

ORGANISATION: MINORITY SHAREHOLDER WATCHDOG GROUP

**COMMENTS ON ISSUES SET OUT IN THE CONSULTATIVE DOCUMENT ON
ENGAGEMENT WITH SHAREHOLDERS**

Response to Consultation Questions:-

Question 1:

Do you agree that private companies should no longer be required to hold AGMs?

Yes. We agree with the Corporate Law Reform Committee's (CLRC) recommendation.

For private companies, shareholders' agreement should be encouraged particularly among minority shareholders to protect their interests if they are not involved in the management of the company.

Question 2:

Do you agree that if private companies are not required to hold an AGM, individual members should be accorded the right to demand that an AGM be held in a particular year? If yes, should there be a minimal threshold either based on shareholding or the number of shareholders to request for an AGM?

Yes. We agree with the CLRC's recommendation.

It is important to allow a minimal threshold either based on the level of at least 5 per cent shareholdings or two and/or more shareholders collectively with at least 5 per cent shareholding.

Question 3:

Do you agree that a company should be permitted to hold a general meeting at unlimited number of locations, provided that real time, two-way communication is available between participants?

Yes. We agree with the CLRC's recommendation.

Companies should be permitted to hold a general meeting at unlimited number of locations provided that real time, two-way communication is available between participants. The infrastructure for real time and two-way communication must be effective and efficient from the point of view of the company and shareholders.

Transparency is absolutely important between the Board and shareholders present at a general meeting at different locations to understand each other on the proceedings of the meeting.

The Board has to be composed of a competent Chairman and Directors of the right quality to handle critical issues (including difficult questions) raised by shareholders on a real-time two-way communication basis for the general meeting to be conducted smoothly and satisfactorily.

Investor education is important in this area.

Question 4:

Do you agree that the minimum notice period for the AGM should be increased to 21 days?

Yes. We agree with the CLRC's recommendation.

The minimum Notice period for the AGM including EGM should be increased to 21 days.

The longer Notice period for the AGM or the EGM is useful for shareholders and for proxy services to be given more time and to work effectively.

Hopefully, the longer period should also enable the dates of AGMs among public companies to be spread out rather than to coincide on certain dates.

Question 5:

Do you agree with the recommendation for notices to be given personally or sent by post to shareholders unless the shareholders agree to adopt electronic means of communications?

Yes. We agree with the CLRC's recommendation.

Companies should be allowed, subject to shareholders' approval at general meetings, to issue Notices personally or sent by post to shareholders. Shareholders can be given an option to advise companies accordingly which appropriate means of communications they prefer and suitable to them.

Question 6:

Do you agree that a company is not required to give notice of any resolution or to circulate any statements unless a copy of the requisition signed by the requisitionist is deposited not less than 4 weeks before the meeting?

Yes. We agree with the CLRC's recommendation.

Circulation is good to promote greater awareness, engagement and participation among shareholders at the meeting.

It is also important for companies to make an announcement of such resolution received and deposited for other shareholders to know and understand the issues involved.

It is advisable for companies to make known the contact person for resolution to be raised and the company's Articles should be available on the website at all times. All this information should be made available as the company's shares are traded on the stock market with investors changing hands daily.

Question 7:

Do you agree that the company is responsible for the cost if the company receives the notice in time (if it is deposited not less than 4 weeks before the meeting) to send it out to members with the notice of meeting?

Yes. We agree with the CLRC's recommendation.

The company should be responsible for the cost if the proposed resolution is received in time with the Notice to be circulated (with no change to the 1,000 words limit).

Question 8:

Do you agree that companies may pass a written resolution by a lesser majority than unanimity i.e., by the same majority as required for the resolution at general meetings?

Yes. We agree with the CLRC's recommendation.

We should follow Singapore and New Zealand as mentioned under paragraph 4.5 of the Consultative Document on Engagement with Shareholders.

It is important to prevent the abuses of power and authority in the management of the company concerning with the key issues of the company's interest and shareholders' interest as a whole.

Question 9:

Do you agree that shareholders with at least 5 per cent of the ordinary shares are allowed to demand in writing that the company convene a general meeting as a safeguard against situations where dissenting shareholders are deprived of an opportunity to be heard?

Yes. We agree with the CLRC's recommendation.

The lower threshold of at least 5 per cent of the shareholding will encourage more shareholders to come forward and get involved with the key issues affecting their interests and the company.

Question 10:

Do you agree that section 152A of the Companies Act 1965 be clarified by stating that for private companies, matters that would ordinarily be resolved at any meetings may be resolved by written resolution?

Yes. We agree with the CLRC's recommendation.

This will make directors of private companies more accountable and transparent in their dealings and related party transactions.

Question 11:

Do you agree that the written resolution procedure shall not be applied in certain circumstances i.e., dispensing with the need to hold annual general meetings or resolutions where special notice is required?

Yes. We agree with the CLRC's recommendation.

Question 12:

Do you agree that the written resolution procedure should be expressly excluded for public companies?

Yes. We agree with the CLRC's recommendation.

This is particularly important for public companies to encourage shareholders to attend the general meeting where their presence and engagement is required in the best interest of the company.

The AGM is recognized as an unsatisfactory forum for the exchange of views and the making of decisions in public companies especially large conglomerate with both small private shareholders and institutional investors.

Written special resolution should not be expressly excluded if agreed to by all members entitled to vote.

It is important in public companies where decisions made at general meetings are expressed in resolutions as follows:-

- Ordinary resolution – 51% of votes
- Special resolution – 75% of votes, 21 days notice of intention to propose required
- Extraordinary resolution – 75% of votes. If no Notice is required, it should be replaced by special resolution
- Written resolution – agreed by all members entitled to vote

Refer to Question 16 regarding the Notice of the AGM to include resolutions under the Agenda of the general meeting.

Question 13:

Do you agree with the proposal for categorical limitations on the types of persons who can be appointed as proxy to be removed from the Companies Act 1965?

Yes. We agree with the CLRC's recommendation.

This will allow greater participation and engagement not only with shareholders but also proxy holders attending the general meeting.

Question 14:

Should the disclosure of proxy voting details prior at the general meeting be prescribed?

Yes. We agree with the CLRC's recommendation.

Transparency is important when the Chairman is being appointed as a proxy for shareholders who may vote differently from the Chairman.

How the Chairman announces the proxies held by him truly depends on his personal integrity.

Question 15:

Should the Companies Act 1965 expressly permit direct absentee voting at a meeting?

Yes. We agree with the CLRC's recommendation.

The legitimate use of votes by all shareholders should be encouraged whether voting in absentia or by electronic means.

Any means to voting process should be encouraged if it contributes effectively to shareholders participation and engagement at general meeting and in corporate decision making of public companies.

Ensuring the integrity of the voting system is important.

Question 16:

What are your views, on whether the law should require decisions on all business at the AGM of a company to be taken by poll i.e. one share one vote, thus abolishing voting by show of hands?

Yes. We agree with the CLRC's recommendation.

Voting by show of hands is often not fair at general meeting with each member having one vote.

At the AGM or EGM if the Chairman receives proxy votes from shareholders who are not present and from persons connected with directors and management, a poll should be demanded in accordance with the Articles, in which case a written record should be kept and each member has a vote for every share held.

To ensure the integrity of the voting process for or against each resolution relating to a contentious issue is a challenge. In circumstances of delisting of a public listed company, voting by show of hands is effective when minority shareholders are present in number to demonstrate their physical presence and to vote in number by show of hands against the delisting e.g. the case of E&O Property Development Berhad where voting by show of hands from minority shareholders in number outvoted the majority shareholders.

It is to be noted that AGMs are concerned with the audited financial statements, directors' and auditors' reports, dividends, directors' fees, the election of directors and the appointment and remuneration of auditors.

A general meeting of company's members and their decisions can bind the company. Hence, a decision reached by a majority of members either by show of hands or a poll at a company meeting can bind all shareholders. In view of these powers specified under the Companies Act 1965, it is deemed fit and proper for resolutions to be tabled for shareholders' approval under the Notice of the AGM of every public listed company.

Question 17:

In the event that the current law on voting by hand is maintained, should voting by show of hands be expressly allowed for proxies? What would be your rationale?

Yes. We agree with the CLRC's recommendation.

Proxies should represent shareholders who are not available to attend general meetings.

A proxy must be someone who understands his role and performs accordingly to the law in representing shareholders who for some reasons, are not available to attend general meetings.

Greater shareholder engagement and participation can be encouraged.

Investor confidence can improve with shareholders able to appoint proxies to vote on their behalf when they are absent at general meetings.

Question 18:

Do you agree with the view that the prohibition of the practice of 'bundling' is to be governed by best practices? Alternatively, do you think that we should allow it within the current regulatory framework? How would you justify your choice?

Yes. We agree with the CLRC's recommendation.

The best practice in corporate governance should be expanded to describe the generic categories of resolutions that should not be bundled.

Public companies should ensure that each item of special business included in the Notice is accompanied by a clear explanation about the effects of a proposed resolution. (See paragraph 4.79(1) of the Malaysian Code on Corporate Governance)

Question 19:

Do you agree with the view that there should not be a statutory formulation of the functions and duties of the Chairman of the meeting, but any such information be set out in a non-legislative document, such as the Best Practices in the MAICSA Guide or the Malaysian Code on Corporate Governance?

Yes. We agree with the CLRC's recommendation.

Company Secretary should be professionally independent to ensure the best conduct of the Chairman of a meeting.

Every company secretarial association should get its members involved to play their role effectively in this area.

Preferably, the Chairman should be an independent, non-executive director to chair the meeting. The role of Chairman at the AGM or EGM is usually not so clear cut when he is also the Managing Director and CEO of the public company.

Question 20:

Do you agree that section 144 be clarified to enable members holding not less than 5 per cent of voting right to requisition a meeting?

Yes. We agree with the CLRC's recommendation.

This will allow greater shareholder engagement and activism if public companies are not well run. In such a case, the cost of holding general meeting should be at the company's expense – otherwise shareholders requisitioning the meeting to pay for it.

Question 21:

Do you agree that section 145 should be clarified to state that a single member, holding more than 10 per cent of the issued capital, should be allowed to call for a meeting of the company?

Yes. We agree with the CLRC's recommendation.

This will allow greater shareholder engagement and activism if public companies are not well run. In such a case, the cost of holding general meeting should be at the company's expense – otherwise the single shareholder requisitioning the meeting to pay for it on the grounds that he calls for the meeting and looks whether he could obtain support of other shareholders for the issues to be resolved.

KFC Holdings (Malaysia) Bhd, QSR Brands Bhd and T.H.Hin Corporation Berhad (now known as Milux Corporation Berhad) are good examples of such EGMs being held.