

LAW ON THE GUARANTEE BUSINESS

In an attempt to strengthen the legal basis of the guarantee business and to make sure that small-to-medium sized enterprises and cooperatives have access to credit, the Government of Indonesia on 15 January 2016 issued Law No. 1 of 2016 on Guarantees (“**Guarantee Law**”). This is the first regulation on the guarantee business issued at the level of a law. Before the Guarantee Law was enacted, the guarantee business fell under various technical regulations, including the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), Presidential Regulation No. 2 of 2008 on Guarantee Institutions, Minister of Finance Regulation No. 222/PMK.010/2008 on Credit-Guarantee and Re-Guarantee Institutions, as amended, and a series of Financial Services Authority (OJK) regulations in 2014 on Guarantee Institutions.

However, the Guarantee Law does not repeal nor replace these technical regulations. They will still apply but only when they comply with the Guarantee Law.

The Guarantee Law defines the guarantee business as the activities engaged in by a guarantor involving the provision of guarantees of compliance by guaranteed parties regarding their financial obligations to their guarantee receivers (beneficiaries). The Guarantee Law recognizes 2 types of guarantee institutions: (i) guarantee companies which are legal entities engaging in financial business to provide guarantees; and (ii) re-guarantee companies. Each of these two companies may do business according to both conventional (commercial) or sharia business principles. Re-guarantee companies may only guarantee the financial obligations of guarantee companies. Meanwhile, part of the business of a conventional guarantee institution may be based on sharia principles under a sharia business unit.

Both guarantee and re-guarantee companies may be established as (i) a public-utility company (*perusahaan umum*) owned by the central government, (ii) a limited liability company, or (iii) a cooperation. The Guarantee Law provides for a limit on foreign-ownership of a guarantee or re-guarantee limited liability company of 30% of the company’s paid-up capital. This is lower than the current foreign-ownership limit under OJK Regulation No. 5/POJK.05/2014, which is 49% of a company’s paid-up capital. The Guarantee Law also requires the foreign capital invested in a guarantee institution to be deposited in a local bank under the guarantee or re-guarantee company’s name.

The Guarantee Law only allows a party to be a controlling shareholder in one guarantee

company, re-guarantee company, sharia guarantee company or sharia re-guarantee company, with an exception for the central and/or regional governments. Shareholders, directors and commissioners/supervisory board/supervisors of guarantee institutions must satisfy the requirements imposed by the OJK.

All guarantee institutions must have a business license from the OJK. A violation of this requirement could lead to an imprisonment of up to 15 years and fine of up to Rp.100.000.000.000 (one hundred billion Rupiah). During their operating term, guarantee institutions must submit monthly reports, audited annual financial reports, reports on any amendments to their Articles of Association, and/or other reports (if required) to the OJK. Any merger, consolidation, acquisition and/or split off of a guarantee institution requires prior approval from the OJK. Unless required otherwise by law, bankruptcy declaration applications for guarantee institutions may only be filed by the OJK.

Guarantee institutions which obtained a business license before the issuance of the Guarantee Law must make relevant adjustments to their business practices so that they are fully compliant with the Guarantee Law within two years of the issuance date of this Law. Meanwhile, any party that is not classified as a guarantee institution, but has been providing guarantee services, must be fully compliant with the Guarantee Law within three years of its date of issuance. The Guarantee Law also requires sharia business units with assets equal to at least 50% of their holding company's assets or which have been operating for 15 years before the issuance of the Guarantee Law to be split off and established as separate sharia guarantee institutions.