



Material Transactions and the Alteration of Business Activities

by A.A.A. Reditha Saras

On 14 December 2018, the Financial Services Authority (OJK) released a draft regulation concerning Material Transactions and the Alteration of Business Activities (the **Draft Regulation**). The Draft Regulation supersedes other regulations covering the same topics.* The Draft Regulation also converts all Capital Market and Financial Institution Supervisory Board regulations to OJK regulations.

The Draft Regulation introduces stricter rules relating to the operation of public companies to encourage good corporate governance, transparency and fairness.

The main difference between the Draft Regulations and previous legislation is the definition of Material Transactions. If an activity is caught by the definition of the term "Material Transaction", then it would trigger certain obligations on the part of the public company.

In the previous legislation, the term was defined very specifically. Given this specificity, certain transactions that should have triggered reporting obligations were not caught. The Draft Regulation seeks to rectify this problem by updating the definition of "Material Transactions" to every transaction that a public company undertakes above a particular value. The Draft Regulation defines the value of a Material Transaction as equal to 20% or more of the equity of a Public Company or 10% or more of the equity of a Public Company with negative equity.

The Draft Regulation places great emphasis on information disclosure obligations when public companies carry out Material Transactions. Some of these obligations include the requirement to submit to the OJK summaries of the proposed transaction drafted by an approved evaluator, and statements made on the proposed Material Transaction from the Board of Commissioners and Board of Directors.



Image source: katadata.co.id

With this Draft Regulation, the OJK can administer certain sanctions including administrative sanctions, such as written warnings, fines, restrictions on business activities, suspension of business, business license annulment, revocation of approvals, and revocation of registration. The OJK is also authorized to take certain actions against any party that violates the provisions in the Draft Regulation, other than the aforementioned administrative sanctions.

The OJK is now seeking responses on the Draft Regulation from the public and those in the financial services industry. Responses will be accepted until 15 March 2019.

**The Decree of the Head of the Capital Market and Financial Institution Supervisory Board (Bapepam-LK) No. Kep-614/BL/2011 concerning Material Transactions and the Alteration of Main Business Activities (Decree No. Kep-614/BL/2011).*



Conflicts of Interest for Public Companies: New Draft Regulations

by Shaskia Putri Ramadhani



Image source: The Financial Express

To improve the transparency and accountability of the operations of public companies and companies controlled by the government, (together, **the Companies**), Indonesia's Financial Services Authority (the **OJK**) has drafted new regulations relating to conflicts of interest in corporate transactions carried out by the Companies (the **Draft**). The Draft is primarily concerned with any transactions carried out by Companies with other entities with which they have an affiliation or relationship.

The following types of transactions carried out by Companies with related entities may be caught by the obligations in the Draft:

- participation in business, projects or activities;
- purchase, sale, transfer, use, exchange of assets or parts of a business;
- acquisition, release, and/or use of services;
- leasing assets;
- lending funds including fund transfers; and
- acting as guarantors.

Certain transactions carried out by Companies with the members of the Board of Commissioners, the Company directors and the Companies' main shareholders, who are also employees, are exempt from the obligations set out in the Draft. Exempt transactions include:

- transactions that have been approved by a General Meeting of Shareholders;
- any transaction started before the company carried out its initial public offering and became a public company and before the registration statement that the company is public has been submitted;
- transactions with a value not exceeding 0.5% of the paid-up capital of the Companies or 5 billion Rupiah, whichever is lower;
- transactions that are carried out as a result of complying with laws, regulations or the decision of a court;
- transactions between the Companies where one company owns at least 99% of the shares or capital of the other company;
- etc.

Prior to carrying out "affiliated transactions", the Director of the Company must obtain approval for the transaction from the Board of Commissioners and from the Audit Committee, which will make an assessment on whether the proposed transaction is a conflict of interest.

Certain transactions will require independent shareholder approval, in the form of a notarial deed, through a general meeting of shareholders including those that:

- have reached the maximum value of material transaction;
- will disrupt the Company's business; and
- the Board of Commissioners has determined would be a possible conflict of interest.

The Draft introduces new transparency obligations for Companies that carry out "affiliated transactions". * If the shares of the Company are not listed on the stock exchange, the Draft requires the Company to announce the "affiliated transaction" through its website and one Indonesian newspaper. If the Company is a listed company, any "affiliated transactions" must also be announced on the stock exchange website. The evidence of the required announcement, an assessment report, a summary of the transaction, and other supporting documents must be delivered to the OJK.

Furthermore, this Draft introduces administrative penalties for breach of the provisions and allows for the OJK to impose its own sanctions for any breach.

**The Draft would supersede the Decision of the Head of Capital Market Supervisory Board and Financial Services No. KEP-412/BL/2009 regarding Affiliated Transaction and Conflict of Certain Transactions and its attachment the Regulation No. IX.E.1.*

Finance Companies: Business Organization

by Margareth Nita Gunawan



The Indonesian Financial Services Authority, the *Otoritas Jasa Keuangan*, (the **OJK**) has issued new regulations relating to the Organization of the Business Activities of Financing Companies (**Regulation 35**).^{*} Regulation 35 is intended to boost the role that financing companies play within the national economy, improve the implementation of certain principles such as fairness, transparency, etc and enhance consumer protection.

Essentially, Regulation 35 addresses matters relating to the organization of the business activities of financing companies, as well as to the implementation of information technology systems and to various fraud control strategies.

Financing companies are authorized to offer a number of different financing services, including:

1. investment financing;
2. working-capital financing;
3. multipurpose financing; and
4. other financing activities, as approved by the OJK.

Prior to the issuance of Regulation 35, similar matters were addressed under the Previous Regulations^{**}, which have now been revoked.

Several minor changes have been made to the requirements for, and/or descriptions of, each financing method in comparison with the Previous Regulations. However, a number of more major changes have also been made to financing, which takes the form of working-capital-facility and fund-facility methods in comparison with the Previous Regulations.

One of the major changes that has been introduced under Regulation 35 is the implementation of a new set of down-payment rates for the financing of two, three or four-or-more-wheeled vehicles, which are based on the financial soundness and net non-performing financing (**NetNPF**) ratios of financing companies.

Another new obligation involves the provision of working-capital facilities and fund facilities; in addition to meeting various requirements set by the relevant financing companies, any financing itself must now comply financial soundness and NetNPF ratios.

^{*}The Financial Services Authority Regulation No. 35/POJK.05/2018 on the Organization of the Business Activities of Financing Companies

^{**}Regulation of the OJK No. 29/POJK.05/2014 of 2014 on the Organization of the Business Activities of Financing Companies and all implementing regulations; Article 49 of the Regulation of the OJK No. 30/POJK.05/2014 on Good Corporate Governance for Financing Companies;

Circular of the OJK No. 47/SEOJK.05/2016 on Down-Payment Rates for Motor Vehicle Financing for Financing Companies; and Point V 2.c (4-8) of Circular of the OJK No. 1/SEOJK/05/2016 on Financial Soundness Levels for Financing Companies.

Building Regulations: New and Updated

by Pratiwi Widyastuti



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Construction law in Indonesia requires all building construction work to comply with all regulatory requirements including in relation to building standards. Any person who intends to carry out building work including the construction of a new buildings and renovation must obtain a licence, called an *Izin Mendirikan Bangunan/IMB* from the local government.

On completion of the construction work, if the work complies with all regulatory requirements, the local government will issue a certificate called a *Sertifikat Laik Fungsi* or Certificate of Feasible Building (the **SLF Certificate**).

All new buildings will need to have a valid SLF Certificate. The validity period of the SLF Certificate varies depending on how the building is classified. Prior to the expiry of the validity

period, the owners of the building must apply for an extension and submit a technical review report, carried out by a licenced technical reviewer.

The SLF Certificate and its grant is governed by Regulation No. 27/PRT/M/2018 (**Regulation No. 27**), issued by the Ministry of Public Works. Regulation No. 27 supersedes Ministry of Public Works Regulation No. 25/PRT/M/2007 (**Regulation No. 25**).

Regulation No. 27 brings in significant new updates to Indonesian construction law. The principal differences between Regulation No. 25 and Regulation No. 27 are set out in the table below.

Topic	Regulation No. 25	Regulation No. 27
Classification of Buildings	General building.	Building complexity and height.
	Type building construction.	Condition of the building.
Inspections relating to compliance of building constructions with all building regulatory requirements.	Both Regulation No. 25 and Regulation No. 27 require that inspections are carried out by the relevant licenced service provider and by the local government.	
	Both Regulation No. 25 and Regulation No. 27 require that the particular party that will carry out regulatory inspections will depend on how the building construction work has been classified and/or the purpose of the inspection, for example, whether the inspection is carried out for the purposes of SLF Certificate extension or the assessment of the building in relation to disaster readiness.	
Compliance confirmation	Under Regulation No. 25, buildings were classified into two categories. First, general construction which included residential housing. Second, construction for specific purposes including nuclear reactors, defence and security installations, and certain buildings whose functions are determined by the ministerial decision.	Under Regulation No. 27, buildings are classified for the purposes of assessing compliance by, among other things, whether they are new or already existing. This assessment process is carried out once the buildings are complete.
Validity Period	Between 5-20 years.	From 5 years upwards, with no upper limit.
The Funding	Regulation No. 25 is silent on who funds the administrative procedures to assess compliance.	The costs of assessing compliance for the purposes of the SLF Certificate are shared between the owner of the building, the user of the building and the local government.