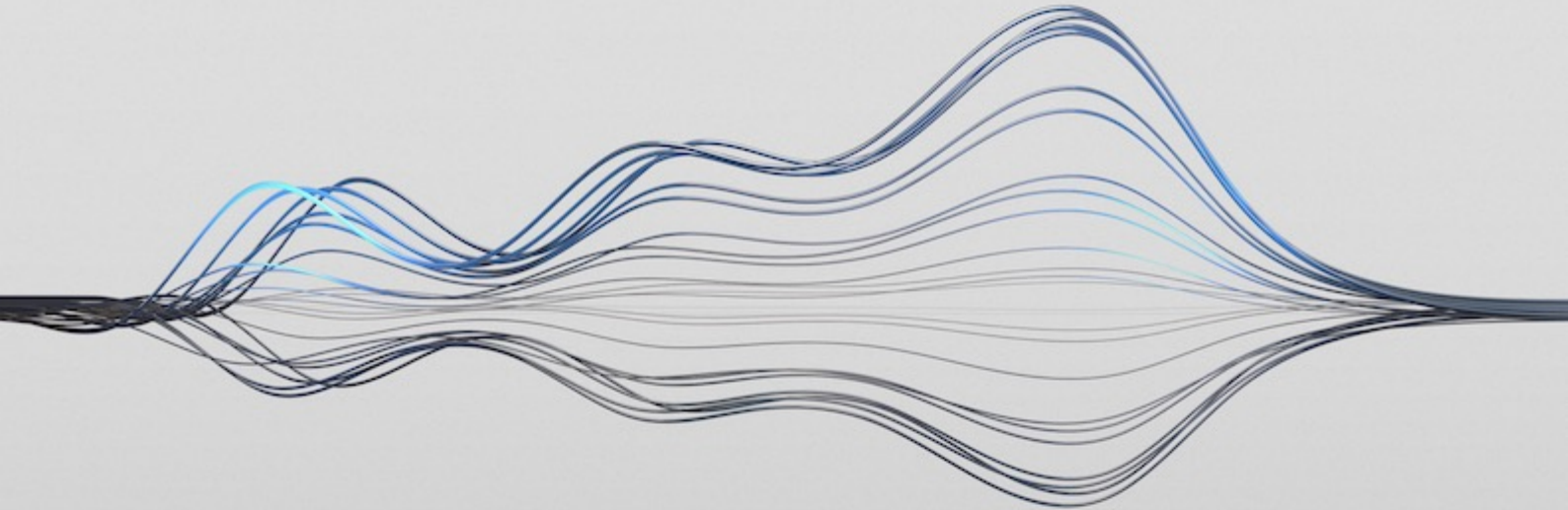


INDONESIA

Global Guide to Directors' Duties





Indonesia

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Corporate entities

What type of company is typically used in group structures?

The main form of business vehicle in Indonesia is the limited liability company (known as *Perseroan Terbatas* or PT). A PT is a legal entity comprised of shares. It is commonly used as it recognizes the separation of liability of the shareholders and the entity, has clear capitalization regime and the Indonesian Investment Law requires foreign investments into Indonesia to be in the form of a PT.

PTs must be incorporated by at least two shareholders (which can be an individual, a legal entity, or a combination of either) and registered with the Indonesian Ministry of Law and Human Rights (MOLHR) as well as the Indonesian Online Single Submission (OSS) system. PTs can be publicly listed or privately-owned. Rules on PTs are primarily contained in Indonesian Law No. 40 of 2007 regarding Limited Liability Companies, as amended by Law No. 11 of 2020 regarding Job Creation (Company Law).

Types of director

What is a "director"?

A PT has a two-tiered board system, namely the Board of Directors (BOD) and the Board of Commissioners (BOC). A director is an individual member of the BOD and is appointed by the shareholders.

The BOD is responsible for the day-to-day activities of a PT. Whereas, the BOC acts as the advisory/supervisory body to the BOD.

What are the different types of director?

In general, Indonesian Company Law does not differentiate between the roles and types of director. The shareholders decide the size and composition of the BOD, and this may also be provided under a shareholders or joint venture agreement and the articles of association of the PT. The sectoral regulations applicable to the PT's business line must be observed to determine if there is any specific rule on the size and composition of the BOD.

There is no requirement under Indonesian Company Law to have an employee or lender representative as a director.

Eligibility

Who can be a director?

A director can be any individual who has the capacity to perform legal actions and within five years prior to their appointment has not been declared bankrupt, been the director of a commissioner that has been adjudicated to cause a company's bankruptcy, or has been sentenced for a criminal offence that has caused financial loss to a state and/or a loss related to the financial sector (ie banks, non-banking financial institutions or capital market institutions) or other sectors related to the collection and management of public funds.

In certain highly regulated industries such as banking and insurance, certain requirements apply, and a fit and proper test is required for the candidate director.

Foreigners can generally be a director, except for the position of human resources director which shall be held by an Indonesian citizen. There is no general requirement for a foreign director to reside in Indonesia.

Minimum / maximum number of directors

The minimum number of directors is one. Similarly, there must also be at least one commissioner. PTs that engage in mobilizing public funds or issue debt instruments or are publicly listed must have at least two directors. The size of the BOD and BOC are as agreed by the shareholders, with due observance to the sectoral rules and capital market regulations for publicly listed companies.

If there are two or more directors, the division of roles and authorities are decided by the shareholders (and if the shareholders do not decide, then by the BOD itself).

Appointment and removal

How are directors appointed?

Directors are appointed by the shareholders (whether through a general meeting of shareholders or by adopting a unanimous circular resolution). The appointment term and effective date of appointment is as decided by the shareholders. If the shareholders do not specifically stipulate the effective date of appointment, then the director's appointment is effective as of the date of the shareholders' approval.

The appointment must also be reported to the MOLHR, with the assistance of an Indonesian notary, to which the MOLHR will issue an acknowledgment letter.

In certain industries, such as banking and insurance, a fit and proper test before the Indonesian Financial Services Authority is required before a candidate director can be appointed.

How are directors removed?

Directors will hold the position until the expiry of their term and they can be reappointed by the shareholders. The directors can be removed earlier before the end of their term by the shareholders' approval (whether through a general meeting of shareholders or by adopting a unanimous circular resolution).

Any removal and changes of director must be reported to the MOLHR.

Board / management structure

Typical management structure

As noted previously, a PT has a two-tiered board system, namely the BOD and BOC. The BOD is authorized to represent the PT in and outside of court and is responsible for the day-to-day activities of a PT. Whereas, the BOC acts as the advisory/supervisory body to the BOD.

Although not legally required, it is common for the BOD to consist of a President Director and the other directors (some also have a Vice President Director). Similarly, there can also be President Commissioner. It is up to the shareholders to decide who becomes which and which shareholders can appoint which position.

How are decisions made by directors?

The BOD may adopt decisions in a meeting of the BOD or by adopting a unanimous circular resolution. The articles of association of a PT may govern the specific procedures for a meeting of the BOD.

Authority and powers

The BOD is authorized to represent the PT in and outside of court. Basically, each director is authorized to represent the BOD, unless the articles of association provide otherwise. This means that the shareholders are free to restrict which director (or which number of directors) is authorized to represent the PT.

Delegation

The BOD may grant a power of attorney to any employee of the company or any persons outside of the company to perform certain legal acts.

Duties and obligations of directors

What are the key general duties of directors?

The BOD has the primary responsibility to run the company for the company's best interests and in accordance with the company's objects and purposes. The BOD shall perform this duty in good faith and with a sense of responsibility.

What are directors' other key obligations?

The Company Law requires the BOD to:

- Prepare the annual work plan and budget.
- Prepare the annual report and financial documents of the company. The BOD must arrange for the financial statement of the company to be audited by a public accountant if:
 - the company's business is to collect and/or manage public funds
 - the company issues debt instruments to the public
 - the company is a listed company
 - the company is a *persero* company (ie a state owned enterprise)
 - the company has assets and/or business turnover of at least IDR50 billion, or
 - if required by the regulations.
- Prepare and maintain the shareholders register and special register.
- Prepare minutes of the general meeting of shareholders, and minutes of the meeting of the BOD.
- Maintain all registers, minutes and financial documents and other documents of the company.

The directors must also observe and comply with the articles of association which may set out the required corporate approvals to be obtained before a company may conduct a certain corporate action.

Transactions with the company

A director is not authorized to represent the company if the concerned director has any conflict of interest with the company. In such a case, the other non-conflicted director would represent the company.

Specifically for listed companies, there are certain rules for transactions carried out by a listed company with a member of its board of directors.

Liabilities of directors

Breach of general duties

The Company Law provides that each director shall be personally liable for losses suffered by the company if the concerned director is at fault or is negligent in performing their duties, unless the concerned director can prove the following:

- The losses were not caused by their mistakes or negligence.
- They managed the company in good faith and prudently in the interests and in accordance with the purposes and objectives of the company.
- There were no conflicts of interest, either directly or indirectly, in their management acts that resulted in the losses.
- They took action to prevent the losses from occurring and continuing.

Shareholders (on behalf of the company) that represent at least one-tenth of the entire voting shares may file a lawsuit in the district court against the director who (due to their fault or negligence) causes losses to the company.

Additionally, shareholders are also given the right to file a lawsuit against the company if the shareholders suffer losses caused by the company's actions that are considered unfair and baseless as a result of the decision of the BOD and/or the BOC.

Liabilities on insolvency

If a company becomes bankrupt due to the fault or negligence of the BOD and the bankruptcy assets are insufficient to pay the company's liabilities, each director will be jointly responsible for the unpaid liabilities.

This liability also applies to a director that is at fault or negligent and who served as a director within five years prior to the bankruptcy decision.

Under the Company Law, the director won't be liable for the bankruptcy if they can prove the following:

- The bankruptcy was not due to their fault.
- They have managed the company in good faith, prudently, and with a sense of full responsibility for the interest of the company and in accordance with the objects and purposes of the company.
- They have no conflict of interest whether directly or indirectly.
- They have taken actions to prevent the bankruptcy.

Other key risks

See [Breach of general duties](#) and [Liabilities on insolvency](#).

Protection against liability

How can directors be protected from liability?

The directors shall perform their duties in good faith, prudently and with a sense of responsibility.

There is no statutory requirement for the company to obtain directors and officers liability insurance. A company is however free to do so.

What practical steps can directors take to avoid liability?

As Indonesia is not a common law jurisdiction, there is no set of case law that sets out the yardstick or guiding notes on the practical steps that the directors can take to prove that they have discharged their duties.

The directors must perform their duties in good faith, prudently and with a sense of responsibility. They shall also observe the articles of association of company and the Company Law (especially those provisions regarding corporate approvals for companies to enter into certain corporate actions) and other laws and regulations applicable to the company.

As noted previously, a director will not be liable for the company's losses if the following conditions are met:

- The losses were not caused by their mistakes or negligence.
- They managed the company in good faith and prudently in the interests and in accordance with the purposes and objectives of the company.

- There were no conflicts of interest, either directly or indirectly, in their management acts that resulted in the losses.
- They took action to prevent the losses from occurring and continuing.

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