

General Meeting of Shareholders Goes Online

OJK finally issues the highly anticipated regulations on electronic general meeting of shareholders. These regulations are information-heavy, and we highlight the key changes below. But does it answer the question of whether a physical GMS is still required?

In light of the approaching deadline for public companies to hold their annual GMS, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) issued two new regulations this week on general meeting of shareholders (“**GMS**”) of public companies, namely OJK Regulation No. 15/POJK.04/2020 (“**POJK 15**”) and OJK Regulation No. 16/POJK.04/2020 (“**POJK 16**”).

POJK 15 and POJK 16 allow public companies to hold their GMS virtually (“**e-GMS**”) through an e-GMS system provided by an e-GMS provider. In addition, both regulations enable the granting of an electronic proxy (“**e-Proxy**”) through the e-GMS system. While we have discussed the e-proxy mechanism in our previous client update ([click here to read](#)), certain provisions have been adjusted in POJK 16 to facilitate the implementation of the e-GMS better.

POJK 15 revokes OJK Regulation No. 32/POJK.04/2014, as amended by OJK Regulation No. 10/POJK.04/2017 (“**Previous Regulation**”).

Is a Physical GMS still Required?

It might be surprising that the answer to this question is yes. Essentially, a public company is still required to hold a pared-down physical GMS, in addition to the e-GMS. This physical GMS must be attended by at least the chairman of the GMS, one member of the board of directors or board of commissioners and the capital market supporting professionals whose attendance is required for the GMS. The company can also limit the physical presence of shareholders based on any directive issued by the government or OJK’s approval.

Setting aside the above requirement, both regulations also introduces new concepts, some of which are relevant even outside of the Covid-19 pandemic. We detail below the other key changes.

E-GMS

Eliminating any doubt, POJK 16 now allows a public company to hold an e-GMS. In general, the GMS provisions under POJK 15 will apply to an e-GMS, unless otherwise specified in the POJK 16.

An e-GMS can be held via a platform developed and operated by an e-GMS provider, such as the Depository and Settlement Institution (i.e. KSEI) appointed by OJK or a third-party provider approved

by the OJK. OJK also gives companies the flexibility to develop their e-GMS platform. If a company chooses a third-party provider or develop its own system, such provider or system must be approved by the OJK, and must be connected to the Depository and Settlement Institution and the share registrar.

An e-GMS platform must have certain features to allow, among others, the shareholders to appoint a proxy and to cast votes virtually. In addition, the e-GMS provider must also set a standard operating procedure to be approved by OJK. Specifically for the Depository and Settlement Institution, it must have an SOP within six months after the enactment of POJK 16. Pending this SOP, the Depository and Settlement Institution can still provide the e-GMS service by relying on an agreement with its users (public companies, share registrar, shareholders and any other parties determined by the provider). The e-GMS provider will be liable for any losses that result from its fault or negligence in providing and managing the e-GMS system.

The virtual presence of shareholders via an electronic media, such as a video conference, will be considered as their physical presence. As such, it will be calculated in the attendance quorum. The votes of shareholders holding valid voting rights who are present virtually but do not cast a vote or abstain will be counted as validly present at the GMS and casting the same vote as the majority vote.

Public companies who have submitted their GMS agenda to OJK before the enactment of POJK 16 can also benefit from POJK 16.

Lock-Up, Invitation, Agenda and Disclosure

In normal circumstances, an annual GMS must be held by six months after the end of a company's fiscal year. Under POJK 15, the OJK now has the authority to set a different time limit for public companies to hold their annual GMS in the event of significant fluctuating market conditions. This follows the OJK's previous move in March 2020, where it extended the deadline for the annual GMS of public companies considering the Covid-19 pandemic.

POJK 15 also extends the lock-up period on the transfer of shares by shareholders who requested the GMS. Previously, the lock-up applies for six months after the date of the GMS. Now, the lock-up applies for six months after the date of the GMS announcement.

With respect to notification of the GMS agenda to the OJK, POJK 15 now explicitly states that the agenda must be disclosed 'clearly and in detail'. This means that if the agenda includes approval for corporate action, the company must disclose the detail of the transaction (including the counterparty and transaction value) in the notification.

In addition, the company must also disclose additional information in the GMS invitation. This additional information includes a statement that the shareholders can grant a power of attorney through the e-GMS system and that the GMS agenda can be downloaded through the company's website or the e-GMS system. If any change occurs to the GMS, whether with respect to the actual date or addition or

enhancement to the agenda, and such change is based on OJK's instruction, the company does not have to issue a revised GMS invitation unless OJK instructs otherwise.

All announcements, invitations and revisions (which must be in English and Indonesian) must be announced on the company's website and the IDX's website. If the company uses the e-GMS service from an e-GMS provider, this information must also be posted in the e-GMS provider's website.

E-Proxy

At least one business day before the GMS, the company must notify the shareholders of the alternative means to appoint a proxy via the e-Proxy system either through the company's website or the e-GMS provider's platform. If shareholders choose to use the e-Proxy system, they must indicate their votes on each of the GMS agenda. Any change to the designated proxy or vote can be made at the latest one business day before the GMS.

Parties that can act as a proxy are:

1. a participant administering the shareholders' accounts/sub-accounts;
2. a party arranged by the public company; or
3. a party appointed by the shareholder.

These parties must have the legal capacity and registered in the system of the e-GMS provider or the company (if the company decides to use its platform). The e-GMS provider or the company can determine the mechanism for registration, appointment, and revocation of the e-Proxy.

Quorum

POJK 15 confirms the quorum requirement for a material transaction and/or change of the company's main business activity. The attendance quorum is achieved if more than 50% of the shareholders holding validly issued shares of the company are present in the meeting. Meanwhile, resolutions approving a material transaction or change of main business activity can only be passed if such resolutions are approved by a majority of the total shareholders present and casting votes at the GMS, except for a material transaction in the form of a transfer of more than 50% of the company's total net assets, which has a higher quorum threshold.

POJK also sets a new requirement for the holding of a third GMS if the second GMS fails to achieve the necessary quorum. Here, the company must issue a request to OJK to convene a third GMS at the latest 14 days after the second GMS. Such request must include details of GMS quorum as governed under the company's articles of association, an attendance list of the first and second GMS, shareholders' register showing the shareholders eligible to attend the first two GMS, the company's to

meet the quorum in the second GMS, and targeted quorum for the third GMS and the reasoning for such quorum. A third GMS can only be convened based on OJK's approval.

Independent GMS

With respect to an independent GMS, it must now consider the new definition of the independent shareholder under POJK 15. Under POJK 15, an independent shareholder is a shareholder who has no personal economic interest in a certain transaction and is not a director, commissioner, substantial shareholder (as defined under the Indonesian Capital Markets Law) or controller (as defined under OJK Regulation No. 9 of 2018), or an affiliate of any of the foregoing persons.

This is a stricter definition compared to the previous definition, where independent shareholder means a shareholder having no conflicting economic interest irrespective of their share ownership.

Prior to attending the GMS, the independent shareholder must sign a statement letter with stamp duty, stating that they are, in fact, independent, and agreeing to be sanctioned if such statement is proven to be false.

Further, if permitted by the articles of association, the company can set a stricter quorum for the independent GMS.

Conclusion

Public companies must adjust their articles of association within 18 months from the enactment of POJK 15 to ensure that the provisions on GMS correspond to the new requirements under POJK 15.

At the time of publication, the government has issued various directives and regulations, all of which essentially limit public interaction and travel. There is no doubt that the current situation should warrant only the holding of an e-GMS and eliminating the physical GMS requirement. But, as neither POJK 15 nor POJK 16 states this explicitly, it remains to be seen whether public companies can choose to hold a purely virtual GMS.

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