

New Regulations for Public Companies

by Budi Wibowo



The Financial Services Authority of Republic of Indonesia, also known as the Otoritas Jasa Keuangan (the **OJK**) plans to issue new regulations (the **Draft**) to amend the Regulation No. 614.*

Regulation No. 614 covers, among other things:

- a definition of the term “material transaction” for public companies; and
- rules governing the activities of a public company.

Regulation No. 614 states that any public company that intends to carry out a material transaction, must comply with certain disclosure and administrative obligations.

The Draft, published on the OJK’s website, outlines a number of significant changes to the obligations governing public companies as set out in Regulation No. 614.

The Draft broadens Regulation No. 614’s definition of the term “material transaction” to cover all types of trans-

actions carried out by a public company that falls into the relevant value category. The Draft also imposes an obligation on public companies to obtain the prior approval of independent shareholders for any material transaction that would disturb a public company’s business activities. This is a new and significant step toward holding public companies accountable for their business activities.

Another significant change introduced by the Draft is the application of all obligations relating to material transactions not only to public companies but also to their subsidiaries. The Draft also introduces new transparency requirements for public companies including the obligation to announce material transactions on the company’s website and on the website of the relevant stock exchange. This signifi-

cantly broadens the disclosure obligations of public companies, which under Regulation No. 614, were only required to disclose material transactions in a newspaper.

The Draft includes new penalties for failure to comply. The OJK is currently accepting comments on the Draft.

**The Decree of the Head of the Capital Markets and Financial Services Supervisory Board No. Kep-614/BL/2011 dated 28 November 2011 concerning Material Transactions and Changes to the Main Business Activities of a Public Company, including schedules, Regulation No. IX.E.2.*



Improving Building Standards In Indonesia

by *Yohannes Halim*

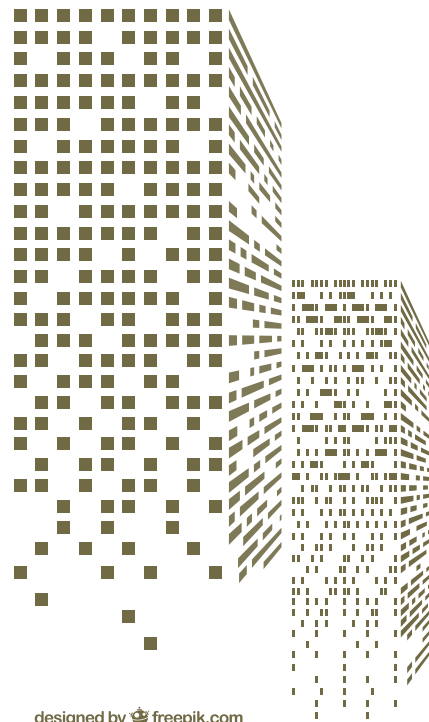
Recently, the Minister for Public Housing and Works passed a new regulation, Regulation 27*, outlining new building standards. The purpose of Regulation 27 is to ensure that buildings in Indonesia are built to strict safety standards. Many buildings in Indonesia do not comply with current standards and Regulation 27 has been passed to introduce clarity into construction standards.

Previous building legislation has basic building classification categories and outlines procedures for obtaining a Building Standards Certificate and for maintenance that are appropriate to each category. Regulation 27 introduces more detailed building classification categories to ensure that new building standards, inspection protocols and the validity of Building Standards Certificates are appropriate for a broader range of buildings.

Regulation 27 introduces building classification based on the complexity of the building, its elevation and its condition. Different building standards and inspection protocols apply depending on the building's classification.

Regulation 27 includes not only technical building standards but also administrative obligations on the owners of the building. Both technical standards and administrative obligations must be complied with in order for the building to be awarded a Building Standards Certificate.

Regulation 27's administrative obligations include that the owner of the building must:



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- have the right to build on the land, evidenced by a deed of ownership or a lease agreement;
- be able to show evidence of ownership by a deed or ownership or a lease agreement; and
- be able to show that they have a right to build the building evidenced by a Building Construction Licence.

Regulation 27's technical building standards include rules on building design, health and safety.

Regulation 27 requires that before a building can be awarded a Building Standards Certificate, an authorized party must carry out a detailed inspection of the building to ensure compliance with the building standards. The validity period of the Building Standards Certificate will depend on the type of building. For example, for residential houses, a Building Standards Certificate will be valid for 20 years with a possible extension for a further 5 years.

Local governments have set aside some funding to cover certain costs associated with awarding the Building Standards Certificates to ensure that every building can be inspected.

**Regulations of the Minister for Public Housing and Works No. 27/PRT/M/2018 Concerning Building Standards Certificates.*

Indonesian Capital Markets: Draft Regulations on Conflicts of Interest

by Dedi Putra

In conducting business, companies will often carry out commercial transactions and related activities with other companies or individuals with which it has a relationship or an affiliation. Recently, the Financial Services Authority of the Republic of Indonesia (**OJK**) has compiled a draft regulation relating to conflicts of interest in corporate transactions of public companies (the **Draft**). The Draft defines “affiliated transactions” as activities or transactions that carried out by public companies with an entity with which it has some form of relationship or affiliation. Affiliation between two entities is defined as:

- a relationship existing between the two entities;
- the same individual holding senior positions in both entities;
- a relationship existing between one of the entities and the majority shareholder of the other entity.

The current position is that, within two days after the completion of an “affiliated transaction” a public company must provide information about that transaction to the public and to the Capital Market Supervisory Board and Financial Institution of Republic of Indonesia (**BAPEPAM LK**). The Draft does away with the current reporting requirement and introduces an obligation for public companies to provide the OJK with a summary of any “affiliated transactions” in its annual report.¹

Further, the Draft introduces an obligation for the board of directors to obtain prior approval for any “affiliated transactions” from the Board of Commissioners. The board of directors must also obtain the opinion of the Audit Committee of the Board of Commissioners on

whether the proposed “affiliated transaction” is a conflict of interest.

The Draft defines a conflict of interest as a difference in the economic interests between the majority shareholder and the independent shareholders.

Consequently, the Draft requires that certain proposed “affiliated transactions” will need to have the prior approval of the independent shareholders in a general shareholders’ meeting. Prior independent shareholder approval is required if the proposed “affiliated transaction”:

- is deemed to be a conflict of interest;
- has a value of at least 20% of the company’s capital², as determined by an expert in capital markets who is registered with the OJK; and
- has the potential to reduce the company’s income by 80% or more.

Any such approval gained during a shareholders’ meeting must be recorded in the form of a notarial deed and is only applicable for one year. If the proposed transaction has not been



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completed within that timeframe, new approval will need to be sought by the company.

The Draft sets out some exceptions to the approval and reporting requirements. Generally, “affiliated transactions” will be exempt from certain reporting/approval requirements if they are required by a court decision.³

It is important to note that the Draft is still just that and the final version, issued by the OJK, will need to be carefully reviewed by interested parties.

¹The summary must include a description of the transaction, the parties involved and the value, among other things.

²Regulation of BAPEPAM LK No. IX.E.2 of 2011 concerning Material Transaction and Amendment of Main Business.

³Article 13 of the Draft.

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