



MALAYSIAN COMPANY LAW

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MEETINGS

by

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1.0

MEETINGS



Sharp v Dawes (1876) 2QBD 26

Lord Coleridge C.J

“Meeting” prima facie means ‘a coming together of more than one person’.

ANNUAL GENERAL MEETING

CA 2016

- Private companies are no longer required to hold AGM in every calendar year.
- Only public companies has to hold AGM in every calendar year

AGM
Annual General Meeting

Section 340(1) of the CA 216

Every public company shall hold an AGM in every calendar year to transact the following business:

laying of audited
financial statements
and the reports of the
directors and auditors

election of
directors in place of
those retiring

appointment and the
fixing of the fee of
directors

any resolution or other
business of which
notice is given in
accordance with the
Act or the constitution.

CA 2016	CA 1965
Laying of audited financial statements and the reports of the directors and auditors	The consideration of the accounts, balance sheets, and the report of the directors and auditors
Election of directors in place of those retiring	The election of directors in place of those retiring
Appointment and the fixing of the fee of directors	The appointment and fixing of the remuneration of auditors.
Any resolution or other business of which notice is given in accordance with the Act or the constitution	Declaring a dividend

For the purposes of **Section 340(1)**, **Section 340(2)** of the CA 2016 provides that the AGM shall be held:

- a) within six months of the company's financial year end
- b) not more than fifteen months after the last preceding AGM.

- ▶ A company shall not be required to hold an AGM in the year of its incorporation or the following year provided that the company hold its first AGM within **eighteen months** of its incorporation.
- ▶ Registrar may extend such periods as he considers appropriate, upon being satisfied with the reasons provided.

CA 2016
Section 340(3)

A company shall not be required to hold an AGM in the year of its incorporation or the following year

provided that the company hold its first AGM within **eighteen months** of its incorporation.

CA 1965
Section 143(1)

A general meeting of every company to be called the "annual general meeting" shall in addition to any other meeting be held once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting

but so long as a company holds its first annual general meeting within **eighteen months** of its incorporation, it need not hold it in the year of its incorporation or in the following year.

MEETING OF MEMBERS

All meetings of a private company are known as meeting of members (MoM).

Section 310 of the CA 2016 - A meeting of members may be convened by

- (a) the board; or
- (b) any member holding at least ten per centum (10%) of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least five per centum (5%) in the number of members.



- ▶ The members of a company may by virtue of **Section 311** of the CA 2016 require the directors to convene a meeting of the members of the company
- ▶ **Section 311(2)** of the CA 2016 states that the requisition under **Section 311(1)** of the CA 2016 –

shall be in hard copy or electronic form;

shall state the general nature of the business to be dealt with at the meeting;

may include the text of a resolution that may properly be moved and intended to be moved at the meeting; and

shall be signed or authenticated by the person making the requisition.

By virtue of **section 312(1)** of the CA 2016,
the directors shall –

- (a) call for the meeting within **fourteen days** from the date of the requisition; and
- (b) hold the meeting on a date not more than **twenty-eight** days after the date of the notice to convene meeting.

Section 312(4) of the CA 2016 provides that if the resolution is to be proposed as a special resolution, the directors shall be considered as not having duly called for the meeting if the notice of the resolution is not given in accordance with section 292 (special resolution).

- ▶ **Section 313** of the CA 2016 provides that if the directors are required to call for MoM under Section 311 and do not do so in accordance with **Section 312**, the members who requisitioned the meeting, or any of the members representing **more than half of the total voting rights** of all of the members who requisitioned the meeting, may call for MoM.
 - The meeting shall be convened on a date **not more than three months** after the date on which the directors received a requisition under Section 311 to call for MoM.
 - The notice of the meeting shall include the text of the resolution and the business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with section 313 of the CA 2016.

- ▶ **Section 314** of the CA 2016 provides that if for any reason it is impracticable to call for a MoM of a company in any manner in which meetings of that company may be called or to conduct the meeting in the manner prescribed by the constitution or the Act, the court may, either of its own motion or on the application of the director of the company, or of a member of the company who would be entitled to vote at the meeting, or of the personal representative of any such member, order a meeting to be called, held and conducted in any manner the court thinks fit.



CLASS MEETING

Meeting of holders of a class of shares and class of members is governed by **Section 339** of the CA 2016.

2.0

NOTICE OF MEETINGS

- ▶ **Section 316(1)** of the CA 2016 - a meeting of members of a private company, other than a meeting for the passing of a special resolution, shall be called by a notice of at least fourteen days or any longer period specified in its constitution.
- ▶ **Section 316(2)** of the CA 2016 provides that a meeting of members of a public company, other than a meeting for the passing of a special resolution, shall be called by notice -

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

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

- **Section 316(4)** of the CA 2016 - A meeting of members other than an annual general meeting may be called by a notice shorter than the period prescribed in **Sections 316(1) & 316(2)** of the CA 2016 if so agreed by the majority in the number of members entitled to attend and vote at the meeting, being a majority who –
- Together hold not less than the requisite percentage in the number of the shares giving a right to attend and vote at the meeting, excluding any shares in the company held as treasury shares; or
 - In the case of a company not having a share capital, together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.

► **Section 316(5)** of the CA 2016 - the requisite percentage shall be –

- In the case of a private company, 90% or such higher percentage, not exceeding 95% as may be specified in the constitution; or
- In the case of a public company, 95%.

CONTENTS OF NOTICE OF MEETINGS OF MEMBERS

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

The notice of meeting of members may include text of any proposed resolution and other information as the directors deem fit, section 317 of the CA 2016.

Manner of giving notice is stipulate by section 318 of the CA 2016— notice of meeting of members shall be in writing and shall be given to the members either

- a) in hard copy; or
- b) in electronic form; or
- c) partly in hard copy and partly in electronic form.

2) Unless otherwise provided in the constitution, a notice –

- a) given in hard copy shall be sent to any member either personally or by post to the address supplied by the member to the company for such purpose; or
- b) given in the electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose or by publishing on a website.

- ▶ A notice to convene a meeting for the passing of a special resolution requires not less than twenty-one days to be given to the members, **Section 292** of the CA 2016.

- ▶ Special notice is required of a resolution, **Section 322** of the CA 2016 stipulates that the resolution shall not be effective unless notice of the intention to move it has been given to the company at least twenty-eight days before the meeting at which it is moved.
- ▶ Example of ordinary resolution circumstances which require special notice:

a) **Section 206** of the CA 2016 for the removal of a director before the expiration of his term of notice.

b) **Section 277** of the CA 2016 for the removal of an auditor at a general meeting

c) **Section 445(3)** of the CA 2016 for the removal of liquidator at a general meeting.

- ▶ At common law, where notice as required by the constitution of the company is not given, the proceedings of the meeting, including any resolutions purported to be passed, are void. This is subject to unanimous agreement by all members to waive the irregularity, **Re Express Engineering Works Ltd** [1920] 1 Ch 466.
- ▶ **Section 316(6)** of the CA 2016, any accidental omission to give notice of a meeting to, or the non-receipt of the notice of the meeting, by any member shall not invalidate proceedings at a meeting.

- ▶ Although an accidental omission to give notice to a member does not invalidate proceedings, however, it does not apply where the omission was deliberate as shown in the following court decision: -

Case : **Musselwhite v Musselwhite** [1962] Ch 964

Fact : Some member executed transfers of their shares to the third parties but the shares had yet to be transferred. Their names remained in the register of members and the company did not give them notice of meeting.

Held : The court held that this was an intentional omission and the meeting was held to be void.

QUORUM

3.0 QUORUM

- ▶ The minimum number of members who must be present at the meeting unless the constitution provide otherwise
- ▶ **Section 328(1)** of the CA 2016 provides that in the case a company having only one member, one member personally present at a meeting shall constitute a quorum.
- ▶ **Section 328(2)** of the CA 2016 further provides that in any other case, two members personally present at a meeting or by proxy shall be a quorum unless higher number is specified in the constitution.

- ▶ For the purpose of constitution a quorum, **Section 328(3)** of the CA 2016 stipulates that one or more representative appointed by a corporation shall be counted as one member; or one or more proxies appointed by a person shall be counted as one member.
- ▶ **Section 328(4)** of the CA 2016 stipulates that no business shall be transacted at any meeting of members unless a quorum is present at the time when the meeting proceeds to business.

Section 328(5) of the CA 2016 - provides that unless otherwise provided in the constitution, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting –

- a) If convened upon the requisition of members, shall be dissolved; or
- b) In any other case, shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.



4.0 CHAIRPERSON

- ▶ The person in charge of the meeting with responsibility for ensuring that the meeting is properly conducted is the chairperson.
- ▶ Usually the chairman of board chairs the general meeting
- ▶ By virtue of **Section 329(2)** of the CA 2016, if there is no chairman or if the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their members to be chairperson of the meeting.

VOTING



5.0 VOTING

- **Section 330(1)** of the CA 2016 - at any meeting of members, a resolution put to vote of the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands, a poll is demanded –

a)by the chairman

b)by at least three members present in person or by proxy;

c)by any member present in person or by proxy and representing not less than ten per centum of the total voting rights of all the members having the right to vote at the meeting

d)by a member holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than ten per centum of the total paid up shares conferring that right.

In the case of a company having a share capital, **section 293(1)(a)** of the CA 2016 stipulates that unless otherwise provided in the constitution –

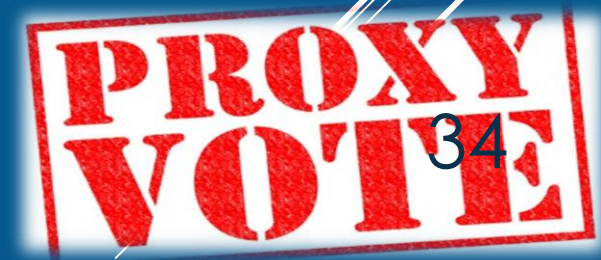
- (i) On a vote of a written resolution, every member shall have
one vote in respect of each share or stock held by him;
- (ii) On a vote on a resolution on a show of hands at a meeting every member shall have one vote
- (iii) On a vote of a resolution on a poll taken at a meeting, every member shall have one vote in respect of each share or stock held by him.

- ▶ For a company not having a share capital, **Section 293(1)(b)** of the CA 2016 stipulates that unless otherwise provided in the constitution, every members shall have one vote.
- ▶ **Section 293(2)** of the CA 2016 stipulates that no member shall be entitled to vote at a meeting unless all calls or other sums presently payable by the member in respect of shares in the company has been paid.

6.0 PROXIES

A proxy is a person authorised to vote on behalf of the appointing member

- ▶ **Section 334(1)** of the CA 2016 provides that a member of a company shall be entitled to appoint another person as his proxy to exercise all or any of his rights to attend, participate, speak and vote at a meeting of members of the company.
- ▶ Compared to section 149 of CA 1965 – a non-member cannot be appointed as proxy, except his is an advocate, auditor or a person appointed by the Registrar



6.0 PROXIES

Case : **Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors**
(1992)

Facts : Article 51 of the company's articles of association restricted the appointment of a proxy to only members of the company.

Held : The article was void.

- ▶ For a company having a share capital, **Section 334(2)** of the CA 2016 further provides that a member may appoint more than one proxy in relation to a meeting, provide that the member specifies the proportion of the member's shareholding to be represented by each proxy.
- ▶ **Section 336** of the CA 2016 provides that unless prohibited in the constitution, a proxy may be elected to be the chairperson of a meeting of members by a resolution of the company passed at the meeting.
- ▶ **Section 294(1)** of the CA 2016 provides that notwithstanding anything in the constitution, where a member entitled to vote on a resolution has appointed a proxy, the proxy shall be entitled to vote on a show of hands, provided that he is the only proxy appointed by the member.

Section 294(2) of the CA 2016 further states that where a member entitled to vote on a resolution has appointed more than one proxy –

a)The proxies shall only be entitled to vote on a poll; and

b)The appointment shall not be valid unless he specifies the proportion of his holdings to be represented by each proxy.

A member may terminate the appointment of his proxy by submitting a notice to the company before the meeting. Besides that, if the proxy dies or become of unsound mind before the meeting, his appointment will also automatically terminate. Further, if the members transfer all his share in the company before the company meeting, he can no longer attend the meeting.

7.0 RESOLUTIONS

Resolution is a written official internal document of a company documenting the decisions that have been voted during the board of directors meeting or the meeting of members.

The resolution can be found in the minutes of meeting detailing the decision made during the meeting.

1.0 Written Resolution of Private Companies

- ▶ **Section 290(1)** of the CA 2016 provides that a resolution of the members or of a class of members of a private company shall be passed either by a written resolution or at a meeting of the members.
- ▶ On the other hand, **Section 290(2)** of the CA 2016 stipulates that a resolution of the members or of a class of members of a public company shall be passed at a meeting of the members.
- ▶ **Section 297** of the CA 2016 provides that a resolution shall be proposed as a written resolution by the Board or any members of a private company.

The following shall not be passed as a written resolution-

- a) A resolution under **Section 206** to remove a director before the expiration of his term of office;
- b) A resolution under **Section 276** to remove an auditor before the expiration of his term of office.

Section 302 (1) of the CA 2016 provides that any member of a private company having a total of five per centum, or such lower per centum as specified in the constitution, of the total voting rights of all eligible members may require the company to circulate a resolution that may properly be moved as a written resolution.

Section 302(2) of the CA 2016 further provides that any resolution may be properly be moved as a written resolution unless the resolution –

a) If passed, would be ineffective whether by reason of inconsistency with any written law or the constitution

c) Is frivolous or vexatious

b) Is defamatory of any person

d) If passed, would not be in the best interest of the company.

- ▶ Where a member requires a company to circulate a written resolution, the member may require the company to circulate with the written resolution a statement of not more than one thousand words on the subject matter of the written resolution, **Section 302(3)** of the CA 2016.
- ▶ In the event the Act did not specify the type of resolution required, the resolution of a company shall be passed as an ordinary resolution, **Section 290(3)** of the CA 2016.

7.1 ORDINARY RESOLUTION

Section 291(1) of the CA 2016 stipulates that an ordinary resolution of the members or a class of members of a company means a resolution passed by a simple majority of more than half of such members –

a) Who are entitled to vote and do vote in person, or where proxies are allowed, by proxy at a meeting of members; or

b) Who are entitled to vote on a written resolution.

Ordinary Resolution requires more than 50% of the members present and voting and also 14 days of notice before a members' meeting. Some Ordinary Resolution requires issues of share at discount, alteration of share capital, passing of annual financial reports, reports of BOD and Auditors and also appointment of Auditors and their remuneration.

7.2 SPECIAL RESOLUTION

- ▶ **Section 292(1)** of the CA 2016 provides that a special resolution of the members or class of members of a company means a resolution of which a notice of **not less than 21** days has been given and passed by a majority of **not less than 75%** of such members –
 - ❑ who are entitled to vote and do vote in person, where proxies are allowed, by proxy at a meeting of members; or
 - ❑ who are entitled to vote on a written resolution.

- ▶ **Section 292(2)** of the CA 2016 provides that if a resolution of a private company is passed as a written resolution, the resolution is not a special resolution unless it is stated that it is a special resolution and passed as a special resolution.

Section 292(5) of the CA 2016 further stipulates that where a resolution is passed at a meeting –

a) the resolution is not a special resolution unless the notice of the meeting includes the text of the resolution and states that the resolution is proposed as a special resolution; and

b) if it is so stated in the notice of the meeting, the resolution shall only be passed as a special resolution.

E.g. of circumstances which requires special resolution

- a) changes of name of the company, section 28(1) of the CA 2016
- b) adoption of constitution, section 32(1) of the CA 2016
- c) alteration or amendment of constitution, section 36(1) of the CA 2016
- d) conversion of unlimited company to limited company, section 40(1) of the CA 2016
- e) conversion of public company to private company, section 41(1) of the CA 2016
- f) conversion of private company to public company, section 41(2) of the CA 2016
- g) alteration of share capital, section 84(1) of the CA 2016
- h) variation of class rights, section 91 of the CA 2016
- i) reduction of share capital by court, section 116 of the CA 2016
- j) reduction of share capital by private or public company, section 117 of the CA 2016
- k) company giving financial assistance, section 126 of the CA 2016

8.0 POST MEETING REQUIREMENTS

Lodgement with CCM

Section 609 of the CA 2016 provides that if a document is required to be lodged and the period of time for the document to be lodged is not prescribed, the document shall be lodged within thirty days or, in the case of a document required to be lodged by a foreign company, within such further period as the Registrar in special circumstances allows after the happening of the event to which the document related.

Under the same section, the Registrar shall have the power and upon payment of the prescribed fee, extend any period of time relating to the lodgement of any document required to be lodged to such further period as the Registrar deems just and expedient, and the Registrar may require additional information and impose any terms and conditions as the Registrar deems fit.

RECORDS OF RESOLUTIONS AND MEETINGS

- ▶ **Section 47** of the CA 2016 provides that minutes of all meetings of members and resolutions of members and minutes of all meetings and resolution of the Board and committees of the Board shall be kept at the registered office.
- ▶ **Section 48** of the CA 2016 provides that the minutes of the proceedings shall be made available for inspection by any person who is entitled to inspect such document and record at the registered of a company.
- ▶ **Section 341** of the CA 2016 provides that records shall be kept for at least seven years from the date of the resolution, meeting or decision, as the case may be.

Meetings are at the heart of an effective organization, and each meeting is an opportunity to clarify issues, set new directions, sharpen focus, create alignment, and move objectives forward.

- Paul Axtel, Meetings Matter: 8 Powerful Strategies for Remarkable Conversations

THANK YOU