



D DREW & NAPIER

CLIENT UPDATE

ALTERNATIVE
ARRANGEMENTS
FOR MEETINGS
DURING COVID-19

17 April 2020

LEGAL UPDATE

In this Update

In light of the evolving COVID-19 situation, the Singapore regulatory authorities have issued guidance for issuers on how to conduct their general meetings. The SGX RegCo had, in consultation with ACRA and MAS previously on 7 April 2020 automatically extended by 60 days the deadline for all issuers with a financial year-end on or before 31 March 2020 to hold their general meetings. On 13 April 2020, the Ministry of Law further promulgated the Order to allow issuers who still wish to conduct general meetings during this period to use alternative arrangements to do so. With the Order coming into force, SGX RegCo, MAS and ACRA have on 13 April 2020 issued a checklist (Checklist) to guide listed and non-listed entities on the conduct of general meetings during the period when elevated safe distancing measures are in place.

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INTRODUCTION

On 7 April 2020, Part 4 of the COVID-19 (Temporary Measures) Act 2020 (“**Covid Temporary Measures Act**”) came into operation. Under Part 4 of the Covid Temporary Measures Act, alternative meeting arrangements may be prescribed, by order, for those meetings where personal attendance is provided for in written law or certain legal instruments. On the same day, the Ministry of Health issued the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (“**Regulations**”), which put in place an elevated set of safe distancing measures as a circuit breaker to pre-empt increasing local transmission of COVID-19. This included the closure of workplace premises except for providers of essential services.

On 13 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 gazetted and deemed to have come into operation on 27 March 2020. The Order prescribes, amongst other things, the alternative arrangements for the conduct of general meetings of (1) companies; (2) variable capital companies and classes of members of variable capital companies holding shares in respect of a sub-fund; (3) unitholders of registered business trusts; (4) unitholders of relevant unit trusts; and (5) debenture holders. This update examines the alternative arrangements (“**Alternative Arrangements**”) applicable to companies with a focus on listed issuers. Alternative arrangements applicable to the other categories of meetings are substantially similar.

APPLICABLE PERIOD

KEYPOINT

The alternative arrangements set out in the Order will apply to meetings convened, held, conducted or deferred during (a) 27 March 2020 to the last day the Regulations or the Infectious Disease (Measures to Prevent Spread of COVID-19) Regulations 2020 is in force (“**Control Period**”); and (b) a period of 30 days after the end of the Control Period, where notice of the meeting was given during the Control Period. As of the date of this update, the Control Period ends on 4 May 2020.

ALTERNATIVE ARRANGEMENTS

The Order is permissive and not mandatory, and compliance with the alternative arrangements will be deemed to be compliant with the relevant provisions of written law or legal instrument in respect of which the alternative arrangements are made. Specifically for listed entities, provisions in the SGX Listing Rules that require otherwise (in respect of the matters set out in the Checklist) will not be applicable for the applicable period if an issuer adheres to the Order and the Checklist.

Conduct of meetings

The Alternative Arrangements provide that meetings can be convened, held, or conducted whether wholly or partly by electronic means. If issuers choose to do so, they must be at no cost to shareholders. If a meeting is to be held by electronic means, issuers must allow shareholders and persons which would have been able to be appointed as proxies by relevant intermediaries under Section 181(1C) of the Companies Act (“**Relevant Intermediaries**”), such as CPF and SRS investors, to contemporaneously observe the proceedings of the meeting by (a) “live” audio and video means, such as a “live” webcast; and (b) “live” audio only means, such as a telephone number.

A quorum will be formed by 2 shareholders either personally or electronically present. ‘Electronically present’ in this case means that the shareholder (a) attends by electronic means; (b) is verified by the share registrar as attending the meeting by electronic means; and (c) is acknowledged by the chairman of the meeting as present by electronic means.

For issuers, the Board of Directors and their statutory auditors should attend the general meetings as well, and their attendance and right to be heard may be satisfied by electronic means.

Issuers must publish the minutes of the meeting on SGXNET and their corporate website within one (1) month after the date of the meeting.

Submission of questions

The Alternative Arrangements also provide methods in which a shareholder or person can make representations during a meeting by electronic means. Under the Alternative Arrangements, a company can require shareholder to send, by post or electronic mail, matters which the shareholder or person wishes to raise at the meeting to the chairman of the meeting, and such matters, if substantial and relevant, must be addressed to at or before the meeting by electronic means. For issuers, the cut-off time in which questions can be submitted will be at least 72 hours prior to the general meeting. Issuers can also choose to respond to such questions through publication on SGXNET and on the issuer’s corporate website, or through any virtual information session that the issuer may organise.

Persons who would have been able to be appointed as proxies by Relevant Intermediaries must be given the same extent of rights as shareholders. Such

rights include being allowed to attend the meeting as well as submitting questions to be addressed.

Voting and proxy forms

Issuers whose constitutive documents allows for remote electronic voting may allow remote electronic voting to take place at the meeting by electronic means. If they choose to do so, the issuer must ensure that it has implemented the necessary safeguards to validate votes submitted by shareholders.

If the issuer's constitutive documents do not allow for remote electronic voting, then shareholders must vote by proxy only, and only the chairman of the meeting must be appointed as the proxy.

Shareholders must be allowed to submit proxy forms through electronic means, as an alternative to physical delivery of the instrument of proxy. Issuers must specify in the notice of general meeting how shareholders may submit the proxy forms electronically and through hard copy as well as the timeline by which instruments of proxies must be submitted.

Proxy forms delivered by shareholders before 13 April 2020 will continue to be valid, but proxy forms appointing any other person other than the chairman of the meeting shall be deemed to appoint the chairman of the meeting as proxy, provided that (a) in respect of adjourned or postponed meetings, there is no change to the resolutions to be proposed at the adjourned or postponed meeting from those that are contained in the notice of the previously-notified meeting, including no amendments to the ambit of the resolution and no addition of new resolutions; (b) shareholders are allowed to withdraw their previously-submitted proxy form and have not done so; and (c) shareholders have specifically directed the proxy on how they wish to vote for or vote against (or abstain from voting on) the resolutions in their proxy form.

CPF and SRS investors should be informed that if they wish to vote, they should approach their respective CPF Agent Banks or SRS Operators to submit their votes at least seven (7) working days before the general meeting.

Notice of meeting

The Alternative Arrangements regarding giving notice of a meeting have not deviated significantly from existing provisions. Issuers must still provide at least 14 days' notice, or 21 days if a special resolution is proposed, on SGXNET and their corporate website before convening a meeting. Issuers who wish to adjourn or postpone a general meeting in respect of which a notice had already been circulated must take care to give at least 14 days' notice for the reconvened meeting. However, issuers are strongly encouraged to provide at least 21 days' notice to shareholders.

Notices of general meetings under the alternative arrangements will additionally have to contain particulars on the electronic means by which the meeting will be conducted, as well as arrangements for shareholders to participate in the

meeting by electronic means. Issuers will also have to provide instructions to shareholders on how they can (1) access documents or information in relation to the business of the general meeting; (2) submit their questions ahead of the meeting; and (3) cast their votes.

Documents

For issuers, all documents relating to the business of the general meeting must be published on SGXNET and, if available, the issuer's corporate website, and published together with the notice of general meeting. Such documents will include proxy forms, annual reports, shareholder circulars and other relevant corporate information.

Documents required to be laid or produced before a general meeting of a non-listed company may be so laid or produced by being sent with the notice of the meeting.

Time-limited exemptions

Lastly, issuers who require essential persons to be in the same physical location to facilitate the conduct of the general meeting by electronic means can do so, so long as the number of persons at the same physical location does not exceed six (6) people, and the arrangement at the physical venue comply with prevailing safe distancing measures. Issuers must inform the Ministry of Trade and Industry of the date, time and venue of the meeting no later than one (1) day before the conduct of the general meeting.

CONCLUSION

The Order has been promulgated as a result of the evolving COVID-19 situation, in order to aid companies in fulfilling their continuous disclosure obligations. With the addition of these new alternative arrangements, issuers now have another option, in addition to postponing their general meeting, to instead hold a meeting through electronic means. Regardless, issuers should note that such alternative arrangements are only meant to facilitate the conduct of meetings, and that their obligations to keep shareholders properly informed about the state of affairs of the company remain intact.

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