

## Client Alert

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## New Concepts and Harmonization in OJK Regulation on Corporate Actions of Banks

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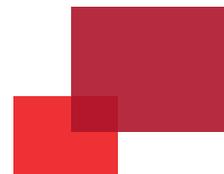
The Indonesian Financial Services Authority ("**OJK**") has issued OJK Regulation No. 41 of 2019 on Merger, Consolidation, Acquisition, Integration and Conversion of Banks ("**OJK Reg No. 41**"). OJK Reg No. 41 came into force on 26 December 2019, and introduces new concepts regarding the integration and conversion of foreign bank branch offices into Indonesian banks. OJK Reg No. 41 also harmonizes the rules governing mergers and acquisitions of banks with prevailing regulations.

The new regulation replaces Bank Indonesia Board of Directors Decrees No. 32/50/KEP/DIR on Requirements and Procedures to Purchase Shares of Banks and No. 32/51/KEP/DIR on Requirements and Procedures on Merger, Consolidation and Acquisition of Banks ("**BI Decrees**").

### New Concepts in OJK Reg No. 41

#### 1. Integration of Foreign Bank Branch Offices

- OJK Reg No. 41 introduces a new concept for business integration between foreign bank branch offices and a conventional bank ("**Receiving Bank**"). This concept is similar to what we did in 2017 when we represented HSBC in its business integration into Bank Ekonomi Raharja. Integration is defined as a legal act conducted by a foreign bank branch office by transferring its assets and liabilities to an existing bank, and then the business license of the foreign bank branch office is revoked.
- The integration must be announced to the public and to employees of the foreign bank branch office and the Receiving Bank (in the form of an integration plan). Before an announcement of the integration plan can be made, the Receiving Bank and the foreign bank branch office must submit preparatory documents to OJK.
- The preparatory documents consist of (1) approval from the foreign bank branch office's head office; (2) the integration plan duly approved by the foreign bank branch office and the board of directors of the Receiving Bank; (3) the integration deed outline; and (4) administrative documents for fit and proper tests of prospective controlling shareholders or prospective directors and commissioners. At the latest 20 business days after OJK has deemed the documents to be complete, OJK will inform the foreign bank branch office and Receiving Bank whether the integration can proceed. Subsequently, the integrating parties can make an announcement of the abridged integration plan.



- Like mergers and acquisitions, the integration must be approved in a general meeting of shareholders of the Receiving Bank, and any creditors' objections must be settled before submitting an application for OJK approval of the integration. OJK then approves or rejects the integration at the latest 14 business days after OJK has deemed the application documents to be complete. OJK's decision will include the results of any fit and proper tests.
- The OJK approval comes into force on the date of the Ministry of Law and Human Rights' ("MOLHR") approval (if there is an amendment of the articles of association) or receipt of notification. The business license of the foreign bank branch office must be revoked at the latest two years after the effective date of integration.

## 2. Conversion of Foreign Bank Branch Offices

- Conversion is defined as a legal act conducted by a foreign bank branch office to change its business license into a banking business license and subsequently its foreign bank branch office business license will be revoked. OJK Reg No. 41 requires a conversion approval in addition to an application for a new banking business license, which should be applied for based on existing regulations.
- The approval for the business license of the local subsidiary is given in two steps: (1) a principle approval and (2) a banking business license. The application for a conversion approval (including the requirement for evidence of approval from the foreign bank branch office's head office) must be submitted at the same time as the application for a principle approval.
- Subsequently, an application for a banking business license should be submitted after receiving the principle approval. OJK will approve the conversion simultaneously with the approval for the banking business license. The bank resulting from the conversion must begin its business activities at the latest 60 business days after the date that it receives its business license. This period may be extended in special circumstances deemed acceptable by OJK.
- The foreign bank branch office business license will be revoked at the latest two years after the date of its banking business license.

## 3. New Concept of Controlling Shareholder

A change of control will also be deemed to occur if a party acquiring shares in a bank becomes the shareholder with the biggest shareholding. This change from simply using the 25% shareholding threshold set out in the BI Decrees means that a new shareholder that owns less than a 25% shareholding will be deemed as a controller (even though it does not exercise actual control) if no other shareholder owns more shares than it has.

## Key Changes on Procedures

Procedures are generally refined to conform to the prevailing laws and regulations. One example is that OJK Reg No. 41 is consistent with the Company Law in that the deadline for creditors to submit objections is 14 days after the announcement of the relevant corporate action plan (e.g., merger or



consolidation plan), as opposed to seven days before the call for a general meeting of shareholders, as stipulated under the BI Decrees.

Under OJK Reg No. 41, OJK is now more involved than ever in the process of merger, consolidation and acquisition of banks due to the additional reporting obligations and approval requirements. In case of merger or consolidation, the bank is now required to submit the following documents on the same day as the announcement of the abridged merger or consolidation plan:

- merger or consolidation plan approved by BOCs
- draft merger or consolidation deed
- administrative documents for fit and proper tests of the relevant primary parties of the resulting bank.

Compared to the change to the merger and consolidation processes, the change in the acquisition process will have more of an impact, as the acquirer and the target bank are now required to submit preparatory documents (i.e., the acquisition plan approved by BOCs, draft acquisition deed and administrative documents for fit and proper test of prospective controlling shareholders) to OJK for review. The review process includes a fit and proper test for the acquirer as the prospective controlling shareholder and an inspection of the source of funds that will be used for the acquisition. The abridged acquisition plan may only be announced after OJK provides a clearance after the review.

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### Transition Provisions

- Banks that have published their merger, consolidation, acquisition or integration announcement prior to the enactment of OJK Reg No. 41 (i.e., 26 December 2019) will still be subject to the previous regulations.
- Adjustment of the periodic bank reporting requirements for banks and/or foreign bank branch offices that conduct merger, consolidation, acquisition, integration or conversion, whether in the period ending before, or the first period after, the merger, consolidation, acquisition, integration or conversion, is determined by OJK.