Cross-Border Listings Guide - Indonesia Stock Exchange

Corporate governance

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# Corporate governance

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Indonesian companies are required to have a two-tier management structure. The executive functions are managed by a board of directors, which is supervised by a board of commissioners. The board of commissioners does not have an executive function or authority, except where all members of the board of directors have a conflict of interest in certain transactions or in the absence of all members of the board of directors (Direksi).

Under the Indonesian Company Law (Law No. 40 of 2007 as last amended by Law No. 6 of 2023 on Enactment of Regulation of the Government in Lieu of Law No. 2 of 2022 on Job Creation), the board of directors is tasked with managing the company in the best interests of the company and in accordance with the purpose and objectives of the company. The board of commissioners is tasked with supervising and advising the board of directors in the best interests of the company and in accordance with the purpose and objectives of the company. Generally, the board of directors and board of commissioners have defined rules to guide their conduct. The company is a separate legal entity to which the board of directors and the board of commissioners owe a loyalty above both their own personal interests and the interests of the shareholders. The board of directors and board of commissioners therefore are obligated to run the company in the best interests of the company, even if those interests conflict with their own personal interests or shareholders' interests.

As referred to in Section 2 above, under OJK rules, a listed company must have:

Independent commissioners comprising at least 30% of the total number of members of the board of commissioners.

A nomination and remuneration function.

An audit committee.

A corporate secretary.

An internal audit unit.

*Independent commissioners*

To become an independent commissioner in a listed company, a person must:

Not be a person that has had the authority and responsibility to plan, lead, control or supervise the activity of the listed company in the six months prior to their appointment as an independent commissioner, except as an independent commissioner.

Not own any shares of the listed company, directly or indirectly.

Not have an affiliated relationship with the listed company, or with any commissioner, director or principal shareholder of the listed company.

Have no business relationship that is directly or indirectly related to the listed company's business activity.

An independent commissioner that has served for two consecutive terms of office can be re-elected for the next terms as long as they declare and proves to a general meeting of shareholders that they remain independent.

*Audit committee*

A listed company's audit committee must comprise at least three members, one of whom must be an independent commissioner who will serve as chairman of the audit committee. The other members must also be independent persons (usually originating from outside the company), at least one of whom must be an expert in the field of accounting and/or finance.

The following persons are prohibited from becoming members of the audit committee of a listed company:

Any inside person of a public accountant, legal consultant or other party who gives audit, non-audit and or other appraisal services and/or consultation services to the company or that has personally audited the financial statements of the listed company in six months prior to their appointment as a member of the audit committee.

Any person that has had the authority and responsibility to plan, lead, control or supervise the activity of the listed company in the six months prior to their appointment as a member of the audit committee, except an independent commissioner.

Any person who owns shares, either directly or indirectly, in the listed company.

Any person who has an affiliated relationship with commissioners, directors or a principal shareholders of the listed company.

Any person who has a business relationship that is directly or indirectly related to the listed company's business activity.

In addition to the above, each member of the audit committee must:

Have high integrity, ability, knowledge and adequate experience (including any relevant educational qualifications) and be able to communicate properly.

Have at least one audit committee member that has an educational qualification in accountancy or finance.

Understand financial statements, the business of the listed company concerned, audit process, risk management and capital market regulations and other related regulations.

Comply with the audit committee's code of conduct which is stipulated by the listed company.

Agree to increase his/her competency continuously through education and training.

For the appointment and dismissal of audit committee members, the reporting to the OJK and upload on the listed company's website must be done at the latest two business days after the appointment or dismissal. The term of office of the members of the audit committee cannot be longer than the term of office of the members of the board of commissioners as set out in the articles of association of the listed company and the member of the audit committee can only be appointed for maximum of two terms of office.

A listed company must set up an audit committee charter. The charter must, as a minimum, detail the following:

The duties, responsibilities and the authority of the audit committee.

The composition, structure and requirements of members of the audit committee.

Guidelines and working procedure.

The requirements for audit committee meetings.

Reporting mechanism.

Provisions on complaints or reports received in connection with any suspicion as to whether there is any violation on financial reporting.

The term of the audit committee.

The charter must be published on the listed company's website as soon as the information is available.

*Corporate secretary*

The function of the corporate secretary may be performed by one of the directors of the listed company, or an official of the listed company designated to carry out such function. However, a corporate secretary cannot have a dual position as director in other listed companies. The corporate secretary acts as a liaison or contact person between the listed company, government authorities, including the OJK, and the public. The corporate secretary must have access to material and relevant information relating to the listed company and must be familiar with all statutory regulations relating to capital markets, particularly on disclosure matters.

The appointment and termination of the corporate secretary are decided by the board of directors. If there is no corporate secretary, the listed company must appoint a replacement at the latest 60 calendar days after the corporate secretary position becomes vacant. Such appointment and termination must be: (i) reported to the OJK and (ii) published on the relevant listed company's website, at the latest two business days after the appointment or the termination.

*Internal audit unit*

The internal audit unit plays a visible leadership role in promoting compliance and performing an internal audit function within the listed company. Each listed company must have an internal audit unit and the number of internal auditors in the internal audit unit will be adjusted based on the scale and the complexity level of the listed company's business.

An internal auditor is required to fulfil, at a minimum, the following requirements:

Must have integrity, and be professional, independent, honest and objective.

Must have knowledge and experience in relation to undertaking an audit and other knowledge relevant to his/her duties.

Must have knowledge of capital market regulations and other related regulations.

Must have the ability to interact and communicate effectively.

Must comply with the professional standards issued by the Internal Audit Association.

Must comply with the code of ethics for internal audit.

Must protect the confidentiality of all information and/or company data related to the implementation of his/her duties (an exception to this may be granted only if the prevailing laws and regulations stipulate otherwise, or if it is based on a court decision).

Must understand good corporate governance principles and risk management.

Must continuously improve his/her knowledge, ability and professionalism.

The duties and responsibilities of an Internal Audit Unit include:

Preparing and implementing an annual internal audit plan.

Examining and evaluating the implementation of an internal control and risk management system in accordance with the company's policy.

Reviewing and evaluating efficiency and effectiveness in the areas of finance, accounting, operations, human resources, marketing, information technology and other activities.

Providing objective suggestions and information on activities that have been audited at all management levels.

Making an audit report and submitting the report to the president director and the board of commissioners of the company.

Overseeing, analyzing and reporting on the implementation of the suggestions.

Working together with the Audit Committee.

Preparing programs to evaluate the quality of the internal audit activities they have conducted.

Conducting special reviews or investigations, if required.

A listed company must have an internal audit charter. The charter must, as a minimum, detail the following:

Structure and status of the internal audit unit.

Duties and responsibilities of the internal audit unit.

Authority of the internal audit unit.

Code of ethics of the internal audit unit that refers to the code of ethics determined by the internal audit association of Indonesia or an internal audit code of ethics that is commonly applied internationally.

Requirements to be an auditor in the internal audit unit.

Responsibility of the internal audit unit.

Prohibition on dual positions and functions for auditors and officers of the internal audit unit in relation to their involvement in the operational activities of the public company or subsidiaries of the public company.

All appointments, replacements, and dismissals of the chief of an internal audit committee must be reported to the OJK immediately.

*Nomination and Remuneration Function*

A listed company is required to have its nomination and remuneration function conducted by the board of commissioners. The board of commissioners may establish a nomination and remuneration committee to implement this function.

A nomination and remuneration committee must have at least three members and must fulfil these requirements:

The chairman of the nomination and remuneration committee must be an independent commissioner of the listed company.

Other members of the nomination and remuneration committee can be either:

Members of the board of commissioners.

Persons from outside the listed company, who (i) have no affiliate relationship with that company, or the members of the board of directors, members of the board of commissioners or the principal shareholders of the listed company; (ii) have experience related to nomination and remuneration; and (iii) do not hold any position in any other committees of that company.

Persons who hold a managerial position under the board of directors member that handles human resources affairs.

The latter should not be the majority member(s) of the nomination and remuneration committee.

Members of the board of directors of the relevant company are prohibited from serving as members of the committee.

The tenure of the nomination and remuneration committee must not be longer than the tenure of the board of commissioners, as stipulated in the articles of association of the listed company. Members of a nomination and remuneration committee are appointed and dismissed by resolutions of a board of commissioners meeting and can be reappointed without any term limitation.

The committee must act independently at all times, is responsible to the board of commissioners of the relevant company, and has the following duties:

Nomination function:

Make recommendations to the board of commissioners on:

Composition of membership of the board of directors and/or board of commissioners.

Nomination policies for the board of directors and/or board of commissioners.

Performance evaluation policies for the board of directors and/or board of commissioners.

Assist the board of commissioners in evaluating the performance of the board of directors and/or board of commissioners based on the prepared benchmarks.

Make recommendations to the board of commissioners on programs for developing the capabilities of the board of directors and/or board of commissioners.

Propose to the board of commissioners any candidate who might qualify as a member of the board of directors and/or board of commissioners to be submitted to a general meeting of shareholders of the company.

Remuneration function:

Make recommendations to the board of commissioners on remuneration structure, policy on remuneration, and amount of remuneration.

Assist the board of commissioners in evaluating the performance of the board of directors and/or board of commissioners in accordance with their remunerations.

In implementing the remuneration function above, the committee must consider:

The remunerations applicable in other public companies in a similar industry and the business scale of the relevant company within its industry.

The duties, responsibilities and authorities of members of the board of directors and board of commissioners in relation to the relevant company’s fulfilment of its performance and goals.

The goals or performance targets of each member of the board of directors and board of commissioners.

The balance between fixed and variable allowances.

The board of commissioners of a listed company must prepare nomination and remuneration guidelines. The guidelines must, at a minimum, detail the following:

Duties and responsibilities.

Composition and membership.

Work guidelines and procedures.

Meetings.

Report of the nomination and remuneration committee's activities.

Replacement of members.

Period of membership.

Listed companies must disclose the implementation of the nomination and remuneration function in:

Their annual reports, consisting of:

A statement of the company that it has established the nomination and remuneration committee's guidelines.

A brief explanation of the implementation of the nomination and remuneration committee’s duties and responsibilities during that financial year.

Its website, consisting of:

The nomination and remuneration committee's guidelines.

A brief explanation of the implementation of the nomination and remuneration committee’s duties and responsibilities during that financial year.

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