

Guidance and FAQs on the Conduct of General Meetings for Listed Issuers

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PART I: Introduction

- 1.1 This *Guidance and FAQs on the Conduct of General Meetings for Listed Issuers* (Guidance Note) was first issued by the Securities Commission Malaysia (SC) on 18 April 2020 with the enforcement of the Movement Control Order (MCO)¹.
- 1.2 The first revision of the Guidance Note was on 14 May 2020, to align the guidance with the requirements under the Conditional Movement Control Order (CMCO), which took effect from 4 May 2020 to 10 June 2020. The second revision was on 11 June 2020 pursuant to the Recovery Movement Control Order (RMCO), which took effect from 10 June to 31 August 2020. The third revision was on 18 June 2020 pursuant to the issuance of the standard operating procedure “*SOP Am Pelaksanaan Majlis Kerajaan dan Swasta*”² by the Malaysian National Security Council on 16 June 2020.
- 1.3 This Guidance Note is issued to guide all issuers listed on Bursa Malaysia Securities Berhad on the conduct of general meetings, including Annual General Meeting, Extraordinary General Meeting and Meeting of Unit Holders during a period when the RMCO is in place or outside of the RMCO period; but where safe distancing requirements remain. This includes the conduct of **fully virtual, hybrid and physical general meetings**.
- 1.4 **Fully virtual general meetings** are conducted online, without a physical meeting venue for board members, senior management, shareholders³ and others involved in a general meeting to gather. The only venue involved in the conduct of a fully virtual general meeting is the **broadcast venue**⁴ where only the **essential individuals** are physically present to organise the fully virtual general meeting. All shareholders in a fully virtual general meeting participate in the meeting online (remotely).

¹ Implemented under *Malaysia’s Prevention & Control of Infectious Diseases Act 1988, Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations 2020* and the *Police Act 1967*.

²<https://asset.mkn.gov.my/web/wp-content/uploads/sites/3/2020/06/42.-Majlis-Rasmi-Kerajaan-dan-Swasta-MKN-16-Jun-2020.pdf>

³ For a listed real estate investment trust and exchange-traded fund, this refers to ‘unit holders’.

⁴ A broadcast venue refers to a physical venue in Malaysia where the Chairperson of the general meeting is physically present. The essential individuals may also be present at the broadcast venue to facilitate the conduct of a fully virtual general meeting.

- 1.5 It is envisaged that the essential individuals would include the Chairperson of the general meeting, board members, the Chief Executive Officer, the Chief Financial Officer, the company secretary, the auditor, the scrutineer and those providing audio and visual support for the fully virtual general meeting. Listed issuers are encouraged to conduct the fully virtual general meeting with the fewest possible number of essential individuals physically present at the broadcast venue.
- 1.6 A **hybrid general meeting** is conducted at a physical meeting venue(s) with shareholders physically present. The same meeting is broadcasted online, and shareholders are also provided the option of participating in the meeting online (remotely).
- 1.7 A **physical general meeting** is conducted at a physical meeting venue(s) only, without any online (remote) participation.
- 1.8 During the RMCO, a listed issuer may choose to conduct a fully virtual, hybrid or physical general meeting. **Listed issuers must abide by the “SOP Am Pelaksanaan Majlis Kerajaan dan Swasta” in conducting these meetings.** This includes the limitation on the total number of individuals allowed to be physically present at a meeting venue (250 individuals) and that a general meeting shall not be conducted at a place subjected to an enhanced movement control order⁵. Shareholders are strongly encouraged to participate in the general meetings online (remotely), and listed issuers are advised to facilitate online (remote) participation.
- 1.8 The total number of individuals physically present at the broadcast or meeting venue(s) will depend on the size of the venue, but shall not exceed 250 individuals. Listed issuers must ensure that a physical distance of at least one meter can be maintained between each meeting participant at all times.
- 1.9 Listed issuers are advised to include questions and remarks raised by shareholders and the listed issuers’ response during the general meeting in the ‘Key Matters Discussed’; which is to be published on the website of the listed issuer after the conclusion of the general meeting.
- 1.10 The common concerns or issues in relation to the conduct of general meetings, including fully virtual, hybrid and physical general meetings are addressed in the list of Frequently Asked Questions (FAQs) in Part II of this Guidance Note.
- 1.11 This Guidance Note will be updated as and when required, including to ensure they are aligned with the Government’s measures to curb the spread of Covid-19.

⁵ Paragraph 4 of the *Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No.7) Regulations 2020*.

- 1.12 This Guidance Note will be applicable beyond the RMCO period. When appropriate and circumstances permit, the RMCO and Covid-19 related guidance will be removed.
- 1.13 The SC also encourages listed issuers to continue leveraging technology to conduct their general meetings and communication with shareholders beyond the RMCO period.

All listed issuers are reminded to ensure the applicable directives, safety and precautionary requirements as prescribed by the Government, the Ministry of Health, the Malaysian National Security Council, and other relevant authorities to curb the spread of Covid-19 are abided by.

Part II: Frequently Asked Questions

A. Timeline to conduct an Annual General Meeting (AGM)

2.1 When is a listed issuer required to conduct its AGM?

Under section 340(2) of *Companies Act 2016*, a company shall conduct its annual general meeting –

- (a) within six months of the company's financial year; and
- (b) not more than 15 months after the last preceding annual general meeting.

In relation to listed real estate investment trusts (REITs), paragraph 13.18(a) of the *Guidelines on Listed Real Estate Investment Trusts* (Guidelines on Listed REITs) requires a management company to hold an annual general meeting –

- (a) within four months of the REIT's financial year end; and
- (b) not more than 15 months after the last preceding annual general meeting.

2.2 Can a listed issuer request for an extension of time (EOT) to conduct its AGM?

Yes, a listed issuer may request for an EOT to conduct its AGM.

In relation to REITs, the SC has granted management companies of REITs with financial year end of 31 December 2019, an extension of 2 months (i.e. until 30 June 2020) and REITs with financial year end of 31 March 2020, an extension of 1 month (i.e. until 31 August 2020) to hold their annual general meetings. The related media release is available at the SC's website, www.sc.com.my

2.3 How does a listed issuer apply for an EOT to conduct its AGM?

A listed issuer should submit an application to the Companies Commission of Malaysia (CCM) pursuant to sub-section 340(4) of *Companies Act 2016*. Please refer to CCM's website, www.ssm.com.my on the application procedure.

B. Notice of meetings

2.4 Can a listed issuer circulate the notice of meeting electronically to its shareholders?

A listed issuer can circulate the notice of meeting electronically to its shareholders provided the listed issuer's constitution or trust deed allows it to do so, and it complies with any applicable legal requirements under the *Companies Act 2016*, *Guidelines on Listed REITs*, *Guidelines on Exchange-traded Funds* (Guidelines on ETFs) and *Bursa Malaysia Listing Requirements*

(Listing Requirements)⁶. The listed issuer must issue the notice of the meeting in accordance with the manner as set out in its constitution or trust deed.

2.5 Is a listed issuer required to follow the notice period stipulated under the *Companies Act 2016, Guidelines on Listed REITs, Guidelines on ETFs* and Listing Requirements if the notice is sent electronically?

Yes. A listed issuer must follow the stipulated notice period stated under section 316(2) of *Companies Act 2016* and the listed issuer's constitution.

In relation to a REIT and an exchange-traded fund (ETF), the management company must follow the stipulated notice period stated under paragraphs 13.20 and 13.21 of the *Guidelines on Listed REITs*, and paragraphs 11.23, 11.24, 11.25 and 11.29 of the *Guidelines on ETFs*.

C. Conduct of meeting

2.6 Can a listed issuer conduct its general meeting online e.g. remote shareholders' participation, live broadcasting?

Section 327⁷ of *Companies Act 2016* allows the use of technology for the conduct of general meetings unless the listed issuers' constitution requires the general meeting to be organised at a physical venue.

The listed issuer should ensure that the –

- (a) technology used enables members to exercise their rights to speak and vote at the meeting;
- (b) main venue of the meeting is in Malaysia; and
- (c) Chairperson of the meeting shall be at the main venue.

The *Guidelines on Listed REITs* and *Guidelines on ETFs* do not prescribe the manner in which a general meeting must be organised. Unless the trust deed of the REIT or ETF requires the general meeting or unit holders' meeting to be organised at a physical venue, a management company can conduct the REIT or ETF's general meeting online.

⁶ Listing Requirements, paragraph 2.19(B)/Rule 2.19(B)

⁷ Section 327(1) - Subject to the constitution, a company may convene a meeting of members at more than one venue using any technology or method that enables the members to participate and to exercise the members' rights to speak and vote at the meeting.

Section 327 (2) - The main venue of the meeting shall be in Malaysia and the chairperson shall be present at that main venue of the meeting.

2.7 Must the listed issuers' constitution or trust deed contain expressed provisions allowing it to leverage technology to conduct general meetings?

No. A listed issuer may leverage technology to conduct its general meeting provided its constitution or trust deed does not prohibit it from doing so. If a listed issuer's constitution or trust deed is silent on the manner a general meeting should be conducted, the listed issuer is permitted to leverage technology to conduct its general meeting.

After the RMCO is lifted, listed issuers should review and update their constitutions or trust deed to enable the use of technology to conduct general meetings and facilitate communication and engagements with shareholders electronically.

2.8 During the RMCO, is a listed issuer required to seek the SC's authorisation to conduct a fully virtual, hybrid or physical general meeting?

No, a listed issuer does not require the SC's authorization to conduct its general meeting.

2.9 Is the 'main venue of the meeting' under section 327(2) of *Companies Act 2016* and 'place' under paragraphs 13.20 and 13.21 of the *Guidelines on Listed REITs*, and paragraphs 11.23, 11.24 and 11.25 of the *Guidelines on ETFs restricted to physical venues only*?

The 'main venue of the meeting' envisaged under section 327(2) of *Companies Act 2016* and the 'place' envisaged under the *Guidelines on Listed REITs* and *Guidelines on ETFs* are physical venue(s). Technology such as online platforms can be used to facilitate the conduct of general meetings, but listed issuers must be able to demonstrate that the main venue/place of the meeting is in Malaysia where the Chairperson is physically present.

For a fully virtual general meeting, the broadcast venue as described in paragraph 1.3 of this Guidance Note fulfills the requirements under section 327(2) of *Companies Act 2016*, paragraphs 13.20 and 13.21 of the *Guidelines on Listed REITs*, and paragraphs 11.23, 11.24 and 11.25 of the *Guidelines on ETFs*.

For fully virtual, hybrid and physical general meetings, where the Chairperson of the meeting is physically present is deemed as the main venue of meeting.

2.10 In the event the Chairperson of the meeting is not in Malaysia, can the listed issuer still proceed with the meeting?

Subject to the listed issuer's constitution, in the event the Chairperson of the meeting is not in Malaysia, unless members or directors whichever is specified in the constitution elect one of their members who is in Malaysia to be the Chairperson of the meeting, the meeting shall not proceed.

2.11 Can shareholders submit their questions prior to the general meeting?

Yes, shareholders can submit their questions prior to the general meeting within the stipulated time and through a manner (for example electronic means or by post) as determined by the listed issuer.

Listed issuers are advised to share the questions that were submitted by shareholders prior to the general meeting, at the general meeting itself.

Fully virtual general meeting

2.12 Can a listed issuer conduct a fully virtual general meeting?

Yes, subject to the listed issuer's constitution or trust deed and compliance with requirements under section 327 of the *Companies Act 2016*, *Guidelines on Listed REITs* and *Guidelines on ETFs*. Refer also to FAQ 2.6, 2.7 and 2.8.

2.13 What are the requirements to conduct a fully virtual general meeting when the RMCO is in place?

In addition to the requirements under section 327 of *Companies Act 2016*, *Guidelines on Listed REITs* and *Guidelines on ETFs*, a listed issuer should -

- (a) ensure there is reliable infrastructure to enable the conduct of a fully virtual general meeting including enabling members to exercise their rights to speak and vote at the meeting;
- (b) provide guidance to shareholders on the requirements and method of participating in the general meeting using the selected platform;
- (c) identify a broadcast venue;
- (d) ensure only eligible individuals are allowed to participate in the meeting; and
- (e) observe the applicable standard operating procedures, directive, safety and precautionary requirements prescribed by the Government, the Ministry of Health, the Malaysian National Security Council, and other relevant authorities to curb the spread of Covid-19 are abided by.

Listed issuers are advised to provide shareholders with a dedicated contact number and/or email to submit queries or request for technical assistance to participate in the fully virtual general meeting.

2.14 In the case of a fully virtual general meeting, what should the listed issuer state as the 'place' of the meeting in the content of its notice of meeting as required under sub-section 317(1)(a) of *Companies Act 2016*, paragraphs 13.20 and 13.21 of the *Guidelines on Listed REITs* and paragraphs 11.23, 11.24 and 11.25 of the *Guidelines on ETFs*?

The notice must indicate the broadcast venue as the place of meeting. In addition, the notice must also state the online platform being used for the meeting to ensure members are aware and have access to it.

Listed issuers are reminded to provide the necessary guidance to its members on the requirements and method of participating in the general meeting using the selected online platform.

2.15 Section 327(2) of the *Companies Act 2016* requires the Chairperson to be present at the main venue of the meeting. How will this requirement be met in the case of a fully virtual meeting?

The Chairperson must be physically present at the broadcast venue.

2.16 Are all directors required to be physically present in a fully virtual general meeting?

A listed issuer shall identify the essential individuals, and directors who are not identified as an essential individual can participate in the meeting online (remotely).

Hybrid general meeting

2.17 What are the requirements to conduct a hybrid general meeting?

In addition to the requirement under section 327 *Companies Act 2016*, *Guidelines on Listed REITs* and *Guidelines on ETFs*, a listed issuer should -

- (a) ensure there is reliable infrastructure to enable the conduct of a hybrid general meeting including enabling members to exercise their rights to speak and vote at the meeting;
- (b) provide guidance to shareholders on the requirements and method of participating in the general meeting using the selected platform;
- (c) ensure only eligible individuals are allowed to participate in the meeting;
- (d) require shareholders who would like to be physically present at the meeting venue to register ahead of the meeting to allow listed issuers to make the necessary arrangements including in relation to logistics;
- (e) determine whether additional meeting venue(s) is required to accommodate the meeting participants; and
- (f) observe the applicable standard operating procedures, directive, safety and precautionary requirements prescribed by the Government, the

Ministry of Health, the Malaysian National Security Council, and other relevant authorities to curb the spread of Covid-19 are abided by.

Listed issuers are advised to provide shareholders with a dedicated contact number and/or email to submit queries or request for technical assistance to participate in the hybrid general meeting.

Physical general meeting

2.18 What are the requirements to conduct a physical general meeting?

In addition to the requirement under the *Companies Act 2016*, *Guidelines on Listed REITs* and *Guidelines on ETFs*, a listed issuer should -

- (a) ensure there is reliable infrastructure to enable the conduct of a physical general meeting including enabling members to exercise their rights to speak and vote at the meeting;
- (b) provide guidance to shareholders on the requirements and method of participating in the general meeting;
- (c) ensure only eligible individuals are allowed to participate in the meeting;
- (d) require shareholders to register ahead of the meeting to allow listed issuers to make the necessary arrangements including in relation to logistics;
- (e) determine whether additional meeting venue(s) is required to accommodate the meeting participants; and
- (f) observe the applicable standard operating procedures, directive, safety and precautionary requirements prescribed by the Government, the Ministry of Health, the Malaysian National Security Council, and other relevant authorities to curb the spread of Covid-19 are abided by.

Listed issuers are advised to provide shareholders with a dedicated contact number and/or email to submit queries on the hybrid general meeting.

2.19 In a fully virtual, hybrid or physical general meeting, is the shareholders' right to speak limited to verbal communication only (i.e. using voice)?

No. The right to speak is not limited to verbal communication only but includes other modes of expression for example real time submission of typed texts. However, all modes of communication must be expressly stated as acceptable by the listed issuer in the notice of the meeting. This is to ensure that in the event of any technical glitch in the primary mode of communication, it can be supplemented by a secondary backup communication channel.

In relation to typed texts, listed issuers are advised to make the questions and remarks posed by shareholders during the general meeting visible to all participants of the meeting.

2.20 For a fully virtual or hybrid AGM, is a listed issuer required to table the resolutions stipulated by the law⁸, the Listing Requirements or the listed issuers' constitution?

Yes, a listed issuer must table all the resolutions required under the law, the Listing Requirements and the listed issuer's constitution.

Listed issuers are reminded to ensure the meeting proceedings and resolutions passed at the meeting are properly recorded and maintained as required under section 341 of the *Companies Act 2016*. We also encourage listed issuers to record (video and audio recording) the meeting, if they are able to.

Additionally, listed issuers must also publish a summary of the key matters discussed at the annual general meeting, as soon as practicable after the conclusion of the annual general meeting, on their website pursuant to paragraph/Rule 9.21(2)(b) of the Listing Requirements.

In relation to ETFs, the management company must also provide a copy of the resolution to the SC and trustee.

D. Meeting quorum

2.21 What is the quorum for a fully virtual or hybrid general meeting?

Subject to the listed issuer's constitution, the quorum shall be at least 2 members; personally participating in the meeting or by proxy, pursuant to sub-section 328(2) of *Companies Act 2016*.

In relation to REITs and ETFs, management companies must comply with paragraphs 13.22 and 13.23 of the *Guidelines on Listed REITs*, and paragraphs 11.27 and 11.28 of the *Guidelines on ETFs*, respectively. Participation of members is not restricted to physical presence but also includes members' online participation at the meeting.

⁸ For example, section 340 of *Companies Act 2016*.

2.22 How does a listed issuer count the number of members present at a fully virtual or hybrid general meeting to determine quorum?

The quorum of the meeting can be determined as follows:

- (a) Fully virtual general meeting – the quorum may be determined by the number of members logged-in at the start of the meeting.
- (b) Hybrid general meeting – the quorum can be determined by the number of physical attendees at the meeting and members logged-in at the start of the meeting.

A listed issuer must ensure there is proper mechanism to ensure members or proxies can fully participate in the meeting. There must also be a proper audit trail to record the attendance of individual members at the meeting.

E. Voting including online voting

2.23 Must the online voting process support in time voting⁹ during the proceedings of the general meeting?

Yes, the online voting process must be able to allow members to cast their votes in time during the proceeding of the general meeting.

2.24 How would members with no access to the internet cast a vote?

Such members may appoint a proxy to vote on the members' behalf. The proxy forms should be submitted within the stipulated time and through a manner (for example electronic means or postal) as determined by the listed issuer.

2.25 Does a listed issuer need to appoint a scrutineer under paragraph 8.29A(2)/ Rule 8.31A(2) of the Listing Requirements if it conducts a fully virtual or hybrid general meeting?

Yes, a listed issuer must appoint at least one scrutineer to validate the votes cast at the general meeting whether on-site or remotely.

2.26 How does the scrutineer validate the votes if voting is conducted online?

Similar to the validation process at a physical general meeting, the scrutineer must ensure that the votes cast are validated accordingly.

⁹ For purposes of this Guidance Note, 'in time voting' refers to the ability for shareholders to cast their votes remotely and contemporaneously (live) during the proceeding of the general meeting.

F. General

2.27 Are individuals, including directors, members of senior management and shareholders who are above 60 years old allowed to be physically present at the broadcast or meeting venue?

Yes, individuals above 60 years old can be physically present at the broadcast or meeting venue provided they are well, not exhibiting any symptoms and the applicable safety and precautionary measures are undertaken. However, where possible, we advise such individuals to participate in the meeting online (remotely).

2.28 Can proxies participate in general meetings online (remotely)?

Yes, under sub-section 334(1) of *Companies Act 2016*, a member of a company shall be entitled to appoint another person as his proxy to exercise all of his rights to attend, participate, speak and vote at a general meeting. As such, listed issuers shall facilitate the online participation of proxies.

In relation to REITs and ETFs, a unit holder may appoint another person to attend a unit holders' meeting and vote in the unit holder's place as prescribed under paragraph 13.29 of *Guidelines on Listed Real Estate Investment Trusts* and paragraph 11.36 of *Guidelines on Exchange-Traded Funds*.

2.29 Can a listed issuer restrict the appointment of a proxy only to the Chairperson of the general meeting?

No, as provided for under sub-section 334(1) of *Companies Act 2016*, a member is entitled to appoint any person as his proxy.

Similar to REITs and ETFs, a unit holder is entitled to appoint any person as his proxy as prescribed under paragraph 13.29 of *Guidelines on Listed Real Estate Investment Trusts* and paragraph 11.36 of *Guidelines on Exchange-Traded Funds*.

2.30 If the RMCO and physical distancing requirements are lifted, are listed issuers expected to conduct fully virtual or hybrid general meetings?

Listed issuers are encouraged to continue leveraging technology to conduct their general meetings beyond the RMCO. This includes conducting fully virtual or hybrid general meetings. Listed issuers should ensure their constitution allows them to leverage technology to facilitate communication and engagements with shareholders. This is also in line with Principle C (II) and Practice 12.3 of the *Malaysian Code on Corporate Governance*, where boards are encouraged to have effective, transparent and regular communication with shareholders including leveraging technology to promote shareholder participation.

2.31 If the RMCO and physical distancing requirements are lifted, will this Guidance Note still be applicable?

Yes, this Guidance Note will still be applicable to guide listed issuers on the conduct of fully virtual and hybrid general meetings. When appropriate and circumstances permit, the RMCO and Covid-19 related guidance would be removed for example.

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Any query in relation to this Guidance Note can be directed to AGM@seccom.com.my