

NEW STATUTORY FRAMEWORK FOR COMPANIES IN SINGAPORE TO CONDUCT VIRTUAL MEETINGS

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The COVID-19 pandemic reshaped the way businesses were conducted in Singapore. Various Safe Management measures were implemented by the authorities to prevent the spread of COVID-19 infections and some of these measures discouraged or prevented the attendance of in-person meetings held by companies. To enable companies in Singapore ("**Companies**") to have the option to hold virtual meetings, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings) Orders (the "**Order**") were introduced in April 2020 as part of the COVID-19 (Temporary Measures) Act 2020. We have since successfully transitioned towards living with COVID-19 and many of the Safe Management measures have been lifted such that physical meetings are no longer discouraged or prevented. Nonetheless, the COVID-19 pandemic has paved the way for Companies to embrace technology and make technological advancements in the way corporate proceedings are carried out. The benefits of being able to conduct meetings virtually are recognized and notwithstanding the cessation of the Order, Companies are able to continue to choose to conduct meetings virtually following the passing of the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act (the "**Amendment Act**").

In summary, the Amendment Act will facilitate digitalization and the use of technology by amending the Companies Act 1967 (the "**Act**") to (hereinafter referred to as the "**New Statutory Framework**"):

- allow Companies to hold virtual and hybrid company meetings;
- require Companies to accept proxy instructions given by its shareholders using electronic means; and
- clarify that virtual meetings of the board of directors of Companies are not prohibited.

A. Scope of the New Statutory Framework

The New Statutory Framework, which took effect on 1 July 2023, allows Companies to hold the following types of meetings partially or fully using virtual meeting technology (unless the holding of fully virtual meetings are excluded by order in the Gazette):

- annual general meeting of a Company;
- extraordinary general meeting of a Company;
- statutory meeting of a Company;
- general meeting of an amalgamating Company to approve the amalgamation;
- meeting of a class of members of a Company;
- a meeting ordered by the Court pursuant to section 182 of the Act, and if the Court so directs; and
- a meeting of creditors, members of a Company, holders of units of shares of a Company, or a class of such persons, as ordered by the Court pursuant to section 210 of the Act, and if the Court so directs.

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For the avoidance of doubt, under the New Statutory Framework, subject to Section B of this article, Companies may hold any of the above-mentioned meetings in any one of the following manners:

- at a physical place;
- at a physical place and using virtual meeting technology; or
- using virtual meeting technology only (unless excluded by order in the Gazette).

The New Statutory Framework also provides that, subject to the constitution of the relevant Company, a meeting of the board of directors of the Company or a committee consisting of one or more directors is not prohibited from being partially or fully held using virtual meeting technology.

B. Application of the new statutory framework

A Company does not need to amend its constitution if it would like to hold partially or fully virtual meetings under the New Statutory Framework, as the New Statutory Framework will automatically apply to all Companies incorporated before 1 July 2023 unless the constitution is amended on or after 1 July 2023 to exclude the application of the New Statutory Framework. For a Company that is incorporated on or after 1 July 2023, the Company may choose to exclude the application of the New Statutory Framework at the point of incorporation or any time after its incorporation.

It should also be noted that notwithstanding the introduction of the New Statutory Framework, Companies listed on the Singapore Exchange remain subject to regulations issued by the Singapore Exchange Regulation (“**SGX RegCo**”). In this regard, in line with the introduction of the New Statutory Framework, SGX RegCo has updated its practice notes to provide detailed guidance to listed issuers on the conduct of virtual general meetings, which will apply to meetings held on or after 1 July 2023.

C. Protection of shareholders’ rights

The amendments to the Act to allow for the holding of virtual meetings will not compromise shareholders’ rights as the New Statutory Framework will also introduce a set of default rules that sets out how key shareholders’ rights are to be applied at a meeting that is held using virtual meeting technology. We set out in the table below, a summary of such shareholders’ rights and the corresponding default rules to be applied:

Shareholders’ rights	Default Rules
Attendance at the meeting	Any person can attend the meeting using virtual means.

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Appointment of proxy	A member may appoint a proxy by submitting the proxy instrument via electronic means as specified in the notice of meeting.
Quorum	A person attending the meeting using virtual means can count to the quorum.
Right to be heard or to require representations to be read out	A person may be heard and representations may be read out using any means of synchronous communication that the directors of the Company may determine.
Right to speak on a resolution	A person may speak or discuss any matter using any means of synchronous communication that the directors of the Company may determine.
Voting rights	<p>A member may vote by electronic means or any other means permitted by the constitution of the Company.</p> <p>In addition to the above, a member may vote by a show of hands through electronic means or any other means permitted by the constitution of the Company but only if the person can be identified:</p> <ol style="list-style-type: none"> 1. by any method that may be prescribed relating to the verification or authentication of the identity of persons attending the meeting; or 2. if no method is so prescribed, by any method that the directors of the Company may determine.

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<p>Laying and production of documents</p>	<p><u>Auditor's report</u></p> <p>The contents of an auditor's report may be read out using any means of synchronous communication that the directors of the Company may determine.</p> <p><u>Inspection of documents</u></p> <p>A document can be made available for inspection:</p> <ol style="list-style-type: none"> 1. on a website during the meeting; or 2. by any other means during the meeting that the Company may by ordinary resolution determine. <p><u>Register of the Company</u></p> <p>The register of the Company can be made available:</p> <ol style="list-style-type: none"> 1. on a website during the meeting; or 2. by any other means during the meeting that the Company may by ordinary resolution determine. <p><u>List of members of the Company and their shareholding</u></p> <p>The list of members and their shareholding can be made available:</p> <ol style="list-style-type: none"> 1. on a website during the meeting; or 2. by any other means during the meeting that the Company may by ordinary resolution determine. <p><u>Documents required to be laid before a meeting and at a meeting</u></p> <p>A statement, financial statement, consolidated financial statement, balance sheet, auditor's report or other document may be laid before a meeting and before the Company at a meeting by making available the same:</p> <ol style="list-style-type: none"> 1. on a website; or 2. by any other means during the meeting that the Company may by ordinary resolution determine.
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Irregularities	<p>A meeting to which is held at (a) a physical place and using virtual meeting technology or (b) using virtual meeting technology only, is not invalidated by reason of any technological disruption, malfunction or outage unless the Court:</p> <ol style="list-style-type: none"> 1. is of the opinion that the technological disruption, malfunction or outage has caused or may cause substantial injustice that cannot be remedied by any order of the Court; and 2. by order declares the meeting to be invalid.
Electronic transmission of documents by shareholder, officer or auditor to the Company	<p>A shareholder, officer or auditor of the Company may now send documents to the Company or a director of the Company using electronic communications, as long as the Company or director have agreed, generally or specifically, that such documents may be sent electronically, and that agreement has not been revoked.</p>

D. Closing thoughts

With effect from 1 July 2023, Companies that have been conducting their general meetings during the COVID-19 pandemic using video-conferencing platforms may continue to do so under the New Statutory Framework. The New Statutory Framework is a significant development that keeps pace with digitalization as it allows Companies to capitalize on technology and adapt to the evolving corporate landscape while protecting the rights and interests of shareholders. While the New Statutory Framework will automatically apply to all Companies with effect from 1 July 2023, Companies should take note that certain matters are still required to be determined by their directors and shareholders in order for the default rules under the New Statutory Framework to work. SGX-listed Companies are also reminded to apply the New Statutory Framework in tandem with the revised practice notes on general meetings.

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