tegaskan-kepemilikan-asing-maksimal-85>

Presidential Regulation on Government and Business Entity Partnerships in Infrastructure Procurement

by Vinton Rasil Taris



The President of the Republic of Indonesia, Joko Widodo, has issued Presidential Regulation No. 38/2015 (“**Regulation No. 38/2015**”) regarding Government and Business Entities Partnership in Infrastructure Procurement. This regulation has been issued for the purpose of supporting and increasing national development, economic growth, and social welfare, and to enhance national competitiveness within a global context.

The partnership has several objectives to aim for, which are to; (1) fulfill the necessity of sustainable financing in infrastructure procurement; (2) create a good quality of infrastructure procurement which is effective, efficient, well-targeted, and prompt; (3) create a better investment climate to encourage the participation of business entities in the infrastructure procurement; (4) encourage the implementation of user pay services principals or in some cases, consider the capability of users to pay; (5) provide certainty of return on investment through the periodic payment mechanism from government to business entity. This regulation determines that infrastructures which can be under-

taken in partnership are economic and social infrastructures; both categories of infrastructure are specified in Article 5 paragraph 2 Regulation No. 38/2015.

The express terms of partnership under this regulation, there are two parties which have an important role; the government and the business entity. Based on Article 1 Paragraph 7 Regulation No. 38/2015, a business entity is defined as a state-owned enterprise, regionally-owned state enterprise, a private business entity in the form of a limited liability company, a foreign legal entity, or a cooperative. The business entity has the role of resource provider at the issue date of infrastructure procurement, whilst the government has a role of the party in charge and which supports the infrastructure procurement. With regard to the supporting role, the government contributes by giving fiscal and/or feasibility support.

The partnership for infrastructure procurement consists of the following activities, which are:

1. procurement of executive enterprises / business entities;
2. partnership agreement signing; and
3. financial fulfillment by business entities of the infrastructure procurement.

Based on the Article 38 Regulation No. 38/2015, the procurement of the business entity must be performed through auction or direct appointment. The regulation also specifies the agreement guidelines in Article 32 Paragraph 2 Regulation No. 38/2015, consisting of 20 points.

Regulation No. 38/2015 has been in force since the issue date, 20 March 2015. Commercially, this regulation provides more opportunities for business entities to participate in national development, and also optimizes certainty in business entity and government partnerships in respect of infrastructure procurement.

Operation of Land Acquisition for Development in the Public Interest

by Athalia Devina



The President of Republic of Indonesia, Joko Widodo, has signed Presidential Decree No. 30 of 2015, the Third Amendment of Presidential Decree No. 71 of 2012, entitled Operation of Land Acquisition for Development in the Public Interest (“**Presidential Decree No. 30/2015**”). Presidential Decree No. 30/2015 was enacted in order to accelerate and improve the effectiveness of the operation of land acquisition for development in the public interest. Presidential Decree No. 30/2015 came into force on 17th March 2015. In outline, changes are made in Article 1 clause 1, Article 117A, and Article 123B.

The first change is in Article 1 clause 1, about the definition of an institution that requires land. Institutions that requires land are defined as state institutions, ministries, non-ministerial government agencies, provincial governments, district/city governments, and state-owned legal entities/state-owned business entities that have special assignments from government or enterprises. They obtain their authority based on agreements with each other to provide infrastructures in the public interest.

Article 117A makes stipulations about the funding of land acquisition. The funding of land acquisition in the public interest can be sourced in advance, with the funds coming from a business entity being an institution that requires land

and thus obtains authority to do so based on an agreement, and which acts on behalf of state institutions, ministries, non-ministerial government agencies, provincial governments, and/or district/city governments. The funding of land acquisition by a business entity will be repaid by the fore-mentioned entities through the state budget and/or the regional budget after the land acquisition process is completed. The repayment is calculated in accordance with return on investment value.

In the case of an unfinished land acquisition process based on Article 123 and Article 123A, where there is a Determination of Location or Letter of Approval for Determination of the Development Area (“**SP2LP**”) or any other name that is intended as a determination of location for the development, the land acquisition process can be completed based on the stage as stipulated in this Presidential Decree. The land acquisition process is commenced from the stage of the implementation of the land acquisition. The following documents are required for the land acquisition process: (i) results of measurement, inventory, and identification, (ii) results of deliberations related to the form and amount of compensation for plots of land that have been agreed in advance with the authorized party, (iii) provision of indemnity and waiver, and/or (iv) other related documents. SP2LP or any other name that is intended as a determination of location for the development shall be renewed for a period of 2 (two) years by the Governor.