



Indonesia passes new law affecting Insurance businesses

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In brief: Investors in the insurance sector should take note of a number of important new or notable concepts that were introduced in a new law on insurance (the **New Law**) that was passed by the Indonesian Parliament on 23 September 2014. The New Law replaced the now outdated 1992 Insurance Law (the **Old Law**). As well as introducing these new concepts, the New Law also consolidated, to a significant extent, existing regulation and policy.

Key changes

Here is a summary of the key changes introduced by the New Law:

- Delegation of significant authority to the Indonesia Government to make changes to foreign ownership rules going forward.
 - New rules requiring separation of sharia insurance businesses.
 - New Single Presence Policy.
 - New protection of policyholder measures.
 - New concepts of controllers and statutory managers for insurance businesses.
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How does it affect you?

We set out below a more detailed review of the provisions of the New Law:

Types and Forms of Insurance Companies

- The New Law **retains the types of insurance businesses recognised under the Old Law** (and its implementing regulations), being insurance and reinsurance companies operated under either conventional or sharia principles, as well as insurance and reinsurance broker companies, and insurance adjusters.
- The New Law also **retains the separate licensing for general insurance companies** and life insurance companies, as well as the recognised forms of insurance businesses for the private sector, being:
 - Limited liability company;
 - Cooperative; or
 - Mutual business.
- The New Law provides that only mutual businesses in existence at the date of passage of the New Law may continue to operate – **no new mutual businesses will be permitted**. However, the New Law avoided taking the further more controversial step of requiring existing mutual businesses to demutualise.

Ownership of insurance companies

- Ownership of insurance companies must now be either by:
 - (a) an Indonesian individual and/or an Indonesian legal entity which is directly or indirectly fully owned by Indonesian individuals (**Local Party**); or
 - (b) **a Local Party and a foreign insurance company** (or a foreign holding company that has a subsidiary) engaging the same line of business with the insurance company.
- The key change as compared to the Old Law is that the New Law clarifies that **a Local Party must be directly or indirectly wholly owned by Indonesian citizens**. Under the Old Law, a Local Party only needed to be wholly owned by Indonesian citizens and/or Indonesian entities, which allowed an interpretation that foreign parties could still obtain an indirect shareholding in a Local Party further up the line. This would no longer be possible based on the wording in the New Law.
- Foreign individuals may now only acquire shares in Indonesian insurance companies via the **Indonesia Stock Exchange**. This was not previously expressly provided.
- The highly publicised feature of the New Law is that it **does not stipulate a maximum foreign ownership limit**; instead the maximum foreign investment, as well as the criteria for eligible foreign insurance companies who may acquire shares, will be provided for in further government regulations to be issued following consultation between the Parliament and the OJK. It is hoped that this will allow for a measured approach to be taken with respect to foreign ownership limits over time, in light of the continued need for significant capital investment in the sector.

- The current 2008 government regulation that permits foreign insurance companies to acquire up to **80 per cent** of an Indonesian insurer in the same line of insurance business will remain in force until replaced by the new regulations. The New Law requires that insurance companies that are not compliant with the requirements of paragraph (a) above (ie insurance companies that have a Local Party with indirect foreign ownership) shall, **within five years** of the enactment of the New Law, divest its shares to Indonesian individuals or to change its ownership through an Initial Public Offering. The procedure to adjust the ownership, and the sanctions for the insurance companies that do not comply with this requirement, will be regulated by further OJK regulation.

Sharia business

- Sharia business must be conducted in the form of a limited liability company and will **no longer be permitted to be conducted by a unit of an insurer company**.
- Either (i) upon the aggregate of the Tabarru Fund and the Participant's Investment Fund reaching at least 50 per cent of the aggregate of the Insurance Fund¹, Tabarru Fund and Participant's Investment Fund, or (ii) within **10 years** of the enactment of the New Law, insurance companies must spin off existing sharia units to become a limited liability company.

Protection of policyholders

Policyholder guarantee program

- An insurance company is now obliged to participate in the insurance policyholder guarantee program, the implementation of which (and the establishment of the institution) will be regulated under a separate law that will be issued within **three years**. Once that law is issued, the current statutory guarantee fund will no longer be required.
- The guarantee program aims to provide **additional protection for insurance policyholders** to minimise the risks of delay in payment or inability to pay insurance benefits in case of dissolution and liquidation.

Insurance mediation institution

- An insurance company must become a member of the mediation institution that will resolve disputes arising between insurance companies and policyholders. The institution must be independent and impartial and must secure OJK's approval.
- A decision of this institution is to be final and binding.

1. Insurance Fund is collected funds derived from premiums that was formed to meet the obligations arising from policies or from insurance claims.

Controllers and statutory managers

Controller

- **Each insurer must appoint at least one Controller²** and the OJK has authority to determine a second Controller. The concept of a 'Controller' will help the OJK determine the responsible party in the event an insurer fails to meet its obligations to its policyholders, other insurers or its participants (for sharia business), as the Controller is deemed to exercise control over the management of the insurance company.
- A Controller must be registered with the OJK and changes to the Controller must be reported to the OJK. The Controller may not resign or be replaced without obtaining the OJK's approval.
- A Controller shall be responsible for any loss incurred by an insurance company that is caused by a party under his/her control.

2. Controller means a party (personnel or an entity either in the form of legal entity or non-legal entity) that directly or indirectly has the authority to determine and/or control or influence the members of the board of director and the board of commissioners.

Statutory Manager

- The **OJK may appoint a Statutory Manager to take over the management of an insurance company** that either comes under business activity restrictions, is unable to fulfil its obligations, conducts business activities that are not in accordance with prevailing insurance laws, becomes financially unhealthy or facilitates financial crime.
- A Statutory Manager will have significant authority to transfer part or all of an insurance portfolio and to cancel or terminate any agreement that was entered into by the insurance company and which, in the Statutory Manager's view, is unfavourable to the company, the policyholders, the insured or the participant (in the context of sharia).
- The Board of Directors and Board of Commissioners will not have any authority while the insurance company is controlled by a Statutory Manager.

This note is intended to give an overview on the foreign-investment related provisions of the New Law and may not cover all provisions provided in the New Law. Please do not hesitate to contact us if you need more detailed advice, or have specific questions.

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