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Amended Bapepam-LK Rule Fleshes Out Annual Reporting Requirements, Reinforces Beneficial Ownership Disclosure

1. Introduction

The Capital Markets and Financial Institutions Supervisory Agency (Bapepam-LK) recently amended Rule No. XK6 ("Amended Rule"), which generally governs the submission timeframe and contents of the annual reports of public companies.

While for the most part the Amended Rule deals with procedural/technical matters related to corporate and accounting information, it also introduces a number of

new and potentially far-reaching features. One important new provision makes it mandatory for a public company to reveal its ultimate principal or controlling shareholder, as clearly spelled out in diagrammatic or chart form. In addition, the Amended Rule introduces a much broader reporting requirement for corporate social responsibility (CSR) activities, and the mandatory reporting of any whistleblowing arrangements that may be in place. It also sets out rules governing the timeframe for the filing of the annual reports of companies that have cross-listings on the Indonesia Stock Exchange and overseas bourses.

2. Ultimate Controlling Shareholder

Article 2E(7)(11) of the Amended Rule provides that "information on the principal and controlling shareholder, either direct or indirect, in a listed or public company, up to the individual (natural person) owner, shall be presented in the form of a diagram or chart" in the company's annual report. This will clearly have significant implications.

One of the difficulties faced by Bapepam-LK in discharging its duty to promote confidence in the integrity of the Indonesian capital markets and safeguard shareholder interests has been tracing the ultimate beneficial owners of public companies held through a labyrinth of local or offshore special purpose companies or trusts. While disclosure of the ultimate beneficial owner is required in the case of IPOs and acquisitions based on the principle that such disclosure is vital to the transparent and efficient operation of the capital markets, it has often been the case that this has been neglected post-IPO. Consequently, the requirement contained in the Amended Rule may be seen as an effort to ensure compliance with the spirit of capital markets law by making sure that the relevant disclosures are made on an annual basis.

Whatever the rationale, it is clear that the new disclosure requirement could well put companies with shareholder-related skeletons in their closets on the spot. It will be interesting to see what responses this elicits from Indonesia's legal, accounting and tax professionals down the line.

3. Timeframe for Submission of Annual Report in Case of Cross-Listing

In the case of a company that has a cross-listing, i.e., a listing on the Indonesia Stock Exchange and on one or more overseas bourses, where the time limit for the submission of the annual report to the overseas capital markets authority differs from that applied by Bapepam-LK, then (a) the deadline for the submission of the annual report to Bapepam-LK will be adjusted in line with the deadline established by the overseas capital markets authority, (b) the annual report should be submitted on the same date to both Bapepam-LK and the overseas capital markets authority; and (3) both versions of the annual report should contain the same information and, at a minimum, fulfill the requirements set by Bapepam-LK in the Amended Rule as regards the format and content of an annual report.

4. Whistleblowers

In an interesting development, the Amended Rule requires companies to state whether they have a whistleblower system in place, including how reports of wrongdoing may be submitted, protection for whistleblowers and how complaints are to be acted on. While the purpose of this requirement is to provide information to shareholders on any matters that could adversely affect their interests, it also reflects a growing awareness in Indonesia of the importance of whistleblowing in combating corruption in both the public and private sectors, although it is unlikely that much will be achieved in this regard until legislation is enacted to protect whistleblowers from retribution. However, neither the government nor the national legislature has shown much interest or willingness in enacting such legislation to date.

5. Corporate Social Responsibility

The Amended Rule includes a corporate social responsibility reporting requirement, including the need to supply information on environmental responsibility (use of environmentally friendly/recyclable materials, renewable energy, waste treatment, environmental classification, etc.), labor, and occupational health and safety issues (gender equality, employee turnover, training, occupational accidents, etc.), social and community development (employment of local manpower, community empowerment, provision of social infrastructure, donations, etc), and product responsibility (product information, response to consumer complaints, etc.). In addition, CSR activities must be reported in a dedicated section of the Annual Report.

This is a new departure and ties in with Article 74(4) of the Companies Act (No. 40 of 2007), as elaborated by Government Regulation No. 47 of 2012, which makes Indonesia one of the few countries in the world to practice mandatory CSR. However, as we pointed out in our Client Update of 25 May 2012 (New Regulation on Mandatory CSR for Resources Companies Adds Little New), compulsory CSR in Indonesia is a light burden for corporations to bear as there is no oversight other than that provided by shareholders and the public at large. And, perhaps most importantly, there are no generally applicable sanctions, at least thus far.

6. Additional Disclosures

The Amended Rule also requires the disclosure of information on employee/management stock options, if any, including information on the amounts and timeframes involved, participation requirements, and the prices at which such options are exercised. In addition, a description must be given of the company's code of ethics (if any), including the key provisions of the code, how it is familiarized to employees, and information on corporate culture.

7. Procedural Changes

Besides the substantive changes discussed above, the New Regulation requires that a corporation's annual report be produced in both hard and soft-copy formats, and be posted on the corporate website.

In addition, more comprehensive profiles are required of the company and its directors and commissioners, and more detailed information furnished on the Audit Committee, company secretary, internal audit processes, affiliations between commissioners, directors and shareholders, and the internal control and risk management systems. Further, tighter requirements are established as regards the statements of accountability of the directors and commissioners as to the veracity of the annual report's contents.

8. Conclusion

The Amended Rule's requirement that the identity of the ultimate beneficial owner be revealed on an annual basis should help improve international investor confidence in the transparency of the Indonesian capital markets, despite a number of recent setbacks related to poor corporate governance standards.

Further, the harmonizing of filing deadlines in the case of cross-listings is an apt move given the increasing number of Indonesian companies opting to list on overseas bourses, and the potential for confusion that this could cause.

As for the other substantive and procedural changes introduced by the Amended Rule, they reveal that Bapepam-LK is keeping a close eye on developments in the wider world of corporate management and governance, as reflected in the CSR, whistleblowing and stock option disclosure requirements, all of which serve to provide greater protection to shareholders and improve corporate governance.

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