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ACRA/MAS/MOF Seek Comments On Legislative Amendments to Allow Virtual Meetings for Companies, VCCs and BTs

Introduction

On 9 February 2023, the Accounting and Corporate Regulatory Authority ("**ACRA**"), Ministry of Finance ("**MOF**") and Monetary Authority of Singapore ("**MAS**") jointly announced that they are conducting a public consultation to seek feedback on proposed changes to the Companies Act 1967 ("**CA**"), Variable Capital Companies Act 2018 ("**VCC Act**") and the Business Trusts Act 2004 (collectively, the "**Acts**"). The public consultation exercise will run from 9 to 20 February 2023.

The key proposed changes to the Acts primarily aim to expressly clarify in the Acts that companies, variable capital companies ("**VCCs**") and business trusts ("**BTs**") have the option to conduct fully virtual or hybrid general meetings, and to ensure that the rights of the members of the companies and VCCs and unitholders of BTs to attend and participate in such general meetings are safeguarded. The proposed changes to the Acts are set out in the draft Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill 2023 ("**draft Bill**").

The proposed draft Bill is stated to come into effect on **1 July 2023**. This will provide companies, VCCs and BTs with the option to conduct general meetings by electronic means after the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 is revoked with effect from 1 July 2023.

This Update provides a summary of these key proposed changes.

Express Provisions to Allow Fully Virtual or Hybrid Meetings

Presently, the Acts do not clearly address the manner in which general meetings are held. The proposed changes to the Acts will expressly allow companies, VCCs and BTs to hold general meetings¹ fully virtually (i.e. using virtual meeting technology) or in a hybrid format (i.e. at a physical place and using virtual meeting technology), **without** having to first amend their constitutions or trust deeds (as the case may be). ACRA/MOF/MAS proposed to define "*virtual meeting technology*" as "any technology that

¹ The proposed provisions also apply to other types of meetings, for instance, the proposed new Section 173J of the CA also applies to a statutory meeting of a company and a meeting of a class of members of the company, among other things. For details, please refer to the draft Bill. This Update relates generally to reforms under the "general meeting" category of meetings.

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allows a person to participate in a meeting without being physically present at the place of meeting", and seek comments on whether such a definition is appropriate in the context of companies, VCCs and BTs, respectively.

Supporting provisions are also proposed to clarify how references in the Acts that are applicable to a general meeting may be applied in the context of a general meeting held using virtual meeting technology. These references include: attendance, presence, voting, the entitlement or right to vote at a meeting, the entitlement or right to be heard, the right to speak on resolution and the right to speak at a meeting, among other things.

In addition, it is proposed to provide companies, VCCs and BTs with the option to amend their constitutions or trust deeds (as the case may be), on or after 1 July 2023, to prohibit the holding of fully virtual and/or hybrid general meetings; or modify or exclude the application of the rules clarifying how references in the Acts that are applicable to a general meeting may be applied in the context of a fully virtual and/or hybrid general meeting.

Subsidiary Legislation to Regulate Use of Virtual Meeting Technology for General Meetings etc.

Subsidiary legislations under the Acts are expected to be passed to regulate the use of virtual meeting technology for fully virtual or hybrid general meetings. The areas that may be regulated under subsidiary legislations are anticipated to include safeguards to restrict or mandate the types of virtual meeting technology that may be used, as well as the imposition of verification or authentication requirements, among other things.

Right to Invalidate Virtual Meeting Where There is Technological Disruption, Malfunction or Outage

Currently, members of a company and members of a VCC have the right to apply to Court for orders in respect of a procedural irregularity at a proceeding (e.g. at a general meeting), including an order to declare the general meeting to be invalid. However, the CA and the VCC Act do not specifically deal with the effect of a technological disruption, malfunction or outage on the validity of a general meeting held using virtual meeting technology.

To address this, amendments are proposed to be made to the CA and the VCC Act:

- To allow a member of a company or a VCC to apply to the Court to invalidate a fully virtual or hybrid general meeting held in accordance with the respective new provisions under the Acts on the basis of the occurrence of a technological disruption, malfunction or outage; and

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- To provide that the occurrence of a technological disruption, malfunction or outage does not per se invalidate the general meeting, unless the Court is of the view that there was substantial injustice caused by the technological disruption, malfunction or outage that cannot be remedied by any order of the Court.

The proposed amendment is calibrated to provide members a right of recourse in the event of a technological disruption, malfunction or outage at a fully virtual or hybrid meeting, while giving companies and VCCs the flexibility to hold meetings in such manner.

Further Information

If you have any queries on the above development, please feel free to contact our team members below who will be happy to assist.

For further information please click on the following links below:

- ACRA, MOF and MAS "[Public Consultation on Legislative Amendments to Enable the Conduct of General Meetings by Electronic Means](#)" (available on Reach website www.reach.gov.sg) consisting:
 - [Annex A: Draft Companies, Business Trusts and Other Bodies \(Miscellaneous Amendments\) Bill 2023](#)
 - [Annex B: Key clauses on virtual general meetings of companies in the draft Companies, Business Trusts and Other Bodies \(Miscellaneous Amendments\) Bill 2023](#)
 - [Annex C: Key clauses on virtual general meetings of business trusts and variable capital companies in the draft Companies, Business Trusts and Other Bodies \(Miscellaneous Amendments\) Bill 2023](#)

Contacts

Capital Markets | Corporate Commercial



Chia Kim Huat
Regional Head, Corporate and
Transactional Group

T +65 6232 0464

kim.huat.chia@rajahtann.com



Abdul Jabbar Bin Karam Din
Head, Corporate and
Transactional Group

T +65 6232 0465

abdul.jabbar@rajahtann.com



Evelyn Wee
Deputy Head, Corporate and
Transactional Group
Head, Capital Markets

T +65 6232 0724

evelyn.wee@rajahtann.com



Tan Mui Hui
Deputy Head, Capital Markets

T +65 6232 0191

mui.hui.tan@rajahtann.com



Hoon Chi Tern
Deputy Head, Capital Markets

T +65 6232 0714

chi.tern.hoon@rajahtann.com



Cynthia Goh
Partner, Capital Markets

T +65 6232 0316

cynthia.goh@rajahtann.com



Khairil Suhairee
Partner, Corporate Commercial

T +65 6232 0571

khairil.suhairee@rajahtann.com

Funds & Investment Management



Anne Yeo
Head, Funds and Investment
Management

T +65 6232 0628

anne.yeo@rajahtann.com



Jasmine Chew
Deputy Head, Funds and
Investment Management

T +65 6232 0454

jasmine.chew@rajahtann.com



Philip Yeo
Deputy Head, Funds and
Investment Management

T +65 6232 0487

philip.yeo@rajahtann.com

Please feel free to also contact Knowledge Management at eOASIS@rajahtann.com

Regional Contacts

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP

Shanghai Representative Office

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800

F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.co.id

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673

F +84 28 3520 8206

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

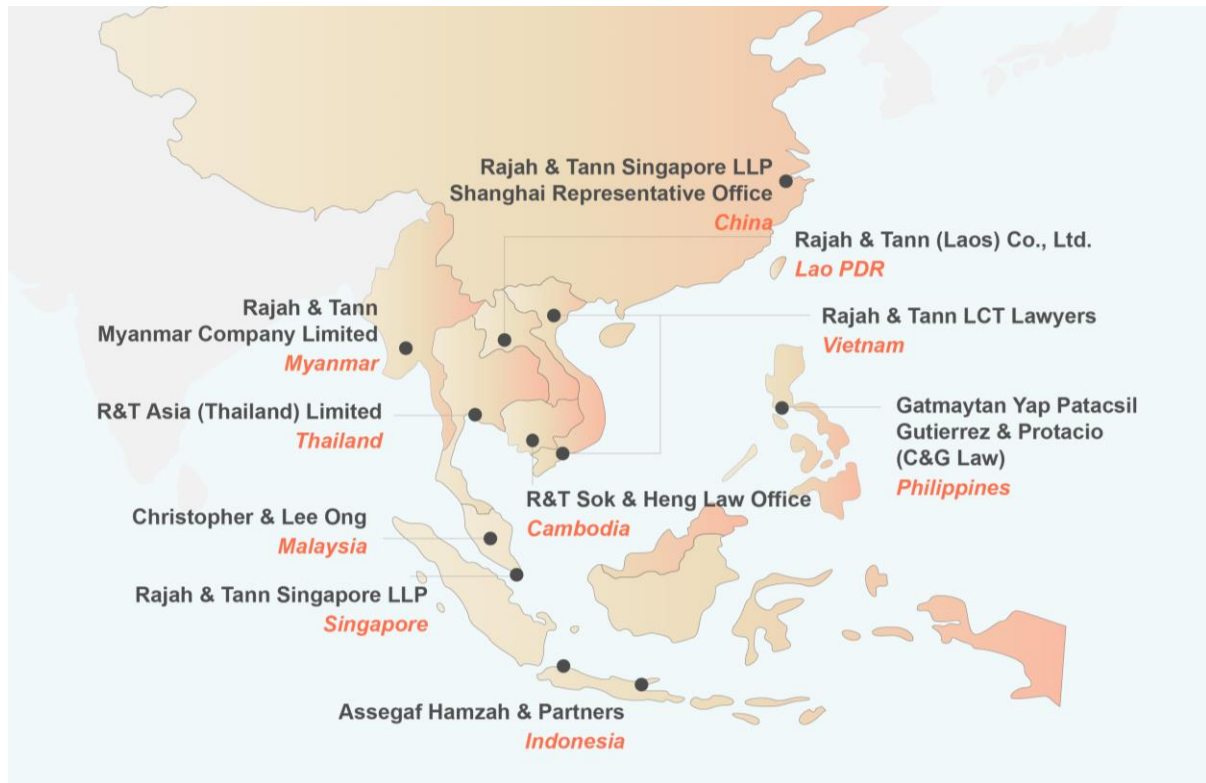
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