GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA NO. 27 OF 1998 CONCERNING MERGERS, CONSOLIDATIONS, AND ACQUISITIONS OF LIMITED LIABILITY COMPANIES

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Whereas:

a. in the context of fostering and developing business in order for it to be able to face the tide of economic globalisation, it is necessary to create a healthy and efficient business climate;

b. the creation of a healthy and efficient business climate may pass through the mergers, consolidations, or acquisitions of Limited Liability Companies;

c. mergers, consolidations, and acquisitions of Limited Liability Companies must nevertheless have due regard to the interests of the company, the shareholders, third parties, the company's employees and the community;

d. based on the considerations mentioned in points a, b, and c above, and as implementation of the Limited Liability Companies Act No. 1 of 1995, it is necessary to promulgate a Government Regulation concerning mergers, consolidations, and acquisitions of Limited Liability Companies.

In view of:

1. Article 5 (2) of the 1945 Constitution;

2. The Limited Liability Companies Act No. 1 of 1995 (Statute Book 1995 No. 13, Supplement to the Statute Book No. 3587)

General Elucidation

The existence of Limited Liability Companies in the business and trade world is very important and strategic for the motivation and direction of development activities in the economic sector, especially in the context of facing the tide of globalisation and liberalisation of an ever more complex world economy. For this reason, efforts are needed to bring about a healthy and efficient economic climate in order to open up wider opportunities for Limited Liability Companies to grow and develop more dynamically in accordance with developments in the business world.

Nevertheless the operationalisation of these attempts to create a healthy and efficient business climate in the context of improving economic development must still refer to the principles of national economic development based on the familial principles mandated by Article 33 of the 1945 Constitution.

Given the above thoughts, efforts to create a healthy and efficient climate for the business world should not be directed towards the possession of economic resources by and the centralisation of economic power in any particular group or class. Therefore, mergers, consolidations, and acquisitions of companies which may tend towards the occurrence of monopolies, monopsonies, or unfair competition must be preventable at any early date, or in other words the desired mergers, consolidations, and acquisitions must still have due regard to the interests of the company's shareholders, employees, or the community, including interested third parties.

Although the Limited Liability Companies Act No. 1 of 1995 has provisions on the principles related to the legal actions of merger, consolidation and acquisition of Limited Liability Companies, but it orders more detailed requirements and procedures for mergers, consolidations and acquisitions of companies to be made by Government Regulation.

The material governed by this Government Regulation covers requirements; procedures; drafting of merger, consolidation and acquisition plans; the obligation to make announcements; notification of employees; matters that Draft Mergers must contain; objections to drafts, and the right submit annulments of mergers, consolidations, and acquisitions of Limited Liability Companies.

HAS DECIDED

to promulgate:
A GOVERNMENT REGULATION CONCERNING MERGERS, CONSOLIDATIONS AND ACQUISITIONS OF LIMITED LIABILITY COMPANIES

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Government Regulation, the following terms have the following meanings:

1. Merger means the legal action taken by one or more companies to merge into another existing company, upon which the merging companies dissolve.

2. Consolidation means the legal action taken by two or more companies to consolidate by means of forming a new company, upon which each of the consolidating companies dissolves.

3. Acquisition means the legal action taken by a legal entity or individual person to acquire all or a majority of the shares in a company, which could result in a transfer of control of the company.

4. Minister means the Minister of Justice of the Republic of Indonesia.

Elucidation
1 & 2
Sufficiently Clear

3
The definition of 'majority' in this matter covers more than 50% (fifty per cent) or a certain amount which demonstrates that the amount is greater than the share ownership of the other shareholders.

For the company to be acquired, the shares to be assigned are issued shares including shares bought back by the company under the provisions of Article 30 of the Limited Liability Companies Act No. 1 of 1995.

As payment or compensation, the acquiring company will give the shareholders of the company to be acquired:

a. money and/or
b. non-money consisting of:
    1. objects or other assets;
    2. shares already issued or new shares to be issued by the acquiring company or some other company.

4.
Sufficiently Clear

Article 2

Mergers and consolidations as provided for in this Government Regulation may be done without any prior liquidation.

Elucidation
Sufficiently Clear

Article 3

Mergers and consolidations done without any liquidation as contemplated in Article 2 will result in:

a. the shareholders of the merging or consolidating company becoming shareholders of the incorporating company or the company resulting from the consolidation;

b. the assets and liabilities of the merging or consolidating company will pass by operation of law to the incorporating company or the company resulting from the consolidation.

Elucidation
The merger and consolidation contemplated in a and b will come into effect at the time provided for in Articles 14 and 18.

CHAPTER II
CONDITIONS FOR MERGERS, CONSOLIDATIONS, AND ACQUISITIONS

Article 4

(1) Mergers, consolidations, and acquisitions may only be done with due regard to:

a. the interests of the company, and the minority shareholders and employees of the company concerned;

b. the interests of the community and fair competition in doing business.

(2) Mergers, consolidations, and acquisitions must not prejudice the rights of minority shareholders to sell the shares at a reasonable price.

(3) Shareholders who do not agree with the resolution of the General Meeting of Shareholders regarding the merger, consolidation, or acquisition may only use their right that their shares be bought at a fair price in accordance with the provisions of Article 55 of the Limited Liability Companies Act No. 1 of 1995.

(4) The exercise of their rights as contemplated in paragraph (3) will not stop the process of carrying out the merger, consolidation, or acquisition.

Elucidation
Paragraphs (1) and (2)
Sufficiently Clear

Paragraph (3)
This provision makes explicit that the rights of dissenting shareholders are as provided for in Article 55 of the Limited Liability Companies Act and not those provided for in Article 54 of that Act. This is because the provisions of Article 55 are specifically allocated for shareholders in particular circumstances, among others, mergers, consolidations, and acquisitions.

Paragraph (4)
Sufficiently Clear.

Article 5

Mergers, consolidations, and acquisitions must also have due regard to the interests of creditors.

Elucidation
This provision is an implementation of the principles of the law of contract. The creditors in this matter are the creditors of the merging or consolidating company or the acquiring or to be acquired company.

Article 6

(1) Mergers, consolidations, and acquisitions may only be done with the approval of the General Meeting of Shareholders.

(2) Mergers, consolidations, and acquisitions must be based on a resolution of a General Meeting of Shareholders attended by shareholders representing at least ¾ (three quarters) of all the shares with lawful voting rights, the resolution being approved by at least ¾ (three quarters) of that number of votes.

(3) For public companies, in the event that the requirements contemplated in paragraph (2) are not achieved, the attendance and adoption of resolution conditions must be determined in accordance with legislative regulations in the capital markets sector.

Elucidation
Sufficiently Clear

CHAPTER III
PROCEDURES FOR MERGERS, CONSOLIDATIONS, AND ACQUISITIONS

Part One
Mergers

Article 7

(1) The Boards of Directors of the merging company and the incorporating company shall each compile a merger plan proposal.

(2) The proposal contemplated in paragraph (1) must have the approval of the Board of Commissioners and contain at least:

a. the name and domicile of the merging companies performing the merger;

b. the reasons and explanations of each Board of Directors of the companies performing the merger and the requirements for the merger;

c. the procedure for the conversion of shares of each company performing the merger into shares of the company resulting from the merger;

d. the draft amendments to the Articles of Association of the company resulting from the merger;

e. balance sheets, and profit and loss statements covering the last 3 (three) financial years for all of the companies performing the merger; and

f. matters the shareholders of each company need to know, among others:

1) a proforma balance sheet for the company resulting from the merger in accordance with financial accounting standards, and estimates of matters related to benefits and costs and the company's future which may be obtained from the merger based on an appraisal by an independent appraiser;

2) method of resolving the status of the merging company's employees;

3) method of resolving the rights and obligations of the company against and to third parties;

4) methods of resolving rights of shareholders dissenting from the merger of the company;

5) composition, salary and other allowances for the Board of Directors and Board of Commissioners of the company resulting from the merger;

6) an estimate of the time needed for the implementation of the merger;

7) a report on the situation and progress of the company and the results achieved;

8) the main activities of the company and changes during the current financial year;

9) details of problems arising during the current financial year which influence the company's activities;

10) the names of members of the Board of Directors and Board of Commissioners;

11) the salaries and other allowances for the members of the Board of Directors and Board of Commissioners.

Elucidation
Paragraph (1)
Sufficiently Clear

Paragraph (2)
a to c
Sufficiently Clear
d
The draft amendments to the Articles of Association are an obligatory part of the proposal here only if the merger will cause amendments to the Articles of Association.
e and f
Sufficiently Clear

Article 8

In the event that the companies performing the merger are merged within one group or between groups, the merger plan proposal must contain a consolidated balance sheet and proforma balance sheet for the company resulting from the merger.

Elucidation
Sufficiently Clear

Article 9

The proposal contemplated in Articles 7 and 8 constitutes material for the compilation of the Draft Merger jointly compiled by the Boards of Directors of the companies performing the merger.

Elucidation
Sufficiently Clear

Article 10

The Draft contemplated in Article 9 must contain at least the items stated in the merger plan proposal contemplated in Articles 7 and 8.

Elucidation
Sufficiently Clear

Article 11

Other than the items contemplated in Article 10, the Draft Merger must contain explicit confirmation from the incorporating company with regard to its acceptance of the assignment of all the rights and obligations of the merging company.

Elucidation
Sufficiently Clear

Article 12

A Summary of the Draft Merger contemplated in Article 10 must be published by the Boards of Directors in 2 (two) daily newspapers and published in writing to the employees of the companies performing the merger no later than 14 (fourteen) days before the invitations to the General Meeting of Shareholders of each company.

Elucidation
Sufficiently Clear

Article 13

(1) Approval for the Draft Merger referred to in Article 10 and the draft Deed of Merger must be requested from the General Meeting of Shareholders of each company.

(2) The draft Deed of Merger which has received the approval of the General Meetings of Shareholders as contemplated in paragraph (1) must set forth in a Deed of Merger made in front of a notary in the Indonesian language.

Elucidation
Paragraph (1)
The draft Deed of Merger contains the main points of everything contained in the Draft Merger.

Paragraph (2)
Sufficiently Clear

Article 14

(1) If the merger of the companies is done by amending the Articles of Association as contemplated in Article 15 (2) of Law No. 1 of 1995, the merger will come into effect as from the date of the approval of the Articles of Association by the Minister.

(2) If the merger of the companies is done together with amendment of the Articles of Association which does not need the approval of the Minister, the merger will come into effect as from the date of the registration of the Deed of Merger and the deed of amendment of Articles of Association in the Company Register.

(3) If the merger of the companies is done without any amendment of the Articles of Association, the merger will come into effect as from the date of the signature of the Deed of Merger.

Elucidation
Paragraph (1)
Sufficiently Clear

Paragraph (2)
"Company Register" means the register contemplated in the Mandatory Register of Companies Act No. 3 of 1982.

Paragraph (3)
Sufficiently Clear

Article 15

(1) In the event that the merger of the companies is done in accordance with the provisions contemplated in Article 14 (1), the incorporating company's Board of Directors must submit an application for approval of the deed of amendment of the

Articles of Association to the Minister, register in the Company Register and publish in the Supplement to the State Gazette of the Republic of Indonesia after obtaining the Minister's approval.

(2) In the event that the merger of the companies is done in accordance with the provisions contemplated in Article 14 (2), the incorporating company's Board of Directors must report the companies' Deed of Merger and the deed of amendment of the Articles of Association to the Minister, register in the Company Register and publish in the Supplement to the State Gazette of the Republic of Indonesia.

Elucidation
Sufficiently Clear

Article 16

(1) The application for approval contemplated in Article 15 (1) must be submitted to the Minister in writing with the deed of amendment of the Articles of Association and the Deed of Merger attached.

(2) The approval contemplated in paragraph (1) must be granted within no more than 60 (sixty) days after the application is received.

(3) In the event that the application is rejected, the applicant must be informed of the rejection in writing together with the reasons therefor with the period stated in paragraph (2).

Elucidation
Sufficiently Clear

Article 17

The application for approval of the amendment of the Articles of Association or delivery of the report of the Deed of Merger of the companies and deed of amendment of the Articles of Association of the companies as contemplated in Article 15 must be done within a period of no more than 14 (fourteen) days from the resolution of the General Meeting of Shareholders.

Elucidation
Sufficiently Clear

Article 18

(1) If the merger of the companies is done in accordance with the provisions contemplated in Article 14 (1), the merging company will be dissolved as from the date of the Minister's approval for the amendment of the Articles of Association.

(2) If the merger of the companies is done in accordance with the provisions contemplated in Article 14 (2), the merging company [*sic*] as from the date of

registration of the Deed of Merger and deed of amendment of the company's articles of association in the Company register.

(3) If the merger of the companies is done in accordance with the provisions contemplated in Article 14 (e), the merging company [*sic*] as from the date the Deed of Merger is signed.

Elucidation
Sufficiently Clear

Article 19

(1) From the date of the signature of the Deed of Merger as contemplated in paragraph 13 (2), the Board of Directors of the merging company may not do any legal action except those necessary in the context of carrying out the merger.

(2) Any breach of the provision contemplated in paragraph (1) is the responsibility of the Board of Directors of the company concerned.

Elucidation
Sufficiently Clear

Part Two
Consolidations

Article 20

The provisions contemplated in Articles 7, 8, 9, 10, 11, 12, and 13 also apply to the legal act of consolidation.

Elucidation
Sufficiently Clear

Article 21

(1) The founders of the company resulting from the consolidation are the consolidating companies.

(2) The shareholders of the company to be founded as contemplated in paragraph (1) are the shareholders of the consolidating companies.

(3) The assets of the company to be founded as contemplated in paragraph (1) are all the assets of the consolidating companies.

Elucidation
Paragraphs (1) and (2)
Sufficiently Clear

Paragraph (3)
Here, 'assets' means all of the property of the companies stated in the assets section of the most recent balance sheet ratified by the General Meeting of Shareholders.

Article 22

(1) The Deed of Consolidation made in accordance with the provisions contemplated in Article 13 (2) serves as the basis for making the Deed of Establishment of the company resulting from the consolidation.

(2) The Boards of Directors of the consolidating companies must submit an application to the Minister for ratification of the Deed of Establishment of the company resulting from the consolidation within not more than 14 (fourteen) days as from the date of the resolutions of the General Meetings of Shareholders, and register in the Register of Companies and publish in the Supplement to the State Gazette of the Republic of Indonesia after obtaining the Minister's ratification.

(3) The application for ratification of the Deed of Establishment as contemplated in paragraph (2) must be submitted to the Minister in writing with the Deed of Consolidation enclosed.

(4) The Minister must give his ratification of the application contemplated in paragraph (3) in a period of not more than 60 (sixty) days after the application is received.

(5) In the event of the application being rejected, the applicant must be informed of the rejection in writing together with the reasons therefor within the period contemplated in paragraph (4).

Elucidation
Sufficiently Clear

Article 23

The consolidating companies will be dissolved as from the date the Deed of Establishment of the company resulting from the dissolution is ratified by the Minister.

Elucidation
Sufficiently Clear

Article 24

(1) From the date of the signature of the Deed of Consolidation as contemplated in paragraph 22, the Boards of Directors of the consolidating companies are prohibited from doing any legal action except those necessary in the context of carrying out the consolidation.

(2) Any breach of the provision contemplated in paragraph (1) is the responsibility of the Board of Directors of the company concerned.

Elucidation
Sufficiently Clear

Article 25

The provisions contemplated in Article 11 of the Limited Liability Companies Act No. 1 of 1995 apply to legal actions performed before the Deed of Establishment of the company resulting from the consolidation is ratified by the Minister.

Elucidation
Sufficiently Clear

Part Three
Acquisitions

Article 26

(1) The acquiring party must convey its intention of making the acquisition to the Board of Directors of the company to be acquired.

(2) The Board of Directors of the company to be acquired and the acquiring party must each compile an acquisition plan proposal.

(3) The proposals contemplated in paragraph (1) must each have the approval of the Boards of Commissioners of the company to be acquired and the acquiring company or similar institution of the acquiring party and contain at least:

a. the name and domicile of the companies or other legal entities or the identity of the individuals performing the acquisition;

b. the reasons and explanations of the Board of Directors of each company, the management of legal entities or the individuals performing the acquisition;

c. the annual reports, especially the annual statement for the most recent financial year of the companies or other legal entities performing the acquisition;

d. the procedures for conversion of the shares of each of the companies performing the acquisition if payment for the acquisition is being made in shares;

e. the draft amendments to the Articles of Association of the company resulting from the acquisition;

f. the number of shares to be acquired;

g. the preparations for funding;

h. the proforma combined balance sheet for the company after the acquisition compiled in accordance with financial accounting standards, and estimates of matters related to benefits and costs and the company's future which may be obtained from the merger based on an appraisal by an independent appraiser;

i. the method of resolving the rights of shareholders dissenting from the acquisition of the company;

j. the method of resolving the status of employees of the company to be acquired;

k. an estimate of the time needed for the implementation of the acquisition.

Elucidation
Paragraph (1)
Here 'party' may mean a party in the form of a company, a non-company legal entity, or an individual.

Paragraph (2)
In so far as they concern procedures, the provisions here concerning acquisitions spell out further the provisions of Article 103, paragraphs (3), (4), and (5) of the Limited Liability Companies Act No. 1 of 1995, that acquisitions must be performed with the involvement of the Boards of Directors of both the company to be acquired and the acquiring company.
a
"Identity" means at least the full name, place and date of birth, occupation, address, and nationality of the person concerned.
b to d
Sufficiently Clear
e
The draft amendment of the Articles of Association is only an obligatory part of the proposal here if the acquisition causes an amendment of the Articles of Association.
f to k
Sufficiently Clear

Article 27

The proposal contemplated in Article 26 constitutes material for the compilation of the Draft Acquisition jointly compiled by the Boards of Directors of the company to be acquired and the acquiring company.

Elucidation
Sufficiently Clear

Article 28

The Draft contemplated in Article 27 must contain at least the items stated in the acquisition plan proposal contemplated in Articles 26.

Elucidation
Sufficiently Clear

Article 29

A Summary of the Draft Acquisition contemplated in Article 27 must be published by the Boards of Directors in 2 (two) daily newspapers and published in writing to the employees of the companies performing the acquisition no later than 14 (fourteen) days before the invitations to the General Meeting of Shareholders of each company.

Elucidation
Sufficiently Clear

Article 30

The Draft Acquisition must have the approval of the General Meetings of Shareholders of the company to be acquired and of the acquiring company or similar institution of the acquiring party.

Elucidation
A similar institution of a non-company in this provision would be, for example, the Members' Meeting of a Cooperative.

Article 31

(1) The Draft Acquisition approved as contemplated in Article 30 must be set forth in a Deed of Acquisition.

(2) The Deed of Acquisition contemplated in paragraph (1) must be made before a notary in the Indonesian language.

Elucidation
Sufficiently Clear

Article 32

(1) If the acquisition of the company is done by amending the Articles of Association as contemplated in Article 15 (2) of Law No. 1 of 1995, the acquisition will come into effect as from the date of the approval of the Articles of Association by the Minister.

(2) If the acquisition of the company is done together with amendment of the Articles of Association which does not need the approval of the Minister, the acquisition will come into effect as from the date of the registration of the Deed of Acquisition in the Company Register.

(3) If the acquisition of the company is done without any amendment of the Articles of Association, the acquisition will come into effect as from the date of the signature of the Deed of Acquisition.

Elucidation
Sufficiently Clear

CHAPTER IV
OBJECTIONS TO MERGERS, CONSOLIDATIONS AND ACQUISITIONS

Article 33

(1) The Board of Directors must deliver the Merger, Consolidation or Acquisition Draft to all creditors of the company by registered letter no later than 30 (thirty) days before the invitations to the General Meeting of Shareholders.

(2) Creditors may submit an objection to the company no later than 7 (seven) days before the invitations to the General Meeting of Shareholders which will decide on the planned merger, consolidation, or acquisition set forth in the Draft.

(3) If during the period contemplated in paragraph (2), creditors do not submit objections, the creditors will be deemed to have agreed to the merger, consolidation, or acquisition.

(4) The objections from creditors contemplated in paragraph (2) must be forwarded to the General Meeting of Shareholders for resolution.

(5) Until the resolution contemplated in paragraph (4) is achieved, the merger, consolidation or acquisition cannot proceed.

Elucidation
Paragraph (1)
This provision does not preclude the possibility of the Board of Directors informing the creditors earlier by conveying the merger, consolidation or acquisition plan proposal. At the time the Draft is conveyed, the date of the invitation to the General Meeting of Shareholders must also be stated.

Paragraphs (2) and (3)
Sufficiently Clear

Paragraph (4)
The definition of 'resolution' here must mean immediate repayment of the receivable, but may also take the form of an agreement resolving the creditors' objections.

Paragraph (5)
Sufficiently Clear

CHAPTER V
OTHER PROVISIONS

Article 34

(1) The Board of Directors of the company resulting from the merger or consolidation must publish the outcome of the merger or consolidation in 2 (two) daily newspapers no later than 30 (thirty) days as from the date on which the merger or consolidation comes into effect.

(2) The provision contemplated in paragraph (1) also applies to the Board of Directors of companies with a certain value of assets performing an acquisition.

(3) The value of the assets of the company contemplated in paragraph (2) will be promulgated in a Decree of the Minister.

Elucidation
Paragraph (1)
Sufficiently Clear

Paragraph (2)
The publication here must be done by the acquiring party.

Paragraph (3)
Sufficiently Clear

Article 35

(1) In carrying out its duties in the context of a merger, consolidation or acquisition, the Board of Directors must act purely in the interests of the company.

(2) In the event of any conflict of interest between the company and the Board of Directors, the Board of Directors must disclose the same in the plan proposal and the Merger, Consolidation or Acquisition Draft.

(3) The provision contemplated in paragraphs (1) and (2) also apply to the Board of Commissioners.

Elucidation
Sufficiently Clear

CHAPTER VI
CLOSING PROVISIONS

Article 36

This Government Regulation applies to mergers, consolidations, and acquisitions of companies without prejudice to other legislative regulations specifically providing for mergers, consolidations and acquisitions of companies.

Elucidation
In principle the provisions in this Government Regulation apply to legal actions performed in the context of mergers or acquisitions by companies and acquisitions of companies except where there are special provisions such as those in legislative regulations in the banking and capital markets sectors.

Article 37

This Government Regulation will come into effect on the date of its promulgation.

Elucidation
Sufficiently Clear

So that every person will have knowledge hereof, it is ordered that this Government Regulation be enacted by being placed in the Statute Book of the Republic of Indonesia.

Promulgated in Jakarta
on 24 February 1998
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

sgnd

SOEHARTO

Enacted in Jakarta
on 24 February 1998
THE SECRETARY OF STATE
OF THE REPUBLIC OF INDONESIA

sgnd

MOERDIONO

STATUTE BOOK OF THE REPUBLIC OF INDONESIA OF 1998
NO. 40
SUPPLEMENT TO THE STATUTE BOOK OF THE REPUBLIC OF INDONESIA
NO. 3741