

BLP NEWSLETTER

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Our February newsletter highlights legislative amendments that we think will be of relevance to our clients. The finance sector has seen significant changes with the introduction of the Financial Sector Omnibus Law, as well as new regulations governing IT and cyber security, changes in investment rules, and new regulations governing minimum capital requirements for banks. Companies also have new regulations including new rules relating to access to government administrative systems for limited liability companies and new rules relating to non-public offerings. New mining regulations have been introduced to facilitate mineral and coal conservation. We would be happy to advise you on any aspect of these new laws and how they apply to your business.

Mining: New Guidelines

by Faudzan Eka Putra



The Minister for Energy and Mineral Resources has issued new mining guidelines to facilitate mineral and coal conservation (the **Guidelines**)*. The new Guidelines state that in order to expand mining areas, applicants must already hold the relevant mining license and must submit an application that meets a number of criteria including a maximum limit on the area to be mined. Various other criteria will be considered including coal seam continuity or mineral deposit characteristics.

Any applicants that have applied for expansion permits prior to the enactment of the Guidelines, must reapply in accordance with the Guidelines.

*Decree of the Minister of Energy and Mineral Resources Number 266.K/MB.01/MEM.B/2022

Enactment of Financial Sector Omnibus Law

by Rahmi Intan Jeyhan

The Indonesian government has recently enacted the Financial Sector Omnibus Law,* which aims to provide comprehensive regulations for the Indonesian financial sector. As the name suggests, this regulation covers a wide range of financial-related topics, from financial institutions, banking, capital market, and insurance to law enforcement. This Omnibus Law amends various existing legislation, revokes legislation and introduces new concepts and provisions.

Some notable points include that the Omnibus Law:

- introduces the digital Rupiah and authorizes Bank Indonesia to manage it;
- introduces new regulations governing domestic and international carbon trading through a carbon exchange mechanism;
- transfers authority over the management of digital financial assets and crypto assets from the Commodity Futures Trading Supervisory Body (*Badan Pengawas Perdagangan Berjangka Komoditi*) to the OJK;
- requires financial institutions that intend to carry out bullion related business activities to apply to the OJK for a license; and
- broadens access to finance for micro, small and medium enterprises.

To further regulate the provisions in this Omnibus Law, the government and relevant institutions such as Bank Indonesia and the OJK will issue various implementing regulations.

*Law Number 4 of 2023 concerning Financial Sector Development and Reinforcement.

Strengthening IT Governance in Indonesian Banks: The Significance of OJK Regulation 11/2022

by Kumalasari Retnopati

The Indonesian Financial Services Authority (“OJK”) previously issued Regulation 11/2022,* which took effect on October 7, 2022. This regulation replaced OJK Regulation 38/2016.**

Regulation 11/2022 covers a wide range of topics, including IT governance in banking, IT architecture, implementation of IT risk management, data management and personal data protection, cybersecurity, and data protection in banking operations. The regulation requires commercial banks to have a robust IT governance structure, conduct regular assessments of their IT systems, and have disaster recovery plans in place to ensure continued operations in the event of a disaster or major incident.

This new regulation is a significant development that will have a far-reaching impact on the country's banking sector. By establishing clear standards and guidelines for IT governance, the regulation will help to ensure stability, security, efficiency, and effectiveness of the banking sector, providing a more secure environment for financial transactions.

* Regulation No. 11/POJK.03/2022 concerning the Implementation of Information Technology by Commercial Banks.

** Regulation No. 38/POJK.03/2016 which dealt with the Application of Risk Management in the Use of Information Technology by Commercial Banks and its amendments.

Foreign Ownership of Securities: New Regulations

by Darwin Setiawan



On 13 September 2022, the government issued new regulations updating the current regime relating to foreign ownership of securities (the **New Regulations**)*. The New Regulations set out the foreign ownership rules in relation to Indonesian securities companies.

The New Regulations state that if a foreign legal entity is a securities company, then it can own shares that represent a maximum of 99% of the paid-up capital in an Indonesian securities company. However, if the foreign legal entity is not a securities company, then it can own shares that represent a maximum of 85% of the paid-up capital in an Indonesian securities company.

The limitations in the New Regulations do not apply if the securities company in question is listed on a stock exchange.

* Government Regulation Number 31 of 2022 concerning Foreign Capital Ownership in Securities Companies.

Capital Participation Activities by Commercial Banks – New Regulations

by Valya Hermayrani S.



Image source: <https://www.pexels.com/id-id/foto-bangunan-dengan-pendite-kaca-351264/>

The Financial Services Authority, in Indonesian, *Otoritas Jasa Keuangan*, has recently issued the Financial Services Authority Regulation Number 22 of 2022 concerning Capital Participation Activities by Commercial Banks (the **New Regulation**).

For the purposes of the New Regulation, the term “capital participation” means a bank’s investment of funds in companies via various ownership instruments such as shares, bonds, certificates, and temporary capital investments, etc.

With some exceptions, the New Regulation states that banks are not permitted to invest, in companies other than those that operate in the financial sector.

Non-Public Securities Offerings: New Requirements

by Luisa Srihandayani

Companies have always been able to raise finance through non-public securities offerings. On 30 December 2022, the Financial Services Authority has enacted Circular 33, which introduces new requirements in relation to non-public securities offerings.*

In brief, Circular 33 introduces:

1. additional criteria for non-public securities offerings;
2. new rules relating to the eligibility of the parties able to conduct a non-public securities offering;
3. new rules relating to the documents and information memorandum required for a non-public securities offering;
4. submission procedures for non-public securities offerings.

Parties wishing to carry out a non-public securities offering must apply to the Financial Services Authority. The Financial Services Authority may request any amendments and/or additional information to supplement the application documents, to a deadline. We would be happy to advise you on your non-public securities offering.

*Circular of the Financial Services Authority of The Republic of Indonesia Number 33/SEOJK.04/2022 of 2022 On Guidelines For The Implementation of Securities Offerings Classified As Non-Public Offerings

Access to the Legal Entity Administration System: New Regulations

by Annisa Ayu A

Indonesia's Minister for Law and Human Rights has recently issued Regulation No. 29/2022 (the **New Regulation**).¹ This regulation came into force on 19 December 2022 and replaced Regulation No. 24/2012².

The legal entity administration system (**LEAS**) is the government's central [online] hub for the administration of limited liability companies. Access to LEAS is only available for those limited liability companies that have been incorporated in accordance with Indonesian law. Blocking access to LEAS is one of the sanctions that the government can impose if a limited liability company has breached its statutory obligations.

Companies that have their access to LEAS blocked will not be able to carry out their statutory obligation in relation to their governance and will be effectively stopped from continuing to legally operate. The government can unblock the access restriction in circumstances where the limited liability company complies with any direction or regulatory requirement.

The New Regulation aims to streamline the process of blocking and unblocking access to LEAS by introducing the implementation of electronic submission. If you have any questions or concerns, our lawyers are available to help with your compliance.

¹ Regulation of the Minister for Law and Human Rights of the Republic of Indonesia Number 29 of 2022 on the Blocking and Unblocking of Access of Limited Liability Companies to the Legal Entity Administration System.

² Regulation of the Minister for Law and Human Rights of the Republic of Indonesia Number 24 of 2012 as amended by Regulation of the Minister for Law and Human Rights of the Republic of Indonesia Number Regulation for the Minister of Law and Human Rights of the Republic of Indonesia Number 19 of 2017.

The Changes and Implications for Banks Under OJK Regulation No. 27 of 2022

by Jayalaksana Purnama

Indonesia Financial Authority (*Otoritas Jasa Keuangan*/"**OJK**") has issued Regulation No. 27 of 2022, which amends OJK Regulation No. 11/POJK.03/2016 concerning the Obligation of Minimum Capital Provision for General Banks. The regulation aligns Indonesian law with international standards.

Banks are now required to comply with BASEL III Reforms to strengthen their risk management and adjust their calculation of risk-weighted assets (ATMR). Banks also need to apply international standards on capital requirements for exposures to central counterparties, and margin requirements for non-centrally cleared derivatives.

The principal change in the new regulation is the obligation on certain banks to form capital conservation buffers and the obligation to disclose the potential profit/loss from the fair value of financial assets as a disclosed reserve.

Under the new regulation, the disclosed reserve must now be interpreted as a financial asset measured at fair value in accordance with generally accepted accounting principles for financial instruments.

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