

Reduction of Share Capital under Indonesian Company Law

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Overview

As part of company restructuring, reduction of share capital is required because of many factors like distribution of assets to shareholders, pare off debt, coverage of losses, etc. In Indonesia, this matter is stipulated under Article 44 - 47 of Law Number 40 of 2007 regarding Limited Liability Company (“**Indonesian Company Law**”).

The reduction can be performed to authorized, subscribed and paid-up capitals. There are two options to reduce subscribed and paid-up capital based on Article 47.1 of the Indonesian Company Law i.e. shares buyback or reducing nominal value of shares. Shares buyback is carried out to withdraw the issued shares from circulation or shares with a revocable classification.

Decrease in the par value of shares without repayment should be made proportionally to all shares from each qualification of shares. This proportional requirement could be excluded with approval of all shareholders whose shares are reduced.

Mechanism of Reduction of Share Capital

Reduction of share capital should be approved by General Meeting of Shareholders (GMS) whereby the GMS is attended by shareholders representing not less than $\frac{2}{3}$ (two thirds) of the total shares with valid voting rights and the resolution is valid if approved by at least $\frac{2}{3}$ (two thirds) of the total vote cast.

Otherwise, the shareholders may provide their approval by way of circular resolution of shareholders (CROS) provided that all shareholders approve the reduction of share capital agenda as stipulated in Article 91 of the Indonesian Company Law. It is commonly done by two associated shareholders or in case of all shares of the company are basically owned by one group of company (intercompany transaction).

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Subsequently, director of the company is obliged to announce the resolution to all creditors in 1 (one) or more daily newspaper by no later than 7 (seven) days as of the date of the GMS resolution or the last signing date of CROS.

The placing of announcement is intended to give the creditors an opportunity to submit their objection on the reduction action. The reduction could decrease the shares participation of shareholders. In case of bankruptcy, shareholders shall not be responsible for company losses exceeding the nominal value of the shares. It is reasonable for creditors to object the reduction action if the company has outstanding collectable debts.

The creditors may submit their written objection to the company within 60 (sixty) days as of date of the announcement. Maximum of 30 (thirty) days, the company should respond such objection. If no settlement is reached by both parties within 30 (thirty) days since date of the response or the company does not give any response within 60 (sixty) days, the creditors may submit a law suit to district court where the company is domiciled. Pursuant to Article 1341 of the Indonesian Civil Code, although the creditors do not submit any claim within the given timeframe, they are still entitled to submit the objection at any time, even after completion of process.

For an Indonesian foreign investment company (PT PMA), approval from the Indonesian Investment Coordinating Board (BKPM) is required for change of capitalization and shareholders composition of the company. It is worth noting that the reduction of share capital shall not cause the authorized capital is below than IDR 10 billion and the subscribed and paid-up capital is below than IDR 2.5 billion as required by the BKPM.

The final procedure is to obtain ratification from the Ministry of Laws and Human Rights (MOLHR). It is granted if i) no written objection from the creditors within the 60 (sixty) days period; ii) A settlement of the objection raised by the creditors is achieved; or iii) The creditors' law suit related to the capital reduction is rejected by the District Court based on the judgment which has been obtain validly legal force. All process shall normally complete around 3 (three) months.

Reduction of share capital might be required for commercial purposes as long as it is not conflicted with creditors' interest or put creditors in a disadvantaged situation.