

Frequently Asked Questions (FAQs) on the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act 2023

Virtual company meetings

Q: What are the amendments about? What are the types of company meetings that the amendments apply to?

A: The amendments clarify that companies can hold the following meetings using virtual meeting technology (including fully virtual and hybrid meetings):

- (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 Companies Act 1967 (CA);
- (e) a meeting of a class of members of the company;
- (f) where a Court directs, a meeting ordered by the Court under section 182 to the CA; and
- (g) where a Court directs, a meeting of creditors, members of a company, holders of units of shares of a company, or a class of such persons, ordered by the Court under section 210 of the CA.

Q: Will companies be allowed to hold fully virtual or hybrid meetings?

A: Yes, the amendments will enable companies to hold fully virtual or hybrid meetings. This is subject to:

- a) Companies' constitutions (for example, companies that do not wish to conduct meetings in a virtual manner may amend their constitution accordingly); and
- b) The regulations issued by the respective regulators such as SGX Regulation (SGX RegCo) in relation to SGX-listed companies.

Q: Must a company amend its constitution to hold fully virtual or hybrid meetings?

A: No, the amendments will enable companies to hold fully virtual or hybrid company meetings, without having to amend their constitution. This will give greater clarity as to whether companies may hold such meetings.

Q: Can a company choose not to hold fully virtual or hybrid meetings and opt out of the amendments?

A: Yes, a company can choose to hold a physical meeting. It can also amend its constitution on or after 1 July 2023 to prohibit the holding of fully virtual and/or hybrid company meetings.

Q: How are shareholder rights protected under the amendments?

A: Shareholders' rights are protected via a set of default rules that addresses how key shareholder rights such as the rights to attend, speak and vote are to be applied at a meeting held using virtual meeting technology (see the new section 173J(4) of the Companies Act 1967).

Q: For listed companies, are there any additional restrictions for holding virtual/ hybrid company meetings?

A: SGX's Practice Note 7.5 on General Meetings provides detailed guidance to listed issuers on how virtual general meetings may be conducted (such as providing shareholders with the opportunity to ask written questions within a reasonable time prior to general meetings, and the safeguards required to validate votes). For more details, please visit <https://rulebook.sgx.com/rulebook/practice-note-75-general-meetings>.

Q: What are some best practices that a company can adopt in holding virtual/hybrid company meetings?

A: The SGX, the Singapore Institute of Directors and the Chartered Secretaries Institute of Singapore outlined standards for service providers of virtual meeting technology. This set of standards enhances the market's understanding of virtual meeting technology and facilitates effective shareholder engagement. For more details, please visit <https://www.sgxgroup.com/media-centre/20221124-sgx-regco-sid-and-csis-map-out-service-standards-companies-virtual>.

Q: Can a meeting of a company's directors or a committee of the company's board of directors be held fully virtually or in hybrid mode?

A: Yes, the amendments clarify that the Companies Act 1967 does not prohibit meetings involving a company's board of directors (or a committee within the board of directors) from being held in a fully virtual or hybrid manner. However, this is subject to the company's constitution (i.e. such meetings may not be held in a fully virtual or hybrid manner, if they are explicitly prohibited by a company's constitution).

Requiring companies to accept proxy instructions given by electronic means

Q: What are the amendments about?

A: The amendments make it mandatory for companies to accept an appointment of a proxy that is made using electronic means, regardless of the company's constitution. Companies will be required to specify in the notice of meeting the electronic means for the appointment of a proxy.

Q: What will happen to the current practice of physically submitting the instrument to appoint a proxy? Must all proxy instruments be submitted by electronic means?

A: Under the amendment, a company must give its members the option of submitting proxy instruments via electronic means, although members are not required to submit proxy instruments via electronic means. Companies may continue to allow their members to submit proxy instruments via physical means, and members may continue to choose to submit a proxy instrument via physical means.

Excluding shares held by persons connected with the offeror from the computation of the 90% threshold for compulsory acquisition under s 215 of the Companies Act 1967

Q: What are the amendments about? What are the exclusions?

A: Under the amendment, shares held or acquired by the following persons are excluded from the computation of the 90% shareholders' approval threshold required for compulsory acquisition of shares under section 215 of the Companies Act 1967 (CA):

- (a) Bodies corporate who are controlled by the offeror;
- (b) Persons who are controlled or can be influenced by the offeror to approve of his offer, i.e. his close relatives¹, and bodies corporate controlled by such persons; and
- (c) Persons who control the offeror and the bodies corporate controlled by such persons. This means that even if a person makes an offer through a special purpose vehicle, the person's shares will be excluded from the computation of the 90% threshold since the person also controls the special purpose vehicle.

Q: What is the definition of "control", to establish control of a body corporate?

A: A person would be deemed to have control over a body corporate under 2 scenarios:

- a) Control via formal means – If he/she is entitled to exercise (or control the exercise of) at least 50% of the shares in the body corporate;
- b) Control via informal means – If the body corporate (or a majority of its directors) is accustomed or obligated to act in accordance with the person's directions, instructions or wishes.

Q: Is the amendment prospective? What are the offers to which the new exclusions will apply?

A: The amendment will apply prospectively to an offer made on or after the effective date of the amendment. The amendment does not apply to an offer made before the effective date.

The amendment will also apply to revised offers (e.g. change in offer price), if the offer is later revised on or after the effective date, even though the original offer is made before the amendment's effective date.

¹ Close relatives are defined as the offeror's spouse, parent, brother, sister, son, adopted son, stepson, daughter, adopted daughter or stepdaughter.