

Electronic General Meeting of Shareholders for Public Companies - What You Need to Know

SPEED READ

Following the declaration by the President of Indonesia declaring Covid-19 as a "Public Health Emergency" and the implementation of various protective measures, including imposing restrictions on activities in public places, the Indonesia Financial Service Authority (**OJK**) has passed two regulations concerning the general meeting of shareholders (**GMS**) of public companies. The new regulations allow a **GMS** to be undertaken, a proxy to be nominated and voting to be cast electronically. This is important for public companies to implement protective measures to contain the spread of the Covid-19 outbreak but at the same time comply with the requirement to conduct an annual **GMS** and, if required, an extraordinary **GMS**.

Introduction

Due to the COVID-19 outbreak, public companies in Indonesia and their shareholders are concerned about the risk of the virus spreading when holding a General Meeting of Shareholders (**GMS**) or attending one in person. Under the previous OJK Rule No. 32/POJK.04/2014 on Preparation and Implementation of General Meeting of Shareholders for Public Companies (as amended) (**POJK 32/2014**) there was uncertainty whether public companies could legally convene an electronic **GMS** (**e-GMS**), in particular due to the fact that they have an obligation to hold an annual **GMS** this year. Therefore, it is critical for public companies to know that they can still request shareholders' approvals in a timely manner.

Responding to this issue, on 21 April 2020, the OJK issued two regulations¹ that provide a legal basis for public companies to convene an e-**GMS**. These regulations came into effect immediately.

This article is a summary of the key provisions of these regulations and should not be considered as a substitute for specific legal advice in particular circumstances.

Electronic General Meeting of Shareholders (e-GMS)

Under POJK 16/2020, every public company is now allowed to hold an e-**GMS**. The e-**GMS** can be organized by e-**GMS** providers. The e-**GMS** provider can be either (i) the Indonesian Depository (PT Kustodian Sentral Efek Indonesia or **KSEI**) or any party as approved by the OJK, or (ii) a system provided by the respective public company itself.

If a public company wishes to use the electronic general meeting system **KSEI** (eASY.**KSEI**), it must follow **KSEI** Rule No.KEP-0016/DIR/**KSEI**/0420 dated 3 April 2020. **KSEI** guidelines on this matter can be found at <https://www.ksei.co.id/data/download-data-and-user-guide>.

¹ (i) OJK Rule No.15/POJK.04/2020 on Preparation and Implementation of General Meeting of Shareholders for Public Companies (**POJK 15/2020**), which revokes POJK 32/2014, regulates the general guidelines on holding a **GMS** e.g. quorums, announcements, invitations, procedures and parties that may call a **GMS**; and

(ii) OJK Rule No.16/POJK.04/2020 on Implementation of Electronic General Meeting of Shareholders for Public Companies (**POJK 16/2020**), which sets out procedures for holding an e-**GMS** and the systems involved.

Alternatively, but this remains subject to discussion with the regulators, a public company may use its own e-GMS system. This system should comply with various technical requirements as provided under POJK 16/2020 and approved by the OJK. Furthermore, this system must be connected with the KSEI system and the public company's Share Registrar (BAE).

We expect that most if not all e-GMS by public companies will use the eASY.KSEI system provided by KSEI until their own system (if any) goes live.

e-GMS will still require physical attendance of certain personnel with an exemption under "certain conditions"

Despite what the name suggests, an e-GMS still requires the physical attendance of certain personnel. Pursuant to POJK 16/2020, a physical meeting must take place; the following personnel must physically attend the meeting:

- i) the chairman of the GMS (i.e. the President Commissioner or other parties as designated in the articles of association);
- ii) one director and/or one commissioner; and
- iii) capital markets support profession personnel (e.g. notary, legal consultant, BAE).

That being said, POJK 16/2020 contains an exemption where no physical attendance is required for e-GMS or to limit the number of physical attendances by shareholders or their attorneys due to an undefined term "certain conditions" as determined by the Government or as approved the OJK.

Our view is that the Covid-19 outbreak should qualify as a "certain condition" as referred to in Article 9 of POJK 16/2020, which allows public companies to hold an e-GMS without the physical presence of the relevant parties.

Electronic Proxy (e-Proxy) and Electronic Voting (e-Voting) in an e-GMS

e-Proxy

One key feature that is introduced by POJK 15/2020 is the mandatory requirement for

public companies to provide its shareholders with an option to grant a power of attorney electronically (**e-Proxy**). Under the e-Proxy, the principal (i.e. the shareholder) may authorize a proxy to attend and/or vote in the e-GMS.

An e-Proxy can be granted by the shareholder to the following designated persons as specified under POJK 15/2020 by no later than one (1) business day prior to the e-GMS:

- i) securities companies or custodian banks who are members of KSEI, which administers securities sub-accounts on behalf of the shareholders;
- ii) parties as designated by the public company; or
- iii) parties appointed by the relevant shareholder.

In each case, the proxy must fulfil the following criteria: (a) be legally capable; (b) not be a member of the board of directors or board of commissioners or an employee of the public company; and (c) be registered via the e-GMS system provider (e.g. KSEI) or the public company's system (in the event the public company provides its own system).

In the current situation due to the Covid-19 outbreak, our observation is that "*parties as designated by the public company*" as discussed above are mostly the public companies' BAE. It is reasonable to assume that the BAE has satisfied the criteria to become a proxy as we discussed earlier. Therefore, most if not all public companies have designated its BAE to become the shareholders' proxy.

Shareholders, who have given their vote through their proxy under the e-Proxy, are entitled to amend their decision or change their proxy by no later than one (1) business day prior to the e-GMS.

e-Voting

While POJK 15/2020 regulates the participation of public companies' shareholders in an e-GMS to vote and/or attend through an e-Proxy mechanism, POJK 16/2020 also introduces the electronic voting mechanism (e-Voting).

The e-Voting mechanism under POJK 16/2020 would be relevant for any shareholder who wishes to participate in an e-GMS in person. An e-Voting may be cast from the time that the e-GMS invitation is published until the time at which the e-GMS opens the e-GMS agenda that requires the shareholders to vote. The shareholders, however, are entitled to change their mind (if they have cast their votes before the e-GMS is held) by no later than the time at which the Chairman of the e-GMS starts to request the shareholders to vote in each of the e-GMS agendas. If the votes remain unchanged at the time the decision is made, the vote will be deemed to be bound at the time the Chairman of the e-GMS closes the voting period in that particular e-GMS agenda.

For further details and guidance on how to access the e-Proxy and e-Voting system, please coordinate with your securities companies and KSEI.

Media and language for announcements, invitations and minutes of meetings

Please note that under POJK 15/2020, the requirement to publish the e-GMS announcement, invitation, correction, re-invitation, and minutes of an e-GMS (the **GMS Related Publication**) in a nationally circulated newspaper is, in general, no longer mandatory. This will obviously save the public companies costs for the **GMS Related Publication**. Under POJK 15/2020, the primary medium for the **GMS Related Publication** are (i) the e-GMS provider website, (ii) the IDX's website, and (iii) the company's website.

That being said, specifically for non-listed public companies, if they wish to use their own system for an e-GMS, the primary medium for the **GMS Related Publication** are (a) their website, and (b) a nationally circulated newspaper or the OJK's website.

POJK 15/2020 mandates the announcements must be made in Bahasa Indonesia and other languages, including at least English. In the event of inconsistency between these languages, the Bahasa Indonesia version shall prevail.

Public Companies must amend their articles of association

POJK 15/2020 stipulates that public companies must amend their articles of association to be in line with the provisions under POJK 15/2020. Public companies have 18 months since the enactment of POJK 15/2020 to amend their articles of association.

That being said, it is reasonable to conclude that due to the fact that the Government has applied a strict measure for the public not to hold any public gathering, in our case a **GMS**, we believe any public company that is planning to conduct their upcoming annual **GMS** and extraordinary **GMS** (if relevant) through an e-GMS may implement the provisions under POJK 15/2020 immediately regardless of whether they have amended their articles of association to conform with the provision of POJK 15/2020.

Conclusion

While these new OJK regulations clarify that public companies are now allowed to organize **GMS** electronically, the technical implementations of e-GMS, e-Proxy and e-Voting remain untested. That said, we recommend all public companies should coordinate with KSEI closely, or if the respective public company wishes to set up their own e-GMS system, they should check if the technical requirements for setting up an in-house e-GMS system under POJK 16/2020 is feasible. Further, any public companies may now start to formulate their proposed amendment of articles of association to conform to the provisions under POJK 15/2020.

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