

CORONAVIRUS: ALTERNATIVE ARRANGEMENTS FOR HOLDING COMPANY MEETINGS IN SINGAPORE

Due to safe distancing measures imposed by the Singapore Government in response to the Coronavirus crisis, many businesses that were required by law, regulation or constitution to hold physical meetings, had been faced with challenges and uncertainties.

Singapore has moved quickly to introduce several pieces of legislation, including the COVID-19 (Temporary Measures) Act 2020 (the Act), to provide sweeping temporary relief to address some of the key challenges faced by businesses as a result of the Coronavirus crisis.

In this briefing, we examine and consider the key alternative meeting arrangements impacting companies in Singapore.

INTRODUCTION

The Act provides temporary measures aimed at addressing and alleviating the challenges Coronavirus has caused to firms and businesses.

In exercise of the powers conferred under the Act, the Minister for Law has since published:

- the COVID-19 (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debentures Holders) Order 2020; and
- the COVID-19 (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debentures Holders) (Amendment) Order 2020,

(together the Order). The Order has retrospective effect from 27 March 2020 and provides details of permitted arrangements for the convening, holding, conducting or deferral of a general meeting of companies, variable capital companies, unitholders of registered business trusts and relevant unit trusts and holders of a series of debentures governed by Singapore law.

In addition, the Accounting and Corporate Regulatory Authority, the Monetary Authority of Singapore and the Singapore Exchange Regulation issued the

Summary

- Rules introduced in Singapore provide companies with alternative arrangements for holding (or deferring) in-person corporate meetings, including via electronic communication, video conferencing and teleconferencing.
- Meetings held on or after 27 March 2020 that comply with the prescribed alternative arrangements, will be deemed to satisfy any requirements for convening, holding, conducting or deferring such meetings under the relevant written law or legal instrument.
- These alternative arrangements are temporary and are intended to apply during the Coronavirus crisis.
- Meetings can still be held in accordance with existing law or legal instruments, if doing so, does not breach prevailing safety distance measures.

Additional Guidance on the Conduct of General Meetings During the Elevated Safe Distancing Period (the Guidance) to provide greater legal certainty in respect of holding meetings which are usually required to be held in person (for example, the attendance of shareholders or members at an AGM).

As the Order is permissive, not mandatory, the Guidance states that meetings can still be held in accordance with existing law (e.g. Companies Act), or constitutive documents, if doing so would not breach prevailing safe distancing measures. Businesses which are unable to comply with the alternative arrangements in the Order, or the requirements under existing law or their legal instruments, should consider deferring their meetings.

It is important to note that the alternative arrangements prescribed under the Order are temporary and are intended to apply only during the Coronavirus crisis.

Under the Order, the prescribed alternative arrangements apply to meetings convened, held, conducted or deferred during the control period and during a period of 30 days after the end of the control period, where notice of the meeting was given during the control period. The control period is the period from 27 March 2020 to the last day that either or both of the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 and the Infectious Diseases (Measures to Prevent the Spread of COVID-19) Regulations 2020 are in force.

ALTERNATIVE ARRANGEMENTS

Convening of Meetings

While both listed and non-listed companies, may utilise an automatic 60-day extension if their general meetings are due to be held during the period from 16 April 2020 to 31 July 2020, companies that wish to hold their general meetings during the control period, should conduct such meetings in accordance with the Order and the Guidance.

Given the inability of members to attend meetings in person, a general meeting of a company may be convened, held or conducted by electronic means (wholly or partially), which includes electronic communication, video conferencing and tele-conferencing.

Electronic means must, at least, allow members to contemporaneously observe the proceedings of the meeting by audio and video means (e.g. companies must also provide for contemporaneous observation of the meeting proceedings by audio only means (e.g. a telephone number)). Details on the arrangements must be provided in the notices of general meetings.

Attendance

Provided that access to both audio and visual broadcast is provided to a person or member, a company may specify (i.e. it must be stated in the company's notice) that a person or a member may only attend a meeting by observing and listening to the meeting by electronic means.

Companies must, if conducting general meetings through electronic means, do so at no cost to members.

Right to be Heard

A company may provide that a member may only be heard at a meeting by electronic means as outlined below. A representation may be read out by electronic means.

Before the start of a meeting, a company may require a member that intends to attend to send to the chairman of the meeting, by post, or electronic means, a notice of the matters which the person wishes to raise and the notice must state the cut-off time (i.e. a reasonable time) within which the member's questions must be submitted.

All substantial and relevant questions must be addressed by the Board of Directors and/or management prior to, or at, general meetings. Questions may be addressed prior to the general meeting through publication on SGXNET and, if available, the company's corporate website and/or any virtual information session that the issuer may organise.

Quorum

A quorum may be formed by two members of the company (or one member if permitted by the legal instrument of the company e.g. its constitution) personally or electronically present.

A member is electronically present if the member: (i) attends the meeting by electronic means as set out above; (ii) is verified by the share registrar or the company secretary as attending the meeting in the manner as set out above; and (iii) is acknowledged by the chairman as present at the meeting by electronic means.

Voting

If the constitution of a company does not allow for remote electronic voting, the member must vote by proxy only, and only the chairman of the meeting may be appointed as the member's proxy to vote at the meeting by depositing an instrument of the appointment, by post or by electronic means (to the email address stated in the meeting notice). Members must specifically indicate how they wish to vote on the resolutions.

Where a proxy form was delivered to the company before 13 April 2020 then:

- the company may treat the instrument appointing a person other than the chairman as the member's proxy to vote at the meeting, as an instrument of appointment appointing the chairman as the member's proxy to vote at the meeting, if: (i) the member has indicated how the member wished to vote on each such resolution; and (ii) the member has been given an opportunity to withdraw the appointment and has not withdrawn the appointment; and
- the company may treat the instrument appointing a person, other than the chairman as the member's proxy to vote at adjourned or postponed meetings, as an instrument of appointment appointing the chairman as the member's proxy to vote at the meeting, if: (i) the resolutions proposed at the adjourned or postponed meeting are the same as the resolutions to be proposed at the meeting; (ii) the member has indicated how the member wished to vote on each such resolution; and (iii) the member has been given an opportunity to withdraw the appointment and has not withdrawn the appointment.

If the constitution of a company allows for remote electronic voting, the company may allow remote electronic voting to take place at the general meeting (whether for all votes or only part of the votes). The company must ensure that it has implemented the necessary safeguards to validate votes submitted by shareholders or members.

Notice of Meeting

All notices of general meetings for companies (including notices for adjourned or postponed meetings) must be sent out to all members at least 14 calendar days (or 21 calendar days where a special resolution is proposed) before the meeting. If a meeting, in respect of which a notice had previously been circulated, is to be adjourned or postponed, then at least 14 calendar days' notice (excluding the date of notice and the date of meeting) must be given for the reconvened meeting.

A notice of a meeting (including adjourned or postponed meeting) may be sent by electronic means and must meet the following requirements: (i) it must include the date and time of the meeting and the proposed resolutions; (ii) it must be sent to all members; (iii) it must describe the means by which the meeting can be electronically accessed (e.g. online location, if the meeting is held at an online location; or the relevant audio and video feed); (iv) it must set out how members are to cast their votes (e.g. if the chairman of the meeting is to be appointed by a member entitled to vote at the meeting as the member's proxy to vote at the meeting, it must specify how shareholders and members may submit the proxy forms electronically and through hard copy as well as the timeline by which instruments of proxies must be submitted); (v) it must state how a member can send to the chairman the substantial matters/questions that the member wishes to raise at the meeting; and (vi) it must state how to access the meeting documents.

If a non-listed company is unable to comply with these requirements, it should defer the holding of its meeting, until it is safe to convene it again.

In addition, a notice of a meeting of a listed company must be published on SGXNET (together with any documents to be produced before a general meeting) and the website of the listed company (if available). A listed company may still send a notice of a general meeting using electronic means in accordance with section 387A of the Companies Act.

Time-Limited Exception

If a company requires certain essential persons (e.g. a chairman of the meeting, the CEO, the company secretary, a cameraman or other technical administrator, or the share registrar or the scrutineer) to be in the same physical location to facilitate the conduct of its general meetings by electronic means, the Ministry of Trade and Industry (MTI) may grant an automatic time-limited exemption to the company (and its service provider(s), if any) to have temporary operations in the same physical location for the purpose of holding a general meeting, provided that: (i) the number of persons at the same physical location does not exceed six; and (ii) the arrangement at the physical venue must comply with the safe distancing measures contained in the Regulations or the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020 (and any subsequent advisories or regulations as may be issued).

The company must notify MTI of the date, time and venue of the meeting, by submitting a notification for time-limited exemption, no later than one day before the conduct of the general meeting.

CONCLUSION

The Act is a novel and bold piece of legislation which provides a wide-ranging array of measures to address the needs of businesses suffering economic hardship caused by the Coronavirus, including provision of alternative meeting arrangements for businesses in Singapore.

In addition, as the Order is permissive, not mandatory, and since company meetings can still be held in accordance with the existing law or legal instruments, if doing so, does not breach prevailing safe distancing measures, it is most likely that the majority of companies will follow it.

However, the coordinated measures implemented by the various regulatory authorities to regulate meetings may become a form of 'new normal' for the conduct of general meetings. In a post-Coronavirus world, it may well be that even members of, or participants in other types of statutory meetings, such as creditor meetings, will expect companies to provide some form of remote or virtual means to take part in such meetings, perhaps alongside the traditional way of physically attending at the designated venue. Many companies may take this opportunity to explore investing in technology and/or engaging service providers in the virtual meeting space to assist them in the administration of meetings going forward.

Further Information

Visit our dedicated [Coronavirus \(Covid-19\) Insights](#) webpage for practical considerations and insights into critical questions and from across different jurisdictions to help businesses manage and mitigate risk.

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