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Corporate Governance

# COVID-19 AGM Matters & the Move to Virtual General Meetings

## Introduction

As the COVID-19 threat continues to escalate and companies struggle to stay afloat, the Companies Commission of Malaysia (“**CCM**”), in doing its part to offer companies breathing room, has provided a procedure for the extension of time for public companies to hold annual general meetings (“**AGMs**”), and has also introduced an extension of time for public and private companies to circulate and lodge financial statements and reports.

Regarding the conduct of AGMs, the Securities Commission Malaysia (“**SC**”) has issued guidelines on the conduct of general meetings during the Movement Control Order (“**MCO**”) period and the post-MCO period (“**Guidelines**”).

This Update highlights the key features of these measures.

## Extension of Time for AGMs, Circulation and Lodgment of Financial Statements and Reports

The CCM has provided an application process whereby public companies may apply for an extension of time to hold annual general meetings (“**AGMs**”). An extension of time has also been provided for both private and public companies to circulate and lodge financial statements and reports.

### Eligibility to Apply

The application for extension of time to hold an AGM can be made by companies with financial year end beginning 1 September 2019 until 31 December 2019, from 7 April 2020 until 30 June 2020.

### Extension of Time to Hold AGMs

Under normal circumstances, every public company must hold an AGM within six months from the date of its financial year end, and not later than 15 months from the date of its previous AGM.

Under CCM's Practice Directive No. 6/2020 revised on 15 April 2020 (“**Practice Directive**”), public companies affected by COVID-19 can lodge an application with CCM for a 90-day extension to hold their AGMs. The 90-day period starts from the last day their AGMs are supposed to be held.

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Public companies opting to defer their AGMs must make a disclosure announcement on the deferment on Bursa Malaysia.

#### Extension of Time to Circulate and Lodge Financial Statements and Reports

Similarly, under normal circumstances, a private company must circulate its financial statements and reports to its shareholders within six months of the end of its financial year, and submit to CCM its financial statements and reports within 30 days from the date its financial statements and reports are circulated.

A public company must circulate its financial statements and reports to its shareholders at least 21 days before its AGM, and submit to CCM its financial statement and reports within 30 days from the date of its AGM. Under the Practice Directive, a one-month extension is granted for circulation and lodgement of financial statements and reports.

#### Quick Illustration

Public Company Details	Under Normal Circumstances	With Extension of Time
Financial Year End	30/9/2019	30/9/2019
Expiry date for Financial Statement Circulation	10/3/2020	8/6/2020
Expiry date for AGM	31/3/2020	29/6/2020
Expiry date for Financial Statement Lodgement	30/4/2020	29/7/2020

*\* adopted from CCM's FAQ revised on 15 April 2020*

#### Waiver of Time Extension Application Fees and Streamlined Application Procedure

CCM has waived the extension application fees of RM100 for each category and streamlined application procedure to having company secretaries submitting the company's financial year end and AGM details to [eot@ssm.com.my](mailto:eot@ssm.com.my).

#### Conduct of General Meetings

On 18 April 2020, the SC issued the Guidelines on the conduct of general meetings both during the MCO period and in the post-MCO period, where social distancing measures must be observed.

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Fully virtual general meetings and hybrid general meetings (only allowed post-MCO period) are covered by SC in this Guideline.

For public companies that do not wish to postpone their AGMs during the MCO period, they must apply for a time-limited exemption for essential individuals to travel to and be physically present at the broadcast venue of their AGMs to facilitate the conduct of a fully virtual general meeting. This is of course, if the companies even need individuals to physically gather at a venue to support a fully virtual general meeting. As at the date of this update, SC allows up to a maximum of eight individuals to gather, including the chairperson, CEO, CFO, company secretary, auditor and those providing audio-visual support. The time-limited exemption application can be made to SC with details of the AGM and essential individuals at [AGM@seccom.com.my](mailto:AGM@seccom.com.my).

Post-MCO, hybrid general meetings where a physical meeting venue with shareholders physically present, with the same meeting broadcasted online, are allowed. At those meetings, shareholders have the option to participate via audio and/or video capabilities.

#### **Key Points & Practical Tips to Host Virtual Meetings**

The Guidelines are not exhaustive on the manner to which a virtual meeting can be conducted, save that companies must be able to demonstrate that the venue of the virtual meeting is in Malaysia, and that the chairperson is at the main venue, as required under Section 327 of the Companies Act 2016 (“**Companies Act**”).

In this regard, we have compiled key points and practical tips for companies to take note of in conducting virtual meetings in compliance with the Companies Act and the Bursa Malaysia Listing Requirements (“**Listing Requirements**”).

**Suitable Virtual Meeting Platform Provider** – When sourcing for a platform provider, the company should take into consideration the technology capabilities of the provider i.e. whether the provider is able to provide both live audio and video feed, to allow shareholders to listen and participate in meetings; and whether other modes of real time expression is supported, eg. submission of typed texts. This is to ensure that in the event of any technical glitch in the primary mode of communication, there is a secondary backup communication channel. More importantly, the platform should be secured where only pre-registered shareholders can access the webcast with a unique ID and password, and that casting of votes can be validated and traced through remote participation and voting facilities.

**Notice of Meeting** – Notice of meeting can be issued electronically to shareholders provided the company’s constitution allows for it, and that the notice period of at least 21 days before the AGM is held is observed.

**“Venue” of Virtual Meeting** – The company must be able to demonstrate that the “venue” of the meeting is in Malaysia, in order to satisfy the requirement of the Companies Act. To our mind, this requirement is satisfied when the virtual meeting is hosted on a local platform with the chairperson dialling in from anywhere in Malaysia, unless the company’s constitution expressly requires a physical meeting venue.

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**Requirement for Chairperson to be in Malaysia** – This requirement under Companies Act can be satisfied so long as the chairperson dials into the meeting from anywhere in Malaysia.

**Submission of Questions Prior to Virtual Meeting** – The company can determine the mode for submission of questions whether through the virtual meeting platform or through traditional means eg. through return post or email, so long as the shareholders are given clear notice on the avenues made available to them.

**Meeting Quorum** – Meeting quorum remains as two, and SC has stated in the Guideline that shareholders' virtual attendance can be determined by the number of attendees who logged in at the start of the meeting on the platform. It is therefore vital for the platform service provider to be able to provide a proper audit trail to record the attendance of shareholders at the meeting.

**Tabling of Resolution** – Resolutions must be tabled, and the meeting proceedings and resolutions passed at the meeting must be properly recorded and maintained as required under the Companies Act and the Listing Requirements.

**Voting** – Notwithstanding the meeting is conducted virtually through remote participation and voting facilities, companies must take note that SC requires for a scrutineer to be appointed by the company to validate the votes casted. Proxies are allowed in a virtual meeting provided proxy forms are submitted in accordance with the rules set down by the company.

**Publishing of Summary of Meeting** – The company must, as soon as practicable after the conclusion of the meeting, publish on its website a summary of the key matters discussed at the meeting, as it would need to do if a physical meeting was convened.

We would emphasise that the above are quick points to take note of, and that all other requirements under the Companies Act and the Listing Requirements relating to convening of meetings, content of meeting notices, submission of proxy forms etc. which are not expressly mentioned above remain applicable, and must be accordingly complied with.

## Conclusion

This pandemic has undoubtedly hastened the need for companies to examine their constitution and board room practice, to ensure their framework allows for the new norm of conducting business and meetings through electronic means and virtual space, without breaching the law. A careful redrafting of the constitution is likely to be required for companies that have yet to embrace digitalisation.

We would also take the opportunity to highlight the need for companies to be mindful of the manner by which information is collected, and the type of information collected from shareholders attending physical meetings (post-MCO period), as whilst it is understandable that companies will likely collect more information than before, the scope of data collection may exceed their current privacy notices. Examples of such information would include whether individuals are displaying symptom of virus, locations visited, health status of individuals in the same household etc., which fall within the category

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of sensitive personal data. For further details, please see our client update on [Processing Personal Data in the Context of COVID-19 and the Movement Control Order](#).

If you have any more 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 law, please feel free to contact our team members below who will be happy to assist.

For more articles and updates from our teams across the region on COVID-19 and other related legal issues, please visit the [Rajah & Tann Asia COVID-19 Resource Centre](#).

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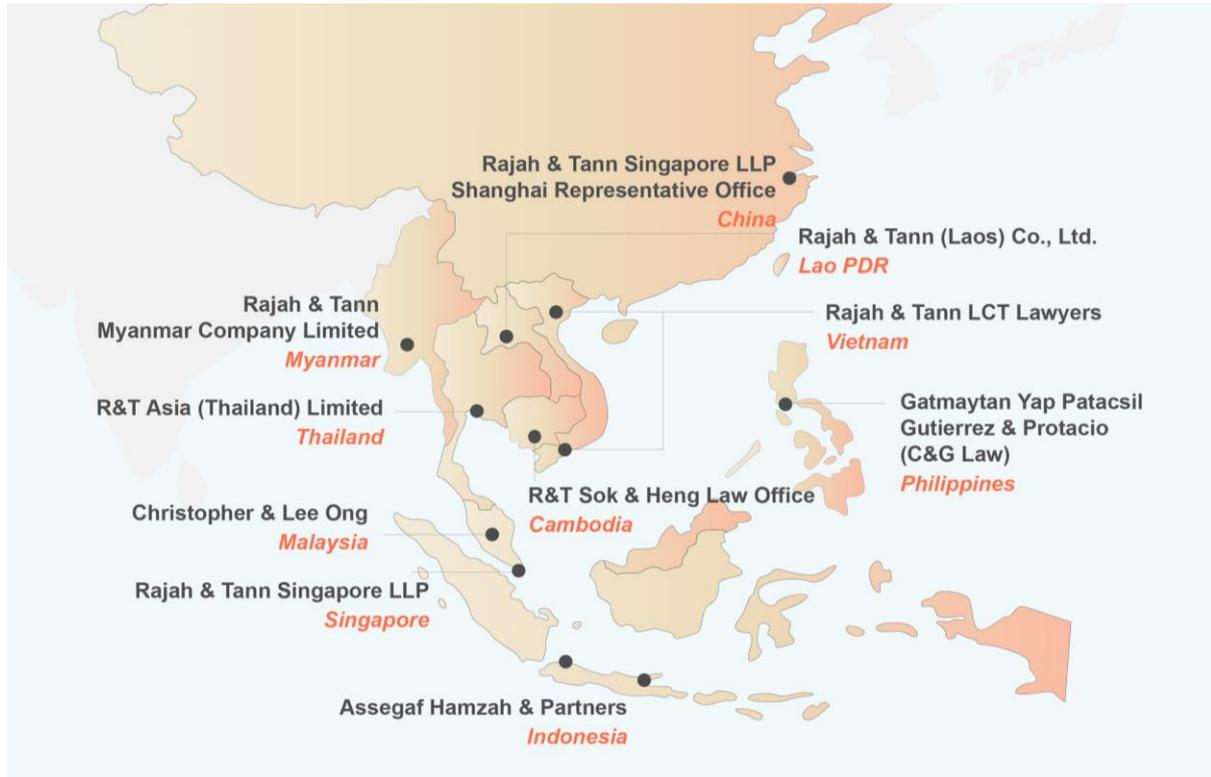
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