

New regs on share ownership of commercial banks



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Long awaited by the banking industry, and having gone through a lengthy process within Bank Indonesia (BI) itself, BI finally issued a new regulation on the ownership of commercial banks, as contained in BI Regulation No. 14/8/PBI/2012 regarding the Share Ownership of Commercial Banks on July 13, 2012 (BI Reg 14/2012). BI wanted to make certain that bank owners continue to maintain and implement policies of good corporate governance. In addition, the proposed ASEAN financial integration plan of 2020 will allow banks with certain qualifications to operate freely within ASEAN, forcing Indonesian banks to step up their game. BI considered it necessary to integrate share ownership percentages with bank soundness levels to incentivise investors to not just invest but to also have an interest in maintaining the performance of the banks they own.

With the issuance of BI Reg 14/2012, the maximum percentage of share ownership based on the category of shareholders is:

1. for financial institution shareholders (bank or a non bank), the maximum share ownership is 40 percent of the bank's capital;
2. for non financial institution shareholders, the maximum share ownership is 30 percent; and
3. for individual shareholders of conventional commercial banks, the maximum share ownership is 20 percent of the bank's capital, while for individual shareholders in syariah banks, the maximum share ownership is 25 percent.

Additionally, BI provides that financial institutions in the form of banks may maintain a share ownership percentage exceeding 40 percent of the bank's capital, so long as it is approved by BI, subject to the fulfillment of certain requirements by such shareholder, such as the bank's ability to go public no later than five years after being owned by such financial institution, resulting in at least 20 percent of the bank's capital to be owned by the public.

BI also regulates that banks owned by related parties having an affiliated relationship through ownership in the same bank or a rela-

tionship in the form of an affiliation of up to the second degree, and/or a relationship referred to as 'acting in concert', are deemed by BI as one party, which would be applicable for family owned banks. These share holders will be required to follow the share ownership percentages based on the shareholders category as previously mentioned.

Foreign potential controlling shareholders are required to fulfill the following requirements: (i) committed to support the economic development of Indonesia, (ii) obtain a recommendation letter from the relevant supervisory authority in its home country, and (iii) have the minimum percentage previously explained in points 1 to 3, depending on the form of its investment vehicle.

It is noteworthy to conclude that BI Reg 14/2012 does not specifically limit the ownership of foreign shares in a bank since, in total, foreign parties can still hold up to 99 percent share ownership in an Indonesian bank, to the extent it fulfills the requirements stipulated by BI in this regulation.

It is important to note that BI Reg 14/2012 does not apply retroactively. All existing share ownership in place before July 13, 2012 will remain as is, subject to the bank's soundness level. Until the end of December 2013, shareholders of certain banks will be required to adjust their share ownership percentage to the applicable maximum amount in a period of no more than five years as of January 1, 2014. Shareholders that manage to have their banks maintain the minimum required bank soundness level and/or good corporate governance level as of December 2013, they are allowed to maintain their existing share ownership percentage above the allowed stipulated percentage. However, adjustments are required to be made if that level plummets after three periodical valuations.

Failure to comply with the share ownership limitation provisions of this regulation will cause the shareholder's rights to be limited to the maximum percentage allowed by the regulation, specifically to its voting rights at a General Meeting of Shareholders and also for the payment of dividends.

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