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This Newsletter is meant to keep our clients and friends informed of the recent regulations in Indonesia, which we feel may be interesting to them. You will, therefore, not find all recent legislations in this Newsletter and the selected items are also not dealt with in length. You will find that the articles contain only the general information about such recent regulations. If further information or a deeper analysis of the topics published in the Newsletter is needed, please contact us at the address or telephone and e-mail address indicated.

Area Of Practice

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ABNR does not generally handle litigation but will, if so requested, undertake cases in which it has particular competence. Otherwise, ABNR firm will advise clients as to the choice of Indonesian litigators and coordinate and supervise the conduct of court proceedings.

INDONESIA'S RESPONSE TO THE GLOBAL FINANCIAL CRISIS

In response to the global financial crisis, the Government of Indonesia has issued several regulations with respect to Short-Term Funding Facilities, Changes in Saving Values, Increases in Guaranteed Saving Values, Financial System Safety Net, Extension of Foreign Exchange (FX) Swap Tenors, Foreign Currency Reserves, Statutory Reserves in Sharia Commercial Banks, Bank Offshore Borrowings, Statutory Reserves in Commercial Banks, and Buybacks. Below are the summaries of regulations.

1. Short-Term Funding Facilities

Perpu No. 2 of 2008 concerning Second Amendments to Law No. 23 of 1999 concerning Bank Indonesia:

Effective October 13, 2008, the Government has expanded the types of bank assets that can be used as collateral for Short-Term Funding Facilities extended by Bank Indonesia. Formerly, the collateral was restricted to assets, such as Bank Indonesia Certificates (SBI) and State Debt Securities (SUN). This new regulation expands collateral to credit assets which are liquid and collectable. This measure is aimed at allowing banks to hold additional assets in order to have access to the short term funding.

2. Changes in Saving Values

Perpu No. 3 of 2008 concerning Amendments to Law No. 24 of 2004 concerning Deposit Insurance Corporation:

Effective 2008, the Government adds to the existing criteria with respect to the deposits guaranteed by the Deposit Insurance Corporation (LPS). Under this Perpu, the Government may take preventive measures by increasing the amounts of deposits the LPS guarantees in order to foster public confidence in national banking system.

3. **Increases in Guaranteed Saving Values**

PP No. 66 of 2008 concerning Saving Amounts Guaranteed by Deposit Insurance Corporation:

This PP is ancillary to Perpu No. 3 of 2008. Effective October 13, 2008, the Government increases the maximum deposit amount guaranteed by the LPS from Rp.100,000,000 (one hundred million) to Rp2,000,000,000 (two billion) for every customer in a bank.

4. **Financial System Safety Net**

Perpu No. 4 of 2008 concerning Financial System Safety Net (JPSK):

Effective October 15, 2008, the government establishes JPSK. JPSK is intended to protect the financial system against financial crisis, and includes mechanisms aimed at the prevention and management of financial crisis. JPSK may respond to liquidity and solvency problems of banks and nonbank financial institutions which may have systemic impacts. Instruments to be used will be adjusted to the needs and levels of threat to the financial system, and are in the form of emergency payment facilities and interim capital participation. Where a bank obtains emergency payment facilities, Bank Indonesia may replace the management of the bank, and put the bank under the status of special oversight. If a bank receives interim capital participation, the bank will fully be taken over by the LPS or a government-sanctioned special body. To prevent and manage such a crisis, the government will derive funds from the state budget through issuance of State Bonds (*Surat Berharga Negara*) or cash. Financial System Stability Committee (*Komite Stabilitas Sistem Keuangan/KSSK*) is established with a membership of the Minister of Finance as the Head and the Governor of Bank Indonesia as member. The KSSK will make policy and set the pace to prevent and tackle financial crisis and coordinate among relevant authorities.

5. **Extension of Foreign Exchange (FX) Swap Tenors**

PBI No. 10/21/PBI/2008 concerning Fifth Amendments to PBI No. 4/9/PBI/2002 concerning Open Market Operations:

Effective October 15, 2008, a foreign exchange swap tenor is extended from not exceeding 7 days to not exceeding 1 month. This measure is taken to meet temporary demand of USD currency, and allow sufficient adjustment time for banks/market players before actually adjusting their portfolio composition.

6. **Foreign Currency Reserves**

PBI No. 10/22/PBI/2008 concerning Foreign Currency Reserves for Domestic Companies through Banks:

Effective October 15, 2008, this regulation provides foreign currency reserves through banks for domestic companies in order to enhance the assurance in meeting foreign currency demand by domestic companies.

7. **Statutory Reserves in Sharia Commercial Banks**

PBI No. 10/23/PBI/2008 concerning Amendments to PBI No. 6/21/PBI/2004 concerning Statutory Reserves in Rupiah and Foreign Currency for Sharia Commercial Banks:

Effective October 13, 2008, foreign statutory reserves for conventional commercial and sharia banks are lowered from 3.0% to 1.0% in order to increase USD liquidity availability to be used by banks in their transactions with customers.

8. **Bank Offshore Borrowings**

PBI No.10/20/PBI/2008 concerning Amendments to PBI No. 7/1/PBI/2005 concerning Bank Offshore Borrowings:

Effective October 13, 2008, this regulation revokes Article 4 of PBI No. 7/1/PBI/2005 concerning daily balance position of short term foreign loans by abolishing the limit of daily balance position. This measure is taken to decrease pressures in USD purchase due to transfer of rupiah account to foreign currency account by foreign customers.

9. **Statutory Reserves in Commercial Banks**

PBI No. 10/19/PBI/2008 concerning Statutory Reserves in Rupiah and Foreign Currency for Commercial Banks, as amended by PBI No. 10/25/PBI/2008:

The Rupiah statutory reserve is set at 7.5%, of which 5% is in the form of demand deposit (which must be complied with by October 24, 2008), and the remaining 2.5% is in the form of Bank Indonesia Certificate, State Bond and/or demand deposit (which must be complied with by October 24, 2009). The statutory reserve in foreign currency is effective October 13, 2008 set at 1%.

10. Buybacks

Keppapepamlk No. 401/BL/2008 concerning Buybacks of Issuers or Public Companies Shares in a Potentially Crisis Market Condition, effective October 9, 2008:

A Potential Crisis Market Condition occurs when the Composite Share Price Index (IHSG) on the Indonesian Stock Exchange has been significantly weakening for a minimum of 20 (twenty) stock exchange trading days due to economic conditions which do not encourage a fair stock market price. Bapepam –LK will make a determination of whether a Potential Crisis Market Condition has occurred.

The Rule changes the procedures for share buybacks. If a Potential Crisis Market Condition Occurs, issuers or public companies may buy back shares without breaching regulations relating to market manipulation or insider trading.

Issuers or public companies can conduct share buybacks without seeking approval from a General Meeting of Shareholders (GMS). The buyback is limited to 20 per cent of the paid-up capital of the issuer or public company. A buyback under the Rule requires the issuer or public company to notify both Bapepam-LK and the Stock Exchange details of their plans and the buyback must be completed within three months of the notification. The following prescribed information regarding the buyback plan must be submitted to Bapepam-LK at least one day before conducting the share buyback:

1. estimated schedule and total amount required for undertaking the share buyback;
2. forecast on the decrease of revenue as a result of the buyback;
3. the impact of the financing for the buyback;
4. details of management discussions and analysis on the impact of the buyback on the business activities of the company and future company growth.

The volume of the share buyback transactions in one stock exchange day is unlimited.

The share buyback must not result in a “delisting” of the relevant issuer or public company (e.g. on the basis that the issuer or public company has insufficient shareholders to justify continued listing).

The Rule is unclear as to whether or not the buyback must be an on market transaction (arguably it could be an off market transaction although the other provisions of the Rule would need to be complied with in such cases).

The Rule is silent with regards to a share buyback price. The general Bapepam-LK Rule which governs share buybacks (in normal conditions), namely Rule XI.B.2, provides that the offer price to purchase (buyback) shares must be at a price below or equal to the previous market trading price.

Scope of Financial System Safety Net

(This table is taken from the Press Release and not part of the text of a regulation)

Stage	Scope and Mechanism	Legal Basis
Normal Conditions	Financial Institutions Regulation and Supervision	Laws related to banks and non-bank financial institutions
	Deposit Insurance	Law on Deposit Insurance Corporation
Transition	Short-Term Funding Facilities	Law and Government Regulation in Lieu of Law on Bank Indonesia
	Deposit Insurance	Law and Government Regulation in Lieu of Law on Deposit Insurance Corporation
Crisis Conditions	Prevention and Management of Crisis: <ul style="list-style-type: none">- Funding/loan facilities;- Interim capital participation- Incentives and facilities to expedite resolution of problems in the private sector	Government Regulation in Lieu of Law on Law on Financial System Safety Net
	Deposit Insurance	Law and Government Regulation in Lieu of Law on Deposit Insurance Corporation

Source: Financial System Stability Committee (*Komite Stabilitas Sistem Keuangan*)

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