BANKING, FINANCE & PROJECT

Investing in Indonesia? Major Regulatory Update for Venture Capital Companies

Indonesia's financial regulator, the OJK (*Otoritas Jasa Keuangan*), has recently issued new rules for non-bank financial companies, including those involved in financing, infrastructure, and venture capital. These rules, outlined in OJK Regulation No. 46 of 2024 on Development and Strengthening of Financing Companies, Infrastructure Financing Companies, and Venture Capital Companies ("**New Regulation**"), are designed to strengthen and develop these crucial sectors.

The New Regulation, effective from 31 December 2024, replaces, amongst others, OJK Regulation No. 34/POJK.05/2015 on Business Licensing and Institution of Venture Capital Companies ("**Previous Regulation**") and brings significant changes for companies like financing institutions, venture capital companies, microfinance companies, and other financial services institutions (collectively known as *Perusahaan Modal Ventura dan Lembaga Jasa Keuangan Lainnya* or PMVL).

At its core, the New Regulation brings the regulatory framework up to date with the evolving financial landscape. The OJK is aiming to support growth in these industries while ensuring they operate safely and transparently, in line with the broader goals of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector.

In this client alert, we will focus specifically on the changes impacting venture capital companies. One key update is the introduction of clear guidelines for separating or spinning off Sharia-compliant business units. We will also discuss the stricter requirements for operations, compliance, and governance, all aimed at enhancing safety and transparency.

Establishing and Structuring Venture Capital Companies

The New Regulation has streamlined the requirements for establishing and structuring venture capital companies in Indonesia. Previously, venture capital companies can be established as limited liability companies, cooperatives, or limited partnerships. This has now been narrowed, with the New Regulation restricting eligible structures to limited liability companies and cooperatives.

Moving to ownership, the New Regulation expands the range of eligible owners for venture capital companies. Previously, ownership was limited to Indonesian citizens, Indonesian legal entities, foreign business entities or institutions, the Indonesian government, and regional governments. Now, notably, foreign citizens are also permitted to own venture capital companies.

However, this expansion comes with specific conditions:

1. Foreign legal entities can only participate through partnerships with the Indonesian government regional governments, Indonesian citizens, or Indonesian legal entities.

2. Foreign citizens can only acquire ownership through capital market transactions.

It is important to note that further details on foreign ownership will be provided in forthcoming government regulations. Until those are issued, the following provisions under the New Regulation apply:

1. The existing 85% maximum foreign ownership limit stipulated in both the Previous Regulation and New Regulation does not apply to companies licensed before the New Regulation, as long as there is no change of ownership.

2. This limit also does not apply to publicly traded venture capital companies.

3. The limit can be exceeded if additional capital from foreign shareholders is needed to meet financial requirements (e.g. gearing ratio, equity to paid-up capital ratio) or address liquidity issues.

4. If a change of ownership results in the limit being exceeded, companies have up to three years to adjust their structure in accordance with the adjustment plan approved by the OJK.

In addition to these ownership enhancements, the New Regulation also simplifies and strengthens the requirements for the establishment and initial operations of venture capital companies.

1. **Minimum Equity Requirement:** The New Regulation simplifies the minimum equity requirements for venture capital companies. Previously, the required capital varied depending on the company's legal structure. Now, all venture capital companies, whether limited liability companies or cooperatives, must maintain a minimum paid-up capital of IDR50 billion.

2. **Commencement of Business Activity:** Venture capital companies must begin operations within six months of receiving their business licence. This requirement, along with the need to report the commencement of activities to the OJK within 10 business days, existed in the Previous Regulation. However, the New Regulation adds a critical provision—the OJK now has the authority to revoke a company's licence if business activities do not commence within the six-month timeframe. This underscores the importance of timely operational readiness.

Increased Disclosure and Regulatory Scrutiny

Beyond ownership, the New Regulation places a stronger emphasis on transparency. Venture capital companies must now identify and disclose their controlling shareholders and beneficial owners, and report any changes in beneficial ownership to the OJK within 10 business days.

Furthermore, the OJK has also tightened the rules for changes in ownership. Now, companies must follow a more detailed process, which includes providing specific documents, adhering to stricter reporting rules, and meeting new minimum paid-up capital requirements. This is particularly relevant for companies that were already licensed before the New Regulation came into effect. Moreover, if a change in ownership results in a new controlling shareholder, the OJK will conduct a fit and proper test on the candidate. The application for ownership change must then be submitted together with the fit and proper test application.

Operational and Governance Enhancements

To ensure greater accountability and efficiency, the New Regulation strengthens the operational and governance framework for venture capital companies. One key change pertains to the organisational structure. Venture capital companies are now required to establish a more comprehensive structure that fulfils the specific functions mandated by the OJK. These functions, which must be determined by the board of directors, include administration and accounting, marketing, financing analysis and collection, compliance, prevention of financial crimes (including funding for weapons proliferation), information system management, consumer complaint services, fraud control, and financial literacy and inclusion. Furthermore, to ensure effective implementation, these functions must be supported by a robust data processing system that provides accurate, current, and reliable information for decision-making.

In addition to organisational structure, the New Regulation also modifies the process for employing foreign workers. While the New Regulation still allows venture capital companies to employ foreign workers provided that knowledge transfer occurs, there is now a stricter approval process. First, companies must now obtain the OJK's approval before seeking approval from the relevant labour authorities. This is a major departure from the Previous Regulation, which only required notification of the proposed employment of foreign workers to the OJK. Moreover, the plan to employ foreign workers must also now be included in the company's business plan.

Sharia Business Unit Spin-Off

The New Regulation introduces significant changes to the requirement for venture capital companies in the form of limited liability companies to spin-off their Sharia business units. Previously, a spin-off was mandatory when the Sharia business unit's assets reached 50% of the parent company's total assets, based on the last monthly report to the OJK.

Now, the spin-off criteria are more specific:

1. The Sharia business unit's equity must reach at least IDR50 billion for venture capital corporations or IDR25 billion for venture debt corporations.

2. The Sharia business unit's assets must reach 50% of the parent company's total assets, based on the latest annual financial statement audited by a public accountant.

At the same time, the New Regulation provides greater flexibility in the spin-off process. Companies can now either establish a new Sharia limited liability venture capital company or transfer the Sharia business unit's portfolio to an existing, licensed Sharia limited liability venture capital company. This new option offers a more streamlined approach compared to the Previous Regulation.

Strengthened Compliance and Enforcement

The OJK has significantly expanded its enforcement powers under the New Regulation, introducing a wider range of sanctions for non-compliance. This reflects a more proactive approach to ensuring venture capital companies adhere to regulatory standards.

Previously, the OJK could impose warnings, suspend business activities, or revoke licences, typically in a progressive manner. However, the New Regulation provides the OJK with greater flexibility and a broader range of enforcement tools.

The new sanctions include:

1. Written warnings

2. Suspension of some or all business activities

3. Restriction of specific business activities

4. Downgrading risk level assessment result

5. Revocation of business licence approvals

6. Prohibition from holding key positions (controlling shareholder, board member, etc.)

7. Administrative fines

8. Revocation of Sharia business unit licences

Notably, the OJK can now impose more severe sanctions, such as fines or licence revocations, without necessarily issuing a prior warning. This empowers the OJK to take swift action in response to serious violations, enhancing regulatory effectiveness.

Key Takeaways

The New Regulation introduces comprehensive guidelines aimed at fostering growth in Indonesia's venture capital sector while prioritising transparency and accountability. These changes are designed to strengthen the industry and maintain market integrity.

It is crucial to note that while the OJK has issued a circular letter on fit and proper tests for PMVL, other implementing regulations are still forthcoming. Venture capital companies should closely monitor the future OJK circular letters for further guidance.

Looking ahead, all venture capital companies, both existing and new, must prioritise understanding and complying with the new regulatory framework. This includes reviewing and updating corporate documentation to ensure compliance with requirements regarding ownership, minimum paid-up capital, organisational structure, and other governance standards. Additionally, careful attention should be paid to the upcoming issuance of government regulations on foreign ownership, which will significantly impact foreign investment in the sector.

Contacts

BANKING, FINANCE & PROJECT

Ahmad Fikri Assegaf

CO-FOUNDER & SENIOR PARTNER

D +62 21 2555 7880
ahmad.assegaf@ahp.id

Indira Yustikania

PARTNER

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

Ismail Muhammad

SENIOR ASSOCIATE

D +62 21 2555 7828
ismail.muhammad@ahp.id

Contribution Note

This Legal Update is contributed by the Contact Partners listed above, with the assistance of **Fabrian Iman Laksmono Simorangkir** (Associate, Assegaf Hamzah & Partners).

Please feel free to also contact Knowledge Management at RTApublications@rajahtann.com.

Regional Contacts

Cambodia

Rajah & Tann Sok & Heng Law Office

T +855 23 963 112 | +855 23 963 113
kh.rajahtannasia.com

China

Rajah & Tann Singapore LLP
Representative Offices

Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820

Shenzhen Representative Office
T +86 755 8898 0230
cn.rajahtannasia.com

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

Lao PDR

Rajah & Tann (Laos) Co., Ltd.

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

Malaysia

Christopher & Lee Ong

T +603 2273 1919
F +603 2273 8310
www.christopherleeong.com

Myanmar

Rajah & Tann Myanmar Company Limited

T +951 9253750
mm.rajahtannasia.com

Philippines

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8248 5250
www.cagatlaw.com

Singapore

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

Thailand

Rajah & Tann (Thailand) Limited

T +66 2656 1991
F +66 2656 0833
th.rajahtannasia.com

Vietnam

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127 | +84 24 3267 6128
vn.rajahtannasia.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

Our Regional Presence

Based in Indonesia, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally, and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.