

KEY CLAUSES ON VIRTUAL GENERAL MEETINGS OF COMPANIES IN THE DRAFT COMPANIES, BUSINESS TRUSTS AND OTHER BODIES (MISCELLANEOUS AMENDMENTS) BILL

	Clause	Current requirement(s)	Proposed amendment(s)	Reason(s) for amendment(s)/ Consultation question(s)
1.	Clauses 1, 2, 3 and 5	The Companies Act (“CA”) provides for general meetings but does not directly address the manner in which general meetings are held. The CA’s provisions on general meetings originated from a time before the advent of digital technology and some of the provisions lean more towards the holding of general meetings in a physical venue and with the attendees being physically present.	To amend the CA to introduce a new section 173J ¹ which: (a) enables a company to hold general meetings ² : (i) at a physical place; (ii) at a physical place and using virtual meeting technology ³ ; or (iii) using virtual meeting technology only;	The proposed amendments will expressly clarify that companies can hold fully virtual or hybrid general meetings and provide companies flexibility in holding such meetings, while ensuring that members’ rights are upheld. When the COVID-19 pandemic began in 2020, temporary legislative amendments ⁹ were made to allow virtual general meetings to be held in view of the ambiguity in the CA. Facilitating the use of digital media and technology would help companies comply more effectively

¹ See clause 3 of the draft Bill.

² See subsection (2) of section 173J. The following types of meetings are covered under section 173J (see subsection (1) of section 173J):

- (a) an annual general meeting of a company;
- (b) an extraordinary general meeting of a company;
- (c) a statutory meeting of a company;
- (d) a general meeting of an amalgamating company mentioned in section 215C or 215D of the CA; and
- (e) a meeting of a class of members of the company.

For ease of reference, this document will refer to general meetings of a company only.

³ “Virtual meeting technology” is proposed to be defined to mean “any technology that allows a person to participate in a meeting without being physically present at the place of meeting”. See clause 2 of the draft Bill.

⁹ The COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 was made under the COVID-19 Temporary Measures Act 2020.

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			<p>(b) clarifies how references in the CA that are applicable to a general meeting⁴ may be applied in the context of a general meeting held using virtual meeting technology;⁵ and</p> <p>(c) enables a company to, on or after 1 July 2023, amend its constitution to exclude the application of paragraphs (a)(ii) and/or (a)(iii) or exclude or modify the application of any of the rules mentioned in paragraph (b), in</p>	<p>with the law in today's operating environment.</p> <p>The proposed amendments will enable companies to hold fully virtual or hybrid general meetings, without having to first amend their constitution. This will give greater clarity as to whether companies may hold such meetings.</p> <p>The proposed amendment will also give the company the flexibility of</p>

⁴ The references in the CA include:

- (a) attendance (e.g. sections 177(3); 180(1); 181(1); 181(2); and 181(1C));
- (b) presence (e.g. sections 179(1)(a); 179(1)(b); 179(4); and 184(1));
- (c) voting (e.g. sections 64(1); 175A(2); 180(2); 180(3) and 184(1));
- (d) entitlement or right to vote (e.g. section 176(1); 176(3); 177(3); 181(1); 181(1C); 181(2); 182; 183(2)(a); 184(2); 184(4)(a); 184(4)(b)(ii); 184A(3); 184A(4); 184C(1); and 184D(1));
- (e) voting on a show of hands (e.g. sections 179(1)(c)(i); and 181(1D));
- (f) entitlement or right to be heard (e.g. sections 152(2); 152(3); 205(6) and 207(8));
- (g) right to speak on a resolution (e.g. section 180(1));
- (h) right to speak at a meeting (e.g. sections 181(1) and 181(1C));
- (i) discussion (e.g. section 174(7));
- (j) reading out a representation or declaration (e.g. sections 152(3); 152(4); and 205(6));
- (k) reading out an auditor's report (e.g. section 207(7));
- (l) making a document available for inspection (e.g. sections 76DA(4); 78B(4)(a); and 78C(4)(a));
- (m) production of a register and keeping it open and accessible (e.g. section 164(11));
- (n) keeping a list open and accessible (e.g. section 174(6));
- (o) laying a statement, financial statement, consolidated financial statement, balance sheet, auditor's report or other document (e.g. sections 164A(1)(e); 201(1); 201AA(1)(a); 203(4)-(4A); and 206(1)(e)); and
- (p) a statement, financial statement, consolidated financial statement, balance sheet, auditor's report or other document being laid or caused to be laid (e.g. sections 201(1); 201(5); 201(8); 201(10)(a); 201(10)(b); 201(11); 201(16); 201AA(1)(a); 201C(1); 201C(2); 202A(1)(b); 203(1); and 207(1)).

⁵ See subsection (4) of section 173J.

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			<p>respect of all or any meetings to which section 173J applies.⁶</p> <p>Section 173J will come into operation on 1 July 2023⁷.</p> <p>To amend section 411 of the CA to enable the Minister to make regulations for or with respect to regulating the use of virtual meeting technology for meetings mentioned in paragraphs (a)(ii) or (a)(iii)⁸.</p>	<p>amending its constitution on or after 1 July 2023 to prohibit the holding of fully virtual and/or hybrid general meetings, or modify or exclude or modify the application of the rules clarifying how references in the CA that are applicable to a general meeting may be applied in the context of a fully virtual and/or hybrid general meeting.</p> <p>To address any future challenges with fully virtual or hybrid general meetings, the proposed amendments will empower the Minister to make subsidiary legislation to regulate the use of virtual meeting technology for general meetings, including safeguards that restrict or mandate the types of virtual meeting</p>

⁶ See subsection (5) of section 173J. I.e. section 173J will override a company's constitution to enable the company to hold fully virtual or hybrid general meetings on and after 1 July 2023, even if the company's constitution immediately before 1 July 2023 expressly prohibit the company from holding such meetings or do not expressly provide for such meetings. A company may amend its constitution on or after 1 July 2023 to prohibit the company from holding fully virtual and/or hybrid meetings.

⁷ See clause 1 of the draft Bill.

⁸ See clause 5 of the draft Bill. Regulations may be made to regulate the use of virtual meeting technology for the meetings, including:

- (i) restricting or mandating the types of virtual meeting technology that may be used;
- (ii) restricting the means by which voting may be carried out, or mandating how voting may be carried out, using virtual meeting technology;
- (iii) imposing record keeping and auditing requirements in respect of the use of virtual meeting technology;
- (iv) imposing requirements relating to the verification or authentication of the identities of persons attending meetings using virtual meeting technology; and
- (v) mandating the notices and documents (including physical notices and documents) to be sent to persons attending or eligible to attend a meeting using virtual meeting technology.

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				<p>technology that may be used and imposing verification or authentication requirements.</p> <p>Question 1a: Is the proposed definition of “virtual meeting technology” in footnote 3 appropriate?</p> <p>Question 1b: Are the rules in subsection (4) of the new section 173J appropriate?¹⁰ Are there any other references in the CA that should be covered under subsection (4)?</p> <p>Question 1c: Are the areas mentioned in footnote 10 appropriate? Are there any other areas that should be covered by the Minister’s power to regulate the use of virtual meeting technology for general meetings?</p>
2.	Clause 4	The CA does not specifically address the effect of a technological disruption, malfunction or outage on the validity of a general meeting held using virtual meeting technology.	To amend section 392 to introduce a new subsection (2A) which provides that a meeting to which the new section 173J(2)(b) or (c) ¹² applies is not invalidated by reason of any technological disruption, malfunction or outage unless	The proposed amendment will: <p>(a) allow a member of a company to apply to the Court to invalidate a fully virtual or hybrid general meeting held under the new</p>

¹⁰ Please refer to clause 3 of the draft Bill for the wordings of subsection (4) of the new section 173J.

¹² i.e. a meeting held at a physical place and using virtual meeting technology (a hybrid meeting); or using virtual meeting technology only (a fully virtual meeting).

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		<p>Section 392 of the CA provides an avenue for a member of a company to apply to Court for orders in respect of a procedural irregularity at a proceeding (such as a general meeting¹¹), including an order declaring a general meeting to be invalid.</p> <p>Section 392(2) provides that a proceeding under the CA (including a general meeting) is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.</p>	<p>the Court 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 by order declares the proceeding to be invalid¹³.</p>	<p>section 173J on the basis of the occurrence of a technological disruption, malfunction or outage; and</p> <p>(b) provide that the occurrence of a technological disruption, malfunction or outage does not <i>per se</i> invalidate the general meeting, unless the Court is of the view that there was substantial injustice caused by the technological disruption, malfunction or outage.</p> <p>The proposed amendment strikes a balance between providing members an avenue for redress where a technological disruption, malfunction or outage occurs at a fully virtual or hybrid meeting, and providing companies with the flexibility to hold such meetings.</p>

¹¹ *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [55].

¹³ Similar to the new section 173J, the new subsection (2A) of section 392 will come into operation on 1 July 2023. See clause 1 of the draft Bill.