
Indonesia: Public companies' general meetings of shareholders go electronic!

Overview

On 21 April 2020, the Financial Services Authority (**OJK**) issued:

1. OJK Regulation No.15/POJK.04/2020 on The Planning and Holding of General Meetings of Public Companies (**POJK 15/2020**); and
2. OJK Regulation No.16/POJK.04/2020 on The Implementation of Public Companies' Shareholders' General Meetings Electronically (**POJK16/2020**),

The above regulations aim to improve the effectiveness, efficiency and now public safety (in light of the COVID-19 crisis) of public company shareholders' general meetings (**GMS**) by enabling electronic systems' usage. POJK 15/2020 supersedes OJK regulation No.32/POJK.4/2014 of 2014 (as amended), which used to regulate public company **GMS (POJK 32/2014)**.

What is new?

POJK15/2020 contains various new provisions and modifies public companies' **GMS** governance. The changes to **GMS** governance and relevant new definitions are summarised below:

1. New provisions under POJK 15/2020
 - (a) **Electronic **GMS (e-GMS)****

POJK 15/2020 defines "e-GMS" as an electronic system or facility used to support public company **GMS**.
 - (b) **New procedures for **GMS** that require the independent shareholders' vote**

POJK 15/2020 provides new procedures for conducting **GMS** in which an agenda item requires independent shareholder approval due to a potential conflict of interest. In such a situation, a public company must set out the attendance quorum requirement in the **GMS** announcement, and also provide a statement form that must be signed by each independent shareholder. By completing such a form, the independent shareholders are essentially declaring that they are in fact independent shareholders.
 - (c) **e-GMS provider's obligation**

"e-GMS provider" is defined as a party that provides and manages e-GMS. POJK 15/2020 specifies that e-GMS providers must fulfil all the relevant regulatory obligations, including to: (1) register as an electronic system provider; (2) have a standard operating procedure to run e-GMS; and (3) meet certain minimum information technology systems standards.
 - (d) **e-Proxy mechanism**

"e-Proxy" refers to a system that provides an electronic facility for shareholders to authorise their proxies to attend **GMS** on their behalf, which is now available under the Indonesia Central Securities Depository (known as KSEI). According to POJK 15/2020, a public company must also provide an

alternative to the electronic proxy mechanism for its shareholders to participate in GMS.

2. Changes brought about by POJK 15/2020

We set out below the main differences between POJK 32/2014 and POJK 15/2020 in various key subject areas.

Subject	POJK 32/2014	POJK 15/2020
Initiation of GMS	GMS can be initiated at the request of one or more shareholders representing at least 1/10 of the total voting shareholders.	GMS can be initiated by the request of: <ol style="list-style-type: none"> a. one or more shareholders representing at least 1/10 of the total voting shareholding; or b. the company's board of commissioners.
Attendance and voting quorum of independent shareholders	Generally, regulates the attendance and voting quorum for GMS agenda items that involve a conflict of interest. In such meetings, shareholders who have a conflict of interest are not permitted to vote, but are deemed to have approved the result of the independent shareholders' vote.	Regulates that the attendance and voting quorum for GMS agenda items that involve a conflict of interest must <u>only</u> be attended and voted on by independent shareholders.
Media announcements	For publicly listed companies: <ol style="list-style-type: none"> a. Newspapers; b. Stock exchange website; and c. Company website. For public companies that are not listed: <ol style="list-style-type: none"> a. Newspapers; and b. Company website. 	If the company uses an e-GMS Provider (Indonesia Central Securities Depository)'s e-GMS system: <ol style="list-style-type: none"> a. For publicly listed companies: <ul style="list-style-type: none"> • e-GMS provider's website; • Stock exchange website; and • Company website. b. For public companies that are not listed: <ul style="list-style-type: none"> • e-GMS provider's website; • Company website; and • Website provided

Subject	POJK 32/2014	POJK 15/2020
		<p>by OJK.</p> <p>If the company uses its own e-GMS system:</p> <p>a. For publicly listed companies:</p> <ul style="list-style-type: none"> • Stock exchange website; and • Company website. <p>b. For public companies that are not listed:</p> <ul style="list-style-type: none"> • Company website; and • Newspapers.
Announcement language	Only announcements that are made on the company's website must be made in Indonesian and in a foreign language or foreign languages, which must (at least) include English.	All announcements must be made in Indonesian and in a foreign language or foreign languages, which must (at least) include English.

(e) New features set out under POJK 16/2020

We set out below a summary of the key provisions under POJK 16/2020.

(1) e-GMS procedure

In organising e-GMS, a public company must:

- (A) provide information on its plan to hold a GMS electronically by notifying OJK of the GMS agenda, announcement and calling; and
- (B) hold a physical GMS, attended at least by:
 - (i) the GMS chairman
 - (ii) one member of the Board of Directors or Board of Commissioners; and
 - (iii) capital market supporting professionals who assist the public company to conduct an e-GMS.

(2) e-GMS place or venue

The e-GMS place or venue is the place where the physical GMS is held, which must be within Indonesia.

(3) e-GMS activity rundown

The e-GMS is required to be carried out “efficiently”, covering at least the following activities in the below sequence:

- (A) GMS opening;
- (B) determination of attendance quorum;
- (C) discussion of questions or opinions raised by the shareholders (or their e- Proxies) in relation to each GMS agenda item;

- (D) decision-making for each GMS agenda item, based on the relevant quorum; and
 - (E) closing.
- (4) e-GMS minutes.

e-GMS minutes must be made in the form of a notarial deed and do not require any e-GMS participant's signature.

Conclusion

Before the recently enacted regulations POJK 15/2020 and POJK 16/2020, the legal basis for an e-GMS could be found in Article 77 of the Company Law (Law No. 40 of 2007 on Company Law). These new regulations now provide further governance requirements and confirm the legal basis for public companies to adopt the procedures to conduct e-GMS now and in the future.

Public companies need to familiarise themselves with these new regulations and also take the initiative to review their articles of association, particularly provisions relating to GMS. Article 63 of POJK 15/2020 requires public companies to amend their articles of association within 18 months of the promulgation of POJK 15/2020 (that is, by 21 December 2021). Such amendments will need to be made on a case by case basis, since public companies may have different governance articles for their GMS.

We will continue to monitor and report on any new regulations impacting public companies, including any further refinements to the latest electronic solutions relating to e-GMS.

Soemadipradja & Taher

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If you would like to discuss any aspect of this update or your industry activities or plans, please feel free to contact us.



Denia Isetianti

Partner

denia_isetianti@soemath.com



Oene Marseille

Foreign Counsel

oene_marseille@soemath.com



Robert Reid

Foreign Counsel

robert_reid@soemath.com



Vinton Rasil Taris

Associate

vinton_rasil@soemath.com