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Financial Service Authority (OJK) Circular Letter on Fraud Control, Implementation of Anti Fraud Strategy, and Report of Anti Fraud Strategy for Insurance Company, Sharia Insurance Company, Reinsurance Company, Sharia Reinsurance Company, or Sharia Unit

by Galih Adi Prasetya

Insurance Law in Indonesia have reach a new phase since the enactment of Indonesia Law No. 40 of 2014 on Insurance ("**Insurance Law**"). With the Insurance Law, the government has introduced several new features, such as sharia-based insurance companies, a policy guarantee program, and a brief explanation of Financial Service Authority's ("**OJK**") position as the supervisory body on insurance services. As a supervisory body, one of OJK's duty would include to regulate several provisions relating insurance services in Indonesia.

In 2016, OJK has issued OJK Regulation No. 69/POJK.05/2016 on Business Organization of Insurance Company, Sharia Insurance Company, Reinsurance Company, dan Sharia Reinsurance Company ("**Regulation No. 69/2016**") which governed several provisions on conducting insurance services business in Indonesia. The Regulation No.69/2016, has set a new provision on company's duties to have an instrument of fraud control and anti fraud strategy. To support the provision on fraud strategy, OJK issued a Circular Letter No. 46/SEOJK.05/2017 on Fraud Control, Implementation of Anti Fraud Strategy, and Report of Anti Fraud Strategy For Insurance Company, Sharia Insurance Company, Reinsurance Company, Sharia Reinsurance Company, or Sharia Unit ("**Circular Letter No. 46/2017**"). There are several important provisions in OJK Circular Letter No. 46/2017 for insurance/reinsurance company in order to prevent fraud that can lead to negative impact to the company. First, to control the risk of fraud, a company is obliged to conduct the fraud control function and implement the anti fraud strategy in their company. The fraud control function should includes the following aspects: active management supervision (i.e the supervision from Board of Directors and Commissioner on fraud control), organization and accountability (i.e forming a special unit or function on fraud control), controlling and monitoring program (i.e the assessment of fraud control policy), and training and education (i.e internal training on fraud control conducted at least once in a year).

Second, to conduct the anti fraud strategy, a company will be required to implement a strategy that should includes the following aspects such as deterrent (i.e customer and employee awareness program), detection (i.e protection for whistleblower and confidentiality of fraud informant), investigation and sanction (i.e had an investigation and sanction mechanism), evaluation and follow-up (i.e maintenance the data of fraud cases). OJK Circular Letter No. 46/2017 also regulate company's obigation to report their anti fraud strategy to OJK. Such report will be send to OJK through online application or if the application does not available yet, the report should be sent to an e-mail address as stipulated by OJK. If there are any indication that a fraud has created a negative impact to the company, the company should report such fraud to OJK. The report should includes at least name of the suspects, form or type of the violation, violation's scene, short information about the modus of the operation, and loss indication. If the insurance/reinsurance company or sharia unit failed to fullfilled the obligation, administrative sanction pursuant to article 72 of OJK Regulation No. 69/2016 shall prevail.

Implementation of Anti Money Laundering Programs and Prevention of Terrorism Financing in Capital Market Sector

by Ricky Hasiholan

The financial services provider ("FSP") in the capital market sector is highly vulnerable to the possibility of being used as a medium for money laundering and terrorism financing. The FSP in the capital market Sector is possible to become the entrance of assets which are the result of a crime or the terrorism activities funding into the financial system which can further be utilized for interests of criminals.

The development of complexity of financial services and products, including marketing (multi-channel marketing), and the increasing use of information technology in the financial services industry causes the higher the risk of FSP in the capital market sector to be used as a medium of money laundering and/or terrorism financing.

In connection of aforementioned, it is necessary to improve the implementation quality of Anti-Money Laundering and Prevention of Terrorist Financing Programs based on risk based approach in accordance with internationally accepted principles and in line with the national risk assessment (NRA) and sectoral risk assessment (SRA).

To implement the mandate of Article 68 of the Financial Services Authority ("**OJK**") Regulation No. 12/POJK.01/2017 on the Implementation of Anti Money Laundering and Prevention of Terrorism Financing Programs in Financial Services Sector ("**POJK 12/2017**"), OJK issued Circular Letter of OJK No. 47/SEOJK.04/2017 TAHUN 2017 ("**SEOJK 47/2017**") on September 6, 2017.

The Money Laundering Crime can be defined as an act of placing, transferring, paying, spending, donating, entrusting, bringing abroad, exchanging, or other acts of known assets or reasonably suspected to be a result of crime, in order to hide or dis- guising the origins of the assets as if those were legitimate assets.

Whereas, the Terrorism Financing Crime is the use of assets directly or indirectly for terrorist activities, terrorist organizations or terrorists. Terrorism Financing Crime is basically different from Money Laundering Crime, but both have similarities in using financial services as a medium to commit a crime.

In contrast to the Money Laundering Crime which purpose is to disguise the origin of assets, the objective of Terrorism Financing Crime is to assist terrorism activities, either with assets which are the result of a crime or legally acquired assets. To prevent FSP in Capital Market Sector used as Terrorism Financing Crime facility, FSP in Capital Market Sector should apply Anti-Money Laundering and Terrorism Financing Prevention Programs adequately.

Based on the SEOJK 47/2017, the implementation of risk-based Anti-Money Laundering and Terrorism Financing Prevention Programs at least includes a) active supervision on the Board of Directors and Board of Commissioners; b) policies and procedures; c) internal control; d) information management systems; and e) human resources and training.

Property Trading Brokerage Company

by Monica Sonya Ginanti

The Government of Indonesia has issued Regulation of Minister of Trade of Republic of Indonesia Number 51/M-DAG/PER/7/2017 of 2017 on Property Trading Brokerage Company ("**Regulation Number 51/2017**"). The Regulation Number 51/2017 itself revoke the Regulation of Minister of Trade of Republic of Indonesia Number 33/MDAG/PER/8/2008 on Property Trading Brokerage Company as amended by Regulation of Minister of Trade of Republic of Indonesia Number 107/M-DAG/PER/12/2015.

Pursuant to Regulation Number 51/ 2017, property trading brokerage business activities may only be conducted by a domestic capital investment company. Such company may also cooperate with foreign company through franchise system which in accordance with governing law. The property trading brokerage company in conducting its business activities are required to enter into written agreement with the service user which at least contain matters as follows: (i) scope of activities assigned; (ii) property object; (iii) rights and obligations; (iv) value or percentage and gratuity payment method; (v) duration of agreement;and (vi) dispute settlement.

The property trading brokerage company business activities are: (i) property sale and purchase service; (ii) property lease service; (iii) property research and assessment service; (iv) property marketing service; and/or (v) property information dissemination and consultation service. The property trading brokerage company shall have at least 2 (two) experts as evidenced by Property Trading Brokerage Competency Certificate.

Every property trading brokerage company shall have business license issued by Minister of Trade and valid for 5 (five) years. The application for such business license may be submit online to http://sipt.kemendag.go.id. or manually. The required documents to obtain business license for property trading brokerage company are: (i) copy of notarial deed related to the establishment; (ii) statement letter of business entity for individual company; (iii) copy of approval from Minister of Law and Human Rights for cooperation and limited liability company; (iv) list of experts; (v) copy of identity card and taxpayer registration number of owner, executive, and caretaker of property trading brokerage company; (vi) 2 (two) photos of owner, executive, and caretaker of property trading brokerage company size of 4x6m; and (vii) power of attorney signed by owner, executive, and caretaker of property trading brokerage company (if assigned to the third party). At the latest of 3 (three) days after the application submitted, if the documents are fulfilled the requirements then the business license will be issued otherwise it will be denied.

The business license obtained by the property trading brokerage company will affect them to submit business activities report to Directorate General of Domestic Trading once a year. The report shall be submitted at the latest of 31 March for the next year. The Government of Indonesia will give administrative sanction for those who did not comply.

Ministry of Energy and Mineral Resources Regulation Number 48 / 2017

by Devina Rosalia Tantiana

In early August 2017, the Ministry of Energy and Mineral Resources introduced a new regulation no 48/2017 ("**Regulation No 48/2017**"). Such regulation is introduced with the purpose of realising good governance and to improve supervision on companies conducting business activities in energy sectors.

For upstream gas and oil company, Regulation No 48/2017 stipulates that a company who wishes to transfer its rights and duties either in part or in whole is required to get an approval from the Ministry of Energy and Mineral Resources. In case of transfer of shares which may cause a change of control, a company will also require to obtain an approval from the Ministry. Previously, a transfer of shares which may cause in a change of control of a company is permissible if such transfer its done to a company's affiliation. Regulation No 48/2017 have amended this regulation, and a company may now transfer its shares to any unaffiliated company. Furthermore, a change in the composition of board of directors and commissaries in the upstream gas and oil company that previously requires approval from the Ministry of Energy and Mineral Resources is no longer applicable. Thus, supervision in the energy sector is loosen and instead of obtaining an approval from the Ministry, a company is simply to report to the Ministry of such changes.

Similarly, in case of a company in the upstream and downstream sector of oil and gas, in the sector of electricity and renewable energy and in the geothermal sector, a transfer of shares and a change of composition in the board of directors and commissioners will no longer require an approval from the Ministry of Energy and Mineral Resources.

In case of a company who hold a geothermal license, a transfer of shares for a company who is not listed in Indonesian Exchange will now require to report any changes (including a transfer of shares) to Ministry of Energy and Resources through the Directorate General.

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