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The importance of Roles and Duties of An Indonesian Directors in A Foreign Investment Company

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Roles and Duties of Board of Directors

The Indonesian Company Law, as regulated in Law Number 40 of 2007 regarding limited liability company, generally provides roles and duties of Board of Directors in a limited liability company. The main responsibility of board of directors to undertake the management of the company for the interest of the company and in accordance with the company's purposes and objectives.

As a care taker of the company, board of directors is mandated to represent the company inside or outside the courts of justice. In a particular case, board of directors is not authorized to represent the company if: i) there is a case before the courts between the company and the member of board of directors concerned; or ii) the member of the board of directors concerned has a conflict of interests with the company.

Shareholders of a company are authorized to designate and dismiss any member of board of directors. This leads to the role of board of directors to provide accurate and comprehensive required information to the shareholders of a company. All these information shall be presented in an annual general meeting of shareholders (GMS) or other GMS (if required) which should be organized by board of directors. In an annual GMS, Board of directors is required to present an annual report on management of the company and financial report of the company.

Even though board of directors is authorized to determine day-to-day business decision, the Indonesian Company Law, however, limits its authority and requires to obtain approval from shareholders of the company in light of transferring the company's assets or securing the company's assets which constitutes of more than 50% (fifty percent) from the total net assets of the company in 1 (one) transaction or more, either separate or inter-related.

In terms of the administrative works, board of directors should assure that corporate documents are constantly maintained and kept in the company's premises such as register of shareholders, special register of shareholders, minutes of GMS and board of directors meeting, share certificates, original licenses or approvals.

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Why Does An Indonesian Foreign Investment Company Needs An Indonesian Director?

Stipulation on foreign direct investment in Indonesia is specifically regulated under Law Number 27 of 2007 regarding Investment and its implementation regulations issued by the Indonesian Investment Coordinating Board (BKPM) (“**Investment Regulations**”). The Indonesian Company Law and the Investment Regulations does not require an Indonesian foreign investment company to place an Indonesian director.

In common practice, an Indonesian foreign investment company tends to post foreign director to remote and monitor all company’s activities from overseas for some reasons such as personal income tax issues, working and stay permit and so forth. However, from practical point of view, an Indonesian foreign investment company is essentially recommended to have at least 1 (one) director sitting in Indonesia, though any business decision should be communicated intensively with the principal company.

For instance, a director is obliged to sign withholding tax report, value added tax report and corporate income tax report. As tax matter is quite sensitive issue, all these reports are supposedly signed by a person who is reliable, trustable and bound to its responsibility under the Indonesian Company Law rather than giving specific power of attorney to company’s senior staff.

From legal perspective, to obtain general licenses such as Letter of Domicile (*SKDP*), Company Tax ID (*NPWP*), Business Registration Certificate (*TDP*) and other specific business license, an Indonesian foreign investment company is required to provide working permit (*IMTA*) and stay permit (*KITAS*) of its foreign director as part of the required supporting documents. The main issue is to obtain these IMTA and KITAS, he/she should complete the process in Indonesia and it takes quite some times and somehow becomes more complicated as manpower and immigration regulations change quite often.

Therefore, having an Indonesian director, who is familiar with Indonesian laws and regulations, would be the reasonable ‘alternate route’ to minimize tax and legal potential risk and to make all business decisions is consistent with the core purposes and objectives of shareholders of the company or its ultimate business owner. Lastly, this Indonesian director shall consistently be aware of any updated Indonesian laws and regulations, particularly the ones which have negative impact on the company’s business.

An Indonesian Director is essentially needed by an Indonesian Foreign Investment Company considering its benefits from tax and legal point of views