COVID-19 UPDATE: ALTERNATIVE ARRANGEMENTS FOR MEETINGS FOR COMPANIES

Posted on April 14, 2020



Categories: CNPupdates, Covid-19 Resource

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.



Last Updated: 27 April 2020

Authors and Contributors: Tan Min-Li, Jennifer Lo and Timothy Tan.

*Update: On 24 April 2020, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 ("**Order**") was amended by deleting the definition of and references to "control period". The Order now states that these alternative arrangements apply for the period starting on 27 March 2020 and ends on 30 September 2020. The effect of this amendment has been incorporated into our original article below.*

On 7 April 2020, the COVID-19 (Temporary Measures) Act 2020 ("**Act**") was passed by Parliament. The Act, amongst others, empowered the Minister for Law to make provisions for alternative arrangements for a meeting to be convened, held or conducted while the various control orders made in relation to the COVID-19 pandemic were in force. On 13 April 2020, in exercise of the powers under the Act, the Minister for Law made the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 ("**Order**").

As announced by the Ministry of Law and the Ministry of Finance on 31 March 2020, this Order was made to provide legal certainty on the alternative arrangements for the holding of general meetings in light of the various safe distancing measures and prohibitions made to deal with the COVID-19 pandemic. The announcement can be found at the following link:
https://www.mof.gov.sg/newsroom/press-releases/covid-19-relief-measures-upcoming-legislative-provisi

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

ons-to-provide-legal-certainty-on-holding-of-meetings .
The Accounting and Corporate Regulatory Authority ("**ACRA**"), the Monetary Authority of Singapore ("**MAS**") and Singapore Exchange Regulation ("**SGX RegCo**") have also on 13 April 2020, issued a statement and a checklist to guide listed and non-listed entities on the conduct of general meetings during this period when elevated safe distancing measures are in place (the "**Checklist**"). The Checklist may be found at the following link:
https://www.sgx.com/media-centre/20200413-additional-guidance-conduct-general-meetings-during-elevated-safe-distancing .
This article focuses on the alternative arrangements prescribed by the Order and Checklist for the holding of general meetings by companies.

Date of commencement and duration of the alternative arrangements

The Order is deemed to have commenced on 27 March 2020 and would apply to meetings convened, held, conducted or deferred: (i) during the Control Period; or (ii) 30 days after the Control Period has ended provided that notice of the meeting was given during the Control Period. The Control Period is defined to be the period which either of the following are in force:

- the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, which are in force from 7 April 2020 to 4 May 2020, or
- the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020

(each a "**Control Order**").
On 24 April 2020, the Order was amended by removing the definition of and references to the Control Period and providing that the alternative arrangements under the Order apply for the period between 27 March 2020 and 30 September 2020.
This means that any general meeting held in accordance with the Order between 27 March 2020 and 30 September 2020 would be deemed to be valid, notwithstanding anything in the law, constitution of the company, the SGX Listing Rules or any other legal instrument. Companies may utilise these alternative arrangements until the Control Orders made in relation to the COVID-19 pandemic have been revoked. It should also be noted that the Order is permissive, not mandatory, and meetings can still be held in accordance with existing law or legal instruments, provided that doing so would not breach prevailing safe distancing measures.

Applicability of previous announcements and guidance

Extension of time

The Checklist clarifies that the automatic extension of time with respect to the holding of annual general

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

meetings and the filing of annual returns previously announced by SGX RegCo and ACRA on 7 April 2020 continue to apply. For more details, please refer to our CNPupdate article here: https://www.cnplaw.com/extension-of-time-to-hold-annual-general-meetings-agms-and-issue-annual-reports-for-listed-companies-cnpupdate-may2020.

Previous guidance on the conduct of general meetings

The Checklist states that the earlier guidance issued by ACRA, MAS and SGX RegCo on 31 March 2020 in respect of the conduct of general meetings are no longer applicable. Companies that wish to hold general meetings while the Order applies should conduct their meetings according to the Order and the Checklist.

Alternative arrangements for companies

The following are the various alternative arrangements which companies can undertake to convene, hold or conduct its general meetings.

Holding meetings electronically

A general meeting may be convened, held or conducted by electronic means, whether wholly or partly. The company may provide that members or persons may only attend the meeting solely by electronic means, if access to both an audio broadcast and audio-visual broadcast is provided to members or persons. The Checklist clarifies that these "electronic means" must:

- allow shareholders and members to contemporaneously observe the proceedings of the meeting by audio and video means (e.g. "live" webcast); and
- contemporaneous observation of the meeting proceedings by audio only means (e.g. a telephone number).

However, companies are not allowed to charge members for conducting general meetings through electronic means.

Right to be heard or to speak electronically

The company may also require a member or person, before the meeting, to send to the chairman of the meeting, by post or electronic mail, the matters which the member or person wishes to raise at the meeting. Companies should inform their members of any cut-off time within which questions must be submitted in the notice of general meeting.
If the matter is (i) substantial, (ii) relevant, and (iii) sent within a reasonable time before the meeting, it is to be responded to at or before the meeting by electronic means.
The company may also provide that a member or person may only be heard at a meeting by electronic

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

means in the manner provided above. A representation may also be read out at a meeting by electronic means.

Quorum at general meetings

A quorum may be formed by 2 members of the company personally or electronically present. The quorum may be formed by one member if permitted by the constitution of the company.
A member is electronically present at a meeting if the member:

- attends it by observing and listening to the proceedings of the meeting by electronic means, and access to both an audio broadcast and audio-visual broadcast was provided to the member by the company;
- is verified by the share registrar (for listed companies) or the company secretary (for non-listed companies) as attending the meeting in the manner provided above; and
- is acknowledged by electronic means by the chairman of the meeting as present at the meeting.

Voting only by proxy at general meetings

Unless the constitution of the company allows for remote electronic voting, a member may only vote at the meeting by appointing the chairman of the meeting as the member's proxy. This may be done by depositing with the company an instrument of appointment ("**Proxy Form**") by post, or by e-mail to an e-mail address stated in the notice of the meeting.
CPF and SRS investors should also be informed that they should approach their respective CPF Agent Banks or SRS Operators if they wish to vote. They should submit their votes at least 7 working days before the general meeting.
The company may treat Proxy Forms as instruments appointing the chairman as the member's proxy to vote at the meeting even if the member had indicated that he wished to appoint a person other than the chairman as his proxy, if:

- the proxies were delivered before 13 April 2020;
- the member indicated how the member wished to vote on each such resolution; and
- the member has been given an opportunity to withdraw the appointment and has not withdrawn the appointment, for example, via e-mail.

If the Proxy Form was in relation to a meeting that had been adjourned or postponed, in addition to the above requirements, the resolutions proposed at the adjourned or postponed meeting must also be the same as the resolutions to be proposed at the meeting. No amendments or additions to the resolutions previously proposed are allowed.

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Rights of relevant intermediaries

Persons, who would have been able to be appointed as proxies by relevant intermediaries such as CPF and SRS investors, must be given the same extent of rights as members. These rights include the right to participate in the meeting through "live" webcast and submitting questions prior to the meeting and having substantial and relevant questions answered.

Notice of general meeting

A notice of a meeting may be sent by electronic means and must contain the following:

- the date and time of commencement of the meeting;
- the resolutions to be proposed;
- a description of the means by which the meeting can be electronically accessed (including the online location, if the meeting is held at an online location). This includes:
    - a link to access the "live" audio and video feed (e.g. a link to access the "live" webcast) or the "live" audio only link (e.g. a telephone number); and
    - any other relevant information, such as whether members will have to pre-register on an online platform;
- instructions to members on how they may:
    - access any documents or information relating to the business of the general meeting, that is, documents to be laid or produced before a general meeting;
    - submit their questions ahead of the meeting (e.g. via email), the timeframe to do so and how substantial and relevant questions will be responded to prior to, or at, the meeting;
    - submit their Proxy Forms electronically and through hard copy, as well as the timeline by which the Proxy Forms must be submitted; and
    - cast their votes (i.e. by appointing the chairman of the meeting as the member's proxy to vote at the meeting), including specific instructions to CPF and SRS investors, if applicable.

For non-listed companies, the notice can only be sent electronically if:

- the notice is sent to all the members of the company, to an email address notified by the members to the company; and
- the notice is published on the website of the company (if available).

If this cannot be done, the Checklist recommends that the meeting be deferred until after it is safe to do so. The notice period remains the same as stated in the Companies Act, that is, at least 14 calendar days (or 21 calendar days where special resolutions are proposed). However, listed companies are strongly encouraged to provide at least 21 days' notice to shareholders. The Checklist clarifies that this notice period excludes the date of the notice and the date of the meeting.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Laying or producing documents before a general meeting

For non-listed companies, a document may be laid or produced before a general meeting by sending it with the notice of the meeting. Alternatively, the documents may be sent electronically in accordance with the relevant provisions of the Companies Act or the constitution of the company.

Directors and auditors

Directors and auditors may attend or be heard at general meetings through electronic means. Their attendance and right to be heard may be satisfied by electronic means.

Alternative arrangements specifically for listed companies

The following are alternative arrangements that are specific to listed companies. These arrangements are in addition to those stated above.

Time-limited exemption to facilitate the conduct of the general meetings

The Checklist states that the Ministry of Trade and Industry ("**MTI**") would grant an automatic time-limited exemption to listed companies (and their service provider(s), if any) to have temporary operations in the same physical location for the purpose of holding a general meeting. This is provided that:

- a maximum of six persons may be at the same physical location, including those from the issuer and the issuer's service provider(s); and
- the arrangement at the physical venue must comply with the safe distancing measures contained in the Control Orders.

The essential persons which may be required to be in the same physical location may include the chairman of the meeting, the CEO, the company secretary, technical crew, the share registrar or the scrutineer. Listed companies (and their service provider(s), if any) must notify MTI of the date, time and venue of the meeting at least 1 day before the conduct of the general meeting. They may do so by submitting a notification for the time-limited exemption via https://covid.gobusiness.gov.sg.

Minutes of meeting

In the case of listed companies, the minutes of the meeting must be published on both SGXNet and the company's website (if available) within one month after the date of the meeting.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Right to be heard or to speak electronically

For listed companies, the Checklist recommends a cut-off time of at least 72 hours prior to the general meeting within which questions must be submitted.
Listed companies are also encouraged, as far as possible, to respond to questions promptly to facilitate shareholders' votes. This may be addressed prior to the general meeting through publication on SGXNet and, if available, the issuer's corporate website and/or any virtual information session that the issuer may organise.

Notice of general meeting

The notice of a general meeting may be called by notice in writing of not less than 14 days, published on both SGXNet and the company's website (if available). This, however, does not affect the period of notice required to pass a special resolution. According to the Checklist, issuers are nonetheless strongly encouraged to provide at least 21 calendar days' notice to shareholders.
The Checklist also clarifies that if a general meeting is adjourned or postponed in respect of which a notice had previously been circulated, at least 14 calendar days' notice (excluding the date of notice and the date of meeting) must be given for the reconvened meeting.

Laying or producing documents before a general meeting

Documents may be laid or produced at a general meeting of a listed company by being either:

- sent or published together with the notice of the general meeting; or
- published online, with the online address being sent with the notice of the meeting, or published on the website of the listed company.

These documents include Proxy Forms, annual reports, shareholders' circulars and other relevant corporate information.

We are here to help

We understand that this may be a challenging time for you and your businesses. If you have any queries about how the Act, the Order or the Checklist will affect you and your company, we will be more than happy to address them. Please feel free to contact Ms Tan Min-Li or Ms Jennifer Lo.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.