

## GENERAL MEETINGS OF MANAGEMENT CORPORATIONS (OTHER THAN FOR THE PURPOSE OF COLLECTIVE SALE) AMID COVID-19 SITUATION

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### Introduction

1. Under the Building Maintenance and Strata Management Act ("BMSMA"), general meetings of the Management Corporation ("MCST") are required to be held within certain prescribed periods.
  - a. For the First Annual General Meeting ("AGM"), this must be held within 13 months after the MCST is constituted or 8 weeks after requisition from subsidiary proprietors ("SPs"), whichever is earlier<sup>1</sup>;
  - b. For subsequent AGMs, this must be held every calendar year and not more than 15 months from the last AGM<sup>2</sup>; and
  - c. For Extraordinary General Meetings ("EOGMs"), this must be held within 6 weeks after requisition from SPs<sup>3</sup>.
2. In 2017, the BMSMA was amended to allow meetings of the Councils of MCSTs to be held by electronic means<sup>4</sup>. However, there were no similar provisions for general meetings of MCSTs.
3. Following the worsening COVID-19 situation, the Singapore government implemented a series of measures, which eventually rendered the holding of meetings of MCSTs all but impossible.
  - a. On 13 March 2020, the government advised organisers of all non-ticketed events to introduce social distancing measures including limiting the number of participants to below 250<sup>5</sup>;
  - b. On 24 March 2020, the government directed all events and mass gatherings to be deferred or cancelled, regardless of size<sup>6</sup>;
  - c. On 26 March 2020, the Building and Construction Authority ("BCA") advised all MCSTs to defer holding their AGMs<sup>7</sup>;
  - d. On 26 March 2020, the Minister for Health issued the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020 which made it an offence to hold a meeting of 10 or more individuals<sup>8</sup>;

<sup>1</sup> Section 26 BMSMA

<sup>2</sup> Section 27 (1) BMSMA

<sup>3</sup> Paragraph 14 of First Schedule to the BMSMA

<sup>4</sup> Paragraph 1A(2) of Second Schedule to the BMSMA.

<sup>5</sup> MOH announcement on 13 March 2020.

<sup>6</sup> MOH announcement on 24 March 2020.

<sup>7</sup> BCA advisory on 26 March 2020.

<sup>8</sup> Regulation 4.

- e. On 7 April 2020, the government passed the COVID-19 (Temporary Measures) Act 2020 which, *inter alia*, empowered the Minister to issue Control Orders as well as Temporary Measures for Conduct of Meetings<sup>9</sup>; and
- f. On 7 April 2020, the Minister for Health issued the COVID-19 (Temporary Measures) (Control Order) Regulations (“the Control Order Regulations”) which, *inter alia*, placed restrictions on individuals leaving or entering their place of residence, using facilities on common property and required all MCSTs to close all facilities on common property<sup>10</sup>.

## ***COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Management Corporations, Subsidiary Management Corporations and Collective Sale Committees) Order 2020***

4. On 27 April 2020, the Minister for Law issued the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Management Corporations, Subsidiary Management Corporations and Collective Sale Committees) Order 2020 (“the Order”).
5. In brief, the Order contains details as to how general meetings may be conducted partially or wholly by electronic means, during the period from 27 March 2020 up to and including 30 September 2020 (“Relevant Period”). “Electronic means” means electronic communication, video conferencing, teleconferencing or other electronic means.
6. MCSTs also have the option of deferring their general meetings up till 30 September 2020.
7. All general meetings convened and conducted in accordance with the Order during the Relevant Period are deemed to satisfy the requirements under the BMSMA.

### ***Council to Make Decision***

8. It should first be noted that the Order merely empowers the Council to conduct the general meeting using the alternative means, partially or wholly, provided in the Order. It is not mandatory for the Council to do so. Council may choose to defer the general meeting until a later date, when the Control Order Regulations may be sufficiently relaxed to allow a meeting in the traditional way to take place, whether partially or wholly.
9. If a general meeting is scheduled to take place within the Relevant Period, Council must therefore make two decisions: -
  - a. Whether to defer the general meeting; and
  - b. Whether to hold the general meeting by electronic means, partially or wholly.
10. The Control Order Regulations were originally in force only for the period 7 April 2020 to 4 May 2020. In line with the extension of the Circuit Breaker period, they have since been amended and are now in force till 1 June 2020.

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<sup>9</sup> Sections 27 and 34.

<sup>10</sup> Regulations 4, 8 and 9.

11. It remains to be seen whether the Control Order Regulations will be further extended after 1 June 2020, either partially or wholly. However, it is unlikely that MCSTs will be able to resume holding their meetings wholly in the traditional way anytime soon.
12. Council may choose to make a decision first to defer the general meeting. A decision on whether to hold the meeting by electronic means can be made later.
13. It should further be noted that the alternative arrangements provided for in the Order are valid only for the Relevant Period i.e. up till 30 September 2020. Deferral of the general meeting is allowed only up till 30 September 2020. After 30 September 2020, the provisions of the BMSMA will apply. The Order will not be applicable.
14. MCSTs that decide to defer holding their AGMs beyond their statutory due dates must inform the Commissioner of Buildings by writing to BCA via their online feedback form at <http://www.bca.gov.sg> under Strata Management / MCST > AGM / EOGM / Council Meeting<sup>11</sup>.
15. MCSTs that defer their AGM must still ensure that their audited accounts end at a date not earlier than 4 months before the date of the deferred AGM<sup>12</sup>. If the accounts have already been prepared, then the MCST must cause to be prepared a fresh set of accounts to end at a later date, within the 4 months period or a supplementary set of accounts to bridge the gap.

## ***Preliminary Actions***

16. In its Guidance Notes, BCA states that MCSTs shall send a circular to SPs informing them of the MCST's email address for the purpose of SPs serving notice or written request on the MCST by email. The notice or written request of an SP includes a notice requesting for the inclusion of a motion on the agenda of the general meeting<sup>13</sup>.
17. BCA also states that the MCST may also display its email address on notice boards and prominent locations in the development, such as lift lobbies or letterbox areas.
18. These requirements go beyond what is currently required of the MCST under the BMSMA or even the Order. The facilitation of SPs submitting by email motions to be included on the agenda is commendable. Unfortunately, if this results in many motions being submitted, it may be a trying time for the Council and Managing Agent ("MA") conducting the meeting by electronic means.
19. It is strongly advised that all MCSTs take the opportunity to request all SPs to provide an email address for the service of notices<sup>14</sup> and for inclusion on the strata roll<sup>15</sup>. All MCSTs should do this even if they have no immediate plans to hold meetings by electronic means.

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<sup>11</sup> Paragraph 7 of BCA Circular BCA BC BMSC/CIR/2020/10 dated 27 April 2020

<sup>12</sup> Section 38(10) BMSMA

<sup>13</sup> Paragraph C, Annex A to BCA Circular BCA BC BMSC/CIR/2020/10 dated 27 April 2020

<sup>14</sup> Section 65(12) BMSMA

<sup>15</sup> Section 46(3A) BMSMA

## ***Notice of General Meetings***

20. In addition to the usual requirements under the BMSMA, the notice of a general meeting to be conducted by electronic means<sup>16</sup>:
  - a. Must describe the means by which the meeting can be electronically accessed (including the online location, if the meeting is held at an online location);
  - b. Must set out how a person entitled to vote may vote at the meeting by electronic means;
  - c. Must state how an SP or person may send to the chairperson of the meeting the substantial and relevant matters which the SP or person wishes to raise;
  - d. Must stipulate an electronic email address to which proxy forms and supporting documents may be submitted<sup>17</sup>; and
  - e. May be accompanied by any other documents relevant to the meeting.
21. BCA has also indicated that the following should be included in the notice<sup>18</sup>: -
  - a. A reminder that SPs exercise all due care and diligence to ensure that their login details are not disclosed to any other party;
  - b. A reminder to SPs to ensure that no other party is present at all times throughout the conduct of the meeting;
  - c. A reminder to SPs to abide by the rules set for discussion or deliberation of each motion in the course of the meeting.
  - d. An email address to which SPs can submit their queries or questions, in relation to the motions tabled, which the chairperson of the general meeting shall address in the general meeting; and
  - e. A cut-off time before the general meeting is held, for the SPs to submit queries or questions.
22. The notice must still be served in the usual way in accordance with the provisions of the BMSMA. The notice may be served by email if and only if the SP has provided an email address for service of notices under the BMSMA. If service is effected by email, the Order provides that it will not be necessary to send a physical hard copy by post as required under the BMSMA<sup>19</sup>.
23. Hence, it is important that the MCST plan ahead and request all SPs to provide an email address for the service of notices and for inclusion on the strata roll, as suggested earlier, before convening the general meeting.

## ***Proxy Forms and Supporting Documents***

24. Signed proxy forms (in electronic form or scanned copy) can be submitted from the SP's registered email address to the MCST stipulated email address.<sup>20</sup> Alternatively, the SP can continue to submit the original proxy form by hand or by post.

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<sup>16</sup> Item 8 of First Schedule to the Order

<sup>17</sup> Item 6 of First Schedule to the Order

<sup>18</sup> Paragraph B of Annex A to BCA Guidance Notes BCA BC BMSC/CIR/2020/10 dated 27 April 2020

<sup>19</sup> Item 8 of First Schedule to the Order

<sup>20</sup> Item 4 of First Schedule to the Order

25. This is a change from the usual understanding that the original hardcopy proxy form must be deposited with the MCST.
26. Other requirements under the BMSMA will continue to apply, such as the prescribed format for proxy forms, and the deadline for submission.
27. The Order is silent on letters of authorisation from SPs which are companies. It is advisable for MCSTs to state in the notice of meeting that letters of authorisation should also be submitted by the same deadline and in the same manner as proxy forms.

### ***Attendance and Quorum***

28. A quorum may be formed by SPs (either in person or by proxy) personally or electronically present and satisfying the relevant quorum requirements.<sup>21</sup>
29. An SP is “electronically present” if the SP<sup>22</sup>
  - a. Attends the meeting in the manner provided by the MCST;
  - b. Is verified by the secretary or some other appointed person to be attending the meeting in the manner provided; and
  - c. Is acknowledged by electronic means by the chairperson of the meeting as present at the meeting.
30. BCA has stated that MCSTs must ensure that the electronic portal used will enable the secretaries of MCSTs to identify and verify the identities of the SPs who attend and participate in the meeting.<sup>23</sup>

### ***Right of SPs to Speak and Be Heard at the Meeting***

31. Where the meeting is conducted by electronic means, it may not be feasible to allow SPs to speak as they wish, particularly for large developments where there may be hundreds of SPs or even more. That is probably the reason why the Order states that the MCST “may” provide for the following: -
  - a. Except for the purposes of oral nominations of Council candidates,<sup>24</sup> an SP or person may only attend the meeting by observing and listening to the proceedings of the meeting by electronic means, if access to both an audio broadcast and audio-visual broadcast is provided to the SP or person<sup>25</sup>;
  - b. As regards the right to be heard or make representations, an SP or person may only be heard at a meeting by electronic means in the manner provided, and a representation may be read out at a meeting by electronic means<sup>26</sup>;
  - c. As regards the right to speak on any resolution, an SP or person may be required, before the meeting, to send to the chairperson of the meeting, by post or electronic mail, the matters which

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<sup>21</sup> Item 5 of First Schedule to the Order

<sup>22</sup> Item 5 of First Schedule to the Order

<sup>23</sup> Paragraph D of Annex A to BCA Circular No. BCA BC BMSC/CIR/2020/10 dated 27 April 2020

<sup>24</sup> Paragraph 8(1) of First Schedule to the BMSMA

<sup>25</sup> Item 2 of First Schedule to the Order

<sup>26</sup> Item 3 of First Schedule to the Order

the SP or person wishes to raise at the meeting, and each such matter, if substantial and relevant and sent within a reasonable time before the meeting, is to be responded to at or before the meeting by electronic means<sup>27</sup>;

32. It is therefore possible that SPs and persons attending the meeting may only be observing and listening to an audio and audio-visual broadcast of the proceedings, with no right to speak, except as provided above.

## ***Voting***

33. Voting by electronic means may be used only if the following are satisfied<sup>28</sup>: -
- a. The electronic voting system used accurately counts all votes cast for and against any proposal submitted at the meeting;
  - b. The electronic voting system used is capable of providing records from which the operation of the electronic voting system may be audited and for verification of the accuracy of the recording and counting of votes;
  - c. The chairperson must, during the meeting, declare the result of the voting by electronic means on any proposal submitted at the meeting; and
  - d. In respect of a meeting at which the council is to be elected, the chairperson of the meeting must ensure that his or her declaration of the voting results of the election of the members of the council is recorded in the form of either an audio recording or audio-visual recording.

## ***System to be Used***

34. BCA has indicated that it does not recommend or restrict the type or group of vendors whom MCSTs can engage or appoint for the purpose of providing a system or systems that can meet the legal and other requirements of a general meeting of the MCST by electronic means.
35. For small MCSTs where not more than 50 people are expected to attend the meeting, it might be possible for the MCST to use common video conferencing systems such as Zoom, Skype or Cisco Webex to conduct the meeting and another system such as email or SMS/Whatsapp to conduct the voting.
36. The participants can be pre-registered and their identities verified before the meeting. The email address or mobile number which the SP will be using for voting can be registered before the meeting, and a format for casting votes can be pre-determined. The meeting can be recorded and the results of the votes received retained for audit and verification purposes.
37. However, for large developments, the MCST and/or the MA will likely have to source for a suitably robust system or systems that can handle the large number of participants, and yet meet the legal and other requirements.

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<sup>27</sup> Item 4 of First Schedule to the Order

<sup>28</sup> Item 6 of First Schedule to the Order

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38. Such an investment is unlikely to be wasted. COVID-19 has already changed the way we live and work. Even after COVID-19, it is likely that meetings by electronic means will be a way of life more often than not.
39. Whichever system it decides to use, MCSTs are advised to do a practice session to enable all SPs to familiarise themselves with the system. For many of the SPs, this may be the first time they are participating in a meeting by electronic means, with more to come.

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