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1. Introduction

1.1 Forms of Corporate/Business Organisations

The principal form of corporate/business organisation in Indonesia is a limited liability company.

However, there are other forms of business organisations such as co-operatives, representative offices and partnerships.

1.2 Sources of Corporate Governance Requirements

Since corporate organisations in Indonesia largely take the form of a limited liability company (as mentioned in **1.1 Forms of Corporate/Business Organisations**, above, corporate governance in Indonesia is principally governed under Law No 40 of 2007 regarding Limited Liability Companies (the 'Company Law')). The elucidation of Article 4 of the Company Law states that the applicability of the Company Law does not detract from the obligation of companies to comply with the principles of corporate governance. It should also be noted that the principles of corporate governance only apply to limited liability companies, and these principles differ depending on whether the company is a public or private entity.

Corporate governance for certain types of companies and businesses is further regulated by the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK). OJK regulations govern corporate governance requirements for the insurance and capital markets sectors, issuers and public companies.

The Coordinating Ministry for Economic Affairs established the National Committee on Governance (NGC) in 2004 through Coordinating Ministry for Economic Affairs Decree No KEP-49/M.EKON/11/TAHUN 2004. This decree was amended by Coordinating Ministry for Economic Affairs Decree No KEP-14/M.EKON/03/Year 2008. The stated aim of the NGC was mainly to formulate, promote and facilitate the implementation and enforcement of the Indonesian Code of Good Corporate Governance (the 'GCG Code').

The GCG Code was first published in 2006. It must be noted that the GCG Code is not a legal instrument and as such does not have binding force on corporations in Indonesia. The GCG Code serves as a model that provides recommendations on the implementation of corporate governance in companies.

Aside from government regulations, internal corporate documents such as the company's Articles of Association,

Company Regulation and Company Code of Ethics are also used to conduct corporate governance.

1.3 Corporate Governance Requirements for Publicly Traded Companies

Indonesian law establishes a clear line between companies that are listed and those that are not listed on the Indonesia Stock Exchange (IDX). If a company has publicly traded shares then it is categorised as a listed company, meaning that the company has initiated a public offering and is currently listed on the IDX.

Listed companies are required to implement corporate governance as governed under OJK Regulation No 21/POJK.04/2015 regarding the Implementation of Corporate Governance for Publicly Listed Companies (the 'OJK Regulation'), and OJK Circular Letter No 32/SEOJK.04/2015 regarding the Good Governance Manual for Publicly Listed Companies (the 'Circular Letter'). The OJK has a 'comply or explain' principle in regard to the implementation of corporate governance at public companies. Article (2) paragraph (1) of the OJK Regulation stipulates that publicly listed companies must implement good governance as set out in the Circular Letter. In the event that a publicly listed company does not implement corporate governance, it must explain its reasoning to the OJK and provide alternatives, if any.

2. Corporate Governance Framework

2.1 Key Rules and Requirements

Aside from the regulations cited above, other laws and regulations that can be applied in conducting corporate governance include:

- Law No 8 of 1995 on Capital Markets (the 'Capital Markets Law');
- Law No 13 of 2003 on Manpower (the 'Manpower Law');
- Law No 25 Of 2007 on Investment (the 'Investment Law');
- OJK Regulation No 32/POJK.04/2014 on General Meetings of Shareholders of Public Companies, as amended by OJK Regulation No 10/POJK.04/2017 dated 14 March 2017;
- OJK Regulation No 33/POJK.04/2014 on Directors and Board of Commissioners of Issuing Companies or Public Companies;
- OJK Regulation No 21/POJK.04/2015 and Circular Letter of OJK No 32/SEOJK.04/2015 on the Implementation of Corporate Governance Guidelines for Public Companies (the 'OJK CG Guidelines')
- OJK Regulation No 34/POJK.04/2014 on Nomination and Remuneration Committees of Issuing Companies or Public Companies;
- OJK Regulation No 2/POJK.05/2014 on Good Corporate Governance of Insurance Companies;
- OJK Regulation No 30/POJK.05/2014 on Good Corporate Governance of Financing Companies;
- Ministry of Manpower and Transmigration Decree No 40 of 2012 on Certain Positions Prohibited for Foreign Workers (the 'MMT Reg. 40/2012'), and Minister of Manpower Regulation No 16 of 2015 as amended by Minister of Manpower Regulation No 35 of 2015 on Guidelines for the Employment of Foreign Workers (the 'MMT Reg. 35/2015'); and
- OJK Regulation No 11/POJK.03/2016 on Minimum Capital Provision of Commercial Banks, as amended by POJK No 34/POJK.03/2016.

2.2 Current Issues and Developments

Issues regarding corporate governance in Indonesia revolve around the implementation of corporate governance in the regulations and the execution thereto. Compared to other countries, corporate governance in Indonesia is still developing, particularly for those businesses not covered by specific corporate governance regulations. However, with the regulations passed by the OJK, there are now more specific provisions on corporate governance other than the general provisions in the Company Law.

3. Management of the Company

3.1 Bodies or Functions Involved in Governance and Management

The principal bodies and functions involved in the governance and management of Indonesian companies under the Company Law are the General Meeting of Shareholders (GMS), Board of Directors (BOD) and Board of Commissioners (BOC).

The BOD constitutes the company's management. The members of the BOD are the day-to-day operating officers of the company. By contrast, the BOC supervises certain BOD activities and decisions, without interfering in the BOD's day-to-day management of the company. The GMS is the highest authority for a company.

Article 1 paragraph (5) of the Company Law stipulates that the BOD is the company organ with full authority and responsibility for the management of the company in the interest of the company and in accordance with the company's purposes and objectives. The BOD also represents the company in and out of court in accordance with the provisions of the company's Articles of Association (AOA). The Indonesian Corporate Governance Manual divides the BOD's recommended duties into five areas, namely management, risk management, internal control, public relations and social responsibility. It recommends that the BOD:

- develop the company's vision, mission and values (it is responsible for the company's strategic direction, and

formulates short- and long-term plans to be approved by the BOC or GMS, in accordance with the AOA);
- manage the use of the company's resources efficiently and effectively;
- ensure that stakeholders' interests are properly considered;
- delegate specific tasks to a committee that is established to support the BOD in the execution of its duties, or to a company employee (with ultimate responsibility remaining with the BOD); and
- set out its working procedures, regulations and guidelines in a charter to facilitate the objective and effective execution of its duties (this charter may also serve as a tool for the appraisal of the performance of the BOD and individual directors).

Although, in principle, the BOD is fully responsible for managing the company, its actions are supervised by the BOC, which is authorised to give recommendations to the BOD for the management of the company in the interest of the company and in accordance with the company's purposes and objectives.

3.2 Types of Decisions Made by Governing Bodies

Pursuant to the provisions set out in the Company Law, the BOD, BOC and shareholders have separate duties and functions. The members of the BOD are the day-to-day operating officers of the company. The Company Law gives the BOD the right to assign functions and authorities among the members of the BOD by stipulating such assignment in a BOD resolution (in the event that the GMS does not stipulate it).

Meanwhile, the BOC serves a supervisory function. Under the Company Law, each member of the BOC is required, in good faith, with prudence and a sense of responsibility, to carry out their supervisory duties and advise the BOD in the interest of the company and in accordance with the company's purposes and objectives.

Shareholders do not participate directly in the management or supervision of the company, but they are nonetheless the highest authority in corporate governance. Shareholders, through the GMS, reserve the right to make decisions which the BOD or BOC are not authorised to make. The GMS decides on major issues of the company such as the appointment of BOD and BOC members, amendments to the AOA of the company, the liquidation of the company, approval of annual reports and payment of dividends.

Specific duties, together with the process for making decisions, are stipulated in each company's AOA.

3.3 Decision-making Processes

In principle, decisions by a company's bodies are usually discussed within the respective body and shall be stipulated in a resolution. However, certain decisions deemed strategically or financially significant require the approval of the other bodies. Under the Company Law, actions that require the approval of other bodies include:

- transferring the assets of the company or encumbering assets having a value in excess of 50% of the net assets of the company in one or more transactions, for which the BOD must request the approval of the GMS; and
- company mergers, for which the BOC of the company must obtain the approval of the GMS.

Other than the provisions in the Company Law, the AOA of a company can also stipulate decision-making processes in the company.

4. Directors and Officers

4.1 Board Structure

Companies in Indonesia must have at least one director, except for specific companies whose business relates to the collection or management of public funds, and companies that issue acknowledgements of indebtedness to the public, which must maintain a BOD with at least two members.

The Indonesian Corporate Governance Manual recommends that the number of BOD members should be appropriate for the size of the company and its line of business. The appropriate number of directors therefore largely depends on the company's activities, size (number of employees), level of development, etc. Positions that companies may find useful to include on the BOD include:

- President Director;
- Operations Director;
- Finance Director;
- Chief Risk Officer;
- Head of Strategy;
- Marketing and Sales Director;
- General Affairs Director; and
- Human Resources Director.

4.2 Roles of Board Members

According to Article 92 paragraphs (5) and (6) of the Company Law, in the event that the BOD consists of two or more members, the assignment of managerial functions and authorities among the members of the BOD shall be stipulated based on GMS resolutions. If the GMS does not make such stipulation, the assignment of functions and authorities among BOD members shall be stipulated based on BOD resolutions. Typically, the AOA of the company will stipulate this process.

4.3 Board Composition Requirements/ Recommendations

Based on the provisions in the Company Law regarding directors it can be concluded that a company must at least have one director to conduct the company's management, except for companies that collect funds from the public, issue bonds or are publicly listed, which must have at least two directors. This is in accordance with OJK Regulation No 33/POJK.04/2014 on Directors and Board of Commissioners of Issuing Companies or Public Companies, which stipulates this requirement. The OJK regulation also states that one of the directors must be appointed as President Director.

Other specific requirements are set out in OJK Regulation No 55/POJK.03/2016, which stipulates that banks in Indonesia must have at least three members on the BOD.

4.4 Appointment and Removal of Directors/ Officers

Pursuant to Article 94 paragraph (1) of the Company Law, member(s) of the BOD shall be appointed by the GMS. Procedures for the appointment, replacement and dismissal of a member of the BOD are governed under the company's AOA.

After the establishment of a company, the initial appointment of members of the BOD and BOC shall be done by the company founders, whose names are contained in the Deed of Establishment.

In terms of removal, Article 105 paragraph (1) of the Company Law states that a member of the BOD may be dismissed at any time by a resolution of the GMS by stating reason for such removal. Article 106 paragraph (1) of the Company Law further regulates that a member of the BOD may be suspended by the BOC by stating the reason for the suspension. A suspended member of the BOD is not authorised to perform their duties as a director.

4.5 Independence of Directors and Conflicts of Interest

To avoid conflicts of interest, Article 99 of the Company Law prohibits a member of the BOD from representing the company if such representation presents a conflict of interest.

Aside from the Company Law, it is expressly stated in Law No 5 of 1997 regarding Prohibition on Monopolistic Practices and Unhealthy Business Competition that a person is prohibited from serving as a director of more than one company if the respective companies are in the same market or closely related fields of business, or can jointly control the market share of certain goods and/or services, which could cause monopolistic practices and/or unfair business competition.

4.6 Legal Duties of Directors/Officers

In accordance with Article 92 paragraph (1) of the Company Law, the principal legal duty of the directors/officers of a company is managing the company for the interest of the company and in accordance with the purposes and objectives of the company. Article 98 paragraph (1) of the Company Law states that the BOD shall represent the company inside and outside of court.

4.7 Responsibility/Accountability of Directors

In conducting the management of the company, the BOD shall act based on the best interest of the company and in pursuit of the objectives and purposes of the company. It can also consider advice given by the BOC in the best interest of the company within the context of the objectives and purposes of the company, meaning that the advice from the BOC should not be in the interest of any other parties or groups.

It should be noted that the GMS will discharge directors, and the GMS will typically mention that directors will be discharged of all liabilities as long as the directors perform their duties in the company's interests.

4.8 Breach of Directors' Duties

Under the Company Law, the BOD shall carry out its duties in good faith and with full responsibility. In the event that the company suffers any losses as a result of an error or negligence by a director in performing their duty, the BOD member in question shall be fully and personally responsible for the losses.

In the event that the actions of the BOD inflict losses on the company, shareholders representing at least a tenth of the total voting shares of the company may file a claim through the district court against members of the BOD whose mistakes or negligence resulted in the losses. The BOC, by way of implementing its supervisory function of the management of the company by the BOD, also has the right to file a claim against BOD members who make a mistake or are negligent in carrying out their duties.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

The liability of a director will depend on their roles and responsibilities. The BOD can adopt a resolution basically dividing the board's responsibilities among the BOD members. Each year, the BOD will prepare the company's annual report to be submitted to the BOD and the GMS. As discussed in **4.8 Consequences and Enforcement of Breach of Directors' Duties**, above, in the event that the company suffers losses because a director has made a mistake or been negligent in carrying out their duties, the BOD member in question shall be fully responsible personally for the losses suffered by the company.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

Under the Company Law, payments to directors/officers are approved by the GMS. The GMS has the authority to stipulate the salary and remuneration of BOD members and this authority can be delegated to the BOC. In the event that the GMS delegates this authority to the BOC, the salary is stipulated based on a decision adopted by the BOC meeting.

4.11 Disclosure of Payments to Directors/Officers

The Company Law does not contain any provisions requiring the disclosure of information regarding the remuneration, fees or benefits payable to directors and officers.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

Shareholders, since they provide the capital for the company, shall have rights and responsibilities toward the company in accordance with the relevant laws and regulations and the AOA of the company. Although shareholders do not participate directly in the management or supervision of the company, they are nonetheless the highest authority in corporate governance. Shareholders control the appointment of the BOD and BOC, and decide on major issues such as amendments to the AOA of the company, the liquidation of the company, the approval of annual reports and the payment of dividends. In these areas shareholders' authority is exclusive, although the BOD may make recommendations to shareholders.

In a nutshell, shareholders are responsible for making decisions on significant actions and decisions of the company.

The General Meetings of Shareholders shall consist of the Annual GMS and any other GMS that may be held at any time depending on the needs or interests of the company. Shareholders have the right to vote during the GMS. This voting right is subject to the number of shares owned by the shareholder. Pursuant to Article 52 (1) of the Company Law and in conjunction with Article 85 (1) of the Company Law, each share shall grant its owner the right to attend and cast one vote in the GMS (or be represented by a duly authorised representative pursuant to a valid power of attorney) and receive dividend payments and the distribution of assets remaining after liquidation, as well as such other rights as provided under the Company Law.

5.2 Role of Shareholders in Company Management

Under the Company Law, the management of the company is under the authority of the company's BOD. Therefore, shareholders do not have any direct role in the company's management.

5.3 Shareholder Meetings

Under the Company Law, the GMS shall consist of the Annual GMS and any other GMS that may be held at any time depending on the needs or interests of the company.

The Annual GMS is typically held six months after the closing of the financial year.

The other GMS are called Extraordinary GMS (EGMS). An EGMS may be held at the request of one or more shareholders who jointly represent a tenth or more of the total shares with valid voting rights, unless the company's articles of association stipulate a smaller amount. Such a request, accompanied by the reason for it, will be submitted to the BOD by registered mail. The BOD will then hold the EGMS after a summons for the GMS is distributed no later than 15 days from the date the request to hold the GMS is received. In the event that the BOD does not call an EGMS, the request to hold the GMS shall be re-submitted to the BOC or the BOC will call for a GMS. The GMS of a publicly listed limited liability company shall abide by the provisions of the Company Law insofar as the provisions of the laws and regulations governing the capital markets do not determine otherwise.

A GMS may be held if it is attended or represented by more than half of the total shares with valid voting rights, unless a higher quorum is stipulated in the Company Law or the company's articles of association. In the event that the quorum is not reached, a summons for a second GMS may be sent. The summons for the second GMS must indicate that the first GMS was held and that the quorum was not reached. The second GMS shall be valid and shall be entitled to adopt resolutions if attended by shareholders representing not less than a third of all shares with valid voting rights, unless the company's articles of association stipulates a greater total. In the event that the quorum of the second GMS is not reached, the company may request that the chairman of the district court whose jurisdiction includes the company's domicile determine the quorum for a third GMS. The summons for a third GMS must indicate that the second GMS was held and 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 district court chairman concerning the quorum for the third GMS shall be final and have permanent legal force.

For publicly listed companies, shareholders meetings are regulated under OJK Regulation No 32/POJK.04/2014 regarding the Planning and Holding of General Meetings of Shareholders for a Public Company. The GMS summons for a publicly listed company shall be done through at least one Indonesian-language daily newspaper with national circulation, the stock exchange's website and the publicly listed company's website, in Indonesian and a foreign language (normally English).

Resolutions of the GMS shall be adopted based on deliberation to reach a consensus. In the event that consensus is not reached, the resolution shall be valid if approved by more than half of the total votes cast, unless the law and/or the company's articles of association require a higher total number of votes.

5.4 Shareholder Claims

Each shareholder is entitled to file a lawsuit against the company in the district court whose jurisdiction includes the company's domicile (the 'Relevant Court'), if the shareholder suffers losses caused by actions of the company which are considered unfair and unreasonable, as a consequence of a resolution of the GMS, BOD or BOC.

Shareholders are also entitled to request that the company purchase their shares at a reasonable price if the relevant shareholder disapproves of the company's actions that inflicted losses on shareholders or the company, in the form of amendments to the company's articles of association, the transfer or pledge of company assets valued at more than 50% of the company's net assets, or the merger, consolidation or acquisition of the company.

5.5 Disclosure by Shareholders in Publicly Traded Companies

Once a shareholder holds at least 5% of the shares in a publicly traded company, there is a new threshold for filing subsequent reports. Under the previous rule, any change of ownership once a party exceeded 5% of shares had to be reported to the OJK, which meant an increase of even one share triggered the reporting obligation. Under the new rules, subsequent reports must only be submitted once there is a change of ownership of at least 0.5%, either in one transaction or in a series of transactions.

6. Corporate Reporting and Other Disclosures

6.1 Financial Reporting

In accordance with Article 100 paragraph (1) letter b of the Company Law, the BOD is required to prepare the company's financial documents as intended in the Company Law's provisions on company documents.

For publicly listed companies, OJK Regulation No 29/POJK.04/2016 requires the company to convey their annual report to the OJK no later than four months after the financial year has ended. This report is made by the BOD and reviewed by the BOC.

Financial reporting for issuing companies and public companies is subject to further requirements. The Decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency No KEP-346/BL/2011 on the Periodical Submission of Financial Statements by Issuing Companies and Public Companies stipulates that "periodical financial statements" means the annual and mid-year financial statements of issuing companies and public companies.

6.2 Disclosure of Corporate Governance Arrangements

Disclosure of corporate governance arrangements under the Company Law is required in the event of submitting an annual report. Article 66 paragraph (1) of the Company Law states that the annual report must contain the names of members of the BOD and BOC.

Subject to their line of business, some companies (such as banks and insurance companies), must announce their financial reports in newspapers.

6.3 Companies Registry Filings

Company registration is regulated under Law No 3 of 1982 concerning Mandatory Company Registration. The company register is a list of official records containing matters to be registered by each company. This list must include data on the company's shareholding structure (authorised capital, number and nominal value of each share, and amount of subscribed and paid-up capital). Companies that have been registered in the Company Register will be given a Company Registration Certificate that is valid for a period of five years and which must be renewed at least three months before its expiration date.

The Ministry of Trade is the authority responsible for maintaining the Company Register. The aim of the Company Register is to record material information concerning Indonesian companies. It serves as the official source of information for all interested parties regarding the identity and data of companies and other important corporate information. Article 3 paragraph (3) of Ministry of Law and Human Rights Regulation Number M.HH-03.AH.01.01 dated 6 February 2006 stipulates that the Company Register shall contain the following information:

- the name and domicile of the company;
- the purpose and objective of the company's business;
- the operational time period of the company (nb, certain companies in Indonesia formerly had set time periods for which they were allowed to operate, such as 30 years, subject to renewal; such time periods are no longer applicable, but the Company Register still requires this information);
- the company's capital, consisting of authorised capital, paid-up capital and total number of shares and the par value of the shares and share deposit and its value;
- the company's address;
- the number and date of the Deed of Establishment with the Ministry of Law and Human Rights (MOLHR) decree approving the Deed of Establishment;

- the number and date of any deeds amending the company's AOA and the MOLHR approval of said amendments;
- the number and date of any deeds amending the company's AOA and the date it was received by the MOLHR;
- the name and place of domicile of the notary that legalised the Deed of Establishment and any deeds of amendment of the company's AOA;
- the names and addresses of shareholders and members of the BOD and BOC;
- the deed of the company's dissolution; and
- the balance sheet and loss and profit statement for the financial year for which auditing is required for the concerned company.

The above information can be accessed by the public upon submission of an application to the Directorate General for General Law Administration.

7. Audit, Risk and Internal Controls

7.1 External Auditors

Article 68 of the Company Law requires the BOD to submit its financial statement to a public accountant if:

- the company's line of business involves raising and/or managing public funds;
- the company issues Debt Acknowledgement Letters to the public;
- the company is a public company;
- the company is a state-owned company;
- the company owns assets or has turnover of at least fifty billion rupiah; and/or
- if so required by laws and regulations (such as for banks and insurance companies).

The appointment of external auditors is required for all public and listed companies. The companies must have their annual financial statements audited by an independent and accredited public accountant that is registered with the OJK.

7.2 Management Risk and Internal Controls

Pursuant to the Indonesian Corporate Governance Code, the BOC and BOD are ultimately responsible for determining the nature and extent of risks that an organisation is willing to take to achieve its strategic objectives and for ensuring that these risks are identified and managed properly. The BOD is responsible for implementing the risk management system while the BOC is in charge of monitoring and reviewing its implementation.

The management of risk requires the establishment and maintenance of an effective internal control system. The GCG Code sets out the following provisions on internal control:

- the BOD should establish and maintain a sound internal control system to safeguard the company's assets, its performance and its compliance with laws and regulations;
- issuers and public companies are required to have an internal control function or unit;
- the internal control unit should assist the BOD in achieving the company's objectives and business sustainability by evaluating the implementation of the company's programme, providing recommendations to improve the effectiveness of the risk management process, evaluating the company's compliance with laws and regulations, and facilitating co-ordination with the external auditor; and
- the internal control unit is responsible to the president director or the director in charge of this function. The internal control unit has a functional relationship with the BOC through the audit committee.

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