

Type: REGULATION (PER)  
By: CHAIRPERSON OF THE BOARD OF COMMISSIONERS OF  
FINANCIAL SERVICE AUTHORITY  
Number: 27/POJK.03/2016  
Date: JULY 22, 2016 (JAKARTA)  
Title: FIT AND PROPER TEST FOR PRIMARY PARTY OF FINANCIAL  
SERVICE INSTITUTION

BY THE GRACE OF THE ALMIGHTY GOD

THE BOARD OF COMMISSIONERS OF FINANCIAL SERVICE AUTHORITY,

Considering:

- a. whereas in the framework of creating sound Financial Service Institution, protecting the stakeholders and improving compliance with laws and regulations, it requires the implementation of good governance in Financial Service Institution;
- b. whereas to realize good governance, Financial Service Institution must be owned and managed by a party that complies, at all times with fit and proper requirements;
- c. whereas to support the realization of prime licensing, it is necessary to have faster, accurate, easy and transparent licensing services;
- d. whereas by the transfer of authority in regulation and supervision of Financial Service Institution to Financial Service Authority, harmonization of provisions governing Fit and Proper Test is required;
- e. whereas based on the considerations as referred to in letter a, letter b, letter c and letter d, it is necessary to stipulate a Regulation of Financial Service Authority regarding Fit and Proper Test for Financial Service Institution;

In view of:

1. Law Number [7 Year 1992](#) regarding Banking (State Gazette of the Republic of Indonesia Year 1992 Number 31, Supplement to the State Gazette of the Republic of Indonesia Number 3472) as has been amended by Law Number [10 Year 1998](#) (State Gazette of the Republic of Indonesia Year 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790);
2. Law Number [11 Year 1992](#) regarding Pension Fund (State Gazette of the Republic of Indonesia Year 1992 Number 37, Supplement to the State Gazette of the Republic of Indonesia Number 3477);

3. Law Number [8 Year 1995](#) regarding Capital Market (State Gazette of the Republic of Indonesia Year 1995 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number 3608);
4. Law Number [21 Year 2008](#) regarding Sharia Banking (State Gazette of the Republic of Indonesia Year 2008 Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4867);
5. Law Number [21 Year 2011](#) regarding Financial Service Authority (State Gazette of the Republic of Indonesia Year 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253);
6. Law Number [40 Year 2014](#) regarding Insurance (State Gazette of the Republic of Indonesia Year 2014 Number 337; Supplement to the State Gazette of the Republic of Indonesia Number 5618);
7. Law Number [1 Year 2016](#) regarding Guarantee (State Gazette of the Republic of Indonesia Year 2016 Number 9; Supplement to the State Gazette of the Republic of Indonesia Number 5835);

HAS DECIDED:

To stipulate: REGULATION OF FINANCIAL SERVICE AUTHORITY REGARDING FIT AND PROPER TEST FOR PRIMARY PARTY OF FINANCIAL SERVICE INSTITUTION.

## CHAPTER I GENERAL PROVISION

### Article 1

In this Regulation of Financial Services Authority, referred to as:

1. Financial Service Institution, hereinafter abbreviated to LJK, shall be Financial Service Institution as referred to in Law Number 21 Year 2011 regarding Financial Service Authority that includes:
  - a. Bank namely bank as referred to in Law Number 7 Year 1992 regarding Banking as has been amended by Law Number 10 Year 1998 and Law Number 21 Year 2008 regarding Sharia Banking, including branch office and representative office of a bank that is domiciled in overseas;
  - b. Securities Company namely a party that carries out business activities as Securities Underwriter, Broker-Dealer, and/or Investment Manager as referred to in Law Number 8 Year 1995 regarding Capital Market;
  - c. Investment Advisor namely a company that provides advices to other party regarding sale or purchase of shares by obtaining fees as referred to in Government Regulation Number 45 Year 1995 regarding Organization of Activities in the Capital Market Sector;
  - d. Insurance Company namely an insurance company, sharia insurance company, reinsurance company, sharia reinsurance company, insurance broker firm, reinsurance broker firm, and insurance loss appraisal

company as referred to in Law Number 40 Year 2014 regarding Insurance;

- e. Pension Fund namely a legal entity that manages and implements program which guarantees pension benefit guarantee program, as referred to in Law Number 11 Year 1992 regarding Pension Fund, including those conducting all of its business activities based on sharia principles;
  - f. Financing Company namely a business entity that carries out financing activities for the procurement of goods and/or services, including those conducting all of its business activities based on sharia principles as referred to in laws and regulations regarding Financing Company and Sharia Financing Company;
  - g. Guarantee Institution namely guarantee company, sharia guarantee company, re-guarantee company, and sharia re-guarantee company that carry out guarantee activities as referred to in Law Number 1 Year 2016 regarding Guarantee;
  - h. Venture Capital Firm, hereinafter abbreviated to PMV, shall be a business entity that carries out Venture Capital Business including those that carry out all of its business activities based on sharia principles as referred to in laws and regulations regarding Venture Capital Firm and Sharia Venture Capital Firm;
  - i. Fiduciary Service Company shall be a private fiduciary service and state-owned fiduciary service company including those carrying out their business activities based on sharia principles as referred to in laws and regulations regarding fiduciary service business.
- 2. Primary Party shall be a party that owns, manages, supervises, and/or has significant influence in LJK.
  - 3. Controlling Shareholder, hereinafter abbreviated to PSP, shall be a legal entity, individual, and/or business group that owns shares or their equivalent in LJK and has the capability to exercise control over LJK.
  - 4. General Meeting of Shareholders, hereinafter abbreviated to RUPS, shall be the general meeting of shareholders as referred to in Law Number 40 Year 2007 regarding Limited Liability Company for LJK incorporated as limited liability company or its equivalent for LJK incorporated as cooperative, joint venture, Pension Fund, public company, regional company, regional public company, or regional liability company, or limited partnership business entity.
  - 5. Board of Directors shall be the Board of Directors as referred to in Law Number 40 Year 2007 regarding Limited Liability Company for LJK incorporated as limited liability company or its equivalent for LJK incorporated as cooperative, joint venture, Pension Fund, public company, regional company, regional public company, regional liability company, limited partnership business entity, or branch office/representative office of a bank that is domiciled in overseas.
  - 6. Board of Commissioners shall be the Board of Commissioners as referred to in Law Number 40 Year 2007 regarding Limited Liability Company for LJK incorporated as limited liability company or its equivalent for LJK incorporated

as cooperative, joint venture, Pension Fund, public company, regional company, regional public company, regional liability company, limited partnership business entity, or branch office of a bank that is domiciled in overseas.

7. Sharia Supervisory Board shall be supervisor recommended by the National Sharia Council, Indonesian Ulema Council and assigned in LJK or sharia unit that has the duty to supervise business activities of the company to ensure its compliance with sharia principles.
8. Insurance Company Controller shall be a party that has the capability, directly or indirectly, to designate the Board of Directors and Board of Commissioners, and/or influence the action of the Board of Directors, Board of Commissioners in Insurance Company.
9. Control shall be an action that is aimed to influence in any way the company management and/or policies, including in LJK, whether directly or indirectly.
10. Internal Auditor shall be an official in Insurance Company that is responsible to evaluate and improve the effectiveness of risk management, control, and company governance process and working independently in accordance with the applicable practice standard.
11. Company Actuary shall be an official in insurance company, sharia insurance company, reinsurance company, and sharia reinsurance company that is appointed and responsible to manage the financial impacts of risks faced by the company and working independently in accordance with the applicable practice standard.
12. Financial Service Authority hereinafter abbreviated to OJK shall be Financial Service Authority as referred to in Law Number 21 Year 2011 regarding Financial Service Authority.

## Article 2

- (1) Candidate Primary Party shall be obliged to obtain approval from OJK before taking any actions and performing any duties and functions as Primary Party.
- (2) Primary Party as referred to in paragraph (1) shall include:
  - a. for Bank:
    - 1) PSP;
    - 2) member of the Board of Directors; and
    - 3) member of the Board of Commissioners.
  - b. for Securities Company:
    - 1) PSP;
    - 2) member of the Board of Directors; and
    - 3) member of the Board of Commissioners.
  - c. for Investment Advisor:
    - 1) PSP;
    - 2) member of the Board of Directors; and

- 3) member of the Board of Commissioners.
- d. for Insurance Company:
    - 1) Insurance Company Controller;
    - 2) member of the Board of Directors;
    - 3) member of the Board of Commissioners;
    - 4) member of Sharia Supervisory Board;
    - 5) Internal Auditor; and
    - 6) Company Actuary.
  - e. for Employer's Pension Fund:
    - 1) member of the Board of Directors;
    - 2) member of the Board of Commissioners; and
    - 3) member of Sharia Supervisory Board.
  - f. for Financial Institution Pension Fund:
    - 1) the board acting executive; and
    - 2) member of Sharia Supervisory Board.
  - g. for Financing Company, Guarantee Institution, PMV, and Fiduciary Service Company:
    - 1) PSP;
    - 2) member of the Board of Directors;
    - 3) member of the Board of Commissioners; and
    - 4) member of Sharia Supervisory Board.
- (3) Candidate PSP or candidate Insurance Company Controller which is a shareholder and has not been approved by OJK shall be prohibited to act as PSP or Insurance Company Controller notwithstanding its share ownership in LJK.
  - (4) Candidate member of the Board of Directors, candidate member of the Board of Commissioners and/or candidate member of Sharia Supervisory Board that have not been approved by OJK shall be prohibited to take any actions, perform any duties and functions as member of the Board of Directors, member of the Board of Commissioners, or member of Sharia Supervisory Board of LJK although they have obtained approval from and appointed by RUPS.

### Article 3

In the framework of granting approval as referred to in Article 2, OJK shall carry out Fit and Proper Test on candidate Primary Party.

## CHAPTER II FACTORS IN FIT AND PROPER TEST

### Article 4

Fit and Proper Test shall be carried out to assess whether the candidate Primary Party as referred to in Article 2 meets the following requirements:

- a. integrity and financial feasibility, for candidate PSP or candidate Insurance Company Controller that is a shareholder;
- b. integrity and financial reputation, for candidate Insurance Company Controller that is not constitute a shareholder;
- c. integrity, financial reputation and competency, for other than candidate PSP or candidate Insurance Company Controller.

#### Article 5

Integrity requirements as referred to in Article 4 letter a, letter b, and letter c, shall include:

- a. capable of taking legal acts;
- b. having good characters and morals, shown at least by their conduct of complying with the applicable provisions, including never been punished for proven to have committed any criminal act within a particular period prior to their nomination;
- c. having commitment to comply with laws and regulations and support the policies of OJK;
- d. having commitment to the development of sound LJK; and
- e. not named as a party that is prohibited to become Primary Party.

#### Article 6

Financial reputation requirements as referred to in Article 4 letter b and letter c shall be proven with, at least:

- a. not having bad loan and/or financing; and
- b. never been declared bankrupt and/or never served as shareholder, Insurance Company Controller that is not a shareholder, member of the Board of Directors, or member of the Board of Commissioners that is declared guilty for causing a company to be declared bankrupt within the last 5 (five) years prior to their nomination.

#### Article 7

Financial feasibility requirement as referred to in Article 4 letter a shall be proven, at least, by:

- a. having financial reputation as referred to in Article 6;
- b. having financial capacity that may support the business development of LJK; and
- c. having commitment to take any necessary efforts when LJK is faced with financial difficulties.

## Article 8

Competency requirement as referred to in Article 4 letter c shall include, at least, knowledge and/or experience that may support the management of LJK.

## CHAPTER III FIT AND PROPER TEST PROCEDURES

### Part One General

## Article 9

Candidate Primary Party that is undergoing:

- a. legal proceeding;
- b. Fit and Proper Test process in OJK; and/or
- c. re-assessment process due to an indication of problem related to their integrity, financial feasibility, financial reputation, and/or competency in one LJK,

shall not be nominated to participate in Fit and Proper Test to become Primary Party.

## Article 10

- (1) Application to obtain approval to become Primary Party shall be submitted by:
  - a. candidate owner, founder or member of the Board of Directors of LJK in the event of application for permit for the establishment of LJK; or
  - b. member of the Board of Directors of LJK, in the event that LJK has obtained business permit;completed with administrative requirement documents.
- (2) LJK must submit list of fulfillment of administrative requirements to OJK that is signed by:
  - a. candidate owner, founder, or LJK authorized official in the event of application for permit for the establishment of LJK; or
  - b. LJK authorized official, in the event that LJK has obtained business permit.
- (3) Submission of application and/or administrative requirement documents shall be made through electronic facility in the event that provisions governing such matter have been applied.
- (4) OJK may return the application as referred to in paragraph (1) if the administrative requirement documents are not complete.
- (5) LJK may nominate a specific number of candidate Primary Party for every position that it intends to nominate.

#### Article 11

- (1) In the event that all or majority shares of LJK are owned by the central government or institution which by Law is given the duty to carry out restructuring of LJK, application to obtain approval to become member of the Board of Directors or member of the Board of Commissioners of LJK concerned may be submitted by the agency that represents the central government or institution.
- (2) In the event that candidate PSP intends to purchase the shares of LJK for the purpose of temporary capital inclusion by the institution that is given the duty by Law to carry out restructuring of LJK, application to obtain approval to become PSP may be submitted by the institution.

#### Article 12

In the event that member of the Board of Directors of LJK as referred to in Article 10 paragraph (1) is not able to perform his function or has conflict of interest, application shall be submitted by:

- a. other member of the Board of Directors that has no conflict of interest;
- b. member of the Board of Commissioners if all members of the Board of Directors are not able to perform their functions or have conflict of interests; or
- c. other party that is appointed by RUPS if all members of the Board of Directors or members of the Board of Commissioners are not able to perform their functions or have conflict of interests.

#### Part Two

#### Fit and Proper Test Procedures for Candidate PSP and Candidate Insurance Company Controller

#### Article 13

- (1) Fit and Proper Test for candidate PSP and candidate Insurance Company Controller shall be carried out through administrative assessment.
- (2) In the framework of administrative assessment as referred to in paragraph (1), candidate PSP, and candidate Insurance Company Controller must perform presentation or explanation, at least, regarding:
  - a. plan of candidate PSP, and candidate Insurance Company Controller for the development of LJK that it wishes to own and/or control; and
  - b. strategy of candidate PSP, and candidate Insurance Company Controller in the event that LJK that it wishes to own and/or control experiences financial difficulties.

#### Article 14

In the event that candidate PSP, or candidate Insurance Company Controller is the central government or regional government, presentation or explanation as referred to in Article 13 shall be only carried out if deems necessary.



## Article 15

- (1) In the event that candidate PSP, and candidate Insurance Company Controller is in the form of legal entity, Fit and Proper Test on such legal entity shall be carried out by assessing the relevant legal entity, member of the Board of Directors, and member of the Board of Commissioners of the relevant legal entity, and parties whose based on the assessment of Financial Service Authority are the ultimate shareholder.
- (2) In the event that the ultimate shareholder is the Government of another country, and the law in the relevant country does not allow the ultimate shareholder to provide any data and documents, OJK shall determine another ultimate shareholder that is directly controlled by the Government of such another country based on valid supporting documents as the substitute of ultimate shareholder of the Government of such another country.
- (3) Party as referred to in paragraph (1) and paragraph (2) must deliver administrative requirement documents.
- (4) In addition to the party as referred to in paragraph (1) and paragraph (2), OJK may determine another party whose based on the assessment of OJK exercises Control, to deliver administrative requirement documents.
- (5) Result of Fit and Proper Test on the party as referred to in paragraph (1), paragraph (2) and paragraph (4) shall be an integral unit of the result of Fit and Proper Test on the legal entity as referred to in paragraph (1).

## Part Three

### Fit and Proper Test Procedures for Primary

### Parties Other Than Candidate PSP and Candidate Insurance Company Controller

## Article 16

Fit and Proper Test on candidate Primary Party other than candidate PSP and candidate Insurance Company Controller shall be carried out by OJK through administrative assessment.

## Article 17

- (1) LJK must first carry out self-assessment on candidate Primary Party other than candidate PSP and candidate Insurance Company Controller prior to their nomination to OJK, related to:
  - a. the fulfillment of requirements as referred to in Article 4 letter c; and
  - b. the fulfillment of requirements in accordance with laws and regulations.
- (2) Result of self-assessment as referred to in paragraph (1) shall be delivered to OJK at the submission of application.

## Article 18

- (1) In the framework of administrative assessment as referred to in Article 16, OJK may seek clarification from candidate Primary Party.

- (2) Clarification as referred to in paragraph (1) shall be sought in the following event:
- a. there is negative information regarding candidate Primary Party;
  - b. candidate Primary Party has no experience in LJK in Indonesia that is relevant to the position that it wishes to assume and consideration on the position, size, complexity, and/or problems of LJK where the concerned will be nominated; and/or
  - c. candidate Primary Party has been determined as not approved in the previous nomination.

Part Four  
Suspension of Fit and Proper Test

Article 19

- (1) OJK shall suspend the Fit and Proper Test of candidate Primary Party of LJK if the candidate undergoes:
- a. legal proceeding;
  - b. Fit and Proper Test process; and/or
  - c. re-assessment process due to an indication of problem on integrity, financial feasibility, financial reputation, and/or competency in an LJK.
- (2) Suspension as referred to in paragraph (1) shall be notified in writing to LJK.

Article 20

Candidate Primary Party whose Fit and Proper Test is suspended by OJK, may be re-nominated to OJK to become Primary Party if the concerned has completed the process as referred to in Article 19 paragraph (1).

CHAPTER IV  
RESULT OF FIT AND PROPER TEST

Article 21

- (1) OJK shall determine the result of Fit and Proper Test as follows:
- a. approved; or
  - b. not approved.
- (2) Period for the determination of result of Fit and Proper Test as referred to in paragraph (1) shall be maximum 30 (thirty) business days as from the complete receipt of all application documents.
- (3) In the event that Fit and Proper Test process of candidate Primary Party is carried out at the application for permit for the establishment, merger and/or consolidation of LJK, OJK shall provide determination of result of Fit and Proper Test within the period in accordance with regulation governing grant of permit for the establishment, merger, and/or consolidation of LJK.

- (4) OJK shall notify the result of Fit and Proper Test as referred to in paragraph (1) in writing to LJK.
- (5) In addition to LJK as referred to in paragraph (4), OJK may also notify the result of Fit and Proper Test to other interested party in the framework of implementation of the function, duty, and authority of OJK or as required by laws and regulations.

#### Article 22

- (1) For candidate PSP that is not approved by OJK, but it is already a shareholder of LJK:
  - a. shall be obliged to transfer its shareholding in the relevant LJK and shall not exercise control; and
  - b. its rights as shareholder in the relevant LJK shall be restricted.
- (2) LJK shall be obliged to report the transfer of shareholding as referred to in paragraph (1) letter a to OJK by referring to applicable laws and regulations governing reporting on amendment to articles of association related to the change of ownership in the respective financial services sector.
- (3) In the event that no laws and regulations governing reporting on amendment to articles of association related to the change of ownership as referred to in paragraph (2) are available, LJK shall be obliged to report the transfer of shareholding by no later than 7 (seven) business days after RUPS approves the transfer of shareholding.

#### Article 23

LJK shall be obliged to include explanation on the status of shareholder as referred to in Article 22 in:

- a. the list of shareholders of LJK; and
- b. the report published by LJK.

#### Article 24

- (1) OJK may determine party that is not allowed to accept transfer of shares as referred to in Article 22 paragraph (1).
- (2) In the event that transfer of shareholding is to the party that is not allowed to accept the transfer of shares as referred to in paragraph (1):
  - a. the transfer shall not be considered as transfer of ownership as referred to in Article 22 paragraph (1);
  - b. LJK shall be prohibited to register the party so accepting the transfer in the list of shareholders of LJK; and
  - c. the party so accepting the transfer shall not obtain its rights as shareholder.

## Article 25

- (1) Approval of OJK on candidate Primary Party other than candidate PSP, and candidate Insurance Company Controller shall become null and void if no appointment to candidate Primary Party has been approved by OJK within particular period.
- (2) LJK shall be obliged to report the appointment as referred to in paragraph (1) by referring to the applicable regulation governing reporting on the change of Primary Party in the respective financial services sector.
- (3) In the event that no regulation governing reporting on the change of Primary Party as referred to in paragraph (2) is available, LJK shall be obliged to report the appointment of Primary Party by no later than 7 (seven) business days following the appointment.

## Article 26

- (1) For candidate member of the Board of Directors, candidate member of the Board of Commissioners, and/or candidate member of Sharia Supervisory Board that is not approved by OJK, but has been appointed as member of the Board of Directors or member of the Board of Commissioners, LJK must hold RUPS to cancel their appointment.
- (2) LJK must report the RUPS for cancellation as referred to in paragraph (1) to OJK by referring to the applicable regulation governing reporting on the change of Primary Party in the respective financial services sector.
- (3) In the event that no regulation governing reporting on the change of Primary Party as referred to in paragraph (2) is available, LJK shall be obliged to report the change of Primary Party by no later than 7 (seven) business days after RUPS cancels the appointment of member of the Board of Directors or candidate member of the Board of Commissioners.

## Article 27

- (1) Candidate Primary Party other than candidate PSP and candidate Insurance Company Controller that is not approved as referred to in Article 21 paragraph (1) letter b may be re-nominated to OJK at the soonest within 6 (six) months as from the date of determination stating that it is Not Approved from OJK.
- (2) In the event that candidate Primary Party as referred to in paragraph (1) is not approved due to competency requirements, therefore, the relevant candidate may be nominated before the 6 (six) month period ends in:
  - a. different area of position at equal or lower level in the same LJK;
  - b. a position in similar LJK that has lower size and complexity; or
  - c. a position in different LJK.
- (3) Re-nomination of candidate Primary Party that is not approved due to competency requirements as referred to in paragraph (1) must be completed with supporting documents to prove that the re-nominated candidate has improved his competency.

## Article 28

- (1) OJK shall cancel the approval as referred to in Article 21 paragraph (1) letter a, if following the grant of approval:
  - a. it is known that the information or documents submitted in the Fit and Proper Test process are incorrect and therefore do not meet the requirements; and/or
  - b. there is information obtained from other authority causing the party that has been approved to not meeting the requirements.
- (2) Provisions as referred to in Article 2 paragraph (3) and Article 22 shall apply to PSP whose approval is cancelled as referred to in paragraph (1).
- (3) Provisions as referred to in Article 2 paragraph (4) and Article 26 shall apply to member of the Board of Directors, member of the Board of Commissioners and/or member of Sharia Supervisory Board whose approval is cancelled as referred to in paragraph (1).

## CHAPTER V FIT AND PROPER TEST FOR PRIMARY PARTY OF FINANCIAL SERVICE INSTITUTION UNDER RESTRUCTURING/MANAGEMENT AND PRIMARY PARTY OF THE BANK THAT IS USED AS RESOLUTION FACILITY

### Article 29

OJK shall stipulate different Fit and Proper Test procedures for Primary Party in:

- a. LJK under restructuring/management by an institution or agency that has the authority to carry out restructuring/management of LJK; and
- b. Bank that is used as resolution facility as set forth in Law Number 9 Year 2016 regarding Prevention and Management of Crisis in Financial System.

## CHAPTER VI MISCELLANEOUS PROVISION

### Article 30

- (1) Bank shall be obliged to report its plan to change the structure of business group related to the Bank including legal entity of the owner of the Bank up to the ultimate shareholders to OJK by no later than 1 (one) month prior to the occurrence of such change.
- (2) In the event that the change of structure of business group as referred to in paragraph (1) according to the assessment of OJK causes change in the Bank's controller or if according to the assessment of OJK the Bank has a controller, Bank shall be obliged to propose candidate PSP to undergo Fit and Proper Test by OJK.

- (3) Fit and Proper Test on the Bank's controller due to change of structure of business group as referred to in paragraph (2) shall be an integral part of the Fit and Proper Test on business group.
- (4) OJK shall have the authority to reject the change of the Bank's controller in the event that based on assessment of OJK, such change in the Bank's controller may cause or there is an indication that it may hamper the implementation of supervision of the Bank.

## CHAPTER VII SANCTION

### Article 31

- (1) LJK and/or Primary Party that violate the provisions as referred to in Article 2 paragraph (1), Article 2 paragraph (3), Article 2 paragraph (4), Article 22, Article 23, Article 24 paragraph (2) letter b, Article 25 paragraph (2), Article 25 paragraph (3), Article 26 paragraph (1), Article 26 paragraph (3), or Article 30 paragraph (1), shall be subject to administrative sanction in the form of:
  - a. written warning;
  - b. downgrading of soundness level;
  - c. annulment of the result of Fit and Proper Test;
  - d. restriction on business activities;
  - e. order for replacement of management;
  - f. inclusion of management in the list of parties prohibited to become Primary Party;
  - g. cancellation of approval, registration and ratification; and/or
  - h. revocation of business permit.
- (2) Other than administrative sanction as referred to in paragraph (1), OJK may impose sanction as set forth in laws and regulations applicable to LJK in the respective financial services sector.
- (3) Mechanism of imposition of sanction as referred to in paragraph (1) and paragraph (2) shall refer to the provisions applicable to LJK in the respective financial services sector.

## CHAPTER VIII TRANSITIONAL PROVISIONS

### Article 32

Result of Fit and Proper Test that has been set forth prior to the entry into force of this Regulation of Financial Service Authority shall be declared to remain valid.

### Article 33

With regard to Fit and Proper Test on candidate Primary Party that is still undergoing at the entry into force of this Regulation of Financial Service Authority:

- a. procedures of assessment and result of assessment shall continue to refer to the applicable provisions on Fit and Proper Test in the respective financial services sector; and
- b. consequence from the result of Fit and Proper Test shall refer to the provisions in this Regulation of Financial Service Authority.

### Article 34

- (1) At the time this Regulation of Financial Services Authority comes into effect:
  - a. Primary Party in PMV or Fiduciary Service Company that has not participated in Fit and Proper Test shall remain qualify to become the Primary Party;
  - b. member of Sharia Supervisory Board in Pension Fund and Internal Auditor in Insurance Company that have not participated in Fit and Proper Test shall remain qualify to serve and perform their duties and functions.
- (2) Primary Party other than PSP as referred to in paragraph (1), must participate in Fit and Proper Test based on this Regulation of Financial Service Authority before the position of the concerned is extended or transferred in the same company.

## CHAPTER IX CLOSING PROVISIONS

### Article 35

Further provisions regarding Fit and Proper Test shall be set forth in a Circular Letter of Financial Service Authority.

### Article 36

With the entry into force of this Regulation of Financial Services Authority, Article 3 paragraph (2) letter a, Article 3 paragraph (2) letter b, and Article 18 paragraph (4) of Regulation of Financial Service Authority Number [4/POJK.05/2013](#) regarding Fit and Proper Test for Primary Party in Insurance Company, Pension Fund, Financing Company, and Guarantee Company shall be revoked and declared null and void.

### Article 37

Applicable provisions of laws and regulations governing Fit and Proper Test in the respective financial service sector shall remain valid insofar as they are not contradictory to this Regulation of Financial Service Authority.

### Article 38

This Regulation of Financial Services Authority shall come into effect as from:

- a. 1 August 2016 for LJK other than Fiduciary Service Company;
- b. 2 (two) years as from the date of its promulgation, for Fiduciary Service Company.

For public cognizance, ordering that the promulgation of this Regulation of Financial Services Authority is published in the State Gazette of the Republic of Indonesia.

Stipulated in Jakarta  
on July 22, 2016

CHAIRPERSON OF THE BOARD OF COMMISSIONERS OF  
FINANCIAL SERVICE AUTHORITY,  
Signed  
MULIAMAN D. HADAD

Promulgated in Jakarta  
on July 27, 2016

MINISTER OF LAW AND HUMAN RIGHTS  
REPUBLIC OF INDONESIA,  
Signed  
YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2016 NUMBER 147

Issued as a true copy  
Legal Director 1  
Legal Department  
Signed  
Yuliana

ELUCIDATION OF  
REGULATION OF FINANCIAL SERVICE AUTHORITY  
NUMBER 27/POJK.03/2016  
REGARDING  
FIT AND PROPER TEST FOR PRIMARY PARTY OF FINANCIAL SERVICE  
INSTITUTION

I. GENERAL

In addition to improvement of financial condition of Financial Service Institution, effort to create a sound Financial Service Institution is also sought through the stabilization of Financial Service Institution that directs the Financial Service Institution to the practice of good governance and fulfillment of prudential principle.

Financial Service Institution as an institution that has strategic position in the financial system should at all times maintain and keep the trust that are put on them, and therefore it should be owned and managed by party that always complies with fit and proper requirements.

Moreover, with the existence of financial conglomeration, management of Financial Service Institution acting as the main entity must be fit and proper to



manage the main entity and Financial Service Institution in financial conglomeration. This is required considering that in financial conglomeration the level of complexity in transaction and interaction among Financial Service Institutions within the financial system is greater, causing an increase in risk exposure.

Fit and Proper Test provides a facility for Financial Service Authority (OJK) to approve or disapprove the party that wishes to own or manage the Financial Service Institution. In the framework of supporting the realization of prime licensing, it requires improvement of regulation regarding Fit and Proper Test so that OJK can provide licensing services for faster, accurate, easy and transparent management and ownership of Financial Service Institution.

Furthermore, with the transfer of authorities in regulating and supervising Financial Service Institution to OJK in accordance with Law Number 21 Year 2011 regarding Financial Service Authority, harmonization of provisions governing Fit and Proper Test applicable to Financial Service Institution whether in banking sector, Capital Market, and non-bank financial industry is required. This harmonization is required to avoid regulatory arbitrage and inconsistency in the implementation of Fit and Proper Test in Financial Service Institutions governed and supervised by OJK.

Based on the above matters, it is necessary to revise provisions governing Fit and Proper Test particularly in the provisions regarding Fit and Proper Test.

## II. ARTICLE BY ARTICLE

### Article 1

Self-explanatory.

### Article 2

#### Paragraph (1)

Approval from OJK does not necessarily mean that candidate Primary Party can immediately perform his action, duties and function, but it must be first followed up in accordance with the applicable provision. For example, candidate member of the Board of Directors that has been approved by OJK must first be appointed by RUPS before the concerned can perform his duties and function.

#### Paragraph (2)

##### Letter a.

Self-explanatory.

##### Letter b.

Self-explanatory.

##### Letter c.

Self-explanatory.

##### Letter d.

#### Figure 1)

Referred to as "Insurance Company Controller" shall be Insurance Company Controller that is not a shareholder

such as member representative agency in insurance company incorporated as joint venture and Insurance Company Controller that is a shareholder such as PSP.

Figure 2)  
Self-explanatory.

Figure 3)  
Self-explanatory.

Figure 4)  
Self-explanatory.

Figure 5)  
Self-explanatory.

Figure 6)  
Self-explanatory.

Letter e.  
Self-explanatory.

Letter f.  
Self-explanatory.

Letter g.  
Self-explanatory.

Paragraph (3)  
Referred to as already owned shares in LJK shall be shares in LJK where the concerned is nominated that are acquired among others through transactions in stock exchange.

Referred to as action as PSP in this paragraph shall be among others influencing the policy of LJK, to be present and/or cast vote in RUPS in his capacity as PSP.

Paragraph (4)  
Referred to as LJK in this paragraph shall be LJK where the concerned is nominated.

Referred to as duties and functions as member of the Board of Directors and/or member of the Board of Commissioners shall be acting to represent LJK in making decision that is legally binding upon LJK and/or making important decision that influences the financial condition of LJK.

Article 3  
Fit and Proper Test shall constitute process to assess the fulfillment of fit and proper requirements of candidate Primary Party as mandated by the applicable provisions of laws and regulations in the respective financial services sector.

Article 4  
Self-explanatory.

Article 5

Letter a

Self-explanatory.

Letter b

Referred to as "criminal act" shall be:

1. criminal act in financial services sector for which punishment has been fully completed within the last 20 (twenty) years prior to his nomination;
2. felony, namely criminal act as set out in the Indonesian Criminal Code (KUHP) and/or the equivalent in overseas with penalty of imprisonment of 1 (one) year or more for which punishment has been fully completed within the last 10 (ten) years prior to his nomination; and/or
3. other criminal offense with penalty of imprisonment of 1 (one) year or more, including among others corruption, money laundering, narcotics/psychotropic, smuggling, customs, excise, human trafficking, illegal weapon trading, terrorism, money forgery, in the field of taxation, in the field of forestry, in the field of environment, in the field of maritime, and fisheries, for which punishment has been fully completed within the last 20 (twenty) years prior to his nomination.

In the framework of assessing "his conduct of complying with the applicable provisions" it shall take into account among others the negative record of the concerned as available in law enforcement agency and/or other authority.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Article 6

Letter a

Referred to as "bad loan and/or financing" shall be among others:

- 1) bad loan and/or financing that is included in the Debtor Information System or the equivalent to the Debtor Information System;
- 2) bad loan and/or financing that has not been reported by LJK in the Debtor Information System or the equivalent to the Debtor Information System, however, based on examination that has been carried out by OJK, the loan and/or financing met the criteria that is classified as bad

loan and/or financing in accordance with laws and regulations; and/or

- 3) failure to meet the obligation of Securities transaction settlement in Securities Company.

Referred to as having bad loan and/or financing shall be if candidate Primary Party:

- 1) has bad loan and/or financing; and/or
- 2) is a controller, member of the Board of Directors or member of the Board of Commissioners of the legal entity having bad loan and/or financing.

Letter b

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Self-explanatory.

Article 9

Letter a

Referred to as legal proceeding in this paragraph shall be bankruptcy process or investigation process or judicial process (including appeal and cassation) in a case that includes:

1. criminal act in Financial Services Sector;
2. felony, namely criminal act that is included in the Indonesian Criminal Code (KUHP) and/or its equivalent in overseas punishable by imprisonment of 1 (one) year or more; and/or
3. other criminal act punishable by imprisonment of 1 (one) year or more, including among others corruption, money laundering, narcotics/psychotropic, smuggling, customs, excise, human trafficking, illegal weapon trading, terrorism, money forgery, in the field of taxation, in the field of forestry, in the field of environment, in the field of maritime, and fisheries.

Letter b

Example of candidate Primary Party that is undergoing Fit and Proper Test process in OJK:

Mr. Y is undergoing Fit and Proper Test process in OJK as candidate member of the Board of Commissioners in PT BPR Maju. Then, shareholder of PT BPR Idaman plans to propose Mr. Y to become one of the members of the Board of Commissioners to OJK. Therefore, Mr. Y cannot be proposed to OJK to undergo

Fit and Proper Test as candidate member of the Board of Commissioners of PT BPR Idaman.

Letter c

Example of candidate Primary Party that is undergoing re-assessment process because there is an indication of problem in integrity, financial feasibility/financial reputation and/or competency in one LJK shall be:

Mr. X being a member of the Board of Directors of PT Bank ABC is undergoing re-assessment process for committed violation of prudential principle in granting significant amount of loan. At the same time, shareholder of PT Insurance DEF plans to propose Mr. X to become one of the members of the Board of Directors to OJK. Therefore, Mr. X cannot be proposed to OJK to undergo Fit and Proper Test as candidate member of the Board of Directors of PT Insurance DEF.

Article 10

Paragraph (1)

Letter a

Referred to as application for permit for the establishment of LJK shall be application for principle approval and/or business permit of LJK.

Letter b

Submission of application by LJK shall be carried out by member of the Board of Directors authorized to represent LJK in accordance with its articles of association or the equivalent.

Paragraph (2)

List of fulfillment of administrative requirements shall be furnished with statement confirming among others that the administrative requirement documents which have been submitted are complete and correct.

Letter a

Self-explanatory.

Letter b

Referred to as LJK authorized official shall include member of the Board of Directors of LJK.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory.

Article 11

Referred to as "institution that is given the duty by Law to carry out restructuring of LJK" shall be among others Deposit Insurance Corporation.

#### Article 12

Referred to as "conflict of interests" shall be among others difference between economic interests of LJK and personal economic interests of the relevant member of the Board of Directors.

##### Letter a

Self-explanatory.

##### Letter b

Self-explanatory.

##### Letter c

For Pension Fund, referred to as "other party appointed by RUPS" shall be other party that is appointed by founder.

#### Article 13

##### Paragraph (1)

Self-explanatory.

##### Paragraph (2)

In the event that candidate PSP is in the form of legal entity, presentation or explanation may be carried out by the legal entity or other legal entity in its business group or owner and ultimate controller of the legal entity (ultimate shareholder).

#### Article 14

Self-explanatory.

#### Article 15

##### Paragraph (1)

In the event that legal entity of shareholder of LJK is owned and controlled by another legal entity based on hierarchy in a business group, therefore, ultimate shareholder shall be an individual or legal entity directly or indirectly holding shares in LJK and which is the ultimate controller of the overall structure of business group that controls LJK.

Ultimate legal entity of the overall structure of business group shall be set forth as the ultimate shareholder if the legal entity has no controller.

##### Paragraph (2)

Self-explanatory.

##### Paragraph (3)

Self-explanatory.

##### Paragraph (4)

Party that exercises Control as referred to in this paragraph may be in the form of an individual, legal entity, or business group that exercises Control over LJK.

Paragraph (5)  
Self-explanatory.

Article 16  
Self-explanatory.

Article 17  
Paragraph (1)

Letter a  
Self-explanatory.

Letter b  
Referred to as laws and regulations shall be among others laws and regulations regarding Limited Liability Company and manpower.

Paragraph (2)  
Self-explanatory.

Article 18  
Paragraph (1)  
Clarification from candidate Primary Party shall be carried out face to face.

Paragraph (2)  
Self-explanatory.

Article 19  
Paragraph (1)

Letter a  
Referred to as legal proceeding in this paragraph shall be bankruptcy process or investigation or judicial process (including appeal and cassation) in a case that includes:

1. criminal act in Financial Services Sector;
2. felony, namely criminal act that is included in the Indonesian Criminal Code (KUHP) and/or its equivalent in overseas punishable by imprisonment of 1 (one) year or more; and/or
3. other criminal act punishable by imprisonment of 1 (one) year or more, including among others corruption, money laundering, narcotics/psychotropic, smuggling, customs, excise, human trafficking, illegal weapon trading, terrorism, money forgery, in the field of taxation, in the field of forestry, in the field of environment, in the field of maritime, and fisheries.

Letter b  
Self-explanatory.

Letter c  
Self-explanatory.

Paragraph (2)  
Self-explanatory.

#### Article 20

Referred to as has completed the legal proceeding shall be if the concerned has obtained:

- a. Termination of Investigation Order (SP3);
- b. Court Ruling that has obtained binding legal force stating that the concerned is declared not guilty; or
- c. Court Ruling that has obtained binding legal force stating that the concerned is not declared bankrupt.

Referred to as has completed the re-assessment process because there is an indication of problem in integrity, financial feasibility/reputation, and/or competency in one LJK shall be if the concerned is declared by OJK not proven to have any problem related to integrity, financial feasibility, financial reputation, and/or competency.

#### Article 21

Paragraph (1)  
Self-explanatory.

Paragraph (2)  
Self-explanatory.

Paragraph (3)  
Referred to as permit for the establishment shall include principle approval and/or business permit.

Paragraph (4)  
Self-explanatory.

Paragraph (5)  
Other interested party in this paragraph shall be among others Government and/or Deposit Insurance Corporation.

#### Article 22

Paragraph (1)

Letter a  
Transfer of shareholding may be carried out, among others, through sale or grant.

Letter b  
Self-explanatory.

Paragraph (2)  
Self-explanatory.



Paragraph (3)  
Self-explanatory.

Article 23

Referred to as explanation regarding the status of shareholder of LJK shall be:

- a. status of candidate PSP that is not approved by OJK; and
- b. restriction of rights of shareholder to the shares that candidate PSP owns that is not approved by OJK.

Referred to as report published by LJK shall be among others annual financial statements.

Article 24

Paragraph (1)  
Self-explanatory.

Paragraph (2)

Letter a  
Self-explanatory.

Letter b  
Prohibition on registration of shareholding does not affect the accounting recording as well as capital recording of LJK until the concerned transfers its shares.

Letter c  
Referred to as rights as shareholder in this letter shall be for example, rights to attend, quorum calculation, cast vote, in RUPS, and right to receive the distribution of dividend.

Article 25

Paragraph (1)  
Referred to as "appointment" shall be among others candidate Board of Directors, candidate Board of Commissioners, and candidate Sharia Supervisory Board as appointed by RUPS, meanwhile candidate Internal Auditor and Company Actuary are as appointed by the Board of Directors.

Paragraph (2)  
Self-explanatory.

Paragraph (3)  
Self-explanatory.

Article 26

Self-explanatory.

Article 27

Paragraph (1)  
Self-explanatory.

Paragraph (2)

Letter a

Example of equal position level shall be director and director.  
Example of lower position level shall be president director and director.

Letter b

Example of similar LJK shall be among others bank with bank,  
insurance with insurance.

Letter c

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 28

Paragraph (1)

Letter a

Self-explanatory.

Letter b

Referred to as "other authority" shall be authority in the country as  
well as in overseas.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 29

Letter a.

Referred to as "Institution or agency that has the authority to carry  
out restructuring/management of LJK" shall be among others  
Deposit Insurance Corporation.

Letter b.

Self-explanatory.

Article 30

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Referred to as hamper the implementation of supervision of the  
Bank shall be among others in the event that OJK experiences or

sees potential difficulty to access data and information including information on controlling financial source of the Bank.

Article 31

Imposition of sanction shall not eliminate the obligation of LJK to perform its obligations.

Article 32

Self-explanatory.

Article 33

Self-explanatory.

Article 34

Self-explanatory.

Article 35

Matters that will be regulated further in the Circular Letter of Financial Service Authority shall be among others:

- a. integrity requirements;
- b. financial reputation and financial feasibility requirements;
- c. competency requirements;
- d. administrative requirement documents, official that is authorized to sign the list of fulfillment of administrative requirements, and number of candidate Primary Party for each vacancy;
- e. self assessment of the Primary Party other than candidate PSP and candidate Insurance Company Controller in LJK;
- f. criteria and procedures of clarification in the framework of administrative assessment;
- g. procedures of share transfer (volume, period, and party that is not allowed to receive share transfer) and restriction of rights of shareholder;
- h. period when approval of OJK will be invalid in the event that candidate Primary Party is not appointed;
- i. period when RUPS is to cancel the appointment of candidate Primary Party that is not approved; and
- j. different Fit and Proper Test procedures for Primary Party of LJK under restructuring/management by institution or agency that has the authority to carry out restructuring/management of LJK and Primary Party Bank that is used as resolution facility as set forth in Law Number 9 Year 2016 regarding Prevention and Management of Crisis in Financial System.

Article 36

With the revocation of Article 3 paragraph (2) letter a and Article 3 paragraph (2) letter b of Regulation of Financial Service Authority Number 4/POJK.05/2013 regarding Fit and Proper Test for Primary Party in Insurance Company, Pension Fund, Financing Company, and Guarantee Company, therefore, all provisions governing:

- a. Fit and Proper Test on the Primary Party at the time of nomination; and
- b. Fit and Proper Test on the Primary Party at the expiration of validity period of determination of graduation resulting from Fit and Proper Test;

shall become null and void.

Article 37

Self-explanatory.

Article 38

Self-explanatory.

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA  
NUMBER 5098

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NOTE

Source: LOOSE LEAF OF REGULATION OF THE CHAIRPERSON OF THE  
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