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Joint Ventures 2024

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Indonesia: Law & Practice
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INDONESIA

Law and Practice

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SSEK Law Firm is a leading law firm in Indonesia, recognised for its expertise in corporate law and M&A, particularly in joint ventures. The firm's M&A practice is comprised of 30 lawyers, including five partners and three foreign legal advisers, offering comprehensive services in mergers, acquisitions, and restructurings across a variety of industries. SSEK provides critical guidance on joint ventures, managing regulatory complexities and delivering innovative legal solutions to both domestic and international clients. The firm recently advised PT Indosat Tbk on a USD300 million joint venture involving data centre services. Additionally, SSEK's competition, employment, and litigation teams support the M&A practice, handling competition law, employment-related issues, and M&A-related disputes, ensuring seamless legal support across all aspects of joint ventures.

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1. Market Trends

1.1 Recent Changes

Over the past year, Indonesia has seen a dynamic shift in joint venture ("JV") activity, largely driven by government initiatives to promote the country's strategic industries. In particular, the Indonesian government intends to prioritise the downstream development of minerals such as nickel, copper, and bauxite, which are critical to the electric vehicle ("EV") sector. This emphasis on EVs is supported by the country's regulatory framework, including Presidential Regulation No. 55 of 2019, as amended by Presidential Regulation No. 79 of 2023, which sets out a roadmap for accelerating the development, production, and widespread adoption of battery-powered EVs for road transport in Indonesia. This includes support for the local production of EVs and their components, including batteries, which aligns with Indonesia's ambition to become a key player in the global EV battery supply chain. Indonesia's climate commitments to reduce its carbon footprint and achieve net zero emissions by 2060 are further driving activity in this sector.

As a result, there has been a significant trend toward joint ventures in the EV sector. Geopolitical uncertainty (such as the ongoing conflict between Russia and Ukraine, which is causing global supply chain disruptions) has highlighted the importance of energy security, prompting international players to partner with Indonesian companies to secure a foothold in the country's growing EV supply chain. Thus, the global economic climate has steered JV activity toward collaborations that align with Indonesia's national priorities, deepening commitment to environmental sustainability and global demand for sustainable resources and technologies.

1.2 Key Industries

In recent years, particularly in 2023-2024, several industries in Indonesia have shown increased activity in forming JVs, driven by both domestic economic strategies and global trends. One of the most active sectors is renewable energy, where the Indonesian government's ambitious goal to increase the share of renewable energy in the energy mix has attracted significant local and international investment in solar, wind and geothermal projects. The need to reduce reliance on coal and transition to cleaner energy sources has made the renewable energy sector a prime area for collaboration.

Another notable sector is EV, where Indonesia's abundance of natural resources (particularly

nickel, a key component of EV batteries) has attracted foreign investments and collaborations. The government's push to develop an EV ecosystem through various incentives (such as tax incentives) and infrastructure development has catalysed numerous JVs in the sector (such as Hyundai Motor Group's collaboration with LG Energy Solution to start local battery cell production in Indonesia through their joint venture, PT Hyundai LG Indonesia (HLI) Green Power). In addition to batteries, the focus on building domestic EV production capacity is also resulting in numerous JVs involved in the local production of EVs themselves – such as Electrum, the JV between PT TBS Energi Utama Tbk and PT GoTo Gojek Tokopedia Tbk.

The technology sector – particularly financial technology (fintech) and digital services – has also seen a surge in JV activity. The digital transformation accelerated by the COVID-19 pandemic continues to reshape consumer behaviour and business operations in Indonesia, driving growth in e-commerce, online payment platforms, and financial technology services. Local companies have increasingly sought partnerships with global technology giants to scale their operations and expand their market reach. Joint ventures in the technology sector are being driven by both the rapid adoption of digital services and government initiatives to increase financial inclusion and build digital infrastructure.

2. Types of Joint Venture (JV)

2.1 JV Vehicles

In Indonesia, JVs are typically structured in various forms, depending on the business objectives, regulatory requirements, and the nature of the cooperation between the parties.

JV arrangements can generally be categorised into two types:

- corporate JVs, where the JV partners typically enter into a joint venture agreement ("JVA") or shareholders agreement ("SHA") to establish a separate business entity ("corporate JV"); and
- contractual JVs, where the JV partners contractually cooperate without forming a separate business entity, typically through cooperation agreements or joint operation agreements ("contractual JV").

The most commonly utilised vehicle for corporate JVs in Indonesia is the limited liability company (*Perseroan Terbatas* or "PT"). However, other business structures, such as partnerships in the form of *Commanditaire Vennootschap* ("CV") and Firm, are also used, depending on the nature and complexity of the venture. Each structure has different legal and operational implications tailored to suit the specific needs and objectives of the JV partners.

Corporate JV

Limited liability companies (Perseroan Terbatas or PT)

The most common form of JV in Indonesia is a corporate JV structured as a PT. As a legal entity, PT offers several advantages, including limited liability for shareholders, which means their personal assets are protected from the company's liabilities. A PT also has a separate legal identity, which allows it to enter into contracts, own assets, and sue or be sued in its own name. In addition, Indonesian law provides a clear regulatory framework for PTs, offering certainty in terms of governance, decision-making processes, and dispute resolution mechanisms.

Pursuant to Article 5 (2) of Law No. 25 of 2007 regarding Capital Investment, as amended by Government Regulation in lieu of Law No. 2 of 2022 regarding Job Creation, which was further enacted into law by Law No. 6 of 2023 on the Enactment of Government Regulation No. 2 of 2022 regarding Job Creation ("Omnibus Law") (collectively, the "Investment Law"), capital investment by foreign parties must be made in the form of a PT. Therefore, in the context of a corporate JV involving foreign parties, such a corporate JV must be established as a PT.

Partnerships (Commanditaire Vennootschap or CV and firm)

Partnerships such as CVs and firms provide an alternative JV structure, particularly for smaller businesses or industries. In a CV, there are two types of partners:

- active partners, who are responsible for managing the business operations of the CV; and
- passive partners, who only provide capital contributions to the CV.

In a CV, the liability of passive partners is limited to the amount of their capital contribution to the CV. There are no different types of partners in a firm.

The main disadvantage of partnerships such as CVs and firms is the unlimited liability borne by the partners of the CVs and firms due to their non-legal entity status. Unlike shareholders in a PT, partners in a CV or a firm are personally liable for the debts and obligations of the CV or the firm in question, which can pose a significant financial risk. In addition, partnerships lack PTs' clear governance framework, leading to conflicts in management and decision-making if not carefully structured.

Contractual JV

Cooperation agreements or joint operation agreements

Some JVs in Indonesia can also be structured as a contractual collaboration between the JV partners without the need to form a separate business entity. In these arrangements, the parties agree to work together for a specific purpose or project while each party retains its legal identity. Contractual JVs are often used for specific term project-based collaborations and are common in industries such as construction and infrastructure, where the parties can pool resources or share expertise without forming a formal JV entity. A contractual JV is typically created through cooperation or joint operation agreements.

Recently, contractual JVs have been increasingly used in other areas after the issuance of the Decree of the Minister of State-Owned Enterprises ("SOE") No. SK-315/MBU/12/2019 of 2019, dated 12 December 2019, regarding the Arrangement of Subsidiaries or Joint Venture Companies within State-Owned Enterprises ("SOE Decree 315/2019"). The first dictum of SOE Decree 315/2019 regulates the temporary suspension (moratorium) on the establishment of subsidiaries or joint venture companies by SOEs until the Minister of SOEs revokes the moratorium policy. As a result, contractual JV methods are commonly used in many instances of cooperation between SOEs and private companies.

2.2 Choice of JV Vehicle

Generally, the primary drivers in determining the suitable JV vehicle are as follows.

Risk Sharing and Liabilities

One of the main differences between a PT and a firm, CV, and contractual JV is the limited liability nature of a PT. As mentioned above, a PT has a

limited liability status, separating the company's assets from the respective shareholders' assets. This way, the shareholders cannot be held liable for the company's debts and financial losses. For a firm, CV, and contractual JV, there is no limited liability protection for the parties, and therefore, each party may be directly liable for any debts and financial losses of the JV. The difference between a firm, a CV, and a contractual JV lies in the risk-sharing between the partners. According to the Indonesian Commercial Code, the partners of a firm and a CV are jointly liable for any obligations and/or liabilities of the firm or CV to third parties. In a contractual JV, such joint liability can only arise if the partners have agreed to such joint liability in the cooperation agreement or joint operation agreement.

Management and Operations

A PT offers a formal management structure, with a Board of Directors ("BOD"), a Board of Commissioners ("BOC"), and a General Meetings of Shareholders ("GMS") as its organs. Each organ plays a distinct role in a PT (please see **6.2 Decision-Making** and **7.2 Directors' and Board' Duties and Functions** below for further elaboration on the role of each organ in a PT). This structured governance framework provides clarity on decision-making processes and may prevent conflicts, but it also requires adherence to certain formal procedures under Law No. 40 of 2007 regarding limited liability companies, as last amended by the Omnibus Law (the "Company Law"). Partnerships are often more flexible in their governance, with the JV partners directly managing the operations of the CV or firm (except for passive partners of a CV, who do not have control over the management and day-to-day operations of the CV). Similarly, in a contractual JV, the management and operation of the JV are directly carried out by each of the JV partners according to their respective obligations set forth in the cooperation agreement or joint operation agreement (and, accordingly, each partner will be responsible for their assigned obligation). However, this flexibility in partnerships and contractual JVs can also lead to disputes if the roles and responsibilities of each partner are not clearly defined.

Legal Certainty and Costs for Setting Up the JV

A PT under Indonesian law offers a high degree of legal certainty, with clear statutory regulations governing its establishment, operations, and dissolution. However, the incorporation process and statutory compliance can lead to higher establishment and operational costs, and setting up a PT may be time-consuming. Partnerships like a CV or firm offer simpler and more economical setups and are typically less formal; however, they do not provide the same level of legal certainty due to the lack of a clear governance framework under the current laws and regulations, leading to potential conflicts in management and decision-making if not carefully structured. Meanwhile, the key advantages of contractual JVs are simplicity and flexibility – and they are often less expensive to initiate, but may lack the security of a formal corporate structure if the agreement is not carefully drafted.

In conclusion, each JV vehicle has its own advantages and disadvantages. The choice of vehicle will depend on the specific goals, risk tolerance, and regulatory requirements of the JV partners.

3. Regulation

3.1 Regulators

The primary regulators which regulate and oversee joint venture activities in Indonesia are the

Ministry of Law and Human Rights ("MOLHR") and the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or "BKPM"). In particular, the MOLHR is responsible for approving or registering the establishment of JV entities in Indonesia, including PTs, Firms, and CVs. The BKPM is authorised to oversee foreign and domestic investment, including the realisation of investment plans. Aside from the MOLHR and the BKPM, JVs may also be subject to different sectoral authorities depending on the business sector in which they engage.

Apart from the sectoral regulations that may be applicable depending on the business sector engaged in by the JV, the primary laws and regulations governing JVs in Indonesia are outlined below.

- Indonesian Civil Code: the foundation of civil law in Indonesia.
- Indonesian Commercial Code: addresses JVs primarily through its provisions on partnerships. It outlines the legal framework for forming and operating business entities such as CVs and Firms.
- Company Law: provides the framework for the establishment, administration, and dissolution of PTs in Indonesia.
- Investment Law: sets out the parameters for domestic and foreign capital investment.
- Presidential Regulation No. 10 of 2021 regarding Business Fields for Capital Investment, as amended by Presidential Regulation No. 49 of 2021 ("PR 10/2021, as Amended"): governs business fields that are open for domestic and foreign capital investment in Indonesia.
- Government Regulation No. 5 of 2021 regarding the Implementation of Risk-Based Business Licensing ("GR 5/2021"): provides guidelines for implementing risk-based business licensing in Indonesia. It provides a framework for categorising businesses into various risk levels — low, medium, medium-high, and high — each with distinct licensing requirements and procedures. The regulation also mandates the use of the Online Single Submission Risk-Based Licensing ("OSS RBL") system to streamline the licensing process.
- BKPM Regulation No. 4 of 2021 regarding Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities ("BKPM Regulation 4/2021"): provides further guidelines and procedures for risk-based business licensing through the OSS RBL system as mandated by GR 5/2021, which categorises businesses into low, medium, medium-high, and high-risk levels.
- BKPM Regulation No. 4 of 2021 regarding Guidelines and Procedures for Risk-Based Business Licensing Supervision ("BKPM Regulation 5/2021"): regulates the supervision of risk-based business licensing, outlining the responsibilities of the government in monitoring and evaluating compliance with licences, including the post-licensing phase to ensure adherence to relevant laws and regulations.

3.2 AML

In Indonesia, Law No. 8 of 2010 regarding the Prevention and Eradication of Money Laundering Crimes ("Money Laundering Prevention Law") sets out the framework to combat money laundering, establishing the framework for AML efforts and requiring certain entities to report suspicious financial transactions to the Indonesian Financial Transaction Reports and Analysis Centre (*Pusat Pelaporan dan Analisis Transaksi Keuangan* or "PPATK"). The law mandates due diligence and reporting requirements for entities, especially those involved in financial trans-

actions, including joint ventures. The Money Laundering Prevention Law's implementing regulation, Government Regulation No. 43 of 2015 regarding Reporting Party in the Prevention and Eradication of Money Laundering Crimes ("GR 43/2015"), further regulates the entities that are required to report suspicious financial transactions to the PPATK.

Law No. 9 of 2013 regarding the Prevention and Eradication of Criminal Acts of Terrorism Financing ("Terrorism Financing Prevention Law") complements the Money Laundering Prevention Law and its implementing regulation by specifically targeting financial support for terrorist activities. The Terrorism Financing Prevention Law prohibits every individual and entity from financing terrorism both within and outside of Indonesian territory. Collectively, the Money Laundering Prevention Law, GR 43/2015, and the Terrorism Financing Prevention Law require joint ventures to ensure their partners are not committing money laundering and terrorism financing, and that the business activities of these joint ventures adhere to the aforementioned legal requirements.

3.3 Restrictions and National Security Considerations

In Indonesia, while there are no specific National Security regulations or sanctions laws that regulate restrictions on the cooperation with or formation of joint ventures, the regulatory framework established under the Investment Law and PR 10/2021 outlines certain business sectors where foreign investment is prohibited or restricted. This includes areas deeply rooted in cultural heritage, national identity, and domestic economic growth to protect and promote local industries, as well as areas critical to security, reflecting the Indonesian government's approach towards maintaining sovereignty and safeguarding national interests. The sectors that are 100% closed to foreign investment include the batik industry, traditional cosmetics, traditional medicine for humans, and coffee processing, which has obtained a geographical indication. Sectors that are partially closed to foreign investment include certain strategic sectors related to defence and security (such as the weapons and ammunition industry, warship industry, and military aircraft industry).

3.4 Competition Considerations

In Indonesia, JVs are subject to antitrust regulations primarily governed by Law No. 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition, as amended by Omnibus Law (the "Competition Law") and its implementing regulation, Government Regulation No. 44 of 2021 regarding the Implementation of the Prohibition on Monopolistic Practices and Unfair Business Competition ("GR 44/2021"). The Competition Law and GR 44/2021 are enforced by the Indonesian Competition Supervisory Commission ("KPPU"), which monitors and regulates business practices to prevent anti-competitive behaviour. JVs can raise antitrust concerns, particularly if they result in market concentration, reduce competition, or create barriers to entry. The Competition Law prohibits agreements between business actors that may result in monopolistic practices or unfair competition, which can include certain JV arrangements if they significantly impact market dynamics.

Additionally, JVs must undergo a merger control review by the KPPU if they meet certain thresholds. Under Government Regulation No. 57 of 2010 regarding Mergers, Consolidations, and Acquisitions of Shares that May Result in Monopolistic Practices and Unfair Business Competition, JVs that are created through merg-

ers, acquisitions, or consolidations that meet certain thresholds must notify the KPPU post-transaction. The KPPU will assess whether the JV could lead to a significant lessening of competition in the market. Companies entering into a JV through mergers, acquisitions, or consolidations must, therefore, carefully consider these regulations and seek legal advice to ensure compliance with Indonesian antitrust laws.

3.5 Listed Party Participants

In Indonesia, there are no restrictions for publicly listed companies to be a participant in a JV. However, additional obligations may apply, particularly if the participation of the listed company in the JV is classified as a material transaction, affiliated transaction, and/or conflict of interest transaction. These additional obligations include the obligation to publish a disclosure of material information to the public relating to its participation in a JV company.

Publicly listed companies that are listed on the Indonesia Stock Exchange ("IDX") are subject to the authority of the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or "OJK"). In this regard, OJK Regulation No. 17/POJK.04/2020 of 2020 regarding Material Transactions and Changes of Business Activities ("OJK Regulation 17/2020") defines a material transaction as a transaction conducted by listed companies or controlled companies (of the listed companies) that exceeds the value thresholds as set out under OJK Regulation 17/2020. For transactions in the form of participation in business entities, such as establishing a JV company, the applicable value threshold is equal to or more than 20% of the listed company's equity. If this value threshold is met, the participation in and establishment of a JV company by a publicly listed company shall be subject to OJK Regulation 17/2020 provisions.

OJK Regulation No. 42/POJK.04/2020 regarding Affiliated and Conflict of Interest Transactions ("OJK Regulation 42/2020") may also provide additional obligations for publicly listed companies in participating in a JV company. In this context, an affiliated transaction refers to any activities and/or transactions that are carried out by:

- listed companies or companies controlled by the listed companies ("controlled companies") with:
  - (a) the affiliates of the listed company; or
  - (b) affiliates of members of the board of directors or board of commissioners, majority shareholders; or
- controllers of such listed company.

Conflict of interest transaction refers to transactions that are carried out by public companies or controlled companies with any party, either affiliates or non-affiliates, that have a conflict of interest, namely a difference between the economic interests of the listed company and the personal economic interests of members of its board of directors or board of commissioners, principal shareholders, or controllers that may result in the listed company incurring losses.

Based on OJK Regulation 42/2020, if the transaction is an affiliated transaction or involves a conflict of interest, the publicly listed company is required to obtain a fair opinion from an independent appraiser. The approval of independent shareholders is also mandatory.

3.6 Control/Ownership Disclosure Requirements

Pertaining to the disclosure of ultimate beneficial owners in Indonesia, every company is required to identify and register its ultimate beneficial owners with the MOLHR during the time of incorporation, as provided under Presidential

Regulation No. 13 of 2018 regarding the Implementation of Know Your Beneficial Owners of the Corporation for the Purpose of Prevention of Criminal Acts of Money Laundering and Terrorism Financing ("PR 13/2018") and MOLHR Regulation No. 15 of 2019 regarding the Procedures for Implementing Know Your Beneficial Owner Principles by Corporations ("MOLHR Regulation 15/2019"). These regulations define a beneficial owner as an individual who meets any of the following criteria:

- owns more than 25% of shares in the company as provided in the company's articles of association;
- owns more than 25% of the total voting rights as provided in the company's articles of association;
- receives more than 25% of the profit generated by the company per year;
- has the authority to appoint, replace, or dismiss members of the board of directors and board of commissioners;
- has the authority to control the company without obtaining any authorisation from any other party;
- receives benefit from the company; and/or
- is the actual owner of the funds used to issue the company's shares.

4. Legal Developments

4.1 Significant Recent Decisions or Regulatory Developments

In supporting the investment environment in Indonesia, the Indonesian government has issued several regulations to encourage investors to enter the Indonesian market. Among others, PR 10/2021 as Amended was enacted in 2021, replacing the previous regulation containing the negative list of investments in Indonesia, ie, Presidential Regulation No. 44 of 2016 regarding the List of Closed Business Fields and Business Fields Open with Conditions in the Investment Sector. The enactment of PR 10/2021 as Amended allows for greater foreign investment flexibility and broader access to various sectors of the Indonesian economy by foreign investors by reducing the number of business sectors subject to foreign investment restrictions.

The Indonesian government also simplified business operations, registration, and licensing processes through the issuance of the Omnibus Law and its implementing regulation, GR 5/2021. The Omnibus Law amended several existing laws, including those related to foreign investment and business licensing, directly affecting joint ventures by reducing bureaucratic hurdles and enhancing the ease of doing business in Indonesia. GR 5/2021 provides further guidelines for the implementation of risk-based business licensing introduced by the Omnibus Law.

5. Negotiating the Terms

5.1 Negotiation Documentation

The documents used for negotiations between potential JV partners will be subject to the nature of the collaboration/transaction between the JV partners. Broadly speaking, such documents are typically as outlined below.

Non-Disclosure Agreement ("NDA")

The potential JV partners may enter into an NDA which governs the obligations of the JV partners to maintain the confidentiality of the potential JV arrangement as well as any associated information related thereto. The NDA protects sensitive information from being disclosed to third parties or used for unauthorised purposes. The NDA is

typically executed before the parties conduct due diligence on each other.

Due Diligence Request List ("DDRL") or Due Diligence Questionnaire ("DDQ")

The DDRL or DDQ is a comprehensive set of questions and requests for information and documents that the parties exchange during the due diligence process. It helps both parties assess each other's financial, legal, operational, and other aspects relevant to the potential joint venture.

Term Sheet

A term sheet is a concise preliminary document that outlines the key terms and conditions that will form the basis of the final JVA, SHA, or cooperation agreement/joint operation agreement. It is typically used in the early stages of negotiations to ensure that all parties agree on the fundamental aspects of the JV before drafting a comprehensive and legally binding agreement.

While the term sheet is generally non-binding, it serves as a critical tool to align all parties' expectations and identify and resolve any potential areas of disagreement early in the process. It provides a roadmap for the more detailed negotiations that will follow and helps to streamline the drafting of the final agreement by providing a clear reference point for the agreed-upon terms.

5.2 Disclosure Requirements and Timing

Generally, disclosure requirements will arise after the establishment of JV. A JV in the form of a PT, CV, and firm will be bound to the disclosure requirements of the MOLHR following the execution of the JV's Deed of Establishment (DoE) containing the JV's AOA. Specifically for a JV in the form of a PT, if the JV is created through the merger, acquisition, or consolidation of an existing PT, then disclosure through newspaper announcements and disclosure to employees must be made at the latest 30 days prior to the notice to all shareholders to convene the GMS to approve such merger, acquisition, or consolidation.

Additional disclosure requirements may also apply depending on the JV's business sector. Further, companies listed on the IDX participating in a JV may be bound by additional disclosure requirements set out under OJK Regulation 17/2020 and OJK Regulation 42/2020. As previously elaborated in **3.5 Listed Party Participants**, the additional disclosure requirements will be triggered if the participation of the publicly listed company in the JV is considered a material transaction, affiliated transaction, and/or conflict of interest transaction.

5.3 Set-Up

Parties setting up a JV in Indonesia shall first determine the type of JV vehicle (ie, a PT, CV, firm, or contractual JV).

Parties opting for a PT will typically need to enter into a JVA/SHA, followed by establishing the PT according to the provisions of the Company Law, including preparing and executing the DoE containing the AOA of the PT (which shall reflect the terms of the JVA/SHA), and submitting the DoE to be approved by the MOLHR. Similar to a PT, the establishment of a JV in the form of a CV or firm includes preparing and executing the DoE containing the AOA of the CV or firm in question and submitting said deed to be registered with the MOLHR.

Parties opting to set up a contractual JV will have to enter into an agreement (typically structured as a cooperation agreement or a joint operation agreement). After the signing of the cooperation agreement or joint operation agreement, it is

common for the contractual JV to open a joint bank account to manage the finances of the joint operation.

6. The JV Agreement

6.1 Agreement Documentation

Corporate JVs

As mentioned, the terms governing Corporate JVs are usually specified in a JVA or SHA entered into by the JV partners. Under Indonesian law, there is no rigid structure in drafting a JVA/SHA and the terms of a JVA/SHA may vary depending on the complexity of the JV and the varying contributions from the partners. Notwithstanding the foregoing, a JVA/SHA would generally contain the following main terms:

- definitions and interpretations;
- representation and warranties;
- business plan (purpose and objectives);
- capitalisation of the company;
- further funding of the company;
- Board of Directors;
- Board of Commissioners;
- general meeting of shareholders;
- dividend policy;
- transfer of shares;
- breach of contract;
- deadlocks;
- governing law and dispute resolution;
- confidentiality;
- general boiler plate clauses (ie, severability clause, counterparts clause, etc).

Contractual JVs

Contractual JVs are typically governed by cooperation or joint operation agreements. Similar to a JVA/SHA, Indonesian law does not provide a fixed structure for preparing a cooperation or joint operation agreement. While the terms of the cooperation agreement or joint operation agreement may vary according to the complexity of the cooperation/joint operation, the general terms included in a cooperation agreement or a joint operation agreement are as follows:

- definitions and interpretations;
- scope of cooperation/joint operation;
- period of the agreement;
- rights and obligations of the parties;
- share of participation of the parties;
- financing and budget;
- representations, warranties, and undertakings;
- management of cooperation/joint operation;
- breach of contract;
- Governing Law and dispute resolution;
- confidentiality;
- general boiler plate clauses (ie, severability clause, counterparts clause, etc).

6.2 Decision-Making

Decision-making is a crucial element that can significantly influence the success or failure of a joint venture. Indonesian law allows a great deal of flexibility in structuring decision-making processes within JV entities, typically set up as a PT. The primary legal framework governing the decision-making process within a PT is the Company Law, which provides a broad outline while allowing the joint venture partners to tailor the specifics according to their mutual agreement.

The Company Law mandates that every PT in Indonesia have three organs, namely the BOD, the BOC, and the GMS. Each organs plays a distinct role in the decision-making of a PT.

As elaborated **7.2 Directors' and Board' Duties and Functions** below, the BOD has the function to carry out the PT's management in the

PT's best interest and in accordance with the PT's purpose and objectives. In performing their management duty, the BOD is authorised to represent the PT both in and out of court, enter into contracts with third parties on behalf of the PT, and manage the day-to-day operations of the PT. The BOC is entrusted with the responsibility to provide supervisory and advisory functions towards the management of the PT by the BOD. The GMS is vested with the right to make significant corporate decisions for the PT. Pursuant to the Company Law, this authority includes making decisions regarding the following key matters:

- appointment of BOD and BOC members;
- amendment to the AOA;
- mergers, acquisitions, consolidations, and spin-offs;
- submission of application for the PT to be declared bankrupt;
- extension of the time period of the PT (if, based on the AOA, the PT is established only for a certain period of time); and
- dissolution of the PT.

Given the above, the shareholding composition in the PT plays a pivotal role in the decision-making of a PT. Generally, under the Company Law, the quorum required for a GMS to be validly convened necessitates the presence or representation of more than 50% (simple majority) of the total shares with voting rights, whereby any resolution passed during such GMS shall be considered as valid if it is approved by more than 50% of the total votes legally cast at the meeting. Certain matters under the Company Law require a higher quorum and voting requirements for the GMS, such as:

- amendment of the AOA, which can only be passed by the GMS if attended by at least 2/3 (67%) of the total shares with voting rights issued by the company, and approved by more at least 2/3 (67%) of the total votes legally cast at the meeting; and
- mergers, acquisitions, consolidations, spin-offs, submission of application for the company to be declared bankrupt, an extension of the time period of the company (if (based on the AOA) the company is established only for a certain period of time), and dissolution of the company, which can only be passed by the GMS if attended by at least 3/4 (75%) of the total shares with voting rights issued by the company, and approved by more at least 3/4 (75%) of the total votes legally cast at the meeting.

The AOA may stipulate higher quorums and voting requirements than the Company Law, but never lower. Hence, if the AOA of the JV entity does not stipulate higher quorum and voting requirements for the GMS, a shareholder holding 75% or more of the shares in the JV entity would effectively have the power to unilaterally pass any GMS resolution, without the participation and consent of the other shareholders. Consequently, such a shareholder can unilaterally steer the JV entity's direction.

In addition to ownership structure, the composition of the BOD and BOC plays a central role in the decision-making process. The composition of the BOD and BOC is often reflective of the ownership structure, with each JV partner typically having the right to appoint a certain number of directors and commissioners. Please see **7.1 Board Structure** for further elaboration on the BOD and BOC structure.

In relation to the above, the crucial step in addressing decision-making in a PT is the formulation of clear and detailed reserved mat-

ters, which are important matters that require the consent of certain organs and require certain quorum and voting requirements (typically involving issues such as capital expenditure, mergers and acquisitions, and significant changes to the business strategy). Reserved matters usually can only be passed by unanimous consent. This approach is designed to ensure that no single party can unilaterally control the JV entity's direction or make critical decisions, thereby maintaining a balance of power within the JV entity. Reserved matters may be created either at the BOD, BOC, or GMS level.

Further, the Company Law provides that certain matters can only be carried out by the BOD if these matters have been approved by the GMS. For instance, Article 102 of the Company Law stipulates that the BOD must obtain the approval of the GMS if the BOD intends to transfer or encumber the company's assets with a value of more than 50% of the total net assets of the company in one or more transactions. These matters can only be passed by the GMS if attended by at least 3/4 of the total shares with voting rights issued by the company and approved by at least 3/4 of the total votes legally cast at the meeting. Accordingly, the formulation of reserved matters shall also observe the relevant mandatory reserved matters under the prevailing laws and regulations.

Deadlock resolution mechanisms are also essential in the decision-making framework of a JV. Given that disputes and differences of opinion are inevitable, the JV agreement should include clear procedures for resolving deadlocks. For further elaboration regarding the resolution of deadlocks, see **6.4 Deadlocks**.

In conclusion, the decision-making framework within a JV in Indonesia must be carefully crafted to balance the interests of all parties. A well-structured JVA/SHA and AOA, coupled with balanced board composition, effective deadlock resolution mechanisms, and adherence to regulatory requirements, can help create a robust governance framework that facilitates the smooth operation of the JV.

6.3 Funding

Typically, JVs in Indonesia are financed through a combination of debt and equity, with a specific proportion between debt and equity funding depending on the nature of the business, the financial capability of the JV partners, and their strategic objectives. For instance, JVs engaged in business activities relating to infrastructure projects (eg, development of toll roads, power plants, etc) are likely to opt for a higher proportion of debt funding, as opposed to equity funding, to mitigate the parties' risk. In general, equity contributions usually form the initial capital of the JV, while debt funding, either from the shareholders themselves or third-party financial institutions such as banks, is used to fund ongoing operations and expansion.

Equity funding, provided by the JV partners, establishes the entity's ownership structure. If there is no classification of shares, each JV partner's initial contribution is directly proportional to their shareholding percentage in the JV. If the JV entity is a foreign capital investment company (*PT Penanaman Modal Asin* g or "PT PMA"), BKPM Regulation 4/2021 provides that the minimum initial issued and paid-up capital of a PT PMA is RP10,000,000,000 (ten billion rupiah), unless otherwise specified by the prevailing laws and regulations.

Apart from the initial contribution, the JVA/SHA often includes clauses detailing the policies for future funding. These policies can vary

significantly, ranging from no obligation or commitment for the shareholders to provide future funding proportional to each party's shareholding percentage to commitments and obligations to always provide future funding proportional to each party's shareholding percentage (with penalties to be imposed if one shareholder fails to provide its portion of future funding and the other shareholders need to cover for the funding shortfall, as a form of disincentive for the parties to fund disproportionately). Additionally, parties may also determine the order of priority that the JV entity will follow in acquiring additional funding. For instance, if additional funding is required, the parties may agree that such additional funding will be provided through the following order of priority:

- shareholder loan;
- third-party financing;
- issuance of new shares to shareholders; and
- issuance of new shares to third parties.

Future funding in the form of equity funding by a JV partner can significantly impact the ownership structure of the JV. If one partner contributes additional equity while the others do not, this could lead to a dilution of the non-contributing partners' shares, shifting control within the entity. To address this, the Company Law provides pre-emptive rights to the shareholders, which give existing shareholders the right to subscribe to new shares to be issued by the JV entity in proportion to their shareholding percentage in the JV entity each time the JV entity decides to raise funds through equity funding. Only if there is a balance of shares not being subscribed by a JV partner do the other JV partners who have successfully subscribed and paid their portion of new shares have the right to subscribe and pay for the unsubscribed portion. This ensures that the balance of control is preserved unless all parties agree to a change.

6.4 Deadlocks

Deadlocks at the BOD or BOC ("Board") level or shareholders level are common challenges in JVs in Indonesia. A deadlock can arise when there is a fundamental disagreement on strategic decisions, management issues, or other significant matters, leading to an impasse that can jeopardise the operation of the JV. Therefore, it is crucial to establish clear mechanisms within the JVA/SHA to address and resolve deadlocks effectively.

At the Board level, in the event of a tie vote or deadlock in a BOD or BOC meeting, one common method to resolve the same is to grant the President Director or President Commissioner (as applicable) an additional vote/determining vote in the JVA/SHA, enabling them to break the tie and resolve the deadlock. Alternatively, the JVA/SHA may also provide that any deadlock in a BOD meeting is to be resolved in a BOC meeting and, subsequently, any deadlock in a BOC meeting is to be resolved in a GMS. The rationale for this escalation is that higher-level management may have a broader perspective and greater flexibility to negotiate a resolution.

On the other hand, deadlocks between the shareholders/JV partners usually occur during the GMS. In most JVA/SHAs, a deadlock between the shareholders/JV partners is typically deemed to occur when there are certain matters proposed by a shareholder which require the approval of the other shareholders (typically, reserved matters which require unanimous approval of the shareholders) but fail to be approved by the other shareholders for several consecutive occasions. In such an event, the JVA/SHA typically provides that the

shareholders appoint a representative (usually a member of the JV's senior management) to further discuss and negotiate in good faith for a certain period of time to resolve the deadlock. If the deadlock is not resolved within the agreed period of time, each shareholder may make an offer to the other shareholders to purchase or sell all (and not some) of their respective shares in the JV at a price determined by an independent appraiser. If no shareholder makes an offer to purchase or sell the shares, or if the shareholders are equally willing to purchase or sell their respective shares, the JVA/SHA may provide that the shareholders must sell all of their shares to a third-party buyer via an independent broker.

As a last resort, the SHA may include a provision for the dissolution of the JV if the deadlock still cannot be resolved (including if the shareholders fail to sell all of their shares to a third-party buyer). While this is generally seen as a measure of last resort, dissolution of a JV provides a clear exit strategy for the parties involved, preventing prolonged disputes that could harm the JV's operations and value.

6.5 Other Documentation

Although the JVA/SHA will have regulated most crucial aspects regarding the establishment and operation of a corporate JV, there is supplementary documentation that the parties may require based on the nature of the JV.

- AOA: The AOA is a statutory document required to incorporate a corporate JV (eg, PT, CV, firm) in Indonesia, outlining the entity's governance, management structure, and internal regulations, and is publicly filed with the MOLHR. Different from a JVA/SHA, which is a private agreement between the JV partners and also addresses the commercial and operational terms between the JV partners, the AOA focuses on the general framework and compliance with Indonesian law and is a public document. The contents of the AOA must be consistent with the terms of the JVA/SHA agreed by the JV partners.
- IP licence agreement: Often, JVs involve the utilisation of IP, especially trade marks and patents from one or more JV partners. An IP licence agreement plays a crucial role in formalising the right to use IP while protecting the IP owner's rights, ensuring that such utilisation is clearly regulated.
- Secondment agreement: This agreement facilitates the temporary assignment of employees from the JV partners to the JV entity, allowing the JV partners to contribute expertise and personnel without permanently transferring staff. This agreement outlines the roles, compensation, and obligations of the assigned personnel during the secondment period.
- Technology transfer agreements: Technology transfer agreements become important as Article 10(4) of the Investment Law provides that investment companies – where JVs may be considered as one – employing foreign workers are required to provide training and conduct the transfer of technology to Indonesian workers. Accordingly, technology transfer agreements aid in facilitating the sharing of technology and know-how to clearly define the scope of technology being transferred.

7. The JV Board

7.1 Board Structure

As mentioned earlier, the Board level in a PT consists of the BOD and BOC. Generally, the Company Law does not provide a limit regarding the maximum number of BOD and BOC members that the shareholders can appoint. How-

ever, Articles 92(3) and 108(3) of the Company Law provide that a PT must have at least one BOD member and one BOC member. Notwithstanding the foregoing, please be advised that PTs engaged in certain business sectors may be subject to different BOD and BOC requirements. For example, PTs engaging in peer-to-peer lending business activities are required to have at least two BOD members and at least one BOC member, and the number of BOC members must not exceed the number of BOD members.

To appoint members of the BOD and the BOC, the JV partners, as the shareholders, would first need to agree on the total number of BOD members and BOC members in the PT, specifying the number of BOD and BOC members that each party can nominate. This will be reflected in the JVA/SHA and AOA. The number of BOD members and BOC members each party is entitled to nominate usually depends on the shareholding composition in the JV company. Generally, a party with the majority of the shareholding in the JV company would be entitled to nominate more BOD and BOC members than the minority shareholder(s). Alternatively, the majority shareholder and the minority shareholder may be given the right to nominate the same number of BOD or BOC members, but the majority shareholder is given the right to nominate the President Director or President Commissioner. These BOD and BOC nomination rights will affect the decision-making process in the BOD and BOC meetings.

Regarding the quorum and voting requirements for BOD and BOC meetings, the Company Law is silent and therefore does not prohibit a director or a commissioner from having weighted voting rights in such BOD or BOC meeting. Typically, in cases of tie votes, the JVA/SHA may provide that the President Director or the President Commissioner will have a second vote as the tie-breaker in the relevant BOD or BOC meeting. Therefore, in such a case, the relevant shareholder with the right to nominate the President Director and the President Commissioner will have greater control over the BOD and BOC meetings.

In connection to the above, while companies are allowed to issue different classifications of shares (for example, shares with or without voting rights), the Company Law does not allow weighted voting rights to be given to shareholders. Under the Company Law, shareholders are only entitled to one voting right for every share with voting rights. Exemptions may apply to publicly listed companies. Under OJK Regulation No. 22/POJK.04/2021 regarding the Implementation of Shares Classification with Multiple Voting Rights by Issuers with High Innovation and Rate of Growth which Conduct a Public Offering of Equity Securities in the Form of Shares, innovative and fast-growing publicly listed companies which meet the eligibility criteria may issue a classification of shares whereby one share has multiple voting rights. This regulation is part of Indonesia's effort to create a more flexible capital market environment, particularly for fast-growing and innovative companies such as companies in the technology sector, to create a structure allowing founders or key stakeholders to retain control despite holding a smaller equity stake.

As for JVs structured as Partnerships (eg, CVs and firms), there are no specific board structures mandated by the prevailing laws and regulations. The prevailing laws and regulations only provide that in a CV, partners are classified into two categories: active partners and passive partners. Please see **2.1 JV Vehicles** for the distinction of the roles of active and passive partners in a CV.

There is no formal categorisation of partners in a firm.

7.2 Directors' and Board' Duties and Functions

The Company Law mandates different duties for the BOD and BOC based on their respective roles and functions in the company. Article 93 of the Company Law provides that the principal duty of the BOD is to carry out the management of the company in the best interest of the company and in accordance with the company's purpose and objectives. In performing their management duty, the BOD is authorised to represent the company both in and out of court, enter into contracts with third parties on behalf of the company, and manage its day-to-day operations. Notwithstanding the foregoing, the authority of the BOD is subject to certain restrictions and requirements under the Company Law, the company's AOA, and the JVA/SHA (for example, if the AOA provides certain BOC/shareholders reserved matters, then these matters can only be carried out by the BOD if these matters have been approved by the BOC/GMS).

The BOC is vested with the duty and responsibility to supervise and advise on the management of the company by the BOD, particularly ensuring that such management by the BOD is aligned with the company's purpose and objectives.

7.3 Conflicts of Interest

The Company Law prohibits a BOD member from representing the company if such a member possesses conflicting interests with the company. In such event, the authority to represent the company shall be vested to:

- other members of the BOD who do not have a conflict of interest with the company;
- the BOC, in the event that all the members of the BOD have a conflict of interest with the company; or
- other parties appointed by the GMS in the event that all the members of the BOD and BOC have a conflict of interest with the company.

One common approach to managing conflicts of interest in a JV company is the establishment of clear conflict-of-interest policies within the JVA/SHA and the AOA. These policies often require board members to disclose any potential conflicts and to recuse themselves from voting on decisions where their impartiality might be compromised.

One way to disclose potential conflicts is by preparing a "special register". Under the Company Law, the BOD is required to prepare a special register, which is a source of information regarding the share ownership of members of the BOD and BOC or their family (ie, their spouses and children) in the company or in another company. The Company Law specifically mentions that the purpose of having a special register is to curb potential conflicts of interest in a company.

Additionally, although it is common for individuals from the JV partners to be appointed as members of the BOD or BOC of the JV company, in certain circumstances, it may be inappropriate for such individuals to take a seat on the BOD or BOC of the JV company solely due to their position within a JV partner. This is particularly true when the individual's duties within the JV partner could conflict with their fiduciary responsibilities to the JV company. For example, if the JV partners and the JV company are involved in the same market and potentially compete for resources or customers, it may create an untenable conflict of interest for the individual. In such

cases, appointing an independent director who can act solely in the interests of the JV company may be a more appropriate solution.

8. Intellectual Property and the JV

8.1 Key IP Issues

In establishing a JV entity, intellectual property (IP) issues are critical and require careful consideration, especially in businesses which rely heavily on IP such as manufacturing and technology. The IP contributed to the JV entity by each partner, such as patents, trade marks, copyrights, and trade secrets, can be essential assets that drive the venture's success. The IP assets' ownership, use, and protection should be clearly defined in the JVA/SHA and related documents to prevent future disputes and ensure that each party's interests are adequately safeguarded.

One of the key IP issues in establishing a JV entity is determining the ownership and control of pre-existing IP and newly developed IP. Pre-existing IP refers to the IP that each partner brings into the JV entity. The JVA/SHA should specify whether the IP will remain the property of the contributing party or be transferred to the JV entity. In cases where IP is to be licensed rather than transferred, the terms of the licence, including duration, scope, exclusivity, and any royalties or fees, should be clearly outlined in a separate licensing agreement between the licensor and the JV entity, which shall also be recorded with the MOLHR's Directorate General of Intellectual Property ("DGIP"). For newly developed IP created during the joint venture period, the JVA/SHA should address whether the JV entity will own the IP or if it will be jointly owned by the JV partners, including how the IP will be managed and commercialised.

In a Contractual JV, IP issues are equally important. Agreements between the JV partners should clearly define the ownership of any IP generated during the collaboration and include provisions for the protection of confidential information. Additionally, agreements should address the use of each party's pre-existing IP, ensuring that it is used only for the purposes intended by the collaboration and does not inadvertently benefit the other party outside the scope of the agreement. Clauses related to IP warranties, indemnities, and dispute resolution should also be included to protect against potential IP infringement or misuse claims.

Finally, for either Corporate JVs or Contractual JVs, understanding the possibility of the joint venture being terminated, it is prudent to also specify the handling of IP assets upon the termination of the joint venture, including who retains ownership and what rights the other party has (if any) to continue using the IP post-termination.

8.2 Licensing and Assignment

One of the pivotal decisions concerning IP when structuring a JV is whether pre-existing IP rights owned by the JV partners should be licensed or assigned to the JV entity. The choice between licensing and assigning has far-reaching implications for the control, use, and value of the IP assets and must be carefully evaluated in light of the strategic objectives of the JV and the interests of the parties involved.

Licensing IP rights to the JV, rather than assigning them, allows the original owner to retain ownership while granting the JV entity the right to use the IP under agreed-upon terms. This approach offers significant flexibility, as the licensor can tailor the licence to the specific needs of the JV, including restrictions on the scope, exclusivity, duration, and territory of use. Licensing

also enables the licensor to continue exploiting the IP independently outside the scope of the JV, preserving its broader commercial value. However, licensing may lead to complexities in managing the IP, particularly ensuring compliance with the licence terms. The licensor may also retain the power to terminate the licence under certain conditions, potentially jeopardising the JV entity's continuity if the IP is central to its operations.

Further, if the owner of the IP rights is a foreign entity which has not yet registered or recorded their IP rights in Indonesia, these rights first need to be registered or recorded with the DGIP under the owner's name before the IP rights may be licensed to the JV entity. Once the IP rights are duly registered or recorded with the DGIP and the licence agreement between the licensor and the JV entity is executed, the licence agreement must also be recorded with the DGIP to ensure its enforceability towards third parties.

In contrast to licensing, assigning IP rights involves the transfer of ownership from the original owner to the JV entity. This option may be preferable when the IP is central to the JV's operations and success, as it gives the JV complete control over the IP, including the right to further develop, commercialise, or transfer the IP without the need for ongoing negotiations with the original owner. Assignment can also simplify governance within the JV by consolidating IP ownership, thereby reducing the risk of conflicts between the partners. However, the assigning party forfeits its ownership rights, which can be a significant drawback if the IP has substantial standalone value or the JV's future is uncertain.

In respect of registration or recordation of the IP rights, it is important to note that if the original owner of the IP rights is a foreign entity which has not yet registered or recorded their IP rights in Indonesia, it is prudent for these rights to be first registered or recorded with the DGIP under the original owner's name before the IP rights are assigned to the JV entity. If the IP rights are registered with the DGIP directly under the JV entity's name without prior registration under the name of the foreign owner, there is a significant risk that the DGIP may reject the registration due to the existence of prior registrations in other jurisdictions under a different name (ie, under the name of the foreign entity as the original owner). This is especially the case if the IP right in question is a patent or well-known trade mark, given their higher visibility and the greater scrutiny they attract in the registration process. Following the successful registration or recording of the IP rights with the DGIP under the name of the original owner, and the execution of the assignment agreement between the original owner and the JV entity, the assignment must also be recorded with the DGIP.

The implications of licensing versus assigning IP rights extend to various legal and financial aspects. From a legal perspective, the decision affects the degree of control each party has over the IP and the relevant procedure for recording the relevant licensing arrangement or assignment. Financially, the choice influences the valuation of the JV entity, the allocation of profits derived from the IP, and potential tax consequences, particularly concerning the characterisation of payments as royalties (for licensing) or purchase prices (for assignment).

Ultimately, the decision between licensing and assigning IP rights should be guided by the JV's specific context, including the IP's nature, the partners' business objectives, and the JV's anticipated lifecycle. In some cases, a hybrid approach may be adopted, where certain rights

are assigned while others are licensed, providing a balance between control and flexibility. The key is to ensure that the arrangement fosters the JV's success while protecting the interests of all parties involved.

9. ESG and the JV

9.1 ESG Regulations and Developments Affecting JVs

Environmental, social, and governance ("ESG") considerations have become increasingly central to business operations globally, including in Indonesia. Investors, stakeholders, and regulatory bodies increasingly prioritise companies that demonstrate a commitment to sustainable practices, responsible corporate governance, and positive social impacts. In the context of JVs, ESG is crucial for mitigating risks, improving long-term financial performance, and enhancing reputational value. JV entities operating without a strong ESG focus may be running the risk of regulatory penalties, reduced investor confidence, and diminished market competitiveness. By embedding ESG principles into the operations of the JV, the JV partners can future-proof their investments and ensure compliance with evolving market expectations.

JV participants should proactively implement ESG measures to mitigate legal and reputational risks. This may include developing a robust corporate social responsibility ("CSR") policy, engaging with stakeholders to assess environmental and social risks, and ensuring transparency in governance practices. JVs in sectors with significant environmental impacts, such as energy, mining, or manufacturing, must also prioritise compliance with climate-related regulations and adopt carbon-reduction strategies.

Indonesia has several key ESG-related regulations that JV entities must be aware of. Among the most notable is Law No. 32 of 2009 regarding Environmental Protection and Management, as amended by the Omnibus Law (the "Environmental Law"), which imposes strict environmental protection standards and mandates that companies assess their environmental impacts and obtain the necessary environmental permits. Under the Company Law and Minister of State-Owned Enterprises ("SOE") Regulation No. PER-1/MBU/03/2023 regarding Special Assignments and Social and Environmental Responsibility Programs of SOEs, SOEs and PTs whose business activities involve managing and utilising natural resources are required to perform CSR activities that benefit the community. This requirement underscores the importance of social responsibility in the corporate framework. Additionally, OJK Regulation No. 51/POJK.03/2017 concerning the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies mandates incorporating sustainability principles into financial institutions and publicly listed companies. OJK Circular Letter No. 16/SEOJK.04/2021 further provides guidelines for ESG disclosures in annual reports for public companies.

Further, significant developments can be seen in the introduction of EV subsidies. The Indonesian government issued Minister of Industry Regulation No. 6 of 2023 regarding Guidelines for Providing Government Assistance for the Purchase of Two-Wheeled Battery-Based Electric Motorized Vehicles, as amended by Minister of Industry Regulation No. 21 of 2023, introducing EV subsidies. This regulation supports the ESG strategy by promoting cleaner energy sources and reducing reliance on fossil fuels, aligning with environmental sustainability goals. According to the regulation, the applicable EV subsidy

is in the amount of an IDR7 million discount for every purchase of two-wheel electric vehicles. The introduction of this subsidy, along with the Indonesian government's efforts to promote the downstream development of certain commodities essential in the EV industry, has given rise to the establishment of joint ventures specialising in EVs, as previously elaborated in **1.1 Recent Changes** and **1.2 Key Industries**.

10. Completion of the JV's Purpose, Winding Up and Redistribution of JV Assets

10.1 Termination of a JV

The termination of a JV can be either mutual, where all parties agree to end the collaboration, or unilateral, where one party seeks to terminate the collaboration based on specific conditions or events.

The JV can be terminated with the mutual consent of all parties involved. This usually occurs when the objectives of the JV have been achieved or if the parties agree that continuing the JV is no longer in their best interest. Under Indonesian law, contracts, including JVA/SHAs and cooperation agreements/joint operation agreements, can be terminated by mutual consent, pursuant to Article 1338 of the Indonesian Civil Code. The parties typically need to document the mutual termination through a written agreement.

A JV partner is also typically provided the right to unilaterally terminate the JV if another party defaults on their obligations. Pursuant to Article 1266 of the Indonesian Civil Code, a unilateral termination based on the other party's default can only be performed with prior court approval. Therefore, it is common for parties to an agreement governed under Indonesian law to include a waiver of this provision to ensure an efficient unilateral termination without requiring prior court approval.

Common reasons for unilateral termination of a JV in Indonesia include the following:

- Breach of contract: If one of the JV partners fails to perform its obligations or breaches the terms of the agreement and is unable to remedy such breach within the grace period agreed in the agreement.
- Insolvency: One of JV partners becomes insolvent or is declared bankrupt. Insolvency can lead to the inability to fulfil financial commitments to the JV.
- Force majeure: Unforeseen events which are beyond its control (eg, natural disasters, war, etc) affect one of the JV partners, making the continuation of the JV impossible or impractical.

Specifically in the context of a corporate JV, one of the possible consequences of a termination of the JV is that the JV entity may be agreed to undergo a winding-up process, which includes the processes of settling debts, collecting receivables, and completing any outstanding obligations. The partners must also decide how to dispose of the JV entity's assets, which could involve selling the assets, distributing them among the partners, or transferring them to one of the partners.

Another critical aspect of JV termination is addressing any IP and confidential information issues. In the context of a corporate JV, if the JV entity has developed IP during its operation, the JV partners need to determine who will retain ownership of the IP after termination. This may include assigning the IP to one of the partners or jointly owning the IP post-termination. Addi-

tionally, in either a corporate JV or contractual JV, the JV partners must ensure that any confidential information shared between the entities is protected by returning or destroying sensitive documents and data or by entering into confidentiality agreements that survive the termination.

10.2 Transferring Assets Between Participants

In the event of the termination of a Corporate JV structured as a PT that leads to the winding up of the JV entity, the JV entity must undergo a formal liquidation process before its assets can be distributed to the JV partners (ie, the shareholders) in the form of liquidation dividends. From a legal standpoint, there is no distinction between assets originally contributed by a JV partner and those generated by the JV entity itself; both are regarded as assets of the JV entity. Consequently, these assets will be distributed to the shareholders as liquidation dividends in proportion to their respective shareholding percentages in the JV entity.

In a specific case whereby the JVA/SHA mandates certain assets to be transferred by the JV entity to the shareholders upon JVA/SHA termination but before the company's liquidation, there are several considerations to be taken into account, as outline below.

- Tax: The parties need to consider any applicable tax arising from the transfer of assets between the JV entity and the shareholders. Given that the transfer of assets between the JV entity and the shareholders can be considered an affiliated transaction, the parties must also adhere to the applicable transfer pricing rules, which include following the arm's length principle.
- Regulatory compliance: The parties must ensure that all asset transfers comply with the prevailing laws and regulations, particularly if the transfer of the relevant type of asset requires any government approvals or notifications. For example, any assignment or transfer of IP rights that have been registered or recorded with the DGIP must be recorded with the DGIP. If the JV entity is a publicly listed company, it must also adhere to the provisions of OJK Regulation 42/2020. Article 4(2) of OJK Regulation 42/2020 requires an affiliated transaction to be appraised by an independent appraiser to determine the fair value of the object of the affiliated transaction and/or the fairness of the transaction concerned. OJK Regulation 42/2020 also mandates a publicly listed company to perform a public disclosure of such affiliated transactions.

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