

GR 38/2026: New Framework for the Management of State-Owned Enterprises

September 2026

On 21 August 2026, the Government issued Government Regulation No. 38 of 2026 on the Management of State-Owned Enterprises (“**GR 38/2026**”). GR 38/2026 is a key implementing regulation following the recent amendments to the State-Owned Enterprises Law (“**SOE Law**”) and came into effect upon promulgation.

GR 38/2026 introduces a new framework for the management of State-Owned Enterprises, including the allocation of authority between the State-Owned Enterprises Regulatory Agency (*Badan Pengaturan BUMN* or “**BP BUMN**”) and the Daya Anagata Nusantara Investment Management Agency (*Badan Pengelola Investasi Daya Anagata Nusantara* or “**Danantara**”).

GR 38/2026 revokes:

- a. Articles 29 to 43 of Government Regulation No. 43 of 2005 on the Merger, Consolidation, Takeover and Change in the Legal Form of State-Owned Enterprises; and
- b. Government Regulation No. 45 of 2005 on the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises, as amended by Government Regulation No. 23 of 2022.

The following are the salient points under GR 38/2026, focusing on State-Owned Enterprises in the form of limited liability companies (“**SOE**” or “**SOEs**”):

1. Appointment of Directors and Commissioners

GR 38/2026 provides a new mechanism for the appointment and dismissal of members of the Board of Directors and Board of Commissioners of SOEs. Candidates are generally proposed by Danantara and submitted by the Head of BP BUMN to the President for approval before being appointed by the General Meeting of Shareholders.

GR 38/2026 also strengthens eligibility and governance requirements for Directors, including requirements relating to integrity, experience, independence and potential conflicts of interest. Directors must also sign a management contract and an integrity pact before their appointment.

GR 38/2026 further restricts the holding of double-positions that may give rise to conflicts of interest, including positions as members of the Board of Directors or Board of Commissioners of other SOEs, SOE subsidiaries and their subsidiaries, regional-owned enterprises or private companies, as well as certain political, elected or government positions.

2. The “Cut-Loss” Mechanism: Protection for Commercial Decisions

GR 38/2026 explicitly allows SOEs to implement “cut-loss” measures to mitigate greater financial harm from asset or receivables write-offs. Permissible actions, which also apply to SOE subsidiaries, include disposing of assets below book value, writing off assets without a disposal and ceasing the collection of written-off receivables.

To qualify, the implementation of “cut-loss” measures must meet the following criteria:

- Supported by an appropriate analysis prepared by an independent consultant or competent government institution. The analysis shall demonstrate that:
 - a) retaining the asset or receivables would likely yield greater losses;
 - b) any impairment or loss relating to the SOE’s asset subject to the cut-loss is not attributable to any error or negligence of the party undertaking the cut-loss; and
 - c) the party undertaking the cut-loss does not have any direct or indirect conflict of interest in taking any cut-loss action.
- Undertaken in good faith, with prudence, following Good Corporate Governance (GCG) principles and free from personal benefit, fault, negligence or conflicts of interest.

Losses resulting from a cut-loss transaction meeting the above criteria are treated solely as corporate losses of the SOE, provided all statutory conditions are satisfied. This aligns with the SOE Law, which provides that any profit or loss incurred by an SOE constitutes a profit or loss of the SOE itself, not a profit or loss of the State. This principle applies to all financial outcomes arising from the management of an SOE’s assets in the ordinary course of its investment and operational activities.

3. Personal Liability and Protection for Directors and Commissioners

The Business Judgment Rule under the SOE Law is expressly re-emphasized. Under these provisions, members of the Board of Directors and Board of Commissioners are protected from personal liability if they can demonstrate that:

- The loss was not caused by their fault or negligence;
- They performed their respective executive or supervisory duties in good faith, with prudence, and with due care for the best interests of the SOE;
- They maintained no direct or indirect personal interest in the underlying transaction or decision; and
- They took appropriate proactive measures to prevent or mitigate the loss, either through executive action (for Directors) or timely supervisory advice to the Board of Directors (for Commissioners).

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