

## The New Regulation on Shares Ownership in Indonesian Commercial Banks - What You Need to Know

On 7 December 2016 the Financial Services Authority (*Otoritas Jasa Keuangan* - “**OJK**”) promulgated Regulation No. 56/POJK.03/2016 on Shares Ownership in Commercial Banks (“**Shares Ownership Regulation**”). Please find below the key provisions that you need to know:

1. **The Maximum Shares Ownership** – The Shares Ownership Regulation limits shares ownership in commercial banks (including Islamic banks) as follows:
  - a. for shareholders in the form of banks and non-banks financial institutions, the maximum shares ownership is 40% (forty percent) of Banks’ capital;
  - b. for shareholders in form of non-financial institutions legal entities, the maximum shareholding is 30% (thirty percent) of Banks’ capital; and
  - c. for individuals shareholders , the maximum shareholding is 20% (twenty percent) of Banks’ capital and, in case of Islamic Banks, 25% (twenty five percent) of Banks’ capital.
2. **Exemptions** – The maximum shares ownership rules do not apply or can be exempted (as applicable):
  - a. for shares ownership by the Indonesian central government or the Indonesian institutions which handled banks recovery;
  - b. with the approval of the OJK (subject to certain conditions among others, having minimum capital tier 1 of 6% and it is a public company) and the target banks must (i) be gone public so that it reach 20% (twenty percent) public ownership and (ii) obtain approval from the OJK to issue a debt equity instruments;
  - c. for shareholders of Islamic banks that acquire its shares as results of spin-off provided it must comply with the shares ownership rules at the latest by December 2028;
  - d. for shares ownership in (i) banks under recovery by the Deposit Insurance Agency (Lembaga Penjamin Simpanan - “**LPS**”), (ii) banks in special mention, and (iii) banks in intensive supervision provided that the shareholders must adjust its ownership in accordance with the rules within 20 (twenty) years for banks in recovery with LPS and banks in special mention and 15 (fifteen) years for banks under intensive supervision;
  - e. for shares ownership in merged banks subject to certain terms and conditions.
3. **Foreign Shareholders** – In addition to the obligation to comply with the shares ownership rules and other prevailing regulations regarding controlling shareholders, foreign citizens and/or legal entites domiciled outside Indonesia also have to meet certain requirements among others :
  - a. obtain recommendation from the supervisory authority of its home country; and
  - b. posses certain level of investment rate as follows:
    - (i) 1 (one) notch above the lowest investment rank for shareholders in the form of banks;
    - (ii) 2 (two) notch above the lowest investment rank for shareholders in the form of non-bank financial institutions; and

- (iii) 3 (three) notch above lowest investment rank for shareholders in the form of other legal entities.
4. **Divestment Obligations** – Shareholders own shares more than the shares ownership rules must adjust its ownership within 5 (five) years after the last assessment period or the sale of shares if (as applicable):
- (i) the banks suffer degradation in its level of soundness and/or governance to rank 3 or 4 or 5 in 3 (three) consecutive periods; and
  - (ii) the shareholders voluntarily sell the shares.
5. **Failure to Comply** – Shareholders whom fail to comply with requirements to adjust their shareholding pursuant to the Shareholding Regulation are subject to the following restrictions:
- (i) their voting rights are only for the maximum of permitted percentage pursuant to the Shareholding Regulation; and
  - (ii) payment of dividend for any excess shares owned by the shareholders will be suspended pending compliance to the required adjustment.

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