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Key-points on the Establishment and Organization of an Individual Company Under Ministry of Law and Human Rights Regulation No. 21 of 2021

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As Law No. 40 of 2007 on Limited Liability Company is amended by Law No. 11 of 2020 on Job Creation ("**Company Law**"), now there are 2 (two) types of limited liability company. Previously the Company Law set out that a company may only be established by a minimum of 2 (two) shareholders. However, under the current Company Law, 1 (one) person may establish a company. Given this, the requirements and procedures for the establishment and organization of an individual company will also need to be regulated differently.

In line with the above, Ministry of Law and Human Right issued a Regulation No. 21 of 2021 on Requirements and Procedures of Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entity ("**MOLHR Regulation 21/21**") on 30 April 2021. Thus, on this month's newsletter, we will focus on the discussion of some of the key-points regarding the qualification of an individual company and the requirements and procedures of the establishment, and organization of an individual company.

I. The "Birth" of An Individual Company

Before amendment, according to Article 1 paragraph 1 of the Company Law, a Limited Liability Company ("**Company**") is defined as a legal entity constituting capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and satisfies the requirements stipulated in the Company Law and its implementing regulations. Meanwhile, as per the amendment of the Company Law and the issuance of the MOLHR Regulation 21/21, under Article 1 paragraph 1 of MOLHR Regulation 21/21 a Company is now defined as a legal entity constituting capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares (in this newsletter hereinafter referred to as "**Regular Company**") **or individual legal entities which meet the criteria for Micro and Small Enterprises as regulated under the laws and regulations on Micro and Small Enterprises** (in this newsletter hereinafter referred to as "**Individual Company**").

In line with the above, Article 2 of MOLHR Regulation 21/21 states that (now) a Company consists of (i) capital partnership Company – i.e. the Regular Company; and (ii) Individual Company. Given this, under the new applicable laws and regulations, 1 (one) person may establish a Company as long as it meets the criteria of a micro and small enterprises and therefore, it marks the acknowledgement of an Individual Company in Indonesia.

II. Establishment, Amendment and Dissolution of Individual Company

In a way, an Individual Company is special compared to a Regular Company because, aside from its characteristic, the process of establishment, amendment and dissolution of an Individual Company also differ from Regular Company. We will explain further below.

A. Establishment

The establishment of an Individual Company is carried out based on an establishment statement made in Indonesian Language by the founder of the Individual Company. The establishment statement then must be registered to the Minister of Law and Human Right ("**MOLHR**"). Further under MOLHR Regulation 21/21, the establishment statement registration must be carried out electronically via Legal Entity Administration System (SABH). The proof of the registration will be issued electronically by the MOLHR in a form of establishment certificate. An Individual Company obtains its legal entity status after the establishment certificate is issued.

B. Amendment

We note that there are several types of amendment to an Individual Company, which are:

1. Amendment to the establishment certificate

   The amendment to the establishment certificate of an Individual Company may be carried out via the SABH. On the amendment to the establishment certificate, the MOLHR will issue an amendment statement.
2. Amendment to the status of the Individual Company

   According to Article 17 of MOLHR Regulation 21/21, an Individual Company must amend its status to become a Regular Company, if, among others, the shareholder of the Individual Company becomes more than 1 (one) person. Please note that this amendment must be made via a notarial deed and must be registered electronically.

C. Dissolution

Please note that the dissolution of an Individual Company may be carried out by filling in a format of dissolution statement via the SABH. The MOLHR then will record the expiry of the legal entity status of the Individual Company and will delete the name of the Individual Company from the company list since the dissolution statement is registered.

III. Financial Statement Report

Individual Company must report its financial statements to the MOLHR no later than 6 (six) months after the end of the on-going financial year.

According to Article 20 of MOLHR Regulation 21/21, an Individual Company which does not report its financial statements as above, will be subject to administrative sanctions from written warning, termination of access rights to the SABH, to revocation of legal entity status of the Individual Company.

The above key-points that we have conveyed are some of the note-worthy provisions of the MOLHR Regulation 21/21. It is also important to remember that, if you are interested to establish an Individual Company, please do consider (among other things) that (i) the founder must be an Indonesian Citizen; and (ii) it meets the criteria of Micro and Small Enterprises as regulated under the applicable laws and regulations of the Republic of Indonesia.

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