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## Electronic GMS – What We Know So Far

As the Covid-19 outbreak is showing no sign of slowing down, governors in certain provinces in Indonesia have begun to initiate social restriction policies. Particularly for DKI Jakarta, a large-scale social restriction will officially commence on Friday, 10 April 2020.

From the capital markets front, this restriction is inevitably a cause of concern for public companies that are required to hold a general meeting of shareholders (“GMS”). As a follow-up to our previous Client Update ([click here to read](#)), public companies are still expecting the OJK and SROs to ease the GMS requirements and provision of a proper infrastructure to allow the GMS to be held virtually. Many believes that the issuance of a regulation on electronic GMS is imminent. Hence, the SROs, public companies and capital market supporting professionals (public notaries, legal consultants and the likes) are seeking collaborative actions to ensure the smooth implementation of the electronic GMS.

In the meantime, we are taking the liberty to provide you with a compilation of Frequently Asked Questions (“FAQ”) on electronic GMS. These are based on our discussion with various institutions regarding electronic GMS and are aimed to give our clients an abstract what the electronic GMS regulation may entail.

### 1. What is Electronic GMS?

Electronic GMS means the implementation of a GMS by public companies using electronic means, such as teleconference, video conference or any other electronic media.

### 2. Are We Ready to Implement Electronic GMS?

On 3 April 2020, the Depository and Settlement Institution (“KSEI”) launched a platform called **eASY.KSEI**, that enables a GMS to be held virtually. eASY.KSEI has two main features, **e-Proxy** and **e-Voting**.

e-Proxy allows the shareholders of a public company to grant a power of attorney to attend a GMS virtually. Meanwhile, e-Voting allows the shareholders to appear virtually in the GMS and cast their vote via the platform. Following the announcement from KSEI, public companies can only use the e-Proxy mechanism if they issue their GMS invitation after 20 April 2020. However, it must be noted that only Indonesian individual shareholders can use the e-Proxy platform. On the other hand, the market is still waiting for the e-Voting platform to be up and running.

To expedite the implementation of electronic GMS, OJK has also issued the draft regulation on electronic GMS. Under the current draft, other than eASY.KSEI, OJK also gives public companies the flexibility to develop their own electronic GMS platform or to use any third-party platforms. OJK also sets certain technical requirements that must be complied with by these

platforms, including an interoperability requirement with the KSEI and Share Registrar's systems.

### **3. Is There Any Difference in Timeline?**

We envisage that the timeline for the physical GMS under OJK Regulation No. 32 of 2014 will apply to electronic GMS. The current draft OJK regulation confirms the same. Nevertheless, if the public company is keen to use eASY.KSEI, both the GMS announcement and invitation must be uploaded onto eASY.KSEI.

### **4. How Do You Calculate the Quorum in the Electronic GMS?**

Under the current draft regulation on electronic GMS, the virtual presence of shareholders by means of an electronic media will be considered as their physical presence and as such, it will be considered in calculating the attendance quorum under OJK Regulation No. 32 of 2014. But as eASY.KSEI will only be available for public companies whose shares are kept in KSEI's collective custody, there is no clarity yet as to how eASY.KSEI will accommodate shareholders with scrip shares.

### **5. How Will Voting be Conducted in the Electronic GMS?**

The shareholders can cast their votes electronically after receipt of the GMS invitation until the date of the GMS. The power of attorney through the e-Proxy platform can be granted by the shareholders in the form of (i) a full power of attorney (general authority) or (ii) a special authority, where the shareholders' votes must be indicated in the submission of the power of attorney to the e-Proxy platform. Based on our discussion with KSEI, it is advisable for shareholders to grant a special authority in order to expedite the calculation of the total votes cast in the GMS. In addition, shareholders are allowed to change or revoke their votes at the latest one day before the GMS date.

### **6. Is a Physical GMS still Required?**

Yes, even though a public company decides to hold an electronic GMS, it is still required to hold a physical GMS, which must be attended by at least (i) the chairman of the GMS, (ii) the company's board of directors and board of commissioners and (iii) capital market supporting professionals whose attendance is necessary in the GMS.

Just like other regulatory bodies, the OJK, KSEI and other capital markets regulators, are being forced to adapt to the current situation. Most importantly, public companies need to be aware that a physical GMS is still required, albeit with limited attendance. But it remains to be seen how this will all play out as the government moves towards a more restrictive social measure.

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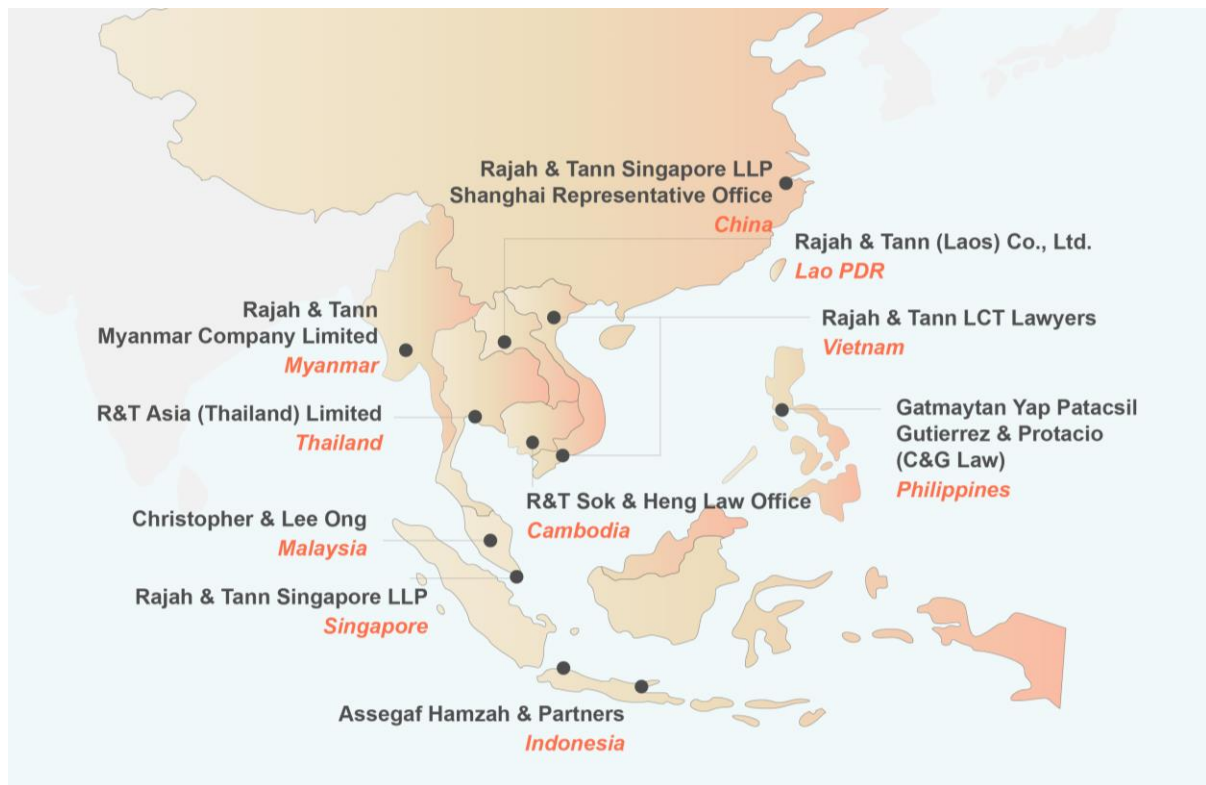
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