

## OJK Moves to Regulate Trustee Agreement for Debt Securities or Sukuk



In late April this year, OJK issued Regulation No. 20/POJK.04/2020 on Trustee Agreement for Debt Securities or Sukuk, to regulate trustees in debt securities and sukuk issuance. This regulation revokes and replaces Bapepam-LK Regulation No. VI.C.4 on the General Provisions and Trustee Agreement for Debt Securities.

The key points of the new regulation are as follows:

### **Due diligence on issuer**

The new regulation retains the old regulation's requirement for a trustee to perform due diligence on an issuer before signing a trustee agreement. However, the new regulation requires such due diligence to also cover due diligence on assets that constitute the basis of the sukuk issuance.

### **Replacement of trustee**

The old regulation allows an issuer to replace the trustee in an issuance if, among others, the trustee has its business license revoked by the OJK or if the trustee's business activities are suspended, or its registration cancelled.

The new regulation expands these reasons by adding a 'catch-all' provision that allows an issuer to replace the trustee if that trustee no longer complies with the trustee requirements based on prevailing laws and regulations. As a result, a trustee may still be replaced even if it still holds its business license and is carrying out its ordinary business activities.

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## **Profit sharing, margin and reward**

Under the old regulation, payment of the interests of debt securities must comply with the following provisions:

1. the payment agent must inform the interest that must be paid by the issuer;
2. the payment agent must pay the interest agreed in the trustee agreement;
3. the trustee agreement must include the terms relating to the rate, schedule, calculation, and method to pay the interest; and
4. the issuer may be deemed to be in default if it fails to pay interest.

Under the new regulation, all the above provisions on interests are now also applicable to the payment of profit sharing, margin and reward of debt securities and sukuk.

## **Termination of duties and obligations of the trustee**

The conditions for termination of duties and obligations of a trustee under the old regulation still apply. However, the new regulation allows the duties and obligations of a trustee to be terminated if the debt securities or sukuk has been fully converted into shares. This addition is intended to regulate convertible debt securities and sukuk, which were not regulated under the old regulation.

## **Amendment to use of proceeds**

Under the old regulation, an amendment to use of proceeds must first be approved by the trustee. Under the new regulation, the issuer is no longer required to obtain the trustee's prior approval to amend the use of proceeds. Now, the issuer can simply amend the use of proceeds by informing the OJK of the amendment and obtaining the approval from the general meeting of securities holders.

## **The quorum for a general meeting of debt securities and/or sukuk holders**

While the old regulation allows an issuer to hold up to three general meetings of shareholders for a meeting held for any other purpose other than to amend a trustee agreement, the new regulation allows an issuer to hold up to four meetings. The attendance and resolution quorums for the fourth meeting will be stipulated by the OJK based on a request from the trustee.

## **Force majeure**

Under the new regulation, an underwriting agreement must now include provisions on force majeure.

## **Conclusion**

In general, the new regulation was issued to keep up with the developing debt securities and sukuk market in Indonesia. Although most of the requirements for a trustee agreement remains unchanged, the regulation does introduce several notable changes.

Trustee agreements that have been executed and submitted to the OJK as part of the issuer's registration statement for the issuance of debt securities and sukuk prior to 23 April 2020 remain subject to the old regulation.

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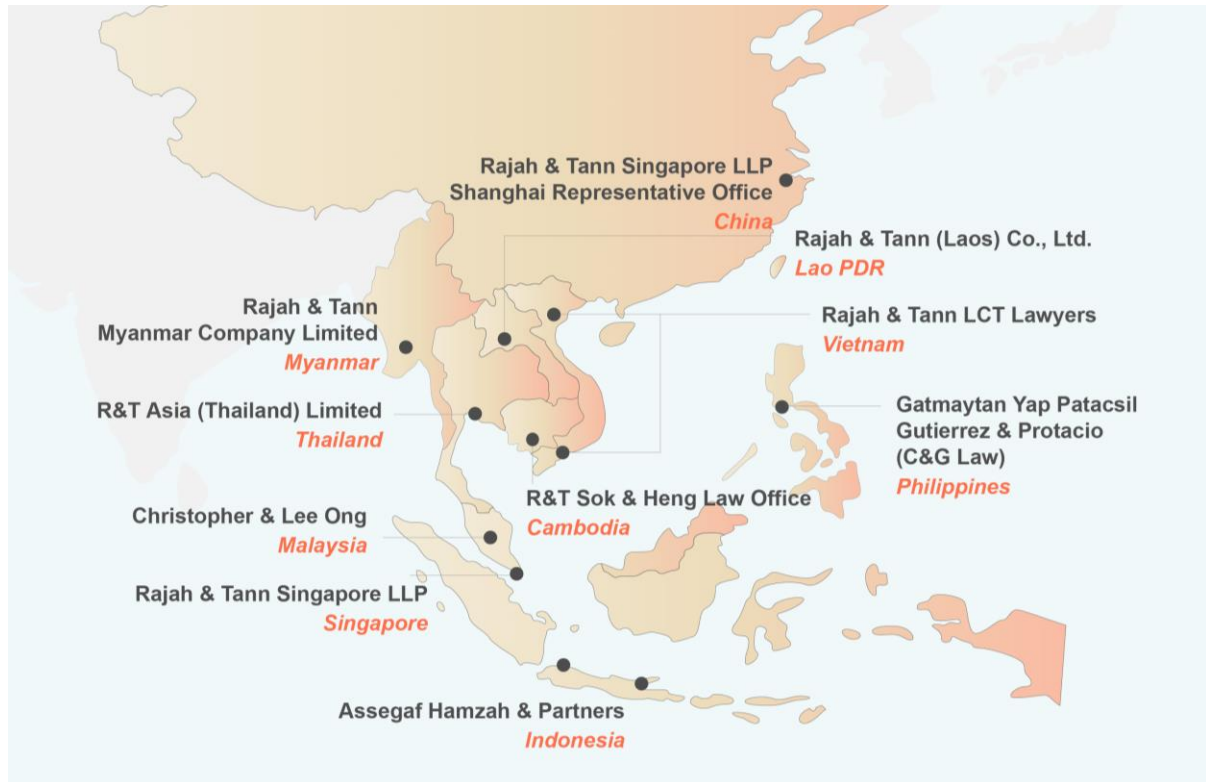
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