REGULATION ON COMMERCIAL BANK OWNERSHIP IN INDONESIA FINALLY ISSUED

Feb 11, 2013

After lengthy discussions among regulators and politicians on ownership of commercial banks, Bank Indonesia issued its Regulation No. 14/8/PBI/2012 regarding Ownership of Shares in Commercial Banks (“BI Regulation No. 14”) which came into effect on 13 July 2012.

In general, BI Regulation No. 14 provides rules that restrict ownership of commercial banks by individuals or corporations either on an individual or joint basis. BI Regulation No. 14 also provides the requirements that can cause its shareholders to maintain increase or even divest its share ownership up to certain percentage as determined under BI Regulation No. 14.

The maximum percentage of share ownership based on the category of shareholders, based on BI Regulation No. 14, is as follows:

40% of paid-up capital, for bank and non-bank financial institution, shareholders. BI Regulation No. 14 provides that shareholders in the form of banks may maintain a share ownership percentage exceeding 40% of paid-up capital with prior approval from Bank Indonesia. Further, to qualify as a non-bank financial institution in this regard, such institutions must have a charter of incorporation that allows it to invest in long term instruments and be supervised and regulated by the financial services authority;

30% of paid-up capital, for non-financial institution shareholders;

20% of paid-up capital, for non-financial institution shareholders in conventional commercial banks; and

25% of paid-up capital, for individual shareholders in Sharia commercial banks.

BI Regulation No. 14 provides that shareholders having an affiliated relationship through ownership in the same bank or a relationship in the form of an affiliation up to second degree (including family owned banks with up to second tier familial relationship) and/or acting in concert relationship are deemed as one party. BI Regulation No. 14 requires share ownership between affiliated parties deemed as a single party to comply with the shares ownership percentage as mentioned above.

All candidate controlling shareholders with foreign citizenship and/or legal entities domiciled overseas must meet the following requirements:

(i) be committed to support Indonesian economic development;

(ii) foreign financial institution shareholders must obtain a recommendation letter from the relevant supervisory authority in its country of origin; and

(iii) have a minimum investment level of either 1, 2 or 3 notch, depending on the form of the investment vehicle.

Despite the above rules, BI Regulation No. 14 does not specifically limit ownership of shares in a commercial bank by foreigners. This has the consequence that a foreign party can own up to 99% of an Indonesian commercial bank, to the extent the foreign party fulfills the requirements of this BI regulation No. 14.

BI Regulation No. 14 which does not apply retroactively, provides that, upon receiving Bank Indonesia approval, a candidate bank may take up more than 40% of an Indonesian commercial bank provided that it, among others:

(i) has level 1 or 2 Bank Indonesia financial health rating or equivalent rating for foreign banks;

(ii) has adequate minimum capital comparable to its risk profile;

(iii) maintains a six percent tier one capital;

(iv) has the recommendation of the bank regulator in its home country (for a foreign bank);

(v) is a publicly owned bank; and

(vi) has the commitment to own the Indonesian bank for a certain period of time.

Shareholders in a commercial bank which has soundness and/or good corporate governance (GCG) at level 1 or 2 as at December 2013 can continue to own their existing shares without an obligation to reduce their share ownership, unless the above level drops after 3 periodical valuations in a row. However, shareholders which have soundness and/or good corporate governance at levels 3, 4, or 5 by December 2013, must adjust their shares ownership within 5 years as of 1 January 2014.

Failure to comply with ownership limitation rules under BI Regulation No. 14 will cause the shareholders' rights to be limited to the maximum percentage allowed by the regulation, eg limiting their voting rights in a General Meeting of Shareholders and payment of dividends.