

## PLEDGE OF SHARES UNDER INDONESIAN LAW

### **Shares as Movable Intangible Assets**

Shares under Indonesian law are considered as movable intangible assets; therefore, a pledge over shares is created by a “delivery” of the shares to the pledgee and notification of such pledge to the party against whom the pledge is to be exercised (that is, the Company whose shares are pledged). “Delivery” for movable tangible rights is conducted by an authentic deed or an agreement delivering such rights to the transferee. By the Pledge of Shares Agreement stating the delivery of the rights over the shares and the notification to the Company, the pledge over the shares is created. No physical possession of the share certificate is required. The delivery of the share certificates is a contractual term under the Pledge of Shares Agreement and does not impact on the creation of the pledge over the shares. The “movable intangible” nature of shares is also expressed under the company law.

### **Pledge of Shares**

The relevant regulations relating to pledge are Articles 1150 to 1160 of the Indonesian Civil Code (the “**ICC**”). As shares are movable intangible rights, the provision applies to a pledge of shares are Articles 1150 and 1153 of the ICC. Article 1150 is a general clause on pledge whilst Article 1153 is a specific clause that states that a pledge on movable intangible assets, except for papers to order or to bearer, shall be effected by a notification of such pledge to the party against whom the pledge shall be exercised.

The notification with respect to a pledge of shares is to be effected by recording the pledge in the Register of Shareholders of the company where the shares are pledged. Registration of the pledge in the register of the company is a requirement under the Company Law so that the company and any other party can be informed of the status of the relevant share.

In light of this, the registration of the pledge in the Register of Shareholders of the company perfects the establishment of the pledge.

**Does the pledgee need to deliver share certificates to perfect a pledge?**

In practice, it is common to deliver the share certificates to the Pledgee under a Pledge of Shares Agreement. Under the Company Law evidence of ownership of registered shares (as oppose to bearer shares) is left to be regulated in the Articles of Association of the Company. In many Articles of Association, the registration of a shareholder in the Share Register of the Company shall constitute complete evidence of the ownership of the shares as stated therein. Although share certificates are issued, such ownership of the shares is evidenced by the registration in the share register. Share certificates are in practice employed to provide additional comfort as to evidence of ownership - such that a party can readily demonstrate that it is the party registered as owner of the shares.

Delivery of share certificates is not required to create the pledge on registered shares, even if the pledge agreement requires such delivery. Creation of a pledge over registered shares is by “delivery” of the rights through the share pledge agreement and the notification to the company. Delivery of the share certificates is only a contractual term under the share pledge agreement.

In light of the above, delivery of shares certificate is only matter of “psychological” issues rather than legal issues.

**Is there any other security to secure shares?**

Unlike the old company law, the new company law (Law No 40 of 2007) specifically provides that other than pledge, shares can also be secured by way of fiduciary securities.

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