



New BAPEPAM-LK Affiliated Transaction and Conflict of Interest of Certain Transaction Rule: More Flexibility For Arm's Length Affiliated Transactions

Just before the closing of the year 2008, BAPEPAM introduced a new Conflict of Interest Rule (Rule IX.E.1) that can be considered as a total makeover of the previous Rule.

The most significant change introduced by the new Rule is that there is no longer a requirement to obtain independent shareholders approval for a related party transactions that is conducted at fair value. Independent shareholders need only to vote when the price in the related party transaction is determined unfairly and may cause losses to the Company.

This move marked significant shift of BAPEPAM-LK's view on related party transaction. It is quite obvious that this change is a response from mounting concern voiced by public companies for quite some time due to extremely broad and overly simplistic definition of conflict of interest transaction in the old Rule that covered just about any type of transactions without regard to the size and effect to the public company. The old approach, had sometimes prevented companies in conducting transaction with their affiliates albeit the benefit of the transaction to the public companies concerned.

With the new approach, BAPEPAM-LK seems to draw a distinction between "good" and "not so good" related party transactions. The "good" related party transaction will not require independent shareholders vote and the "not so good" related party transaction can only proceed after approval from independent shareholders is obtained.

Under the New Rule, the "good" related party transaction is known as "Affiliated Transaction" that is defined in the Rule as transaction between a public company ("**Issuer**") and its affiliates where affiliates is defined broadly from family to corporate relationship.

The "not so good" related party transaction is defined in the Rule as "Conflict of Interest Transaction" that is a transaction where there is a difference between the economic interest of the company and personal economic interest of its Director, Commissioner, and Majority Shareholders of the company which may cause losses to the company due to unfair price determination.

❖ Affiliated Transaction

All Affiliated Transaction will not require independent shareholders approval, except the “not so good” related party transaction. However, to proceed with the transaction an issuer must first obtain fairness opinion from independent appraiser and discharge the transaction to BAPEPAM-LK, and to the public within 2 business days after the date of transaction. Such announcement must contain:

1. Description of the transaction, namely the object, value, identities of the parties involved and their relationship with the Issuer, and the nature of the Affiliate relationship with the Issuer;
2. A summary of the appraisal report, which includes information on the identity of the party, object of the appraisal, purpose of such valuation, assumption, method of valuation, and conclusion;
3. A description of the background and consideration of the Transaction compared to other similar Transaction which is not conducted with affiliated parties (if any);
4. Issuer’s plan, Issuer information, and other information;
5. Statement from the Board of Commissioner and Board of Directors stating that material information have been disclosed and not misleading; and
6. Summary from expert or other independent consultant (if necessary).

Certain Affiliated Transactions are exempted from the above requirements as described in the preceding paragraph, namely:

1. The use of facilities provided by the Issuer or company(ies) controlled by the Issuer (“**Controlled Company**”) by commissioners, directors, or majority shareholders who are also employees, provided that such usage are directly relevant with their responsibilities within the Issuer, is in accordance with the Issuer’s policy, and has been approved by the General Meeting of Shareholders;
2. Any transaction (i) between the Issuer and its employees, directors, or commissioners, (ii) between the Issuer and the employees, directors, or commissioners of the Controlled Company, (iii) between the Controlled Company and the Issuer’s employees, directors, or commissioners, or (iv) between the Controlled Company and its employees, directors, or commissioners, provided that such transaction has been approved by the General Meeting of Shareholders. This also includes all benefits provided by the Issuer or Controlled Company to its employees, directors, or commissioners with the same terms and in accordance with the Issuer’s policy;
3. Remuneration, including salary, pension fund contribution, and/or special benefits granted to commissioners, directors, and majority shareholders who are also employees, if such total amount has been disclosed in the annual financial statement.

❖ **Conflict of Interest Transaction**

A 'Conflict of Interest Transaction' is a transaction conducted by an Issuer or Controlled Company, where there is a conflict between the economic interest of a director, commissioner, or majority shareholder of the Issuer with the Issuer's which may cause losses to the company due to unfair price determination. A Conflict of Interest Transaction must first be approved by the independent shareholders in a General Meeting of Shareholders. Such approval is not required for the following transactions:

- (a) Transactions which have a continuous nature and have been conducted prior to the Issuer's public offering, and the relationship of the parties within the transaction has been disclosed in the public offering prospectus.
- (b) Transactions of a continuous nature which commences after the public offering which has fulfilled the requirements of the new Rule, provided that the terms and conditions of the transaction will not add losses to the Issuer;
- (c) Any sale conducted by the Issuer through open auction;
- (d) The usage of facilities provided by the Issuer or Controlled Company by commissioners, directors, or majority shareholders who are also employees, provided that such usage are directly relevant with their responsibilities within the Issuer, is in accordance with the Issuer's policy, and has been approved by the General Meeting of Shareholders.
- (e) Any transaction (i) between the Issuer and its employees, directors, or commissioners, (ii) between the Issuer and the employees, directors, or commissioners of the Controlled Company, (iii) between the Controlled Company and the Issuer's employees, directors, or commissioners, or (iv) between the Controlled Company and its employees, directors, or commissioners, provided that such transaction has been approved by the General Meeting of Shareholders. This also includes all benefits provided by the Issuer or Controlled Company to its employees, directors, or commissioners with the same terms and in accordance with the Issuer's policy;
- (f) Remuneration, including salary, pension fund contribution, and/or special benefits granted to commissioners, directors, and majority shareholders who are also employees, if such total amount has been disclosed in the annual financial statement;
- (g) Transactions conducted by the Issuer, which value does not exceed both 0.5% of the paid up capital provided that such 0,5% of the paid up capital does not exceed Rp 5 billion; and/or
- (h) Transactions which are conducted in compliance with the law or court judgment.

In the new Rule, the following are the disclosure requirements for Conflict of Interest Transactions:

- (a) The information on the Conflict of Interest transaction shall be disclosed in accordance with BAPEPAM Rule No. IX.J.1, i.e. 28 days prior to the General Meeting of Shareholders, excluding invitation date and announcement date. The information of the transaction shall covers, at least the following:
 - (i) description on the Affiliated Transaction, among others: object of the transaction, the value of the transaction, name of the parties involved in the transaction and their relationship with the Issuer, and nature of the Affiliates;

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- (ii) summary of appraisal report, which includes information on the identity of the party, object of the appraisal, purpose of such valuation, assumption, method of valuation, and conclusion;
 - (iii) date, time, and place of the General Meeting of Shareholders;
 - (iv) mechanism of General Meeting of Shareholders;
 - (v) consideration and background of the Transaction compared to other similar Transaction which is not conducted with affiliated parties (if any);
 - (vi) Issuer's plan, Issuer information, and other information;
 - (vii) statement from the Board of Commissioner and Board of Directors stating that material information have been disclosed and not misleading; and
 - (viii) summary from expert or other independent consultant (if necessary).
- (b) The Issuer shall submit the following documents to BAPEPAM-LK:
- (i) information on the transaction;
 - (ii) appraisal report;
 - (iii) information on the acquired or disposed company;
 - (iv) statement from the Board of Directors and Board of Commissioner stating that the information have been disclosed and not misleading; and
 - (v) summary of the expert report.
- (c) Any additional information shall be published no later than 2 business days prior to the General Meeting of Shareholders.

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