

CLIENT UPDATE:

AUGUST 2016

## NEW GOVERNMENT REGULATION REDEFINING AUTHORIZED CAPITAL OF LIMITED LIABILITY COMPANIES

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### Background

Government of the Republic of Indonesia has enacted Government Regulation No. 29 of 2016 regarding Amendment to Authorized Capital of Limited Liability Companies ("**GR 29/2016**"), which came into effect on 14 July 2016.

GR 29/2016 is intended to implement Article 32 (3) of Law No. 40 of 2007 regarding Limited Liability Companies ("**Company Law**"), which states that any amendments to the amount of authorized capital of limited liability companies as provided in Article 32 (1) of the Company Law, i.e., IDR 50 million at the minimum, shall be determined by a government regulation.

GR 29/2016 redefines the minimum amount of authorized capital of limited liability companies, providing a sole right to the founders of companies to freely set their own authorized capital based on their mutual agreements, subject to the minimum capital requirements applicable to certain line of business (e.g., banking, insurance, financing, etc.) or type of the company (e.g. foreign investments company (PMA)).

GR 29/2016 revokes and replaces Government Regulation No. 7 of 2016 ("**GR 7/2016**"), which regulated the similar matter, as previously elaborated in our client update of April 2016.

### Minimum Authorized Capital

GR 29/2016 provides the full right and authorization to the founders of a limited liability company to determine the amount of authorized capital of the company solely based on their mutual agreements, which shall be stipulated under the articles of association contained in the company's deed of establishment.

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This means that the requirement for limited liability companies to have a minimum authorized capital of IDR 50 million as stated in Article 32 (1) of the Company Law is no longer applicable. GR 29/2016, however, states that the minimum amount of authorized capital of limited liability companies engaging in certain business activities, e.g., banking (IDR 3 trillion)<sup>1</sup>, insurance (IDR 100 billion), etc., must comply with the prevailing laws and regulations governing such activities.

Previously, GR 7/2016 required all or one of the founders of a limited liability company to have a net worth in line with the criteria of the micro, small, and medium enterprises, to enjoy the freedom of determining the authorized capital of the company. This requirement is no longer applicable under GR 29/2016.

### Other provision

In line with the Company Law, GR 29/2016 still requires the founders of a limited liability company to pay in full, at least, 25% of the authorized capital of the company at the time of its establishment.

Proof of such payment must be submitted electronically to the Minister of Law and Human Rights no later than 60 days as of the signing date of the deed of establishment of the company. In practice, the submission will be undertaken by the notary appointed by the founders to prepare the deed of establishment.

### Commentary

As described in the general elucidation of GR 29/2016, the amendment to the amount of authorized capital of limited liability companies, initially from the mandatory of at least IDR 50 million to an amount to be determined freely based on agreements among the founders, is aimed at honoring the freedom of contract principle (*Asas Kebebasan Berkontrak*) as provided under the Indonesian civil law. Ultimately, the amendment aims to provide the ease of doing business to start-up entrepreneurs.

However, in our view, GR 29/2016 will not affect the establishment of certain business (e.g. insurance companies, banks etc.) or foreign investment companies (PMA) as they will need to comply with more provisions on minimum capitalization for each sector, or policies on investment amounts for foreign direct investment.

<sup>1</sup> Subject to qualification of the bank.

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This client update is intended to give an overview only on several provisions, and may not cover all provisions of GR 29/2016. Please do not hesitate to contact us if you need a more detailed advice, or have specific questions.

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