SQUIRE PATTON BOGGS

New Government Regulation on Foreign Ownership in the Insurance Sector

On April 17, 2018, the Government of the Republic of Indonesia issued a new regulation (Regulation No. 14 of 2018) on Foreign Ownership Limitation in Insurance (the Regulation), effective from April 18, 2018. The Regulation supersedes and replaces previous laws governing foreign ownership in insurance companies.

Key Provisions

Foreign Investment Limitation

The main purpose of this Regulation is to reiterate that foreign shareholding in an insurance company is limited to 80% of the issued and paid up capital. In any transaction, a foreign investor is not permitted to acquire more than 80% of the outstanding capital in an insurance company.

Future Funding

In addition to the above, any future capital funding of an insurance company whose foreign shareholder already holds more than 80% of the issued and paid up capital must be done on an 80:20 basis – where at least 20% of any future capital funding must be provided by local Indonesian shareholders (defined below) or through an initial public offering. However, this only applies if the capital funding is done through a capital injection. In other words, other kinds of capital funding, like the purchase of assets, is not covered by the 80:20 rule.

Dilution Right and Calculation of Foreign Ownership

There is no possibility for a foreign investor to increase shareholding by subscribing to new shares that are not funded by the Indonesian shareholder. Additionally, the calculation of foreign ownership limitation will be cumulative of any form of ownership, including those of an indirect nature.

Foreign Shareholder Criteria

The Regulation reiterates the requirements for a foreign shareholder, i.e. the foreign shareholder:

- Must have equity of a minimum of five times its capital participation in the insurance company
- Must engage in the same line of business as the insurance company or be a holding company with at least one subsidiary engaged in the same line of business as the insurance company
- Can only own shares in insurance companies through the stock exchange, in the case of foreign individuals

Nature of Indonesian Shareholders

Indonesian shareholders are defined as Indonesian citizens or companies directly or indirectly wholly owned by Indonesian citizens. This is consistent with the current nature of insurance companies covered by Indonesia’s insurance law.

Reporting Requirements

All insurance companies in Indonesia must identify all foreign shareholdings in the company, including indirect foreign shareholdings, and report such information to the Indonesian Financial Services Authority. Timelines for compliance with this particular requirement are expected to be issued in subsequent circulars.

Sanctions

Administrative sanctions will be imposed on those who fail to comply with these Regulations in the form of warning letters, limitations to business activities, revocation of business licenses or fines.

Exceptions and Grandfathering Provisions

Existing Foreign Shareholding – Insurance companies that currently have foreign shareholdings that are above 80% are not required to dilute their shareholding to comply with the 80% limit. However, if these companies decrease their foreign shareholding in the future, that new lower percentage will be the revised benchmark for foreign investment in that company. These companies cannot increase their foreign shareholding.

Listed Insurance Companies – The provisions of the Regulation do not apply to listed insurance companies. Such companies can have more than 80% foreign ownership, subject to the required public free float (currently at 7.5%). If a currently unlisted company were to list, the majority shareholder could increase its shareholding to 92.5%.

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