Indonesia

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Introduction

Business practices in modern countries are carried out through various organized and systematic entities. the entities recognized by the Indonesian Law include cooperatives (*Koperasi*), foundations (*Yayasan*), partnerships (*Persekutuan*), firms (*Firma*), limited partnerships (*Persekutuan Komanditer / CV*), and limited-liability companies (*Perseroan Terbatas / PT*). Among the various business entities as stated, the limited-liability company is the most preferable and by far the most common.

Limited-liability companies have enjoyed the most rapid and comprehensive growth and development. Formerly, limited-liability companies were regulated under both the original Dutch-based Indonesian Commercial Code, Articles 36–56 and the Indonesian Civil Code, Chapters 8 and 9. However, the existing regulations were not able to keep up with modern business requirements, and the Government has continued to issue new regulations regarding limited-liability companies.

In 1982, Law Number 3 was enacted regarding company registration. In 1995, a new comprehensive law was promulgated regulating most matters concerning the limited-liability company, being Law Number 1 of 1995 regarding limited-liability companies, which has been amended by Law Number 40 of 2007 (the "Company Law"). Shortly thereafter, Law Number 8 of 1997 was enacted regarding company documents and, in 2003, Law Number 19 of 2003 regarding state-owned companies was promulgated.

The Company Law, Article 1, Paragraph (2), states that the company's organs consist of the general meeting of shareholders, the board of directors, and the board of commissioners. The general meeting of shareholders, consisting of the owners of the company, is vested with authority not provided to either the board of directors or board of

commissioners, within limits stipulated in the Company Law or in the articles of association of that Company.[1]

The general meeting of shareholders also is entitled to obtain information in relation with the company from the board of directors and/or board of commissioners in accordance with the agenda as long it does not contravene with the company's interests. The general meeting of shareholders represents the capital of the company's owners. Therefore, it may be concluded that the general meeting of shareholders acts in the interest of the shareholders. The board of directors is responsible to perform the company's management and operations and must act in the interests of the company itself. The board of commissioners has a supervisory role over the board of directors, in effect to ensure that shareholder interests are represented.

Shares and Shareholders

In General

Payment for shares in a company is made in the form of money. However, it is possible for payment to be made in other forms, the as tangible or intangible goods that are able to be valued in monetary terms and are actually received by the company. Other forms of shares payment must be accompanied with details of value or price, type, status, place or domicile, and other information deemed necessary to clarify the deposit of capital.

Matters concerning shares and shareholders are explicitly regulated in the Company Law and implicitly in other regulations. Shares owned by the shareholders are considered as ownership proof, and shares issued by the company must be identified as the shareholders' payment receipt. Each share (or each share in each class of shares) has one, or equal, voting right within the class. The shareholder's responsibility is limited by the number of the shares owned. the shares generally provide voting rights in the general meeting of shareholders. They also provide the right to receive dividends proportional to the number of shares owned. Under the Company Law, shareholders are entitled to:

(1) Attend and cast votes in the general meeting of shareholders;

1 Company Law, Article 75, Paragraph 1.

(2) Receive dividends and the proportional share of any remaining assets resulting from a liquidation process;
(3) File a lawsuit against the company if the shareholder suffers a loss as a result of actions performed by the company which are considered unfair and unreasonable;
(4) Request the company to purchase their shares at a reasonable price in the event of certain specified corporate transactions; and
(5) Exercise the pre-emptive right to subscribe to newly issued shares, proportionally.

As stipulated in the Company Law, Article 3 Paragraph (1), "[t]he company's shareholders are not personally liable for any legal agreements entered into on behalf of the company and are not liable for any company losses exceeding their owned shares". However, the Company Law also provides a provision related to "Piercing the Corporate Veil" in Article 3, Paragraph (2), stating that shareholders may be personally liable towards the company in case of the occurrence of any of the following events:

(1) The requirements for the company as a legal entity were not completed;
(2) The shareholders, whether directly or indirectly, in bad faith, took advantage of the company for their own interest;
(3) The shareholders were involved in an unlawful act conducted by the company; or
(4) The shareholders, whether directly or indirectly, have unlawfully misapplied the company's assets leading to an inadequacy of the assets in order to settle the company's debts.

The Company Law and Law Number 8 of 19957 (the "Capital Market Law") also regulate various issues related to shares and shareholders.

Shareholders' Authority

The Company Law specifically regulates the authority provided to the general meeting of shareholders, board of directors, and board of commissioners. Each performs its own role in the company in accordance with its respective authority, each of which differs from the others. These roles are normally also set out in the company's articles of association.

As noted above, the board of directors is responsible for conducting management and operational functions inside the company, and represent to company with respect to external parties. However, certain

actions or decisions within the company may not be taken by the board of directors without prior consent from the general meeting of shareholders, according to the Company Law. Under the Company Law, the actions or decisions that require consent or approval of the general meeting of shareholders include related to the following events:

(1) Amendment to the articles of association;[2]
(2) Capital increase;[3]
(3) Capital reduction;[4]
(4) Annual financial statement approval and management discharge;[5]
(5) Appropriation of profit;[6]
(6) Transfer of company assets and render the company's assets as collateral, which constitute more than fifty per cent of the net company assets;[7]
(7) Appointment and termination of board of directors and board of commissioners;[8]
(8) Merger, acquisition, and consolidation;[9] and
(9) Company dissolution.[10]

Shareholders may add additional restrictions on corporate actions performed by the board of directors in the company's articles of association. The board of directors in public companies must comply with the regulation issued by the Financial Services Authority (*Otoritas Jasa Keuangan*), wherein shareholder approval is required for certain corporate actions, including conflict-of-interest transactions and material transactions. Approval of the board of commissioners also may be required for certain activities of the board of directors, and these are within the shareholders' authority to determine and set out in the articles of association.

Classification of Shares

As stated in the Company Law, Article 53, the articles of association determine one or more classifications of shares. Each share of the same

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2 Company Law, Article 19.
3 Company Law, Article 41.
4 Company Law, Article 44.
5 Company Law, Article 69.
6 Company Law, Article 71.
7 Company Law, Article 102, Paragraph 1.
8 Company Law, Articles 94–105 and 111–119.
9 Company Law, Article 123.
10 Company Law, Article 142.

classification must be provided with equal rights. If there is more than one classification of shares, the articles of association must designate one class as common shares. There are two types of shares, namely:

(1) Common shares — Owners of common shares have the right to participate in the company's decision-making by casting votes in the general meeting of shareholders. They also are entitled to obtain profit from the company, either in the form of dividends or capital gain. Each share must have the same nominal value and carry the same rights, interest, and obligations for the owners in accordance with the articles of association. In accordance to the Company Law, Article 52, the holders of common shares have the right to attend and cast votes in the general meeting of shareholders, to receive dividends and remaining asset distribution from a liquidation process, and to perform any other rights in accordance to the prevailing law.

(2) Preferred or priority shares — Preferred or priority shares benefit from a privilege not provided to common shares. Based on the Company Law, Article 53, Paragraph (4), the classification of shares besides common shares is shares with or without voting rights, shares with prerogative rights to nominate candidates for the board of directors and/or the board of commissioners, shares including the right to exchange one class of shares for another after a designated time or upon a designated occurrence, shares that provide priority rights to the owner with respect to receipt dividends, and shares that provide priority rights to the owner with respect to distribution of the remaining assets from a liquidation process.

All shares must be registered in the name of the owner both in the company's register book and set out in the articles of association, or an amendment thereto, registered with the Ministry of Law and Human Rights and published in the *State Gazette* (*Berita Negara).* Bearer shares are not recognized in Indonesia. The registration of public company shares is conducted by the Central Securities Depository (*Kustodian Sentral Efek /* KSEI).

Transfer of Shares

Article 56 of the Company Law provides that the transfer of rights of shares must be performed by transfer of a rights deed. The deed may be made before a notary public or privately; in either case, the deed must

be registered with the Ministry of Law and Human Rights and published in the *State Gazette*.

Basically, shareholders are free to transfer their shares, but there may be some prerequisites. The procedure of share transfer in a limited-liability company is subject to the company's articles of association. Share transfer may be subject to prior consent from other shareholders, prior consent from the company's organs (general meeting of shareholders, board of directors, or the board of commissioners), and/or prior consent from a governmental institution in accordance with the law.[11]

Approval or refusal for a transfer of shares by the company's organs must be provided in writing within ninety days from the date the request for approval is received by the company's organs. If no written statement is provided by the company within the determined period, an automatic approval from the company's organ is considered given regarding the transfer of shares.

In the case of issuance of new shares, each shareholder has the pre-emptive right to subscribe newly issued shares in accordance with their respective proportion for the equivalent class of shares. New shares may be issued to a third party if the existing shareholders have waived their pre-emptive rights.[12] Provisions regarding pre-emptive rights also are regulated by the Capital Market and Financial Institution Regulatory Board (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* / Bapepam-LK), now known as the Financial Services Authority (*Otoritas Jasa Keuangan*).[13]

While foreign interests are not restricted in ownership of shares listed on the Stock Exchange, shares in regular private Indonesian companies may only be held by Indonesian individuals or legal entities. In general, in most fields, foreign interests may hold shares in specific Indonesian companies designated as foreign investment limited-liability companies (PT PMA, *Penanaman Modal Asing),* pursuant to the Foreign Investment Law, Law Number 25 of 2007, replacing Law Number 1 of 1965. Periodically, the government issues a Negative Investment List (*Daftar Negatif Investasi* / DNI), setting out relevant sectors that are allowed and/or restricted to foreign investment, including its respective proportion to investment.[14]

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11 Company Law, Article 57.
12 Company Law, Article 58.
13 Bapepam-LK Regulation Number IX.D.1.
14 Capital Market Law, Article 12, Paragraph 1; Government Regulation Number 44 of 2016.

Restrictions on transfer of shares may be agreed between or among the shareholders in the articles of association or in a shareholder agreement. Provisions regulated in the shareholder agreement must be set forth in the company's articles of association. Amendments covering the shareholder's proportion of shares in a company must be notified by the company through a notary public or directly to the Ministry of Law and Human Rights and published in the *State Gazette* once the parties have executed the transfer deed. An increase in the company's authorized capital requires Ministry of Law and Human Rights approval.

An increase in issued and paid-up capital must be notified to the Ministry of Law and Human Rights once the new shareholder has injected additional funds for the subscription of new shares. Any increase or decrease of capital or change or shareholders in a PMA company must first obtain approval of the Investment Coordinating Board (BKPM). Prior consent also may be required for any amendments to the shareholder's composition in certain business fields. For example, financial institutions whether bank or non-bank require prior consent for any the change. The Company Law regulates transfer of shares as follows:

(1) Transfer of shares is performed by executing a deed of share transfer and providing a copy of the deed the company;
(2) The board of directors must register every transfer, including the date of transfer, in the shareholder register (and update the special register, if applicable) and may notify amendments to the Ministry of Law and Human Rights within thirty days of the date of the transfer of shares is recorded;
(3) Transfers of shares in public companies shall be made in accordance with the prevailing Capital Market law;[15] and
(4) The articles of association may provide additional requirements for a transfer of shares, the as an offer to shareholders of a certain class of shares, an offer made to employees, and the requirement to seek consent from third parties or the general meeting of shareholders. Shares can be pledged, unless otherwise provided under the articles of association. Pledges over shares must be registered in the shareholder register. A pledge is a security instrument only and voting rights on pledged shares remain with the shareholder.

15 Transfer of shares in public companies are scriptless, and conducted by a broker, and must be registered.

Shareholder Voting Rights and Quorum

Basically, provisions regarding voting rights and quorum are stipulated in the company's articles of association. However, the legal basis of the stipulation is regulated in the Company Law. If possible resolutions should be attempted to be agreed by consensus of all shareholders.

If no consensus can be reached, a vote is taken and the resolution will pass if favored by more than fifty per cent of the share/votes cast unless the articles of association require a greater percentage. The Company Law also requires a greater percentage for certain matters, the as amendment to the articles of association and merger or dissolution of a company. In addition, shareholders may conclude a resolution by circular resolution, without holding a general meeting of shareholders, as long as all of the shareholders are in agreement. The resolution will have the same legal force as the general meeting of shareholders resolution.[16]

Each share will carry one vote, unless otherwise determined in the articles of association. Nonetheless, the vote may not apply with respect to company shares that are controlled by the company itself (treasury shares, which are limited to no more than 10 per cent of the total), parent company shares that are controlled whether directly or indirectly by a subsidiary, or company shares that are controlled by another company whose shares are directly or indirectly owned by the company.[17] Following are the specific quorum and voting requirements for certain corporate actions of the general meeting of shareholders:

(1) Amendments to the articles of association — Amendments to the articles of association must be conducted through a general meeting of shareholders wherein at least two-thirds of the entire company's shares with voting rights are present or represented in the general meeting of shareholders. the amendment will be considered valid if approved by at least two-thirds of the votes cast, unless a greater percentage is required under by the articles of association. If the quorum is not reached at the first meeting, a second general meeting of shareholders may be held. The second general meeting of shareholders must be valid and authorized to conclude a resolution if at least three-fifths of the entire company's shares with voting rights are present or represented. The amendment will pass if approved by at least two-thirds of the

16 Company Law, Article 91.
17 Company Law, Article 84.

votes cast, unless otherwise determined by the articles of association. If the quorum cannot be reached in the second general meeting of shareholders, the company may request the chairman of the District Court whose jurisdiction covers the company's domicile to determine the quorum for a third general meeting of shareholders.[18]

(2) Merger, consolidation, acquisition, bankruptcy and/or dissolution — A merger, consolidation, acquisition, bankruptcy, and/or dissolution of the company, as well as the transfer or pledge of more than 50 per cent of the company's assets as security for a loan, in one or more related or unrelated transactions, must be approved through a general meeting of shareholders wherein at least three-quarters of the entire company's shares with voting rights are present or represented. the action will require approval of at least three-quarters of the votes cast, unless a higher percentage is required under the articles of association. If the quorum is not reached, a second general meeting of shareholders may be held, in which the quorum must be two-thirds of the total shares with voting rights and approval by at least three-quarters of the votes cast.[19]

(3) Increase of issued and paid-up capital — An increase of issued and paid-up capital must be approved through a general meeting of shareholders wherein at least more than half (simple majority) of the entire company's shares with voting rights are present or represented in the general meeting of shareholders. the increase will be considered valid in terms of approved by more than half of the casted votes, unless otherwise determined by the articles of association.[20]

Quorum and Voting in Conflict-of-Interest Transactions

The Financial Services Authority also regulates voting rights and quorum requirements for certain corporate actions specifically for public companies. The requirements are stipulated in Financial Services Authority Regulation Number 32/POJK.04/2014 regarding the implementation of general meeting of shareholders in public companies.

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18 Company Law, Articles 86–88.
19 Company Law, Articles 89–102(1).
20 Company Law, Article 42.

In addition, there are certain transactions that require approval from an independent shareholder through a general meeting of shareholders. These include conflict-of-interest transactions. A conflict-of-interest transaction is a transaction where the economic interest of a director, commissioner, or majority shareholder is not the same as, or is not in harmony with, that of the company, so that the transaction may cause a loss to the company.

In a conflict-of-interest transaction, the attendance (for quorum purposes) and votes cast by the shareholders with a conflict of interest are not calculated. This means that a quorum is reached if shareholders holding more than 50 per cent of the total shares owned by the independent shareholders, those free of conflict of interest, attend the general meeting of shareholders. Even where the percentage of the shares owned by the independent shareholders is less than 50 per cent of the total issued shares of the company, the approval must be granted if more than 50 per cent of the shares owned by the independent shareholders are cast in favor. the approval is not required for the following transactions:

(1) A facility application provided by the company or a company controlled by the company to the commissioners, directors, or majority shareholders, where the majority shareholder also is an employee, provided that the application is considered relevant to their responsibilities within the company, in accordance with the company's policy, and has been approved by the general meeting of shareholders;
(2) A transaction between the company and any of its employees, directors, or commissioners, or between the company and the employees, directors, or commissioners of a controlled company, or transactions between the controlled company and the employees, directors, or commissioners of the controlled company, as well as transactions between the controlled company and company's employees, directors, or commissioners, provided that the transaction has been approved by the general meeting of shareholders, including all benefits provided by the company or the controlled company to its employees, directors, or commissioners with the same terms and in accordance with the company's policy;
(3) Remuneration, including salary, pension fund contribution, and/or special benefits granted to commissioners, directors, and majority shareholders who also are employees, if the total amount has been disclosed in the annual financial statement;
(4) A transaction with continuous nature which commenced following a public offering which has fulfilled the requirements

of the prevailing regulations and that transaction's terms and conditions do not inflict any loss to the company;

(5) A transaction conducted by the company, the value of which does not exceed 0.5 per cent of the paid-up capital of the company, provided that the 0.5 per cent of the paid up capital does not exceed Rp. 5-billion; or

(6) A transaction conducted in compliance with the law or a court judgment.[21]

Rights in Proxy Voting

A shareholder with voting rights may appoint a representative (proxy) to attend a general meeting of shareholders on its behalf by providing a power of attorney. The proxy may cast its votes in accordance with the representative proportion of shares owned by the shareholder.

However, if the shareholder decides to attend the general meeting of shareholders in person, the proxy may not be recognized in the general meeting and the power of attorney will be invalid. the power of attorney is valid for one meeting only. Nor may an employee or member of the board of directors or board of commissioners act as proxy to vote on behalf of a shareholder to vote in the general meeting of shareholders.[22]

Shareholder Meetings

In General

Shares provide their owners the right to attend a general meeting of shareholders and cast votes in the meeting following its registration in the shareholder register. Only listed shareholders are entitled to participate in a general meeting of shareholders. Under the Company Law, a general meeting of shareholders consists of annual general meetings of shareholders and extraordinary general meetings of shareholders.

A general meeting of shareholders must be held at the company's domicile as it is determined in the articles of association. A general meeting of shareholders also may be held elsewhere within Indonesia. It also is required to provide minutes of a meeting, approved and signed by the general meeting of shareholder participants. A general meeting of

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21 Bapepam-LK Regulation Number IX.E.1.

22 Company Law, Article 85.

shareholders may be held as long as more than half of the total number of shares with voting rights are present or represented in the general meeting of shareholders, unless a greater percentage is otherwise provided by the law and/or the articles of association.

Agenda

A general meeting of shareholders may be called by the board of directors, board of commissioners, or one or more shareholders who jointly represent one-tenth or more of the total number of shares with voting rights, unless otherwise determined in the articles of association.[23] The notice should include the agenda, which gives the structure and the issues to be discussed at the general meeting of shareholders.

The annual general meeting of shareholders must be held no later than six months following the end of the company's fiscal year. At the annual general meeting of shareholders, the board of directors is required to present the company's annual report, including an audited financial statement. The report should have obtained prior consent from the board of commissioners and be accepted by the shareholders at the annual general meeting, which acceptance absolves the board of directors from liability.

Other matters commonly resolved in an annual general meetings of shareholders are dividend distributions, amendments in the board's structure, auditor's appointment, election of directors and commissioners whose terms have expired or who have resigned, compensation provided to the board of directors and board of commissioners, and statutory reserve allocations. An extraordinary general meeting of shareholders may be held any time required by the shareholders or by the board of directors. No specific provisions are regulated in the Company Law regarding the agenda for an extraordinary general meeting of shareholders.

Notice

In accordance with the Company Law, notice of a general meeting of shareholders must be made through registered mail and/or publication in at least in two daily newspapers. Notice is to be delivered to the shareholders at least fifteen days prior to the date of the general meeting of shareholders.

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23 Company Law, Article 79.

A shareholder seeking to hold an annual general meeting of shareholders must request that notice be sent by the board of directors or, if the board of directors fails to deliver it, to the board of commissioners. If neither send the notice, a shareholder may request the chairman of the District Court within the company's domicile to authorize the shareholder to deliver the notice. For publicly listed companies, an early announcement is required to be made prior to the general meeting of shareholders notice delivery in accordance with the Capital Market Regulation.[24]

Media

In accordance with Article 77 of the Company Law, a general meeting of shareholders also may be conducted through teleconference, video conference, or other electronic media that enables the general meeting of shareholder participants to see and hear each other during the meeting.

Inspection of Shareholder Lists

Every shareholder has the right to examine, search, and copy the list of shareholders. Shareholders are entitled to verify the accuracy of information in the list regarding themselves and their holdings. They also are entitled to submit an objection to any irregularity in the list and request an amendment to correct information or add missing information.

The board of directors is obligated to provide and maintain a list of shareholders that must contain, for each shareholder, shareholder's name and address; amount, number, and date of the share's acquisition, along with its classification, if more than one type of shares was issued; paid-up amount of each share; if the shares are pledged, the name and address of the individual or legal entity who is entitled over the share's pledge rights, including the date the pledge was acquired and its registration; and information regarding other forms of payment made for the shares, if not paid in currency, as stipulated in Article 34 of the Company Law.[25]

The board of directors also is required to maintain a special list containing information regarding shares owned by members of the board of directors and board of commissioners, including relatives, in the company and/or related companies, along with the date the shares were acquired. The shareholders' list must be made available at the company's domicile to enable the shareholders to inspect the related information.

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24 Company Law, Article 83.
25 Company Law, Article 50.

The board of directors must actively revise and/or record amendments made to the shareholder list from time to time. This will apply as long as the Capital Market Law does not otherwise apply. in which case the provisions stipulated in Article 50, Paragraph (1), (3), and (4), will apply to listed companies. Upon written request from the shareholders, the board of directors must allow the shareholders to examine the list (register of shareholders and special register), minutes of general meeting of shareholders, and annual reports. Members of the board of commissioners have the right to inspect this list, as well as all other corporate documentation.

Acquisition and Tender Offers

Acquisition and tender offers are regulated by Financial Services Authority Regulation Number IX.H.1 In a tender offer performance, the new controlling shareholder is required to:

(1) Deliver an announcement text of the tender offer to the Financial Services Authority, containing a tender offer disclosure attaching the related documents, no later than two business days follow the takeover announcement;
(2) Deliver any amendments and/or additional information including documents attached to the announcement text above, no later than five business days following the receipt of request from the Financial Services Authority;
(3) Announce information disclosure regarding tender offer in at least one Indonesian daily newspaper no later than two business days following the receipt of a letter from the Financial Services Authority, stating that the new controlling shareholder may announce information disclosure regarding the tender offer;
(4) Perform a tender offer for thirty days commencing one day following the day of the announcement;
(5) Complete the tender offer transaction by delivering the money, no later than twelve business days following the expiration of the offering period as determined in point 4, above; and
(6) Deliver the tender offer result report to the Financial Services Authority no later than five business days following the expiration of the transaction completion, as determined in point 5, above.

The disclosure announcement is required to contain the acquisition background and information regarding the shares, including the amount and percentage of shares that are to be purchased and the amount and

percentage of the Target Company's shares, whether directly or indirectly owned by the new controlling shareholder, including options to purchase or rights to receive dividends or other benefits and the power to cast votes in the taken over public company's general meeting of shareholders.

Distributions

The Company Law requires that a company reserve a certain amount from its net profit each year not to exceed twenty per cent of the issued and paid-up capital, as a reserve fund to ensure the company has gained profit in the same year.[26] Dividends may only be distributed among the shareholders if the company has gained positive profit balance.

A company may distribute interim dividends prior to the end of the company's financial year as long it is regulated in the company's articles of association. The distribution may be made only if the company's total net assets are not less than the company's issued and paid-up capital plus the mandatory reserves. The distribution may not interfere with the company's activities or cause the company to be unable to perform its obligations towards any creditor distribution of interim dividends are based on the board of directors' decision with prior consent from the board of commissioners. If there is a loss suffered by the company at the end of the company's fiscal year, distributed interim dividends must be returned to the company by the shareholders.

The board of directors and board of commissioners will be jointly and severally liable for the company's losses if shareholders are not able to return distributed interim dividends. Dividends that are not collected for five years after the determined date must be placed in the special reserve fund. The general meeting of shareholders may determine the procedure to collect dividends that were placed in the special reserve fund. Dividends that were placed in the special reserve fund and are not collected within ten years will be owned by the company.

Derivative Suits and Put Option

Derivative Suits

A company's actions that may be considered detrimental to the shareholders or the company itself include amendments of the articles of

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26 Company Law, Article 70.

association, transfer or placing any security right over the company's assets that are valued more than fifty per cent of the company's total net assets or merger, consolidation, acquisition, or spin-off.[27]

Under the Company Law, one or more shareholders who represent one-tenth of the total shares with legal voting rights, may file a lawsuit within the District Court against the board of directors for its negligence.[28] One or more shareholders who represent one-tenth of the total shares with legal voting rights may submit a request the District Court to investigate the company to obtain required information for some specific reason.[29]

One or more shareholders who represent one-tenth of the total shares with legal voting rights may submit a request within the District Court to dissolve the company if it is deemed to not be able to continue its businesses.[30] Such shareholders may request the convening of a general meeting of shareholders. If the board of directors or the board of commissioners fails to perform the call for a general meeting of shareholders within thirty days, the shareholders requesting the general meeting of shareholders may submit a request to the District Court to permit shareholders to perform the call for a general meeting of shareholders.[31] One or more shareholders who represent one-tenth of the total shares with legal voting rights may file a lawsuit at the District Court against the board of commissioners for its negligence.[32]

Put Option

Detrimental actions resulting from a merger, consolidation, acquisition, or spin-off may not be contested by the minority shareholders. However, they are entitled to request that the company repurchase the shares owned by them at a reasonable price, wherein the nominal value of the repurchase may not exceed ten per cent of the company's issued capital. The repurchase may not cause the net assets of the company to become less than the subscribed capital added with the mandatory reserves set aside.[33] If exceeded, the company is required to strive to enable the remaining shares to be purchased by a third party.

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27 Company Law, Article 62(1).
28 Company Law, Article 97(6).
29 Company Law, Article 138.
30 Company Law, Article 114.
31 Company Law, Articles 79 and 80.
32 Company Law, Article 114(6).
33 Company Law, Article 37.

Business Plan

The annual business plan of a company is regulated by Article 63 of the Company Law. The board of directors is required to prepare the business plan prior to the commencement of the upcoming financial year. The business plan must contain the company's annual budget and activities to be performed by the company for the upcoming financial year.

The business plan must be delivered by the board of directors to the board of commissioners or to the general meeting of shareholders, as determined in the articles of association. The articles of association may designate whether the business plan requires approval from the board of commissioners or the general meeting of shareholders, unless otherwise determined by the law. If the articles of association require the business plan to be approved by the general meeting of shareholders, the plan must be reviewed in advance by the board of commissioners.[34]

Under Article 65 of the Company Law, it is possible to apply the previous year's business plan if the board of directors fails to deliver the business plan to the board of commissioners or the general meeting of shareholders in accordance with the articles of association. This condition occurs if the board of directors fails to complete the business plan for the upcoming financial year or the board of directors does not submit the prepared business plan to the board of commissioners or the general meeting of shareholders for approval.

In this case, all provisions and activities that must be applied in the upcoming financial year must be based on the previous business plan. If the board of directors has prepared and delivered the business plan to the board of commissioners or the general meeting of shareholders, but it has not yet been approved, the previous business plan will apply for the upcoming financial year.

Access to Corporate Information

In accordance with the Company Law, the board of directors is responsible for disclosure and transparency. The shareholders are entitled to obtain certain information in relation to the company upon written request. The board of directors shall disclose any information related to the company to the shareholders through a general meeting of shareholders as long as the disclosed information is in accordance with the meeting agenda and does not contravene the company's interests.[35] The board of directors also

34 Company Law, Article 64.
35 Company Law, Article 75(2).

is required to allow the shareholders to examine the shareholders list, shareholders special list, minutes of the general meeting of shareholders, and annual reports.

In addition, under the Financial Services Authority Regulation,[36] information or material facts that may affect the share price must be disclosed to the public not later than two business days from the date the information or facts become available. Such information or material facts would relate to the following:

(1) Merger, consolidation, or joint venture;
(2) Tender offers to purchase another company's shares;
(3) Purchase of shares with material value;
(4) Splitting or incorporation of shares;
(5) Distribution of interim dividends;
(6) Delisting and re-registration of shares in the stock exchange;
(7) Extraordinary dividend income;
(8) New material invention or product;
(9) Sale of additional shares to the public;
(10) Amendment in the public company's management;
(11) Purchase/buy back of debt securities;
(12) Purchase of crucial assets;
(13) Labor dispute;
(14) Material lawsuit against the public company, the board of directors, or the board of commissioners;
(15) Accountant replacement;
(16) Trustee replacement;
(17) Share administration replacement;
(18) Amendment of the company's fiscal year book;
(19) Amendment of the currency applied in the financial statement;
(20) Restrictions on the company's business activities;
(21) Amendment of the published financial projection;
(22) Debt restructuring;
(23) Suspension of part or the entire business segment;
(24) Material impact on the company resulting from an event of *force majeure*; and/or
(25) Other material information or facts.

In accordance with Article 138 of the Company Law, a company may be inspected in order to obtain data or information if there is suspicion that the company has committed an act that is considered a violation of the

36 Financial Services Authority Regulation Number 31/POYJ.04/2015.

law and is detrimental to the shareholders or other third parties or members of the board of directors or board of commissioners of the company have committed an act that is considered a violation of the law and is detrimental to the shareholders or other third parties.

The inspection must be carried out by submitting a written request, together with the reasons to the District Court covering the company's jurisdiction. The request may be submitted by one or more shareholders representing at least 1/10 (one tenth) of the total number of shares with voting rights; other parties based on the regulations, articles of association, or contract with the company, who have been provided with the authority to apply the request; or the public prosecutor's office for the public interest.

Conclusion

Principally, shareholder liability is based on the shares invested in the company as it is implied in the Company Law and the Commercial Code. Shareholders may not be personally liable for any action made by and on behalf of the company and for any loss suffered by the company exceeding their owned shares.

However, the shareholders may be personally liable for the company's loss if otherwise determined by the prevailing law. Any action or decision made by the shareholders must be in accordance with the prevailing law and regulations.