The Brief | Legal

ARTHADAYA PARTNERSHIP

Redefining SOE Governance:

Authority, Corporate Decisions and Accountability under Government Regulation No. 38 of 2026

28 October 2026

Industry – SOE, Government & Public Sector

A NEW PLAYBOOK OF SOE GOVERNANCE

Government Regulation No. 38 of 2026 ("**GR 38/2026**") introduces a revised framework for the management of State-Owned Enterprises ("**SOEs**"), implementing Law No. 19 of 2003, as last amended by Law No. 16 of 2025 ("**Law 16/2025**"). GR 38/2026 revokes Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises, as amended by Government Regulation Number 23 of 2022 concerning the Amendment to Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises ("**GR 45/2005**"), and Articles 29-43 of Government Regulation Number 43 of 2005 ("**GR 43/2005**"). Existing implementing regulations remain applicable unless inconsistent with GR 38/2026, requiring SOEs to align their governance and corporate approval procedures with the revised allocation of authority.

THE REGULATORY SHIFT

The revised framework introduces six key changes affecting SOE governance, institutional authority, corporate decision-making, and accountability.

1 **Implementing the Amended SOE Law**

Gives effect to Law No. 19 of 2003 on SOEs, as last amended by Law No. 16 of 2025, through detailed rules on institutional authority, corporate governance and SOE management.

2 **Replacing the Previous Framework**

Revokes GR 45/2005, as amended by GR 23/2022, and Articles 29-43 of GR 43/2005. The remaining provisions of GR 43/2005 are not revoked by this provision.

3 **Preserving Regulatory Continuity**

Existing implementing regulations under the revoked framework remain applicable insofar as they do not conflict with GR 38/2026. SOEs should therefore assess whether such regulations remain consistent with GR 38/2026.

4 **Allocating Regulatory and Investment Functions**

Allocates regulatory and specified State ownership functions to Badan Pengaturan BUMN ("**BP BUMN**"), while Badan Pengelola Investasi Daya Anagata Nusantara ("**BPI Danantara**") undertakes portfolio and investment management through the holding structure.

5 **Retaining Strategic State Control**

Preserves the President's overarching authority and the State's special rights through Series A Dwiwarna shares in Persero, including rights concerning specified strategic matters and appointments.

6 **Clarifying Corporate Risk and Directors' Accountability**

Provides a framework for recognising corporate losses and undertaking cut-loss, with protection from liability subject to statutory conditions, including good faith, due care and the absence of conflicts of interest.

KEY LEGAL QUESTIONS

Allocation Of Authority

Which matters belong to the President, BP BUMN, BPI Danantara or the SOE's corporate organs? How do public policy, shareholder rights and commercial management interact?

Accountability For Business Decisions

When may a corporate loss give rise to directors' personal liability? What conduct, analysis and supporting evidence are required to establish protection for business decisions, including cut-loss?

Corporate Decision-making & Approvals

Which corporate decisions fall within the Directors' authority, and which require supervisory approval, GMS resolutions, Series A Dwiwarna consent, or Presidential approval?

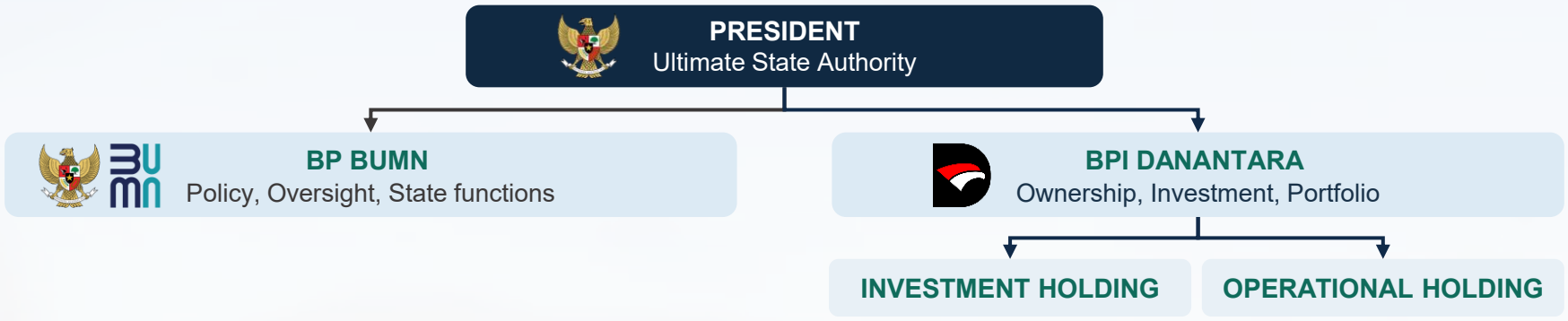
Implementation Within Existing Governance Arrangements

Which provisions of the articles of association ("**AoA**"), approval matrices and internal policies should be reviewed to reflect the revised framework?

WHO GOVERNS AND WHO MANAGES?

DISTRIBUTION OF AUTHORITY UNDER GR 38/2026

GR 38/2026 allocates regulatory, shareholder and commercial management functions among different State institutions, while preserving the President's overarching authority over SOEs.



A. THE PRESIDENT (ULTIMATE STATE AUTHORITY)

The President retains overarching authority over SOEs and the State's separated assets invested therein. BP BUMN and BPI Danantara exercise delegated authority as Central Government representatives, while the Minister of Finance exercises designated fiscal powers upon the prescribed proposal.

Art. 3 GR 38/2026

B. BP BUMN (REGULATORY & STATE FUNCTIONS)

1 Regulatory and Policy-setting Authority

- Sets SOE governance policies and roadmaps, subject to Presidential approval, and aligns them with national priorities.
- Regulates government assignments, Key Performance Indicators, and asset/receivable write-off criteria.
- Approves BPI Danantara's work plan, subject to Presidential approval.

2 Regulatory Supervision and Examination

- Oversees SOE governance, performance, and government assignments through risk-based inspections and reporting reviews.
- Requires follow-up, issues warnings, and proposes corrective measures.
- Conducts examinations on specified grounds, subject to Presidential approval.

3 State Shareholder and Perum Functions

- Holds the State's 1% Series A Dwiwarna shares in Persero, with special strategic shareholder rights.
- Exercises State capital ownership and management functions in Perum.

Arts. 4, 7, 12-19 GR 38/2026

C. BPI DANANTARA (PORTFOLIO MANAGEMENT)

BPI Danantara exercises the State's **99% Series B shareholding on behalf of the Government** and manages Persero through its holdings and/or an SOE acting as a parent company.

1 Ownership, Investment and Capital Management

- Manages SOE/holding dividends and approves dividend-funded capital changes.
- Establishes and wholly owns Investment and Operational Holdings.

2 Asset Management and Financial Transactions

- Approves holding proposals for asset/receivable write-offs.
- May lend, borrow, or pledge assets with Presidential approval, and guarantee Investment Holding with Supervisory Board approval.

3 Strategic Governance of Holdings

- Ratifies holding Annual Work Plans and Budgets and consults the relevant committee of the House of Representatives.
- Sets strategic policies on finance, investment, operations, procurement, IT, HR, risk, ESG matters.
- Determines technical implementation of holding authorities.

Arts. 5, 26-28 GR 38/2026

D. TWO HOLDINGS UNDER BPI DANANTARA

INVESTMENT HOLDING

Manages investments and assets to enhance value; may issue debt securities, borrow, provide group loans/guarantees, manage dividends, and propose asset/receivable write-offs and management contracts to BPI Danantara.

OPERATIONAL HOLDING

Manages SOE operations and assets; may issue debt securities, borrow, provide group loans/guarantees, and propose asset/receivable write-offs and management contracts to BPI Danantara.

Arts. 5(3)-(7), 6, 28-30 GR 38/2026

CONTROL BEYOND SHARE PERCENTAGES

SERIES A DWIWARNA & RESERVED CORPORATE MATTERS

GR 38/2026 separates economic ownership from strategic corporate control by attaching special rights to the State's minority Series A Dwiwarna shares.

1%	**SERIES A DWIWARNA** BP BUMN | Special rights	**99%**	**SERIES B** BPI Danantara | Majority stake

MAJORITY SHAREHOLDING ≠ UNILATERAL CONTROL OVER RESERVED MATTERS

A. LEGAL FOUNDATION: DIFFERENT CLASSES, DIFFERENT RIGHTS

Art. 53 of Law 40/2007 permits different share classes with distinct or combined rights, including voting rights, special nomination rights for Directors/Commissioners, and dividend or liquidation preferences. GR 38/2026 specifies the special rights attached to the State's Series A Dwiwarna shares in Persero.

Art. 53(1)-(4) & Elucidation of Law 40/2007; Arts. 20-21 GR 38/2026

B. SERIES A DWIWARNA: SPECIAL SHAREHOLDER RIGHTS

1 RESERVED GMS APPROVAL

Series A must attend and approve specified strategic GMS decisions for such resolutions to be binding, including circular resolutions.

2 GMS AGENDA PROPOSALS

May propose agenda items concerning the SOE general policy direction, roadmap, government programmes and Special Assignments.

3 INFORMATION ACCESS

May request and access corporate data and documents under applicable laws for the exercise of BP BUMN's statutory duties.

4 BOARD APPOINTMENT & DISMISSAL

Exercises special rights concerning the appointment and dismissal of Directors and Commissioners, subject to Presidential approval and formal GMS resolutions.

Arts. 20(4), 21-24 & Elucidations of GR 38/2026

C. RESERVED MATTERS: WHEN IS SERIES A CONSENT REQUIRED?

STATE POLICY & ROADMAP

Implementation of SOE general policy direction and roadmap, taking financial sustainability into account.

GOVERNMENT PROGRAMMES

Government programmes implemented by SOEs, including Special Assignments.

CORPORATE EXISTENCE

AoA amendments concerning Persero's existence, including mergers, consolidations, acquisitions, spin-offs, bankruptcy petitions, and dissolution.

CAPITAL STRUCTURE

Amendments to the AoA concerning the capital structure of Persero.

Art. 21(1)(a)-(c) & Elucidation of Art. 21(1)(c)(1) GR 38/2026

D. CORPORATE IMPLEMENTATION: APPROVALS, PROCEDURES & ARTICLES

- GMS resolutions on reserved matters require Series A attendance and consent, including through circular resolutions.
- Series A and Series B rights are exercised under jointly established GMS decision-making procedures.
- Special rights under Arts. 21-24 of GR 38/2026 must be incorporated into each Persero's AoA.

Arts. 20(4)(a), 21(2), 25 & Elucidations of Arts. 20-21 GR 38/2026

BPI Danantara's 99% ownership does not override the State's reserved Series A rights. Valid corporate decisions require alignment of statutory rights, AoA provisions and GMS procedures.

WHO MUST APPROVE WHAT?

GR 38/2026 establishes distinct approval mechanisms for SOE corporate actions, involving BP BUMN, BPI Danantara, the President, and relevant corporate organs. The following matrix outlines the allocation of authority in proposing, approving, and implementing such actions based on their respective legal requirements.

CORPORATE ACTION	PROPOSAL → APPROVAL → EXECUTION	GR 38/2026
SOE policy/roadmap	BP BUMN and BPI Danantara jointly prepare the SOE general policy and roadmap, which are formally adopted by the Head of BP BUMN following Presidential approval.	Art. 7 (a), (c), Art. 8 (2)-(3) and Art. 10 (2)-(3)
Series A reserved General Meeting of Shareholders ("GMS") matters	The relevant proposal is submitted through the applicable corporate process. BP BUMN, as holder of the Series A Dwiwarna share, exercises its approval rights over specified reserved matters. The relevant corporate organ then implements the approved action in accordance with Persero's AoA and applicable corporate requirements.	Art. 20 (4) (a), Art. 21 (1)-(2), and Art. 25
Persero board nomination	BPI Danantara may nominate Directors and Commissioners but cannot appoint them unilaterally. BP BUMN submits such nominees for Presidential approval, following which the GMS formally appoints them. Dismissals are subject to the applicable approval requirements under GR 38/2026.	Art. 34 (1)-(3), Art. 42 (1)-(2), Art. 48 (1)-(3), and Art. 55 (1)-(2)
Dividend-funded equity	BPI Danantara approves increases or decreases in capital participation funded by dividends. Implementation remains subject to the relevant corporate approvals and formalities.	Art. 26(a)-(b)
Danantara loans/pledges	BPI Danantara initiates the relevant borrowing, lending or asset pledge, subject to prior Presidential approval. Execution must comply with applicable financing and corporate requirements.	Art. 26(e)
Guarantee to invest holding	BPI Danantara proposes a guarantee for the Investment Holding, subject to Supervisory Board approval. The guarantee is then executed in accordance with applicable corporate and transaction requirements.	Art. 26(f)
Asset / receivable write-offs	The Investment Holding and/or Operational Holding proposes the relevant write-off within its authority. BPI Danantara's approval and other applicable approvals are required before implementation by the relevant corporate organ. Asset write-offs, receivable write-offs, and receivable waivers must be assessed separately, as each may entail different requirements and formalities.	Art. 12, Art. 26(d), Art. 164

KEY TAKEAWAY

SOE corporate approvals under GR 38/2026 are action-specific rather than centralized. Each action follows its own allocation of proposal, approval, and implementation authority. BPI Danantara's commercial management powers therefore remain subject to BP BUMN's reserved rights, Presidential or Supervisory Board approval where expressly required, and the corporate formalities applicable to the implementing entity.

Pursuant to Article 27 of GR 38/2026, BPI Danantara's powers under Article 26 of GR 38/2026 must be exercised in compliance with applicable laws and regulations, including any additional corporate approval requirements, where applicable.

CORPORATE AUTONOMY VS. ACCOUNTABILITY

GR 38/2026 separates BP BUMN's regulatory oversight from the management and supervisory duties of Persero's Directors and Commissioners. State or shareholder approval does not, by itself, discharge Directors from their management duties or Commissioners from their supervisory and advisory duties, nor does it automatically exclude personal liability where the statutory grounds for liability are established.

1 REGULATORY OVERSIGHT AND CORRECTIVE MECHANISMS

Risk-Based Supervision
BP BUMN conducts integrated risk-based regulatory supervision, including on-site inspections and reviews of periodic and incidental reports.

Art. 15 (1)-(5) GR 38/2026

Corrective Measures
SOEs must follow up on supervisory findings and report corrective measures. Non-compliance may result in warnings or further corrective action.

Art. 16 (1)-(3) GR 38/2026

Special Examinations
Special examinations may be conducted based on supervisory findings and, where applicable, Presidential approval

Art. 18 (1)-(3) GR 38/2026

2 MANAGEMENT AND SUPERVISORY DUTIES

Directors' Accountability
Directors remain responsible for managing the Persero in good faith and with due care. Required approvals do not remove personal liability arising from fault or negligence.

Arts. 22 (1)-(4) GR 38/2026

Commissioners Accountability
Commissioners remain responsible for supervision and advice in good faith and with due care. Approval does not remove liability for supervisory fault or negligence.

Arts. 46 (1)-(4) GR 38/2026

3 LEGAL IMPLICATIONS

Approval vs Duties
State or shareholder approval may authorize a corporate action but does not, by itself, relieve Directors or Commissioners of their statutory duties.

Arts. 32 (1)-(4) & 46 (1)-(2) GR 38/2026

Fault – Based Liability
Personal liability arises from fault or negligence, not from corporate loss alone.

Arts. 32 (3)-(4) & 46 (3)-(4) GR 38/2026

Evidence & Protection
Minutes, risk assessments, supervisory records, and procedural compliance help demonstrate good faith and due care in corporate decision-making.

Arts. 22 (1), Arts. 32 (2), Arts. 46 (4) & Arts. 47 (4) GR 38/2026

KEY TAKEAWAY

Approval and accountability operate on separate legal layers. State, shareholder, Presidential or other required approval may authorize a corporate action, but it does not automatically relieve Directors or Commissioners from their statutory duties. Accountability remains dependent on the proper discharge of management and supervisory responsibilities, particularly whether the relevant organ acted in good faith, with due care, and without fault or negligence.

CUT-LOSS AND DIRECTORS' LIABILITY

LIMITING CORPORATE LOSSES UNDER GR 38/2026

GR 38/2026 permits SOEs to undertake specified loss-limitation measures, including asset or receivable write-offs and receivable waivers, subject to the applicable approval process, documented commercial justification, independent assessment and statutory safeguards.

AVAILABLE CUT-LOSS MECHANISMS

Write-off with Asset Disposal

Writing off assets in connection with their disposal, including through sale or exchange.

Write-off without Asset Disposal

Adjusting the books without disposing of the underlying assets. For receivables, collection may continue.

Release Receiveables

Relinquishing collection rights over receivables that have previously been written off.

Art. 165 and its Elucidation of GR 38/2026

CONDITIONS FOR IMPLEMENTING CUT-LOSS

Demonstrable Commercial Justification

Adequate analysis, supported by working papers, must show that greater losses could arise if cut-loss is not undertaken.

No Fault or Negligence by the Decision-Maker

The impairment or loss must not result from the fault or negligence of the person undertaking the cut-loss.

No Conflict of Interest

The person undertaking the cut-loss must have no direct or indirect conflict of interest in the relevant action.

Independent Assessment

All three conditions must be assessed by an independent consultant or government institution acting within its duties, functions, and competencies.

Art. 165 (3)-(4) GR 38/2026

LIABILITY PROTECTION

Losses arising from cut-loss constitute SOE losses. Protection from personal liability is subject to the following statutory conditions:

- The impairment or loss not arising from fault or negligence.
- The absence of direct or indirect conflict of interest.
- Management acting in good faith with due care, consistent with the investment's purposes and sound business governance.
- No personal benefit being obtained from the cut-loss.

Art. 165 (5)-(6) GR 38/2026

APPROVAL AUTHORITIES AND PROCEDURES

Establishes the criteria for asset write-offs and receivable releases, subject to Presidential approval.

BPI Danantara

Approves write-off and receivable-release proposals submitted by the Investment Holding or Operational Holding.

DAM and DIM

Submit proposals within their respective mandates. **The Investment Holding** proposes actions concerning its assets, while the **Operational Holding** proposes actions concerning its assets and/or SOE assets.

Arts. 12(1), 26(d), 29(g) and 30(e) GR 38/2026

The cut-loss mechanisms, statutory requirements, and liability protections also apply, with necessary adjustments, to assets of SOE subsidiaries.

Art. 166 GR 38/2026

KEY TAKEAWAY

Authority to undertake cut-loss does not automatically confer immunity from liability. Directors must substantiate the commercial rationale, comply with statutory safeguards, and maintain supporting documentation, including independent assessments where required.

TRANSACTION IMPLICATIONS

GR 38/2026 affects transaction structuring and funding availability through its approval requirements. Their timing influences when parties may enter binding commitments, draw funds and complete a restructuring.

A FINANCING AND GUARANTEES

GR 38/2026 differentiates financing authority across BPI Danantara, the holdings and individual SOEs. Specified BPI Danantara transactions require Presidential or Supervisory Board approval, while financing at holding and SOE levels is governed by the applicable BPI Danantara rules and corporate authorisation requirements.

Transaction Structure and Funding Source

Financing through Danantara, a holding or an SOE engages different approval requirements. The choice of borrower and the ownership of assets offered as security therefore affect the financing structure and the approvals needed for execution.

Art. 26 (e) GR 38/2026

Approval Sequencing and Funding Availability

Required approvals must precede the action they authorise. Signing may precede certain approvals only where the entity is authorised to enter into a conditional agreement and the applicable rules do not require prior approval for the commitment itself.

Art. 26 (f) GR 38/2026

Documentation and Approval Risk

Transaction documents should identify the approvals required for signing, drawdown or closing. Conditions precedent, drawdown restrictions, and closing requirements should reflect the applicable approval sequence. Long-stop dates, creditor consents and agreed extension or termination rights can address delayed or refused approvals.

Art. 27-30 GR 38/2026

B RESTRUCTURING AND DEAL EXECUTION

GR 38/2026 places SOE restructuring within a framework of corporate approvals and reserved State powers. Capital changes may engage BPI Danantara's authority, Series A Dwiwarna rights and GMS requirements, while SOE formation and changes of legal form involve additional governmental procedures.

SOE Formation

Formation of an SOE requires a Government Regulation and compliance with the applicable proposal and establishment procedures. Transactions involving the creation of an SOE must therefore account for these regulatory steps before implementation.

Art. 105-108 GR 38/2026

Persero-Perum Conversion

Conversion between Persero and Perum follows a dedicated statutory process. Publication requirements, creditor objections, and other implementation steps must be considered when determining the conversion timetable.

Art. 117-128 GR 38/2026

Restructuring an Existing Persero

Restructuring an existing Persero requires identifying the nature of the proposed transaction and the applicable corporate approvals. Changes involving capital, shareholding, or corporate existence may trigger Series A Dwiwarna reserved rights, GMS resolutions, and additional regulatory requirements.

Arts. 20-25, 26(b) GR 38/2026

KEY TAKEAWAY

Under GR 38/2026, regulatory and corporate approvals are not merely compliance requirements; they are transaction-structuring considerations that may determine funding availability, execution sequencing, and completion certainty.

PRACTICAL TAKEAWAYS

The implementation of GR 38/2026 requires SOEs to align their corporate decision-making processes with the revised allocation of authority and applicable approval requirements. Accordingly, SOEs should establish clear transaction-specific approval procedures, ensure proper documentation of business decisions, and implement appropriate risk controls to strengthen corporate accountability, legal certainty, and compliance with the new governance framework.

1 CORPORATE AUTHORITY & TRANSACTION APPROVALS

Map Decision-Making Authority

Identify the relevant decision-makers based on the SOE's legal form, ownership structure, and applicable delegation of authority. Develop a transaction-specific approval matrix.

Arts. 3-5, Arts. 20-21, Arts. 26-30 GR 38/2026

Verify Reserved Rights and Delegations

Review the AoA, Series A Dwiwarna rights, and applicable delegations to identify reserved matters and required shareholder approvals.

Arts. 20-25, Arts. 28-30 GR 38/2026

Set Transaction Approval Gates

Sequence regulatory and corporate approvals and incorporate them into transaction documents, including conditions precedent, approval timelines, and closing requirements.

Arts. 20-21, Arts. 26 (e)-(f), Arts. 27, Arts 123-125 GR 38/2026

2 MANAGEMENT, ACCOUNTABILITY & RISK CONTROLS

Document Independent Board Judgement

Maintain records of commercial rationale, risk assessments, alternatives considered, and decision-making processes to demonstrate good faith and due care.

Arts. 32-33, Arts. 46-47 GR 38/2026

Strengthen Cut-Loss Safeguards

Establish procedures for loss assessments, independent valuations where required, conflict-of-interest checks, and documentation of statutory conditions.

Arts. 164-166 GR 38/2026

Apply Entity-Specific Controls

Distinguish Persero, Perum, and SOEs designated as fiscal instruments, and apply the corresponding governance and approval requirements.

Arts. 3, 31-33, 63-64, 78-79, 169 & 171-172 GR 38/2026

FROM REGULATION TO IMPLEMENTATION

Effective implementation of GR 38/2026 requires SOEs to translate the revised allocation of authority into clear approval matrices, updated governance documents, and documented decision-making processes. Legal certainty depends not only on obtaining the required approvals, but also on demonstrating compliance with applicable corporate duties and safeguards.

We will continue to follow the developments on this topic and provide additional information as it becomes available. If you have any questions on this topic, please contact:



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