

Repurchase Agreement Transactions: New Guidelines for Financial Services Institutions

by Athalia Devina



The Indonesian Financial Services Authority (“OJK”) enacted OJK Regulation No. 9/POJK.04/2015 entitled Guidelines on Transactions in Repurchase Agreements (repo) for Financial Services Institutions (“OJK Regulation No. 9/POJK.04/2015”) on June 25, 2015. OJK Regulation No. 9/POJK.04/2015 will come into force on January 1, 2016. As stipulated in the consideration section, OJK Regulation No. 9/POJK.04/2015 was enacted in order to improve the regulation and supervision of transactions in repurchase agreements that are conducted by financial services institutions.

Article 3 of OJK Regulation No. 9/POJK.04/2015 stipulates that every repo transaction leading to a change of ownership of securities is mandatory. Securities that are transferred as substitutes or to maintain margins in repo transactions leading to a change of ownership of securities are mandatory. In the event of default in repo transactions, the parties must complete their obligations in accordance with the procedure for completion in the event of default and pursuant to the rights and obligations as stipulated in the repo transaction agreement.

It is mandatory for every repo transaction to be based on a written agreement. That written agreement must contain at least the following provisions: (a) transfer of the right of ownership of securities; (b) the obligation to adjust the value of securities with mark to market; (c) the initial margin and/or haircut of securities in repo transactions; (d) margin maintenance including substitutes for securities margins; (e) the rights and obligations of the parties; (f) what counts as an event of default; (g) the procedure for completion in the event of default and the following rights and obligations; (h) is regulated by the laws of the Republic of Indonesia; (i) the position of the financial service institution as an agent or actant for itself; and (j) the confirmation procedure of a repo transaction and/or material amendment regarding that repo

transaction. It is mandatory for any written agreement to be in the form of a Global Master Repurchase Agreement (GMRA) issued by the OJK or other parties recognized by the OJK. Any financial services institution conducting repo transactions has the following obligations: (a) to maintain bookkeeping and records, as well as having adequate documentation of repo transactions conducted by the financial services institution; (b) to ensure accounting treatment in the financial statements of the financial services institution in accordance with Financial Accounting Standards; and (c) to record the identities of the parties in repo transactions correctly.

Financial services institutions that can act as agents of repo transactions are only those that become participants in the settlement system of Bank Indonesia and or the central securities depository. In the case of financial services institutions acting as agents of repo transactions for their clients, financial services institutions must: (a) obtain authorization from the clients to do repo transactions on behalf of the clients; (b) record the identities of customers who conduct repo transactions and convey this to the counter party of the repo transactions; (c) record the identities of the counter party of the repo transaction and convey this to the clients; and (d) make periodic reports as agreed in the agreement to the clients that include information on repo transactions conducted on behalf of the clients.

Financial services institutions who conduct repo transactions on debt securities must report repo transactions to the OJK through the beneficiary of securities transaction reports. The deadline and procedures for submission of reports is subject to the prevailing laws and regulations. Financial services institutions who conduct repo transactions on equity securities must report repo transactions to the OJK through the beneficiary of securities transaction reports. The report must be submitted no later than the next business day after the repo transaction has occurred.

Without prejudice to the criminal provisions in the capital markets sector, the OJK is authorized to impose administrative sanctions against any person who violates the provisions of OJK Regulation No. 9/POJK.04/2015, including the parties which lead to violations in the form of: (a) a written warning; (b) a fine or obligation to pay a certain amount of money; (c) restrictions on business activities; (d) freezing of business activities; (e) revocation of business license; (f) cancellation of the agreement; and (g) cancellation of registration. In addition to administrative sanctions, the OJK can perform a specific action against any person who violates the provisions of OJK Regulation No. 9/POJK.04/2015.

Pension Fund Investment: New Restrictions and Regulations

by Sandra Indriani

The successful implementation of pension plans requires that the management of pension fund investments be conducted in a healthy and proper manner, by maintaining the maturity balance between investments and obligations. With this objective, the Financial Services Authority (“OJK”) recently published regulation No. 3/POJK.05/2015 regarding Pension Fund Investment (“OJK Regulation No. 3/POJK.05/2015”) to further implement Law No. 11 Year 1992 on Pension Funds (“Pension Fund Law”).

OJK Regulation No. 3/POJK.05/2015 specifies the placement of pension funds in investment vehicles in the form of: the type of savings investment, call deposits, time deposits, and certificates of deposit at the bank, securities issued by Bank Indonesia, government securities, shares listed on the Indonesian stock exchange, corporate bonds (obligations) listed on the Indonesian stock exchange, money market mutual funds, fixed income funds, mixed funds, equity funds, protected mutual funds, guaranteed mutual funds, index mutual funds, mutual funds in the form of a contract for collective investment funds limited, mutual funds of which shares or units of participation are traded on the Indonesian stock exchange, medium term notes, asset-backed securities, real estate investment funds in the form of collective investment contracts, option contracts and security futures contracts traded on the Indonesian stock exchange, repurchase agreements, direct investments both in Indonesia and abroad, land in Indonesia, and/or building in Indonesia.

The placement of each type of investment is further restricted to some extent by OJK Regulation No. 3/POJK.05/2015. Such restriction concerns mainly the maximum amount of pension fund placed in each type of investment vehicle along with its concomitant requirements. In addition, OJK Regulation No. 3/POJK.05/2015 also permits pension funds to be placed in Sharia-compliant investment vehicles as mentioned above.

Furthermore, the OJK regulates the obligations and prohibitions of Pension Fund. It is necessary to define the term ‘Pension Fund’ here. Pursuant to Article 1 of OJK Regulation No. 3/POJK.05/2015, Pension Fund is a legal entity that manages and runs programs that promise pension benefits as stipulated in the Pension Fund Law. In other words, Pension Fund is a legal entity of pension funds manager. Pension Fund is prohibited from either per-



forming any derivative transaction or having any derivative instrument, with some exceptions to the provisions, whereby certain deviance relating to such prohibition must be reported to the OJK. OJK Regulation No. 3/POJK.05/2015 also covers the minimum qualification each Pension Fund manager must possess.

There are two types of Pension Fund based on the provider. The first one is provided by the employer (*Dana Pensiun Pemberi Kerja* or “DPPK”), and the other is provided by a bank or life insurance company (*Dana Pensiun Lembaga Keuangan* or “DPLK”). Both the DPPK and the DPLK are generally regulated by similar provisions, but with regard to the DPPK, OJK Regulation No. 3/POJK.05/2015 stipulates more specific provisions regarding investment direction, management of fund investment, and transfer of DPPK management.

To ensure the management of Pension Fund is properly monitored, Pension Fund is obligated to submit to the OJK annual investment reports along with the results of their examination by public accountants. In addition, each Pension Fund is obliged to ensure that the evaluation of investment performance and transparency of investment management are implemented.

Failure to comply with OJK Regulation No. 3/POJK.05/2015 results in administrative sanction in the form of a written warning. A Pension Fund which is still unable to meet these requirements after receiving a third written warning can be sanctioned by termination of investment management, reduction in the level of risk assessment, fit and proper revaluation for the supervisory board, the management, and/or the executive, and/or a written order for the founders of the Pension Fund to discharge the supervisory board, the management, and/or the executive.

Amendment to OJK Regulation regarding Billing Procedures for the Administrative Sanction of Fines in the Financial Services Sector

by Vinton Rasil Taris

On 30 April 2015, the Financial Services Authority (*Otoritas Jasa Keuangan* or "OJK") issued OJK Regulation No. 7/POJK.04/2015 ("**OJK Regulation No. 7/POJK.04/2015**") regarding the Amendment of OJK Regulation No. 4/POJK.04/2014 ("**OJK Regulation No. 4/POJK.04/2014**") on the Billing Procedures for the Administrative Sanction of Fines in the Financial Services Sector. The purpose of the issuance of OJK Regulation No. 7/POJK.04/2015 is to increase the effectivity of fines billing procedures. Three articles have been amended: Article 4 regarding the payment obligation, and Articles 5 and 9 regarding the billing and handling of bad debt.

OJK Regulation No. 4/POJK.04/2014 provides the legal framework for the OJK to conduct billing for all parties who are in contravention of the law in the financial service sector. However, since the regulation was enacted on 1 April 2014, there were some provisions that had yet to be implemented, especially the provision relating to the procedure of payment on the administrative sanction of fines for commercial banks, through the debiting accounts of commercial banks at Bank Indonesia, for the benefit of the OJK. Therefore, OJK Regulation No. 7/POJK.04/2015 stipulates that the payment of fines shall be done by depositing the fine amount into the OJK's account or other payment method determined by the OJK, as governed in the Article 3 of the regulation (OJK Regulation No. 4/POJK.04/2014 as amended by OJK Regulation No. 7/POJK.04/2015). The new regulation entails also the repeal of Article 4 (2) of OJK Regulation No. 4/POJK.04/2014.



In order to provide legal certainty in respect of bad debt caused by the fine sanction and/or interest in relation to the filing of an objection to the sanction, OJK Regulation No. 7/POJK.04/2015 determines that the debt accrued from the fines shall be categorized as a bad debt of the OJK, commencing 1 (one) year subsequent to the expiration of the period of payment specified in the fine's letter or objection response letter issued by the OJK. The purpose of this provision is also for harmonizing the regulation with Article 13 (1) OJK Regulation No. 3/POJK.02/2014 regarding OJK levies procedure.

In the practice of capital markets, a fines sanction is often imposed on the listed company for a number of offences. For example, offences caused by a delay to file periodic reports, a delay in the announcement of information that must be disclosed by the company, and other cases of other infringement in the field of capital market law.