New article on corporate actions by banks in Indonesia

OJK issues new banking regulations on corporate actions

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The Medium Term National Development Plan (Rencana Pembangunan Jangka Menengah Nasional) 2020-2024, issued by the Indonesian Ministry of National Development Planning (Bappenas) (RPJMN), seeks annual economic growth of 6 percent, with an initial rate of 5.3 percent expected in 2020. This ambitious target will need to be underpinned by a stable banking industry, under the mandate of the Indonesian Financial Services Authority (Otoritas Jasa Keuangan, also commonly known as the OJK). To this end, the OJK recently issued OJK Regulation No. 41/POJK.03/2019 concerning commercial bank mergers, consolidations, acquisitions, integrations, and conversions (the new regulations).

The new regulations cover the following five corporate actions, as follows:

- Mergers: Where a bank(s) merges with another bank, resulting in the transfer of assets, liabilities, and equity to the surviving bank.
- Consolidations: Where two or more banks merge to establish a new bank.
- Acquisitions: Where there is a transfer of control of a bank to a third party.
- Integrations: Where the assets and liabilities of foreign bank branches (KCBLNs) are transferred to an Indonesian bank, and the branch license surrendered.
- Conversions: Where a KCBLN applies for an Indonesian banking license and the KCBLN license is surrendered.

What do the new regulations cover?

The new regulations govern the general provisions and implementation principles for each type of action, the procedures, and processes to obtain approval for such from the OJK, as well as sanctions for noncompliance. The new regulations introduce two new actions, namely integrations and conversions, filling a regulatory black hole under the previous regulations, which dated from 1999 were no longer considered fit for purpose. The new regulations have been long awaited by the banking industry which sought clarity in this area, particularly in relation to the OJK approval process.

Interestingly, the new regulations now authorize the OJK, through its monitoring and assessment mechanism, to recommend that a bank or KCBLN undertakes a certain corporate action, without clearly indicating what parameters will be used by OJK in proposing such. This discretionary power additionally extends to the manner in which the action is executed and the conditions to be satisfied to achieve such. This may give rise arguments between a bank/KCBLN and the OJK's supervisory team.

Sanctions

Violations of the new regulations may result in various administrative sanctions depending on the gravity, ranging from written warnings, monetary fines, prohibitions on expansion of business activities, suspension of certain business activities, and/or reassessment of the bank/KCBLN's primary party (being the ultimate controlling shareholder, members of the board of directors and/or commissioners, and executive officers).

Conclusion

The new regulations are expected to support the creation of a strong and competitive banking system in Indonesia by strengthening the banking structure through mergers, consolidations, acquisitions, integrations, and conversions. The OJK may or may not issue guidance for each corporate action, however it is likely that the OJK will allow itself to determine the requirements on a case-by-case basis – a double-edged sword that while allowing for flexible dialogue with the regulator simultaneously may not give the necessary certainty for those banks/KCBLNs intending to carry out these corporate actions.

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