Notice of general meeting

MCCG Intended Outcome 12.0
Shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at General Meetings.

MCCG Practice 12.1
Notice for an Annual General Meeting should be given to the shareholders at least 28 days prior to the meeting.

The internalisation and application of the content “Why” and “How” should be read in tandem with the line of sight outlined by the Intended Outcome.

Why
The case for change

The importance of general meetings cannot be understated as they have a far-reaching impact on a company’s strategic direction. The two commonly held general meetings that allow shareholders to exercise their rights, are the AGM and EGM.

The AGM is an annual gathering of shareholders and the board of directors of a company, whereby resolutions such as election or re-election of directors, remuneration of directors and appointment of external auditors are tabled. The EGM meanwhile is a meeting that is called by the directors or any member holding at least 10% of the issued share capital of the company to pass a resolution that requires the immediate attention of shareholders.

These meetings provide an avenue for shareholders to communicate directly with the board of directors and are often viewed by shareholders, especially the minority shareholders, as one of the few occasions whereby they can engage in a meaningful discussion with the board.

Given the significance of general meetings, it is essential for the notice of these meetings to be provided to shareholders in a timely manner to accord them with sufficient time to consider the resolutions that will be discussed and decided at the general meeting. Practice 12.1 of MCCG calls upon companies to provide at least 28 days’ notice period for AGMs on the premise of empowering shareholders with sufficient preparation time to make informed voting decisions at general meetings. The need for a longer notice period also reflects the ongoing changes in the capital market which is characterised, amongst others, by globalisation (greater participation of foreign investors in the domestic market), increasing volume of information reported and rising complexity of transactions – all of which necessitates greater preparation time by shareholders.

The pertinent regulatory requirements on the requisitioning of general meetings including the prescribed duration for the notice of general meetings are outlined on the following page.
### Section 310 of Companies Act 2016

A meeting of members may be convened by –

(a) the Board; or

(b) any member holding at least ten per centum of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least five per centum in the number of the members.

### Section 311(3) of Companies Act 2016

The directors shall call for a meeting of members once the company has received requisition to do so from –

(a) members representing at least ten per centum of the paid up capital of the company carrying the right of voting at meetings of members of the company, excluding any paid up capital held as treasury shares; or

(b) in the case of a company not having a share capital, members who represent at least five per centum of the total voting rights of all members having a right of voting at meetings of members.

### Section 316(2) of Companies Act 2016

A meeting of members of a public company, other than a meeting for the passing of a special resolution, shall be called by notice –

(a) in the case of an annual general meeting, at least twenty-one days or any longer period specified in its constitution; and

(b) in any other case, at least fourteen days or any longer period specified in its constitution.

### Section 319(1) of Companies Act 2016

Notice of a meeting of members shall be in writing and shall be given to the members either –

(a) in hard copy;

(b) in electronic form; or

(c) partly in hard copy and partly in electronic form.

### Paragraph 7.15 of Bursa Securities Listing Requirements

The notices convening meetings shall specify the place, day and hour of the meeting, and shall be given to all shareholders at least 14 days before the meeting or at least 21 days before the meeting where any special resolution is to be proposed or where it is an annual general meeting. Any notice of a meeting called to consider special business shall be accompanied by a statement regarding the effect of any proposed resolution in respect of such special business. At least 14 days’ notice or 21 days’ notice in the case where any special resolution is proposed or where it is the annual general meeting, of every such meeting must be given by advertisement in at least 1 nationally circulated Bahasa Malaysia or English daily newspaper and in writing to each stock exchange upon which the company is listed.
Even before Practice 12.1 of MCCG was introduced, it should be noted that several listed issuers have already voluntarily provided a longer duration of AGM notice period as opposed to the minimum mandated period of 21 days [as stated in Section 316(2) of Companies Act 2016)], to their shareholders. As stated in the publication by the Minority Shareholder Watchdog Group (“MSWG”), the average notice period for AGMs by listed issuers stood at 24 days in 2015.

**Point for reflection**

It is common for listed issuers in Malaysia to include the notice of AGM in their annual report with cross-referencing of the relevant content in the notice, to the annual report. The increasingly voluminous and complex content of annual reports has resulted in the need for additional lead time for shareholders to extract and comprehend the relevant information so as to formulate an informed voting decision.

**The practice in substance**

It is therefore clear that an extended notice period with detailed information in the notice and accompanying materials could go a long way in encouraging greater shareholder participation at general meetings.

Key considerations relating to the application of this Practice are discussed below:

**How should the notice of general meetings be disseminated?**

As stated in Section 319(1) of Companies Act 2016, notice of general meetings should be given to shareholders in writing via hardcopy or electronic format or a combination of both. In addition, for listed issuers, the notice must be given by advertisement in at least 1 nationally circulated Bahasa Malaysia or English daily newspaper and in writing to the stock exchange (paragraph 7.15 of Bursa Securities Listing Requirements).

In deciding how to disseminate the notice, the company should take into consideration the time taken for the notice to reach its shareholders. Circulation via electronic means (e.g. e-mail, company website) typically expedites the delivery of the notice. In the event the company decides to make the notice available on the website, the company should be cognisant of Section 320(3) of Companies Act 2016 which requires such notice to be made available from the date of notification until the conclusion of the general meeting, as well as paragraph 2.19B of Bursa Securities Listing Requirements relating to issuance of documents by electronic means for listed issuers.

**What should be encapsulated in the notice of general meetings?**

Guidance on the notice of a general meeting can be found in the regulatory requirements, as outlined on the following page.

---

1 Rita, B & Salleh, H, 2015, Report on AGM Practices by Malaysian Companies, MSWG
2 Bin the clutter, 2015, Association of Chartered Certified Accountants (“ACCA”)
Section 317(1) of Companies Act 2016

Notice of a meeting of members of a company shall state –

(a) the place, date and time of the meeting; and
(b) the general nature of the business of the meeting.

Paragraph 8.27 of Bursa Securities Listing Requirements

(1) A listed issuer must ensure that all notices convening general meetings contain sufficient information to enable a member to decide whether to attend the meeting.

(2) Without limiting the generality of subparagraph (1) above, a listed issuer must ensure that a notice convening an annual general meeting, where applicable, is accompanied by a statement which includes the information set out in Appendix 8A.

(3) Any notice of a general meeting called to consider special business must be accompanied by an explanatory note which contains the necessary information to enable a member to make an informed decision. Such explanatory note must include the effect of any proposed resolution in respect of such special business.

Appendix 8A of Bursa Securities Listing Requirements

Contents of statement accompanying notices of annual general meetings (paragraph 8.27(2))

1. Further details of individuals who are standing for election as directors (excluding directors standing for a re-election), namely the following:
   (a) the name, age, gender, nationality, qualification, and whether the position is an executive or non-executive one and whether such director is an independent director;
   (b) the working experience and occupation;
   (c) any other directorships in public companies and listed issuers;
   (d) the details of any interest in the securities of the listed issuer and its subsidiaries;
   (e) the family relationship with any director and/or major shareholder of the listed issuer;
   (f) any conflict of interests that they have with the listed issuer; and
   (g) other than traffic offences, the list of convictions for offences within the past 5 years and particulars of any public sanction or penalty imposed by the relevant regulatory bodies during the financial year, if any.

2. A statement relating to general mandate for issue of securities in accordance with paragraph 6.03(3) of these Requirements.

Note: In the case of specific matters tabled for approval at general meetings which require the issuance of a circular to shareholders under Bursa Securities Listing Requirements (e.g. corporate proposals undertaken, or transactions entered into, by listed issuers), the notice of meetings must be accompanied by such circulars which contain information as prescribed in Bursa Securities Listing Requirements.

3 This paragraph stipulates the information that must be included in a statement accompanying the proposed resolution on a general mandate for issue of securities.
As stated in **Guidance to Practice 12.1 of MCCG**, “The notice should provide further explanation beyond the minimum content stipulated in the listing requirements for the resolution proposed to enable shareholders to make an informed decision in exercising their voting rights. The notice should include details of the resolutions proposed along with any background information and reports or recommendations that are relevant”.

A typical AGM notice would contain the following:

1. **Time, date and location of the meeting**

   It is important for companies to ensure that the aforementioned information is clearly provided in the notice. Once decided, any changes made to the location, date or the time of the meeting should be communicated to all shareholders.

2. **Resolutions that are tabled for approval**

   A resolution is a motion tabled by the board or the shareholders (also known as members) of the company to be voted for at the general meeting. There are typically two types of resolutions tabled during general meetings:

   - ordinary resolution: where a simple majority of more than half of the members who are entitled to vote is required (as outlined in **Section 291 of Companies Act 2016**); and
   - special resolution: to be passed by majority of not less than 75% of the members entitled to vote at the meeting (as outlined in **Section 292 of Companies Act 2016**).

   The company should explain and justify to shareholders on why the resolutions were proposed and how the board has evaluated the proposals. In this regard, the current state of disclosure warrants considerable improvement. According to a publication by MSWG (2015), only 19% of listed issuers in Malaysia provided detailed explanation to shareholders on each agenda item that was sought to be approved at the general meeting4.

   An illustrative disclosure providing explanation for a resolution to approve the payment of a director’s remuneration is outlined on the following page (note: Singtel Ltd of Singapore, in its Notice of AGM for the year 2017 has provided explanation on the bases for arriving at the proposed amount of the chairman’s remuneration).

---

Illustrative disclosure

In arriving at the proposed Chairman’s fees of S$960,000, the Company took into account:

a) The significant leadership role played by the Chairman on the Board, and in providing clear oversight and guidance to management;

b) The amount of time the Chairman spends on Singtel matters, including providing input and guidance on strategy and supporting management in engaging with a wide range of other stakeholders such as partners, governments and regulators, as well as travelling to visit the Group’s key associates in the region. In this regard, the Board has agreed with the Chairman that he will commit a significant proportion of his time to his role as Chairman of the Singtel Board and will manage his other time commitments accordingly; and

c) Comparable benchmarks from other large listed companies in Singapore that have chairmen with similar roles and responsibilities, as well as benchmarks from large listed companies in Australia, where Singtel has sizeable operations.

Additional information on the role of the Chairman can be found under ‘Corporate Governance’ in the Company’s Annual Report 2016.

Source: Notice of Annual General Meeting Singtel Ltd (Singapore) for the AGM in 2017

3. Voting procedures at the meeting

Shareholders should be notified of their rights and the mechanisms that can be deployed in exercising their rights. **Paragraph 8.29A(1) of Bursa Securities Listing Requirements** requires any resolution set out in the notice of a general meeting by a listed issuer to be voted by poll. In line with international developments, many listed issuers have adopted electronic voting as means of carrying out poll voting (covered in the write-up to **Practice 12.3**). In accordance with **paragraph 8.29A(2) of Bursa Securities Listing Requirements**, the listed issuer is also required to appoint at least 1 scrutineer to validate the votes cast at the general meeting.

To this end, shareholders should be furnished with relevant information on the voting procedures to facilitate a seamless proceeding during the general meeting.

It is also important for shareholders to be informed of their legal right to appoint a proxy to attend the meeting on their behalf, including to ask questions and vote on behalf of the shareholders (note: **Section 334 of Companies Act 2016** provides detailed explanation on the rights of a shareholder in appointing a proxy for general meetings). In this regard, a copy of the proxy form should be provided alongside the notice for the ease of shareholders.
Regional/international perspectives

As in the case of Malaysia, countries such as United Kingdom and Australia call for a longer notice period in recognition of the need to ensure that shareholders are given sufficient notice and time to consider the resolutions that will be discussed and decided at the general meetings.

<table>
<thead>
<tr>
<th>Country</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>The company should arrange for the Notice of the AGM and related papers to be sent to shareholders <strong>at least 20 working days</strong> before the meeting. For other general meetings this should be <strong>at least 14 working days in advance</strong> <em>(Provision E.2.4)</em>.</td>
</tr>
<tr>
<td>Australia</td>
<td>Amount of notice of meetings of listed company:</td>
</tr>
<tr>
<td></td>
<td>1) Despite section 249H⁵, <strong>at least 28 days’ notice</strong> must be given of a meeting of a company’s members.</td>
</tr>
<tr>
<td></td>
<td>2) This section only applies to a company that is listed.</td>
</tr>
<tr>
<td></td>
<td>3) This section applies despite anything in the company’s constitution. <strong>(Section 249HA)</strong></td>
</tr>
</tbody>
</table>

⁵ Amount of notice of meetings for a non-listed company