
After Push from the Industry, Government Relaxes the Foreign Ownership Restrictions in Insurance Companies

Previously, recognising the role of foreign insurance companies and foreign investors with their capital, experience and technology, the Indonesian government issued Government Regulation No. 14 of 2018 (“**Regulation 14/2018**”) to allow up to 80% of foreign ownership in a non-publicly listed insurance company. Recently, this allowance was relaxed even further under Government Regulation No. 3 of 2020 (“**Regulation 3/2020**”), which allows a foreign investor to hold more than 80% of the shares of a non-publicly listed insurance company in Indonesia.

Foreign Ownership Limit

Under Regulation 14/2018, foreign citizens and entities were precluded from owning more than 80% (“**Foreign Ownership Limit**”) of the paid-up capital of an insurance company (which covers a non-publicly listed insurance company, Sharia insurance company, reinsurance company, Sharia reinsurance company, insurance brokerage company, reinsurance brokerage company and insurance loss adjuster company). If an insurance company wishes to increase its paid-up capital, at least 20% of the additional paid-up capital must be obtained from an Indonesian entity and/or citizen, or through an initial public offering (“**IPO**”) in Indonesia.

In Regulation 3/2020, this exclusion was clarified and in effect, a non-publicly listed insurance company whose foreign ownership has exceeded the 80% threshold will be exempted from the Foreign Ownership Limit. This means that foreign investors can increase their shareholding in proportion to their existing ownership percentage.

Illustration

In Regulation 14/2018, an insurance company that has exceeded the Foreign Ownership Limit on the date that Regulation 14/2018 came into force may be exempted from the Foreign Ownership Limit provided that its then foreign ownership percentage does not increase. As such, a non-publicly listed insurance company with an 85% foreign shareholding at the date when Regulation 14/2018 came into force may continue to retain that foreign shareholding percentage.

Nevertheless, as Regulation 14/2018 prescribes that at least 20% of the additional paid-up capital must be obtained from an Indonesia legal entity and/or citizen or through an IPO, the foreign shareholders in the said company may subsequently end up holding less than 85% of the share capital post-capitalisation. This is because foreign shareholders are not permitted to subscribe for additional shares in accordance with their existing shareholding percentage pre-capitalisation.

With the introduction of Regulation 3/2020, foreign shareholders may continue to retain their 85% shareholding as at the date the Regulation 3/2020 came into force even after the proposed additional capitalisation, provided that an Indonesian citizen and/or legal entity subscribes for the remaining 15% of the additional capital. If, however, no Indonesian citizens and/or legal entities participate in the capital increase, the capital increase must be conducted through an IPO in Indonesia.

Applicability of the Foreign Ownership Limit

Under Regulation 14/2018, the Foreign Ownership Limit only applied to the insurance companies mentioned above. However, Regulation 3/2020 has expanded the applicability of the Foreign Ownership Limit (and the associated exemptions as set out above) to Sharia insurance companies and Sharia reinsurance companies resulting from a spin-off of a Sharia unit.

By way of illustration, if the Sharia insurance company or Sharia reinsurance company with 88% foreign shareholding has been exempted from the Foreign Ownership Limit, the foreign ownership percentage of the Sharia insurance company or Sharia reinsurance company resulting from a spin-off of a Sharia unit must not exceed 88%.

Conclusion

The enactment of Regulation 3/2020 received a warm welcome from the insurance industry, which has long accepted that development in the industry cannot rely solely on domestic investment. It is hoped that the government's recognition of this fact, and the accommodation made by it to solve the needs of domestic insurance companies will allow the local insurance industry to achieve and continue good sustainability and stability.

Contacts



Ahmad Fikri Assegaf
Partner and Co-Founder

D +62 21 2555 7880
F +62 21 2555 7899
ahmad.asegaf@ahp.id



Indira Yustikania
Partner

D +62 21 2555 7829
F +62 21 2555 7899
indira.yustikania@ahp.id

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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