Annex A: MOF and ACRA's responses to key feedback on the proposed amendments to the Companies Act

1. Facilitating digital general meetings and digital board meetings

Proposal

The CA should be amended to introduce an enabling provision that clarifies that unless the constitution provides otherwise, a company may hold general meetings digitally and in more than one location. It may be necessary to amend certain specific provisions in the CA to address any ambiguity as to how shareholders' rights may apply to digital meetings.

Feedback: The feedback was supportive. There were suggestions to introduce specific requirements for digital general meetings[2] and guidance to be published on how digital general meetings are to be held.

MOF and ACRA's response: **Accepted with modification**. For background, temporary legislative amendments of a similar nature were made via the Meetings Order[3] to allow virtual meetings to be held when the COVID-19 pandemic began in 2020.

In response to the feedback to provide more clarity on the specific requirements for digital general meetings, we will modify the proposal to explicitly specify that companies that hold digital general meetings must use technology that enable members to attend, listen, speak and vote at the meeting, and to specify that companies may hold digital general meetings unless expressly prohibited by their constitution. Additional safeguards and requirements may be introduced subsequently via subsidiary legislation.

On the suggestion to publish guidance on how digital general meetings are to be held, Singapore Exchange Regulation, the Singapore Institute of Directors and the Chartered Secretaries Institute of Singapore have jointly developed and published standards for service providers that provide the systems that enable the holding of virtual and hybrid general meetings[4], which companies may use as a guide when considering how to hold such meetings. ACRA will monitor and study the feedback after implementation of the amendments and will consider issuing any further guidance, if necessary.

Proposals

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[2] These suggestions included requiring companies to provide the option to have a physical meeting; mandating the use of technology with audio-visual capabilities; expressly requiring companies to provide for voting by voice, in addition to voting by show of hands and voting by poll; requiring companies to have a verification system to check the identities of attendees; and requiring digital meetings to be held in a way that replicates a physical meeting.

[3] The COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 ("Meetings Order") was made under the COVID-19 Temporary Measures Act 2020. In December 2022, MinLaw announced its plan to revoke the Meetings Order. The revocation will take effect on 1 July 2023.

[4] https://www.sgxgroup.com/media-centre/20221124-sgx-regco-sid-and-csis-map-out-service-standards-companies-virtual

The existing right under section 392(3) to apply to court to declare proceedings at a general meeting to be void should apply to general meetings held using digital means.
The CA should be amended to introduce an enabling provision which provides that nothing in the CA prohibits board meetings from being held digitally.

Feedback: The feedback was supportive.

MOF and ACRA's response: **Accepted.** This will ensure that there is equal treatment between digital and physical general meetings with respect to the existing right under section 392 to apply to court to declare proceedings at a general meeting to be void, and dispel doubts on whether the CA allows board meetings to be held digitally without being overly prescriptive.

Proposal

The CA should be amended to make it mandatory for all companies to accept proxy instructions given by electronic means instead of leaving this to be stipulated in the company's constitution.

Feedback: The feedback was supportive. Some respondents were concerned about whether using physical means to provide proxy instructions will still be acceptable.

MOF and ACRA's response: **Accepted**. This will make it more convenient for proxies to be appointed, and will provide greater clarity on the practice of providing proxy instructions. The policy intention of the amendment is to provide an additional way of accepting proxy forms, and not to make physical proxy forms obsolete.

2. Clarifying the application of existing digitalisation provisions to documents under the CA

Proposals

Sections 387B (relating to documents sent to members, officers or auditors) and 387C (relating to documents sent to members) should be amended to apply to all documents that the CA requires or permits companies or directors to send to members, officers or auditors.
Sections 395 and 396A (relating to keeping and inspection of company records) should be amended to apply to all documents that the CA requires companies and foreign companies to keep or make available for inspection.
The CA should be amended so that a document may be sent using a mode of electronic communication (including via publication on website) by (a) companies or directors to persons who are not members, officers or auditors of the company; (b) members, officers, or auditors to companies or directors; and (c) persons who are not members, officers, or auditors to companies or directors, where in each case there is an agreement between the parties for the document to be sent using that mode of electronic communication.
For the avoidance of doubt, an agreement may be constituted between the company and its members by a company's constitution such that if the constitution provides that all members may send a document to the company through a particular mode of electronic communications, the members may send a document using that mode of electronic communications to the company.
The current sections 387A to 387C in respect of the electronic transmission of notice and documents by a company or its directors to members, officers or auditors of the company should be retained.

Feedback: The feedback was supportive.

MOF and ACRA's response: **Accepted**. These proposals will provide greater clarity to the industry on the use of electronic communications. We will provide greater clarity on what constitutes an agreement between parties (for example, a company and its members) for a document to be sent using electronic communications.

3. Other areas concerning digitalisation

Proposals

The CA should not be amended to address:

(a) whether and how court-ordered meetings under section 210 may be held digitally;

(b) digital common seals;

(c) certain things made by companies, directors, members, auditors or accounting entities (e.g. debentures; certificates; declarations; reports);

(d) the sending of documents between certain persons (e.g. transferees; auditors; officers; Minister); and

(e) the sending of documents by foreign companies using digital means.

Feedback: Respondents suggested amending the CA to allow for digitalisation in numerous other areas, beyond general meetings.

MOF and ACRA's response: **To be further studied.** We accept the proposal that the CA should not be amended to address the sending of documents by foreign companies using digital means, as it may potentially contradict foreign law.

Regarding the numerous suggestions received on the other areas concerning digitalisation (for instance, whether and how court-ordered meetings under section 210 of the CA may be held digitally and whether common seals can be in digital form), we will need to further study whether and how amendments should be made to the CA to address these issues in greater detail, as they have implications on other sections of the CA.

4. Review of the threshold for the compulsory acquisition of shares under Section 215 of the CA[5]

Proposal

[5] Under section 215 of the Companies Act, a person (the "transferee") has the right to acquire the shares of any dissenting shareholder on a compulsory basis if a scheme or contract involving the transfer of all the shares of a company (the "transferor company") has been approved by at least 90% of the shareholders ("90% threshold"). Section 215(9) of the Companies Act provides that shares held or acquired by (i) a nominee on behalf of the transferee; or (ii) a related corporation of the transferee or a nominee of that related corporation, shall be treated as held or acquired by the transferee, so these shares are excluded from the computation of the 90% threshold for compulsory acquisition.

Shares held or acquired by the following persons should also be excluded from the computation of the 90% threshold for compulsory acquisition under section 215:

(a) A person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;

(b) A body corporate controlled by the transferee;

(c) A person who is, or is a nominee of, a party to a share acquisition agreement with the transferee;

(d) The transferee's close relatives (i.e. spouse; children, including adopted children and step-children; parents; and siblings);

(e) A person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; and

(f) A body corporate controlled by a person described in (e).

Feedback: The feedback was supportive. Respondents expressed different views on the percentage threshold to be used to determine control over a body corporate. Suggestions included using a percentage threshold of 20%, 25%, 30% or 50%, all of which have similar concepts in the Companies Act and/or other foreign legislation[6].

In addition, some respondents disagreed with the proposal to exclude a person who is (or is a nominee of) a party to a share acquisition agreement with a transferee, such that shares held by such a person should not count towards the threshold for compulsory share acquisition.

MOF and ACRA's response: **Accepted with modification.** In view of the public's feedback, we will modify the threshold to establish control of a body corporate to 50%, instead of the 30% threshold that was originally proposed. This will be in line with similar concepts in the Companies Act[7] and the Singapore Code on Take-Overs and Mergers[8].

We will not proceed with the proposal to exclude a person who is (or is a nominee of) a party to a share acquisition agreement with a transferee, such that shares held by such a person should not count towards the threshold for compulsory share acquisition. This is in view of the feedback provided on the ambiguity and the lack

[6] For example, Hong Kong's Companies Ordinance and UK's Companies Act 2006.

[7] Section 5(1)(a) of the CA provides that one way for a company ("Company A") to be deemed as a subsidiary of another company ("Company B") is if Company B controls more than half the voting power of Company A. Section 7(4)(b) also contains the concept of "controlling interest", which entails having control over the majority of voting power. Furthermore, a simple majority (i.e. >50%) of votes is required to pass an ordinary resolution.

[8] The Singapore Code on Take-overs and Mergers defines statutory control as holding more than 50% of a company's voting power.

of clarity of the relevant concepts of a share acquisition agreement and a party to such an agreement, in the context of section 215 of the CA.