

Best Practice Guide
on **AGMs**
for Listed Issuers



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The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)



The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body for Chartered Secretaries and Administrators in the United Kingdom and throughout the world. Formed in 1902, the Institute today has about 36,000 members in over 70 countries.

The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) was founded in 1959 as an affiliated body to ICSA. MAICSA is also a founder member of the Corporate Secretaries International Association (CSIA), a Geneva registered global organisation which is dedicated to developing and growing the study and practice of corporate secretaryship to improve professional standards, the quality of governance practice and organisational performance.

Today, MAICSA is the leading professional body for corporate secretaries in Malaysia. The Government has gazetted MAICSA as a prescribed body under Section 139(A) of the Companies Act 1965. In tandem with its mission of developing good corporate professionals, MAICSA is committed to maintaining the highest standard of integrity and ethical values within the corporate secretarial profession. MAICSA also acts as a change catalyst in the corporate arena, participating actively in the enhancement of corporate governance. It has been championing best practices in Corporate Governance and educating the Malaysian Corporate Sector on its importance.

Currently, MAICSA has about 4,200 members (comprising Fellows and Associates) and Graduates, 2,000 students and 600 affiliates.

Foreword

The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) recognises the importance of Annual General Meetings (AGMs) as a forum in which shareholders are entitled, as a matter of law, to raise for discussion any matters relevant to the affairs and business of a company and to engage with elected directors.

By attending AGMs and participating actively, shareholders can encourage openness, integrity and accountability of the Board of Directors in order to enhance good corporate governance and at the same time to protect their interests.

AGMs will also give the Board of Directors an avenue and opportunity to exhibit the vision and explain the current performance of the company.

MAICSA, with the support of Bursa Malaysia Berhad, has published this Best Practice Guide on AGMs for Listed Issuers with the objective of providing insights to Chairmen and Directors of Public Listed Issuers into the key stages and steps required as well as recommended best practices in preparing, convening and conducting an effective AGM. The Guide covers practical considerations, including common issues encountered in an AGM, best practices adopted (both locally and overseas) and makes reference to Malaysian laws, regulations, requirements and case studies. It is consistent with the recommendations of the Malaysian Corporate Governance Code and the Minority Shareholder Watchdog Group in relation to AGMs.

For new Directors of Public Listed Issuers, this Guide will be a useful introduction to AGMs whilst seasoned Directors can benefit from the best practices and case studies contained in the Guide. We hope users will find the Guide useful, relevant and interesting and we believe it will provide Chairmen and Directors with the information to efficiently and effectively engage with their shareholders.

On behalf of MAICSA, I would like to thank the following for their commendable efforts in writing and reviewing the contents of this Guide:

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I would also like to place on record our appreciation to Bursa Malaysia Berhad for their continuing support, without which this Guide would not have been published.

Dato' Heng Ji Keng FCIS

President

The Malaysian Institute of Chartered Secretaries and Administrators

November 2016

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Background of this Guide

An Annual General Meeting (AGM) is held once in every calendar year and is the main avenue for shareholders to dialogue and interact with directors. Shareholders tend to see this as an opportunity to raise questions on the operational and financial performance as well as any other major developments or issues of a company.

In light of increasing investor protection in the Malaysian capital market, the Best Practice Guide on AGMs for Listed Issuers (“Guide”) has been developed to provide insights into the key stages and steps required as well as recommended practices for listed issuers to prepare, convene and conduct an effective AGM. The Guide has been designed in a manner that provides information to all chairmen, and it includes case studies, illustrations and best practices which may be of assistance even to experienced chairmen while new chairmen will benefit from the guidance provided on how best to conduct their AGM practices.

The objective of this Guide is to give the directors of listed issuers, practical guidance in carrying out an AGM. This is aimed at ensuring that the AGM is managed effectively and conducted in a transparent manner and in the best interest of the shareholders.

Illustrations and case studies are also used to illustrate the information contained in the Guide. The Guide also contains best practices by Malaysian listed issuers and listed issuers in other jurisdictions.

This Guide is divided into four (4) chapters according to the stages of the conduct of an AGM.

Chapter 1 covers basic information of an AGM, such as its objectives and legal requirements. It also highlights matters that are usually considered at an AGM.

Chapter 2 sets out the matters to be addressed and work to be done in preparation for an AGM such as the preparation of reports, notice of AGM including the contents of the notice and the appropriate type of resolutions (ordinary or special) in the notice.

Chapter 3 addresses the conduct of an AGM. It informs the chairman about his duties and powers and how to ensure that the business of the AGM is conducted properly.

Chapter 4 focuses on matters after successfully holding an AGM and covers announcement of the voting outcome to Bursa Securities, posting of the minutes of the AGM on the listed issuer’s website and lodging the necessary documents with the relevant regulators.

The Appendices in this Guide contain samples of documents which may be useful to the chairman of the AGM. These comprise an illustration of the AGM process, a sample of the chairman’s script for the conduct of the AGM, a sample of poll procedures and poll results, pre-AGM shareholder’s question form and a checklist for the conduct of the AGM.

This Guide makes reference to the Corporate Governance (“CG”) Guide issued by Bursa Malaysia, Listing Requirements (“LR”), the Companies Act 1965 (“CA”) and the Companies Act 2016 (“New Act”). Any references to any provisions of the LR shall be a reference to the provisions of Bursa Malaysia’s Main Market Listing Requirements and its equivalents in the ACE Market Listing Requirements, if any. The precise timing for the coming into force of the New Act is as yet uncertain.

We have referred to Table A of the CA in this Guide.¹ However its application would depend on whether the company has adopted Table A as it may have different provisions in its Articles. Directors should refer to the actual Articles of the company to determine this.

They should also refer to their company secretary or professional advisers for further assistance.

The terms “listed issuer”, “listed company” and “public company” are used interchangeably throughout this Guide.

The observance of the recommendations of the Guide by companies is not intended to be mandatory. This Guide is intended to provide guidance only and is not intended to be an exhaustive and comprehensive list of matters pertaining to an AGM. Readers are advised to obtain advice from experts to address their specific needs. This Guide does not purport to render legal or other professional advice.

¹ Section 31 of the New Act sets out that a company (other than a company limited by guarantee) may or may not have a constitution. However, existing memorandum and articles of association of companies registered under CA or prior legislation will continue under the New Act as the constitution of the company.

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“... the main business of the AGM is for the Board to propose, make recommendations and seek shareholders’ views and approval on matters prescribed by law.”

1.0 Introduction¹

Throughout history, the distribution of powers between the Board of directors and the shareholders has been a topical and important feature in company law. In Malaysia, the functions and powers of the Board of directors were not subject to specific statutory regulation until the amendments made to the CA in 2007. The Board was then specifically entrusted with the managerial powers of the business and affairs of the company and such powers could be ineffective without an appropriate mechanism of accountability.

The common law, the Articles and the CA form sources from which the powers vested in the Board and general meeting are derived. The powers which are vested in the Board include, among others:

- 1) convening of extraordinary general meeting;
- 2) fixing of the quorum required for the Board meetings;
- 3) making recommendation on the quantum of dividends;
- 4) appointing an approved company auditor to fill any casual vacancy in the office of the auditor of the company; and
- 5) appointing the company secretary.

The powers vested in the general meeting are aimed at controlling or curbing the potential breaches of fiduciary duties on the part of directors and preserving or maintaining the capital of the company.² Such powers include, among others:

- 1) altering the objects in the memorandum of association;
- 2) altering the Articles;
- 3) issuing shares at a discount;
- 4) reducing share capital;
- 5) appointing or re-appointing directors aged over 70 years;
- 6) removing directors of a public company; and
- 7) approving the issue of shares by directors.

In order to facilitate effective exercise of shareholder rights, it is important for directors to be sufficiently prepared for the AGM and to practise the highest level of corporate governance in relation to the AGM when dealing with the shareholders. The AGM is an avenue for shareholders to voice out their opinions and concerns over issues relating to business and affairs of the company and to question the Board. It also provides the Board with an opportunity to explain and justify corporate decisions made during the financial year. The AGM is also an important forum to transact key matters such as election of Board members and the declaration of final dividend.

¹ See Appendix A of the Guide for an overview of the AGM process.

² Corporate Powers Accountability (2nd edition) by Loh Siew Cheang.

Business of AGM

The success of an AGM depends on the chairman and the Board's understanding of what is required to be done at the AGM. In general, the main business of the AGM is for the Board to propose, make recommendations and seek shareholders' views and approval on matters prescribed by law.

The business usually considered and transacted at an AGM includes the following:

- 1) Laying of the company's audited profit and loss account for the period since the preceding account made up to a date not more than six months before the date of the AGM together with an audited balance sheet, statement of financial position, statement of profit or loss and other comprehensive income, consolidated statement of changes in equity, cash flow statement and notes to the accounts ("financial statements") and a directors' report³ and such other statements comprised in the company's annual report including, among others, statement of financial position, statement of profit or loss and other comprehensive income, consolidated statement of changes in equity, cash flow statement and notes to the accounts;
- 2) appointment of new directors;
- 3) election of directors in the place of those retiring or re-election of retiring directors;
- 4) declaration of dividends;
- 5) remuneration of directors; and
- 6) appointment or re-appointment and fixing of the remuneration of the auditors.⁴

These will be discussed in the following Chapters of this Guide.

In general, the Articles distinguish special and ordinary businesses to be considered at an AGM.

Ordinary business: Subject to the Articles of the company, all businesses transacted at an AGM would usually be considered special business, except for the businesses discussed under "Business of AGM" above, which are considered ordinary business.

Special business: Resolutions which are usually considered as special business are, among others:

- 1) approval to continue in office as independent directors;
- 2) authority for Board of directors to issue and allot shares in the company provided such issuance and allotment does not exceed 10% of the issued and paid-up capital of the company;
- 3) authority for the company to purchase its own shares; and
- 4) shareholders' mandate for recurrent related party transactions.

³ The financial statements and directors' report do not require formal approval of the shareholders - Section 169 (1) of the CA. (Section 244 of the New Act sets out that directors of a company shall ensure that the financial statements of a company and, if the company is a holding company for which consolidated financial statements are required, the consolidated financial statements of the company are made out in accordance with the applicable approved accounting standards. "Approved accounting standards" has the meaning assigned to it in Section 2 of the Financial Reporting Act 1997.)

⁴ Paragraph 15.21 of the Listing Requirements sets out the factors to be considered for the appointment of external auditor. Also, refer to CG Guide for further guidance on the selection, role and scope of external auditor.

CASE STUDY #1: AGMs Are Not A Waste of Time ⁵

Warren Buffet, Chairman of Berkshire Hathaway Inc., while acknowledging that “many meetings were a waste of time”, noted that his AGM was distinct. He was prepared to invest time and effort to answer shareholders’ questions. With several inventive methods to attract shareholders to attend, and ground rules to manage shareholder questions, he has turned Berkshire Hathaway’s AGM into a much anticipated event for investors. It was not always that way. In 1981 only 12 shareholders attended the AGM. Buffet indicated that he is prepared to answer any questions from shareholders except questions on what Berkshire Hathaway is buying and selling, even if this is public information. Currently approximately 40,000 shareholders attend the AGM each year which lasts for several hours.

5 <http://www.thestreet.com/story/13129559/1/10-strange-facts-about-warren-buffetts-berkshire-hathaway-annual-meeting.html>

CASE STUDY #2: Ferreyros engages minority shareholders ⁶

Ferreyros prioritises participation and voting at AGMs as an important shareholder right. But investors, usually minority shareholders, are not always interested in participating in meetings, in large measure because some companies treat such gatherings as a mere formality to go through financial statements.

But Ferreyros took an alternate approach, differentiating itself from other companies. The firm uses the occasion of the AGM to provide detailed information on the company's business and its strategy for the future. A typical meeting follows this pattern:

- 1) A video demonstrates the performance of the capital goods the company sells to different economic sectors.
- 2) Graphs and data are presented as part of the presentation of the annual report.
- 3) Financial statements are presented with an explanation of main figures.
- 4) Financial statements submitted by management and reviewed by the board are approved by shareholders after a detailed presentation and a question and answer session.
- 5) Other items on the agenda are presented with plenty of supporting data.
- 6) Some years, shareholders are invited to visit company offices at the conclusion of the meeting to get a sense of day-to-day operations.

Ferreyros encourages the participation of all shareholders, including minority participants. The company does this by using legally-mandated channels such as advertisements in newspapers. It also posts information on the company's website, mails an invitation to each shareholder's reported address and sends an email notice to shareholders who sign up for this service. If shareholders are unable to attend the meeting, they can delegate rights to any person, without any restriction to act as their proxy. Recent innovations included use of new media as a way to expand participation even more: the AGM was transmitted live and shareholders could access it in real time streaming across the Internet.

Such efforts have resulted in strong attendance rates in recent years where the attendance rates at Ferreyros AGMs improved significantly from 74% to 92% over several years.

2

“There are preparatory work and important matters for an AGM which directors and their advisers should attend to.”

2.0 Preparing for the AGM

In order to have an effective AGM, proper planning and preparation is essential. There are preparatory work and important matters for an AGM which directors and their advisers should attend to. These should include sending the notice of AGM to shareholders and other relevant persons.

2.1 PREPARATION

2.1.1 REPORTS

The directors have to lay out documents, such as the audited financial statements, directors' report and the independent auditors' report before the company at its AGM. These documents should be prepared well in advance and should be in accordance with the relevant laws and rules.

Where financial statements are concerned, these must have been reviewed by the audit committee to ensure that they comply with the financial reporting standards and other legal requirements before they are approved by the Board.

BEST PRACTICE

The Board should ensure that there is a committee (comprising either management or Board, or both) to oversee the preparation of the relevant reports required. This should be done well before the AGM.

2.1.2 NOMINATION OF DIRECTORS¹

Before the AGM, the Board together with the nominating committee should consider the matters in relation to Board appointments, re-election and nomination. As the nominating committee has to identify and assess candidates and make a recommendation to the Board, it should begin the process at least three months before the AGM is scheduled to ensure there is sufficient time to carry out such process.

POINTS TO NOTE

- 1) In assessing the suitability of candidates and/or existing directors, the nominating committee should carry out background checks on the qualifications, experience, character and other relevant checks on the individuals. These checks should include whether enforcement action has been taken against such candidate/individual as there have been situations where the candidates have been publicly reprimanded for submitting inaccurate and false/misleading statements about their qualifications and experience and the listed issuer appointing the candidate was unaware of the same. In addition, for existing directors, the review should include their contribution to the company including participation in meetings.
- 2) Every listed issuer must ensure that each of its directors has the character, experience, integrity, competence and time to effectively discharge his role as a director².
- 3) The Board should take note that shareholders are permitted to propose candidates to be appointed to the Board and in such instances, the nominating committee should also assess the proposed candidate and should respond to the shareholder with the results of such assessment.

BEST PRACTICE

There are listed issuers who inform their shareholders through their website that such shareholders may nominate directors. They also inform the shareholders of the processes involved when nominating a director as provided in the LR and the length of time needed to assess the candidate adequately.

- 4) Once a candidate for directorship/director for re-election is assessed, the resolution to appoint/re-elect that individual as a director must be approved by a bare majority of votes by shareholders present or by proxies. To enable the shareholders to decide whether to approve the resolution, the nomination must have relevant details of the individuals who are standing for election/re-election as directors³.
- 5) The nominating committee should also assess independent directors annually and should take into account the definition of “independent director” stated in the Listing Requirements and Practice Note 13.

1 Please refer to the CG Guide.

2 Paragraph 2.20A of the Listing Requirements.

3 Paragraph 1 of Appendix 8A of the Listing Requirements.

- 6) It should give due consideration to whether the independent directors have served within the time limit stipulated in the CG Code and if so, whether such independent directors should serve for longer than the said period. While it is not easy to procure candidates with the necessary industry expertise and experience, it is equally important to refresh the Board from time to time.
- 7) The listed issuer should have clear policies on the tenure of independent directors as there is a growing trend among shareholders who question boards when independent directors have served for a long period of time.

2.1.3 DIVIDEND POLICY AND BASIS OF RECOMMENDED DIVIDEND

Establishing a dividend policy brings clarity to shareholders on the expected returns from the company they are investing in.

POINTS TO NOTE

- 1) The Board should establish and adopt a dividend payout policy to guide them in making their recommendation of the quantum dividend payout. Companies may choose to declare interim dividends such that a final dividend requiring approval at the AGM might either not be required or be insubstantial. The Board should, as far as possible, combine dividends into a final dividend so as to enable shareholders to consider the matter more extensively. The objective of a dividend policy is to safeguard the balance between regular cash reward to shareholders and the company's aim to grow and its ability to survive long term.
- 2) It is recommended that the shareholders be informed of the dividend policy.
- 3) If there is no stated dividend payout ratio, directors should be prepared to provide the shareholders with a guideline on dividend payout.
- 4) It should be noted that, under the New Act, companies are required to show that they are solvent before a distribution of dividends is made. For this purpose, a company is regarded as solvent if it is able to pay its debts as and when the debts become due within twelve months immediately after the distribution is made.⁴
- 5) All dividends or distributions are to be paid within one month from the books closure date and in any event, not later than three months from the date of declaration or the date on which approval is obtained in a general meeting. Once the dividend has been declared, a listed issuer must not make any subsequent alteration to the dividend.⁵

BEST PRACTICE

Listed issuers are encouraged to make payment of dividends within one month from the date of declaration or the date on which approval is obtained in an AGM.

⁴ Section 132 of the New Act.

⁵ Paragraphs 8.26 and 9.19(2)(a)(ii) of the Listing Requirements.

2.2 BOARD MEETING BEFORE THE AGM

The final step prior to calling of an AGM should be the convening of a Board meeting.

POINTS TO NOTE

Holding a Board meeting before the AGM

- 1) Depending on the Articles and the business to be transacted at the AGM, such Board meeting should be held at least two months before the AGM.
- 2) However, if there are any material circumstances or developments which require the attention and consideration of the Board, another meeting should be held.
- 3) At the Board meeting, the directors should consider and approve, among others, the following resolutions that are commonly required to convene and facilitate the AGM:
 - i) calling the AGM;
 - ii) approving the directors' report and financial statements;
 - iii) approving the notice of AGM;
 - iv) approving special business to be considered in the AGM; and
 - v) approving the statements disclosed in the annual report and any other documents or material to be circulated to the shareholders for the purpose of the AGM.
- 4) Matters such as the materials/information to be presented, length of the AGM and establishment /review of the procedures to nominate candidates for directorship by shareholders as indicated earlier, should also be considered by the Board.
- 5) Some Boards do not hold a pre-AGM Board meeting but prefer to deal with matters to be discussed via circular resolution. This is not good practice and Boards are strongly encouraged to hold a Board meeting to discuss matters relating to the AGM.

2.3 CALLING THE AGM

There are certain matters and factors which should be considered before calling the AGM such as:

- 1) **Subsidiary location:** If the Articles provide for subsidiary locations for shareholders to participate in the AGM, the Articles should also consider how control is to be exercised over the participants at the subsidiary locations.
- 2) **Right to vote:** Any shareholder who participates at a meeting from a different venue using technology, must also be able to vote in accordance with his rights under the CA⁶ and the Articles.⁷
- 3) **21 days' notice:** The AGM of public companies must be called by a notice in writing of not less than 21 days or such longer period as provided for in the Articles.⁸

POINTS TO NOTE

Where and when to hold the AGM?

- 1) Prior to the calling of the AGM, the Board, when deciding on the venue and timing of the AGM, should take into consideration whether:
 - i)* the majority of shareholders will be available to attend the AGM (e.g. if an AGM is held on the eve of a major festive holiday, many may not be available to attend);
 - ii)* facilities such as ramps and lifts are available for the convenience of disabled attendees.
 - iii)* there are sufficient parking spaces at the venue;
 - iv)* the size of the venue can accommodate all shareholders in the same room⁹ (unless the company plans to use technology to reach out to shareholders elsewhere) In this connection, the listed issuer should estimate the number of attendees; and
 - v)* the date, time and venue are convenient for the greatest number of shareholders to attend.
- 2) The AGM should be held during normal business hours and on a day which is not a public holiday.
- 3) It should not be fixed on a date, time or venue that is inaccessible thus preventing shareholders from exercising their right to vote.

⁶ Section 148 of the CA. (Also refer to Section 71(1)(a) of the New Act.)

⁷ Although Section 145A of the CA only refers to shareholders having a reasonable opportunity to participate and no expressed reference is made to the right to vote, such provision must be read together with the provisions in Section 148 of the CA.

⁸ Section 145(2A) of the CA. (Also refer to Section 316(2)(a) of the New Act.)

⁹ *Byng v London Life Association* [1989] 1 All ER 560 (Court of Appeal, UK). In that case, the venue of the meeting could not fit all the shareholders and some of them were accommodated in the overflow room, where the audio-visual equipment was defective. As such, the shareholders in the overflow room could see and hear the chairman, but could not hear the shareholders speaking in the other room. It was clear in the judgment that if the audio-visual link was not defective, there would have been a valid meeting even though there was no face to face presence.

ILLUSTRATION

XYZ Berhad held its 5th AGM at its factory located adjacent to a rubber plantation estate in a remote area which is inaccessible by normal vehicles. Due to the relative inaccessibility of the venue, XYZ Berhad witnessed a decline in attendance at its AGM.

The Board should be cautious in making decisions on the venue of the AGM by taking into account the convenience of the shareholders in attending the AGM.

- 4) The venue may also be prescribed by law or by the constitution of the company. A company incorporated under the CA is required to hold its AGM in Malaysia.¹⁰ Foreign companies listed on Bursa Securities may be required by the regulators to hold their AGM in Malaysia by the insertion of such requirements in their constitution.¹¹
- 5) The venue for the AGM should be booked for a sufficient length of time to cater for situations where the AGM may be prolonged.¹²

BEST PRACTICE

The Board may consider requiring the company secretary to append to the notice of AGM, a route map to the venue of AGM (which includes landmarks and directions) and other administrative details such as GPS coordinates or accessibility by public transport.

Better participation of Shareholders by using technology

- 6) In order to encourage better participation and accessibility, companies should consider the possibility of using technology to facilitate access by shareholders to the AGM.
- 7) This may involve, for example, setting up multiple locations within the country for shareholders to attend, linked by technology to the principal location of the meeting in order to minimise their travel costs and time and encourage wider shareholder participation
- 8) However, the following may need to be considered:
 - i) the availability of adequate communication infrastructure;
 - ii) verification of shareholders;
 - iii) conduct of matters at subsidiary locations (e.g. conduct of poll voting); and
 - iv) costs versus benefits, for example, would a normally small shareholder attendance justify this?
- 9) The company should assess whether changes to the Articles to address these matters are needed.

¹⁰ Section 145A of the CA. (Also refer to Section 327 of the New Act.)

¹¹ Paragraph 5.39 of the Equity Guidelines issued by the Securities Commission Malaysia.

¹² *Smith v Sadler* [1997] 25 ACSR 672 (Supreme Court, New South Wales).

2.4 NOTICE OF AGM

2.4.1 NOTICE PERIOD AND SERVICE OF NOTICE

The notice of AGM must be sent to all shareholders within the time period prescribed under the relevant law and should contain sufficient information to enable the shareholders to decide on whether to vote and/or attend the meeting.¹³

Notice Period

- 1) The AGM of a public company must be called by a notice in writing of not less than 21 days before the AGM or such longer period as is provided in the Articles.¹⁴ If the length of the notice is shorter than what is required, such notice could be considered defective and the meeting could be an invalid meeting¹⁵. However, if all shareholders entitled to attend and vote at the AGM agree, a shorter notice period may be acceptable.¹⁶
- 2) For listed companies, at least 21 days' notice must be given by advertisement in at least one nationally circulated Bahasa Malaysia or English daily newspaper and in writing to each stock exchange upon which the company is listed¹⁷ and to announce to Bursa Securities 21 days before the AGM is held.¹⁸

BEST PRACTICE

The notice of AGM and any explanatory materials pertaining to the AGM including the rules (relating to shareholders' rights and directors' powers), procedures and processes, should be placed on the company's website, in a prominent manner and be accessible by the shareholders and other interested parties.

- 3) **By fax:** A company which intends to use a fax machine to give notice of meeting to its shareholders must ensure that its Articles allow it.¹⁹
- 4) **To beat the clock:** "Not less than 21 days" means 21 clear days exclusive of the day on which the notice is posted and the day on which the AGM is held.²⁰

¹³ Paragraph 8.27(1) of the Listing Requirements.

¹⁴ Section 145(2A) of the CA. (Also refer to Section 316(2)(a) of the New Act.)

¹⁵ First Nominee (Pte) Ltd v New Kok Ann Realty Sdn Bhd [1983] 2 MLJ 76 (High Court, Singapore).

¹⁶ Section 145(3) of the CA. (Also refer to Section 316(3) of the New Act.)

¹⁷ Paragraph 7.15 of the Listing Requirements.

¹⁸ Paragraph 9.19(6) of the Listing Requirements.

¹⁹ Jenashare Pty Ltd v Lemrib Pty Ltd (1993) 11 ACSR 345 (Supreme Court, New South Wales).

²⁰ Extreme System Sdn Bhd v Ho Hup Construction Company Bhd and Others [2010] MLJU 232 (High Court of Malaya)

BEST PRACTICE

The notice of AGM should be dispersed 28 days before the AGM. Such active steps of serving notices of AGM earlier than the minimum notice period could encourage shareholders' participation at the AGM.²¹ A longer notice period would provide shareholders greater opportunity to review the company's performance and documents as well as plan their meeting attendance.

POINTS TO NOTE

Entitlement to Notice

- 1) It is a substantive right of shareholders to receive the notice, attend and to be heard at the AGM.²²
- 2) The issuance and receipt of the notice to the shareholders are important to avoid any issues pertaining to the validity of the meeting.²³

ILLUSTRATION

A group of debenture holders who were entitled to attend a listed issuer's AGM for particular reasons, did not receive the notice of AGM. Subsequently, the validity of the AGM was challenged.

Although the omission was inadvertent and the proceedings were not invalidated, the inconvenience to the listed issuer and its shareholders could have been avoided if the company had ensured that the notice of AGM had been given to all persons who were entitled to attend the AGM.

Auditor's Entitlement to receive Notice of AGM

- 1) The listed issuer's external auditors are entitled to:
 - i) attend any general meeting of the company;
 - ii) receive all notices of any general meeting which a shareholder is entitled to receive; and
 - iii) be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.²⁴

21 Recommendation 8.1 of the CG Code.

22 Re Compaction Systems Pty Ltd [1976] 2 NSWLR477 (Supreme Court, New South Wales).

23 Corporate Powers Accountability (2nd edition) by Loh Siew Cheang. Section 145(5) of the CA. (Also refer to Section 316(6) of the New Act.)

24 Section 174 of the CA. (Section 285(1) of the New Act sets out that auditor of a public company shall attend every annual general meeting where the financial statements of the company for a financial year are to be laid, so as to respond according to his knowledge and ability to any question relevant to the audit of the financial statements.)

Resolution requiring Special Notice²⁵

- 1) Certain resolutions, such as resolutions for the removal of the directors²⁶ and the removal of the auditors²⁷, require special notice to be given.²⁸
- 2) Where a special notice is required, the resolution is not effective unless a 28 days' notice of the intention to move it has been given to the company before the meeting. Upon receipt of such notice, the company must give its shareholders 14 days' notice of such resolution before the meeting.
- 3) The giving of special notice of 28 days to the company is a condition precedent to the validity or effectiveness of the resolution intended to be moved at the general meeting. However, if upon the receipt of the special notice, the company calls for a general meeting to be held on a date which is less than 28 days after the date on which the special notice was received, the special notice is deemed to have been properly given. This is to prevent companies from frustrating intentions of shareholders by taking advantage of technical rules.²⁹

Service of Notice

- 1) A notice may be given by the company to any shareholder either personally or by post either:
 - i) at his registered address; or
 - ii) if he has no registered address within Malaysia, to the address, if any, within Malaysia supplied by the shareholder to the company for the giving of notice to him.³⁰
- 2) The Articles normally provide for deemed service of notice which has the effect of preventing objections from shareholders that they had not been served with a notice.³¹

Serve Electronically

- 1) In the UK and Australia, a company may provide the notice of meeting to its shareholders electronically if the shareholder has indicated his willingness to receive it in such form.³²
- 2) In the UK, the notice of AGM may be given to a shareholder by means of publishing it on a website.³³

25 Section 153 of the CA. (Also refer to Section 322 of the New Act)

26 Section 128(2) of the CA. (Also refer to Section 206(3) of the New Act)

27 Section 172(4) of the CA. (Also refer to Section 277 of the New Act.)

28 Section 153 of the CA. (Also refer to Section 322 of the New Act.)

29 Corporate Powers Accountability (2nd edition) by Loh Siew Cheang.

30 Regulation 108 of Table A of the CA.

31 Regulation 108 of Table A of the CA.

32 Section 1259 of the UK's Companies Act 2006 and Section 249J of the Australia's Corporations Act 2001.

33 Section 308 of the UK's Companies Act 2006.

- 3) There is currently no restriction which prohibits a company from including a provision to provide the notice of meeting to its shareholders electronically. However, for a listed issuer, if it wishes to issue its annual report in electronic format to its shareholders, it must among others, issue hard copies of the notice of the AGM, proxy form, and other relevant documents to its shareholders together with the said annual report.³⁴
- 4) It should be noted that, the New Act sets out that the notice of meeting may be given to the members either in hard copy, in electronic form or partly in hard copy and partly in electronic form.

2.4.2 CONTENTS OF NOTICE

The content and information in the notice of AGM must be sufficient to enable the shareholders to decide whether to attend the AGM and vote for or against the proposal.

POINTS TO NOTE

- 1) **Prominence:** The notice of AGM must contain a statement with reasonable prominence as to the rights of the shareholder to appoint proxies to attend and vote and that a proxy need not be a shareholder.³⁵
- 2) **Explanatory statement:** The notice of AGM must be accompanied by a statement regarding:
 - i) the effect of any proposed resolution in respect of any special business³⁶
 - ii) information on directors standing for election; and
 - iii) statement relating to general mandate for issue of securities³⁷
- 3) The notice of AGM must specify:
 - i) the place, date and time for the meeting (and if the meeting is to be held at two or more places, the technology that would be used to facilitate this);
 - ii) the general nature of the business of the meeting; and
 - iii) any special resolution(s) to be proposed and the wording of the resolution(s).
- 4) The Board must ensure that the content and information in the notice of AGM would be sufficient to enable shareholders to judge for themselves whether to attend the meeting and vote for or against a proposal.³⁸
- 5) The notice should be written in simple and plain language and should not be misleading. Relevant information should not be withheld or presented in a manner which could mislead the shareholders or the market as a whole.
- 6) The Board could consider providing details in support for the re-election or re-appointment of directors to be included in the notice of AGM.³⁹

34 Paragraph 9.26 of the Listing Requirements.

35 Section 149 of the CA. (Also refer to Section 334 of the New Act.)

36 Paragraph 7.15 of the Listing Requirements.

37 Paragraph 8.27 of the Listing Requirements and Appendix 8A of the Listing Requirements.

38 Paragraph 8.27 of the Listing Requirements and Fraser & Anor v NRMA Holdings Ltd & Ors [1995] 13 ACLC 132 (Federal Court, Australia).

39 Item 3 of Better Practices as set out under Paragraph 5.6 of the CG Guide.

2.4.3 RESOLUTIONS

Before approving the notice of AGM, the Board must be clear on whether the resolution is an “ordinary” or “special” resolution. To determine this, the CA and Articles should be relied upon. The Board should ensure the accuracy of the content of the resolutions.

(a) Ordinary Resolution

- 1) Although the definition of ordinary resolution is not set out in the CA, it is generally understood to be a resolution which is passed by a simple majority of members entitled to vote who are present personally or by proxy.⁴⁰
- 2) **Tiebreaker:** In the event of an equality of votes, it may be expressly provided in the Articles that the chairman of the meeting should be entitled to a second or casting vote⁴¹. In the absence of such express provision, there is no such right as there is no common law right to a casting vote.⁴²

(b) Special Resolution

- 1) A special resolution is a resolution which is required to be passed by a majority of not less than three-fourths (3/4) of shareholders entitled to vote (in person or by proxy) at the AGM.⁴³ Matters which are required to be authorised by special resolution at the AGM include altering the memorandum of association and Articles⁴⁴, altering the objects clause of the memorandum of association⁴⁵ and altering the Articles.⁴⁶
- 2) **Notice:** The notice to pass a special resolution must specify the intention to propose the resolution as a special resolution. However, it is not possible to give notice specifying the intention without also specifying the entire substance of the actual resolution which it is intended to propose.⁴⁷

POINTS TO NOTE

Bundled Resolutions

- 1) Generally, there are no laws governing the style and manner in which resolutions should be put before the AGM for approval. However, a motion for the appointment of two or more directors must be in separate resolutions.⁴⁸
- 2) If resolutions are bundled together, it prevents the shareholders from deciding on issues separately. Therefore for example, the resolution to approve the payment of directors’ fees for the non-executive chairman should be separate from the approval sought for payment of non-executive directors fees.
- 3) The Board should ensure that there is a separate resolution for each substantially separate issue at the AGM. Each resolution should be discussed and voted on individually for greater transparency and better governance.

40 *Bushell v Faith* [1969] 1 CH 438 (Court of Appeal, UK).

41 Regulation 53 of Table A of the CA.

42 *Nell v Longbottom* [1894] 1 Q.B. 767 (Queen’s Bench Division – High Court, UK).

43 Section 152 of the CA. (Also refer to Section 292 of the New Act)

44 Section 21 of the CA. (Also refer to Section 36 of the New Act.)

45 Section 28 of the CA. (Also refer to Section 36 of the New Act.)

46 Section 31 of the CA. (Also refer to Section 36 of New Act.)

47 *Re Moorgate Mercantile Holdings Ltd* [1980] 1 All ER 40 (Chancery Division – High Court, UK).

48 Section 126 of the CA. (Also refer to Section 203 of the New Act.)

2.4.4 EXPLANATORY NOTES

Sufficiency of information: Review should be undertaken to ensure sufficiency and clarity of information set out in a notice of meeting. Notwithstanding, if after issuance of the notice of meeting, there is a need to provide further/additional information, this can be done via a circular or explanatory statement. When a notice of meeting is supplemented by a circular or explanatory statement, both documents would be treated as a single document and as the notice itself.⁴⁹ This appears to prevent any unwanted dispute to the sufficiency of information in the notice, if such information has been provided in the accompanying explanatory statement.

POINTS TO NOTE

- 1) When the contents of the notice of AGM are not sufficient for the shareholders to make an informed decision, explanatory statements or notes may be sent out to the shareholders to provide them with further information in relation to the subject matter considered.
- 2) Complex resolutions should include explanatory statements.⁵⁰
- 3) The Board should include a statement expressing the reason for the support of or against the appointment of a candidate in the explanatory notes to the notice of AGM.

⁴⁹ *Tiessen v Henderson* [1899] 1 Ch 861 (Chancery Division – High Court, UK).

⁵⁰ The Guidelines for Notices of Meeting issued by the ASX Corporate Governance Council.



2.5 PROXY

Bursa Malaysia Depository Sdn. Bhd. (“*Depository*”) operates and maintains a central depository for securities listed on Bursa Securities. A listed issuer may require the Depository to issue a record of the depositors (“*ROD*”) (equivalent to list of shareholders) for the purpose of determining, among others, the shareholders who are entitled to attend the AGM.⁵¹

A depositor of any deposited security (except security in suspense) whose name appears in the ROD shall be entitled to all rights and be subject to all obligations in respect of, or arising from, such security (whether conferred or imposed by the CA, or the Articles, or otherwise) as if he was a member registered in the register of members.

A shareholder entitled to vote may vote in person or he may do so by appointing a proxy or if provided for in the Articles, other duly authorised representative.

POINTS TO NOTE

- 1) ***Right to appoint proxy***: Generally, if the provision of the Articles which sets out the appointment of proxies infringes the statutory right to appoint a proxy, it would be of no effect.⁵²
- 2) ***Omnibus accounts***: Where a shareholder is an exempt authorised nominee⁵³ which holds ordinary shares in the company for multiple beneficial owners in one (1) securities account (“omnibus account”), there is no limit to the number of proxies which the exempt authorised nominee may appoint in respect of each omnibus account it holds.
- 3) ***When to lodge?***: Any provision contained in a company’s Articles would be void if it requires the proxy form to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting.⁵⁴ Arrangements should be considered for deposit of proxies on weekends or public holidays, where appropriate. It might be useful to state in the administrative note of the notice of AGM that proxy forms via fax or email are not acceptable.
- 4) ***Revocation of proxy***⁵⁵: Subject to the Articles, a revocation of proxy is generally not effective until the written notification is delivered to and received by the company before the commencement of AGM. The surest way in which a shareholder may revoke a proxy is to attend and vote in person at the AGM.
- 5) ***Changes to rights appointing proxies***: Listed issuers which are foreign corporations are required to undertake, among others, to inform the Depository as soon as there are any changes in the law of incorporation of the company that may affect or change the Depository’s or depositor’s rights or obligations over the securities, including, the right to appoint proxies.⁵⁶

⁵¹ Paragraph 7.16 of the Listing Requirements.

⁵² The court’s ruling in the case of *Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors* [1992] 2 MLJ 10 (High Court of Malaya, Malaysia) seem to indicate that if the requirements for appointment of proxy set out in the Articles are less stringent than that of the CA, the provisions of the Articles would stand.

⁵³ An exempt authorised nominee refers to an authorised nominee defined under the Securities Industry (Central Depositories) Act 1991 (“SICDA”) which is exempted from compliance with Section 25A(1) of SICDA.

⁵⁴ Section 146(1)(c) of the CA. (Also refer to Section 331 of the New Act.)

⁵⁵ Regulation 62 of Table A of the CA and *Cousins v International Brick Company Ltd* [1930] C 4389 (Court of Appeal, UK) indicates that in a case where a proxy had not been validly revoked in accordance with the Articles, the shareholder who had given the proxy was free to attend at the meeting and vote personally; and that, when he had done this, the vote tendered by the proxy was properly rejected. Also, referred to Shackleton on the Law and Practice of Meetings, twelfth edition – 2011.

⁵⁶ Rule 17.01C(1)(a) of the rules of Bursa Malaysia Depository Sdn Bhd.

Appointment and voting rights of proxies

- 1) The right to appoint a proxy is important as it allows a shareholder who is unable to attend company meetings in person to appoint a representative to vote in his place.
- 2) Every notice of AGM must disclose with reasonable prominence a statement on the rights of the shareholders to appoint proxies, and that a proxy need not be a shareholder of the company.⁵⁷
- 3) A proxy appointed would have the same rights as the appointing shareholder to speak at the meeting, unless the Articles provide otherwise.⁵⁸
- 4) Unless in the case of exempt authorized nominee, a shareholder should not be entitled to appoint more than two proxies to attend and vote at the same meeting. Where a shareholder appoints two proxies, the appointments would be invalid unless he specifies the proportion of his holdings to be represented by each proxy.⁵⁹ Where a member of the company is an exempt authorized nominee which holds ordinary shares in the company for multiple beneficial owners in one securities account ("*omnibus account*"), there is no limit to the number of proxies which the exempt authorized nominee may appoint in respect of each omnibus account it holds.⁶⁰

Proxy Form

- 1) Generally, listed companies would send a proxy form with the notice of AGM.
- 2) However, proxy forms of a listed company must be designed in a manner which allows the shareholder appointing a proxy to indicate how the proxy is to vote in relation to each resolution.⁶¹
- 3) This is to avoid a situation where an appointed proxy votes in contradiction to the wishes of the appointing shareholder and is also to ensure that the intention of the appointing shareholder is reflected in the voting process.
- 4) A proxy form should, in general, be deposited in accordance with the Articles at the registered office of the company or at such place within Malaysia as specified in the notice of AGM:
 - i) not less than 48 hours before the time for holding the AGM; or
 - ii) not less than 48 hours before the time for holding the adjourned AGM; or in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, otherwise proxy forms may be regarded as invalid.⁶²
- 5) The Board should ensure that the company has a process in place to check the validity of the proxy forms. The proxy forms should be counted and verified by the share registrar once they have been received.
- 6) Proxy forms should disclose the date on which the shareholders must be registered as a shareholder and whose name must appear in the record of depositors of the company in order to be entitled to attend and vote at the AGM.

57 Section 149 of the CA. (Also refer to Section 335 of the New Act.)

58 Paragraph 7.21A of the Listing Requirements.

59 Section 149 of the CA. (Also refer to Section 335 of the New Act.)

60 Paragraph 7.21 of the Listing Requirements.

61 Paragraph 8.05 of the Listing Requirements.

62 Regulation 61 of Table A of the CA.

Invitation to Appoint

- 1) When a company issues an invitation to appoint as proxy a person or one of a number of persons, it must ensure that the invitation is accompanied by a proxy form which entitles the shareholder to direct the proxy to vote either for or against the resolution.⁶³ This is to prevent abuse by the appointee of the company and the Board to vote in a way favourable to the Board.⁶⁴
- 2) Where such invitations are to be issued at the expense of the company, the company must ensure issuance of the same to all shareholders of the company who are entitled to be sent a notice of AGM and to vote.⁶⁵
- 3) A company may issue to a shareholder, at his request, a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is also available on request in writing to every shareholder entitled to vote at the meeting by proxy.⁶⁶

63 Section 149(5) of the CA.

64 Corporate Powers Accountability (2nd edition) by Loh Siew Cheang.

65 Section 149(3) of the CA. (Also refer to Section 335(2) of the New Act.)

66 Section 149(4) of the CA.



2.6 SUBMISSION OF RESOLUTIONS AND CIRCULATION OF STATEMENTS BY SHAREHOLDERS

Shareholders have the right to submit resolutions for consideration at the general meeting and the right to circulate statements.⁶⁷

ILLUSTRATION

W Berhad received a notice from its shareholders, who collectively hold 5% of total voting rights, pursuant to the CA, of their intention to move a resolution at its AGM. The resolution was requisitioned by a group of shareholders and their statement in support of their proposed resolution was given.

As such, and with the conditions set out in the CA being met, the company is bound to include the resolution proposed by its shareholders in the notice of AGM.

⁶⁷ Section 151 of the CA. (Also refer to Sections 311, 312 and 313 of the New Act.)

2.7 SHARE REGISTRAR

A share registrar is an institution or organisation whose main responsibility is to keep up-to-date records of all shareholders and bondholders (if any) of a company.

POINTS TO NOTE

- 1) **Criteria:** A listed company must appoint and retain a share registrar who:
 - i) has satisfactory internal control procedures in place and financial and operational capabilities which are needed for the proper performance of its obligations as the listed company's share registrar; and
 - ii) acts professionally and in the best interests of the listed issuer and the integrity of the market when providing services for the listed issuer.⁶⁸
- 2) **Suitability:** When considering the suitability of a share registrar, it must also be considered whether the share registrar:
 - i) is able to provide its services in a timely and efficient manner;
 - ii) has proper safeguards to protect the listed company and its shareholders from financial loss arising from delay in its services, theft, fraud and other dishonest act or professional misconduct of the share registrar;
 - iii) maintains proper records in relation to the services provided to the listed issuer; and
 - iv) complies with all applicable laws and regulations in relation to the business and services it offers, including maintaining confidentiality of information pertaining to the listed issuer and its shareholders.⁶⁹

Roles and Responsibilities of Share Registrar

- 1) The roles and responsibilities of a share registrar in respect of AGM may include, among others:
 - i) preparing the list of shareholders eligible to attend the AGM, and the proxy summary reports;
 - ii) collating and verifying proxy forms;
 - iii) resolving any issues arising over the validity of proxy instructions;
 - iv) coordinating with appointed polling agents and scrutineers on poll voting;
 - v) verifying and registering attendees at meetings; and
 - vi) attending to shareholders' enquiries at the information point, if any.
- 2) The Board should ensure that the share registrar appointed would be able to carry out such responsibilities to ensure the recognition of the voting intention of all shareholders.

⁶⁸ Paragraph 2.21A(1) of the Listing Requirements.

⁶⁹ Paragraph 2.21A(2) of the Listing Requirements.

3

“An AGM should be properly constituted after being duly convened.”

3.0 Conducting the AGM

To ensure proper and effective conduct of your company's AGM, you must familiarise yourself with the important matters in conducting an AGM.

3.1 CONSTITUTING THE AGM

An AGM should be properly constituted after being duly convened. A properly constituted meeting is a meeting:

- a) which has been duly convened;
- b) in which there is a quorum as determined by the Articles;
- c) in which there is a presiding chairman; and
- d) from which no persons who are entitled to attend are excluded.

POINTS TO NOTE

Why is the attendance of the entire Board required at the AGM¹?

- 1) All the directors should attend the AGM as absenteeism projects a lack of commitment by the directors, who are accountable to the shareholders for their stewardship of the company.
- 2) The attendees of the AGM would appreciate the full attendance of the Board.
- 3) A director should only be excused for valid reasons, for example illness and other extenuating circumstances.

BEST PRACTICE

Directors and key management should arrive earlier at the venue of the AGM to interact with the shareholders as it would encourage communication between the Board/key management and shareholders. Most, if not all, shareholders would appreciate this gesture and time spent with the directors and key management.

In considering the venue and arrangements for the AGM, the following should also be considered:

Seating arrangements

- 1) Although there may be space constraints, the directors should be seated together with the chairman (and company secretary), facing the shareholders.
- 2) Certain seats should also be reserved for the advisers, external auditors and senior management personnel of the company.

¹ Based on (with modifications) MAICSA Best Practice Guide Series – A Guide to Annual General Meetings - 2000.

ILLUSTRATION

At A Berhad's AGM, the company secretary was placed further down from the chairman. The company secretary had to walk up to the chairman to advise him on some of the procedures that needed to be followed and to show him some of the questions that the shareholders had asked during the AGM. This may have given the impression that the chairman was not listening to the questions when in effect it is quite difficult to conduct the meeting and take notes at the same time. Furthermore having the company secretary seated away from the chairman and directors does not reflect the position and responsibility of the company secretary.

Dress Code and other Admission Policy:

When choosing a venue, any venue which requires certain conditions for admission, such as strict dress code rules, should be avoided as it may cause inconvenience to some shareholders.

Registration²:

- 1) Clear notification as to the requirements pertaining to registration should be provided to the shareholders prior to the AGM to ensure a smooth and efficient process.
- 2) Shareholders should be informed via the notice of AGM as to the processes involved including identity verification, closing time for registration and other such requirements. Shareholders should also be advised, through the notice of AGM, the reasons/rationale of these requirements (e.g. if there will be security checks conducted, the reason for the security check).

Recordings of the Proceedings

Listed issuers that do not want any of the proceedings of the AGM to be recorded should consider amending their Articles to make this clear.

BEST PRACTICE

It is good practice for companies to record the proceedings at the AGM to capture key discussions. Shareholders should be notified of the company's process in recording the minutes (which can be made available at the request of shareholders). Such recordings may also be of use to the company secretary during the postmortem discussions after each AGM.

2 Based on (with modifications) Shackelton on the Law and Practice of Meetings, twelfth edition – 2011.

Door gifts:

- 1) Most listed companies in Malaysia prepare door gifts for their shareholders as they consider door gifts as an incentive for shareholders to attend AGMs.³
- 2) It is important to note that the provision of door gifts is at the discretion of the company and the shareholders are not entitled to door gifts as of right. The company may forewarn the shareholders if it decides not to provide door gifts at the AGM so as to manage the expectations of the shareholders and avoid any miscommunication with shareholders.

Corporate Representatives:

Corporate shareholders may elect a corporate representative to attend the AGM and ask questions and vote on resolutions at the AGM.⁴

Under the New Act a corporation may authorise a person or persons to act as its representative or representatives at any meeting of members of the company and each of those representatives is entitled to exercise the shareholder's powers. Unlike proxy holders where two holders can vote differently as instructed by the shareholder, corporate representatives must vote the same way. If they exercise the power in different ways, they must be treated as not exercising it at all.⁵

Other matters:

- 1) The chairman and relevant management personnel should be fully prepared, and it may be necessary to inform the meeting, at the outset, of what happens in the event of an emergency. First aid facilities should also be available at the venue of the AGM
- 2) Matters pertaining to security should be considered. In normal cases, a few stewards should be sufficient. If the Board anticipates any chaotic or disruptive events at the AGM, heightened security measures should be in place.
- 3) Shareholders should be informed on how they can obtain assistance during the AGM under such circumstances.

3 In India, no gifts, gift coupons, or cash in lieu of gifts should be distributed to the shareholders at the AGM - Secretarial Standard On General Meetings published the Institute of Company Secretaries of India.

4 Section 147(3) of the CA. (Section 333 of the New Act sets out that if a corporation is a member of a company, the corporation may by resolution of its Board authorize a person or persons to act as its representative or representatives at any meeting of members of the company.)

5 Section 333 of the New Act.

3.2 LANGUAGE OF THE MEETING

Listed companies conduct their AGM in English or the national language. What of other languages?

POINTS TO NOTE

Language at the AGM?

- 1) The law does not require a specific language to be employed by the chairman at an AGM but any language other than the national language or English should only be used by common consensus and in such circumstances, a translation should be provided (in national language or English).
- 2) If no common consensus exists and a shareholder raises a question in a language other than the national language or English at the AGM, the chairman may respond in that language provided that he or any of the listed issuer's personnel is able to provide a reliable translation to keep other shareholders informed about the contents of the question and answer. Alternatively, if the question could not be understood or there is no reliable translation available at the AGM, the chairman should propose that the question be put in writing to the Board so that a written response can be provided. Such response should be provided to all shareholders.

3.3 PRESIDING OVER THE AGM

The chairman usually sets the tone of the AGM and should ensure that it is effectively conducted. The chairman should ensure that shareholders can effectively exercise their right to express their opinion on issues concerning the company and to consider and vote on resolutions tabled at the meeting.

POINTS TO NOTE

Who should be the chairman⁶?

- 1) The chairman of the Board should preside as chairman at every general meeting of the company.
- 2) If there is no such chairman, the shareholders present may elect one of them to be chairman of the meeting.
- 3) It is common practice for a chairman to hand over the chairmanship of the meeting in relation to matters to be considered by the meeting where the chairman has an interest. He is also encouraged to leave the meeting room during such time to minimize any influence he might have on that matter.
- 4) **Running late:** If the chairman of the AGM is not present within 15 minutes after the time appointed for the holding of the meeting or the appointed person is unwilling to act, the shareholders present should elect one of them to be chairman of the meeting instead.⁷
- 5) There may be instances where the AGM cannot proceed due to last-minute notification of a **court injunction** against the conduct of the AGM. The chairman should as soon as possible notify the shareholders present about the adjournment of the AGM.

3.3.1 DUTIES AND POWERS OF CHAIRMAN

The fundamental role of a chairman is to ensure that the AGM is carried out in an effective and efficient manner to achieve its objectives in a proper and orderly manner.⁸

What are the duties of a chairman?

The principal duties of a chairman include the following:⁹

- 1) ensure the meeting is properly constituted and a quorum is present;
- 2) be informed of the business and objectives of the meeting;
- 3) preserve order;
- 4) confine discussions within the scope of the meeting and within reasonable limits of time;
- 5) decide whether proposed motions and any amendments to the resolutions are in order;

⁶ Regulation 49 of Table A of the CA.

⁷ Regulation 49 of Table A of the CA.(Also refer to Section 329 of the New Act.)

⁸ Chitty J in *National Dwelling Society v Skyes* [1894] 3 Ch 159 (Chancery Division – High Court, UK) said “Unquestionably it is the duty of the chairman, and his function, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting”.

⁹ Based on (with modifications) *Corporate Powers Accountability* (2nd edition) by Loh Siew Cheang.

- 6) decide on points of order and other incidental matters during the AGM, including ensuring compliance with the Articles; and
- 7) guide the AGM proceedings by:
 - i) putting relevant questions to the meeting and taking a vote;
 - ii) declaring the result; and
 - iii) adjourning the meeting where prevailing circumstances justify that course.

POINTS TO NOTE

- 1) A chairman may use a procedural script¹⁰ prepared by the company secretary to assist him in preserving the order of the AGM.
- 2) If any matter is anticipated to be contentious and would require much debate, the chairman might wish to put it as the first or last matter so that more time could be allocated for discussion.

What are the powers of a Chairman?

The chairman when discharging his duties at the AGM, may exercise certain powers, including the power to:

- 1) refuse to put a resolution to vote if the resolution is not within the competence of the shareholders' meeting¹¹ such as a resolution to the effect that the directors had acted in breach of statutory duties. However, a chairman must put a proposed resolution to a vote if it is within the competence of the shareholders' meeting¹², for example, the re-election of directors;
- 2) cast the decisive vote in the event of an equality of vote, if such power is provided for in the Articles;¹³ and
- 3) determine the order of the debate of a resolution and the duration of such debate. After the chairman is satisfied that the debate on a matter has been sufficiently carried out, the chairman has the power to close the debate on the matter.

¹⁰ See Appendix B for a sample of the chairman's script.

¹¹ *Turner v Berner & Ors* (1978) ACLC 30,007 (Supreme Court, New South Wales). In this case, a meeting was requisitioned to pass, amongst others, a resolution to effect that the directors had acted in breach of statutory duties. The directors refused to include this proposed resolution in the agenda and the court upheld the decision of the directors and held that no power existed in any of the organs of the company to decide that a director of the company had acted in breach of his statutory duties – as such a decision was a judicial one.

¹² *Wishart v Henneberry* (1962) 3 FLR 171 (Industrial Relations Court, Australia).

¹³ Regulation 53 of Table A of the CA.

3.3.2 DETERMINING THE QUORUM

For valid transaction of business in the AGM, the requisite number to constitute a quorum must be present.

POINTS TO NOTE

- 1) A quorum, as determined by the Articles, must be present at the start of an AGM¹⁴, but there is no need to maintain the quorum throughout the AGM.¹⁵ Proxies constitute part of the quorum.¹⁶
- 2) The chairman must be satisfied that a quorum is present. This is usually done by obtaining the confirmation of the company secretary.

3.3.3 DISCLOSURE OF PROXY VOTES

POINTS TO NOTE

Subject to the Articles, the chairman has the discretion on when to reveal the proxy votes. The chairman can choose to disclose the aggregate number of proxy votes received at the commencement of the AGM¹⁷, before the discussion of the proposed resolution or after the debate of the proposed resolution. However, in determining when to disclose the proxy votes, the chairman should consider whether such disclosure would stifle discussion of the proposed resolution especially where the outcome of the vote due to the proxy votes received, is already determined. The most common practice where proxies will determine the outcome of the vote, is to disclose the proxy votes after the discussion but before the vote is taken.

3.3.4 PROCEDURAL CONTROL OF MEETING

The chairman has the responsibility to maintain procedural control of the AGM and should be impartial and act in the best interest of the company. He should also be familiar with any procedural rule for the AGM set out in the Articles.

POINTS TO NOTE

- 1) The chairman should, at the start of the AGM, explain to the shareholders the house rules and other administrative details (such as policy on audio and visual recording, procedures for emergency evacuation, and to request speakers to use microphones and introduce themselves by name and state whether they are shareholders or proxies each time they speak¹⁸), order of events, how the meeting would be conducted and how resolutions would be proposed, discussed and voted upon.¹⁹
- 2) The chairman should also ensure that the security chief of the venue gives a short briefing on the safety procedures in case of emergency e.g. fire outbreak.

¹⁴ Regulation 47 of Table A of the CA.

¹⁵ 15In *Re Hartley Baird Ltd* [1955] Ch 143 (Chancery Division – High Court, UK) the company had an article which provided that ten members personally present shall form a quorum. The quorum was formed when it proceeded to business. However, when a vote was taken on the resolution, the members present were reduced to nine and the meeting was inquorate, as a member who opposed the resolution left the meeting. It was held that the validity of the meeting and the resolutions could not be disputed as it was not a requirement that throughout the course of the meeting, the meeting must be quorate.

¹⁶ Paragraph 7.21A of the Listing Requirements, Regulation 47 of Table A and Section 147 of the CA (Also refer to Section 328 of the New Act). Section 4(3) of the Interpretation Act 1949 and 1967 provides that words and expressions in the singular include the plural and vice versa.

¹⁷ Annual General Meetings: A Guide for Directors (2nd Edition) by the Australian Institute of Company Directors.

¹⁸ Refer to the Report of AGM Practices by Malaysian Companies by Minority Shareholder Watchdog Group (MSWG) for further guidance.

¹⁹ Based on (with modifications) Annual General Meetings: A Guide for Directors (2nd Edition) by the Australian Institute of Company Directors.

- 3) Although the AGM should be held on time, shareholders arriving late for the AGM should also be allowed entry.
- 4) The chairman also has the right to limit the amount of time spent on debating on each resolution and this should be exercised reasonably (e.g. to restrict repetitive/similar questions which have been addressed, from being posed)²⁰.
- 5) In this respect, the chairman must allow reasonable opportunity for shareholders at the meeting to ask questions or make comments. He should not cut short discussions if the matters discussed are relevant and practical to the business of the AGM and important matters to shareholders. The chairman should not “collect” questions from the shareholders with a view to answer all the questions in one go as this practice will dilute the importance of the questions and generalise the answers.

BEST PRACTICE

Before a proposed resolution is put to vote at the AGM, it is best practice for the chairman to:

- 1) explain the effects and purpose of the proposed resolution. The chairman should, if necessary, explain the information previously provided in the explanatory note accompanying the notice of the meeting; and
- 2) invite and encourage the shareholders to speak and discuss on the matter.²¹

POINTS TO NOTE

It is also a custom at meetings that motions are not put unless they are proposed and seconded. However, it has been established that in general, there is no legal requirement for a proposed resolution to be seconded.²²

²⁰ Based on (with modifications) MAICSA Best Practice Guide Series – A Guide to Annual General Meetings - 2000.

²¹ Based on (with modifications) MAICSA Best Practice Guide Series – A Guide to Annual General Meetings - 2000.

²² Re Horbury Bridge Coal Co (1879) 11 Ch. D. 109 (Court of Appeal, UK) and National Australian Bank Ltd v Market Holdings Pty Ltd (2001) 161 FLR 1; 37 ACSR 629 (Supreme Court, New South Wales).

3.3.5 MAINTENANCE OF ORDER

The chairman has the responsibility of preserving order at the AGM.

POINTS TO NOTE²³

In order to preserve order at an AGM, a chairman should:²⁴

- 1) make a general call to order if the meeting becomes disorderly;
- 2) make a specific call to order if a particular person is responsible for the disruption;
- 3) order the removal of a person from the meeting, if necessary; and
- 4) adjourn the meeting, if order is so disrupted that the proper business of the meeting cannot reasonably be achieved.²⁵

Expulsion of Shareholders

In the event of disorder, the chairman could request the disruptive party to abstain from any unruly behavior and failing which, require such party to leave the AGM.

3.3.6 REGULATION OF DEBATE

The chairman must ensure that the shareholders are given reasonable opportunity to deliberate and examine the feasibility and merits of a proposed resolution before the matter is put to a vote.

POINTS TO NOTE

- 1) The chairman must ensure that shareholders participating in the meeting via technology from a different venue also have reasonable opportunity to be heard and ask questions.
- 2) It is the responsibility of the chairman to control the discussion and debate and to ensure that minority shareholders are also able to participate in the discussion.
- 3) The chairman is not bound to accept a proposal to close the debate on a matter, unless he is satisfied that all the shareholders have been heard and all questions/issues raised have been reasonably clarified and addressed.²⁶
- 4) The chairman should also ensure that the shareholders do not impede the business by speaking endlessly.
- 5) Once the debate on the topic/matter has been closed, the chairman may refuse to take questions on that topic thereafter.

²³ Refer to the Report of AGM Practices by Malaysian Companies by MSWG for further guidance.

²⁴ Based on (with modifications) Annual General Meetings: A Guide for Directors (2nd Edition) by the Australian Institute of Company Directors.

²⁵ John v Rees & Ors [1970] 1 Ch 345 (Chancery Division – High Court, UK) at pp 382 – 384, Byng v London Life Association Ltd [1989] BCLC 400 (Court of Appeal, UK) at pp 410 - 411.

²⁶ Re Direct Acceptance Corp Ltd (1987) 5 ACLC 1037 (Supreme Court, New South Wales).

3.3.7 AMENDMENTS TO RESOLUTION AND WITHDRAWAL OF RESOLUTION

Amendments made to resolutions may affect the validity of such resolutions. As such, the chairman should be well versed with the rules as regards amendments to resolutions. He should also be aware of the possibility of withdrawal of a resolution before it is voted at the AGM.

POINTS TO NOTE

Exceptions to general rule: A resolution can be regarded as properly passed even though it departs in some respects from the resolution set out in the notice (for example, correcting grammatical or clerical errors or re-writing it in more formal language) provided that in either case there is no departure from the substance.²⁷

Amendments to an Ordinary Resolution

- 1) A proposed ordinary resolution may be amended before it is put to the meeting, as long as the amendments do not fundamentally change the substance or effect of the original resolution. Such amendments may be proposed by the shareholders.
- 2) If an ordinary resolution such as the following is proposed: “THAT the ordinary capital of the company shall be increased by the creation of 1,000,000 new ordinary shares of RM1.00 each”, it would be improper to allow the amendment substituting the figure of “2,000,000” for “1,000,000” or the word “preference” for “ordinary” as this would fundamentally change the substance or effect of the original resolution.²⁸

Amendments to a Special Resolution

- 1) Generally, a proposed special resolution may not be amended because it requires 21 days’ notice specifying the intention to propose the resolution as a special resolution.²⁹
- 2) The notice for the purpose of passing a special resolution must set out the entire substance of the actual resolution.
- 3) There may be legal consequences if the substance of the special resolution differed from that which was set out in the notice.³⁰

²⁷ Shackleton on the Law and Practice of Meetings, twelfth edition – 2011; and *Re Moorgate Mercantile Holdings* [1980] 1 All E.R. 40 (Chancery Division – High Court, UK), it was held that a special resolution had not been validly passed because it differed not only in form but also in substance from the one set out in the notices.

²⁸ Based on (with modifications) Shackleton on the Law and Practice of Meetings, twelfth edition – 2011.

²⁹ Section 152(1) of the CA. (Also refer to Section 292 and 316(2) of the New Act.)

³⁰ *Re Moorgate Mercantile Holdings Ltd* [1980] 1 All ER 40 (Chancery Division – High Court, UK).

Withdrawal of a Resolution³¹

- 1) It is possible to withdraw a resolution before it is voted on at the AGM.
- 2) However, there must be a compelling reason such as:
 - i)* a preferable alternative proposal arises during the debate;
 - ii)* when a director standing for re-election advises the chairman immediately prior to the AGM that he no longer wishes to stand for re-election; or
 - iii)* when the reason for the proposed resolution ceases to exist.

Otherwise, the company should exercise caution in withdrawing any resolution.
- 3) The chairman should seek agreement of the meeting to the withdrawal, after explaining the situation. If there are significant objections, the chairman may have to put such withdrawal to the vote.

CASE STUDY

Prior to its AGM, a listed issuer made an announcement to Bursa Securities on withdrawal of resolutions in respect of proposed amendment to its Articles and proposed determination of the amount of fees of non-executive directors from being tabled for its shareholders' approval at the AGM. The proposed resolutions, if passed, would determine the maximum amount of the non-executive directors' fees for the year and such amount determined would be applicable for all calendar years subsequent to the passing of the resolution unless otherwise subsequently varied. It was explained that the decision on the withdrawal of the resolutions was made after taking into consideration feedback received from shareholders and/or stakeholders on the resolutions.

It was also clarified that it was not the intention of the Board of the company to prevent the shareholders from deliberating on the amount of fees payable to the non-executive directors as the maximum amount per annum of such fees would still require the shareholders' approval. Any increase in the maximum amount determined could only be approved by the shareholders at a general meeting.

As best practice, once a company has decided to withdraw any resolution proposed to be tabled to the AGM, the company should make an immediate announcement and provide clear reasons for the withdrawal.

³¹ Based on (with modifications) Guide to procedures at AGMs published by Chartered Secretaries Australia and Horsley's Meetings Procedure, Law and Practice (6th Edition).

3.3.8 POWER OF CHAIRMAN IN DEALING WITH ADJOURNMENTS

A chairman may, with the consent of the meeting at which a quorum is present, and if so directed by the meeting, adjourn the meeting from time to time and from place to place. A meeting may also be adjourned in other circumstances including due to circumstances, such as destruction by fire or terrorist attack, of the proposed venue.

POINTS TO NOTE

- 1) Generally, the chairman may adjourn the AGM in the following circumstances:³²
 - i)* to facilitate the business of the AGM, such as to take a poll;
 - ii)* in the case of persistent disorder; and
 - iii)* where a quorum is not present.
- 2) In addition, where circumstances prevail that the chairman is prevented from discharging his duties, the chairman may adjourn the AGM on his own accord.³³
- 3) The Articles may provide that, only the business left unfinished at the original meeting can be transacted at the adjourned meeting and that no new business may be discussed at the adjourned meeting.³⁴
- 4) Subject to the Articles, if the AGM is adjourned for 30 days or more, notice of the adjourned AGM should be given as in case of the original AGM and if the adjournment is less than 30 days, it may not be necessary to give a notice of an adjournment or of the business to be transacted at the adjourned AGM.³⁵
- 5) The approval for the extension of time from Companies Commission Malaysia (CCM) maybe required if an adjourned meeting is held beyond the stipulated timeframe of holding an AGM.

³² Based on (with modifications) Shackelton on the Law and Practice of Meetings, twelfth edition – 2011.

³³ John v Rees & Ors [1970] 1 Ch 345 (Chancery Division, UK).

³⁴ Regulation 50 of Table A of the CA. (Also refer to Section 206(2) of the New Act.)

³⁵ Regulation 50 of Table A of the CA. (Also refer to Section 318 of the New Act) In India, a company shall inform its shareholders about reconvening the adjourned meeting at least three days in advance, either individually or by publishing an advertisement in the newspapers (one in English and one in the vernacular language) that are in circulation at the place where the registered office of the company is located
An Investor's Guide to Shareholder Meetings in India.

3.4 PRESENTATION ON OPERATIONS AND BUSINESS OF COMPANY

It is advisable to have a presentation at the AGM to demonstrate the value of the company and to highlight the key achievements and issues to the shareholders and to facilitate constructive and effective engagement with shareholders.

The contents of the presentation should have been discussed at the pre-AGM Board meeting. These should include information needed by shareholders to make an informed assessment of the company's activities and results together with any observations, comments or remarks of the Board.

POINTS TO NOTE

Purpose and content of presentation

- 1) Presentations on the operations and business of the company are to facilitate discussions on the financial reports.
- 2) Through this presentation, it is likely that most shareholders' questions would have been addressed.
- 3) The information that may be presented includes:
 - i)* Key financial highlights;
 - ii)* financial trends and key ratios;
 - iii)* dividend trends and total shareholder returns;
 - iv)* business review or divisional performance;
 - v)* project highlights;
 - vi)* sustainability activities;
 - vii)* key risks such as risks to business and projects;
 - viii)* any matters having material adverse effect on the business or financial position of the company;
 - ix)* outlook; and
 - x)* future strategy.

Who should be the presenter?

- 1) The chairman or the director (being the most appropriate person in providing clear explanations) most familiar with the topic should make such presentation.
- 2) Scripts would be useful to the presenter in ensuring the coverage of main aspects of and variances to the business and financial trends.
- 3) It is unusual for consultants to conduct a presentation at an AGM although this is more common during corporate exercises in EGMs. If the AGM is to be followed through with an EGM, the chairman should be cautious and not deal with issues that are to be dealt with at the EGM, even if shareholders raise questions on those issues. The chairman should also not use the presentation at the AGM to influence shareholders with regard to the EGM.

To what extent should information be disclosed?

- 1) The presenter should adhere strictly to the internal corporate disclosure policies of the company and must ensure compliance with the disclosure requirements as set out in the Listing Requirements.³⁶
- 2) The presenter should make use of technology (such as projectors, presentation slides, videos etc), to enhance his delivery of the presentation. This could help to highlight and explain technical concepts and important information which may be difficult to explain verbally.

ILLUSTRATION

At the AGM of one listed issuer, the presenter relied purely on a verbal presentation. His presentation was disorganised, dull, stilted and long. The participants subsequently lost interest. The use of presentation slides during the AGM might have helped him to engage their interest.



3.5 ELECTION, RE-ELECTION AND REMOVAL OF DIRECTORS

The election or re-election of directors at an AGM is one of the most important rights conferred to the shareholders. The Board is entrusted with the managerial powers of the business and affairs of the company. For this reason, the conduct of AGMs is particularly important for the shareholders to hold the directors accountable for the corporate decisions made. If the shareholders are not happy with a director's performance, they could vote against the re-election of that director.

Rotational Retirement of Directors

Generally, the Articles determine the tenure of office of directors. Some directors will retire from office by rotation but may be eligible for re-election. The CA and Listing Requirements stipulate the conditions under which directors must retire.³⁷

Re-election

- 1) If a director standing for re-election decides to withdraw his candidature just before the AGM, and not seek re-election, the chairman should advise the shareholders as soon as possible that the resolution is withdrawn at the AGM.
- 2) Where it is the chairman who is standing for election or re-election, a senior independent director or any other disinterested director present should assume the chair of the meeting for that resolution.

Removal of Director

- 1) A director may be removed by defeating the resolution for his election or re-election or re-appointment.
- 2) Ideally, the Board should ask a director, who is not likely to be re-elected or re-appointed, to not seek re-election or re-appointment.
- 3) A director of public company may, by an ordinary resolution, be removed before the expiration of his office tenure.³⁸ A special notice is required in this instance and the director must be given the right to be heard.³⁹

Facilitating the Debate

The chairman can encourage discussions on directors' elections through the following:

- 1) presenting the Board's views on why the nominated director should be re-elected/elected; and
- 2) allowing shareholders to pose questions to or about the candidates.

³⁷ Regulations 63, 64 and 65 of Table A of the CA, Section 129 of the CA (Also refer to Section 205 of the New Act) and Paragraph 7.22 and 7.26(2) of the Listing Requirements. You should also consult with your company secretaries for more information.

³⁸ Section 128(1) of the CA. (Also refer to Section 206(2) of the New Act)

³⁹ Section 128(2) of the CA (Also refer to Section 206(3) of the New Act). Section 153 of the CA (Also refer to Section 322 of the New Act) provides that a special notice is a notice of not less than 28 days of an intention to move an intended resolution before the meeting at which it is moved.



CASE STUDY

At a listed issuer's AGM, the shareholders did not vote in favour of re-electing some directors. The board called for an emergency board meeting after the AGM and re-appointed those directors.

As a matter of good governance practice, the Board of directors should always respect shareholders' decisions as re-appointing a director whose re-election was rejected by the shareholders would undermine the shareholders' decision at the AGM.

3.6 DIRECTORS' REMUNERATION AND BENEFITS

Directors' remuneration is one of the key areas where due account must be taken of the interests of shareholders. The shareholders usually raise numerous questions as they desire transparency in relation to the fixing of directors' remuneration and benefits. For that reason, the Board should ensure that the work to be done by the remuneration committee before the AGM is properly carried out. As directors' remuneration involves the interest of directors, the directors should be vigilant and abstain from voting when their remuneration is the subject of the vote.

POINTS TO NOTE

Preparation for the AGM

- 1) The Board should ensure that the resolution pertaining to directors' remuneration is part of the AGM agenda and that the relevant details are accurate.
- 2) The Board should ensure that the resolution put forth to the shareholders is clear and worded accurately with an explanatory statement in the notice of AGM to state the exact amount of and justify any increase in remuneration.
- 3) Preparation should also be made to address questions by shareholders as to whether the directors' remuneration is justifiable.
- 4) From a corporate governance perspective, the Board should also consider putting directors' remuneration received from the company's subsidiaries to be approved by the shareholders of the company at the AGM.
- 5) It should be noted that once the New Act is effective, fees and any benefits payable to directors of a listed company and its subsidiaries should be approved at a general meeting.⁴⁰
- 6) Fees payable to directors shall not be increased except pursuant to a resolution passed at a general meeting, where notice of the proposed increase has been given in the notice convening the meeting.⁴¹

⁴⁰ Section 230 of the New Act.

⁴¹ Paragraph 7.24 of the Listing Requirements.

ILLUSTRATION

Common reasons provided at AGMs for increase in directors' remuneration:

- 1) Directors have been paid below market rate and it is time to increase the fees (it is best to have an industry benchmark to provide shareholders with facts).
- 2) Executive directors' salary (although not subject to shareholder approval) is tied to profits and the increase is proportionate to the overall earnings and overall expenses of the company.

To whom should the question be directed at the AGM?

If the shareholders at the AGM raise questions in relation to directors' remuneration, the chairman may direct the question to the remuneration committee chairman or even the external remuneration adviser if the company has engaged such advisers.

3.7 DEALING WITH SHAREHOLDERS

3.7.1 ADDRESSING SHAREHOLDERS' QUESTIONS

The Board should take reasonable steps to encourage shareholders' participation at general meetings.⁴² The Board's responsibilities to the shareholders include developing and implementing an effective shareholder communications policy. In the context of an AGM, it means that shareholders should be given the opportunity to question, or comment on the business and performance of the company at the AGM or ahead of the AGM.⁴³ When addressing shareholders question, the Board must be mindful of the continuous disclosure obligations pursuant to the Listing Requirements and must not disclose any price sensitive information which has yet to be released to Bursa Malaysia.⁴⁴

POINTS TO NOTE

Addressing Shareholders' questions at the AGM

- 1) The company secretary should for record purposes obtain the relevant particulars of the shareholder or proxy who asks questions.
- 2) As far as possible, the Board and management should try to deal with all questions during the AGM itself. If the Board is unable to answer any question on the spot it should explain to the shareholders that this would be addressed by uploading the questions and answers on the company's website.
- 3) The chairman should not limit the number of questions the shareholders may ask during the AGM.
- 4) The company should take note of questions asked during the AGM to better prepare for the next AGM.
- 5) The opportunity to ask questions should be given to all shareholders. If a shareholder has more than one question, it would be practical to let other shareholders ask their questions before taking on further questions by the former. All reasonable questions raised by the shareholders should be responded to.
- 6) In order to give comprehensive answers at the AGM, attempts should be made to obtain the specifics of the questions.
- 7) The chairmen of Board committees should be sufficiently prepared in order to be able to share their views and opinions and to address questions from shareholders.

⁴² Recommendation 8.1 of the CG Code.

⁴³ See Appendix F for the scope and examples of questions that might be raised by the shareholders.

⁴⁴ Section 188 of the Capital Markets and Services Act 2007 and Paragraph 9.14 of the Listing Requirements.

Submission of Individual Shareholders' Questions before the AGM⁴⁵

- 1) Procedures should be put in place to facilitate the submission of individual shareholders' enquiries or questions relating the company's business prior to the AGM. This helps the Board to identify issues which might require extensive discussion and to determine an approach to address the questions in the most efficient/effective manner.
- 2) This is also in line with the practice of allowing other shareholders such as Minority Shareholder Watchdog Group (MSWG) and institutional shareholders to submit its questions before an AGM.

BEST PRACTICE

Questions submitted in advance and answers to such questions should also be presented at the AGM or published on the company's website to promote efficiency and transparency.

DISCLOSURE ON WEBSITE OF COMPANY

- 1) The company must disclose a summary of the key matters discussed at the AGM, as soon as practicable after the conclusion of the AGM.⁴⁶
- 2) The company should also publish answers to salient questions raised by the shareholders on its corporate website.⁴⁷
- 3) There may be questions which may be irrelevant or relate to sensitive issues, such as, a question which might be defamatory or cast aspersions on the character of a person. The company should consider with professional advice, where necessary, whether these questions or their answers should be redacted or omitted.

CASE STUDY

A chairman of a listed company irritated shareholders by repeatedly dodging shareholders' queries on the group's accounting practices. The chairman said: *"Does it have to do with the financial statements? If it does, I will answer it. But if it does not, we won't, okay. We have to stick by the rules and regulations of the meeting"*.

The chairman should have answered the shareholders by using a less offensive tone to avoid causing disappointment to the shareholders who were so annoyed that they highlighted the incident to the media.

⁴⁵ See Appendix D for Sample Pre-AGM Shareholder's Question Form.

⁴⁶ Paragraph 9.21(2)(b) of the Listing Requirements.

⁴⁷ See the FAQs on minutes of meeting on Bursa Securities' website.

3.7.2 DEALING WITH CONTROVERSIES

Controversies do not happen all the time. However, the chairman should always be prepared to deal with controversies so that they do not go beyond control. Examples of controversies include protests by activists at the venue of AGM, transactions carried out or decisions made (such as high payout of remuneration to directors or employees or overpayment of acquisition costs) by the company which raise questions; and infliction of bodily harm to others by misbehaving attendees.

POINTS TO NOTE

Safeguards

Depending on the severity of the situation, it would be appropriate for the company and chairman to manage such issues with actions such as:

- 1) the imposition of appropriate security measures at the venue of AGM;⁴⁸
- 2) meeting with the relevant parties prior to the AGM;
- 3) where safety of attendees is at risk, hiring extra security personnel if necessary; and
- 4) in extreme circumstances, considering police involvement.

However, the company should consider if such strict security measures are necessary by balancing the anxiety and hassle to shareholders against the need for security measures.

CASE STUDY

In the UK, a British security company's AGM was gate crashed for several years consecutively by demonstrators who protested against the company's business activities. Some protestors had to be forcibly removed by security guards. As a precaution, the attendees of its latest AGM had to go through rigorous security measures before they could enter the venue. Nevertheless because the company took such measures it avoided any untoward incidents during the AGM.

BEST PRACTICE

A post-mortem meeting should be held after the AGM, attended by the Board, company secretary and relevant management personnel to discuss controversies which took place at the AGM and evaluate the effectiveness of the AGM.⁴⁹ The aim is to improve the ways of dealing with controversial issues in case they arise at the next AGM.

⁴⁸ The company should, however, consider whether it is entitled to do these things in the circumstances. Forcible measures may, attract potential liability. Also, if a shareholder is refused entry on grounds that he did not submit to the measures, questions may arise as to whether the shareholder has been unlawfully refused entry into the AGM with possible ramifications, including, the validity of the AGM.

⁴⁹ See Appendix E for sample post-AGM checklist for the conduct of AGM.



3.7.3 MANAGING SHAREHOLDERS WHO DOMINATE QUESTION TIME

When planning the AGM, directors should properly factor in the time required for the AGM and the possibility that some shareholders might protract proceedings at question time. This may not, however, always be foreseeable.

POINTS TO NOTE

Get hold of the Situation!

- 1) The chairman should always provide reasonable opportunity for debate and allot sufficient time for the shareholders to raise questions. For this reason, strict time restrictions should not be imposed on question and answer sessions.
- 2) However, if a shareholder or proxy takes up excessive time when commenting or raising questions, the chairman should politely interrupt to avoid the AGM proceedings from being unduly prolonged and to allow other shareholders to raise questions.
- 3) A balance must be struck between permitting questions and unduly prolonging the AGM proceedings.

Repetitive or a Series of Questions

- 1) The chairman should not take questions which have already been addressed. He should politely make it clear to the shareholders that the question has already been addressed.
- 2) If a shareholder asks a series of/numerous questions, the situation should be properly managed by the chairman by addressing the questions individually in succession so that shareholders obtain specific answers to each question.

Irrelevant or Technical Questions, etc.

The chairman should politely interrupt if the questions are irrelevant, ill-informed, frivolous, repetitive or something which might interfere with the proceedings of the AGM. If the questions raised by shareholders are technical or complex in nature and detailed explanation is needed, the chairman, other members of the board or senior management should nevertheless attempt to answer the questions by the end of the AGM or if unable to do so, suggest to the shareholders that the response be given to the shareholders after the AGM by uploading the questions and answers on the company's website.

ILLUSTRATION

At the 3rd AGM of D Berhad, a shareholder took almost half an hour to comment on the company's failure to provide for refreshment and parking reimbursement. He kept going on about how loyal an investor he had been. Yet, the chairman did not interrupt him.

The chairman should interrupt courteously if the question or matter raised by a shareholder is not within the topic of relevance to the company's business and conduct of operations or the shareholder is holding the floor for too long. Chairmen should always try to ensure that other shareholders are not deprived of the opportunity to raise questions.

3.8 ROLE OF EXTERNAL AUDITOR AND ENGAGEMENT WITH SHAREHOLDERS AT THE AGM

The chairman must familiarise himself with the responsibility and authority of the external auditor and the management personnel or those charged with governance and matters arising from the financial statements.

It is important that the external auditor, together with the chairman and management personnel or those charged with governance have prepared adequately for the AGM. If the external auditor is asked to respond to inappropriate questions or if questions are not understood the answers provided could be misleading. Directing the shareholder's question to the wrong person may unnecessarily protract the proceedings of the AGM or mislead the shareholders.

POINTS TO NOTE

Should the Auditor attend?

- 1) The law requires the external auditor of a company to report to the shareholders on the accounts required to be laid before the company in the AGM.⁵⁰
- 2) The chairman should ensure that the partner signing the audit report or his representative has sufficient information and experience to provide an adequate response to any question raised on audit matters.

Engagement with Shareholders at the AGM

- 1) The chairman is encouraged to provide a brief explanation to the shareholders at the commencement of the AGM on the external auditor's roles and responsibilities.
- 2) The chairman should expect the external auditor to answer questions within the scope of his responsibilities only.
- 3) The chairman should promote discussions between the external auditor and the shareholders through the following:-
 - i) introducing the external auditor to the meeting and giving him a platform to brief the shareholders on the auditor's report; and
 - ii) giving an opportunity to the shareholders to put questions in writing to the external auditor, via the company, in advance of the AGM. The chairman should present those questions or clarification sought by the shareholders in relation to the external auditor's report and conduct of the audit, during the AGM.

⁵⁰ Section 174 of the CA. (Section 285(1) of the New Act sets out that auditor of a public company shall attend every annual general meeting where the financial statements of the company for a financial year are to be laid, so as to respond according to his knowledge and ability to any question relevant to the audit of the financial statements.)

- 4) Guidance on the scope of questions pertaining to the financial statements and who should be answering is as follows:

Scope of Questions	Who Should Answer
Conduct of the Audit	external auditor
Preparation and Content of the Audit report	external auditor
Accounting Policies and Standards	chief financial officer
Auditor Independence and Suitability	audit committee chairman
Key Audit Matters	external auditor and audit committee

Immediate Responses

- 1) A situation may arise where the external auditor is unable to provide immediate responses to the questions of shareholders during the AGM.
- 2) In such circumstances, the company should inform the shareholders that it would obtain the appropriate response and communicate this to the shareholders. This should be done by means easily accessible to shareholders in general, for example, by providing the response in the company's website.

Incorrect Responses

If during the AGM, the external auditor concludes that the management or the Board has given a response or made a statement that is materially inconsistent with the financial statements or information obtained during the audit, the external auditor should bring this to the attention of the management or the Board. It is the responsibility of management or the Board to consider whether any correction to the response or statement should be made.

ILLUSTRATION

A shareholder of F Berhad highlighted that the capital commitment of the listed issuer was significantly higher in the current financial year compared to the previous financial year. The chief financial officer and external auditor were unable to verify the previous financial year's figures immediately and the chairman advised the shareholder that the company would revert to the shareholder separately once the information was verified. While this is an appropriate response, good practice dictates that the company should inform all shareholders on the response to the question and not only the shareholder who asked the question.

3.9 VOTING

To ensure the smooth running of an AGM, the chairman would need to establish clear voting procedures. It is good practice to explain these voting procedures to the shareholders present at the AGM once the chairman is done with his welcome speech or before the resolution is put to the vote.

The chairman should be aware of any interested directors and/or shareholders who are required by the Listing Requirements and other applicable requirements to abstain from voting on a resolution, and take the necessary measures to ensure that they and persons connected to them do not vote.⁵¹

POINTS TO NOTE

- 1) **Rights to vote:** Shareholders can exercise their rights to vote either in person or by proxy.
- 2) **Poll voting:** On a poll taken at the AGM, a shareholder need not, if he votes, use all his votes or cast all the votes he used in the same way.⁵²
- 3) **Recount of votes:** It is within the discretion of the chairman to order a recount in any situation (including a vote which has been the subject of a ballot) where he is uncertain of the true result.⁵³
- 4) **Change or withdrawal of votes:**⁵⁴ It has been held that a person entitled to vote might generally change or withdraw his or her vote before the result is finally announced. The chairman's declaration of the voting results is regarded as having closed the voting process. It is then no longer possible for voters to change or retract their votes, and claim, with an explanation, that they had made an error, or for a person who had neglected to vote to make a late vote for similar reasons. It is common for the Articles to provide that the determination of the chairman is final and conclusive.

Directors' Responsibility:

- 1) It is the directors' responsibility to ensure that any poll and vote-taking, are carried out properly in compliance with all applicable laws and regulations and that adequate controls are in place to ensure the completeness, authenticity and accuracy of the votes cast and the poll results. The directors are also responsible for ensuring the completeness and accuracy of the details of the poll results included in the announcement on the poll.⁵⁵
- 2) The Board is responsible to ensure that all proxy forms have been properly received, all votes cast are valid and the voting results are complete and accurate.

⁵¹ For example, the ordinary resolution approving the renewal of shareholders' mandate for the company to enter into recurrent related party transactions.

⁵² Section 147 of the CA and Paragraph 7.18 of the Listing Requirements (Also refer to Section 332(1) of the New Act). Paragraph 8.29A of the Listing Requirements provides that a listed issuer must ensure that any resolution set out in the notice of AGM is voted by poll.

⁵³ Shackleton on the Law and Practice of Meetings, twelfth edition – 2011.

⁵⁴ *Fitzwood Pty Ltd v Unique Goal Pty Ltd (in liquidation)* [2001] 18 ALR 566 (Federal Court, Australia) and *Horsley's Meetings Procedure, Law and Practice* (6th Edition).

⁵⁵ Practice Note 720: Acting as Scrutineer at a General Meeting of a Listed Issuer issued by Hong Kong Institute of Certified Public Accountants.

Voting on a Poll⁵⁶

- 1) A poll could be held immediately after discussion of each resolution or at the end of all discussions on the agenda items including any other business items. If the poll is to be taken at the end, the chairman should make this clear to shareholders to ensure that they do not leave before the conclusion of AGM.
- 2) If the chairman decides that the poll is to be taken at a later date, the date at which the poll is taken is not regarded as a separate meeting but rather, a continuation of the original meeting.⁵⁷
- 3) In announcing the voting results, a listed company must disclose the total number of votes in favour of and against (including the percentage) the resolutions tabled and the name of the scrutineer(s).⁵⁸
- 4) It is good practice for the chairman to explain to shareholders the mode of poll voting before considering any of the proposed resolutions i.e. whether the poll vote will be carried out electronically or manually and how long it will take to announce the results, if carried out manually.
- 5) If certain shareholders hold shares which do not carry voting rights at the AGM (for example, preference shares which do not carry votes at that AGM), the chairman should explain this.

POINTS TO NOTE

- 1) The chairman may specify a fixed time for closing the poll in order to facilitate the voting process.
- 2) The Board is ultimately responsible for the announcements made by the company and must not abdicate its responsibility to any professional especially where matters under consideration are not subjective but factual in nature.

BEST PRACTICE

- 1) The chairman should introduce the poll administrator (usually the share registrar) to the meeting before the poll administrator gives a briefing on how it would be conducted.
- 2) If the company decides to disclose the abstention and spoilt votes in the announcement of poll results, the Board of directors should make it clear that the votes are not counted in the calculation of the proportion of the votes for and against the resolution

⁵⁶ See Appendix C for sample Poll Procedures and Poll Results.

⁵⁷ *Scadding v Iorant* (1851) 3 H.L. Cas. 418 (House of Lords, UK)

⁵⁸ Paragraph 9.19(7) of the Listing Requirements.

Chairman's Casting Vote

- 1) The primary purpose of having a second or casting vote is to break the deadlock so that the resolution can be carried.
- 2) Subject to the Articles, in the case of an equality of votes, the chairman should be entitled to a second or casting vote.⁵⁹
- 3) If the chairman has two votes, one as a shareholder and the other a casting vote, he should not exercise them together. He should use his vote as a shareholder at the same time as the other shareholders vote and then, only if the voting is level, exercise his casting vote as a chairman.
- 4) It is also common for the chairman to abstain from using his vote as a shareholder in order to maintain his non-partisan role.⁶⁰

Electronic Voting

- 1) Electronic voting is an advanced method of voting which allows shareholders to record their voting directions by using technological devices at the AGM.
- 2) Such voting system is encouraged given that it is easier, time-saving and more accessible.
- 3) Changes to the Articles may be necessary to enable such voting method.
- 4) Where electronic voting devices are used, it is necessary to have poll voting slips available to be used in the event technological problems arise.

CASE STUDY

In an AGM conducted recently, a listed issuer conducted electronic poll voting for all resolutions. Over 100 shareholders stayed back to vote and the process was completed within less than 30 minutes. The poll administrator showed a video of how to vote using the new system. The video was replayed several times before the start of the AGM, at the registration counter and just before shareholders cast their votes.

Despite the demonstration, there were a few shareholders who were not comfortable with electronic voting devices. Under such circumstances the poll administrator could assist such shareholders to vote using the electronic voting device.

⁵⁹ Regulation 53 of Table A of the CA.

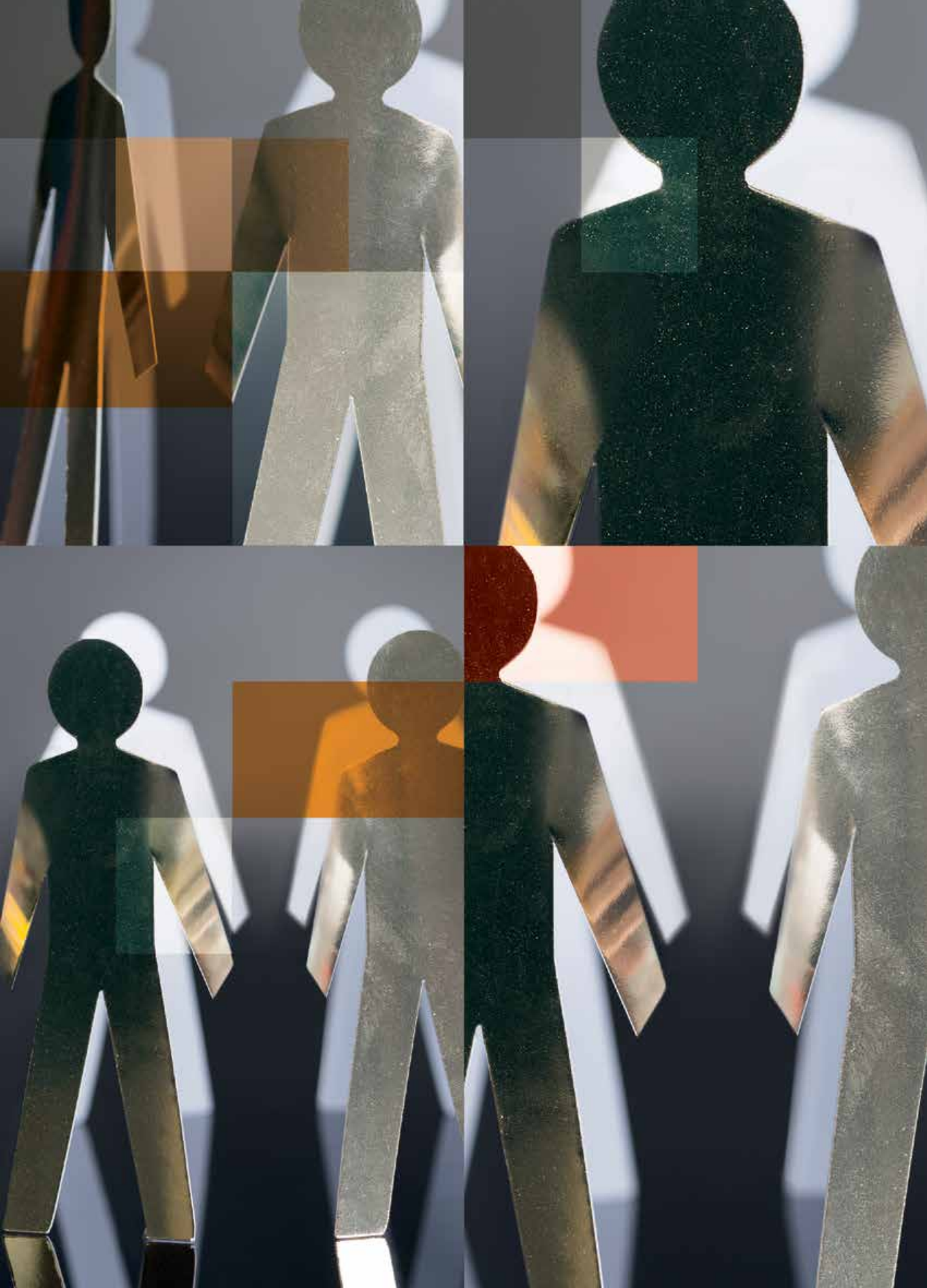
⁶⁰ Shackleton on the Law and Practice of Meetings, twelfth edition – 2011.

Direct Voting

- 1) Either online or by completing their personalised voting forms without the hassles of appointing any proxy.
- 2) The Australian Securities Exchange Corporate Governance Council's Guidelines for Notices of Meeting state that companies should consider allowing shareholders to lodge direct votes electronically.
- 3) Though increasingly used in practice, this form of voting is not referred to in the Australian Corporations Act 2001 or the Australian Stock Exchange Listing Rules.⁶¹
- 4) Similarly in Malaysia, there are no express statutory provisions which allow for this voting method. It may be possible to provide for this method through changes to the Articles.⁶²

61 Corporations and Markets Advisory Committee's discussion paper on the AGM and shareholder engagement published in September 2012.

62 However, the provisions of Section 148 of the CA (Also refer to Section 71(1)(a) of the New Act) should be carefully considered.



3.10 SCRUTINEERS

Scrutineers are appointed to preserve the integrity of the poll voting process and to ensure that voting had been undertaken properly by:

- 1) observing the voting process;
- 2) validating the votes at the AGM; and
- 3) ensuring that the counting of votes had been carried out appropriately.

POINTS TO NOTE

Role of Scrutineers

- 1) Scrutineers may also be involved in carrying out the relevant testing of the system installed for the conduct of the AGM, such as the system for electronic voting. This should be done prior to the AGM.
- 2) They should also ensure that the requirements of the relevant law and the Articles are observed.
- 3) A scrutineer's role includes, among others, observing the counting of the voting slips and verifying the proxy forms lodged (to ensure there is no double counting) against the record of depositors.
- 4) A scrutineer must be independent.⁶³
- 5) The chairman should ensure that the scope of work of the scrutineers is clearly set out prior to the AGM. The scope of work of the scrutineers should be agreed between the scrutineers and the company. There may be variations to the scope referred to above. However, the variations should not be such that the purpose of a scrutineer is in fact quite pointless. In carrying out their work, the scrutineers should not be required to answer questions from shareholders on behalf of the company.
- 6) It is very important that the scrutineers and the company, including the Board, have a clear understanding of the role and responsibilities of the scrutineers. The duties and responsibilities of the scrutineers, could include the following, where applicable:

Prior to the AGM

- i) Liaise with the share registrar to obtain the list of shareholders 48 hours prior to the AGM.
- ii) Liaise with the company or share registrar to obtain copies of proxy forms submitted by shareholders and to verify that the proxies are eligible to attend the AGM. The scrutineers and the company should have a prior agreement on whether the verification process covers all the proxy forms or on a sampling basis.
- iii) Verify the voting slips.
- iv) Ensure enough voting slips are available for walk-in shareholders at the AGM.
- v) Coordinate or request for a briefing from the share registrar on the shareholders registration process and voting procedures.
- vi) Provide consent to the company to identify or name them as the scrutineers in the company's announcement of the voting results after the AGM.

63 Paragraph 8.29A of the Listing Requirements.

During the AGM

- i)* If voting is done manually, prior to the commencement of voting, scrutineers should ensure that the ballot box is empty. The scrutineers may then seal the box to ensure that the box is not opened. Scrutineers may sign on or otherwise mark the seal. Alternatively, the ballot box may be kept by the scrutineer prior to the commencement of voting.
- ii)* If electronic voting system is used, the scrutineers should have a reasonable understanding of the electronic voting system and process by obtaining a copy of the independent certification report and/or flow chart of the electronic voting system. This should be done prior to the meeting.
- iii)* Observe the voting process and ensure it is conducted properly.
- iv)* Obtain the voting results and verify the accuracy of the voting results summary prepared by the company.
- v)* Review the individual details of votes cast in the voting results summary and ensure it is consistent with the poll forms/voting slips.
- vi)* Issue a scrutineers' confirmation report on the voting results. The confirmation should be prepared for the Board and addressed to the chairman.

After the AGM

- i)* Review the draft AGM results announcement prepared by the company and ensure consistency with the declaration of the voting results at the AGM. Scrutineers should be aware of their responsibility in the event of disputes over the voting results or controversy.

Role of the Board

The Board is responsible for the following:

- 1) Ensure that the scrutineers have access to the following through the company secretary, share registrar or other relevant personnel:
 - i)* all written policies, internal memoranda, correspondence and working papers relating to the voting process; and
 - ii)* other relevant information necessary for the scrutineers to perform their duties.
- 2) Ensure that the scrutineers have sufficient time, resources and access to the process of poll voting.
- 3) Ensure that the scrutineers are able to carry out their work in a timely manner.
- 4) Obtain the scrutineers' written confirmation on the voting results prior to the chairman declaring the voting results.
- 5) Obtain the scrutineers' approval on the announcement of the voting results prior to making the announcement.

Independence of Scrutineer

- 1) The appointment of an independent scrutineer is mandated in the LR to provide better assurance of the conduct and integrity of the voting process and result.
- 2) The company should evaluate the suitability of the scrutineer carefully, taking into account the relationship of the scrutineer or his related parties vis a vis the company and whether he is able to discharge his role free from any conflicts including assessment of the voting procedures.
- 3) Under the Listing Requirements, a scrutineer must⁶⁴
 - i) not be an officer⁶⁵ of the listed issuer or its related corporation;
 - ii) be independent of the person undertaking the polling process; and
 - iii) if he is interested in a resolution to be passed at the general meeting, refrain from acting as scrutineer for that resolution.⁶⁶

POINTS TO NOTE

- 1) The scrutineer should be present when the ballot boxes are sealed and reopened, when voting slips are being issued and when the votes are counted so the scrutineer may confirm the integrity of voting process.
- 2) All scrutineers are encouraged to wear identification tags at their assigned voting stations in order to distinguish themselves from the company personnel, share registrar and other persons present. They should avoid conversations or discussions with shareholders and direct questions from the shareholders to the relevant personnel.
- 3) Other than when the scrutineers present an objection or other circumstances to enable proper discharge of their role, the communication between scrutineers and the share registrar should be kept at a minimum to preserve independence.
- 4) Scrutineers are present in the voting place as observers and should not interfere with the share registrar personnel in performing their duties, nor assist in attending to shareholders queries.
- 5) Scrutineers should not collect any voting slips from the shareholders, proxies and directors.
- 6) If scrutineers are unable to carry out their duties in a timely manner, the company secretary or share registrar should be notified soonest possible, so that any possible delay could be addressed.
- 7) A company may appoint more than one scrutineer to observe the voting process, particularly if controversies are anticipated. These appointments should be confirmed in writing.

⁶⁴ Paragraph 8.29A of the Listing Requirements.

⁶⁵ "Officer" has the meaning given in Section 4 of the Companies Act 1965 (Section 2 of the New Act) and includes the director, company secretary and employees.

⁶⁶ Paragraph 8.29A of the Listing Requirements.

ILLUSTRATION

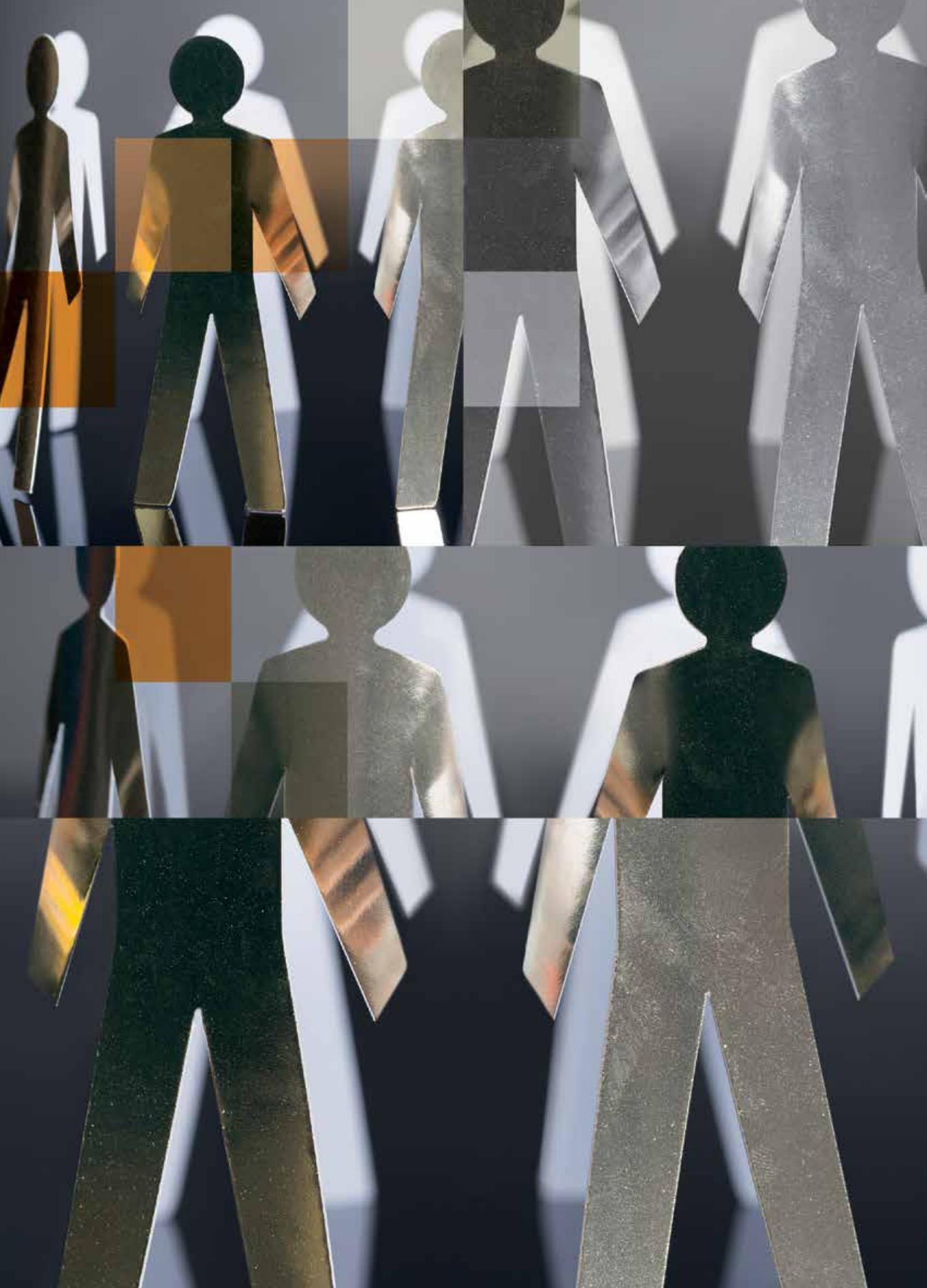
At a recent AGM, the chairman of Company X had declared a voting result inconsistent with the results confirmed by the appointed scrutineer. The variance was due to the omission of a shareholder's vote on a particular resolution. This had not been rectified in the AGM as the meeting had already been closed. Thereafter, Company X provided an explanation on the inconsistency of the results and an announcement was made through Bursa Link.

It is important that the Board obtains the scrutineers' written confirmation on the voting results prior to making any declaration or announcement of the voting results to avoid unnecessary difficulties. A declaration of results by a chairman inconsistent with the actual count as confirmed by the scrutineers also raises the point as to whether the declaration was final and incapable of being corrected.

BEST PRACTICE⁶⁷

The company should consider requiring an engagement report from the scrutineers which should state the factual findings in respect of the poll results summary, including details of errors or exceptions found. In addition, if scrutineers, when carrying out their work are of the view that irregularities or differences of view occur on the poll, such irregularities and differences of view should be included in the engagement report.

⁶⁷ This best practice is practiced in other jurisdictions, such as Hong Kong, and is not common at this time in Malaysia. (Also refer to Section 2 of the New Act)

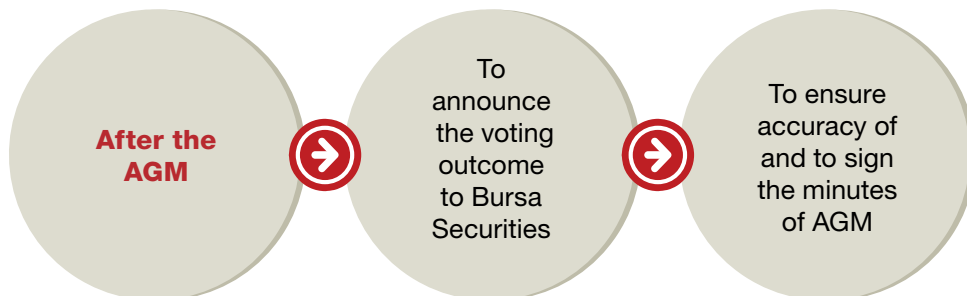


4

**“... although the AGM
may already have been
concluded, there are
still important matters
that need to be dealt
with”**

4.0 After the AGM

Now that the Board and chairman understand what needs to be done before and during an AGM, it is also crucial to understand, although the AGM may already have been concluded, that there are still important matters that need to be dealt with:



4.1 DISCLOSURE, SUBMISSION AND LODGMENT

Before the post-AGM process can be concluded¹, the company should ensure that the following are dealt with:

- 1) Poll voting: If the resolution is decided on a poll, the announcement to Bursa Securities must include the total number of votes cast on the poll (together with the percentage) in favour of and against the resolution.²
- 2) Other jurisdictions: In other jurisdictions such as Hong Kong³ and Australia⁴, listed companies are also required to publicly announce detailed voting results immediately after an AGM.
- 3) Announcement on the voting outcome of the resolutions tabled at the AGM should be made immediately to Bursa Securities.⁵

¹ As the target audience of this Guide are directors of listed companies, some matters, such as procedures for payment of dividends, which are not primarily implemented by the directors would not be covered in this Guide.

² Paragraph 9.19(7) of the Listing Requirements.

³ Rule 13.39(5) of the Hong Kong's Main Board Listing Rules.

⁴ Rule 3.13.2 of the Australian Stock Exchange Listing Rules.

⁵ Paragraph 9.19(7) of the Listing Requirements.

BEST PRACTICE

Companies should disclose detailed voting outcomes on their corporate websites. In Thailand, instead of merely stating whether the resolution is passed, a company announcing and disclosing its voting outcome includes other details, such as the total number of shareholders voting for, against or abstaining in the agenda as well as the number of shares held.⁶

Why should you disclose the details of the voting outcome on the company's website?

- 1) to encourage information disclosure and transparency;
- 2) to gauge the extent of participation of shareholders in the decision making process; and
- 3) to keep shareholders who have appointed proxies to vote on their behalf to be informed of the voting outcome.

⁶ Policy of the Stock Exchange of Thailand's Board of Directors, Re: Appropriate practices for listed companies for organizing shareholders' meeting issued by the Stock Exchange of Thailand.

4.2 MINUTES OF AGM

Minutes play a fundamental part in good corporate governance as minutes act as an audit trail of actions taken. This is particularly important whenever criticism is levelled at the company or litigation is threatened. Minutes also constitute the formal record of proceedings at a meeting and can be submitted in court as evidence.⁷

POINTS TO NOTE

- 1) Inspection of minute books:⁸ A shareholder has the right to inspect the minutes of the AGM free of charge and request a copy of the minutes. He must be furnished with this within 14 days after he has made such request in writing. If proxies who have attended the meeting request for the minutes, the listed issuer should inform the proxy that only shareholders are entitled to request for the minutes.
- 2) Prima facie evidence:⁹ Minutes are prima facie evidence of the proceedings to which they relate. These presumptions are rebuttable by any party who is able to prove to the contrary.

Minutes of AGM

- 1) The minutes of the AGM should be entered into the minute book within 14 days from the AGM.¹⁰ Where minutes are not kept by making entries in a bound book but through some other means, reasonable precaution should be taken to guard against falsification and for facilitating the discovery of any falsification. Proper facilities should also be provided to enable the inspection of such minutes.¹¹
- 2) The minutes of the AGM should reflect the key matters on the conduct of the AGM as this is an indicator of the effectiveness of the meeting, including whether shareholders are given adequate opportunity to raise questions.¹²
- 3) Inaccurately prepared minutes could result in significant legal ramifications, particularly where matters are disputed.
- 4) Voting results and vote counts of each agenda item should also be disclosed in the minutes as the absent shareholders might wish to know the matters which transpired at the AGM.
- 5) The chairman should take particular care in ensuring the accuracy of details in the draft minutes prepared by the company secretary before he signs and confirms it as a true record of the AGM.

7 Shackleton on the Law and Practice of Meetings, twelfth edition – 2011.

8 Section 157 of the CA. (Also refer to Section 342 of the New Act.)

9 Sing Lian Sdn Bhd & Ors v Lim JitTeng @ Lim Tin Teng & Ors [2006] 7 MLJ 70 (High Court of Malaya, Malaysia)

10 Section 156 of the CA. (Also refer to Section 341 and 343 of the New Act.)

11 Section 358 of the CA. (Section 49 of the New Act sets out that all register, books, records and documents as required under the New Act may be in written form or in any other form or manner, electronic or otherwise, that allows the documents and information to be easily accessible and reproduced into written form.)

12 Asean Corporate Governance Scorecard – Country Reports and Assessment 2013-2014.

How much detail to minute down?

- 1) Important exchanges such as salient questions asked by shareholders or questions asked by the MSWG and answers provided by the company, should be included.
- 2) Sufficient details to demonstrate the deliberation of any issues and consideration of any alternatives.
- 3) If a shareholder insists that his questions be minuted, the chairman should consider the request seriously.

BEST PRACTICE

Minutes of the AGM should be published on the company's website within 30 days from the AGM to enhance transparency. Disclosure of such AGM minutes should include the key matters on the conduct of the AGM.



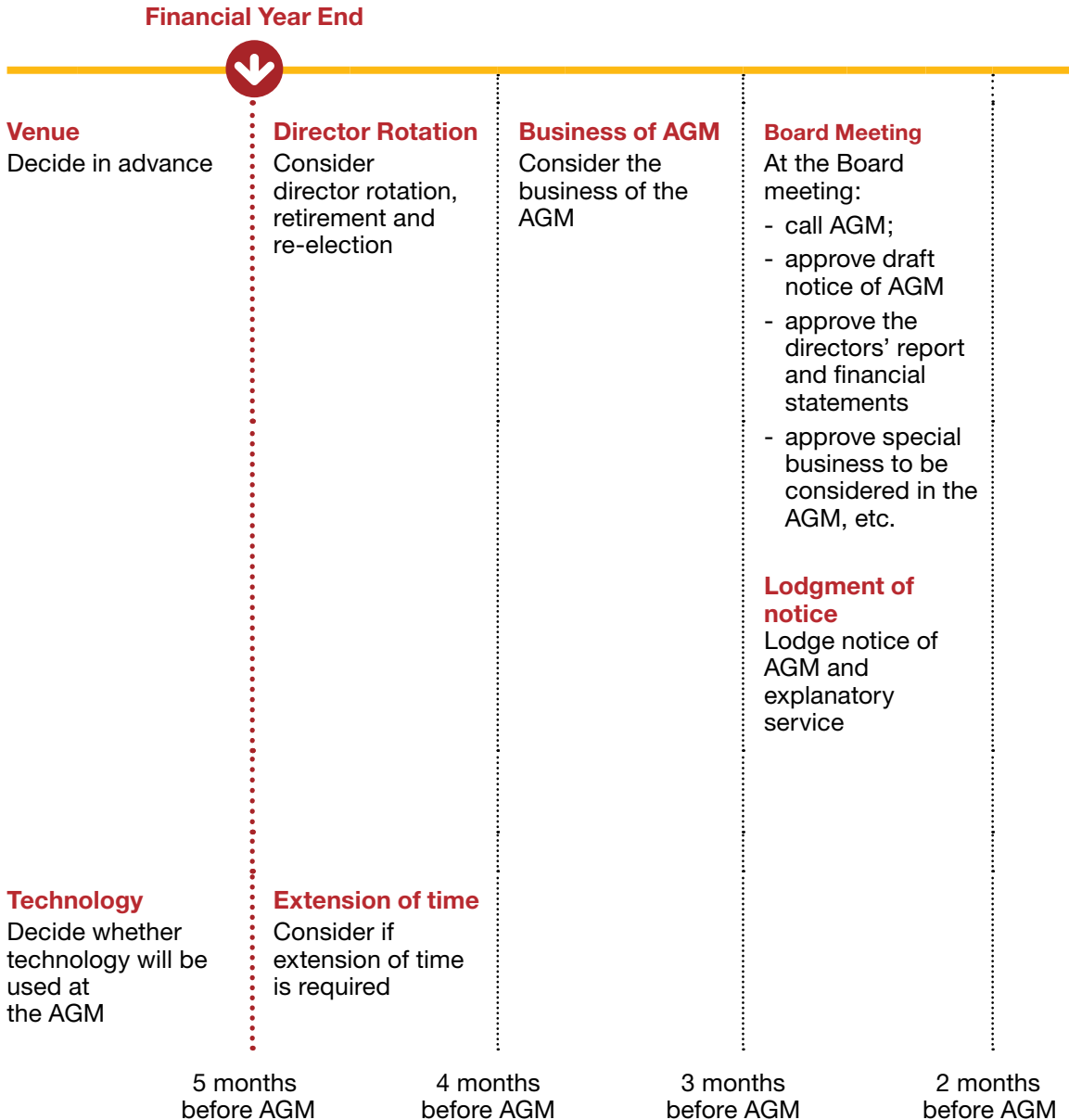
Appendices



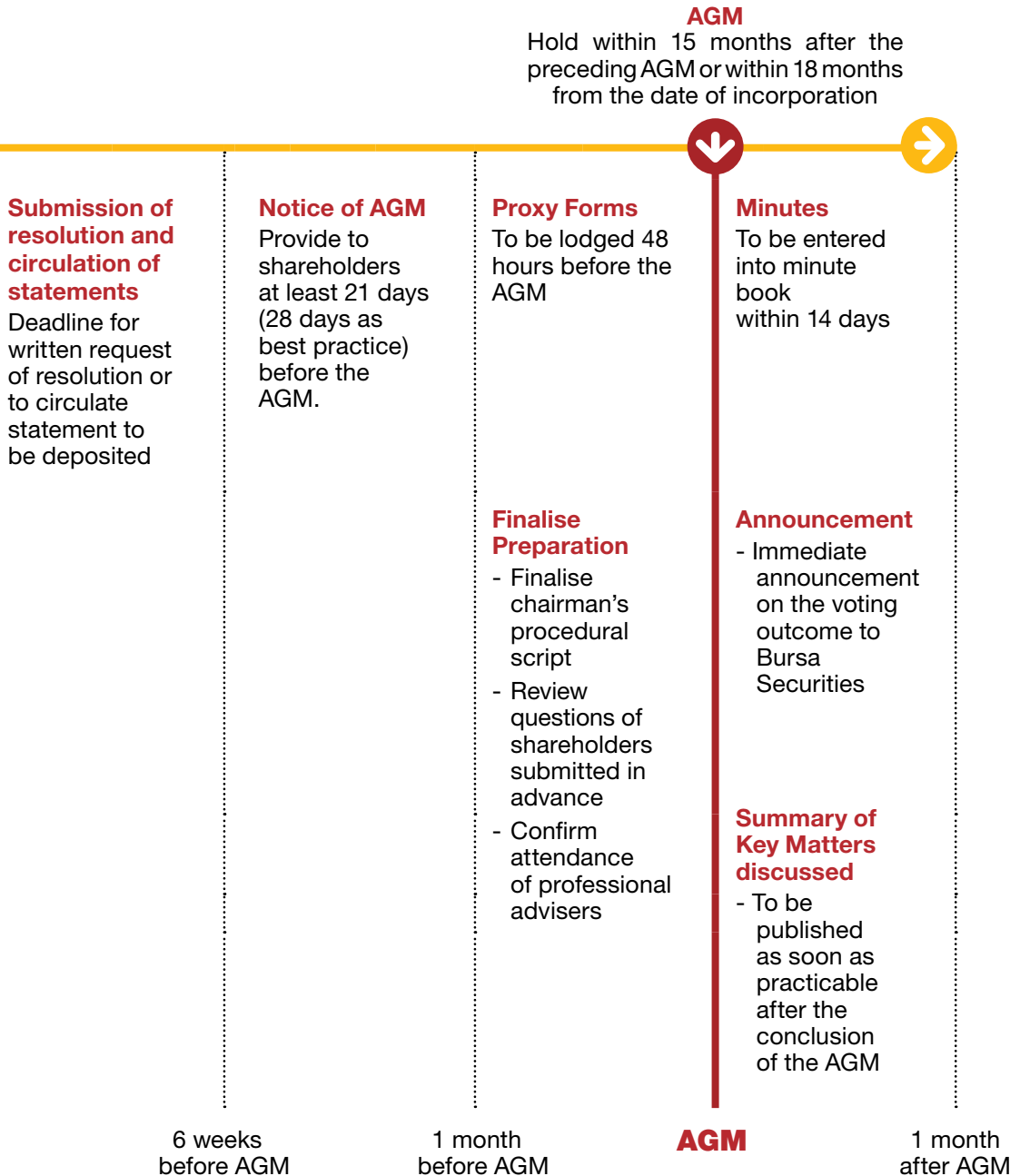
APPENDIX A

The AGM Process¹

The flow chart below only covers certain key steps of the AGM process. It is not intended to be exhaustive and should be read together with the text of this Guide. The relevant legislation, Articles and business to be conducted at the AGM should also be considered.



¹ Based on (with modifications) AGM Process Flowchart published by Australian Institute of Company Directors.



APPENDIX B

Sample Chairman's Script¹

The sample chairman's script below is intended for illustrative purposes only and needs to be treated with caution by taking into account the Articles and business of the AGM.

ABC Berhad

Third Annual General Meeting to be held at [place] on [date] at [time]

		REMARKS
		<i>(Words in italics are not to be read. Words in square brackets are to be modified to suit the needs or preferences of the chairman or business of the AGM.)</i>
WELCOME & INTRODUCTION		
1.	Chairman:	Good morning, ladies and gentlemen.
		<p>I would like to welcome you to the Third Annual General Meeting ("AGM") of ABC Berhad.</p> <p>May I now introduce my fellow directors who are present, starting from my immediate left [to list out directors present at the meeting]. I note that [to insert name of director] is not able to attend and he extends his apology for not being present at this Meeting.</p> <p>I would also like to introduce key personnel of your management team [to insert name] and the company secretary [to insert name].</p> <p>Also present today are [to insert name of auditor] from [to insert name of auditor's firm] and [to insert name and firm of other professional advisers]. We also have representatives from [insert name of share registry].</p>
QUORUM		
2.	Chairman:	<p>Under Article [•] of the Company's Articles of Association, the quorum necessary for the transaction of business at a general meeting shall be two (2) shareholders present personally or by proxy or by corporate representative entitled to vote. There are [•] shareholders present today. I am informed that we have received [•] valid proxy forms representing approximately [•] ordinary shares or [•]% of the total issued and paid-up share capital of the Company.</p> <p>With that I am pleased to confirm the presence of the requisite quorum at the commencement of this Meeting.</p> <p>I hereby call this Meeting to order.</p>

Directors may be asked to stand as they are being introduced.

Two (2) shareholders present personally or by proxy or by corporate representative shall be a quorum [Article [•] refers]

¹ Based on (with modifications) Annual General Meeting – A Guide for Directors (2nd Edition) published by Australian Institute of Company Directors

			REMARKS
VOTING			
3.	Chairman:	Good morning, ladies and gentlemen.	
		I also wish to inform you that pursuant to Article [●], a resolution put to vote at the general meeting shall be decided on a poll.	
		I would like to inform you that the Company has appointed [to insert name] as Poll Administrator to conduct the polling process and [to insert names] as Scrutineers to verify the poll results. The polling process for the Resolutions would be conducted upon completion of the deliberation of all items to be transacted at the AGM.	Refer to Appendix C - Poll Procedures & Specimen Poll Results
NOTICE OF AGM			
4.	Chairman:	The notice convening this Meeting had been dispatched to the shareholders together with the Annual Report of the Company, and if there is no objection from the floor, the notice convening this Meeting shall be taken as read.	
GENERAL INSTRUCTION ON MEETING PROCEDURES			
5.	Chairman:	<p>[I note that this Meeting is not confined to the Company's shareholders only.] I make these rulings concerning the attendance at this Meeting by persons other than shareholders who are not holding valid proxies or corporate representative status on behalf of shareholders:</p> <p>1) You are welcome to remain at this Meeting, subject to any later contrary determination of this Meeting;</p> <p>2) You are not entitled to speak or vote on resolutions to be considered at this Meeting;</p> <p>I also rule that the taking or recording by means of photographs, video or audio at or during this Meeting or of its proceedings is strictly prohibited.</p> <p>[To list down other procedural rules according to the custom of the Company etc.]</p> <p>Before we proceed to the agenda of the meeting, I would like to invite the CEO/CFO/relevant management personnel, [name of presenter], to present a presentation on the financial performance of the Group.</p>	
FINANCIAL STATEMENTS			
<i>Presentation by CEO/CFO/relevant management personnel on the Group's financial performance</i>			
6.	Chairman:	Thank you, [name of presenter].The first item on the agenda is to receive the Audited Financial Statements for the financial year ended [●]and the Reports of the directors and auditors thereon.	

			REMARKS
		<p>The Group's performance for financial year [•] is as disclosed in my Chairman's Statement (pages [•] to [•]) enclosed in the Annual Report.</p> <p>Further details of the Group financial position, Group performance highlights and segmental performance are outlined on pages [•] to [•] of the Annual Report.</p>	
7.	Chairman:	<p>[I shall now put forward this Agenda item to the floor for questions and discussion.</p> <p>We have received a letter from the MSWG for this Meeting. For the benefit of our shareholders, may I invite the representative of MSWG to raise the questions and the Board would answer the questions accordingly.]</p> <p><i>(Dealing with MSWG questions and answers)</i></p>	Alternatively, the questions raised by MSWG may be presented on a screen together with the responses of the Company.
8.	Chairman:	<p>Are there any further questions from the floor?</p> <p><i>(Dealing with shareholders' questions, if any)</i></p>	
9.	Chairman:	<p>Ladies and gentlemen, as this Agenda item is meant for discussion only and does not require the formal approval of shareholders, it will not be put forward for voting.</p>	Under Section 169(1) of the Companies Act, 1965, the audited financial statements do not require the approval of shareholders
RE-ELECTION OF DIRECTORS			
10.	Chairman:	<p>Let us move to the second item on the agenda, that is the re-election of [to insert name of director] who retires in accordance with Article [•] of the Company's Articles.</p>	
11.	Chairman:	<p>May I have a proposer and seconder from the floor for the re-election of [to insert name of director]?</p>	
12.	Chairman:	<p>Thank you.</p>	
13.	Chairman:	<p>The next item on the agenda is the re-election of [to insert name of director] who retires in accordance with Article [•] of the Company's Articles of Association.</p>	
14.	Chairman:	<p>May I have a proposer and seconder for the re-election of [to insert name of director]?</p>	
15.	Chairman:	<p>Thank you.</p>	
16.	Chairman:	<p>The third item on the agenda is to re-appoint the Director retiring pursuant to Section 129 of the Companies Act, 1965.</p>	

			REMARKS
17.	Chairman:	As I am the Director standing for re-appointment, I shall now pass the Chair to [to insert name of director] to conduct the proceeding of this Meeting.	To pass the Chair to Mr. A since this item on the Agenda relates to the Chairman's re-appointment.
18.	<i>Mr A:</i>	Thank you, Mr Chairman. The resolution for consideration is:-	
		"That [to insert Chairman's name], a Director retiring pursuant to Section 129(2) of the Companies Act, 1965 be and is hereby re-appointed a Director of the Company to hold office until the next AGM."	
19.	<i>Mr A:</i>	May I have a proposer and seconder for the re-appointment of [to insert Chairman's name]?	
20.	<i>Mr A:</i>	Thank you.	
		The Director standing for re-appointment has undergone a performance evaluation and has demonstrated that he remains committed to the role and continues to be an effective and valuable member of the Board.	
21.	<i>Mr A:</i>	Congratulations, Mr Chairman. I shall now pass the Chair back to Mr Chairman.	
	Chairman:	Thank you, Mr. A.	
DIRECTORS' REMUNERATION			
22.	Chairman:	The next item on the agenda is to approve the payment of Directors' fees of RM [•] for the financial year ended [•].	
23.	Chairman:	The resolution for consideration is:- "That the payment of Directors' fees of RM[•] for the financial year ended [•] to be divided among the Directors in such manner as the Directors may determine, be and is hereby approved."	
24.	Chairman:	May I have a proposer for the resolution?	
25.	Chairman:	May I have a seconder for the resolution?	
26.	Chairman:	Thank you. I shall now put forward the resolution to the floor for questions, if any. <i>(After dealing with the questions, if any)</i>	

			REMARKS
APPOINTMENT OF AUDITORS			
27.	Chairman:	Let us proceed to the next item on the agenda, that is, to appoint [to insert name of auditor] as the auditors of the Company until the conclusion of the next AGM and to authorise the Directors to fix their remuneration. I also wish to inform that [to insert name], the engaging partner of [to insert name of firm] and his team are present at this AGM.	Notice of consent to act has been received from [to insert name of firm] on [to insert date].
28.	Chairman:	May I have a proposer for the resolution?	
29.	Chairman:	May I have a seconder for the resolution?	
30.	Chairman:	Thank you.	
GENERAL MANDATE TO ALLOT AND ISSUE SHARES			
31.	Chairman:	The proposed ordinary resolution under item [•] of the agenda as special business, is to seek a general mandate, which if passed, would empower the Directors to allot and issue shares pursuant to Section 132D of the Companies Act, 1965. I shall take the text of the resolution in the notice of this Meeting as having been read. Are there any questions from floor?	
32.	Chairman:	May I have a proposer for the resolution?	
33.	Chairman:	May I have a seconder for the resolution?	
34.	Chairman:	Thank you.	
SHARE BUY-BACK AUTHORITY			
35.	Chairman:	The proposed ordinary resolution under item [•] of the agenda as special business, is to seek authority to purchase up to ten percent (10%) of the issued and paid-up share capital of the Company. The details of the proposed share buy-back authority are stated in the Circular dated [date].	
36.	Chairman:	I shall take the text of the resolution in the notice of this Meeting as having been read. May I have a proposer and seconder for the resolution?	
37.	Chairman:	Thank you. I shall now put forward the resolution to the floor for questions, if any. <i>(After dealing with the questions, if any)</i>	
ANY OTHER BUSINESS			
38.		Item [•] of the agenda is to transact any other business for which due notice shall have been given.	

			REMARKS
		I have been informed by the company secretary that there is no other business to be transacted.	
CONDUCT OF POLL VOTING			
39.	Chairman:	Before we proceed to conduct the poll for all Resolutions, may I request the Poll Administrator to explain the polling procedures?	
<i>(Refer to Appendix C - Poll Procedures & Specimen Poll Results)</i>			
CLOSURE			
40.	Chairman:	I shall now declare the Meeting closed. On behalf of the Board, I thank you for your attendance today.	



APPENDIX C

SAMPLE POLL PROCEDURES AND POLL ANNOUNCEMENT RESULTS

Part A: Sample Poll Procedures

1	THE POLL PROCEDURE (DISTRIBUTION/COLLECTION OF POLLING SLIP)	
1.1	You would have been issued with your personalized polling slips upon Registration. If you have not, you may now proceed to the Registration Counter with your identification card to collect your polling slip	
1.2	The personalized polling slip has been issued with your name, ID number and the number of shares that you represent. All you need to do is to indicate your vote by putting a cross “x” or “•” in the appropriate box/boxes and sign the polling slip. Please note that all resolutions must be voted by poll.	
1.3	If you are a proxy and the shareholder who appointed you has indicated in his/her proxy form how you should vote on his/her behalf, we have also filled up the polling slip according to the voting instruction given. All you need to do is to sign the polling slip. Are there any questions?	
1.4	Should you have any other queries about the voting slip, the scrutineers will assist you.	
1.5	Based on the summary of proxy form received, the chairman shall cast his votes according to the instruction of those who have appointed him as proxy.	
1.6	If there were no voting instructions given in those proxy forms appointing the proxy, the proxy holder shall cast the votes at his own discretion (such votes shall be cast on a separate voting slip).	
1.7	Once you have completed casting your vote in the polling slip, please drop the slip into the ballot box. The scrutineers carrying the ballot box will be walking around to collect the voting slip from you. <i>Remark: The ballot box should be shown to the meeting before votes are cast. Commonly, the ballot box used is transparent. If it is non-transparent it should be tipped over and shown to the meeting.</i>	
1.8	The scrutineers will then proceed to calculate the votes. The meeting shall be adjourned for approximately <i>30 minutes for that purpose.</i>	

OR (FOR ELECTRONIC POLL VOTING)		
1.1	You would have been issued with a passcode slip upon registration.	
1.2	Then, proceed to the voting station and present the passcode slip to cast your vote.	
1.3	You can cast your vote by selecting the appropriate option and click on "submit".	
1.4	Upon successful submission, the message "votes have been successfully cast" will be displayed.	
1.5	Once you have submitted your votes, you will not be allowed to modify your votes.	

2	ADJOURNMENT OF MEETING		
	The Chairman may adjourn the meeting while results of the poll are being determined <u>or</u> request that shareholders/proxies remain seated. If the former is chosen, the secretary may say:		
	<i>secretary:</i>	<p style="text-align: center;"><i>Are there anymore voting slips?</i></p> <p style="text-align: center;"><i>With the approval of the chairman, we shall now adjourn the meeting for 45 minutes to conduct the poll count</i></p>	secretary
			Article [•]
	RECONVENING OF MEETING		
	If the meeting is to be adjourned for counting, upon completion of the counting by the scrutineers, the chairman will:		
	<ol style="list-style-type: none"> 1) Reconvene the meeting; and 2) Declare that a quorum is present on reconvening the meeting. 		
	<p><i>Note:</i></p> <p><i>Pursuant to Article [•], no business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, two (2) members present in person or by proxy, or in the case of corporations which are members, present by their representatives appointed pursuant to the provisions of the Articles of Association of the Company and entitled to vote shall be a quorum.</i></p>		Article [•]

3	DECLARATION OF RESULTS																		
3.1	The scrutineers shall immediately hand over the poll results to the chairman upon completion of their calculation.		scrutineers																
3.2	The chairman shall call for the meeting to resume for declaration of results																		
	<i>chairman :</i>	<p><i>Ladies and Gentlemen, may I have your attention please.</i></p> <p><i>The results of the poll are already in my hand and the meeting shall resume now for the declaration of results.</i></p> <p><i>[Pause to wait for everyone to be seated]</i></p>	chairman																
	<i>chairman :</i>	<p><i>Ladies and Gentlemen, the results of the poll for Resolution [•] are as follows:</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 20%; text-align: center;">%</td> </tr> <tr> <td>The number of votes "FOR" is</td> <td></td> <td></td> <td></td> </tr> <tr> <td>The number of votes "AGAINST" is</td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table>				%	The number of votes "FOR" is				The number of votes "AGAINST" is								chairman
			%																
The number of votes "FOR" is																			
The number of votes "AGAINST" is																			
		<p><i>Based on the results, I shall declare that Resolutions[•]are carried/not carried</i></p>	chairman																

Part B: Sample Poll Announcement Results

ABC Berhad (the “Company”) announces that at its []th Annual General Meeting (“AGM”) held on [date], all resolutions set out in the notice of AGM were passed on poll.

The following table shows the votes cast on each resolution:

RESOLUTION	TOTAL VOTES FOR (%)	TOTAL VOTES AGAINST (%)
	%	%
To declare a final dividend of RM [•] per share	xxx,xxx,xxx (x)	xx,xxx,xxx (x)
To approve the directors’ fees for the year ended [•]	xxx, xxx, xxx (x)	xx,xxx,xxx (x)
To elect [to insert name of director] as a director	xxx, xxx, xxx (x)	xx,xxx,xxx (x)
To appoint [to insert name of auditor] as a auditor	xxx, xxx, xxx (x)	xx,xxx,xxx (x)

The independent scrutineer appointed for the verification of the poll results is [•].

APPENDIX D**SAMPLE PRE-AGM SHAREHOLDER'S QUESTION FORM****ABC Berhad**

We invite you to submit question(s) about your company prior to its []th Annual General Meeting ("AGM"), including:

- 1) matters related to the financial reports and the financial performance of ABC Berhad;
- 2) resolutions being put to the AGM; or
- 3) operations of the company.

Questions may also be directed to the auditors if it is relevant to the auditor's report. All questions must be delivered to [address] and must be received by [time], [date]. Matters raised in the question(s) will be addressed during the AGM.

Kindly note that, while best efforts will be made to respond to all matters raised, not all questions will necessarily be addressed.

My question relates to (please check the most appropriate box):

ABC Berhad's AGM

ABC Berhad's financial report

A resolution put to the AGM

ABC Berhad's financial performance

ABC Berhad's auditor

Others

Question(s)



APPENDIX E**SAMPLE POST-AGM CHECK ON FOR THE CONDUCT OF AGM**

ABC Berhad's AGM held at [time], [day], [date] at [venue].

NO.	ASSESSED AREA	YES	NO
Suitability of time, date and venue of AGM			
1.	The AGM was not carried out on a national holiday		
2.	The AGM was carried out within the stipulated time		
3.	The location of the AGM was easily accessible		
4.	The location of the AGM had sufficient parking spaces		
5.	The location of the AGM could accommodate all the shareholders		
Attendance of directors, management personnel and other relevant persons			
6.	All the Directors attended the AGM		
7.	The chairmen of the Board's committees attended the AGM		
8.	The chief executive officer attended the AGM		
9.	The chief operating officer attended the AGM		
10.	The chief financial officer attended the AGM		
11.	The company secretary attended the AGM		
12.	The auditor attended the AGM		
13.	The relevant management personnel of the Company attended the AGM		
14.	Other relevant professional advisers attended the AGM		
Important notifications to shareholders at the start of the AGM			
15.	The chairman explained the Voting Procedures		
16.	The chairman explained the Vote-counting Procedures		
17.	The chairman notified the attendees of the House rules of the AGM		
Observance of the articles of association and notice of AGM			
18.	The AGM was carried out in accordance with the articles of association of the company		
19.	The AGM was carried out in accordance with the agenda set out in the notice of AGM		

NO.	ASSESSED AREA	YES	NO
20.	Resolutions tabled at the AGM were as set out in the notice of the AGM		

NO.	ASSESSED AREA	YES	NO
Shareholders' participation			
21.	Shareholders were allowed to raise questions and express their opinions at the AGM		
22.	Questions asked by shareholders were sufficiently addressed		
Transparency during vote-counting			
23.	Scrutineers were appointed for the vote-counting process		
24.	Voting results were disclosed by indicating the number of shares voted for, voted against or abstained in relation to each resolution at the AGM		
25.	None of the shareholders objected to the voting results		

NO.	OTHER ISSUES TO BE DISCUSSED		
1.			
2.			



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