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New Regulation on Single Presence Policy in the Banking Sector

On 12 July 2017, the Indonesian Financial Services Authority (Otoritas Jasa Keuangan) (“OJK”) issued Regulation No. 39/2017 on the Single Presence Policy in the Banking Sector (“SPP Regulation”), which replaced Bank Indonesia (“BI”) Regulation No. 14/24/PBI/2012.

Single Presence Policy in Banking Sector

Single presence means a party (whether local or foreign) may only be a controlling shareholder in one commercial bank. For legal entities, the controlling shareholder will be traced to the ultimate shareholders of the bank.

“Controlling” is defined as:

- having at least 25% or more shares with voting rights; or
- being proven to have control over the bank, either directly or indirectly, regardless of the number of shares held.

If the party is a controlling shareholder in more than one bank, such party must restructure their ownership by:

- conducting a merger or consolidation;
- establishing a bank holding company in Indonesia to consolidate or control directly all the activities of its subsidiary; or
- establishing a holding function in the company of the party, which means that the party has a function to consolidate or control directly all the activities of its subsidiary banks.

Alternatively, the controlling shareholder can own up to 10% voting shares in other banks and convert the excess shares into shares without voting rights. Such non-voting shares must be transferred to another party within one year after the expiration of the compliance date of the Single Presence Policy.

Key changes in the SPP Regulation

The following are a few key changes introduced by the SPP Regulation:

1. More incentives given for merger or consolidation of banks

Banks which are merged or consolidated to comply with SPP Regulation shall be given incentives in the form of:

- an extension of time for the settlement and compliance with excessive Legal Lending Limit (Batas Maksimum Pemberian Kredit/**BMPK**);
- ease of opening of branch offices;
- relaxation while implementing good governance; and/or
- other incentives, in accordance with the provisions of legislation regarding incentives in the context of banking consolidation.

2. Incorporation documents required for bank holding companies

The following documents must be enclosed for the incorporation of a bank holding company by the controlling shareholder:

- Minutes of the Annual General Meeting of each Bank;
- Draft articles of incorporation of a holding company;
- The draft of bank transfer of shares deed; and
- List of prospective members of the board of directors and members of the board of commissioners of the holding company.

3. Exemptions of Single Presence Policy

The Single Presence Policy does not apply in the following circumstances:

- where the controlling shareholder controls two banks which operate under different business principles (e.g. the conventional principle and the sharia principle); or
- where the controlling shareholder controls two banks, where one of them is a joint-venture bank.

4. Sanctions for non-compliance

One or more of the following penal and administrative sanctions will be imposed by OJK for non-compliance:

- written warnings;
- blacklisting of members of the board of directors, board of commissioners, or executive officers by OJK as a party who does not pass the fit and proper test;
- monetary fine up to IDR500 million (approximately USD37,000); and/or
- non-favourable rankings in good governance assessment.

If you have any questions or require any additional information, please contact [Leoni Silitonga](#), [Sianti Candra](#) or the ZICO Law Partner you usually deal with.

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