

Corporate governance in Indonesia

Rusmaini Lenggogeni, partner, SSEK Legal Consultants



Rusmaini Lenggogeni

Partner, SSEK Legal Consultants
rusmainilenggogeni@ssek.com

Corporate governance is slowly but surely being implemented in Indonesia. The typical form of corporate/business organisation in Indonesia is a limited liability company, but other forms are available, including co-operatives, representative offices and partnerships.

But since the limited liability company is by far the most common form of corporate organisation, in principle, corporate governance is governed by 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). The OJK regulates corporate governance requirements for the insurance and capital markets sectors, issuers and public companies.

National Committee on Governance

Interestingly, the Co-ordinating Ministry for Economic Affairs established the National Committee on Governance (NGC) in 2004

through Co-ordinating Ministry for Economic Affairs Decree No KEP-49/M.EKON/11/TAHUN 2004. This decree was amended by Co-ordinating Ministry for Economic Affairs Decree No KEP-14/M.EKON/03/Year 2008. The stated aim of the NGC is 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 as tools of corporate governance.

Handling corporate documents

One of the main regulations relevant to corporate governance in Indonesia, apart from the Company Law, is Law No 8 of 1997 regarding Corporate Documents dated 24 March 1997 (the Corporate Documents Law). The Corporate Documents Law is further implemented by Government Regulation No 87 of 1999 regarding Procedures for the Delivery and Destruction of Corporate Documents dated 13 October 1999 (GR 87 of 1999) and Government Regulation No 88 of 1999

It should be noted that the records, financial reports and other financial administrative documents must be retained for ten years as of the end of the financial year of the concerned company.

regarding Procedures for Transferring Corporate Documents to Microfilm or Other Media and Legalisation dated 13 October 1999 (GR 88 of 1999).

The Corporate Documents Law defines corporates as any form of business that continually engages in its business to achieve profit, carried out by individuals, legal entities or non-legal entities, established and domiciled in Indonesia. The same law defines corporate documents as data, records and/or statements made and/or received by the corporate in conducting its activities, either written on paper or another form of media that can be seen, read or heard.

Corporate documents consist of financial documents and other documents. The law further regulates that financial documents are notes, bookkeeping and supporting data related to financial administration evidencing the rights, liabilities and business activities of a corporate. Other documents are data or other written documents containing statements valuable to the corporate though not directly related to financial documents.

A corporate is mandated to maintain records consisting of an annual balance sheet, annual profit and lost statement, accounts, daily journal, and other records consisting of a statement concerning the rights, liabilities and other matters related to its business activities. The records shall be made using the Latin alphabet, Arabic numerals, Indonesian rupiah currency, and the Indonesian language, unless the

corporate obtains Minister of Finance approval to prepare the records in another language.

These documents shall be signed by the authorised representatives of the corporate concerned. Unless stipulated otherwise, these documents must be made at the latest six months after the end of the financial year of the concerned business.

It is interesting that even though the Corporate Documents Law was introduced in 1997, it introduced the means for using media other than paper for corporate documents. Hence, the implementing regulation that provides procedures for keeping records using media other than paper. The law cautions the management of companies to consider the use of original documents that must be kept due to their benefit to the company or national benefit. Another consideration is that if the management converts documents into microfilm or other media, the issue of evidentiary value requires the management to keep the original documents in hard copy, not only in electronic form.

The Corporate Documents Law and GR 87 of 1999 provide that the transfer of corporate documents to other media must follow the procedures provided in these regulations, including the requirement of legalisation. Note, however, that even though the process is called legalisation, it does not require the services of a notary public. The legalisation process under the regulations provides that authorised representative of the company shall

make the minutes of conversion of the corporate documents into other media. The minutes shall contain the place, date, month and year of legalisation, a statement that the corporate documents converted into microfilm or other media are true and correct copies, and the names and signatures of the authorised representatives.

It should be noted that the records, financial reports and other financial administrative documents must be retained for ten years as of the end of the financial year of the concerned company.

Another interesting fact under these regulations is that if corporate documents are deemed to have 'historical value', the company is required to deliver such corporate documents to the National Archives.

GR 87 of 1999 further regulates that if it is necessary to destroy corporate documents, such destruction must use the procedures provided in the implementing regulation.

The Corporate Documents Law and its implementing regulations add to the functionality of corporate governance practices in Indonesia. ■

This publication is intended for informational purposes only and does not constitute legal advice. Any reliance on the material contained herein is at the user's own risk. You should contact a lawyer in your jurisdiction if you require legal advice. All SSEK publications are copyrighted and may not be reproduced without the express written consent of SSEK.