THE MERGER, CONSOLIDATION, AND ACQUISITION OF THE LIMITED LIABILITY COMPANY
(Government Regulation No. 27/1998, dated February 24, 1998)

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering :

a. that in cultivating and developing business for being capable of facing the flow of economic globalization, it is deemed necessary to create a sound and efficient business atmosphere;
b. that to create a sound and efficient business atmosphere, a step can among other things be taken by way of merger, consolidation, or acquisition of the limited liability company.
c. that the merger, consolidation, or acquisition of the limited liability company, shall always care for the interests of the company, shareholders, third parties, corporate employees and the public;
d. that under the considerations as intended in points a, b, and c, and the implementation of Law No. 1/1995 on the Limited Liability Company, it is necessary to stipulate a Government Regulation on the Merger, Consolidation, and Acquisition of Limited Liability Companies;

In view of :

1. Article 5, paragraph (2), of the 1945 Constitution;
2. Law No. 1/1995 on the Limited Liability Company (Statute Book No. 13 of 1995, Supplement to Statute Book No. 3587).

DECIDES :

To stipulate :

THE GOVERNMENT REGULATION ON THE MERGER, CONSOLIDATION, AND ACQUISITION OF LIMITED LIABILITY COMPANIES

CHAPTER I
GENERAL PROVISIONS
Article 1

In this Government Regulation, what is meant by :

1. Merger is a legal action taken by one company or more to join another existing company, and thereafter the company/companies that has/have merged, ceases/cease to exist.
2. Consolidation is a legal action taken by two companies or more for a fusion by way of establishing a new company, and each of the companies concerned ceases to exist.
3. Acquisition is a legal action taken by a legal body or an individual for the taking over of the whole or the bigger part of the shares of a company, which can result in the transfer of control of the company concerned.
4. Minister is the Minister of Justice.

Article 2

Merger and Consolidation as stipulated in this Government Regulation, shall be carried out without a liquidation process beforehand.

Article 3

The merger and Consolidation processed without liquidation as meant in Article 2, shall result as follows:

a. the shareholders of the merging company or the amalgamating company, become the shareholders of the company receiving the merger or the company formed by the Consolidation;
b. the assets and liabilities of the merging or amalgamating company, are, for the sake of law, transferred to the company receiving the merger or the company resulting from the amalgation.

CHAPTER II
CONDITIONS FOR MERGER, CONSOLIDATION, OR ACQUISITION OF LIMITED LIABILITY COMPANIES.
Article 4

(1) The merger, Consolidation and acquisition can only be carried out by caring for :
   a. the company's interests, minority shareholders, and employees concerned;
   b. public interests and sound competition in the running of business.

(2) The.....

(2) The merger, Consolidation and acquisition shall not reduce the minority shareholders' rights to sell their shares at a proper price.
(3) A shareholder who does not agree with the resolution of the General Meeting of Shareholders on the Merger, Consolidation, and Acquisition, can only reserve his/her rights to demand that the shares he/she owns, be sold at an appropriate price in accordance with the provisions in Article 55 of "Law No. 1/1995 on the Limited Liability Company.
(4) The realization of the rights as meant in paragraph (3) shall not stop the process of implementation of the merger, Consolidation, and acquisition.

CHAPTER III
PROCEDURES FOR THE MERGER, CONSOLIDATION, AND ACQUISITION
First Part
Merger
Article 7

(1) The Board of Executive Directors of the company to merge and of the company to receive the merger, shall respectively prepare a proposal for the planned merger.
(2) The proposals as meant in paragraph (1) shall receive approval from the Board of Directors and shall at least contain :
   a. the name and domicile of the company to merge;
   b. the reasons and explanations of each Board of Executive Directors of the company to merge, and the conditions of the merger;
   c. the procedures for conversion of the shares of each company to merge, into the shares of the company to result from the merger;
   d. the draft of amendment to the Articles of Association of the company to result from the merger;
   e. the balance sheets, profit/loss calculations for the last 3 (three) fiscal years of all the companies to merge; and
   f. items deemed to be known by each shareholder of each company, inter alia :
      1) a proforma balance sheet of the company to result from the merge, in accordance with the standard of financial accountancy, the estimation on the items related to the profits and losses, and the prospect of the company to be gained from the merger, on the grounds of evaluations by independent experts;
      2) a way for solving the status of employees of the company to merge;
      3) a way for solving the company's rights and obligations with third parties;
      4) a way for solving the rights of shareholders who do not agree with the merger of the company;
      5) the organization, salaries, and other allowances for the Board of Executive Directors and the Board of Directors of the company to result from the merger;
      6) an estimation of the time for implementation of the merger;
      7) a report on the situation and operations of the company and the results achieved;
      8) main activities of the company and amendments during the current fiscal year;
      9) the specification of problems arising during the current fiscal year;
      10) the names of members of the Board of Executive Directors and the Board of Directors; and
      11) the salaries and other allowances for the members of the Board of Executive Directors and the Board of Directors.

Article 8

If the company to merge is bound to one group or inter groups, the proposed plan for merger shall contain a consolidated balance sheet and proforma balance sheet of the company to result from the merger.

Article 9

The proposal as meant in Articles 7 and 8, shall constitute data for preparing the Draft of Merger jointly formulated by the Board of Executive Directors of the company to merge.

Article 10

The draft as meant in Article 9, shall at least contain the items stipulated in the proposed plan for the merger as meant in Articles 7 and 8.

Article 11

Beside containing the items as meant in Article 10, the Draft of Merger, shall contain confirmation from the company to receive the merger, on the acceptance of the transfer of all the rights and obligations of the company to merge.

Article 12

The summary of the Draft for Merger as meant in Article 10, shall be published by the Board of Executive Directors in 2 (two) daily papers, and be notified in writing to the employees of the company to merge, at the latest 14 (fourteen) days before the summon for a General Meeting of Shareholders of the company to merge.

Article 13

(1) Approval for the Draft of Merger as meant in Article 10, together with the draft of the Deed of Merger, shall be asked from the General Meeting of Shareholders of each company.
(2) The Draft of the Deed of Merger already approved by the General Meeting of Shareholders as meant in paragraph (1), shall be put in the Deed of Merger executed in the presence of a notary in the Indonesian language.

Article 14

(1) If the merger of the company is carried out through an Amendment to the Articles of Association as meant in Article 15, paragraph (2), of Law No. 1/1995, the merger shall come into force as from the date of Ministerial approval for Amendment to the Articles of Association.
(2) If the merger of the company is carried out together with an Amendment to the Articles of Association, which does not require approval from the Minister, then the merger shall come into force as from the date of registration of the Deed of Merge and the Deed of Amendment to the Articles of Association, in the Directory of Companies.
(3) If the merger of the company is carried out without Amendment to the Articles of Association, then the merger shall come into force as from the date of signing of the Deed of Merge.

Article 15

(1) If the merger of the company is carried out in accordance with the provisions in Article 14, paragraph (1), the Board of Executive Directors of the company to receive the merger, shall submit an application for Amendment to the Articles of Association to the Minister, and register it in the Directory of Companies, and get it published in the Supplement to the Indonesian State Gazette, after receiving approval from the Minister.
(2) If the merger of the company is carried out in accordance with the provisions under Article 14, paragraph (2), the Board of Executive Directors of the company to receive the merger, shall report the Deed of Merger of the Company and the Deed of Amendment to the Articles of Association to the Minister, and register the company in the Directory of Companies, and get it published in the Supplement to the Indonesian State Gazette.

Article 16

(1) The application for approval as meant under Article 15, paragraph (1), shall be submitted in writing to the Minister by attaching the Deed of Amendment to the Articles of Association and the Deed of Merger.
(2) The approval as meant in paragraph (1), shall be given at the latest 60 (sixty) days after receipt of the application.
(3) If the application is refused, the refusal shall be notified to the applicant in writing, mentioning the reasons for it, within a period indicated in paragraph (2).

Article 17

The application for approval of Amendment to the Articles of Association or the submission of report on the Deed of Merger of the company and Deed of Amendment to the Articles of Association as meant under Article 15, shall be carried out at the latest 14 (fourteen) days after the resolution of the General Meeting of the Shareholders.

Article 18

(1) If the merger of the company is carried out in accordance with the provisions under Article 14, paragraph (1), then the company to merge is dissolved, as from the date of the approval for Amendment to the Articles of Association by the Minister.
(2) If the merger of the company is carried out in accordance with the provisions under Article 14, paragraph (2), then the company to merge is merged as from the date of the registration of the Deed of Merge and the Deed of Amendment to the Articles of Association in the Directory of Companies.

(3) If ...

(3) If the merger of the company is carried out in accordance with the provisions under Article 14, paragraph (3), then the company to merge is merged as from the date of the signing of the Deed of Merge.

Article 19

(1) As from the date of the signing of the Deed of Merge as meant under Article 13, paragraph (2), the Board of Executive Directors of the company to merge, shall not take a legal action unless deemed necessary in the context of the implementation of the merger.
(2) A breach of the provision meant in paragraph (1) shall be the responsibility of the Board of Executive Directors of the company concerned.

Second Part
Consolidation
Article 20

The provisions as meant in Articles 7, 8, 9, 10, 11, 12, and 13 shall also be valid for the legal action, Consolidation.

Article 21

(1) The founder of the company resulting from Consolidation shall be the company wishing to amalgamate.
(2) The shareholders of the company to be founded as meant in paragraph (1) shall be the shareholders of the company wishing to amalgamate.
(3) The assets of the company to be founded as meant in paragraph (1) shall be the entire assets of the company wishing to amalgamate.

Article 22

(1) The Deed of Consolidation made in accordance with the provisions as meant in Article 13, paragraph (2) shall become the basis for formulating the Deed of Establishment of the company amalgamated.
(2) The Board of Executive Directors of the company amalgamating, shall submit an application for legalization of the Deed of Establishment of the amalgamated company to the Minister, at the latest 14 (fourteen) days after the date of Resolution of the General Meeting of Shareholders, and shall exercise registration in the Directory of Companies, and get it published in the Supplement to the State Gazette after receiving approval from the Minister.
(3) The application for legalization of the Deed of Establishment as meant in paragraph (2), shall be submitted in writing to the Minister by attaching the Deed of Consolidation.
(4) The Minister shall legalize the application as meant in paragraph (3) at the latest 60 (sixty) days after receiving the application.
(5) If the application is refused, the refusal shall be notified to the applicant in writing, mentioning the reasons for it, as meant in paragraph (4).

Article 23

The amalgamating company shall be dissolved as from the date of legalization of the Deed of Establishment of the amalgamated company by the Minister.

Article 24

(1) As from the date of the signing of the Deed of Consolidation as meant in Article 22, the Board of Executive Directors of the merging companies, shall not take a legal action unless deemed necessary in the context of the implementation of the Consolidation.
(2) A breach of the provision meant in paragraph (1) shall be held responsible by the Board of Executive Directors of the company concerned.

Article 25

The provisions in Article 11 of Law No. 1/1995 on the Limited Liability Company, shall also apply to the legal actions taken before legalization by the Minister of the Deed of Establishment of the amalgamated company.

Third Part
Acquisition
Article 26

(1) The party desiring acquisition shall notify its intent to the Board of Executive Directors of the company to be acquired.
(2) The Board of Executive Directors of the company to be acquired and the party desiring acquisition, shall respectively prepare a proposal for the plan of acquisition.

(3) The proposals as meant in paragraph (1), shall respectively receive approval from the Board of Directors of the company to be acquired and the company to acquire or a similar body of the party to acquire, and shall at least contain :

a. the name and domicile of the company and other legal body, or identity of the individual to acquire;
b. the reasons and explanations of each of the Board of Executive Directors of the company to acquire, the management of the legal body or the individual to acquire;
c. an annual report, especially the annual calculation of the latest fiscal year of the company and the other legal body to exercise the acquisition;
d. the procedures for conversion of the shares of each of the companies to acquire, if payment of the acquisition is made by using shares;
e. a draft of amendment to the Articles of Association of the company resulting from the acquisition;
f. the total shares to be acquired;
g. the readiness of funds;
h. a proforma joint balance sheet of the company resulting from the acquisition, prepared in accordance with the standard of financial accountancy, the estimation on the items related to the profit and loss, and the prospect of the said company, on the grounds of evaluations by independent experts;
i. a way for solving the rights of shareholders who do not agree with the acquisition of the company;
j. a way for solving the status of employees of the company to be acquired;
k. estimation of the time for implementation of the acquisition.

Article 27

The proposal as meant in Article 26, shall constitute data for preparation of the Draft of Acquisition to be jointly formulated by the Board of Executive Directors of the company to acquire and the party to be acquired.

Article 28

The draft as meant in Article 27, shall at least contain the items stipulated in the proposed plan for the acquisition as meant in Article 26.

Article 29

The summary of the Draft for Acquisition as meant in Article 27, shall be published by the Board of Executive Directors in 2 (two) daily papers, and be notified in writing to the employees of the company desiring the acquisition, at the latest 14 (fourteen) days before the summon for a General Meeting of Shareholders of each company.

Article 30

The draft of Acquisition shall receive approval from the General Meeting of Shareholders of the company to be acquired and the company to acquire or a similar body of the party to acquire.

Article 31

(1) The draft of Acquisition already approved as meant in Article 10, shall be put in the Deed of Acquisition.
(2) The Deed of Acquisition as meant in paragraph (1), shall be made in the presence of a notary in the Indonesian language.

Article 32

(1) If the acquisition of the company is carried out through an Amendment to the Articles of Association as meant in Article 15, paragraph (2), of Law No. 1/1995, on the Limited Liability Company, the acquisition shall come into force as from the date of approval for Amendment to the Articles of Association by the Minister.
(2) If the acquisition of the company is carried out together with an Amendment to the Articles of Association, which does not require approval from the Minister, then the acquisition shall come into force as from the date of registration of the Deed of Acquisition in the Directory of Companies.
(3) If the acquisition of the company is carried out without causing Amendment to the Articles of Association, then the acquisition shall come into force as from the date of signing of the Deed of Acquisition.

CHAPTER IV
OBJECTION TO MERGER, CONSOLIDATION OR ACQUISITION OF COMPANIES

Article 33

(1) The Board of Executive Directors shall deliver by registered mail, the draft of Merger, Consolidation or Acquisition, to all creditors, at the latest 30 (thirty) days before the summon of the General Meeting of Shareholders.

(2) The.....

(2) The creditors can file an objection to the company at the latest 7 (seven) days before the summon of the General Meeting of Shareholders, which will make decision on the Merger, Consolidation or Acquisition already put in the draft.
(3) If within the period as meant in paragraph (2) the creditors do not file an objection, the creditors shall be considered as having agreed with the merger, Consolidation or acquisition.
(4) The objection of the creditors as meant in paragraph (2), shall be delivered to the General Meeting of Shareholders for solution.
(5) As long as the solution as meant in paragraph (4) has not been obtained, the merger, Consolidation or acquisition cannot be realized.

CHAPTER V
OTHER PROVISIONS
Article 34

(1) The Board of Executive Directors of the company resulting from the Merger or Consolidation, shall announce the results of the merger or Consolidation in 2 (two) daily papers at the latest 30 (thirty) days after the date of enforcement of the merger or Consolidation.
(2) The provision as meant in paragraph (1), shall also apply to the Board of Executive Directors of a company having certain assets, which exercises acquisition.
(3) The value of the company's assets as meant in paragraph (2), shall be stipulated by a Ministerial Decision.

Article 35

(1) In performing its duties, in the context of merger, Consolidation or acquisition, the Board of Executive Directors of the company acts exclusively in the interests of the company.
(2) If there is a conflict of interests between the company and the Board of Executive Directors, the Board of Executive Directors shall reveal the matter in a proposal for the plan or draft of the Merger, Consolidation and Acquisition.
(3) The provision as meant in paragraphs (1) and (2), shall also apply to the Board of Directors.

CHAPTER VI
CLOSING
Article 36

This Government Regulation applies to the merger, Consolidation or acquisition of a company without prejudice to the other regulations and legislation stipulating specifically the merger, Consolidation and acquisition of a company.

Article 37

This Decree comes into force as from the date of stipulation.

For public cognizance, this Government Regulation shall be promulgated by publishing it in the Statute Book of the Republic of Indonesia.

Promulgated in Jakarta
on February 24, 1998
THE MINISTER/STATE SECRETARY
sgd.
MOERDIONO

Stipulated in Jakarta
on February 24, 1998
THE PRESIDENT OF THE REPUBLIC
OF INDONESIA
Sgd
SOEHARTO

STATUTE BOOK OF THE REPUBLIC OF INDONESIA OF 1998 NO. 40

ELUCIDATION .....
(to be continued)

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THE MERGER, CONSOLIDATION, AND ACQUISITION OF THE LIMITED LIABILITY COMPANY
(Government Regulation No. 27/1998, dated February 24, 1998)
(Continued from Business News No..6136/6137 pages 6A-11A)

ELUCIDATION
OF
GOVERNMENT REGULATION NO. 27/1008
ON
THE MERGER, CONSOLIDATION, AND ACQUISITION OF THE LIMITED LIABILITY COMPANY

GENERAL

The existence of Perseroan Terbatas (the Limited Liability Company) in the business world and trade is very important and strategic for bilizing and directing the development activities in the economic field, especially in the framework of facing the flow of globalization and liberalization of the more complex world economy. Therefore, it is necessary to seek a sound and efficient business atmosphere, so that as fairly independent opportunity is open to Perseroan Terbatas to grow and develop more dynamically in line with the development of the business world.

Nevertheless, in trying to create a sound and efficient business atmosphere in the context of enhancing the economic development, its process shall continue to refer to the principles of the national economic development which springs from the ethics of cooperation as intended by Article 33 of the 1945 Constitution.

Based on the above reasoning, the endeavors to create a sound and efficient atmosphere, shall not cause one group or a certain group to control the economic resources and to become the center of the economic power. Therefore, the action of merger, consolidation, and acquisition of a company/companies which can lead to monopoly, monopsony or dishonest competition, shall be avoided from the beginning, in other words the action of merger, consolidation and acquisition shall continue to pay attention to the company's interests, shareholders, employees, or the public including third parties concerned.

Though in Law No. 1/1995 on Perseroan Terbatas the principles on the legal action of merger, consolidation, and acquisition of Perseroan Terbatas have been stipulated, more specified conditions and procedures for the process of merger, consolidation, and acquisition, need to be furthermore stipulated in a Government Regulation.

The materials to be regulated in the Government Regulation cover the conditions, procedures, preparation of plan for the merger, consolidation, and acquisition, obligation to announce, notification to employees, items to be contained in the draft of merger, objections to the draft of the merger and the rights to apply for the cancellation of the action of merger, consolidation, and acquisition of the Perseroan Terbatas.

ARTICLE BY ARTICLE

Article 1

Figures 1 and 2

Sufficiently clear

Figure 3

The notion of "the bigger part" here covers either more than 50 % (fifty percent) or a certain amount bigger than that of the ownership of share of other shareholders.

For the company to be acquired (taken over), the shares to be acquired are the shares issued including those re-purchased by the company by virtue of the provisions in Article 30 of Law No. 1/1995 on Perseroan Terbatas.

As payment or compensation, the company to acquire shall give the shareholders of the company to be acquired :

a. money.....

a. money and/or
b. non-money, consisting of :
1. things or other assets;
2. shares already issued or new shares to be issued by the company to acquire or another company.

Figure 4

Sufficiently clear

Article 2

Sufficiently clear

Article 3

The effective date of enforcement of the merger and consolidation as meant in letters a and b, shall be regulated in Articles 14 and 18.

Article 4

Paragraphs (1) and (2)

Sufficiently clear.

Paragraph (3)

By emphasizing this provision, the rights of a shareholder who does not agree, shall follow the provisions in Article 55 of "Law No. 1/1995 on the Limited Liability Company, not in Article 54 of that Law. This is so, because Article 55 constitutes a provision specifically designed for shareholders undergoing a certain event, inter alia if there is a merger, consolidation, and acquisition.

Paragraph (4)

Sufficiently clear.

Article 5

This provision is the realization of the agreement's legal principles. In this case creditors are the creditors of the company to merge or to consolidate or to acquire and to be acquired.

Article 6

Sufficiently clear.

Article 7

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Letters a to c

Sufficiently clear.

Letter d

The draft of amendment to the Articles of Association of the company, in this case, shall be attached only if the proposal for the merger brings about an amendment to the Articles of Association.

Letters e and f

Sufficiently clear.

Articles 8 to 12

Sufficiently clear.

Article 13

Paragraph (1)

The draft of the Deed of Merger, shall contain the essentials of all items contained in the Draft of Merger.

Paragraph (2)

Sufficiently clear.

Article 14

Paragraph (1)

Sufficiently clear.

Paragraph (2)

What is meant by the "Directory of Companies" is a directory as meant in Law No. 3/1982 on the Obligation of Corporate Registration.

Paragraph (3)

Sufficiently clear.

Articles 15 to 20

Sufficiently clear.

Article 21

Paragraphs (1) and (2)

Sufficiently clear.

Paragraph (3)

In this case, "the assets" means the whole assets of the company contained in the assets column ("aktiva") of the latest balance sheet approved by the General Meeting of Shareholders.

Articles 22 to 25

Sufficiently clear.

Article 26

Paragraph (1)

In this case "the party" can mean a company, a non-company legal body, or an individual.

Paragraph (2)

As far as procedure is concerned, in this case the provisions on the acquisition, constitute a further clarification of the provisions in Article 103, paragraphs (3), (4), and (5) of Law No/1/1995 on the Limited Liability Company, i.e. an acquisition carried out by involving the Board of Executive Directors of the company to be acquired, and that of the party to acquire.

Paragraph (3)

Letter a

What is meant by "identity" is at least full name, place and date of birth, occupation, address, and citizenship of the person concerned.

Letters b to d

Sufficiently clear.

Letter e

The draft of amendment to the Articles of Association of the company, in this case, shall be attached only if the proposal for the merger brings about an amendment to the Articles of Association.

Letters f to k

Sufficiently clear.

Article 30

Example of a similar body of the party to acquire is : Meeting of Members in a Cooperative.

Articles 31 and 32

Sufficiently clear.

Article 33

Paragraph (1)

This provision does not omit the possibility of The Board of Executive Directors to notify the creditors earlier by delivering the draft of Merger, consolidation or acquisition.

When delivering the said draft, the date of the summon of the General Meeting of Shareholders shall also be mentioned.

Paragraphs (2) and (3)

Sufficiently clear.

Paragraph (4)

In this case "solution" shall not necessarily mean an instant re-payment of the debt, but can also mean an agreement on the solution of the creditors' objection.

Paragraph (5)

Sufficiently clear.

Article 34

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Announcement in this case is made by the party to acquire.

Paragraphs (3)

Sufficiently clear.

Article 35

Sufficiently clear.

Article 36

In principle, the legal action in the context of merger and consolidation carried out by companies, and the acquisition of a company, shall abide by this Government Regulation, unless there are special provisions which regulate companies in line with their characteristics and activities, like regulations and legislation in the field of banking and capital market.

Article 37

Sufficiently clear.