



OJK - Corporate Governance Guideline for Public Companies

Summary of key recommendations

April 2016

KPMG Siddharta Advisory
kpmg.com/id



Introduction

Until recently, Indonesia had adopted an 'ethics-based' approach to corporate governance, which encouraged, rather than mandated, all companies to comply with Indonesia's Code of Good Corporate Governance published in 2006 (GCG Code)¹. The GCG Code is not legally binding and its adoption is voluntary, resulting in a divergence of corporate governance practices and disclosures.

The Financial Services Authority (OJK), the regulatory agency that oversees Indonesia's financial and capital market sector, is committed to improving the transparency, consistency and oversight of governance practices among Indonesian listed companies. To reflect this commitment, OJK released the Indonesia Corporate Governance Roadmap in 2014, which outlined major reforms to improve corporate governance standards, especially among Issuers and Public Companies. One of the reforms identified in the Roadmap was the application of the 'comply or explain' approach to corporate governance.

In November 2015, OJK issued regulation POJK No. 21/POJK.04/2015 that mandates public companies to 'comply or explain' with regard to the newly released Corporate Governance Guideline for Public Companies – "OJK-CG Guideline", which is benchmarked against internationally accepted principles. It was published as an attachment to an OJK Circular Letter. Public Companies will be required to disclose their adherence or explain reasons for non-compliance beginning in their 31 December 2016 Annual Reports. Given the limited timeframe for compliance and the extent of changes required, public companies should thoroughly review their corporate governance practices and take concrete steps to implement the new recommendations as early as possible.

This brochure summarizes the OJK-CG Guideline recommendations, compares them to the GCG Code and identifies key actions that companies should take, not only to ensure compliance, but also to improve their corporate governance practices.

Summary of Key Changes

Topic	Principle	Level of Change
Protecting Shareholders' Rights	1. Increasing the Effectiveness of Annual General Meeting of Shareholders (AGM) Implementation	Moderate
	2. Improving Communication with Shareholders	Moderate
Function and Role of the Board of Commissioners (BoC)	3. Strengthening the BoC's Membership and Composition	Minimal
	4. Improving the Quality of Implementation of the BoC's Roles and Responsibilities	Significant
Function and Role of the Board of Directors (BoD)	5. Strengthening the BoD's Membership and Composition	Minimal
	6. Improving the Quality of Implementation of the BoD's Roles and Responsibilities	Significant
Participation of Stakeholders	7. Improving Corporate Governance through Stakeholders' Participation	Moderate
Information Disclosure	8. Improving Information Disclosure	Significant

- Minimal – slightly modified from the 2006 GCG Code
- Moderate – strengthened from the 2006 GCG Code
- Significant – new requirement or previous recommendation from the 2006 GCG Code that has been greatly strengthened

¹The GCG Code provides "reference points for all companies in Indonesia" and serves as "a minimum standard" for companies in their implementation of corporate governance practices.

Summary of key changes

Principle 1: Increasing the Effectiveness of Annual General Meeting of Shareholders (AGM) Implementation		Moderate
Overview	Comment	
Recommendation 1.1 Voting Procedures <p>Public Companies should have the means or technical procedures for either open (show of hands) or closed (voting card or electronic) voting that promotes independence and the interests of the shareholders.</p>		<p>While the GCG Code mentions the importance of the AGM and ensuring proper preparation to enable the adoption of valid decisions (Part IV.A.2), the OJK-CG Guideline requires companies to establish and disclose the technical voting procedures.</p> <p>Action: Review voting procedures and adopt closed voting where possible to enhance accuracy and preserve confidentiality of voting.</p>
Recommendation 1.2 BoC and BoD Presence at AGM <p>All members of the BoC and the BoD should be present at the AGM.</p>		<p>While the GCG Code mentions the BoD as being responsible for the conduct of the AGM (Part IV.A.3), the OJK-CG Guideline requires all members of the BoC and the BoD to be present to respond to shareholders' questions or concerns.</p> <p>Action: Communicate the new requirement to BoC and BoD members, include the AGM in the annual BoC and BoD Calendar and brief Commissioners and Directors in advance on all aspects of the AGM.</p>
Recommendation 1.3 AGM Minutes - Timeliness and Availability <p>Summaries of AGM minutes (in Indonesian and English) should be made available at least 2 days following the AGM on the company's website for at least one year.</p>		<p>While the GCG Code mentions the need for AGM minutes to be available for shareholders to view (Part IV.A.2.5), the OJK- CG Guideline has strengthened the timeliness and accessibility of the minutes.</p> <p>Action: Review the Corporate Secretariat capabilities and resources to ensure timely completion of minutes within 2 days of the AGM. Review and update the company's website to ensure ease of access to the AGM minutes.</p>
Principle 2: Improving Communication with Shareholders		Moderate
Overview	Comment	
Recommendation 2.1 Communication Policy with Shareholders/ Investors <p>Public Companies should develop a communication policy capturing protocols for communicating with shareholders/ investors.</p>		<p>While the GCG Code briefly mentions investor relations as one of the functions of the Corporate Secretary (Part IV.D.3.4), the OJK-CG Guideline requires companies to develop and implement a communication policy with their shareholders/ investors.</p> <p>Action: Review the existing shareholder/investor relations policy (if any) and update or establish a communication policy to include a strategy and specific programs to promote two-way, regular and forthcoming communications with shareholders/ investors.</p>

Overview	Comment
Recommendation 2.2 Disclosure of Communication Policy Public Companies should disclose the communication policy on the company's website.	Action: The communication policy should be published on the company's website to convey details on how shareholders/investors can obtain pertinent information on the company (e.g. annual reports, company's performance, corporate governance practice, disclosure policy, etc.) and how they can provide feedback to the company if they wish to do so.

Principle 3 and Principle 5: Strengthening the BoC and BoD's Membership and Composition	Minimal
--	----------------

Overview	Comment
Recommendation 3.1 and 5.1 Size of the BoC and BoD In determining the size of BoC and BoD, Public Companies should take into account the individual conditions and characteristics of the company.	While the GCG Code recommends that the size of BoC and BoD should suit the complexity of the company's business while taking into account effective decision making (Part IV.C.1.1 and D.1.1), the OJK-CG Guideline requires companies to disclose that they have considered the scope and nature of their operations, business requirements and companies' objectives in determining the size of the BoC and BoD, which should not be so large as to affect their performance. Action: OJK Regulation No. 33/POJK.04/2014 requires the BoC and BoD of Public Companies to comprise of at least 2 people each. The BoC and BoD should regularly examine their size to ensure that each can continually discharge its function in an effective, efficient and independent manner.

Recommendation 3.2 and 5.2 Composition of the BoC and BoD In determining the composition of the BoC and BoD, Public Companies should take into account the required diversity of skills, knowledge and experience.	While the GCG Code recommends that members of the BoC and BoD should be professionals who possess the capability and integrity to carry out their duties (Part IV.C.2 and D.2), the OJK-CG Guideline requires companies to disclose that they have taken into account the required diversity of skills, knowledge and experience in determining the BoC and BoD composition. Action: The BoC and BoD should regularly review their composition to ensure that their members collectively possess a balanced mix of backgrounds and competencies to avoid 'groupthink' and bring diversity to Boardroom discussions. Companies could develop a BoC/BoD competency skills matrix to identify the core skills that are critical to achieve the company's goals and objectives. Consider reviewing and expanding the search and nomination process, not only to encourage greater diversity, but to address any gaps in skills.
--	---

Principle 4 and Principle 6: Improving the Quality of Implementation of the BoC and BoD's Roles and Responsibilities	Significant
---	--------------------

Overview	Comment
Recommendation 4.1 and 6.1 Self-Assessment Policy The BoC and BoD should have a self-assessment policy to evaluate their performance.	While the GCG Code recommends companies to disclose the mechanism and criteria used to assess the performance of the BoC and BoD members (Part VII.3.1 and 3.2), the OJK-CG Guideline requires companies to disclose that they have developed self-assessment policies to hold the BoC and BoD accountable for their performance collectively. Action: The BoC and BoD should create a self-assessment policy that includes the objective and purpose of the self-assessment, regular timing for evaluation, methods of assessment, objective performance criteria that promote long-term shareholder value and protocols for addressing sub-standard performance.

Overview	Comment
Recommendation 4.2 and 6.2 Disclosure of Self-Assessment Policy <p>The self-assessment policy should be disclosed in the Annual Report.</p>	Action: Disclose the self-assessment policy in the Annual Report to promote transparency and accountability. Consider linking performance evaluation results with remuneration of BoD members. Utilize performance evaluation in making decisions on BoC and BoD reappointments.
Recommendation 4.3 and 6.3 Policy on Financial Crimes <p>The BoC and BoD should have a policy requiring their members to resign if found to be involved in financial crimes.</p>	Action: Develop a policy that clearly states the definition of financial crimes, the fiduciary duties of Commissioners and Directors, protocols for reporting breaches and resignation procedures. Review the company's Code of Ethics to ensure alignment with the financial crime policy.
Recommendation 4.4 Succession Policy for Management <p>The BoC or its Nomination and Remuneration Committee should develop a succession policy for BoD members and management.</p>	<p>While the GCG Code states that the BoC and BoD assume mutual responsibility to ensure a fair and proper succession of management (Part IV.B.1.4), the OJK-CG Guideline also requires companies to develop and disclose that they have in place a succession policy for members of the BoD and management.</p> <p>Action: Develop a succession policy for BoD members and management to ensure business continuity and the company's long-term sustainability.</p>

Principle 5: Strengthening the BoD's Membership and Composition

Minimal

Overview	Comment
Recommendation 5.3 Knowledge of Accounting <p>The Director in charge of Accounting/Finance should have expertise and/or knowledge in the field of accounting.</p>	<p>While the GCG Code recommends that one of the Independent Commissioners to have an accounting or finance background (Part IV.C.1.3), the OJK-CG Guideline also requires the Director in charge of Accounting/Finance to have expertise and/or knowledge of accounting to provide assurance over the preparation of the company's financial statements.</p> <p>Action: Review the company's human resources policy to require at least one Director to have relevant education, certifications and/or professional experience in accounting. The policy should clearly define what is meant by expertise and/or knowledge of accounting. Provide Directors with relevant training programs.</p>

Principle 7 : Improving Corporate Governance through Stakeholders' Participation

Moderate

Overview	Comment
Recommendation 7.1 Policy on Insider Trading <p>Public Companies should have a policy to prevent insider trading².</p>	<p>While the GCG Code prohibits Commissioners, Directors, employees and shareholders from abusing any information related to the company, including information on plans for mergers and acquisitions as well as share buy-backs (Part III.3.5), the OJK-CG Guideline requires companies to have a preventive policy against insider trading, which involves the misuse of price or value sensitive company information that is not generally available to the public.</p> <p>Action: Establish an insider trading policy that clearly defines insider trading, the duties and responsibilities of Commissioners and Directors, protocols for reporting breaches and consequences for violating the policy.</p>

²Insider trading is strictly prohibited under the Capital Market Law No. 8/1995: Article 95-97

Overview	Comment
<p>Recommendation 7.2 Anti-Corruption and Anti-Fraud Policy</p> <p>Public Companies should have an anti-corruption and anti-fraud policy.</p>	<p>While the GCG Code prohibits Commissioners, Directors and employees from giving or receiving anything from authorities and resource providers who might influence their decision-making (Part III.3.3), the OJK-CG Guideline explicitly requires companies to create an anti-corruption and anti-fraud policy.</p> <p>Action: Create a policy that includes comprehensive programs and protocols intended to prevent corruption, kickbacks, fraud and bribery. The scope of the policy should reflect prevention against all forms of corruption and fraud. This policy can be a stand-alone or incorporated into the company's Code of Ethics.</p>
<p>Recommendation 7.3 Policy on Supplier Selection and Capacity Improvement</p> <p>Public Companies should have a policy on supplier selection and capacity improvement.</p>	<p>While the GCG Code encourages companies to establish procedures to ensure that any resource provider can exercise its rights and obligations (Part VI.2), the OJK-CG Guideline mandates companies to have a policy on supplier selection and capacity improvement to ensure the sustainability of their supply chains.</p> <p>Action: Establish and disclose a policy that defines critical suppliers, covers criteria for supplier selection, a transparent procurement mechanism, supplier capacity building, contingency planning to deal with the loss of critical suppliers and the fulfillment of supplier's rights.</p>
<p>Recommendation 7.4 Policy on Creditor's Rights</p> <p>Public Companies should have a policy to fulfill creditor's rights.</p>	<p>The GCG Code includes creditors in its definition of resource providers and encourages companies to establish procedures to ensure that any resource provider can exercise its rights and obligations (Part VI.2). The OJK-CG Guideline explicitly obligates companies to have a policy to guarantee the fulfillment of creditor's rights.</p> <p>Action: Establish and disclose a policy on the fulfillment of creditor's rights. As an example, the policy can impose a duty on Directors to act in the interest of creditors in case of insolvency or specify requirements for timely disclosures regarding the company's financial difficulties to achieve a consensual solution with the creditors.</p>
<p>Recommendation 7.5 Whistle-Blowing Policy</p> <p>Public Companies should have a whistle-blowing policy.</p>	<p>The GCG Code states that the BoC is responsible to receive and ensure that any complaints related to violations of business ethics, code of conduct, articles of association and regulations are processed properly and in a timely manner. Companies are also encouraged by the GCG to protect whistle-blowers (Part III.3.6). The OJK-CG Guideline requires companies to develop a whistle-blowing policy that covers the types of reportable violations, reporting mechanisms, whistle-blower protection and guarantee of confidentiality, complaints handling, complaints management and results/follow-up of the complaints' handling</p> <p>Action: Develop, disclose and educate key stakeholders regarding the company's whistle-blowing policy along with procedures for raising such concerns. Consider establishing a whistle-blowing hotline to allow key stakeholders to report concerns anonymously.</p>

Overview	Comment
Recommendation 7.6 Policy on Long-Term Incentives <p>Public Companies should have a policy to provide long-term incentives to Directors and employees.</p>	<p>Long-term incentive schemes are encouraged not only to attract and retain key talent but also to align individual performance with the company's long-term interest.</p> <p>Action: Assess the costs and benefits of long-term incentive schemes. Review and update the company's existing remuneration policy to include long-term incentive schemes (such as Employee Stock Ownership Programs), specifying eligibility requirements and terms/conditions of the schemes.</p>

Principle 8: Improving Information Disclosure		Significant
Overview	Comment	
Recommendation 8.1 Information Technology Enablement <p>Public Companies should utilize a broader range of information technology that goes beyond the company's website to facilitate information disclosure.</p>	<p>Channels for information disclosure play a critical role in facilitating an equal and timely access to information, including preventing selective disclosure and reducing barriers for shareholders/investors to access information.</p> <p>Action: Review the company's disclosure policy and approach. Define the company's key disclosure categories (including immediate disclosure of material information as well as statutory reporting requirements) and identify appropriate channels to prevent selective disclosure. Dissemination of pertinent information, including financial statements, company performance, ownership and shareholding, as well as corporate governance implementation, should be conducted in an accurate and timely manner.</p>	

Recommendation 8.2 Disclosure of Ultimate Beneficiaries of Shares Ownership <p>Public Companies should disclose the ultimate beneficiaries of shares ownership of at least 5%, in addition to disclosing the ultimate beneficiaries of shares owned by the majority and controlling shareholders.</p>	<p>Law 8/1995 on Capital Market (Article 87) requires shareholders owning 5% or more of shares in Public Companies to disclose such ownership and any changes in ownership. The OJK-CG Guideline mandates companies to disclose the ultimate beneficial owners of shares of at least 5% and shares owned by the majority and controlling shareholders.</p> <p>Action: Enhance the disclosure of shareholding ownership with information on beneficial ownership, particularly when major shareholdings are held through intermediary arrangements.</p>
---	---

Additional Resources:

► [KPMG Indonesia Board Governance Forum](#)

BGF is a dedicated forum focused on Board level challenges, insights and emerging hot topics.

To access the BGF website, please go to <http://www.kpmg.com/id/en/boardgovernance/pages/default.aspx>

► [KPMG Indonesia Board Governance Toolkit](#)

The Toolkit is an online resource dedicated to bring together the key governing requirements and examples of better practices across critical corporate governance areas. To download the Toolkit, please [click here](#).

Contact us

KPMG Siddharta Advisory

Advisory Services

35th Floor, Wisma GKBI

28, Jl. Jend. Sudirman

Jakarta 10210, Indonesia

T: +62 (0) 21 574 0877

F: +62 (0) 21 574 0313

Irving Low

Head of Risk Consulting

KPMG Singapore and Indonesia

irvinglow@kpmg.com.sg

Antonius Augusta

Partner, Risk Consulting

KPMG Indonesia

Antonius.Augusta@kpmg.co.id

kpmg.com/id

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG Siddharta Advisory, an Indonesian limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.