

# SHAREHOLDERS' RIGHTS

In private and public companies

A GLOBAL GUIDE FROM PRACTICAL LAW

## Foreword

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**General Editors:**

**Alessandro Varrenti**

***CBA STUDIO LEGALE E TRIBUTARIO***

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## TYPES OF LIMITED COMPANIES AND SHARES

### 1. WHAT ARE THE MAIN TYPES OF COMPANIES WITH LIMITED LIABILITY AND SHAREHOLDERS? WHICH IS THE MOST COMMON? WHICH TYPE DO FOREIGN INVESTORS MOST COMMONLY USE?

Limited liability companies (*Perusahaan Terbatas* (PT)) are the only type of legal entity with limited liability and shareholders that are recognised under Indonesian law. A PT is a legal entity that is established by at least two shareholders (individuals or entities) based on a deed of establishment signed before a notary and approved by the Minister of Law and Human Rights (MOLHR).

A PT is commonly used to conduct business in Indonesia. Specifically for foreign investors who wish to invest in Indonesia, the Indonesian Investment Law requires foreign capital investment to be made in the form of a PT duly established in Indonesia. A PT that has foreign capital participation will be recognised as a foreign investment company (*Perusahaan Penanaman Modal Asing* (PT PMA)) licensed by the Indonesian Capital Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal* (BKPM)).

PT, PT PMA and public company (PT Tbk) will be collectively referred to here as PT unless the context requires otherwise.

### 2. WHAT ARE THE MINIMUM SHARE CAPITAL REQUIREMENTS FOR COMPANIES?

Indonesian law recognises three types of capital in a PT (authorised, issued and paid-up capital). Authorised capital must be up to four times greater than the issued capital, and all issued capital must be fully paid up. The Company Law provides that the minimum authorised capital of a PT is IDR50 million (US\$3,850 at current exchange rates).

For PT PMA, the BKPM also requires a minimum investment of more than IDR10 billion (US\$771,000 at current exchange rates), which will be divided into equity (issued and paid-up capital) and debt. The amount of the issued and paid-up capital must be at least IDR2.5 billion (US\$208,000, at current exchange rates).

For a PT Tbk, the minimum issued and paid-up capital must be at least IDR3 billion (US\$230,700, at current exchange rates).

Please note that for specific industries, depending on the line of business of the PT, there can be higher capital requirements required by the relevant supervisory institutions.

3. BRIEFLY SET OUT THE MAIN TYPES OF SHARES TYPICALLY ISSUED BY A COMPANY AND THE MAIN RIGHTS THEY PROVIDE. SET OUT THE OTHER MAIN FINANCIAL INSTRUMENTS (FOR EXAMPLE, BONDS) AND PARTICIPATION INSTRUMENTS THAT CAN BE ISSUED BY A COMPANY.

The Company Law only allows PTs to issue registered shares (*saham atas nama*), but does allow the classification of shares (*see Question 5*).

In addition, PTs can issue derivatives in the form of:

- Rights.
- Warrants.
- Options.

4. WHAT IS THE MINIMUM NUMBER OF SHAREHOLDERS IN A COMPANY?

The Company Law requires PTs to have at least two shareholders. If a PT finds itself with only one shareholder, either:

- The sole shareholder must transfer part of its shares to a second shareholder.
- The PT must issue new shares to be owned by a second party within six months from the date that the PT has only one shareholder.

For a PT Tbk, the minimum number of shareholders that must be maintained is 300. However, please note that the Indonesia Stock Exchange (IDX) requires a higher minimum number of shareholders to be listed on the IDX.

## GENERAL SHAREHOLDERS' RIGHTS

5. WHAT ARE THE GENERAL RIGHTS OF ALL SHAREHOLDERS? HOW CAN SHAREHOLDERS' RIGHTS BE VARIED (FOR EXAMPLE, ADDITIONAL RIGHTS ATTACHING TO A CLASS OF SHARES, OR LIMITATIONS ON SHAREHOLDERS' RIGHTS)? ARE SUCH VARIATIONS GENERALLY PROVIDED IN THE COMPANY'S BYE-LAWS AND SHAREHOLDERS' AGREEMENTS?

In general, the Company Law grants the following rights to each shareholder:

- Attend and cast one vote in the general meeting of shareholders (GMS).
- Receive dividend payments and distribution of remaining assets after liquidation.
- File a lawsuit against the PT in the relevant District Court if the shareholder suffers losses as a result of actions by the PT that are considered unfair and unreasonable as a consequence of a resolution of the GMS, Board of Directors (BOD) or Board of Commissioners (BOC).
- Request the PT to repurchase his or her shares at a reasonable price in the event of certain specified corporate transactions.
- Pre-emptive right to subscribe to newly issued shares in proportion to his or her shareholding for the equivalent class of shares.

The Articles of Association (AOA) of PTs can either give shareholders a right of first refusal to purchase the shares of other shareholders and/or provide that a shareholder intending to sell his shares first obtain prior approval from the GMS, BOD or BOC of the company,

or oblige the shareholder to obtain prior approval from the competent authorities in accordance with the applicable laws and regulations.

In addition, the Company Law allows the issuance of different classifications of shares, as follows:

- Shares with or without voting rights.
- Shares with the special right to nominate members of the BOD and/or BOC.
- Shares that, after a certain period, are revocable or exchangeable with another class of shares.
- Shares granting the holder the pre-emptive right to receive dividends prior to holders of other classes of shares for cumulative or non-cumulative dividend distributions.
- Shares granting the holder the pre-emptive right to receive the PT's remaining assets upon liquidation prior to holders of other classes of shares.

Other rights can also be granted to shareholders under a shareholders' agreement and the AOA of the PT, to the extent that these rights do not violate the provisions of the Company Law and other applicable laws and regulations. For example, it is common to grant certain shareholders the right to nominate members of the BOD and BOC.

## 6. BRIEFLY SET OUT THE RIGHTS OF MINORITY SHAREHOLDERS AND THE SHAREHOLDING REQUIRED TO EXERCISE SUCH RIGHTS.

The following are the rights of minority shareholders under the Company Law:

- At the request of one or more shareholders who jointly represent one-tenth of the total number of shares having valid voting rights, or a lesser number as may be stipulated in a PT's AOA:
  - the BOD is obligated to hold an annual general meeting of shareholders (AGMS) or an extraordinary general meeting of shareholders (EGMS); and
  - the head of the relevant District Court can authorise such shareholders to call an AGMS if the BOD or BOC of the PT has not convened an AGMS at the stipulated time.
- Shareholders who jointly represent one-tenth of the total number of shares having valid voting rights can file a lawsuit at the relevant District Court against members of the BOD and/or BOC who have caused losses to the PT as a result of wrongdoing or negligence.
- One or more shareholders who jointly represent one-tenth of the total number of shares having valid voting rights can submit a written request to the relevant District Court to investigate the PT for the purpose of obtaining data or information if there is any reason to believe that:
  - the PT has committed an unlawful act that has resulted in damage to the shareholders or a third party; or
  - a member of the BOD or BOC has committed an unlawful act that has caused losses to the PT, shareholders or a third party.
- One or more shareholders who jointly represent one-tenth of the total number of shares having valid voting rights can request the relevant District Court to dissolve the PT if it is deemed the PT is not able to continue its operations.

A shareholder can request the PT to repurchase his or her shares at a reasonable price in the event of certain specified corporate transactions (*see Question 5*).

7. HOW INFLUENTIAL ARE INSTITUTIONAL INVESTORS AND OTHER SHAREHOLDER GROUPS IN MONITORING THE COMPANY'S ACTIONS (FOR EXAMPLE, CORPORATE GOVERNANCE COMPLIANCE)? LIST ANY SUCH GROUPS WITH SIGNIFICANT INFLUENCE IN THIS AREA.

The Indonesian Company Law does not distinguish between individual shareholders and institutional shareholders, and the type of shareholder has no effect on the PT's compliance. Typically, a PT's compliance with applicable good corporate governance regulations depends on the PT's line of business. For example, a PT Tbk or PT under the jurisdiction of the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)) will be subject to the OJK's regulations on good corporate governance.

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## GENERAL MEETING OF SHAREHOLDERS

### CALLING A GENERAL MEETING

8. DOES A COMPANY HAVE TO HOLD AN ANNUAL SHAREHOLDERS' MEETING? IF SO, WHEN? WHAT ISSUES MUST BE DISCUSSED AND APPROVED? WHICH DECISIONS MUST BE APPROVED BY THE SHAREHOLDERS IN A GENERAL MEETING?

PTs must hold an annual general meeting of shareholders (AGMS) at least six months after the end of the PT's financial year. The AGMS must discuss and approve the annual report submitted by the Board of Directors (BOD), which must consist of at least the following:

- Financial report.
- Report on the PT's activity.
- Report on the implementation of the PT's corporate, social and environmental responsibility activities.
- Details of any problems that arose during the financial year that affected the PT's business activities.
- Report on the duties and authorities executed by the Board of Commissioners (BOC) during the last financial year.
- Names of the members of the BOD and BOC.
- The salaries and allowances of the BOD and BOC members during the last financial year.

An extraordinary general meeting of shareholders (EGMS) can be convened at any time it is deemed required for the interests of the PT.

9. CAN A GENERAL MEETING BE HELD BY TELECOMMUNICATION MEANS OR WRITTEN/ELECTRONIC APPROVAL?

The Company Law allows a GMS to be held by teleconference, video conference or any other electronic means.



In addition, a PT's Articles of Association (AOA) can permit shareholders to adopt a resolution without convening a GMS, namely by way of a Unanimous Written Resolution of Shareholders (UWRS), provided that:

- The matter to be resolved has previously been notified in writing to all shareholders.
- All shareholders agree to and sign the relevant UWRS.

#### 10. WHAT ARE THE NOTICE, INFORMATION, AND QUORUM REQUIREMENTS FOR HOLDING GENERAL MEETINGS AND PASSING RESOLUTIONS?

For PTs, notice of a general shareholders' meeting (GMS) must be delivered to shareholders no later than 14 days prior to the convening of the GMS, and the notice must be sent by registered mail and/or announced in a daily newspaper. The notice must:

- Contain information on the date, time, place and agenda of the GMS.
- Let shareholders know that materials for the GMS are available in the PT's office as of the date of the notice until the date of the GMS.

The notice of a GMS can be waived if all shareholders attend the GMS and approve the resolution unanimously.

A GMS can be validly convened if attended or represented by parties holding more than one-half of the total shares with valid voting rights. If this quorum for the GMS is not reached, a notice for a second GMS can be sent informing shareholders that the first GMS failed to reach a quorum. The second GMS will be valid and entitled to adopt resolutions if attended by shareholders representing not less than one-third of all shares with valid voting rights. In the event the quorum for the second GMS is not reached, the PT can request the chairman of the relevant District Court to determine the quorum for the third GMS.

A PT Tbk must convey notification of the agenda of the GMS to the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)) no later than five days before the GMS announcement, which must be made at the latest 14 days before the invitation to the GMS is issued. The GMS announcement must include the:

- Eligibility requirements for shareholders to attend the GMS.
- Requirements for eligible shareholders to propose agenda items for the GMS.
- Date of the GMS.
- Date of the GMS invitation.

One or more shareholders who individually or collectively represent one-twentieth or more of the total shares with voting rights can propose GMS agenda items to the Board of Directors (BOD) of the PT Tbk at least seven days before the invitation for the GMS is issued.

A PT Tbk must invite shareholders to attend the GMS no later than 21 days before the GMS, excluding the date of the invitation and the date of the GMS. The invitation for the GMS must at least include:

- The venue, date and time of the GMS.
- Eligibility requirements for shareholders to attend the GMS.
- The agenda of the GMS with a summary of each item on the agenda.
- A statement that the GMS agenda is available at the PT Tbk's office or website from the date of the invitation until the date the GMS is held.

The GMS announcement and invitation must be announced:

- In one daily newspaper with national circulation.
- On the IDX's website.
- On the website of the PT Tbk.

Evidence of these announcements must be submitted by the PT Tbk to the OJK no later than two days after the announcements are made.

A GMS will be deemed valid if one-half of shareholders holding shares with voting rights attend or are represented at the meeting. If such quorum cannot be reached, a second GMS can be held with a quorum of one-third of shareholders holding shares with voting rights. If the quorum for the second GMS cannot be reached, a third GMS can be held with a quorum as stipulated by the OJK at the request of the PT Tbk.

## VOTING

### 11. WHAT ARE THE VOTING REQUIREMENTS FOR PASSING RESOLUTIONS AT GENERAL MEETINGS?

In general, resolutions of a general shareholders' meeting (GMS) are adopted by consensus. Failing this, a resolution must be approved by more than one-half of the shares in attendance or represented. As stated above, in all cases the Company Law permits the Articles of Association (AOA) of a PT to require a greater percentage of votes to approve resolutions submitted to the GMS.

In addition, shareholders can adopt a resolution without convening a GMS provided that:

- The matter to be resolved has previously been notified in writing to all shareholders.
- All shareholders agree to and sign the relevant Unanimous Written Resolution of Shareholders (UWRS).

For PT Tbk, a resolution can be adopted in the first and second GMS if approved by a simple majority. Shareholders who attend the GMS but abstain from voting will be deemed as voting with the majority.

### 12. ARE SPECIFIC SHAREHOLDER APPROVALS/RESOLUTIONS REQUIRED BY STATUTE FOR CERTAIN CORPORATE ACTIONS? WHAT VOTING REQUIREMENTS AND MAJORITIES APPLY?

The following are the quorum and voting requirements for certain corporate actions as required by the Company Law:

- **Amendments to the Articles of Association (AOA).** Amendments to the AOA must be approved at a meeting at which at least two-thirds of the PT's voting shares are represented and at least two-thirds of the shares in attendance approve the resolution. In the event the quorum for attendance is not reached, a second GMS can be held. The second GMS will be valid and entitled to make a resolution if not less than three-fifths of the total shares with valid voting rights are present or represented, and at least two-thirds of the shares in attendance approve the resolution. In the event the quorum for the second GMS is not reached, the company can request the chairman of the District Court whose jurisdiction covers the company's domicile to determine the quorum for the third GMS. The notice for a third GMS must indicate that a second GMS was convened

but the quorum was not reached, and the third GMS will be held with a quorum determined by the chairman of the District Court.

- **Merger, consolidation, acquisition, bankruptcy and/or dissolution.** A merger, consolidation, acquisition, bankruptcy and/or dissolution of the company, as well as the transfer or pledge of the company's assets as security for a loan which comprise more than 50% of the company's net assets in one or more related or unrelated transactions, must be approved at a GMS at which at least three-fourths of the company's voting shares are represented, and at least three-fourths of the shares in attendance approve the resolution. In the event the quorum is not reached, a second GMS can be held. The second GMS will be valid and entitled to approve a resolution if not less than two-thirds of the total shares with valid voting rights are present or represented, and at least three-fourths of the shares in attendance approve the resolution.
- **Increase of issued and paid-up capital.** A GMS can be validly convened if attended or represented by more than one-half of the total shares with valid voting rights, and the resolutions of that meeting must be approved by more than one-half of the shares in attendance. In the event the quorum for the first GMS is not reached, a notice for a second GMS can be issued. The notice for the second GMS must indicate that the first GMS was held and that the quorum was not reached. The second GMS will be valid and entitled to adopt resolutions if attended by shareholders representing not less than one-third of all shares with valid voting rights, and the resolutions of that meeting must be approved by more than one-half of the shares in attendance. If the quorum for the second GMS is not reached, the company can request the chairman of the District Court whose jurisdiction covers the company's domicile to determine the quorum for the third GMS. The notice for a third GMS must indicate that a second GMS was convened but the quorum was not reached, and the third GMS will be held with a quorum determined by the chairman of the District Court. The stipulation by the chairman of the District Court concerning the notice for a GMS will be final and have permanent legal force.

The following are the quorum and voting requirements for certain corporate actions specifically for PT Tbk:

- **Amendments to the AOA.** Two-thirds of shareholders holding shares with voting rights must attend or be represented at the GMS to amend the AOA, and the resolution must be approved by at least two-thirds of shareholders attending or represented at the meeting. If the quorum is not reached, a second GMS can be held with an attendance quorum of three-fifths, and the resolution at the second GMS can be approved by a simple majority. If the quorum at the second GMS is not reached, a third GMS can be held with a quorum stipulated by the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)).
- **Merger, consolidation, acquisition, bankruptcy and/or dissolution.** At least three-fourths of shareholders with voting rights must attend or be represented at a GMS to resolve:
  - a transfer of more than 50% of the company's net assets;
  - the imposition of a security over more than 50% of the company's net assets;
  - a merger;
  - a consolidation;
  - an acquisition;
  - a spin-off;
  - a bankruptcy petition;
  - an extension of the company's term of establishment;
  - a dissolution.

The resolution must be approved by at least three-fourths of shareholders attending or represented at the meeting. If such quorum is not reached, a second GMS can be held with an attendance quorum of two-thirds, and the resolution must be approved by three-fourths of shareholders attending or represented at the meeting. If the quorum at the second GMS is not reached, a third GMS can be held with a quorum stipulated by the OJK.

- **Conflict of interest.** A GMS to resolve a transaction with a conflict of interest must be attended by independent shareholders holding more than one-half of the shares with voting rights held by independent shareholders. The resolution must be approved by more than one-half of independent shareholders with voting rights. If such quorum is not reached, a second GMS can be held if it is attended by more than one-half of independent shareholders with voting rights, and the resolution must be approved by more than one-half of independent shareholders attending the meeting. If the quorum at the second GMS cannot be reached, a GMS can be held with an attendance quorum stipulated by the OJK, and the resolution must be approved by more than 50% of independent shareholders attending the meeting.

Shareholders who attend the meeting but abstain from voting will be deemed as voting with the majority.

## SHAREHOLDER RIGHTS RELATING TO GENERAL MEETINGS

### 13. CAN A SHAREHOLDER REQUIRE A GENERAL MEETING TO BE CALLED? WHAT LEVEL OF SHAREHOLDING IS REQUIRED TO DO THIS? CAN A SHAREHOLDER ASK A COURT OR GOVERNMENT BODY TO CALL OR INTERVENE IN A GENERAL MEETING?

One or more shareholders who jointly represent one-tenth or more of the total shares with voting rights can request the Board of Directors (BOD) to convene a GMS. Upon such request, the BOD will call shareholders to a GMS. If the BOD does not call a GMS, the Board of Commissioners (BOC) will have the obligation to do so. If neither the BOD nor the BOC calls a GMS, the shareholder(s) who requested that a GMS be convened will have the right to file a request to the chairman of the District Court whose jurisdiction covers the domicile of the PT to call a GMS.

### 14. CAN A SHAREHOLDER REQUIRE AN ISSUE TO BE INCLUDED AND VOTED ON AT A GENERAL MEETING? WHAT LEVEL OF SHAREHOLDING IS REQUIRED TO DO THIS? CAN A SHAREHOLDER REQUIRE INFORMATION FROM THE BOARD ABOUT THE MEETING'S AGENDA?

One or more shareholders who jointly represent one-tenth of the total number of shares having valid voting rights, or a lesser number as may be stipulated in a PT's Articles of Association (AOA), can request the Board of Directors (BOD) to hold a general meeting of shareholders (GMS) by filing a registered letter with the BOD containing the agenda to be discussed and resolved at the GMS. The agenda of the GMS must be included in the notice of the GMS by the BOD to shareholders, and materials for the GMS must be available in the PT's office as of the date of the notice until the date of the GMS.

Specifically for a PT Tbk, shareholders who jointly represent at least one-twentieth or more of total shares with voting rights (unless the AOA determines a lower number) can propose the agenda to be discussed and resolved at the GMS.

#### 15. DO SHAREHOLDERS HAVE A RIGHT TO RESOLVE IN A GENERAL MEETING ON MATTERS WHICH ARE NOT ON THE AGENDA?

If there are additional agenda items to be discussed at the GMS that were not included in the notice of the GMS, all shareholders must unanimously approve the inclusion of such additional items to be discussed at the GMS, and the resolution at the meeting must be unanimously approved by all shareholders.

#### 16. CAN A SHAREHOLDER CHALLENGE A RESOLUTION ADOPTED BY A GENERAL MEETING? IS A CERTAIN SHAREHOLDING LEVEL REQUIRED TO DO THIS? WHAT IS THE TIME LIMIT AND PROCEDURE TO CHALLENGE A GENERAL MEETING RESOLUTION?

Each shareholder can file a lawsuit against the PT in the relevant District Court if the shareholder suffers losses caused by the PT's actions which are considered unfair and unreasonable as a consequence of a resolution of the general meeting of shareholders (GMS), or caused by the Board of Directors (BOD) or the Board of Commissioners (BOC).

In addition, if the actions of the PT cause a shareholder or the PT to incur losses, any shareholder can require the PT to purchase his shares at a reasonable price if such shareholder did not approve the PT's actions, and where those actions constitute either:

- An amendment of the Articles of Association (AOA).
- A transfer or pledge of the PT's assets valued at more than 50% of the PT's total net assets.
- A merger, consolidation, acquisition or demerger.

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## SHAREHOLDERS' RIGHTS AGAINST DIRECTORS

#### 17. WHAT IS THE PROCEDURE TO APPOINT AND REMOVE A DIRECTOR?

The appointment and removal of a director must be approved by the shareholders of the PT. A general meeting of shareholders (GMS) must be held for such a purpose. The quorum and voting requirements must be in accordance with the PT's AOA. In the absence of specific voting and quorum requirements under the AOA, a GMS will be valid and entitled to make binding decisions if attended by shareholders representing more than 50% of total shares with valid voting rights. Any resolution to change the composition of the Board of Directors (BOD) or Board of Commissioners (BOC) will be adopted on the basis of mutual consensus, failing which the resolution can be adopted on the basis of an affirmative vote of more than 50% of the total votes legally cast at the GMS. For a PT Tbk, a GMS to adopt resolutions on the resignation of a member of the BOD and/or the BOC must be convened no later than 90 days after receipt of the resignation letter from the relevant member of the BOD and/or the BOC.

The election or removal of a director will be effective as of the effective date stipulated in the resolution.

A PT, through a notary, is required to notify the Minister of Law and Human Rights (MOLHR) of any changes in the composition of the BOD. The MOLHR will then issue an acknowledgement affirming its receipt and registration of the change in the BOD.

18. CAN SHAREHOLDERS CHALLENGE A RESOLUTION OF THE BOARD OF DIRECTORS? IS THERE A MINIMUM SHAREHOLDING REQUIRED TO DO THIS?

*See Question 16.*

19. BRIEFLY SET OUT THE MAIN DIRECTORS' DUTIES TO THE COMPANY AND ITS SHAREHOLDERS. WHAT IS THE POTENTIAL LIABILITY OF DIRECTORS TO THE SHAREHOLDERS? CAN THEIR LIABILITY BE LIMITED OR EXCLUDED? ON WHAT GROUNDS CAN SHAREHOLDERS BRING LEGAL ACTION AGAINST THE DIRECTORS?

Under the Company Law, the Board of Directors (BOD) manages the company in the interests of the PT and in accordance with its purposes and objectives. In performing their management duties, BOD members are jointly and severally empowered to represent the PT in its external relations unless specifically restricted by the Articles of Association (AOA) in the event of a conflict of interest. Subject to the terms of the AOA, the BOD can manage the PT's assets, bind the PT contractually and otherwise generally represent the PT. In Indonesia, directors can delegate duties and functions to other employees, but they remain legally responsible for all actions taken on behalf of the PT.

Each member of the BOD can be liable to shareholders and creditors for acts that are ultra vires, negligent or in bad faith in the discharge of their responsibilities. The Company Law specifies several circumstances that can result in members of the BOD being held personally and/or jointly liable for the acts of the PT, as follows:

- Legal actions taken on behalf of the PT before it becomes a legal entity (that is, before its Articles of Association (AOA) have been approved by the Minister of Law and Human Rights (MOLHR)) can only be undertaken by all members of the BOD together with all of the founders and members of the Board of Commissioners (BOC) of the PT, and they will be held jointly responsible for those legal actions.
- If a PT either directly or indirectly repurchases its shares in violation of the provisions of the Company Law, and the purchasing shareholders acting in good faith suffer losses, then the members of the BOD will be jointly responsible for such losses.
- In the event that the PT's financial statement proves to be incorrect and/or misleading, then the members of the BOD and the BOC will be jointly responsible to parties suffering losses.
- The BOD and the BOC will be jointly responsible for losses incurred by the PT if the shareholders are unable to return the interim dividends.
- Legal actions conducted for and on behalf of the PT by a member of the BOD after the cancellation of his or her appointment as a director will be void and will become the responsibility of the individual member of the BOD concerned.
- Each member of the BOD will be fully responsible personally for losses suffered by the PT if the concerned member is at fault and has been negligent in carrying out his or her duties.
- Members of the BOD who fail to comply with the obligation to report to the PT on their and/or their family members' ownership of shares in the PT and in other companies to be recorded in the special list, and who cause losses to the PT, will be personally responsible for such losses.
- In the event a bankruptcy is caused by the fault or negligence of the BOD and the PT's bankruptcy assets are insufficient to settle all of the PT's liabilities caused by that bankruptcy, then each member of the BOD will be jointly responsible for all outstanding liabilities of those bankruptcy assets.

- If the PT performs legal actions other than to settle all of the PT's matters in the framework of a liquidation, then the members of the BOD and BOC and the PT will be jointly responsible.
- If the BOD as liquidator has neglected to notify creditors and the Minister of Law and Human Rights (MOLHR) within 30 days after the date the PT is dissolved, then the BOD of the PT will be jointly responsible for losses suffered by third parties.

20. ARE DIRECTORS SUBJECT TO SPECIFIC RULES WHEN THEY HAVE A CONFLICT OF INTEREST RELATING TO THE COMPANY? ARE THERE RESTRICTIONS ON PARTICULAR TRANSACTIONS BETWEEN A COMPANY AND ITS DIRECTORS? DO SHAREHOLDERS HAVE SPECIFIC RIGHTS TO BRING AN ACTION AGAINST DIRECTORS IF THEY BREACH THESE RULES?

There are no specific rules on conflicts of interest for private PTs. The Company Law provides that if members of the Board of Directors (BOD) have a conflict of interest with the interests of the PT, those members are not authorised to represent the PT.

In general, if the conflict of interest between a BOD member and the PT results in evident losses to the PT or shareholders due to the fault or negligence of the director, one or more shareholders who jointly represent one-tenth of total voting rights can file a claim with the relevant District Court against the BOD member.

For PT Tbk, there are specific rules on conflicts of interest under OJK Regulation No. IX. E.1. A conflict of interest transaction is one in which there is a difference between the economic interests of the PT Tbk and the personal economic interests of a director, commissioner or major shareholder of the PT Tbk in a transaction in which the PT Tbk may incur losses. OJK Regulation No. IX.E.1 provides that any conflict of interest transaction must first be submitted to, and approved by, a majority vote of independent shareholders at a general meeting of shareholders (GMS).

21. DOES THE BOARD HAVE TO INCLUDE A CERTAIN NUMBER OF NON-EXECUTIVE, SUPERVISORY OR INDEPENDENT DIRECTORS?

The Company Law recognises and requires a two-board system consisting of a Board of Directors (BOD) and a Board of Commissioners (BOC). The BOD constitutes the PT's management. Members of the BOD are the day-to-day operating officers of PTs. By contrast, the BOC serves a supervisory function.

22. DO DIRECTORS' REMUNERATION AND SERVICE CONTRACTS HAVE TO BE DISCLOSED? IS SHAREHOLDER APPROVAL OF DIRECTORS' REMUNERATION REQUIRED?

The salary and remuneration of directors is typically determined by shareholders through a general meeting of shareholders (GMS), but such determination can be delegated to the Board of Commissioners (BOC). In the event that the authority of the GMS is delegated to the BOC, the salary and remuneration of directors must be stipulated based on a resolution adopted at a BOC meeting. Information regarding salaries, allowances and honorariums of Board of Directors (BOD) members must be disclosed in the annual report of the PT.

For a PT Tbk, the BOC can form a Nomination and Remuneration Committee to help the BOC in proposing BOD and BOC candidates and determining remuneration for directors

and commissioners. The committee must consist of a minimum of three members, including one independent commissioner as the chairman of the committee.

There is no specific disclosure requirement for the entering into of a service contract between directors and PTs.

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## SHAREHOLDERS' RIGHTS AGAINST THE COMPANY'S AUDITORS

### 23. WHAT IS THE PROCEDURE TO APPOINT AND REMOVE THE COMPANY'S AUDITORS? WHAT RESTRICTIONS AND REQUIREMENTS APPLY TO WHO CAN BE THE COMPANY'S AUDITORS?

There is no specific procedure to appoint or remove a PT's auditors, nor are there any specific requirements for parties to be eligible for appointment as a PT's auditor.

The Board of Commissioners (BOC) of a PT Tbk must establish an audit committee to assist the BOC in performing the duties and functions of the BOC. The audit committee must at least comprise three members, including an independent commissioner and external parties.

### 24. WHAT IS THE POTENTIAL LIABILITY OF AUDITORS TO THE COMPANY AND ITS SHAREHOLDERS IF THE AUDITED ACCOUNTS ARE INACCURATE? CAN THEIR LIABILITY BE LIMITED OR EXCLUDED?

Under the Company Law, in the event that a financial statement proves to be incorrect and/or misleading, members of the Board of Directors (BOD) and the Board of Commissioners (BOC) will be jointly responsible to parties suffering losses. The financial statement is part of the annual report submitted by the BOD to the general meeting of shareholders (GMS) after review by the BOC within six months after the close of the PT's financial year. All members of the BOD and BOC who hold positions during the relevant financial year must sign the annual report and are considered to have approved the contents of the annual report.

For the liabilities of auditors, as a general rule public accountants must comply with the provisions under Law No. 5 of 2011 regarding public accountants. Violation of these provisions can trigger a lawsuit against the concerned public accountant, which can be submitted by the PT that engaged the public accountant to audit the company's financial report.

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## DISCLOSURE OF INFORMATION TO SHAREHOLDERS

### 25. WHAT INFORMATION ABOUT THE COMPANY DO THE DIRECTORS HAVE TO PROVIDE AND DISCLOSE TO ITS SHAREHOLDERS? WHAT INFORMATION AND DOCUMENTS ARE SHAREHOLDERS ENTITLED TO RECEIVE?

The Company Law provides that upon a written request from shareholders, the Board of Directors (BOD) must permit the shareholders to:



- Examine the register of shareholders, the special register of shareholders, minutes of the general meeting of shareholders (GMS) and annual reports.
- Obtain copies of the minutes of the GMS and annual reports of the PT.

The BOD must also convey information related to the PT to shareholders at the GMS insofar as such information is related to the agenda of the meeting and is not contrary to the PT's interests.

#### 26. WHAT INFORMATION ABOUT THE COMPANY DO THE DIRECTORS HAVE TO DISCLOSE UNDER SECURITIES LAWS (WHERE APPLICABLE)?

Under OJK Regulation No. IX.K.1, information or material facts that may affect the price of shares must be disclosed to the public within, at the latest, two working days as of the availability of such material information. Information that is considered material is as follows:

- Merger, purchase of shares, consolidation or the establishment of a joint venture.
- Stock splits or the distribution of share dividends.
- Extraordinary income from dividends.
- Obtainment or loss of an important contact.
- New product or invention that is material.
- Change of control or material change in management.
- Announcement of buyback or the payment of securities in debt form.
- Sale of additional securities.
- Purchase or material loss from the sale of assets.
- Important labour dispute.
- Material legal claim against the company and/or the company's director(s) and commissioner(s).
- The submission of an offer to purchase the company's security.
- Replacement of the company's accountant.
- Replacement of the trustee.
- Change of the company's fiscal year.

In addition to information that may have a material effect on share price, a PT Tbk is also subject to the obligation to provide regular and incidental disclosures to the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)), the Indonesia Stock Exchange (IDX) and the public.

#### 27. IS THERE A CORPORATE GOVERNANCE CODE IN YOUR JURISDICTION? DO DIRECTORS HAVE TO EXPLAIN TO SHAREHOLDERS IN THE COMPANY'S ANNUAL REPORT IF THEY HAVE NOT COMPLIED WITH IT (COMPLY OR EXPLAIN APPROACH)?

There is no general good corporate governance code for PTs. However, there are specific good corporate governance rules applicable for specific industries, such as the banking and insurance industries. There is no requirement to disclose a company's failure to comply with good corporate governance rules in the PT's annual report.

Specifically for a PT Tbk, OJK Regulation No. 33/POJK.04/2014 requires the Board of Directors (BOD) to prepare:

- Binding guidelines for directors and commissioners, which must at least include the legal basis, description of the job, duties and authorities, the working hours, meeting policy, reporting requirements and liability of directors and commissioners.
- A code of ethics for the BOD in carrying out their duties in good faith, responsibly and with prudence, and governing the conduct of the BOD in the event of a conflict of interest with the PT Tbk.

28. WHAT INFORMATION CAN SHAREHOLDERS REQUEST FROM THE BOARD ABOUT THE COMPANY? ON WHAT GROUNDS CAN DISCLOSURE OF COMPANY INFORMATION BE REFUSED? ARE SHAREHOLDERS ENTITLED TO INSPECT THE COMPANY'S BOOKS AND SIMILAR COMPANY DOCUMENTS?

See *Question 25*.

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## SHAREHOLDERS' AGREEMENTS

29. BRIEFLY SET OUT THE MAIN PROVISIONS OF A TYPICAL SHAREHOLDERS' AGREEMENT.

Shareholders are free to agree on any provisions under a shareholders' agreement insofar as the provisions do not contravene the Company Law and other prevailing laws and regulations. Common provisions in shareholders' agreements include, but are not limited to:

- The rights and obligations of the shareholders.
- Reserved matters that must be unanimously approved by the Board of Directors (BOD) or the Board of Commissioners (BOC) or shareholders.
- Capitalisation.
- Corporate governance.
- Voting rights.
- The appointment of the BOC and BOD.
- The requirements and procedures for the transfer of shares.
- Pre-emptive rights.
- Representations and warranties.
- Protective covenants.
- Restriction on the encumbrance of shares.
- Distribution of dividends.
- Termination.
- Governing law and the settlement of disputes.

Typically, the provisions under a shareholders' agreement will also be reflected in the Articles of Association (AOA) of the PT. The AOA of a PT Tbk must be in accordance with the requirements under:

- OJK Regulation No. IX.J.1.
- OJK Regulation No. 32/POJK.04/2014 regarding the Planning and Implementation of

General Meeting of Shareholders in Public Companies.

- OJK Regulation No. 33/POJK.04/2014 regarding the Board of Directors and Board of Commissioners of Issuers and Public Companies.
- OJK Regulation No. 34/POJK.04/2014 regarding the Nomination and Remuneration Committee of Issuers and Public Companies.

### 30. ARE THERE CIRCUMSTANCES WHERE SHAREHOLDERS' AGREEMENTS CAN BE ENFORCEABLE AGAINST THIRD PARTIES?

Article 1340 of the Indonesian Civil Code expressly provides that an agreement binds only the parties to the agreement, and that an agreement cannot cause losses or benefits to third parties. However, Article 1317 of the Indonesian Civil Code permits the parties to an agreement to specifically provide that an agreement is made for the benefit of a third party. This must be expressly stated in the agreement. Alternatively, the third party can enter into a deed adherence letter to undertake its adherence to the shareholders' agreement.

### 31. DO SHAREHOLDERS' AGREEMENTS HAVE TO BE PUBLICLY DISCLOSED OR REGISTERED?

In general, there is no statutory obligation to publicly disclose or register shareholders' agreements.

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## DIVIDENDS

### 32. HOW CAN DIVIDENDS BE PAID TO SHAREHOLDERS AND WHAT PROCEDURES AND RESTRICTIONS APPLY? IS IT POSSIBLE TO EXCLUDE OR LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DIVIDENDS? IS THE PAYMENT OF INTERIM DIVIDENDS ALLOWED?

Dividends are distributed if there is a surplus in a financial year, and after the allocation of the mandatory reserve so that the amount of the reserve reaches at least 20% of the total amount of the issued and paid-up shares. Indonesian law also recognises interim dividends. PTs can distribute interim dividends prior to the end of a financial year based on a resolution of the Board of Directors (BOD) that has been approved by the Board of Commissioners (BOC), provided that such distribution:

- Does not decrease the net asset value of the PT.
- Will not cause the PT to have difficulty in repaying loans to creditors.
- Will not disturb the PT's business activities.

The BOD and the BOC will be jointly responsible for the losses incurred by the PT if shareholders are unable to return the interim dividends if any of the conditions above occur.

It is not possible to exclude certain shareholders from receiving a dividend, since the receipt of dividends is the right of each shareholder. However, the Company Law allows for the issuance of different classes of shares, including shares granting holders the

pre-emptive right to receive dividends prior to the holders of other classes of shares for cumulative or non-cumulative dividend distributions.

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## FINANCING AND SHARE INTERESTS

### 33. CAN SHAREHOLDERS GRANT SECURITY INTERESTS OVER THEIR SHARES?

Yes, the Company Law allows a shareholder to encumber a fiduciary security or pledge over its shares, unless the PT's Articles of Association AOA stipulate otherwise.

### 34. ARE THEIR RESTRICTIONS ON FINANCIAL ASSISTANCE FOR THE PURCHASE OF A COMPANY'S SHARES?

There are no restrictions under Indonesian law on receiving financial assistance from other parties for the purchase of a PT's shares. Funding to purchase a PT's shares is a commercial decision of the parties involved. The Company Law only provides that all issued shares in a PT must be fully paid by shareholders. The sale and purchase of shares between seller and buyer is subject to the arrangement of the parties, which will be reflected in the share sale and purchase agreement and/or share transfer deed.

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## SHARE TRANSFERS AND EXIT

### 35. ARE THERE ANY RESTRICTIONS ON THE TRANSFER OF SHARES BY LAW? CAN THE TRANSFER OF SHARES BE RESTRICTED? WHAT ARE THE RIGHTS OF SHAREHOLDERS IN THE CASE OF AN ISSUE OF NEW SHARES (PRE-EMPTION RIGHTS)?

In principle, shareholders are allowed to transfer their shares. The procedure for transferring shares in a PT is subject to the PT's Articles of Association (AOA). To the extent that is provided for in the PT's AOA, a share transfer can be subject to:

- Prior approval from other shareholders (for example, a right of first refusal).
- Prior approval from the company's organs (for example, a shareholders' meeting, the Board of Directors (BOD) or the Board of Commissioners (BOC)).
- Prior approval of the authorised governmental institution.

Restrictions on the transfer of shares can be agreed by shareholders in a shareholders' agreement.

Additionally, the transfer of shares in a PT PMA must consider foreign shareholding limitations. Certain types of businesses in Indonesia are subject to foreign ownership limitations, as governed by the Indonesian Negative Investment List (*Daftar Negative Investasi* (DNI)). The DNI lists the relevant sectors that are restricted or prohibited for foreign investment.

For the issuance of new shares, each shareholder has a pre-emptive right to subscribe to newly issued share capital in proportion to its shareholding for the equivalent class of

shares. The new shares can be issued to a third party, provided the existing shareholders have waived their pre-emptive right to subscribe to the newly issued shares.

The issuance of new shares in a PT Tbk is subject to rights issue requirements under OJK Regulation No. IX.D.1.

### 36. CAN MINORITY SHAREHOLDERS ALTER OR RESTRICT CHANGES TO THE COMPANY'S SHARE CAPITAL STRUCTURE?

Minority shareholders cannot alter or restrict changes to a PT's share capital structure. However, to protect the interests of minority shareholders, the Articles of Association (AOA) of a PT can give shareholders the right of first refusal to purchase the shares of other shareholders. In addition, each shareholder has the right to request the PT to repurchase its shares at a reasonable price if that shareholder does not approve the corporate actions of the PT, including merger, consolidation, acquisition or demerger.

### 37. WHEN ARE SHAREHOLDERS REQUIRED TO NOTIFY CHANGES TO THEIR SHAREHOLDING TO A REGULATORY AUTHORITY?

Changes in a PT's shareholding composition must be notified by the PT, though a notary, to the Minister of Law and Human Rights (MOLHR) once the parties have executed the share transfer deed. An increase in the PT's authorised capital will require MOLHR approval, while an increase in issued and paid-up capital must be notified to the MOLHR once the new shareholder has injected additional funds for the subscription of new shares.

Specific regulatory approvals prior to the change of shareholders may be required subject to the PT's specific line of business. For example, a PT PMA will require the approval of the Indonesian Capital Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal* (BKPM)), and banks or non-bank financial institutions require approval from the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)) prior to the change of shareholders.

For PT Tbk, a disclosure obligation arises in relation to an interest in securities (including shares) when an investor reaches 5% of shareholding ownership in a PT Tbk. Once the 5% has been reached, any transfer of shares (as long as the ownership is still above 5%) must be reported to the OJK.

In addition, if a change of shareholder constitutes an acquisition under the Indonesian Company Law, the Indonesian Competition Law requires that a filing be made to the Competition Supervisory Board (*Komisi Pengawas Persaingan Usaha*) (KPPU) for mergers or consolidations of business entities and for acquisitions of shares if the resulting asset value and/or sales value exceeds certain thresholds. This filing must be made to the KPPU no later than 30 business days after the effective date of the merger, consolidation or acquisition. The acquiring company has the obligation to make the filing.

### 38. CAN COMPANIES BUY BACK THEIR SHARES? WHICH LIMITATIONS APPLY?

Under the Indonesian Company Law, PTs can buy back shares with the approval of the general meeting of shareholders (GMS), provided that:

- The buyback does not result in the PT's net assets falling below the issued shares and the PT's mandatory reserve.
- The total nominal value of shares that are bought back by the PT does not exceed 10% of the total issued shares, unless governed otherwise in capital market regulations.

PTs can only hold shares that are bought back for a maximum three years.

With regard to PT Tbk, in addition to the Indonesian Company Law there is a specific provision under OJK Regulation No.XI.B.2 on share buybacks that must be followed by PT Tbk.

39. WHAT ARE THE MAIN WAYS FOR A SHAREHOLDER TO EXIT FROM THE COMPANY? CAN SHAREHOLDERS REQUIRE THEIR SHARES TO BE REPURCHASED BY THE COMPANY? CAN SHAREHOLDERS BE REQUIRED TO EXIT THE COMPANY IN CERTAIN CIRCUMSTANCES? HOW ARE THE SHARES VALUED IN THIS CASE?

Typically, the exit mechanism is governed in the shareholders' agreement. Shareholders can agree that upon the occurrence of certain conditions that are considered as a default, the non-defaulting party can either:

- Require the default party to sell its shares to the non-defaulting party, or another party.
- Require the defaulting party to purchase the shares of the non-defaulting party.

The calculation of the purchase or selling price is also typically governed under the shareholders' agreement.

Alternatively, shareholders can also require the PT to purchase their shares upon the occurrence of certain conditions (*see Questions 16 and 38*).

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## MATERIAL TRANSACTIONS

40. WHAT RIGHTS DO SHAREHOLDERS HAVE IN THE CASE OF MATERIAL TRANSACTIONS, SUCH AS A SALE OF ALL OR SUBSTANTIALLY ALL OF THE COMPANY'S ASSETS, AND A COMPANY REORGANISATION SUCH AS A MERGER OR DEMERGER?

There are no specific requirements for material transactions conducted by PTs. The Indonesian Company Law only requires that a transfer or pledge of the company's assets as security for a loan, which comprise more than 50% of the company's net assets in one or more related or unrelated transactions, must be approved at a shareholders' meeting at which at least three-fourths of the company's voting shares are represented, and at least three-fourths of the shares in attendance approve the resolution.

The PT's Articles of Association (AOA) can require certain transactions conducted by the PT to obtain prior approval from the Board of Directors (BOD), Board of Commissioners (BOC) or shareholders. In addition, if there are acts of the PT that cause shareholders or the PT to incur losses, any shareholder can require the PT to purchase his shares at a reasonable price if that shareholder did not approve the PT's acts (*see Question 16*).

For PT Tbk, under OJK Regulation IX.E.2 the following activities are considered as material transactions where they have a value of 20% or more of the PT Tbk's equity, conducted at one time or in a series of transactions for a certain objective or activity:

- A subscription in a certain business entity, project and/or business activity.
- The purchase, sale, transfer or exchange of assets or business market.
- A leasing of assets.

- The lending and borrowing of funds.
- The granting of security over assets.
- The granting of a company guarantee.

If the transaction value is more than 50% of the PT Tbk's equity, or if an appraiser's opinion indicates that the transaction is unfair, the PT Tbk must obtain prior shareholder approval at a general meeting of shareholders (GMS).

#### 41. WHAT RIGHTS DO SHAREHOLDERS HAVE IF THE COMPANY IS CONVERTED INTO ANOTHER TYPE OF COMPANY (CONSIDER IF APPLICABLE, A EUROPEAN COMPANY (SE))?

Indonesian law does not have a concept similar to a European Company (SE). An ordinary PT can be converted to a PT PMA or a PT Tbk. Converting a PT to a PT PMA or a PT Tbk requires the amendment of the PT's Articles of Association (AOA), which must be approved by a general meeting of shareholders (GMS) at which at least two-thirds of the PT's voting shares are represented, and at least two-thirds of the shares in attendance approve the resolution. The PT's AOA can require a higher quorum and voting requirements for the amendment of the AOA.

In addition, shareholders have the right under the Company Law to request the PT to purchase their shares at a reasonable price if the concerned shareholder disagrees with the acts of the PT, and such acts harm shareholders (*see Question 16*).

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## INSOLVENCY

#### 42. WHAT RIGHTS DO SHAREHOLDERS HAVE IF THE COMPANY IS INSOLVENT?

Under Indonesian law, if a PT is declared bankrupt by the court the shareholders will be the last party to obtain the remaining bankruptcy properties, with such bankruptcy properties distributed first to creditors, the state and/or the PT's employees.

A bankruptcy can be filed voluntarily by the PT itself or by creditors (except for certain industries, such as insurance companies, which can only be declared bankrupt by the Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK)). The Board of Directors (BOD) of a PT can only file a bankruptcy petition with the approval of the general meeting of shareholders (GMS) in which at least three-fourths of the PT's voting shares are represented, and at least three-fourths of the shares in attendance approve the resolution.

#### 43. CAN SHAREHOLDERS PUT THE COMPANY INTO LIQUIDATION? WHAT IS THE PROCEDURE TO DO THIS?

Yes, shareholders can put a PT into liquidation. One or more shareholders that represent at least one-tenth of the total shares with valid voting rights can propose the liquidation of the company to the GMS (*see Question 42*).

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## CORPORATE GROUPS

### 44. IS THE CONCEPT OF A CORPORATE GROUP RECOGNISED UNDER SPECIFIC LEGISLATION?

The concept of a corporate group is recognised under specific legislation in Indonesia. For example, for accounting purposes a PT Tbk that has control of its subsidiaries (that is, holds more than 50% of shares in another PT) must prepare a consolidated financial report.

### 45. DOES A CONTROLLING COMPANY HAVE ANY DUTIES AND LIABILITY TO THE SHAREHOLDERS OF THE COMPANY IT CONTROLS? WHAT ARE THE RIGHTS OF COMPANY SHAREHOLDERS IF THE CONTROLLING COMPANY CARRIES OUT ACTIONS THAT ARE PREJUDICIAL TO THE SHAREHOLDERS?

Majority shareholders have the right to resolve certain matters under the Company Law that require majority shareholder approval. For general matters, a general meeting of shareholders (GMS) can be validly convened if attended or represented by more than one-half of the total shares with valid voting rights, and the resolutions of that meeting must be approved by more than one-half of the shares in attendance. Amendments of the Articles of Association (AOA) must be approved at a meeting at which at least two-thirds of the PT's voting shares are represented, and at least two-thirds of the shares in attendance approve the resolution. Merger, consolidation, acquisition, bankruptcy and/or dissolution of the company, as well as to transfer or pledge the company's assets as security for a loan which comprise more than 50% of the company's net assets in one or more related or unrelated transactions, must be approved at a shareholders' meeting at which at least three-fourths of the PT's voting shares are represented, and at least three-fourths of the shares in attendance approve the resolution. In the event the quorum for attendance is not reached, a second GMS can be held.

### 46. WHAT ARE THE LIMITATIONS ON OWNING RECIPROCAL SHARE INTERESTS IN COMPANIES?

The Indonesian Company Law prohibits cross-holding ownership in PTs. Cross-holding is the condition where a PT holds shares in another company which also holds shares in the former company, whether directly or indirectly.

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## ONLINE RESOURCES

### INDONESIAN FINANCIAL SERVICES AUTHORITY (*OTORITAS JASA KEUANGAN*)

**W** [www.ojk.go.id](http://www.ojk.go.id)

**Description.** The website is OJK's official website and publishes laws and regulations applicable to the financial services sector, including the banks, securities companies and non-banking financial institutions. The website provides English translations for some (but not all) of the regulations published on the website.



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