
Corporate Governance

Update: Conduct of Virtual General Meetings during the CMCO

Introduction

With the recent announcement of the Conditional Movement Control Order (“**CMCO**”) for Sabah, Selangor, Kuala Lumpur and Putrajaya effective from 13 October 2020 until 27 October 2020, the Companies Commission of Malaysia (“**CCM**”) has granted a further extension of time (“**EOT**”) of 90 days for a company to hold its annual general meeting (“**AGM**”), and to circulate and lodge financial statements with CCM.

Following this, the Securities Commission Malaysia (“**SC**”) also revised the Guidance and FAQs on the Conduct of General Meetings for Listed Issuers (“**Guidance Note**”) to dovetail the regulation and conduct of general meetings for listed issuers during the CMCO with the latest initiative of CCM.

In April 2020, we issued an Update on [COVID-19 AGM Matters & the Move to Virtual General Meetings](#) which highlighted certain measures introduced by CCM and SC in light of the pandemic and the CMCO. This Update highlights the key features of the latest revisions by the two regulators.

Revision on the Extension of Time for AGMs, Circulation and Lodgement of Financial Statements and Reports

Under CCM’s Practice Directive No. 6/2020 revised on 22 October 2020 (“**Practice Directive**”), public companies with financial year end beginning 1 September 2019 until 31 March 2020 affected by the CMCO can lodge an application with CCM for a 90-day EOT to hold their AGMs. The 90-day EOT commences from the last day their AGM was supposed to be held.

However, due to the commencement of the CMCO on 13 October 2020, the CCM has further extended the 90-day grace period. If the last day of the time period that the financial statements and reports were supposed to be lodged with the Registrar or the approved extended period of time by the Registrar ends on or before 31 December 2020, companies can lodge their financial statements and reports with the Registrar without any late lodgement fees provided it is lodged during the period from 22 October 2020 to 31 December 2020. Any such application must be submitted to the CCM by 15 November 2020 pursuant to the Practice Directive. A failure to do so attracts a maximum penalty of RM50,000.00 under section 258 and RM20,000.00 under section 340 of the Companies Act 2016 (“**CA 2016**”).

Corporate Governance

Revision on the Guidance and FAQs on the Conduct of General Meetings for Listed Issuers

Previously, the Guidance Note only allowed fully virtual general meetings. Post-CMCO, hybrid general meetings and physical general meetings would be allowed. Summarised below are the guidelines on conducting these different types of general meetings.

Guidance on fully virtual general meetings

Fully virtual general meetings are meetings held online, without a physical meeting venue for board members, senior management, shareholders and others involved to gather. A listed issuer can conduct a fully virtual general meeting unless prohibited by the listed issuer's constitution or trust deed. A fully virtual general meeting must comply with the requirements under section 327 of the CA 2016. At a fully virtual meeting, the quorum may be determined by the number of members logged-in at the start of the meeting. There must also be a proper audit trail to ensure attendance of members at the meeting is recorded.

Only essential individuals are to meet physically at a broadcast venue in order to organise and facilitate the fully virtual general meeting. A "**broadcast venue**" refers to a physical venue in Malaysia where the Chairperson of the general meeting is physically present. The "**essential individuals**" may include the company's board members, the Chief Executive Officer, the Chief Financial Officer, the company secretary, the auditor, the scrutineer and those providing audio and visual support. All shareholders are to participate in the virtual general meeting online. It is encouraged that the broadcast venue has the fewest possible number of essential individuals physically present.

Upon determination of the number of essential individuals to be physically present, listed issuers should take into account:

- (a) the size of the venue;
- (b) the ability of essential individuals present to always maintain a physical distance between each other (at least 1 meter apart); and
- (c) the ability to adhere to any applicable directive and safety and precautionary requirements including the standard operating procedures issued by the Ministry of Health ("**SOPs**").

Further, a listed issuer should:

- (i) ensure there is reliable infrastructure to support and enable the fully virtual general meeting;
- (ii) provide guidance to shareholders on the requirements and method of participating using a selected platform;

Corporate Governance

- (iii) provide technical support or a dedicated contact number/email for shareholders to submit queries or request for technical assistance;
- (iv) identify a suitable broadcast venue; and
- (v) ensure only eligible members are participating in the fully virtual meeting.

Essential individuals travelling to the broadcast venue for the fully virtual general meeting are not required to obtain authorisation or time-limited travel exemption from SC. A listed issuer must, however, ensure that the relevant and necessary documentation to support the travel of essential individuals has been issued.

A listed issuer is still required to table all resolutions in a fully virtual or hybrid general meeting. Further, pursuant to section 341 of the CA 2016, listed issuers are required to ensure that meeting procedures and resolutions passed at meeting must be properly recorded and maintained. Companies are encouraged to record these meetings, if possible. Listed issuers must also publish a summary of the key matters discussed at the meeting, as soon as practicable after the conclusion of the meeting, on their website pursuant to paragraph 9.21(b) of the Listing Requirements.

Guidance on hybrid general meetings & physical general meetings

A hybrid general meeting is a meeting held both at a physical venue and broadcast online. This gives shareholders the option to attend the meeting physically or remotely. For hybrid general meetings, quorum can be determined by the number of physical attendees at the meeting and members logged in at the start of the meeting. On the other hand, a physical general meeting is held at a physical meeting venue only, without any option to participate remotely. Any physical general meeting held should also abide by the guidelines summarised above under *Guidance on fully virtual general meetings*.

The venue of the meeting is where the Chairperson of the meeting is physically present. However, during a CMCO, a listed issuer is ***prohibited*** from conducting a hybrid general meeting or a physical general meeting as this requires individuals to physically gather at the same location. Instead, any meetings should be conducted in a fully virtual manner. This applies to any areas under an Enhanced Movement Control Order (“**EMCO**”) and a Targeted Enhanced Movement Control Order (“**TEMCO**”).

Aside from the guidelines listed above, in both hybrid and physical general meetings, a listed issuer should also:

- (1) require shareholders physically present to register ahead of the meeting in order to ensure measures are in place to observe the appropriate SOPs; and
- (2) determine if an additional meeting venue(s) would be needed to accommodate the number of participants.

Corporate Governance

Key Points in Hosting Virtual/Hybrid Meetings

Key Points	Companies Act 2016	Guidelines on Listed Real Estate Investment Trusts ("REIT")	Guidelines on Exchange-traded Fund ("ETF")
Timeline of AGM	Within six months of the company's financial year and not more than 15 months after the last preceding AGM.	Within four months of the REIT's financial year end and not more than 15 months after the last preceding AGM.	-
Notice of Meeting	At least 21 days before the AGM is held.	At least 21 days before the AGM is held or at least 14 days before a unit holders' meeting is held.	At least 21 days before the general meeting is held or at least 14 days before a unit holders' meeting is held.
Contents of the Notice	The notice of the meeting must clearly indicate: (a) the broadcast venue as the place of meeting; (b) the online platform to be used for the meeting; and (c) the mode of communication, i.e. verbal and typed texts.		
Conduct of Meeting	Meetings are allowed as long as: (a) the technology used enables members to speak and vote; (b) the broadcast venue is in Malaysia; and (c) the chairperson of the meeting is at the broadcast venue.	Meetings are allowed unless the trust deed of the REIT requires a physical meeting.	Meetings are allowed unless the trust deed of the ETF requires a physical meeting.

Corporate Governance

Meeting Quorum	At least two members; in person or by proxy; either physical or online participation.	Five unit holders; in person or by proxy; either physical or online participation.	Five unit holders; in person or by proxy; either physical or online participation.
Venue of Meeting	Main venue/place of the meeting is in Malaysia where the Chairperson is physically present.		
Submission of Questions Prior to Meeting	Listed issuers can determine the method for submission of questions either via electronic means or post.		
Voting	<p>Online voting process is allowed and proxy forms may be used to be submitted within the stipulated time and via electronic means or postal.</p> <p>A scrutineer must be appointed by the listed issuer to validate the votes cast whether on-site or remotely.</p>		

* Adopted from SC's FAQ revised on 13 October 2020

Conclusion

Listed issuers are encouraged to continuously adapt and become technologically savvy in conducting their meetings beyond the CMCO, RMCO and TMCO periods. This includes opting for fully virtual or hybrid general meetings as opposed to physical general meetings. Principle C (II) and Practice 12.3 of the Malaysian Code on Corporate Governance 2017 also highlight the need to leverage technology to promote greater communication and engagement from and with shareholders.

Should you have queries or wish to know what other steps you can take to conduct your meetings in a safe and secure manner that complies with the current measures, please feel free to contact our team members below who will be happy to assist.

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19.

Contacts

If you have further queries or require assistance on matters relating to Corporate Secretarial issues, Christopher & Lee Ong has a Corporate Secretarial team that includes Chartered Secretaries. Please feel free to contact the Partners listed below for further assistance.



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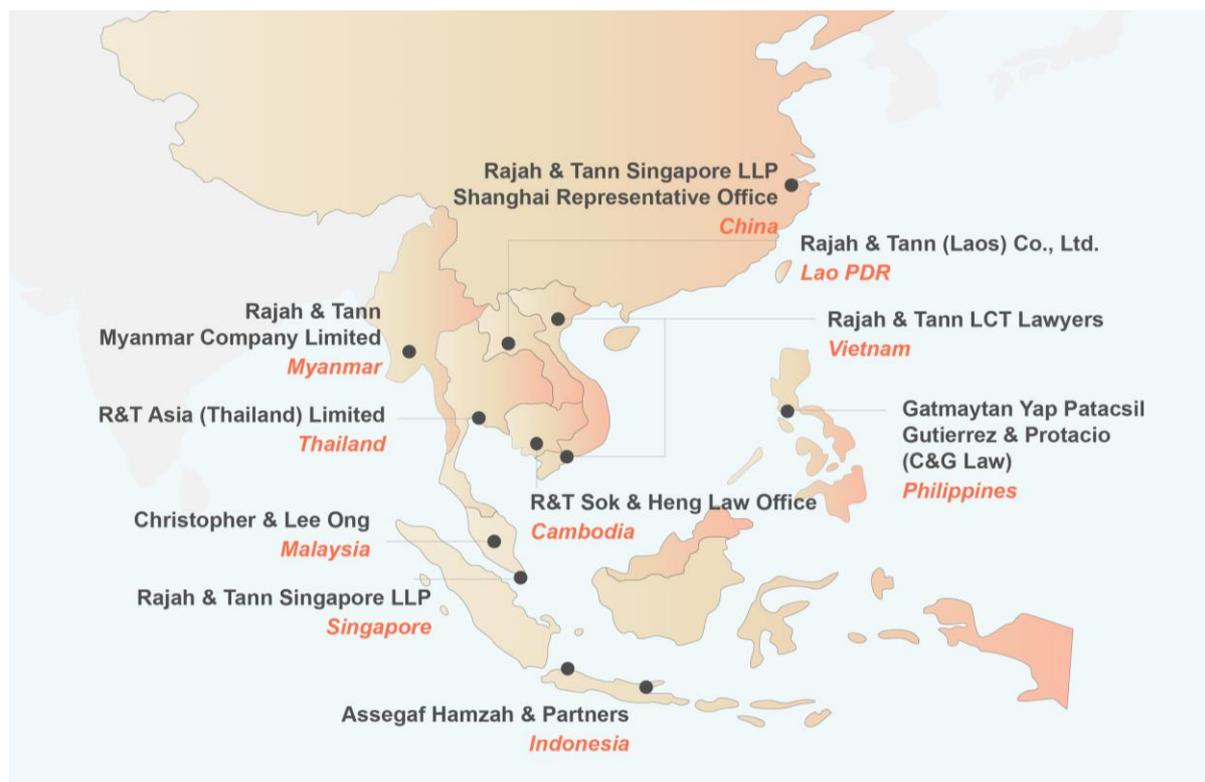
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