



## The OJK's Circular Letter on Prudential Banking Principles for Conventional Banks which hand over Part of their Work to Other Parties

by Megawati



On 17th March 2017, Indonesia's Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") promulgated Circular Letter No.11/SEOJK.03/2017 on Prudential Banking Principles for Conventional Banks which hand over Part of their Work to Other Parties (the "**Circular Letter No. 11/2017**").

As stipulated in the Circular Letter No. 11/2017, work that can be outsourced is support work, either in the flow of business activities or in the flow of business support activities of the bank. The support work itself is a job which, if it does not exist in-house, can still be accomplished via third parties, like call centers, telemarketing, direct sales, sales representatives, secretaries, or drivers. Work handover which is not included as outsourcing according to the Circular Letter No. 11/ 2017 is work handover to the bank's head office or regional office which is domiciled abroad, parent company and other entities in a bank's work group in the country or abroad; work handover of consultancy services or special expertise; and work handover of goods and building maintenance services.

Futhermore, the Circular Letter No. 11/2017 explains that in the outsourcing of credit collection activities, the OJK requires the bank to have and apply written policies and procedures regarding credit collection. In debt collection, service providers' companies must comply with the debt collection ethical principles contained in the outsourcing agreement. Debt collecting should not use threats, violence and actions that embarrass the debtor. Billing is also prohibited by using physical or verbal pressure and should only be done from 8 a.m. until 8 p.m. in the domicile area of the debtor.

In addition, in the case of outsourcing of cash management, the bank can only enter into an outsourcing agreement with a service provider company that is in form of a limited liability company.

Banks that outsource to third parties are required to compile an outsourcing report in the form of an outsourcing plan, modification and/or addition of outsourcing and a problematic outsourcing report. The report should be submitted to the OJK with the address of the bank supervisory department or OJK regional office.

# The Multi Asset Investment Fund

by Johannes Raymond Hasiholan



Currently, fiscal space to encourage growth is limited, while infrastructure development needs financing. This is what underlies the Financial Services Authority's efforts (Otoritas Jasa Keuangan or "**OJK**") to continue to enhance the role of the capital market as a source of long-term financing - by issuing a regulation concerning a Multi Asset Investment Fund. This concept is regulated in OJK Regulation No. 4/POJK.04/2017 on Multi Asset Investment Fund in the form of a Collective Investment Contract ("**POJK No. 4/2017**"). It is the perfect way to collect funds from certain financiers to be invested by investment managers in investment portfolios, other than securities.

This investment product is intended for specific financiers, particularly high net worth investors, and it is not offered through a public offering. The Multi Asset Investment Fund aims to provide alternative investment products as well as to provide professional securities/investment portfolio management services for financiers. POJK No. 4/2017 also sets out things about management guidelines, the Collective Investment Contract, disclosure documentation, recording, reporting, and the dissolution of the Multi Asset Investment Fund.

The investment manager, who manages security portfolios or collective investment portfolios for customers, may sell participation units of the Multi Asset Investment Fund by an agreement with the mutual fund dealer. The sales activity can be done by the mutual funders in the form of a meeting, letter, or electronic media, but it has to be based on the agreement between the mutual funder and investment manager.

The Net Asset Value of the fund shall be set at Rp1,000.- (one thousand Rupiah) and if it is assigned in foreign currency, the Net Asset Value shall be set at US\$ 1 (One

United States of America Dollar) or EUR 1 (one Euro), and the value of the initial fund shall be determined at least at Rp50,000,000,000.- (fifty billion Rupiah). This also applies to foreign currency fund which is equivalent to Rp50,000,000,000 with the rate published by Bank Indonesia at the time of transaction. The initial investment deposit may include securities and/or the Investment Portfolio, in addition to securities with an equivalent value of Rp50,000,000,000 (fifty billion Rupiah). Thus, the initial value of the fund shall be based on the fair market calculated by the methods with reference to Capital Market legislation. This legislation requires that the fair market value of securities in the portfolio of the investment fund, and/or the initial value of the investment (in the form of the investment portfolio in addition to securities), must be based on the available fair market value, to be determined by an independent appraiser appointed by the investment manager.

The investment manager has to meet several requirements that are stated in Article 7 of the POJK No. 4/2017. One of the few requirements is that the investment manager must be certified as a Chartered Financial Analyst ("**CFA**"). The CFA designation is considered the gold standard of the investment management field and those who have the credential are expected to have an in-depth knowledge of the investment industry, with many going on to careers as portfolio managers or research analysts at hedge funds and private equity firms. They establish policies and investment strategies, and also oversee all investment activities during the term of the Collective Investment Contract.

An investment portfolio in a Multi Asset Investment Fund may be in the form of either securities that are published and offered through public offering, listed or traded on the stock exchange, and/or securities that are not listed or traded on the stock exchange, money market instruments, deposit, derivative instruments, other financial instruments, property assets or real estate, infrastructure assets, warehouse receipts, and other investment instruments other than securities that are valid according to the legislation.

The schemes of work used in the distribution of the funds to infrastructural projects would take advantage of the capital market scheme. It is expected to be a way to overcome financial deadlocks, such as projects that are already in existence, or projects that are still in a pre-production phase.

The publication of POJK No. 4/2017 is expected to deepen the Indonesian Capital Market through the investment management industry, while enhancing the competitiveness of the investment management industry in Indonesia, as this may be beneficial to infrastructure finance.

# Updates on Public Company General Meeting of Shareholders by OJK

by Auraylius Christian

On March 14, 2017, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") has promulgated 2 (two) regulations, one of them being OJK Regulation No. 10/POJK.04/2017 on the Amendment of OJK Regulation No. 32/POJK.04/2014 on the Plan and Conduct of General Meeting of Shareholders of Public Company ("**POJK No. 10/2017**"). The purpose of issuance of the Regulation No. 10/2017 is to protect the minority shareholders especially relating to the voting rights at a General Meeting of Shareholders ("**GMS**") of Public Companies and for the appointment or dismissal of an external auditor.

POJK No. 10/2017 introduces additional provisions to OJK Regulation No. 32/POJK.04/2014, as follows:

- (a) enhance the rights of shareholders in a **GMS** who are affected by proposed changes to the rights of a certain class of shares; and
- (b) necessitates **GMS** approval of the appointment or dismissal of an external auditor.

POJK No. 10/2017 regulates that if a listed company has more than one class of share, change to the rights and entitlements under the shares would have to be carried out in accordance with the procedure set out in the POJK No. 10/2017. Article 29 A of the POJK No. 10/2017 stipulates a detailed procedure (including quorum and votes required) for the **GMS** that must be held to seek approval from the holders of the class of shares that is adversely affected by the change, with procedures as follows:

- (a) A **GMS** that discusses a change of rights may only be attended by the shareholders who are affected by that proposed change ("**Affected Shareholders**"). POJK No. 10/2017 provides an explanation as to what is considered as **Affected Shareholders** inter alia if the agenda of the **GMS** is to reduce the rights of a particular class of shares, the **Affected Shareholders** will be the shareholders of the class of shares whose rights will be reduced and if the agenda of the **GMS** is to increase the rights of a particular class of shares, the **Affected Shareholders** will be the shareholders of the other classes of shares whose rights will not be increased;



- (b) Unless the articles of association of the relevant Public Company or other rules and regulations provide a higher quorum, the **GMS** must be attended by the holders of at least three-quarters of the total shares held by the **Affected Shareholders**. A resolution can be passed if it is approved by the holders of three-quarters of the total shares held by the **Affected Shareholders** who attend the **GMS**;
- (c) If the **Affected Shareholders** hold non-voting shares, this POJK No. 10/2017 grants a right for those **Affected Shareholders** to attend and cast votes in the **GMS** that discusses a change of rights of shares by which they are affected.

Furthermore POJK No. 10/2017 has confirms two methods for any appointment or dismissal of an external auditor. The appointment and dismissal of an external auditor must be decided through a **GMS** by taking into consideration the Board of Commissioners ("**BOC**") recommendation. If the **GMS** does not appoint an external auditor, the **GMS** may delegate its authority to appoint the external auditor to the **BOC** by:

- (a) explaining the reasons for delegating such authority; and
- (b) setting out certain criteria for an external auditor/public accountant that can be appointed by the **BOC**.



# New OJK Regulation on Shareholder Reporting in a Public Listed Company

by Vincent Yap



On 14 March 2017, the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") issued a new regulation, OJK Regulation No. 11/POJK.04/2017 on Shareholder Reporting in a Public Listed Company ("**POJK No. 11/2017**").

The issuance of POJK No. 11/2017 revokes the preceding regulation, OJK Regulation No. 60/POJK.04/2014 on Information Disclosure of Certain Shareholders ("**POJK No. 60/2014**").

In essence, POJK No. 11/2017 is similar to POJK No. 60/2014. The laws regulate the requirement to disclose information regarding the shareholders in a public listed company. However, how POJK No. 11/2017 differentiates from POJK No. 60/2014 is on the criterion of shareholders of whom information shall be disclosed.

Under POJK No. 11/2017, it stipulates that any shareholders that own a 5% shareholding in a public listed company, either directly or indirectly (through any other parties i.e. special purpose vehicles), are obligated to report in regard to their shareholding and any changes to their shareholding in the public listed company. Such a duty has to be carried out at the latest 10 (ten) calendar days after the acquisition of shares or after the occurrence of changes

to the shareholding. Under POJK No. 11/2017, it specifies the threshold of change of the shareholding in the public listed company that triggers the duty of reporting amounts to 0.5% or more of the total issued shares.

The obligation of reporting to the OJK must be carried out in accordance with the prescribed form attached to the POJK No. 11/2017. The prescribed form has to include details of, among other things, the transfer price and information in regard to direct or indirect ownership of the shares.

Furthermore, under POJK No. 11/2017, it requires that a public listed company must have such a policy in regard to the obligation for the members of the Board of Directors and the Board of Commissioners to inform the company regarding their ownership of shares and any changes of such shareholding to the company.

The effect of POJK No. 11/2017 is to increase the transparency of the information on public listed companies, which serves to uphold the spirit of shareholder reporting in public listed companies.