

## Is Board of Commissioners authorized to sign transactional documents on behalf of a company?

### Definition and Role of Board of Commissioners

Law Number 40 of 2007 regarding Limited Liability Company (“**Company Law**”) provides definition of the Board of Commissioners (BOC) which is the Company organ in charge of conducting supervision in general and/or in particular in accordance with the Company’s articles of association and providing advice to the Board of Directors (BOD).

Article 108 of the Company Law further stipulates that the BOC performs supervisory duties on management policy, the general performance of management, regarding both the Company and the Company’s business, and provides advice to the BOD. However, these roles and duties may be specified in the Company’s Articles of Association that are approved by the Company’s shareholders and not contradictory with the said stipulation. For instance, the BOC is entitled to check all books, agreements and company’s documents as well as to check financial conditions at any time.

Implementation of these roles and duties cannot be hindered by the BOD because the BOC and the BOD are basically company organs that have the same position with different functions. Both members of the BOD and the BOC are appointed and terminated by and has direct responsibility to the Company’s shareholders. Unlike the BOD, which allows each member of the BOD to act independently in carrying out its roles and duties, each member of the BOC cannot act individually in carrying out its roles and duties, except based on a decision of the BOC.

The accountability report of the BOC will generally be submitted to the Company’s Shareholders together with the Annual Report of the BOD at the holding of the Annual General Meeting of Shareholders. Company’s shareholders may require shorter reporting periods, either monthly, quarterly or half yearly from the BOC depending on the shareholders’ needs and considerations.

### Signing Transactional Documents

Transactional Documents means basic transaction documents (either self-made or from outside parties) that are used as a source of recording or preparation of financial reports by a business unit. For example, invoices, cash receipts, debit note, credit notes, checks and clearing account letter (*bilyet giro*).

### LEGAL ARTICLE



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The Indonesian Company Law does not specify the authority of the BOC to sign transactional documents. Each transactional document is a document used for the benefit of a third party and hence such documents must be signed by the authorized representative of a company. Although the BOC may provide their acknowledgement on certain transactional documents, it cannot be regarded as an official approval and does not legally bind third parties.

Article 92 (1) of the Indonesian Company Law provides authority to the BOD to carry out management of the Company for the benefit of the Company. Further, Article 98 (1) of the Indonesian Company Law stipulates that the BOD represents the Company within and outside the courts of justice. As signing transactional documents is considered as an operational business activity, this role should be performed by the BOD.

If the BOC involves in or intervene operational business activities, their action shall be deemed as 'ultra vires'. It means the BOC performs certain actions beyond their authority and responsibilities. As a consequence, the BOC shall personally responsible for his default or negligence in doing his duties according to Article 114 (3) of the Indonesian Company Law.

However, in the event that all members of the BOD have a conflict of interest with the Company and cannot represent the Company, then the BOC has the right to represent and take action in managing the Company as stipulated in Article 99 (2) (b) of the Indonesian Company Law. In this case, the BOC will automatically be entitled to sign any transactional documents on behalf of the Company.

From tax perspectives, a company can be represented by the 'Board' in terms of performing its tax rights and obligations. The definition of 'Board' is stipulated under elucidation of Article 32 of Law 28/2007 as follow:

*'People who obviously have the authority to determine policies and/or make decisions in terms of running company business activities, for example the one who is authorized to sign contracts with third parties, sign checks, etc. though such person is not listed in board composition stated in the deed of establishment and its amendment, considered in the sense of the board. The provision in this paragraph also apply to **board of commissioners** and majority or controlling shareholders.'*

Referring to the above, the BOC is also entitled to represent the Company to sign any transactional documents though tax compliance matter is part of daily business activities which normally performed by the BOD.

**B**oard of Commissioners has a significant role in carrying out the supervisory function over the policies and actions taken by the Board of Directors, but not specifically for signing transactional documents.