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Highlights of the New Company Law

Law no. 1, 1995 on Limited Liability Company has been superseded by a new law, Law no. 40, 2007 under the same title. The new law has been ratified by the parliament and the President and is effective as of 16 August 2007.

Some of the significant changes under the new law are discussed below.

Use of electronic media

The new law allows a company to use electronic media to carry out certain aspects of its business. For instance:

- In submitting a request to the government for approval of its status as a legal entity.
- In conducting the General Meeting of the Shareholders ("GMoS").

Minimum authorised capital

Minimum authorised capital has been increased from IDR 20 million under the previous law to IDR 50 million under the new law. The new law requires at least 25% of the authorised capital to be issued and the issued capital should be paid up in full. Previously, only 50%, at least, of the issued capital was required to be paid-up.

Annual work plan

There is a new requirement for the Board of Directors ("BoD") to prepare an annual work plan, including a budget. The work plan should be submitted to the Board of Commissioners ("BoC") and/or the GMoS for approval as stipulated in the Articles of Association ("AoA").

Annual report

The time given to the BoD to prepare an annual report and present it to the GMoS has been extended from five months to six months after the financial year end. New sections on the implementation of Corporate Social Responsibility and on the function of the Supervisory Board have been added as a requirement in the annual report.

Corporate Social Responsibility

Under this new stipulation, a company whose activities deal with or are related to the management of natural resources has an obligation to carry out a social and environmental responsibility program. However, the implementation of this stipulation will be regulated in greater details in a government regulation.

Allocation of profits

Under the new law, the company's obligation to provide for statutory reserve is applicable only when it has a positive retained earnings balance. The previous law did not mention that the company should have a positive retained earnings balance in order to be able to distribute dividends.

The new law also determines that dividends may only be distributed when the company has a positive retained earnings balance. A company with negative retained earnings may not distribute dividends. In addition, dividends not collected within a certain period (i.e. ten years) can be claimed by the company.

The new law introduces a new rule on distributing interim dividends. Among others, it determines that interim dividends may only be distributed provided it is so specified in the company's AoA and the dividend distribution does not cause the company's net assets to be smaller than issued capital plus statutory reserve. However, if at the end of the year the company suffers a loss, the interim dividend should be returned by the shareholders.

Treatment of "tantieme" in the financial statements

The new law establishes that a "tantieme", a performance-based compensation for members of the BoD and BoC, should be budgeted and treated as an expense by the company.

Mandatory audits for certain companies

The types of company required to undertake mandatory audits have been extended to include:

- companies with assets/and or revenue of at least IDR 50 billion, and
- state-owned enterprises in the form of "Persero".

Bringing the AoA in line with this Law

Companies are given one year to adjust their AoA to ensure consistency with this new Law. Failure to do so may put the company at risk of being liquidated based on a court decision or shareholders' decision.

Following is a list of some of the other new requirements and changes under the new Company Law. Please be advised that the list below does not represent all changes under the new law.

Incorporation

- A company obtains its status as a legal entity on the date the Minister of Justice and Human Rights issues a decree granting the company such a status. Under the previous law, the company becomes a legal entity on the date the Minister ratifies the AoA.
- The previous version of the law requires that when the number of shareholders of a company declines to just a single shareholder, that sole shareholder should transfer part of his or her shares to another person. The new law allows an alternative for the company to issue new shares to another person.
- The first GMoS must now be held within 60 days of a company obtaining its status as a legal entity.
- For a company that has not been granted a status as a legal entity, there is a more detailed guidance on the legal obligations of the founders of the company when those founders perform legal actions.

AoA and Amendments Thereto

- There is more detailed guidance on the timeframe for amending the AoA.
- The attendance quorum for amending the AoA has been changed. For instance quorum required for the second GMoS to amend the AoA is three-fifths of the shares with voting rights; previously it was two-thirds.
- The location of the company (i.e. city or regency) should be made clear in the AoA.
- Detailed procedures are introduced for a privately held company when it meets the definition of a public company and should consequently amend its AoA.

Company Registry

- A Company Registry, containing the basic information of the company, should be maintained by the Minister of Justice and Human Rights. Under the previous law, such information is maintained by the Ministry of Trade. This registry is open to the public.

Capital and Shares

- Shares paid in the form of immovable assets should be announced in at least one (previously two) newspapers within 14 days of the signature of the AoA, or after the GMoS decides on the shares to be issued for those assets.
- There is further elaboration on claims to the company made by a shareholder or a creditor. In particular, the new law provides guidance on the circumstances in which such claim can be offset against the shareholder's obligation to pay for the shares s/he has taken.
- There is a clarification on how crossholding of shares is prohibited. This prohibition is exempted in certain circumstances, e.g. when the shareholding arises from donation or inheritance; however those shares held must be disposed of within one year.

- Shares should be registered in the name of the shareholders only. The previous law allows a company to issue bearer shares.
- No par value shares, which were previously prohibited, can now be issued in the capital market but only when allowed by relevant capital market laws and regulations.
- There is an elaboration on shareholders' rights arising from share ownership. These rights, including the right to receive dividends and to vote, are exercisable once the shares are recorded in the Shareholders Registry.
- When there is a transfer of share rights, the BoD should record the transfer and inform Minister of Justice and Human Rights of the change in shareholder composition, to be subsequently recorded in the Shareholders Registry within 30 days of the date the transfer is recorded.
- There is a new rule stipulating that a company that buys back its own shares may only hold those shares for a period of not more than three years. After three years, the company should determine whether the shares will be sold or retired.

Annual Report

- The balance sheet and income statement of listed companies and other enterprises that accumulate funds from the public or issue debt instruments should be announced in one newspaper, rather than two as previously required. This announcement should be conducted within seven days of the financial statements being approved by the GMoS.
- Approval of the annual report by the GMoS now includes approval of the supervisory function of the BoC.

GMoS

- There is a new mechanism and requirements for when the head of a local district court grants permission, based on shareholders' request, for a GMoS to be held. This request is typically issued when the BoD or BoC does not conduct the GMoS as required.

Directors

- There is a clarification that in discharging its duties in managing a company, a director should first and foremost consider the interests of the company in line with the company's mission and goals.
- Companies that are listed or those that accumulate funds from the public (for example banks and insurance companies), or those that issue debt securities, should have at least two directors. Division of responsibilities amongst those directors should be outlined in the shareholder's resolution or decreed by the BoD.
- There are additional provisions on the appointment (and cancellation thereof), replacement, and discharge of the directors.
- It is clarified that directors cannot be held liable for losses of the company when it can be demonstrated that the loss is not due to their fault or negligence, they have acted in good faith and in a prudent manner, have not had a conflict of interest in the transaction causing the loss, and have taken measures to prevent or mitigate the impact of the loss.

- There is a clarification that the directors do not have to seek permission from the GMoS in transferring or pledging the company's assets, when such a pledge or transfer arises from the directors conducting the activities of the company in accordance with the AoA.
- Before being discharged from his or her role, a director is given the chance to defend himself or herself even when the decision to discharge the director is taken outside the GMoS.
- The AoA should include guidance on the resignation of a director.

Commissioners

- It is clarified that a member of the BoC cannot act on her or his own but should act based on the BoC's decision.
- Companies operating based on *shariah* principles should set up a *shariah* supervisory board.
- There is more detailed guidance on the appointment, replacement and discharge of a commissioner.
- Should bankruptcy occurs due to the fault or negligence of the BoC in supervising the performance of the BoD, members of the BoC will be jointly and severally held liable for any remaining debts not covered by the company's assets (unless it can be proven that they have duly supervised the company, have had no conflict of interest and have given proper advice to the BoD on how to prevent further losses).
- Such a liability as described above also applies to members of BoC for up to five years after completing his or her term.
- The BoC should prepare and keep a minute of the BoC meeting.
- A member of the BoC should report to the company any shares that they or their family hold.
- The BoC should prepare a report on the supervisory duties it has performed over the past year.
- The AoA may determine that there is at least one independent commissioner and one delegate commissioner. The latter is a member of the BoC appointed in the BoC meeting.
- In discharging its supervisory duties the BoC can establish a committee whose members include at least one member of the BoC.

Business combinations, mergers, acquisitions, takeovers and split-offs

- The components of a merger plan have been added to include, among others: names of companies involved in the merger, its main activities, reason for merger, valuation and conversion of shares, financial statements, proforma balance sheet, continuity or termination plan, settlement to third parties, names and compensation of directors and commissioners, expected period over which the merger will be completed, changes in the AoA, etc.
- Legal actions in a business combination should also consider the interests of the company's creditors and its other business partners.
- There is a new concept of dividing, splitting off and spinning off the company

Investigative audit

- When there is suspicion of an illegal act by the company or its directors or supervisors, an investigative audit may be requested by shareholders or the district attorney's office or another party eligible by law to file such a request. The new law establishes a timeframe for the investigative audit report to be delivered to the head of the local court, i.e. within 90 days of the appointment of the auditor. The head of the local court should then, within 14 days, submit the audit report to the parties requesting the audit.

Dissolution, liquidation and cessation of the company's status as a legal entity

- Under the previous version of the Company Law, a company is dissolved when it has been so decided by the GMoS, the period of incorporation has expired, or based on a court decision. The new law prescribes more situations under which a company is dissolved, i.e.:
    - Upon alleviation of a company's bankruptcy status by the court and the company's assets are not sufficient to cover bankruptcy fees.
    - When a bankrupt company's assets are in insolvency.
    - When the company's business license has been revoked.

- There are new or revised requirements relating to a company liquidation, including but not limited to:
    - All claims to the company should be submitted within 60 days (previously within 120 days) of the announcement of the liquidation.
    - When a company's assets remaining after liquidation have been distributed to its shareholders and claims by creditors remain unpaid, the local district court may order the liquidator to withdraw such assets from the shareholders on a basis proportionate to the amounts of the claims.

Please be advised that the objective of this publication is to provide a preliminary view on some of the changes introduced by the new Company Law and should not be construed as our legal interpretation of the new law. For a comprehensive understanding of the legal aspects, please refer to the original text of the new Company Law and consult your legal adviser.

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