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RECENT DEVELOPMENTS

Team studying SKK Migas becoming state firm

Jakarta (ANTARA News) - The Indonesian Governance Reform Team of the Energy and Mineral Resources Ministry has been studying the possibility of the oil and gas regulator SKK Migas becoming a state-owned enterprise (SOE).

One of the members of the team, Fahmi Radhy, said that they have been exploring the ideal form for SKK Migas. "We have set a target to come up with recommendations for the ideal status for SKK Migas by the end of this month."

He noted that as an SOE, SKK Migas' function as an oil and gas regulator and supervisor will be dissolved. These tasks will be returned to the ministry of energy and mineral resources.

"SKK Migas will only serve as an operator of the oil and gas business," he added. As an SOE, SKK Migas will be able to carry out business transactions with other companies. Fahmi pointed out two SOE options that SKK Migas can adopt. The first option is to be under state-owned oil and gas company Pertamina, and the second is to form a new state company. As an SOE, SKK Migas will have the task of mapping out the potential for further development of working oil business areas.

"The development scheme suggests that the working business area will first be offered to Pertamina. If Pertamina rejects it, then it will be auctioned to other companies," he added.

The other task that SKK Migas will carry out is to coordinate working areas and selling the state's portion of oil and gas.

Source: http://www.antaranews.com/en/news/97345/team-studying-skk-migass-possibility-of-becoming-state-firm

Divestment obligation in the New Insurance Law

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The Indonesian Parliament passed the New Insurance Law[1] that came into full effect on October 23, 2014, which protects domestic insurance businesses by the creation of tougher provisions for foreign investor ownership and greater regulation of all insurance business companies.

According to Article 7(1) of the New Insurance Law, an insurance business may be established by: (a) Indonesian citizens or legal entities whether entirely, directly or indirectly owned by Indonesian citizens; or (b) Indonesian citizens or legal entities jointly with foreign citizens or legal entities, provided that the foreign legal entity is an insurance company or owns an insurance company.

A limitation on foreign ownership is not specified in the New Insurance Law. Instead, Article 7(3) of the New Insurance Law indicates that further provisions regarding foreign ownership will be provided by implementing regulation to be issued in the future. Until the new regulation is issued, Article 90 provides that previous existing regulations remain valid to the extent they are not inconsistent with the New Insurance Law. Although thee are exceptions, in general, according to Government Regulation No. 39 of 2008 on the Second Amendment to Government Regulation No. 73 of 1992 on Conduct of Insurance Business, at the time of the company's establishment, foreign ownership by way of direct participation in an insurance company is currently limited to 80% (eighty percent). This rule is followed in Presidential Regulation No. 39 of 2014 on the List of Business Fields That Are Closed and Conditionally Open for Investment.

Foreign individuals, however, may only purchase shares in an Indonesian Insurance Company through the stock exchange, pursuant to Article 7(2). Any existing insurance companies with individual foreign shareholders have five years to comply with this requirement by way of a public offering (“IPO”), based on Article 88(1). Existing insurance companies are still waiting for the implementing regulation that will further stipulate specific foreign ownership restrictions (which could be different from the current 80% level) and/or whether current PMA companies in the insurance sector with a higher percentage of foreign ownership will be “grandfathered” so as not to require them

to divest shares. At a minimum, Article 7(1) appears to require that there be a wholly Indonesian owned shareholder, so that existing insurance companies with 100% foreign ownership, even if otherwise grandfathered, would need to obtain an Indonesian shareholder to at least some extent. The ways of divestment cited in the New Insurance Law are via (1) IPO, as mentioned above, and (2) strategic sale.

IPOs allow founders and shareholders to raise capital for the company and create liquidity through a public market in which to convert their shares into cash at a future date. IPOs are an arduous change of management style and have extensive public reporting requirements. Further, a significant number of insurance companies undertaking IPOs at the same time could flood the capital markets with shares, creating a glut in the market, possibly depressing insurance company share prices. As for a strategic sale, the policy of the government seems to be encouraging sale to a local partner who will actively participate in the running of the company.

An interesting alternative not contemplated in the New Insurance Law is divestment by way of an Employee Stock Ownership Plan ("ESOP"), which would effectively make the shares public while enabling the company to exercise considerable control by putting the shares in the hands of select employees. However, such an option would likely be cumbersome and generally unworkable for a twenty percent divestment; an ESOP remains an option only if the divestment is of a smaller magnitude.

Articles 13 and 16 require that one "controller" or "controlling shareholder" (both terms are used) may not control more than one insurance company in the same insurance field (life insurance, general insurance, reinsurance, sharia life insurance, general sharia insurance, and sharia reinsurance). Similar to the banking industry, this "single presence" policy (which applies to both foreign and domestic companies) may have been brought forward at this time to limit the extent that an individual or company can spread themselves too thin by operating several companies, and tries to force them to focus on proper operation of one insurance company in a particular field of business. According to Article 85, an individual or company which is the controller of more than one insurance company in the same insurance field has three (3) years from the date of issuance of the New Insurance Law to comply with this provision.

Article 7(1) of the New Insurance Law in fact stipulates that the Indonesian entity holding the shares must be "directly or indirectly wholly owned by Indonesian nationals", whereas in the previous law, this phrase was slightly different: "wholly owned by Indonesian nationals and/or Indonesian legal entities". The change in phrasing clarifies that only Indonesian legal entities which are wholly directly or indirectly owned by

Indonesian nationals can be an Indonesian shareholder and that a PMA company, although an Indonesian legal entity, would no longer qualify.

As for a strategic sale, the policy of the government may be to encourage sale to a local partner who owns a substantial block of shares and will actively participate in the running of the company. In that case, the New Insurance Law may be an attempt to consolidate the government's intention to push foreign insurance companies to either go public or enter into real partnerships with wholly Indonesian owned entities. With this in mind, there is a fair probability that the implementing regulation which is being prepared will be drafted in this same spirit and that existing foreign insurance companies will be nudged along this path (albeit with possible extensions of grace periods, etc.), meaning that they too could be required to effect a divestment (or dilution) to some extent if their current level of foreign ownership is deemed too high. Nonetheless, speculation continues, as the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan*/OJK) has yet to issue the implementing regulation in this respect.

[1] Law No. 40 of 2014, regarding Insurance ("**New Insurance Law**")