HHP Law Firm.

Client Alert

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Indonesia: OJK regulation on insurance sharia spin-off finally issued. Questions answered?

In brief

On 11 July this year, the Indonesian Financial Services Authority (**OJK**) issued the long awaited OJK Regulation No. 11 of 2023 on Spin-off of Sharia Units of Insurance Companies and Reinsurance Companies (**OJK Regulation 11**), which replaces the provisions on sharia unit spin-off of insurance and reinsurance companies in OJK Regulation No. 67/POJK.05/2016 on Licensing and Institution of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies (**OJK Regulation 67**).

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The mandate for sharia spin-off ("**Spin-off**") was introduced in October 2014, without any clear guidance on what the process would be. The main question now is, does OJK Regulation 11 answer all of the key questions about the process?

In this client alert, "insurance companies" refers to insurance companies and reinsurance companies. We set out below the key takeaways and a brief summary of OJK Regulation 11.

Key takeaways

- **Greenfield sharia business is no longer available**

  It has been a long standing unwritten policy of OJK not to issue new business licenses for sharia insurance businesses. OJK Regulation 11 makes it official that new licenses for sharia insurance businesses will only be available for companies established for the purpose of a Spin-off.

  We view this as one of the efforts to push the compliance with the Spin-off requirements as well as a reflection of OJK's intention to avoid fragmentation of the market. This means that potential new investors will need to structure their investment in the sharia segment through acquisition of existing sharia insurance businesses.

- **Deadline is now extended**

  OJK Regulation 11 extends the deadline to complete a Spin-off from 17 October 2024 to 31 December 2026. So affected insurance business players now have additional time to formulate a plan and strategy to comply with this requirement.

  OJK Regulation 11 shortens the timeline for insurance companies to complete the portfolio transfer process after obtaining OJK's approval for a Spin-off – from 12 months under OJK Regulation 67, to only six months. While six months should be sufficient to complete the portfolio transfer process, it would be advisable to have a robust spin-off plan available when submitting the request for approval for the Spin-off to OJK.

- **OJK is now able to instruct a specific company to implement a Spin-off**

  Regardless of the requirement to conduct a Spin-off (i.e., spin-off is required once the value of the '*tabarru*' funds and participation investment funds reach a certain amount) – OJK Regulation 11 authorizes OJK to mandate insurance companies to perform a Spin-off for the purpose of consolidation of sharia insurance business players. However, it is not clear in OJK Regulation 11 how this will be implemented – including in which scenario insurance companies might become subject to such a mandate from OJK. We suspect that OJK may issue an implementing regulation to provide more guidance on this.

Other matters to note

- **Incentives to boost compliance**

  In addition to extending the deadline – OJK Regulation 11 offers additional incentives in order to boost compliance with the Spin-off requirements, including the following:

  - Group synergy

    OJK Regulation 11 provides that the newly established companies that receive spun-off sharia portfolios from other companies may synergize with other insurance companies within the same ownership structure in information and technology, facilities, as well as human resources aspects for the purpose of developing the sharia business.

    Presumably, this refers to a shared services arrangement or group support arrangement to provide some transitional support to the newly established companies.

    There is also no further guidance under OJK Regulation 11 on how this group synergy should be implemented – especially to answer various key practical questions such as the permitted type of support and maximum period for the arrangements.

  - Exemption from minimum capital requirement

    We understand that one of the common hurdles for insurance companies to comply with the Spin-off requirement is to meet the minimum paid-up capital requirement for the newly established companies.

    OJK now provides an exemption for newly established companies that receive a spun-off sharia portfolio from another company to comply with the minimum paid-up capital requirement for sharia insurance (IDR 100 billion) and sharia reinsurance (IDR 175 billion). It remains to be seen whether this exemption will only apply for a certain period after the establishment (i.e., the spun-off company will need to comply with the minimum capital requirement after a period) or will apply permanently.

    For the avoidance of doubt, companies still need to fulfill the minimum equity requirement for sharia insurance (IDR 100 billion) and sharia reinsurance (IDR 200 billion).

- **Notification to policyholders**

  UnderOJK Regulation 67, as part of the Spin-off process, insurance companies were required to make an announcement on the Spin-off plan to the policyholders and participants (to kick-start the process), and another announcement to the policyholders and insurance or reinsurance participants within 20 business days after OJK issued the sharia business license

  OJK Regulation 11 provides a similar announcement requirement (revoking the relevant provisions of OJK Regulation 67). However, unlike OJK Regulation 67 which provides a clear timeframe for the announcements, there is no clear timeframe under OJK Regulation 11 on when the announcements must be made by the insurance companies.

- **Other pratical questions**

  It remains to be seen how OJK will address the various practical questions that usually come up in the Spin-off process (e.g., whether transferred insurance products and distribution agreements will need to be re-approved by the OJK).

Actions to consider

While there are still practical questions and uncertainty following its issuance, OJK Regulation 11 is expected to boost the level of compliance with the Spin-off requirement.

The management teams of insurance companies are advised to consider OJK Regulation 11 and promptly amend their business plans if they are required to spin off their sharia business units. Prospective investors in insurance companies should note that OJK Regulation 11 does not eliminate the possibility of insurance companies retaining their sharia portfolio by establishing new sharia insurance companies. It also remains to be seen whether there will be implementing regulations of OJK Regulation 11.

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