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COVID-19: VIRTUAL GENERAL MEETING FOR LISTED COMPANIES

Virtual general meetings are gaining wider acceptance in many parts of the world in light of the COVID-19 pandemic where more listed companies have begun conducting meetings virtually.

Technology is finally catching up with governance and it is interesting to see this positive development. In the United States alone, at least 920 companies had announced their meetings to be conducted virtually as of 14 April 2020. Closer to home, in Singapore at least 13 listed companies have turned to virtual meetings such as SP Corporation, Food Empire Holdings Limited and DBS Group Holdings as of 21 April 2020.

A fully virtual meeting refers to a meeting where members may participate virtually only.

The Malaysian laws generally allow a fully virtual general meeting to be conducted unless the constitution prohibits it. In view of the COVID-19 pandemic, listed companies in Malaysia have two options: they may conduct their meetings subject to compliance with local regulations related to COVID-19 or they may postpone their meetings to a later date after this pandemic has abated and apply for regulatory time extension if they wish to hold their annual general meetings after the 6-month deadline prescribed in the Companies Act 2016 (“**CA 2016**”).

Fully Virtual Meetings Instead of Postponement

Deferment of general meetings remains a popular option among the listed companies in Malaysia in response to the government’s call to curb the spread of the COVID-19 pandemic. As of 26 April 2020, at least 40 companies had announced to postpone their annual general meetings and/or extraordinary general meetings.

Given the unprecedented situation and while the law allows general meetings to be postponed, it may be prudent for listed companies to hold their general meetings in a fully virtual format instead of postponement for the following reasons:

(a) Postponing general meetings may impact rights of shareholders as general meetings remain to be the major communication platform between the shareholders and companies. This uncertain time calls for a greater disclosure and general meetings are one of the important forums where shareholders may engage with the

directors and senior management directly and raise questions regarding the performance of the company.

(b) Deferred general meetings may also affect any distribution of final dividends, authority given to the company due to cut-off dates and ongoing corporate transactions which may require shareholders' meetings to be convened in order to obtain their approvals.

Fully Virtual Meetings Instead of Hybrid or Physical Meetings

Amid COVID-19 pandemic and the MCO, listed companies in Malaysia are slow in adopting online meetings, with only 6 companies announced to hold their general meetings in a fully virtual format as of 26 April 2020. So far, the only company which successfully conducted its virtual general meeting during MCO is Ranhill Holdings Berhad on 21 April 2020.

However, it is crucial for listed companies to shift to fully virtual meetings for the following reasons:

(a) During the MCO, neither physical nor hybrid meeting is allowed to be conducted. If listed companies intend to conduct meetings during the MCO, their only option is to conduct fully virtual meetings.

(b) Fully virtual meetings, unlike physical or hybrid meetings, could prevent gathering of members at one place and minimise further postponements of the general meetings as online meetings would not be entirely dependent on the outcome of the pandemic situation.

(c) Post-MCO, it is anticipated that stringent social distancing directives would be imposed if physical and hybrid meetings are allowed. These may entail, among others, bare minimum number of attendees allowed at the physical venue of the meeting.

(d) While hybrid meetings may be conducted post-MCO, there may be additional logistics involved when compared to fully virtual meetings. As an example, physical room and material rentals (for physical participation), remote participation and voting infrastructure (for online participation), procedures for physical participation and voting and procedures for virtual participation and voting.

Requirements to Conduct Fully Virtual General Meetings

Listed companies must comply the following requirements if they wish to conduct fully virtual general meetings:

CA 2016: Section 327 of the CA 2016 provides basic requirements to conduct any virtual meetings.

The main venue of the meeting shall be in Malaysia and the chairperson must be present at such main venue. The technology used to conduct virtual meetings must enable members to participate and to exercise right to vote and speak at the meeting.

Where a listed company's constitution prohibits virtual general meeting, virtual meetings may only be conducted after the prohibition is removed from the constitution.

Guidance and FAQs on the Conduct of General Meetings for Listed Issuers (“Guide”): The Guide was recently issued on 18 April 2020 as a direction to listed companies on all general meetings conducted during and outside the MCO period where social distancing requirements are in place.

The Guide provides additional requirements to conduct a fully virtual meeting as follows:

A listed company should:

- Ensure that there is reliable infrastructure to enable the conduct of the meeting including enabling members to exercise their rights to speak and vote at the meeting.
- Provide guidance to shareholders on the requirements and methods of participating in the general meeting using the selected platform.
- Ensure only eligible members are allowed to participate in the meeting.
- Identify the broadcast venue.
- Ensure only a maximum of 8 essential individuals are physically present at the broadcast venue and social distancing measures are practiced. Essential individuals include chairperson of the meeting, CEO, CFO, company secretary, auditor, scrutineer and person providing audio and visual support.

Practical Concerns Faced by Listed Companies

When conducting a fully virtual general meeting, listed companies should be mindful of the following practical concerns faced by companies across the globe:

• **Technology-Related Issues**

Issue/Concern: Technical glitches

Listed companies need to understand technology and its limitations. Listed companies had experienced technical glitches during the virtual meetings including time lag between downloading remote participation voting results and transmitting the same to the scrutineers and temporary cut-off of microphone during discussion of certain resolution.

Solution: While not all technical glitches are foreseeable, advance test run of such technology may reduce potential of such glitches from occurring. Additionally, listed companies may wish to engage a reliable third party platform provider. For example, prior to engaging a third party online platform provider, listed companies may consider whether the provider's potential measures in cases of technical issues are sufficient and if there is any record of serious technical glitches reported against such provider.

• **Shareholders' Queries**

Issue/Concern: Technical glitches may prevent shareholders from raising their queries to their companies through the online platforms.

Additionally, there were also reported incidences where queries forwarded by the shareholders were prioritised, rephrased or simply ignored. There are also concerns raised on censorship issues such as 'troublemakers' being blocked from online participation.

Solution: To minimise the problems caused by the technical glitches, companies should be proactive in considering all other means of obtaining shareholders questions. Companies may also wish to consider requesting shareholders to send their queries in advance of the meeting.

Companies should also be transparent with all the questions received from their members and respond to each and every question received, similar to questions received at a physical meeting.

Companies may consider electing an impartial individual to monitor/manage the questions raised by the members to ensure that no questions are being ignored by the board.

• **Registration of Shareholders**

Issue/Concern: There were instances where shareholders misplaced their pin number or user name information for participation in virtual meeting requiring 'login' by the shareholders.

Solution: In such event, the companies should be prepared to engage with their platform provider for possible solutions including methods to confirm the credentials of such members.

Moving Forward

Malaysia is predicted to be in the recovery stage with possible flattening or even ending of the COVID-19 cases in the near future.

However, no one knows how long the pandemic, its aftereffects and social distancing guidelines will last hindering physical general meetings. It is therefore imperative for Malaysian listed companies to look into and embrace a fully virtual general meeting in these difficult times in order to avoid potential delay in their business transactions and operations.

Listed companies are advised to work closely with online platform service providers on the conduct of general meeting using electronic platform and e-voting on a large scale, to facilitate greater engagement with shareholders and shareholders' decision making process with minimal hiccups.

Additionally, companies whose constitutions do not permit the use of technology to conduct general meetings, should consider reviewing and updating their constitutions to provide greater flexibility in their general meeting processes.

Important Information

Azmi & Associates has set up Azmilaw Task Force to look into all issues arising from COVID-19 and MCO. Clients are welcomed to contact their usual Partner who will bring their issues to Azmilaw Task Force for our further action.

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We hope that the above discussion is of assistance to you and your company. If your operations or contractual obligations are affected by the COVID-19 outbreak, we are ready to assist you on any queries you have.

Corporate Communication

Azmi & Associates

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