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Infrastructure Financing Companies: New Regulations

by Hans Thioso

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To support the government in meeting the needs of national development, the Financial Services Authority (**OJK**) issued new regulations to update the regulatory framework governing infrastructure financing companies (**Perusahaan Pembiayaan Infrastruktur**).*

The Regulations came into force on 10 November 2020 and revoke the previous regulations.** As a result, jurisdiction over infrastructure financing companies has now changed from the Minister for Finance to the Financial Services Authority.

The Regulations provide that an infrastructure financing company must be a limited liability company with foreign ownership not exceeding 85% unless it is a publicly traded company. The Regulations provide that an infrastructure financing company must have a paid-up capital of at least 1 trillion IDR in cash increasing to 2 trillion IDR within 5 years it is issued a business licence.

The new Regulations define infrastructure financing companies as those that:

- provide direct lending for infrastructure financing;
- refinance infrastructure that has been previously financed by other parties;
- provide subordinate financing for infrastructure projects;
- provide other financing products, related to infrastructure financing, with approval from the financial services authority; and/or
- provide other financing products for government projects whether or not related to infrastructure financing.

In addition, the Regulations state that infrastructure financing companies can also provide:

- credit support;
- consultation services;
- equity capital; and/or
- investigate swap markets for financing infrastructure.

The new Regulations allow that infrastructure financing companies may carry out their activities in accordance with sharia law.

The Regulations prohibits an infrastructure finance company from:

- collecting funds directly from the public;
- issuing promissory notes, except as debt collateral;
- making direct investments in companies as other than as related to infrastructure financing.

The new Regulations include administrative sanctions that include the suspension of business and the revocation of business licences.

*OJK Regulation No. 46/POJK.05/2020 on Infrastructure Financing Companies.

**Presidential Regulation Number 110 of 2020 on the Revocation of Presidential Regulation Number 9 of 2009 concerning Financing Institutions.

Indonesia Forms Sovereign Wealth Fund

by Rahmi Intan Jeyhan

The newly promulgated Omnibus Law* inserts new provisions into current laws relating to, among other things, the management of central government investments.

Cluster 10 of the Omnibus Law authorises the establishment of a sovereign wealth fund, also known as the Indonesia Investment Authority/Lembaga Pengelola Investasi (LPI).

Pursuant to the Omnibus Law, central government investments can be managed by the LPI or by the Minister for Finance as the State's General Treasurer.

The Omnibus Law provides that the minimum capital of the LPI shall be IDR 15 trillion. The LPI will have a board of directors and a supervisory board. The supervisory board will consist of 5 members, which will be the Minister for Finance, the Minister for State Owned Enterprises, and three professionals. The board of directors will have five members with professional standing.

LPI aims to increase its long-term asset value in order to support sustainable development. The LPI is tasked with planning, organising, supervising, controlling and evaluating central government investments.

The Government Regulation on the LPI** which was just enacted on 15 December 2020, sets out the authority of the LPI as follows:

- investing in financial instruments;
- carrying out asset management;
- collaborating with other parties, including trust fund entities;
- finding potential investment partners;
- giving and receiving loans; and/or
- administering assets.

The investments to be managed by the LPI include those that originate from state assets and State-Owned Enterprise (SOE) assets. It is worth noting that once the asset becomes a central government investment managed by the LPI, its ownership will be transferred to the LPI. Subject to LPI's approval, the asset can also be handed directly to joint ventures formed by the LPI. The transfer is carried out by means of, among others, sale and purchase and equity participation. Please note that those assets that are vital for people's lives or related to natural resources are not transferrable. LPI can manage such assets by obtaining a power of attorney from the government/SOE.

In order to increase the assets value, the LPI can manage its assets by collaborating with third parties, including investment partners, investment managers, SOE, government institutions, and/or other domestic or foreign entities.

As state above, LPI has the authority to find potential investment partners. The manner in which the LPI can find investment partners differs from normal government procurement which is done by tender. The LPI has the authority to directly appoint investment partners without having to go through the tender process.

*Law No. 11 of 2020 concerning Job Creation.

**Government Regulation No. 74 of 2020 concerning Indonesia Investment Authority.

Financial Conglomerates: New Regulations

by Melisa Kristian

Image source: https://www.ofa.ad/en/press-room/comunicats-de-premsa/the-regulation-of-financial-conglomerates-is-approved/@@images/108aebd4-4245-478b-891b-ad57b12b45fa.jpeg

In October 2020, the Financial Services Authority (Otoritas Jasa Keuangan, the **OJK**) issued new Regulations on the conglomeration of financial institutions.* The Regulations are an addition to regulatory framework already in place relating to the assembly of financial institutions.**

The Regulations define an assembly or conglomeration of financial institutions as the gathering of financial institutions into one group due a single owner or controller of the group of financial institutions. The Regulations state that a "conglomeration" will usually consist of a main institution with subsidiaries or related companies.

For the purposes of the Regulations, the term financial institutions covers a broad range of organisations consisting of banks, re/insurance companies, finance companies and securities companies.

The Regulations state that a financial conglomeration together with one owner or controller, must:

- own a total of at least Rp 100 trillion of assets; and
- have more than one financial business.

The Regulations give the OJK discretion to determine that financial institutions form a conglomeration even if they do not fulfill the above criteria.

The Regulations require the main entity of a financial conglomeration to maintain a corporation charter, which is an agreement between the main entity and its members. This charter should be submitted to the OJK and must include, among other things, its structure and board.

*OJK Regulations No. 45/POJK.03/2020 concerning Financial Conglomeration

** OJK Regulations No. 17/POJK.03/2014 and OJK Regulations No. 18/POJK.03/2014.

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Investment Coordinating Board: New Regulations

by Melisa Kristian

Image source: https://foto.wartaekonomi.co.id/files/arsip_foto_2017_11_03/ekonomi_bisnis_2017_11_03_134458_big.webp

In November 2020, the Indonesian Investment Coordinating Board (ICB), or in Indonesian, the Badan Koordinasi Penanaman Modal, issued new Regulations regulating investment activities.*

The Regulations set out four basic activities that together constitute the ICB's remit. These are monitoring, guiding, supervisory and administrative. In relation to the ICB's monitoring powers, the ICB requires that all reports should be submitted online through the online single submission system (OSS). The Regulations also specify new criteria and submission periods for each type of report. The ICB carries out its guidance role through public engagement – putting on workshops, events, lectures, and providing consultation services. As part of its administrative remit, the ICB has the power to perform several administrative actions, including imposing penalties on investors (such as the revocation of business licences).

*BKPM Regulations No. 6 of 2020 concerning the Guidelines and Procedures relating to the Control over Investment. These Regulations revoke the previous regulations, BKPM Regulations No. 7 of 2018.

President Widodo revokes the authority of the Minister for Finance over financing institutions

by Hans Thioso

On 17 November 2020, President Joko Widodo enacted Regulation No. 110*, revoking the previous regulatory framework governing financing institutions.** The main outcome of Regulation No. 110 is that authority over financing institutions has now been handed from the Minister for Finance to the Financial Services Authority (**OJK**).

This transfer of authority is in keeping with the reasons for the OJK's establishment. OJK was established as an independent institution, separate from the government and the Finance Ministry, to handle the development of financial services and to address problems in the financial services industry. Before the OJK was established, the financial services industry was overseen by Bank Indonesia and the Minister for Finance.

The shifting of responsibilities allows Bank Indonesia to focus on monetary policy and the Minister for Finance on fiscal policy. From 31 December 2012, therefore, all regulatory and supervisory functions relating to the activities of financial services including financing institutions were transferred to the OJK. ***

However, despite the establishment of the OJK, Regulation No. 9 giving the Minister for Finance authority of financing institutions remained in force. This resulted in overlapping authorities and policies, which created problems with enforcement and supervision. With the new Regulation No. 110, the President has revoked Regulation No. 9 and all authority relating to financing institutions is now held exclusively by the OJK.

*Presidential Regulation Number 110 of 2020 concerning the Revocation of Presidential Regulation Number 9 of 2009 concerning Financing Institutions.

**Presidential Regulation Number 9 of 2009 concerning Financing Institutions.

***Law Number 21 of 2011 concerning Financial Services Authority

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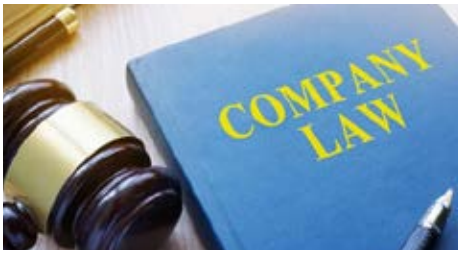
Omnibus Law: Micro and Small Enterprise Empowerment

by Rahmi Intan Jeyhan



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The Omnibus Law* has been formulated to, among other things, empower micro, small and medium size enterprises. To achieve this end, the Omnibus Law amends many other laws including the Limited Liability Company Law (**Company Law**).**

This legislation expands the definition of a limited liability company to include a special type of limited liability company for micro and small enterprises (**MSE Ltd**).

The Omnibus Law changes the law to allow one individual to establish an MSE Ltd. Previously, the general rule was that at least two individuals were needed to establish a limited liability company.

The Omnibus Law also simplifies the procedure for setting up an MSE Ltd. Now, an MSE Ltd can be established by a statement made by the founder, instead of by notarial deed, as was previously required for limited liability companies. The statement should cover general information about the company and must be registered with the Minister of Law and Human Rights.

Article 32 of the Company Law, which previously regulated that a limited liability company's minimum authorised capital must be at least IDR 50 million, has also been amended. The Omnibus Law allows for the authorised capital of an MSE Ltd to be now determined by the company's founder. As a result, the financial barrier for starting up an MSE has been lowered.

It should be noted that if an MSE Ltd no longer meets the criteria set out in the Small Businesses Law**, then it must convert to an ordinary limited liability company.

*Law Number 11 of 2020 concerning Job Creation

**Law No. 40 of 2007 concerning Limited Liability Company, as amended by Omnibus Law.

*** Law No 20 of 2008 concerning Micro, Small, and Medium Enterprises, as amended by Omnibus Law.