

OJK has finalized domestic cession rules

JAKARTA: The Indonesian Financial Services Authority (Otoritas Jasa Keuangan or OJK) has finalised its set of domestic cession rules that are aimed at "improving and optimising capacity in the country". The new rules are expected to be largely welcomed by industry players after intensive engagement and feedback gathered from the market, said OJK officials. The regulations mandate that an insurance company "must have and implement its own retention for every risk managed in accordance to its own retention limits", said OJK Director of Insurance Supervision, Mr Darul Dimasqy, at the Indonesia Rendezvous in Bali earlier in October.

The OJK highlighted that each insurer must develop and implement a reinsurance support strategy that must be reviewed "at least once a year" and which has to be implemented by 15 January 2016. Any changes in the reinsurance strategy must be submitted to the OJK within 10 days of being made. Under the new rules, motor, health, personal accident, credit, life and surety lines of business still require 100% domestic cession. However, OJK said that "worldwide products" which are "products designed specifically for multinational companies" and "new insurance products whose development is supported by foreign reinsurers" would be exempted.

Mr Dimasqy added that insurers must have automatic reinsurance support, with priority given to domestic reinsurers. This includes automatic reinsurance support for catastrophic risk exposures. However, insurance companies may be exempted from this minimum retention requirement if they have established a catastrophic reserve based on a minimum 250-year return period.

Source: <http://sg-reinsurers.org.sg/indonesian-regulator-ojk-has-finalised-domestic-cession-rules>

Cession reinsurance rules to push local industry to optimize capacity

JAKARTA: More than just reducing the Indonesian insurance industry's balance of payments deficit, compulsory cession rules introduced by the Otoritas Jasa Keuangan (OJK) earlier are aimed at capacity optimisation and essentially intended to encourage the local insurance industry in Indonesia to step up on its risk management efforts and ensure better and more prudent underwriting by local players, said OJK Chief Executive of Non-bank Financial Institutions (NBFI) Firdaus Djaelani at the 21st Indonesia Rendezvous in Bali. Capacity optimisation, he said, is a key part of prudential supervisory and regulatory framework, and such policy stance is considered one of the best practices in other countries that have sought to boost the advancement and development of their respective insurance markets. “As a regulator, we believe that the national insurance industry has the ability to retain greater risks,” he said. But without the “presence of the use of domestic insurance and reinsurance capacity optimisation”, there will be “no effort from the national insurance industry” to grasp the importance of greater risk retention, and hence “their capacity will not be utilised properly”.

Reinsurance cannot be sole risk management strategy

Meanwhile, Indonesia Re President Director Frans Sahusilawane highlighted that while reinsurance may “provide certainty to insurers’ annual budget in the event of big losses”, it still “does not reduce big losses themselves” and most certainly does not “take away the cause of such losses”. Hence, while reinsurance is a useful tool for insurers’ risk management strategy, it is not the only solution and insurers will need to develop a strategy that “finds proper fit of their internal resources and capabilities in line with environment factors and trends”, he said.

Reinsurance outlook

Assessing the global reinsurance industry's future, both Dr Till Bohmer, CEO, Southeast Asia, Munich and Lloyd's Asia Managing Director Kent Chaplin noted that rates would continue to remain under pressure, along with the broadening of contract terms and conditions and low investment yields. While Dr Bohmer expects pressure in the reinsurance market to remain for the time being, he said the market would turn at "some point", triggered by a significant event such as a major Nat CAT event, "bankruptcies of insurers or reinsurers", or a disruption in the financial market that would lead to capital scarcity. The "new normal" of the market would see fewer reinsurers with adapted value propositions. And while there would be "no global 'hard market'", rates would be "technically consistent across the board", he said.

In the face of the multiple challenges, Mr. Chaplin noted there is a need for reinsurers to maintain underwriting discipline "from beginning to end". Additionally, with emerging markets accounting for just 17% of global insurance premiums – which was distinctly inverse to their contribution towards global GDP (40%) – there remain plenty of opportunities to in closing the insurance gap. Meanwhile, Mr. Malcolm Steingold, CEO of Aon Benfield Asia Pacific, said that emerging risks will be the growth engine for insurers in the next decade. Risks such as terrorism, which he classified under the category of being "insurable but not insured enough", are what most industry players are going for and will present good opportunities. However, it is risks such as social media, where insurers face an "insurance design challenge" that will be most exciting and which will allow companies to thrive and remain competitive.

Source: <http://www.meinsurancereview.com/News/View-NewsLetter-Article?id=34107&Type=eDaily>

OJK releases a regulation on the marketing of insurance products

JAKARTA: Earlier this year, the Financial Services Authority (OJK) released a regulation for the non-bank financial sector (IKNB). This time, the OJK released rules relating to the marketing of insurance products and the creation of new products. This POJK was released late last year. There are three main issues that are regulated by POJK No. 23/POJK.05/2015. First, the increasing number of insurance products and diverse ways of marketing can increase the risk faced by insurance companies, the policyholders, the insured or participants. Second, the new regulation pertains to good governance or good corporate governance (GCG) and maintaining healthy insurance practices. Third, improving community access for low income earners as well as supporting the development of micro-insurance.

The OJK released the regulation to detail the obligations of insurance companies so that all companies will have standardized insurance products. This is detailed in Chapter II, Section 3. In general, the OJK requires that insurance companies have appropriate insurance products with the benefits that they promised. In addition, insurance policies should not contain words, phrases or sentences that give rise to different interpretations which could potentially complicate policyholder rights.

Meanwhile, insurance products that have an investment element to them must meet three criteria. Among others, they should have proportional protection against the risk of death and benefits associated with the investment. Second, they should have a set period. Third, there should be a specific investment strategy. The rules of proportional protection against the risk of death and the benefits of further investments will be stipulated in an OJK Circular (SE). Dumoly F. Pardede, the Deputy Commissioner of the OJK Supervisory explained that this POJK will facilitate the insurance industry in issuing products. "They (the insurance company) will find it easier to obtain approval from us for new product releases," said Dumoly.

Source: <http://m.kontan.co.id/news/ojk-rilis-aturan-pemasaran-produk-asuransi>



Personal Data Protection

by Oka Anantajaya, S.H., LL.M
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Indonesia does not have a personal data protection law that specifically regulates the protection of personal data; however, the regulatory regime on personal data protection of individuals does exist in several regulations that are related to matters concerning, among others, population administration, banking and insurance and information technology.

Population Administration Law

Under the Population Administration Law, as amended by Law No. 24 of 2013 (“**Population Law**”), personal data is defined as specific individual data that is stored, treated and whose accuracy and confidentiality shall be protected. Under the Population Law, the state has the obligation to protect the personal data of the population in Indonesia. Other parties who wish to access personal data must obtain an approval from the Minister of Internal Affairs. Any breach of confidentiality or use of personal data is subject to criminal sanctions.

Electronic Information and Transaction Law (“EIT Law”)

Under the Indonesian Electronic Information and Transaction regulatory regime, Law No. 11 of 2008 on Electronic Information and Transactions (“**Law 11/2008**”) and Government Regulation No. 82 of 2012, regarding Implementation of Systems and Electronic Transactions (“**GR 82/2012**”) serve as the legal basis for the protection of Personal Data in IT systems. Unless the law or a regulation provides otherwise, the EIT Law requires the consent of the individual concerned for the use of his private or personal information through an electronic system.

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Banking Law

Pursuant to Bank Indonesia Regulation No. 7/6/PBI/2005, regarding Information Transparency and Clients' Personal Data Usage relating to Banking Products, personal data is defined as the 'standard identity' provided by the customer in order to engage in financial transactions with a Bank.

Recent Developments

Recently, the House of Representatives ("House") has been preparing to enact the Personal Data Protection Bill ("Bill"), and the Bill will be debated in the House for 2016 based on the National Legislation Program (*prolegnas*) for 2016. Based on the Bill made available to us, the Bill has the purpose of ensuring that personal data is properly protected and that the standards of management and transfer of personal data will be regulated. In general, the Bill regulates matters concerning (i) Types of Personal Data and Sensitive Personal Data; (ii) Rights of Personal Data Subjects; (iii) Exemptions of Personal Data Protection; (iv) Obligation of Personal Data Operators; (iv) Use of video-surveillance devices; (v) The Central Information Commission (*Komisi Pusat Informasi*) as the supervising authority for Data Protection matters; (vi) Transfer of Personal Data; and (vii) Direct Marketing.

Conclusion

The foregoing discussion covers personal data protection in Indonesia; however, enforcement is still relatively weak. In addition, the numerous laws and regulations relating to data privacy can lead to ambiguity for companies managing personal data. Therefore, we expect that the bill that is being discussed in the House may soon be passed in order to foster legal certainty as to the regulatory regime concerning personal data.

New Regulation on Self-Retention and Domestic Reinsurance Support

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(with research by Pratiwi Widyastuti, S.H.)

A. Introduction

The Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) issued Regulation No. 14/POJK.05/2015 on Self-Retention and Domestic Reinsurance Support (“**OJK Regulation No. 14**”) on 10 November 2015 which was followed by its implementing regulation being OJK Circular Letter No. 31/SEOJK.05/2015 on Self-Retention Limitation, Portion of Reinsurance Support and Reports on Reinsurance and Retrocession Program (“**OJK Circular Letter No. 31**”). These two regulations will become effective on 1 January 2016. Based on these regulations, all insurance and reinsurance companies, both conventional and sharia ones, must own and implement self-retention for all risk, based on their own self-retention limit, as specified in OJK Circular Letter No. 31.

B. Reinsurance Support

Insurance companies (conventional or sharia) must provide adequate capacity to cover their liabilities with a reinsurance strategy that is in accordance with OJK Regulation No. 14. The first report on how the company will implement the company’s reinsurance strategy must be submitted to the OJK no later than **15 January 2016**, which must at least include the following:

- i. a comprehensive reinsurance policy which takes into account the benefits of diversification and the feasibility of reinsurance party (counterparty);
- ii. an adequate system for selecting and monitoring the reinsurance program;
- iii. a summary of the self-retention formation and its monitoring;
- iv. a person-in-charge for the implementation and oversight of the reinsurance program.

Any change to the reinsurance support strategy must be notified to the OJK within 10 working days from the time of the occurrence of such change.

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C. Reinsurance for Simple Risks

Insurance companies (conventional or sharia) must use 100% domestic reinsurance for coverage that is classed as ‘simple risk’. Certain exceptions to this obligation for general insurance companies (conventional or sharia) are made for products that (i) are global in nature and (ii) are designed for multinational companies.

As for life insurance companies (conventional or sharia), in addition to the previously mentioned two items, an exception is also made for new insurance products whose development is supported by foreign reinsurance companies.^[1]

The limitation of reinsurance support for the above exemptions must have previously been approved by the OJK. However, this is not further specified in OJK Regulation No. 14.

D. Special Provisions

Insurance companies must use a domestic reinsurance company as the leader of the automatic reinsurance panel.

E. Provision for Reinsurance Companies

Reinsurance companies must have an adequate retrocession program, which is secure and supported by a retrocession panel with a BBB or equivalent rating. They must have the pooling capacity to provide support to conventional and sharia insurance companies. They must have an A-Idn rating from an internationally recognized ratings agency, and they must carry out a transfer of technology program to improve the risks management by insurance companies. Furthermore, they must provide service in a timely manner (claim settlement within 20 business days and acceptance or rejection of coverage within 10 business days).

F. Sanctions

Administrative sanctions include warning letters, fines, re-imposition of fit and proper tests for company executives and revocation of the company’s business license.

International Mediation in Singapore



The Singapore International Mediation Centre (SIMC) was established in November 2014 as an independent, not-for-profit institution, following the recommendations of the Working Group on International Commercial Mediation appointed by the Honourable the Chief Justice Sundaresh Menon and the Ministry of Law. Under the guidance of its Board of Directors, which comprises eminent mediators, arbitrators, legal practitioners, in-house counsel and business executives, SIMC provides world-class mediation services and products targeted at the needs of parties in cross-border commercial disputes, particularly those based in Asia.

Arb-Med-Arb

Mediation at SIMC comes with the unique benefit of enforceability through the Arb-Med-Arb Protocol jointly administered by the Singapore International Arbitration Centre (SIAC) and SIMC. Parties who have signed an arbitration agreement and/or have commenced arbitration may wish to refer their dispute to mediation, either before they commence arbitration or in the course of the arbitration. "Arb-Med-Arb" is a process where a dispute is referred to arbitration at SIAC before mediation at SIMC is attempted. If the parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award (*see below*). If the parties are unable to settle their dispute through mediation, they may continue seamlessly with the arbitration proceedings at SIAC.

Consent Award

In the event of settlement at the mediation stage, Parties may request the Arbitral Tribunal to record their settlement in the form of a consent award. The consent award is generally accepted as an arbitral award, and, subject to any local legislation and/or requirements, is generally enforceable in more than 150 countries under the New York Convention.

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Model Clauses

SIMC offers 2 model clauses for use in contracts. They are as follows:

1) SIMC Mediation Clause

All disputes, controversies or differences arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be first referred to mediation in Singapore in accordance with the Mediation Rules of the Singapore International Mediation Centre for the time being in force.

2) The Singapore Arb-Med-Arb Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of _____** arbitrator(s).

The language of the arbitration shall be _____.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre (“SIMC”), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.

* Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace “[Singapore]” with the city and country of choice (e.g., “[City, Country]”).

** State an odd number. Either state one, or state three.

For more information on SIMC's Mediation and Arb-Med-Arb services, please visit www.simc.com.sg or contact us at secretariat@simc.com.sg.

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