Corporate Governance 2020

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LEXOLOGY
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the nineteenth edition of *Corporate Governance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Indonesia, South Korea and Thailand.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Holly J Gregory of Sidley Austin LLP, for her continued assistance with this volume.

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Getting The Deal Through

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Indonesia

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

1 What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The primary source of law relating to corporate governance in Indonesia is Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law). Additionally, corporate governance for certain types of companies, namely those operating in the insurance and capital market sectors, as well as issuers and public companies, is governed by the Financial Services Authority (OJK) regulations.

Listing rules applicable to publicly listed companies are based on Law No. 8 of 1995 regarding Capital Markets and Government Regulation No. 45 of 1995 regarding the Implementation of Business in Capital Markets. These laws exist alongside more specific regulations made by the OJK and decrees issued by the Indonesia Stock Exchange Board of Directors. In general, listing rules are compulsory. Specifically, in relation to corporate governance, the OJK applies the 'comply or explain' principle.

Responsible entities

2 What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms whose views are often considered?

The primary government agencies that are responsible for and have the authority to make such rules include the central government and legislature, as well as several ministries, including the Ministry of Law and Human Rights. The OJK is also responsible for both the issuance of regulations and the enforcement thereof for companies operating in the insurance and capital market sectors, as well as issuers and public companies.

There are no well-known shareholder activist groups or proxy advisory firms in Indonesia that materially influence policies on corporate governance matters.

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

3 What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

Shareholders are empowered to direct the company to take particular courses of action within the ambit of the general meeting of shareholders (GMS), including the power to elect and dismiss members of the board of directors (BOD), as governed under articles 94(1) and 105(1) of Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law), respectively. Nothing in the law compels the GMS to take a particular course of action or requires a minimum quorum or vote for the election of directors. Rather, the Company Law prescribes that the terms governing the election of directors, including the procedures for their appointment, replacement and dismissal, are to be contained in the articles of association (AOA) of the company. Shareholders whose classification of shares permits them to do so under the AOA are able to nominate members of the BOD (article 53 of the Company Law).

Shareholder decisions

4 What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

Any amendments to the AOA of the company, including the increase or decrease of the authorised capital, must be approved at a GMS at which at least two-thirds of the company's voting shares are represented, and those representing at least two-thirds of the shares in attendance approve the resolution (article 88 of the Company Law). Any increase in issued and paid-up capital must be approved by simple majority vote in a GMS attended by those representing more than half of the total voting shares.

A GMS vote is also necessary for any merger, consolidation, acquisition and dissolution involving the company as a party (article 89(1) of the Company Law). Additionally, the BOD requires the approval of the GMS to transfer the company's assets or pledge them as security for a loan if the value of the loan exceeds 50 per cent of the company's net assets (article 102 of the Company Law). The BOD also requires the approval of the GMS if it intends to file for bankruptcy for and on behalf of the company (article 104 of the Company Law). Finally, a GMS vote is necessary to decide whether the company will go into liquidation (article 142 of the Company Law) pursuant to a proposal by the BOD, board of commissioners (BOC), or one or more shareholders representing at least one-10th of the company's voting shares (article 144(1) of the Company Law). In all of the above scenarios, those representing

at least three-quarters of the company's voting shares must be in attendance at the GMS, and at least three-quarters of those in attendance must approve the resolution (article 89(1) and article 102(5) of the Company Law).

Disproportionate voting rights

5 | To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The Company Law permits super-voting shares should a company's AOA stipulate the existence of these shares. Otherwise, the proportion of voting rights is strictly one vote for every share (article 84(1) of the Company Law). The Company Law also recognises the existence of shares with and without voting rights. It follows that limitations on the exercise of voting rights are permitted, insofar as the type of share is of a non-voting class; otherwise, shareholders' rights to vote must be respected (article 85 of the Company Law).

Shareholders' meetings and voting

6 | Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

There are no special requirements for shareholders to participate or vote in the GMS. Article 53 of the Company Law recognises non-voting shares, which prevents holders of these shares from voting. Votes by shareholders outside the GMS may bind the company provided all holders of voting shares unanimously approve, in writing, the resolution concerned (article 91 of the Company Law). Virtual meetings by teleconference, video conference and other electronic mediums that allow all members of the GMS to see, hear and participate in the meeting are permitted under article 77 of the Company Law. Nonetheless, these meetings must still meet the quorum requirement stipulated in the Company Law or in the company's AOA.

For a public company, the GMS may be held upon the request of one or more shareholders who jointly represent one-10th or more of the total shares with valid voting rights, unless stipulated otherwise by the company's AOA.

Shareholders and the board

7 | Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Although the BOD has unlimited and unconditional authority to represent the company, the Company Law stipulates that the GMS may have powers that are not granted to the BOD or the BOC, insofar as it is expressly regulated in the AOA of the company. Shareholders are able to request an extraordinary meeting of shareholders, either individually or collectively, if this request is made by shareholders representing one-10th of the total voting rights in the company (article 79(2)(a) of the Company Law). Shareholders may also circulate resolutions outside the GMS that do not require the involvement or approval of the BOD.

Controlling shareholders' duties

8 | Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Generally, controlling shareholders do not have any explicit duties to non-controlling shareholders. However, article 126(1) of the Company Law obliges a GMS approving the conduct of the company in instituting any merger, consolidation, acquisition or dissolution to pay heed to the interests of minority shareholders. If the GMS disregards this obligation in a manner considered to be unfair and unreasonable, the shareholders have the right to sue the company in the district court whose jurisdiction covers the domicile of the company (article 61 of the Company Law).

Additionally, in the context of protecting non-controlling shareholders, a shareholder has the option for its existing shares in the company to be purchased at fair value if the relevant shareholder does not agree with any of the following actions:

- amendment to the AOA of the company;
- transfer or encumbrance of the company's assets with a value exceeding 50 per cent of the net assets of the company; or
- any merger, consolidation, acquisition or dissolution of the company.

Shareholder responsibility

9 | Can shareholders ever be held responsible for the acts or omissions of the company?

Shareholders may be liable for exploiting the company in bad faith for personal gain, for involvement in an illegal act by the company or for illegally using the company's assets in a manner that leaves the company without sufficient assets to fulfil its obligations (article 3 of the Company Law). Otherwise, the shareholders of a company shall not be held responsible for any loss arising from the actions carried out under the name of the company and shall not be held responsible for losses exceeding their ownership of shares in the company.

Employees

10 | What role do employees have in corporate governance?

Employees are not generally involved in corporate governance if they do not hold shares in the company. However, their interests must be taken into account in the actions of the company, specifically those relating to mergers, consolidations, acquisitions and separations (article 126(1) of the Company Law). Nonetheless, in practice, companies often negotiate or discuss with the labour union (if any) any material changes or decisions adopted by the company.

CORPORATE CONTROL

Anti-takeover devices

11 | Are anti-takeover devices permitted?

There is nothing in the law that prohibits anti-takeover devices. Notwithstanding this, Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law) protects the interests of minority shareholders; minority shareholders who do not agree with the takeover can request the target company to purchase their shares at a fair price. Every shareholder is also entitled to institute legal proceedings against the company in the relevant courts if the shareholder is aggrieved by a decision of the general meeting of shareholders (GMS) or the boards.

Issuance of new shares

12 | May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

The issuance of new shares requires shareholder approval at all times (article 41(1) of the Company Law). Shareholders have pre-emptive rights to acquire newly issued shares that are of the same classification as the shares they already hold (article 43(1) of the Company Law). This use of 'classification' refers to shares with or without voting rights, shares with special rights to nominate members of the board of directors, shares that are to be withdrawn or exchanged with shares with a different classification, preferential shares and liquidation preference shares. Should the new shares be of a classification that did not exist among the company's initial shares, the Company Law governs that all shareholders have a pre-emptive right to acquire the newly issued shares according to the proportion of shares they own.

Public companies are similarly mandated by the Financial Services Authority to grant a pre-emptive right to shareholders to acquire newly issued shares based on their respective share ownership percentage.

Restrictions on the transfer of fully paid shares

13 | Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

The Company Law does not prohibit restrictions on the transfer of fully paid shares, nor are there any implied prohibitions in the existing law. The articles of association (AOA) of a company may stipulate prerequisites for the transfer of shares, including the right of first refusal to non-selling shareholders or requiring prior approval from the GMS or the boards. Nonetheless, the Company Law obliges a company to have a minimum of two shareholders, except for companies whose shares are owned entirely by the state or companies that manage the stock exchange, clearing and guarantee institutions, settlement institutions and other institutions as regulated under Law No. 8 of 1995 regarding Capital Markets.

Compulsory repurchase rules

14 | Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Generally, share repurchases are allowed insofar as such repurchases do not cause a company's net assets to become lower than its issued capital plus statutory reserve, and do not exceed 10 per cent of the amount of issued capital in the company unless regulated otherwise in capital market regulations (article 37 of the Company Law). Share repurchases are not statutorily mandated, with the exception of shareholder appraisal rights.

Dissenters' rights

15 | Do shareholders have appraisal rights?

Yes. When shareholders disagree with amendments to the AOA of a company, transfers of or pledges with a value of over 50 per cent of the company's net assets, and mergers, consolidations, acquisitions and separations that shareholders consider detrimental to themselves or the company, they have the right to demand the company repurchase their shares at a fair value (article 62 of the Company Law).

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

16 | Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The predominant board structure is best categorised as two-tier. The first tier is the board of directors (BOD), which acts as an executive to the company and is responsible for its day-to-day operation (article 92(1) of Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law)). The second tier is the board of commissioners (BOC), which acts as a supervisory and advisory body to the BOD (article 108(1) of the Company Law).

Board's legal responsibilities

17 | What are the board's primary legal responsibilities?

The primary legal responsibility of the BOD is to run the company in the company's best interests and in accordance with its object and purpose. In performing their management duties, BOD members are jointly and severally empowered to represent the company in its external relations unless specifically restricted by the articles of association (AOA) of the company or in the event of a conflict of interest (articles 92 and 98 of the Company Law).

The primary legal responsibility of the BOC is supervising the management policies and day-to-day running of the company by the BOD, as well as advising the BOD in the company's interests and in accordance with its objects and purposes. Members of the BOC are also required to carry out their supervisory duties and advise the BOD in the interests of the company and in accordance with its objects and purposes (articles 108 and 114 of the Company Law).

Board obligees

18 | Whom does the board represent and to whom do directors owe legal duties?

The BOD and the BOC are considered to act on behalf of the company (article 1(5) of the Company Law for the BOD, implicit in article 112 of the Company Law for the BOC). Both boards have a legal duty to creditors and shareholders.

Enforcement action against directors

19 | Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgement rule?

Enforcement action against the BOD can be brought by and on behalf of those to whom duties are owed. Creditors can sue directors for the company's wrongful actions under tort (article 1365 of the Indonesian Civil Code) if they are able to pierce the corporate veil, which requires establishing that a director has not performed his or her duties in good faith and in a responsible manner. The Company Law stipulates that each member of the BOD shall also be personally responsible for losses suffered by the company if the concerned member has made mistakes and has been negligent in carrying out his or her duties, unless the concerned member can prove the following:

- the losses were not caused by his or her mistakes or negligence;
- he or she managed the company in good faith and prudently in the interests and in accordance with the purposes and objectives of the company;
- there were no conflicts of interest, either directly or indirectly, in his or her management acts that resulted in the losses; and

- he or she took action to prevent the losses from occurring and continuing.

Shareholders are expressly given the right to sue the company should they suffer losses from actions of the company stemming from decisions by the BOD that they consider to be unfair and unreasonable.

Care and prudence

20 Do the duties of directors include a care or prudence element?

Yes. The BOD is obliged to act in good faith, prudently and with a sense of responsibility in the interests of and in accordance with the objects and purpose of the company. If the company suffers losses or is liquidated, members of the BOD are exempt from personal liability if they, among other things, can demonstrate that they acted in good faith and with prudence (articles 97 and 104 of the Company Law). Similarly, members of the BOC are responsible for acting in good faith, with prudence and with responsibility in performing their supervisory and advisory duties of the BOD (article 114 of the Company Law).

Board member duties

21 To what extent do the duties of individual members of the board differ?

The duties of individual board members differ based on decisions by the general meeting of shareholders (GMS). If the GMS does not make this a determination, the BOD is empowered to decide the division of duties and powers of its own members (article 92 of the Company Law).

Delegation of board responsibilities

22 To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The BOD can appoint one or more employees or persons outside the company's internal structure as agents to perform specific duties on behalf of the company by virtue of power of attorney (article 103 of the Company Law). The BOC can appoint a representative commissioner from among the members of the BOC or form a supervisory committee, whose duties and authorities are to be stipulated in the company's AOA (articles 120 and 121 of the Company Law).

Non-executive and independent directors

23 Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

The Company Law does not recognise the concept of an independent director. However, generally, the BOC exercises the function of a non-executive director, being responsible for the supervision of and advising the company. The Company Law also acknowledges the concept of an independent commissioner, which is a commissioner not affiliated with the controlling shareholder or any member of the BOD or BOC, or both. More specifically for a publicly listed company, it is obliged to have an independent member of the BOC.

For public companies with a two-member BOC, one of the commissioners must be an independent commissioner. If the company appoints more than two commissioners, at least 30 per cent of them must be independent.

Board size and composition

24 How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The size, composition and procedures for the appointment, replacement and dismissal of the BOD and BOC are determined in the AOA of the company. During the company's operations, the boards' composition are determined by the GMS, which is empowered to appoint members of the BOD and BOC. The Company Law only stipulates a minimum number of BOD and BOC members, which, generally, is a single director and single commissioner. Specifically for companies that are responsible for the mobilisation of public funds or the issuance of debt instruments, or public companies, the minimum is two BOD members and two BOC members.

Generally, individual directors must possess the capacity to conduct legal actions, and within five years prior to his or her appointment, they must not have been declared bankrupt, been a member of a BOD or BOC that has been held liable for the bankruptcy of a company, or been sentenced for a financial crime or a crime that caused financial losses to the state (article 93(1) of the Company Law).

For public companies, aside from the above, the requirements that must be satisfied by the members of the boards are that they must:

- have good character, morality and integrity;
- be legally competent;
- within five years before their appointment and during their term of service, have never been a member of a BOD or BOC, or both:
  - that failed to hold an annual GMS;
  - whose accountability as a board member was rejected by the GMS or failed to provide accountability as a member of the BOD or BOC, or both, to the GMS; and
  - that caused a company that had obtained a licence, approval or registration from the Financial Services Authority (OJK) to fail to fulfil the obligation to submit annual reports or financial reports to the OJK;
- be committed to abide by the laws and regulations; and
- have knowledge and expertise in the field needed by the issuer or public company.

General commercial banks must have a minimum of three commissioners, at least 50 per cent of which must be independent. The BOD must comprise three directors, including the president director, who also acts as an independent director, and one compliance director. Insurance companies must have a minimum of three commissioners, at least 50 per cent of which must be independent, and three directors. Guarantee institutions are also obliged to have a minimum of two directors and two commissioners.

Board leadership

25 Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The Company Law does not formally recognise the position of the CEO, although the position exists in practice. However, employment law recognises the position, in Ministry of Manpower and Transmigration Decree No. 40 of 2012, which uses the working definition of a head of

office responsible for the management of administrative and human resource issues. This makes the position distinct from the board chair, who is responsible for managerial decisions. Nothing in the law regulates that these two functions must be either joint or separated.

Board committees

26 What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Nothing in the law compels nor restricts companies to have specific types of board committees or dedicated directors. Companies may choose not to have board committees, so long as they have fulfilled the requirements of having established a BOD and BOC comprising at least the minimum number of directors and commissioners required by law.

In relation to public companies, aside from the GMS, BOC and BOD, a company is obliged to have an internal audit unit, an audit committee and a corporate secretary within its structure. Public companies may also establish a risk policy committee, a corporate governance committee, a nomination and remuneration committee, and other committees at their discretion. Insurance companies are also compelled by regulation to have dedicated directors for compliance with good corporate governance.

Board meetings

27 Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The Company Law does not stipulate a minimum or set number of board meetings per year. However, OJK regulations provide for a minimum number of meetings for specific types of companies. In the case of securities underwriters and brokers, for instance, the BOD must hold a minimum of one meeting every two months, which must be attended by a majority of the board.

Board practices

28 Is disclosure of board practices required by law, regulation or listing requirement?

Generally, issuers and public companies are obliged by OJK regulations to submit their annual report to the OJK. The annual report must include, among other things, the accountability reports of the BOD and BOC in relation to their management and supervisory functions in the company.

Board and director evaluations

29 Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

An evaluation of the board or individual directors by external parties is not governed under existing laws or listing regulations. However, the Company Law requires an annual evaluation by the GMS of the annual report, which contains the financial report, a report on the company's activities, a corporate social responsibility report, a report on issues arising during the year that affected the business of the company, a report concerning the supervisory duties of the BOC during the year, the names of the BOD and BOC members, and the wages and other remuneration for members of the BOD and BOC during the year.

REMUNERATION

Remuneration of directors

30 How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

The remuneration of directors is determined by the general meeting of shareholders (GMS), which may elect to delegate the task of determining this remuneration to a meeting of the board of commissioners (BOC) (article 96 of Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law)). No minimum remuneration is set by law. The board of directors (BOD) must disclose the directors' remuneration for the previous financial year in the annual report of the company, which must be presented at the annual GMS for approval. Public companies must make their annual reports available on their websites. For commercial banks, the BOD must disclose directors' and commissioners' remuneration in a specific corporate governance report.

As for the length of directors' service contracts, the Company Law governs only that members of the BOD are to be appointed for a certain length of time and subject to renewal, which is to be decided by the GMS as part of its appointing duties.

Remuneration of senior management

31 How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

Nothing in the laws and regulations specifically stipulates the remuneration of senior management who are not members of the BOD. If senior managers are the employees of the company, the rights and incentives granted to them must adhere to Law No. 13 of 2003 regarding Manpower (the Manpower Law), which governs the provision of a basic salary and other allowances to employees. Among other things, the Manpower Law mandates that the remuneration or salary of employees is subject to the statutory regional minimum wage.

Say-on-pay

32 Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

The GMS votes to determine the wages and other remuneration of directors. This power can be delegated to the BOC, whose meeting resolution would then determine these wages (article 96 of the Company Law). There are no stipulations as to how frequently they may vote; the shareholders or BOC may vote both during the annual GMS, which occurs, at the latest, within six months of the end of the work year, and in an extraordinary GMS, which can occur whenever shareholders or the BOC see fit (article 79 of the Company Law).

DIRECTOR PROTECTIONS

D&O liability insurance

33 Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

In practice, directors' and officers' (D&O) liability insurance in Indonesia covers indemnity for damages that are paid out by companies and defence costs, and some offer additional benefits, such as cover for losses of reputation, public relations fees, IPO protection and protection for retired directors. Insurance law generally allows for insurance policyholders to enter into insurance agreements and pay premiums on behalf of third parties, and nothing in the law exempts the application of this law to D&Os.

Indemnification of directors and officers

34 Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

There are no constraints prescribed by law regarding indemnity for D&O liabilities, nor are there implied prohibitions to that end. However, this is without prejudice to any possible criminal liability on the part of the directors and officers empowered to act on behalf of the company. Understandably, companies generally do not disclose when this occurs, so the prevalence of these indemnities is unknown.

Advancement of expenses to directors and officers

35 To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

Nothing in the law requires nor limits companies that wish to provide advance expenses in connection with litigation or other proceedings against directors and officers. However, in practice, except for if the director or officer is liable to the company itself, the company may provide such an arrangement.

Exculpation of directors and officers

36 To what extent may companies or shareholders preclude or limit the liability of directors and officers?

In general, the general meeting of shareholders (GMS) can limit the powers and authority of the board of directors (BOD) through the articles of association (AOA) of the company. Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law) also obliges the BOD to obtain the approval of the GMS for certain matters and permits the AOA of the company to set forth shareholders' reserved matters outside of those existing in the Company Law. With the main basis for suits against directors and officers being torts, existing contractual law within the Indonesian Civil Code (ICC) would prohibit this arrangement from being made. Article 1320 of the ICC prohibits agreements with subjects that are contrary to law, among which are the exceptions to the general liability for tortious actions under article 1365 of the ICC.

A member of the BOD is not authorised to represent the company if he or she is involved in an ongoing case against the company or has a conflict of interest with the company (article 98 of the Company Law).

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

37 Are the corporate charter and by-laws of companies publicly available? If so, where?

Nothing in the law mandates companies to make their articles of association (AOA) publicly available. However, the AOA and any amendments thereto must be notified to the Ministry of Law and Human Rights (MOLHR) for acknowledgement or approval, or both (article 9 of Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law)). Nonetheless, some company information (including the name, address, objects and purposes, capitalisation and business activity) is contained in the company profile, which is publicly available for purchase through the MOLHR online system.

Company information

38 What information must companies publicly disclose? How often must disclosure be made?

An annual evaluation of the company's financial report by a public accountant is required under article 68 of the Company Law should the company operate to mobilise public funds or issue bonds to the public; be a publicly listed company or a state-owned enterprise; have assets or gross income of at least 50 billion rupiahs, or both; or be compelled to do so by law. This requires the company to disclose, at the very least, its current balance sheet in comparison to the previous year, profit and loss statement, cash flow statement, statement of changes in equity and notes on the financial report.

Public companies are required by the Financial Services Authority (OJK) to disclose any material information and facts regarding events, occurrences or facts that may affect the price of securities on the Indonesia Stock Exchange or the decisions of investors, prospective investors or other parties with an interest in such information or facts.

Separately, public companies are also required to periodically report to the OJK and disclose, among other things, the following:

- the annual and financial reports;
- appointments of the board of directors, board of commissioners or corporate secretary;
- the agenda and minutes of the general meeting of shareholders;
- changes in capital (including, but not limited to, any share buy-back);
- mandatory and voluntary tender offers;
- mergers, consolidations and takeovers of public companies; and
- material and affiliated transactions.

HOT TOPICS

Shareholder-nominated directors

39 Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

One of the classifications of shares recognised under Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law) is one that grants the shareholder the power to nominate directors (article 53 of the Company Law). No regulation specifically governs proxy access; however, depending on the company's articles of association (AOA), shareholders may be able to exercise this right.

Shareholder engagement

40 Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

Companies are obliged to interact with shareholders through the annual general meeting of shareholders (GMS), where directors, as representatives of the company, submit their annual report (article 66 of the Company Law). In addition, depending on the terms of the AOA, the board of directors (BOD) may be obliged to submit a working plan for the following year and subject it to GMS approval.

In cases where companies have an obligation to submit financial reports to a public accountant for audit, directors are obliged to inform the GMS of the result of the audit (article 68(3) of the Company Law).

Within the ambit of the GMS, shareholders are also given the right to obtain information concerning the company from the BOD or board of commissioners, so long as it relates to the subject of the meeting and does not go against the company's interests (article 75(2) of the Company Law).

Sustainability disclosure

41 Are companies required to provide disclosure with respect to corporate social responsibility matters?

The company is generally obliged to implement corporate social and environmental responsibility initiatives. The Company Law further stipulates that the annual report presented to the GMS by the BOD must include a report on, among other things, the performance of corporate social responsibility by the company. For public companies, the obligation to submit a report on corporate social responsibility is met through the annual report submitted to the Financial Services Authority.

Specifically, companies engaging in the natural resources sector are obliged to fulfil corporate social and environmental responsibilities. These companies must disclose how they meet these responsibilities in their annual reports, which are tabled at the GMS.

CEO pay ratio disclosure

42 Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

Nothing in the law requires companies to disclose the pay ratio between CEOs and other employees, although part of the annual report available to the GMS includes the wages and remuneration of members of the BOD.

Nonetheless, a company is required to disclose the highest and the lowest salary of its employees through the submission of a mandatory manpower report to the Ministry of Manpower. Although the foregoing obligation to disclose the highest and the lowest salary of employees is not expressly contained in laws and regulations, the company will be obliged to do so upon the submission of the mandatory manpower report.

Gender pay gap disclosure

43 Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

Nothing in the law requires companies to disclose gender pay gap information.

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UPDATE AND TRENDS

Recent developments

44 Identify any new developments in corporate governance over the past year (including any significant proposals for new legislation or regulation, even if not yet adopted). Please identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year (without reference to specific initiatives aimed at specific companies).

Indonesia has recently introduced the draft Omnibus Law on Job Creation (the Draft), which would act as a regulatory umbrella for various laws and regulations intended to ease investment and reduce bureaucratic inefficiency. The Draft will exempt, among other things, the provision regarding the minimum of two shareholders in the company as governed in Law No. 40 of 2007 regarding Limited Liability Companies (the Company Law) for small and medium-sized enterprises (SMEs). The Draft also stipulates that shareholders in SMEs must be individuals. This provision is intended to support SMEs in establishing a limited liability company for ease of business financing.

Although companies are obliged to disclose the names of individual beneficial owners, they are not obliged to submit the names of the ultimate beneficial owners. However, for some companies engaging in business activities under the auspices of the central bank (Bank Indonesia) or the Financial Services Authority (OJK), Bank Indonesia or OJK, or both, will scrutinise up to the level of the ultimate beneficial owner of the companies in enforcing, among other things, foreign ownership restrictions and the anti-fraud and anti-money laundering rule. Therefore, in practice, transactions between companies usually require the disclosure of the ultimate beneficial owner.

Although the Company Law only acknowledges the right of first refusal for the transfer of shares prerequisite, recent practice has seen shareholders at companies, through shareholders' agreements, agree on right of first offer requirements – a right granted to non-selling shareholders to be offered the shares before the selling shareholder makes an offer to a third party – prior to the transfer of shares.

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