

**RULES OF THE INDONESIAN CAPITALMARKET ARBITRATION BOARD
NUMBER: 01/BAPMI/12.2014**

CONCERNING

RULES AND PROCEDURES OF BINDING OPINION

MANAGEMENT OF INDONESIAN CAPITAL MARKET ARBITRATION BOARD,

- Considering** :
- a. whereas differences of opinion between the Parties on an issue relating to an agreement or transaction in the Capital Market field or in connection with the Capital Market may be brought for settlement by the Parties to the Indonesian Capital Market Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia – “BAPMI”*) through Binding Opinion services;
 - b. whereas BAPMI’s Binding Opinion services, which were regulated under one (1) rules and procedures together with Mediation and Arbitration services, should be separated into their respective rules and procedures in order to facilitate users of BAPMI services in understanding the rules and procedures, and also facilitate BAPMI in terms of future amendments of any of the provisions therein;
 - c. whereas BAPMI’s rules and procedures regulating Binding Opinion services need to be reviewed in order to adjust to developments of Alternative Dispute Resolution, Arbitration and Capital Market;
 - d. whereas in consideration of the foregoing, it is necessary to establish new Binding Opinion rules and procedures of BAPMI and set it out in these rules.
- In view of** :
1. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (State Gazette of the Republic of Indonesia of 1999 Number 138, Supplement to State Gazette of the Republic of Indonesia Number 3872), along with any amendments thereto, if any;
 2. Law Number 21 of 2011 regarding Financial Services Authority/*Otoritas Jasa Keuangan* (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to State Gazette of the Republic of Indonesia Number 5253), and any of its implementing regulations and any amendments thereto, if any;
 3. Law Number 8 of 1995 on Capital Market (State Gazette of the Republic of Indonesia of 1995 Number 64, Supplement to State Gazette of the Republic of Indonesia Number 3608), and any of its implementing regulations and any amendments thereto, if any;

4. BAPMI's Articles of Association, as set out in the Deed of Establishment Number 15 dated 9th August 2002, drawn up before Mrs. Fathiah Helmi, S.H., Notary Public in Jakarta, having been approved by the Minister of Justice and Human Rights of the Republic of Indonesia under his decree Number C-2620 HT 01.03.TH 2002, dated 29th August 2002, and promulgated in the State Gazette of the Republic of Indonesia dated 18th October 2002, Number 84/2002, Supplement to State Gazette Number 5/PN/2002, and any amendments thereto, if any.

DECIDED:

To stipulate : RULES AND PROCEDURES OF BINDING OPINION

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Definitions**

- (1) In these Rules and Procedures:
 - (a) **Differences of Opinion** mean any differences of opinion between the Parties on a particular legal relationship of the agreement.
 - (b) **Binding Opinion Agreement** is an agreement made by the Parties to resolve any Difference of Opinion occurring through BAPMI's Binding Opinion.
 - (c) **Party** refers to a legal subject, in both civil law and public law. The term "Parties" in these Rules and Procedures shall refer to two (2) or more Parties collectively.
 - (d) **Binding opinion is** an opinion and binding in nature given by BAPMI relevant to Difference of Opinion in accordance with these Rules and Procedures.
 - (e) **Management** refers to people who are appointed as BAPMI's management as stipulated in BAPMI's Articles of Association, and any amendments thereto, if any.
 - (f) **Petition for Binding Opinion** is a written petition to BAPMI brought by the Parties to request a Binding Opinion.
 - (g) **Difference of Opinion Summary** is a document created by the Parties containing the merit of the case with regard to a Difference of Opinion arising between the Parties and recommendations regarding interpretation of each Party and what kind of opinion expected.

- (h) **Secretariat** is secretariat formed by the Management to run BAPMI's day-to-day operations, chaired by one of the Management's members, or other personnel designated by the Management.
 - (i) **BAPMI's Permanent Arbitrator** is an individual who is appointed by BAPMI as an Arbitrator, whose name is then listed in the List of Permanent Arbitrators. Hereinafter referred to as "Arbitrator".
- (2) A reference to the word "day" in these Rules and Procedures shall be made to the Indonesian national calendar.

Article 2

Scope of Rules and Procedures

- (1) These Rules and Procedures regulate settlement of any Differences of Opinion to be resolved through Binding Opinion.
- (2) Differences of Opinion that can be resolved through Binding Opinion must meet all the following criteria:
 - (a) Differences of Opinion on an issue relating to an agreement in capital market or relating to capital market in the form of:
 - (i) the interpretation of any vague provisions in the agreement; or
 - (ii) additions or amendments to any provisions of the agreement in connection with the emergence of any new circumstances; or
 - (iii) other matters relating to the implementation of the agreement;
 - (b) Differences of Opinion on rights, which, under the law and legislation, are fully controlled by the disputing Parties;
 - (c) Differences of Opinion, which according to the legislation, can be amicably settled;
 - (d) the Parties bound by a Binding Opinion Agreement.
- (3) Binding Opinion is made by the Management. In order to provide Binding Opinion, the Management may establish examiner and formulator team consists of the competent person from Management and Arbitrator.
- (4) The member of Management and/or Arbitrator who has conflict of interest and/or affiliation with the dispute and/or the Parties is prohibited to examine and to formulate the Differences of Opinion.

- (5) The member of Management and Secretariat personnel is forbidden from giving and/or offering legal assistance in any form whatsoever, either professionally or personally to the Parties, including legal advice and/or opinion concerning legal standing of the Parties.
- (6) The Parties, the Management, and the Secretariat personnel shall comply with any provisions set out under these Rules and Procedures.

Article 3 Nature of Binding Opinion

- (1) Settlement of Differences of Opinion pursuant to these Rules and Procedures shall be conducted by the Parties on the basis of good faith and dignity, based on cooperative and non-confrontational procedures and with the exclusion of any forum and/or other dispute mechanism.
- (2) Participation of the Parties in the Binding Opinion process shall be based on the Parties' agreement without any coercion whatsoever, and should be followed politely, respectfully, and orderly.
- (3) The Binding Opinion applies only to the Parties filing a Petition for Binding Opinion.
- (4) The Binding Opinion shall be final and binding on the Parties to be enforced in good faith, and any objection or denial cannot be filed against a Binding Opinion.
- (5) In the event of any Parties that do not enforce or act contrary to the Binding Opinion delivered by BAPMI, then said action is considered to be in breach of the agreement.

CHAPTER II PRE-DELIVERY OF BINDING OPINION

Article 4 Binding Opinion Agreement

- (1) The Parties having Differences of Opinion may enter into a Binding Opinion Agreement containing the consent that these differences will be resolved through BAPMI's Binding Opinion.
- (2) The Binding Opinion Agreement, as referred to in paragraph (1), may be made in the following manner:
 - (a) set out a dispute resolution clause of the principal agreement; or
 - (b) made in a separate agreement executed by the Parties.
- (3) A Binding Opinion Agreement must include a statement that the Parties are agreed to:

- (a) the process of Binding Opinion will be conducted according to these Rules and Procedures.
 - (b) bound, subject to and enforce any and all provisions of the Binding Opinion to be provided by BAPMI.
 - (c) pay the required fees of Binding Opinion.
 - (d) exempt BAPMI from any claim in connection of Binding Opinion.
- (4) BAPMI, upon request of either Party, can facilitate a meeting between the Parties in order to make a Binding Opinion Agreement.

Article 5

Registration of Petition for Binding Opinion

- (1) The provision of a Binding Opinion shall be made based a Petition for Binding Opinion, the registration of which is filed by the Parties to BAPMI.
- (2) An Petition for Binding Opinion shall at least contain:
 - (a) full name and residence or domicile of the Parties;
 - (b) a description of the type of case;
 - (c) a request to BAPMI for provision of Binding Opinion;
 - (d) information on the presence of a Binding Opinion Agreement (the copy of the agreement shall be attached);
 - (e) a Difference of Opinion Summary;
 - (f) copies of documents or supporting evidence;
 - (g) payment receipt for Registration Fee of Petition for Binding Opinion.
- (3) A Difference of Opinion Summary shall be prepared by each of the Parties when it is not possible to be prepared jointly.
- (4) The Management provides confirmation of acceptance or rejection with regard to the registration of Petition for Binding Opinion to the Parties within a maximum period of ten (10) days after the date of filing.
- (5) When the Petition for Binding Opinion is rejected by the Management, the confirmation letter, as referred to in paragraph (4), shall contain any reasons for said rejection. The Parties may resubmit the Petition for Binding Opinion by meeting the requirements as stipulated in these Rules and Procedures.

- (6) When the Petition for Binding Opinion is accepted by the Management, the confirmation letter, referred to paragraph (4), shall contain also a notice that the Parties will be invited by the Management to discuss the amount of Binding Opinion Fee, as specified in the meeting schedule by the Management.
- (7) For an accepted Petition for Binding Opinion, as referred to in paragraph (6), the Secretariat on the same date as the date of said confirmation shall record the Petition for Binding Opinion in a case registry book of BAPMI.
- (8) The Management may delegate its authority to confirm the registration of Petition for Binding Opinion to the Secretariat personnel.

CHAPTER III EXAMINATION

Article 6 Timeframe

- (1) The examination process of Difference of Opinion takes place within a maximum period of 30 (thirty) days after the Management and the Parties agree upon the Binding Opinion Fee.
- (2) The period, as referred to in paragraph (1), may be extended by agreement of the Parties and the Management under such provision of extension not later than thirty (30) days.
- (3) As long as a Binding Opinion is not issued, either Party may declare his/her resignation to the Management and the other Party from the examination process of a Difference of Opinion in the event of any strong reason or evidence that the other Party does not show good faith in the examination process of said Difference of Opinion.

Article 7 Place

- (1) Examination of a Difference of Opinion shall be held in Jakarta or any place specified by the Management. However, the Parties may propose any other place upon approval of the Management.
- (2) A place for the examination of a Difference of Opinion may use teleconferencing or videoconferencing facilities.
- (3) A place for reading a Binding Opinion may differ from the place for examination of such Difference of Opinion.

Article 8 Language

- (1) Language used in all examination processes of Differences of Opinion shall be Indonesian language, except upon approval of the Management allowing the Parties to choose another language.
- (2) The Management may order the Parties to have any document or evidence coming with its translation into the language as referred to in paragraph (1).

Article 9 Documentation, Correspondence and Communication

- (1) The Parties are prohibited from recording any examination meeting of a Difference of Opinion, in the form of either audio recordings, visual recordings or audio-visual recordings.
- (2) Correspondence shall be delivered by the Secretariat to the name(s) and address(es) of the Parties as listed in the Petition for Binding Opinion. In the event of any changes, each Party shall ensure to provide the Secretariat with all information regarding name(s), telephone number(s), facsimile number(s) and complete address(es) for the purposes of correspondence from and to each Party, and any further changes with respect to the above matters.
- (3) When registration of a Petition for Binding Opinion is accepted, each Party is prohibited from communicating with one or more members of the Management in any way in connection with the Petition for Binding Opinion, except in a meeting of Difference of Opinion examination, or accompanied by a copy, which is also delivered to the other Party through the Secretariat.
- (4) The correspondence from the Management to the Parties, or from one Party to the Management and the other Party, must be done in an examination meeting and or through the Secretariat.
- (5) Delivery and distribution of correspondence through Secretariat can be made by courier, registered mail, facsimile and or e-mail.
- (6) Delivery by the Secretariat to the Parties by facsimile and or e-mail is equally valid as delivery by courier and or registered mail with sufficient receipt requested. When delivery by facsimile and or e-mail is served properly and clearly, delivery of the original mail by courier and or registered mail is not required to be made by the Secretariat to the Parties.
- (7) The Management may ask the Parties to deliver of any documents and any written information for the purposes of Difference of Opinion examination come with the softcopy in a words document form.
- (8) Documentation, correspondence and communication that do not comply with the provisions of Article 9 shall be invalid and considered to be non-existent.

Article 10 Confidentiality

- (1) Any processes in the Difference of Opinion examination shall be confidential and take place privately except when necessary for the enforceability of Binding Opinion as allowable reasons in Article 14 paragraph (3) and paragraph (4).
- (2) Except when necessary for the enforceability of Binding Opinion as allowable reasons in Article 14 paragraph (3) and paragraph (4), all persons involved in the examination process must maintain the confidentiality of the Difference of Opinion, both during and after the examination, and do not use for any purpose whatsoever:
 - (a) the fact that the examination process will be, is being or has been taken place;
 - (b) anything arising in the examination process;
 - (c) any opinions expressed, recommendations or proposals proposed by the Parties for settlement of the Difference of Opinion;
 - (d) all materials submitted and discussions conducted during the examination;
 - (e) all data, information, correspondence, and printed materials, either in written or in electronic form, regarding any issues discussed, proposals submitted and comments raised, including any contents of the Binding Opinion.
- (3) The provisions of confidentiality shall survive the completion of the Binding Opinion delivery process, to be applicable to all persons involved in the Difference of Opinion examination, as referred to in paragraph (2).
- (4) BAPMI and or any of the Parties shall be entitled to claim any Party violating paragraph (2) and paragraph (3) through a claim for, including but not limited to:
 - (a) full compensation for any losses incurred;
 - (b) costs of proceedings taken in connection with the violation; and or
 - (c) a guarantee of non-recurrence of such violation in the future.
- (5) In the event of a violation of paragraph (2) and paragraph (3), BAPMI is entitled to temporarily suspend the examination process of Difference of Opinion until an assurance of violation non-recurrence in the future is obtained.

Article 11 Hearing

- (1) The Management shall initiate hearing for the first time within a maximum period of seven (7) days after reaching an agreement on the amount of the Binding Opinion Fee.
- (2) Any of the Parties must attend the hearing held by the Management and must not be represented only by his/her attorney.
- (3) In the event that a Party is a legal entity, it must be represented by any of its officers and or employees who are legitimate and authorized to represent the said legal entity or by virtue of a special power of attorney.
- (4) The Parties shall provide relevant data and information required and requested by the Management within the framework of the Difference of Opinion examination.
- (5) When deemed necessary, the Management, upon approval and at the expense of the Parties, may invite any experts in particular expertise and or other third parties to be presented for hearing their opinions.
- (6) The hearing event may be face-to-face or via teleconference and/or video conference.
- (7) Any members of the Management, Arbitrator, and any Secretariat personnel having a conflict of interest in respect of the issue at hand and or any of the examined Parties in the Difference of Opinion are prohibited from engaging in the examination and Binding Opinion provision.

Article 12 Closure of Examination

If the examination phase of a Difference of Opinion is deemed sufficient by the Management, the Management shall declare the closure of said examination and further set a particular date for the issuance of Binding Opinion, not later than 30 (thirty) days after the closure of said examination.

CHAPTER IV BINDING OPINION PROVISION

Article 13 Issuance and Delivery

- (1) Binding Opinion shall be signed by any members of the Management authorized to represent BAPMI, and subsequently an authentic copy of said Binding Opinion shall be communicated to the Parties by courier or registered mail not later than three (3) days after the issuance of said Binding Opinion.

- (2) Whenever required by the Parties, the Management can read the contents of the Binding Opinion in the presence of the Parties. In such case, an authentic copy of the Binding Opinion shall be delivered to the Parties after completion of the reading.
- (3) Reading of the Binding Opinion shall be held at BAPMI's office, or elsewhere on the Parties' proposal with the Management's approval.

Article 14 Enforceability

- (1) When any of the Parties does not comply with the Binding Opinion, the other party could make a written warning letter to the defaulting Party, with a copy to BAPMI.
- (2) The Management shall, within a maximum period of seven (7) days after receiving a copy of the letter, as referred to in paragraph (1), submit a written warning to the defaulting Party, with a copy to the other Party.
- (3) In the lapse of the period of seven (7) days after the submission date of the letter, as referred to in paragraph (2), and the default continues, the Management and or the other Party may re-submit a written warning letter to the defaulting Party with a copy to the association/ organization in the capital market environment to which any of the Parties is a member.
- (4) In the lapse of the period of seven (7) days after the submission date of the letter, as referred to in paragraph (3), and the default continues, the Management and or the other Party may re-submit a written warning letter to the defaulting Party with a copy to the Financial Services Authority (*Otoritas Jasa Keuangan*) and all Members of BAPMI.
- (5) The provisions of paragraph (3) and paragraph (4) are special provisions notwithstanding the provisions of Article 10. Therefore, any of the Parties will not file any claim in any forms whatsoever against BAPMI and or the other Party in connection with the application of the provisions of paragraph (3) and or paragraph (4) by BAPMI and the other Party.

CHAPTER V SERVICE FEES OF BINDING OPINION

Article 15 Types of Fees

- (1) Service Fees of BAPMI's Binding Opinion shall consist of:
 - (a) Registration Fee, as further set forth in Article 16;
 - (b) Examination Fee, as further set forth in Article 17;
 - (c) Binding Opinion Fee, as further set forth in Article 18.

- (2) The Parties are free to agree on sharing of burden and fees, as referred to in paragraph (1) between them, whether it will be borne in a pro rata basis or otherwise, or it will be borne solely by one Party. The Parties shall notify such agreement to the Management.
- (3) In the event of no such agreement, as referred to in paragraph (2), the Management considers the burden of the fees, as referred to in paragraph (1), to be shared in a pro rata basis by the Parties.
- (4) In the event of any tax calculation, the fees, as referred to in paragraph (1) in conjunction with Article 16, Article 17 and Article 18 and Annex I, shall be the net amount that should be received by BAPMI.
- (5) The Management may suspend or terminate the examination process in the event of any outstanding amount of the fees, as referred to in paragraph (1), by the Parties.

Article 16 Registration Fee

- (1) The Parties are subject to a Registration Fee of the Petition for Binding Opinion at an amount as set out in Annex I.
- (2) The fee, as referred to in paragraph (1), is payable at the time of filing of the Petition for Binding Opinion.

Article 17 Examination Fee

- (1) The Parties shall bear the Examination Fee. Examination Fee is for the following expenses:
 - (a) expenses for face-to-face occasion outside BAPMI's office;
 - (b) expenses for presenting any experts and or third parties, as referred to in Article 11 paragraph (5);
 - (c) any requirement of Secretarial services for costs of document copying and correspondence delivery;
 - (d) any other costs incurred that are relevant and reasonably acceptable or agreed upon by the Parties.
- (2) To anticipate any examination expenses, the Parties shall deposit to BAPMI an amount as listed in Annex I.
- (3) The deposit, as referred to in paragraph (2), shall be paid by the Parties to BAPMI prior to the commencement of the hearing, as referred to in Article 11 paragraph (1).

- (4) When the amount of the deposit has been reduced by more than 50% (fifty percent), the Parties must replenish the deposit until it reaches the initial amount of the deposit.
- (5) When all expenses of the Examination Fee are smaller than the deposit paid, the remaining amount of such deposit shall be refunded to the Parties, not later than fourteen (14) days after the Binding Opinion is delivered to the Parties.
- (6) The Secretariat shall prepare a report on the use of the deposit to the Parties with sufficient receipts of expenditures.

Article 18 Binding Opinion Fees

- (1) Binding Opinion Fees shall be paid in full by the Parties before the commencement of hearing, as referred to in Article 11 paragraph (1).
- (2) The amount of Binding Opinion Fees shall be agreed by the Parties and BAPMI, taking into account the complexity of the case and the minimum amount of fees, as set out in Annex I.
- (3) In the event of revocation of Petition for Binding Opinion, then:
 - (a) the Binding Opinion Fees shall be refunded to the Parties with a penalty of 50% (fifty percent) of the Binding Opinion Fees, when the revocation is done before the first meeting of hearing;
 - (b) the Binding Opinion Fees cannot be refunded to the Parties, when the revocation is done after the first meeting of hearing is held.

CHAPTER VI CLOSING PROVISIONS

Article 19 Closing Provisions

- (1) None of the Management and or the Secretariat personnel shall be subject to any criminal or civil liabilities on the performance of their duties and authorities and on any contents of Binding Opinion.
- (2) Any of the Parties may not file any claims against BAPMI (including any of the Management, Arbitrator, and Secretariat personnel), including but not limited to claims in respect of:
 - (a) any services provided by BAPMI;
 - (b) any efforts made by BAPMI;
 - (c) any dispute institutionalized;

- (d) any decision made;
 - (e) any action taken by the Parties;
 - (f) any action taken in accordance with the law or court order.
- (3) The Parties acknowledge and agree that any claims against BAPMI (including any of the Management and Secretariat or personnel) that are made in violation of the provisions of paragraph (1) or paragraph (2) will be a material and real loss to BAPMI. Therefore, BAPMI is entitled to take any proceedings on these claims, and also reserves the right to claim any of the Parties for full compensation of any legal fees incurred by BAPMI thereon.
- (4) The reference of any name of an organization/ institution in these Rules and Procedures shall be made also to any new name of said organization/ institution due to any change in name only or due to any action of splitting, merger, consolidation, or transfer which causes a change in the name of said organization/ institution.
- (5) With these Rules and Procedures coming into force, all provisions of BAPMI's Decrees regulating Binding Opinion shall be declared null and void, as set out in:
- (a) BAPMI's Decree Number KEP-02/BAPMI/11.2009 on Rules and Procedures of BAPMI, dated 30th November 2009, as amended most recently by BAPMI's Decree Number KEP-08/BAPMI/11.2011, dated 21st November 2011; and
 - (b) BAPMI's Decree Number KEP-01/BAPMI/07.2005 on Costs and Fees for Settlement of Disputes or Differences of Opinion in BAPMI, dated 21st July 2005, as amended most recently by BAPMI's Decree Number KEP-07/BAPMI/11.2011, dated 21st November 2011.
- (6) These Rules and Procedures shall come into force on the date of its stipulation.

Stipulated in Jakarta
On 9 Desember 2014

**MANAGEMENT OF
INDONESIAN CAPITAL MARKET ARBITRATION MANAGEMENT**

Signed by

Bacelius Ruru
Chairman

Felix O. Soebagjo
Secretary General

ANNEX I
FEES OF BINDING OPINION SERVICES

- (1) The registration fee shall be IDR 2,000,000 (two million Indonesian Rupiahs).
- (2) Deposit of Examination Fee is IDR 5,000,000 (five million Indonesian Rupiahs).
- (3) The Binding Opinion fee shall be at a **minimum** of IDR 50,000,000 (fifty million Indonesian Rupiahs).