



Protecting Shareholder Rights

CG FOCUS

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HOW TO ADD VALUE TO THE AGM AND IMPROVE COMMUNICATION WITH SHAREHOLDERS

The Financial Services Authority of Indonesia (OJK) has introduced Regulation No. 21/POJK.04/2015 concerning the Implementation of the Corporate Governance Guideline for Public Companies. The Circular Letter No. 32/SEOJK.04/2015 (hereinafter 'CG Guideline') Principle 1 and 2 require improvement in Annual General Meeting (AGM) practices and in communicating with shareholders. This note provides guidance on how companies can implement these principles based on OJK recommendations and leading international practices.

Other Regulations on the Annual General Meeting

In Indonesia several other regulations also apply to the AGM. These must be complied with as appropriate and include:

- OJK Regulation No. 32/POJK/04/2014 on the Planning and Implementation of AGM;
- Law No. 40/2007 on Limited Liability Company;
- Law No. 8/1995 on Capital Market.

1. IMPROVING AGM PRACTICES

The CG Guideline Principle 1 includes recommendations relating to the AGM and voting practices, board member attendance at the AGM, and AGM minutes.

Principle 1: Increasing the value of the implementation of the Annual General Meeting of Shareholders (AGM).

Rec. 1.1: Public companies have the means or technical procedures for either open or closed voting that promotes independence and the interests of shareholders.

Rec. 1.2: All members of the Board of Commissioners (BoC) and the Board of Director (BoD) are present at the AGM.

Rec. 1.3: Summaries of AGM minutes are made available on websites of public companies for at least one year.

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AGM Practices

The right of a shareholder to participate in the AGM is a fundamental shareholder right and its importance cannot be overemphasized. The AGM is a statutory requirement and it is a platform for shareholders to legitimately exercise control over the affairs of the company¹.

According to the G20/OECD Principles, “shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures that govern AGMs [including] that 1) shareholders should be furnished with sufficient timely information concerning the date, location, and agenda of the AGM as well as full and timely information regarding the issues to be decided at the meeting and 2) processes and procedures for AGMs should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.”²

The company should therefore:

- Encourage shareholders’ attendance, make them feel welcome (e.g. set up company help desk to answer pre-meeting queries, provide adequate seating, and open doors to shareholders at least 45 minutes in advance of the meeting); and remove any impediments to attendance (e.g. not charging fees for attendance or require difficult notary or authentication processes for attendance, ensure the location and time of the AGM is easily accessible).
- Provide full information and notice of meeting to all shareholders at least 21 days prior to the meeting. A better practice is to provide this information within 28 days prior to the AGM. All ‘special’ resolutions should be clearly identified.

- Provide shareholders the opportunity to place items on the agenda, schedule time on the agenda for shareholders to ask questions and propose resolutions (subject to reasonable limits), and hear about the company at the meeting. It is important for the company to not discourage them from trying to influence the direction of the company. Allowable questions should include questions on the financial statements and the external audit.
- Give shareholders a chance to cast their vote on all AGM resolutions.
- Encourage better communication (see Part 2. Improving Communications with Shareholders).

Voting Practices

Voting by poll is clearly a superior mechanism to demonstrate shareholder democracy of one-share one-vote.

Source: R.R Bushon and Hassan, AGM Practices by Malaysian Companies, 2015, MSWG

- One share one vote is a good starting point.
- Voting materials with full information on voting processes and voting tabulation and for each resolution to enable decision making should be sent at least 21/28 days in advance of the meeting.
- Voting by ballot at the meeting is preferred (either using a voting card or electronic voting). A show of hands is not preferred as it is not confidential and also it does not take into account the size of the individual’s shareholding.
- An independent party should be appointed to oversee voting, counting of votes, and validate the results. It is a good practice to count minority shareholder votes separately if there is a large majority shareholder with over 50% shares.

¹ Good AGM practices are discussed in a Report of AGM Practices by Malaysian Companies, Bushon and Hassan, 2016, MSWG. Accessible at www.mwsg.org.my

² Useful references include Best Practices for Effective General Meetings accessible at www.mccorporate.com.sg and Achieving a Successful Annual Meeting by J.C. Wilcox, accessible at www.conference-board.org

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- AGM should provide and use technology to allow voting at the AGM either in person or in absentia.
- The company should be transparent and handle with care the recording and counting of votes cast in absentia, including how they were counted and included in each resolution. In absentia votes should be cast in accordance with the shareholders' wishes and if no wish is expressed the President Commissioner may decide how such votes are cast.
- Shareholders should have the right to vote on key governance decisions, such as the nomination and election of commissioners and directors, the remuneration of board members, and the equity component of remuneration schemes.
- The company should provide adequate information on the profile of the commissioners/directors who are being nominated. To ensure a balanced and qualified board, the profile should include the commissioner/director's skills, experience and background, other board positions s/he holds and if s/he is to be an 'independent director', the reasons why s/he is considered independent.
- Each resolution should be voted on separately. There should be no bundling of resolutions.

Board Member Attendance

To demonstrate their accountability to shareholders, all members of the BoC and BoD should be in attendance at the AGM and ready and available to answer questions/problems. The President Commissioner should lead and manage the meeting. All other commissioners and directors should also be in attendance and introduced to the shareholders. AGM is also an opportunity for shareholders to meet, obtain information, and query the commissioners/directors on matters pertaining to the affairs and running of the company. Commissioners and directors should try to anticipate shareholders' questions and develop appropriate responses before the meeting. Contentious issues should be addressed by board members in a

non-confrontational manner. Commissioners and directors should not be absent from the AGM especially when they are seeking re-election.

In addition, commissioners and directors should regularly attend board meetings. Attendance records of each commissioner and director should be kept and published in the Annual Report and on the company website. Attendance is considered a hallmark of the conscientious commissioner and director. Commissioners and directors should attend and be prepared for all meetings including the AGM, having read relevant papers and being prepared to discuss all agenda items.

AGM Summary Minutes Practices

The full AGM minutes are the legal and documentary record of the meeting. In the spirit of transparency and accountability, OJK recommends that the summary of AGM minutes (both in Indonesian and English) should be placed on the company website within 2 days of the AGM to keep the market fully informed. The company should also ensure that the summaries of at least three previous AGM minutes remain available for shareholder reference in the company website for at least one year. In particular, the results of voting on all individual resolutions should be placed on the website. Summaries of the minutes should not be too brief and ideally include:

- The location and the date of the AGM;
- Agenda items;
- BoC and BoD members in attendance;
- Questions from shareholders and commissioners/directors' or company responses;
- Individual AGM resolution decisions, including specific voting results; and
- Details regarding dividend resolutions, payments, and processes.

The full minutes of the AGM should be posted to the website within 30 days following the AGM.

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2. IMPROVING COMMUNICATIONS WITH SHAREHOLDERS

Principle 2: Improving the quality of communication between public companies with shareholders or investors.

Rec. 2.1: Public companies have a communication policy with shareholders or investors.

Rec. 2.2: Public companies reveal their communication policies with shareholders or investors on company websites.

Practices for good shareholder communication

Communication is a two-way relationship. Communication from the company to shareholders is intended to provide shareholders with a clearer understanding of the company's position and business prospects. Meanwhile shareholders should be encouraged to provide the company, the BoC, and the BoD with suggestions and opinions. Companies should establish a communication policy which commits to timely dissemination of information and details shareholder engagement.

Effective shareholder communication may require:

- A regular review and analysis of the share register;
- Regular tracking of market perceptions and expectations;
- An understanding of and compliance with market disclosure rules;
- Communication of corporate governance practices, not just compliance;
- A structured program, ensuring the company is talking to all key audiences in a way that meets their needs;
- BoC and BoD involvement;

- Regular review and update of key messages, which are tailored to individual groups.

The proliferation of Stewardship Codes means institutional investors (asset owners and asset managers) in particular are being encouraged to engage with their investee companies.

Communication Policy

Companies should publicize their communication policy including details of the processes they employ to facilitate constructive dialogue and engagement, as well as instructions and/or email addresses for shareholders to communicate with the company. A structured and regular communication program should provide a flow of accessible and valuable information to shareholders, which is essential to maintain the reputation and credibility of the organization. The policy should state the variety of different channels that the company uses beyond the traditional AGM and include interim reports, company website, analyst roadshows/briefings, shareholder newsletters, podcasts, webcasts, and shareholder forums.

In direct dialogue between shareholders and the company some good practices are emerging:

- Companies should actively seek out dialogue with large shareholders.
- Begin the dialogue before the proxy season – best just after the AGM.
- Management may represent the company in most interactions on strategy, performance or boardroom independence.
- When commissioners/directors engage with shareholders, discussions should generally focus on corporate governance matters.
- BoC's Committee Chairs may communicate on relevant committee matters.
- Any shareholder engagement by the BoC/BoD, if it occurs, should be led by the presiding

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commissioner/director.

- Shareholder engagement is not intended to replace traditional investor relations functions.
- The company should clearly define who may act as spokesperson on behalf of the company.
- Communication should be frequent throughout the year to facilitate better understanding by both parties.

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The Group brings together staff from investment support and advisory operations into a single, global team. This unified team advises on all aspects of corporate governance and offers targeted client services in areas such as increasing board effectiveness, improving the control environment, and family businesses governance.

The Group also helps support corporate governance improvements and reform efforts in emerging markets and developing countries, while leveraging and integrating knowledge tools, expertise, and networks at the global and regional levels.

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