

NEW GOVERNMENT REGULATION CLARIFIES FOREIGN OWNERSHIP IN INSURANCE BUSINESS COMPANIES

The Indonesian Government has just issued Government Regulation No. 14 of 2018 on Foreign Ownership in Insurance Business Companies (“**GR 14/2018**”), which entered into force on April 18, 2018. The regulation is a mandate under Article 7 (3) of Law No. 40 of 2014, dated October 14, 2014, on Insurance (the “**Insurance Law**”). GR 14/2018 provides some important insights relating to the scope, criteria and restrictions on ownership by foreign individuals and legal entities in the insurance business.

GR 14/2018 regulates foreign investment in (i) insurance companies either operated based on conventional or sharia principles; (ii) reinsurance companies; (iii) insurance/reinsurance brokerage companies; and (iv) insurance loss adjusting companies (collectively referred to as “**Insurance Business Companies**”). The regulation replaces Government Regulation No. 73 of 1992 on Organizing Insurance Business, introduced on October 30, 1992 as lastly amended by Government Regulation No. 81 of 2008 (“**GR 73/1992**”). GR 14/2018 confirms there is no changes with caps on foreign ownership of 80% as there were a number of prior discussions exploring possibilities to reduce foreign ownership in insurance sectors. However, specifically for insurance companies, exemptions under GR 73/1992 which allowed local shareholders ownership to dilute is no longer possible.

❖ The Scope of Foreign Ownership in Insurance Business Companies

Consistent with Article 7(1) of the Insurance Law, GR 14/2018 provides that Insurance Business Companies may only be owned by:

- a. Indonesian individuals and/or legal entities, which are ultimately (directly or indirectly) wholly owned by Indonesian individuals; or
- b. Indonesian individuals and/or legal entities together with foreign individuals or legal entities. Only foreign legal entities having similar insurance business activities or hold a subsidiary engaging in similar insurance business activities is qualified as a foreign shareholder.

With respect to joint investment between Indonesian individuals and/or Indonesian legal entities with foreign parties (“**JV Insurance Business Companies**”), GR 14/2018 clarifies and provides detailed provisions on foreign ownership requirements in relation to JV Insurance Business Companies.

According to GR 14/2018, foreign individuals are limited to conduct shares participation in Insurance Business Companies through stock exchange. Meanwhile, foreign legal entity may acquire shares of Insurance Business Companies through the following means:

- a. direct capital participation in the Insurance Company;
- b. transaction on the stock exchange; and/or
- c. capital participation in an Indonesian legal entity owning shares in an Insurance Business Company through direct capital participation or through stock exchange.

Please note that the ownership scheme as mentioned in point (c) above clarifies that the use of a foreign investment company (PMA) ultimately owned by a foreign party holding shares ownership in insurance companies will be recognized as a foreign ownership. This is in line with the Insurance Law which currently only recognizes Indonesian legal entities that ultimately is fully-owned by Indonesian individuals to be qualified as a local shareholder. As a background, under the old Insurance law and GR 73/1992, a PMA company ultimately owned by foreign shareholders was qualified as an Indonesian legal entity. The Indonesian shareholder of an insurance companies could be, i.e., Indonesian legal entities without considering the existence of a foreign element in such Indonesian legal entities such as a PMA company.

❖ **Criteria of Foreign Legal Entities**

In addition to the requirement being a foreign legal entity that is in the same line of business, or a parent company that has a subsidiary engaged in similar insurance business activities, GR 14/2018 provides additional criteria on foreign legal entities that is permitted to hold shares in Insurance Business Companies, as follows:

- a. must have equity at least 5 (five) times to the total direct capital participation at the establishment and at the change of ownership of the said Insurance Business Company; and
- b. fulfil other requirements set by the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) in accordance with prevailing laws and regulations.

Please be informed that foreign legal entities acquiring shares in Insurance Business Companies through (i) stock exchange; or (ii) in Indonesian legal entities owning shares in such companies, are exempted from the above criteria.

❖ **Foreign Ownership Restrictions**

GR 14/2018 set forth the exact percentage of 80% for ownership limitation in Insurance Business Companies.

However, please note that the 80% cap shall not apply to publicly listed Insurance Business Companies.

Further, GR 14/2018 ensure that if foreign ownership of a non-listed Insurance Business Companies exceeds the 80% cap at the time of the enactment of GR 14/2018, such foreign ownership is grandfathered, provided that, any future increase on the foreign ownership shall be prohibited.

For the latter, any increase of paid-up capital (other than the increase of paid-up capital by way of contribution in kind) is subject to the following requirements:

- a. at least 20% (twenty percent) of the additional capital must be obtained from Indonesian legal entities (directly or indirectly wholly owned by Indonesian individuals) and/or Indonesian individuals; or
- b. at least 20% (twenty percent) of the additional capital must be obtained through an initial public offering (IPO) in Indonesia.

To ensure compliance with GR 14/2018, Insurance Business Companies must identify and submit a report on the foreign ownership and fulfilment of the criteria of foreign legal entities to OJK, the details of the reporting mechanism will be further regulated by OJK in an OJK Regulation.

Non-compliance with GR 14/2018 shall be subject to administrative sanctions, which may take the form of

written warnings, limitation of business activities (partial or whole), revocation of the business licenses, and/or an administrative penalty.

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