

# Updates on Public Company GMS and shareholders reporting

---

March 2017

**Authors:** Kristo Molina, Marselus Lelyemin

On March 14, 2017, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) issued two regulations impacting voting rights at a General Meeting of Shareholders of Public Companies (“**GMS**”) and transparency of ownership, in line with efforts by the Indonesian government (the “**Government**”) to increase its ranking in the World Bank Group’s Ease of Doing Business index, particularly in relation to protection of minority investors.

OJK Regulation No. 10/POJK.04/2017 on the Amendment of OJK Regulation No. 32/POJK.04/2014 on the Plan and Conduct of General Meeting of Shareholders of Public Company (“**Reg. 10/2017**”) introduces additional provisions to OJK Regulation No.32/POJK.04/2014 which: (i) enhance the rights of shareholders in a GMS who are affected by proposed changes to the rights of a certain class of shares; and (i) necessitates GMS approval of the appointment or dismissal of an external auditor. OJK Regulation No. 11/POJK.04/2017 on the Ownership Report or Any Changes to Shares Ownership in Public Companies (“**Reg. 11/2017**”) requires enhanced disclosure of changes in ownership and ultimate beneficial ownership.

## Rights of affected shareholders

The existence of different classes of shares, such as preferred shares or shares with no voting rights, is permitted under Law No. 40 of 2007 on Limited Liability Company (“**Law 40/2007**”). However, Law 40/2007 does not specifically regulate the changing of rights attaching to a specific class of shares. Rather, such a change is treated as an ordinary amendment of the articles of association whereby all shareholders (whether affected by the change or not) can vote on the relevant GMS resolution. In specific cases where a change of rights of a certain class would negatively affect the minority shareholders’ rights but can be voted on by majority shareholders, this process has the potential to be unfavourable to the affected minority shareholders. For public companies, except for state owned enterprises (SOEs)<sup>1</sup>, we have not seen any (non-SOE) public companies having different classes of shares with different rights. Even though differing share classes with different rights are legally permissible under Law 40/2007, traditionally, different classes of shares in public companies have been principally attributable to a difference in nominal value and not differing substantive rights. The main reason for this is because OJK has sought to ensure equal rights amongst the shareholders of a public company as part of its effort in protecting the public shareholders’ interest.

With Reg. 10/2017, OJK is signalling to the market that public companies may issue different classes of shares with different substantive rights. As a step towards improving the position of minority shareholders in this scenario, Reg.10/2017 provides that only affected shareholders can attend a GMS with an agenda of changing share-class rights and a vote to change share-class rights. In this context, “affected shareholders” means: (i) shareholders of a certain class who suffer a diminution in their rights; or (ii) shareholders of a

---

<sup>1</sup> In public company SOEs, typically the Government holds “golden shares” (known as Dwiwarna Shares) that have veto rights.

---

certain class who do not receive an increase in, or additional, rights which are given to another class of shares.

In addition, Reg. 10/2017 grants voting rights to the affected shareholders in respect of such changes even if those shareholders do not have voting rights under the articles of association. The granting of voting rights to a class of shares with no voting rights is an entirely new concept not recognised or contemplated under Law 40/2007. Presumably, in drafting this regulation, OJK is relying on its authority to further regulate a GMS pursuant to Law 40/2007.

## Appointment of external auditors

Reg. 10/2017 confirms two methods for any appointment or dismissal of an external auditor: (i) direct approval by a GMS after considering the recommendation of the Board of Commissioners; or (ii) the delegation of authority by GMS to the Board of Commissioners to make such appointment or dismissal. Both of these methods have been adopted as common practice for some time, and the new regulation is a welcome confirmation of such practice.

## Disclosure of the ultimate beneficial owner

Previously, the disclosure of beneficial ownership in public companies was required only in respect of controlling shareholders and major shareholders. Under Reg. 11/2017, this requirement is expanded to cover any direct or indirect owners who hold 5% or more of the total issued shares in a public company. An "indirect owner" is a party who owns shares in a public company through another party which includes ultimate beneficial owners and other parties involved in a chain of ownership below such ultimate beneficial owners. For shareholders who are already holding 5% or more, the threshold triggering the reporting obligation is any change to their ownership involving 0.5% or more of the total issued shares in the public company. The prescribed form of the report must include details of the transfer price and information regarding the direct or indirect ownership of the shares. In line with the Government's aim of improving the quality and transparency of ownership disclosure, a copy of the ownership report will be accessible by the public at the OJK's office.

## Conclusion

Reg. 10/2017 appears to fill a gap left by Law 40/2017 in terms of the treatment of rights given to different classes of shares and enhancing protection of minority shareholders. It remains to be seen if any challenge will be made to the granting of voting rights to owners of non-voting shares on the basis of inconsistency with Law 40/2017 and a public company's articles of association.

Reg. 11/2017 requires ultimate beneficial owners to furnish more information about their shareholdings which will improve transparency of share ownership in public companies. However, this may be viewed as burdensome for indirect owners with sensitivity issues in disclosing their capital market investments, which includes foreign investors in certain business activities with foreign shareholding restrictions under the Indonesian investment negative list.

White & Case in exclusive association with Witara Cakra Advocates (WCA)  
Sampoerna Strategic Square  
North Tower, Level 17, Jl. Jend. Sudirman Kav. 45-46  
Jakarta 12930  
Indonesia

T +62 21 2992 7000

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.