

# Indonesia's Single Presence Policy for the banking sector

On 26 December 2012, Bank Indonesia, Indonesia's central bank, issued BI Regulation No.14/24/PBI/2012 ("**2012 Regulation**"). This represented a long awaited amendment to the previous requirements for participation in the Indonesian banking industry under the "Single Presence Policy" regulation BI Regulation No.8/16/PBI/2006 ("**2006 Regulation**"). Although in practice it only amended certain aspects of the 2006 Regulation, the 2006 Regulation is no longer valid and the 2012 Regulation now represents the governing regulation going forwards. We expect the 2012 Regulation to be further supplemented by implementing circulars which, to date, have yet to be published.

## Introduction

Since 2006, the policy of the Indonesian government has been to make the Indonesian banking system more competitive by reducing the large number of Indonesian banks through a process of consolidation. This was achieved through the introduction of a Single Presence Policy in 2006 and carried forward in the 2012 Regulation, which is based upon the premise that any controlling shareholder of a bank should be limited to owning only one banking operation in Indonesia. Subject to certain exceptions, a controlling shareholder of a bank is defined as either (1) a party that holds 25% or more shares with voting rights in a bank, or (2) a party with direct or indirect control of a bank even where it holds less than 25% of the shares (a "**Controlling Shareholder**").

## Exceptions

The 2012 Regulation allows a Controlling Shareholder to have a controlling share in more than one bank if:

- (a) One bank is a conventional bank and the other is a shariah bank; or
- (b) One of the banks is a joint venture bank.

A joint venture bank is defined as a bank which is set up and owned by a foreign bank and a local bank in Indonesia, which has obtained its banking license before Law No. 10/1998 took effect and for which on 26 December 2012 (being the date the 2012 Regulation took effect) its shareholders were a foreign bank and a bank in Indonesia.

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## Methods of compliance

If the exceptions above do not apply, a party which is, or intends to become, a Controlling Shareholder of more than one bank must comply with the 2012 Regulation. Compliance can be achieved in the following ways:

### Merging or consolidating the controlled banks

One method of compliance is for the Controlling Shareholder to merge the banks under its control. This "merger" option existed as a solution in the 2006 Regulation. However, in a bid to encourage further banking sector consolidation, Bank Indonesia has introduced incentives under the 2012 Regulation for banks contemplating a merger, including a temporary relaxation of the rules on Minimum Statutory Reserve requirements and the Corporate Governance Code, time extensions in relation to curing any Legal Lending Limit requirements they might have exceeded, and added ease in the setting up of new bank branches.

### Bank Holding Company

Parties can also comply with the 2012 Regulation by placing their controlling shareholdings under a single holding company. According to the 2012 Regulation, the holding company must take the form of a limited liability company incorporated in Indonesia and must operate one level above the banks which are directly controlled by it. However, what is left unexplained under the 2012 Regulation is the process and requirements for the establishment of a bank holding company. It is understood that Bank Indonesia intends to issue a circular to set out further details on this in the next few months.

### Holding Function

This process can only be carried out by a Controlling Shareholder which is an Indonesian bank or a government institution of the Republic of Indonesia.

According to the 2012 Regulation, the holding function shall be led by:

- A member of the board of directors in the bank which becomes a Controlling Shareholder; or
- An official appointed by senior management of a government institution of the Republic of Indonesia.

Unfortunately, once again, the 2012 Regulation is unclear on how the holding function is to work in practice, nor are the process and requirements for setting up a bank holding function set out in detail. Implementing circulars are expected from Bank Indonesia in the next few months, which we hope will clarify these matters.

## Implementation

Banks with the same Controlling Shareholder have three months from 26 December 2012 to submit to Bank Indonesia their plan for compliance with the 2012 Regulation. Meanwhile, banks which are in the process of being acquired by a Controlling Shareholder of another bank must file a plan for compliance with Bank Indonesia within three months of the acquisition date, as well as apply for an acquisition permit from Bank Indonesia at the same time.

The plan for compliance must cite the method chosen to comply with the 2012 Regulation (as outlined above), as well as a timetable for implementation. The plan can be prepared and presented separately by each of the relevant banks (with the same controlling shareholder), or by the relevant banks together. The plan must then be signed by the respective banks and acknowledged by the Controlling Shareholder. A quarterly implementation report must also be submitted to Bank Indonesia every three months after the plan has been filed.

## Non-compliance

Sanctions for non-compliance are onerous. A controlling shareholder who fails to comply is prohibited from exercising any controlling function over the relevant bank and must divest its stake in all but one bank to 10% within one year. Correspondingly, in a general meeting of shareholders, the banks in question must register the ownership of shares and the voting rights of the controlling shareholder at a maximum of 10%. Any shares above this threshold will be treated as having non-voting rights until such time as these shares are transferred to another party.

A bank which fails to comply will be subject to a maximum fine of IDR 500 million and a potential downgrade of its Good Corporate Governance rating. A Controlling Shareholder which fails to comply must sell its shares in excess of the permitted

10%. A non-compliant Controlling Shareholder which fails to do so will be prohibited from being a Controlling Shareholder of any bank in Indonesia for 20 years.

## Conclusion

The 2012 Regulation is seen as a welcome development to the banking laws in Indonesia and we hope that it will be a further step toward fulfilling the single presence policy initiated by the previous regime. However, its current terms will need to be expanded upon, and further regulations are expected from Bank Indonesia in the next few months. Ultimately, the practical impact of how the 2012 Regulation will be implemented and regulated by Bank Indonesia still remains to be seen.

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