

FAQ: Impact of the COVID-19 Outbreak on The Holding of Annual General Meetings and Filing of Statutory Documents by Companies

for LexisNexis Resource Hub – COVID-19



No.	Question	Answer
1	In light of the COVID-19 outbreak and the imposition of the movement control order ('MCO') by the Malaysian Government, how are companies affected in terms of the holding of company meetings?	Under these circumstances, companies must now cancel all general meetings which were initially scheduled to take place during the MCO period. As the COVID-19 outbreak has not yet shown any sign of slowing down, it may not be advisable, from a health & safety perspective, for the general meeting to be held in the near future, even if the MCO is lifted by then.
2	What are the meeting deadlines to watch out for?	<p>Pursuant to section 340(1) of the Companies Act 2016, it is mandatory for public companies to hold an annual general meeting. The annual general meeting must be held within six months of the company's financial year-end and not more than 15 months from the last annual general meeting. For public companies with a financial year that ended on 31 December 2019, the annual general meeting must, therefore, be held latest by 30 June 2020.</p> <p>Under the Companies Act 2016, private companies are not required to hold an annual general meeting.</p>
3	On 16 March 2020, the Registrar of Societies announced that in light of the COVID-19 outbreak, all annual general meetings for societies would be banned until 30 June 2020. Is there also a blanket ban for companies in respect of the holding of annual general meetings?	<p>Unlike the Registrar of Societies, the Companies Commission of Malaysia ('CCM') has not imposed a blanket ban on the holding of general meetings of companies until 30 June 2020. Instead, the CCM is allowing companies to apply for an extension of time to hold annual general meetings.</p> <p>In March 2020, the CCM issued a set of FAQs on annual general meetings and filing of documents during this MCO period. Pursuant to the FAQs on annual general meetings and filing of documents, the CCM has confirmed that all annual general meetings during this MCO period are to be cancelled.</p>

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		<p>The CCM has also confirmed that a public company may apply to the CCM for an extension of time to hold its annual general meeting. The CCM may grant an extension of time upon being satisfied with the reasons provided. The requirements for an application for extension of time are prescribed under the Companies Act 2016: Practice Note No 3/2018 and the Companies Act 2016: Practice Directive No. 6/2020.</p>
4	<p>When can companies apply for an extension of time for the holding of annual general meetings?</p>	<p>Pursuant to a further set of FAQs on Extension of Time (EOT) for the Holding of the Annual General Meeting (AGM) the CCM has announced that a company can begin to apply for an extension of time from 9 April 2020 onwards by sending its application to eot@ssm.com.my. All applications must be made latest by 30 June 2020.</p>
5	<p>The Companies Act 2016: Practice Note No 3/2018 states that an application for extension of time must be made at least 30 days before the last day to hold the annual general meeting. Can a company still apply for an extension of time if it is unable to meet the 30 days' deadline prescribed under the Companies Act 2016: Practice Note No 3/2018?</p>	<p>The CCM has stated that in light of the current situation, companies can still apply for an extension of time to hold their annual general meeting even if the application is made less than 30 days before the due date for the annual general meeting.</p>
6	<p>Are all companies entitled to apply for an extension of time for the holding of annual general meetings?</p>	<p>Based on the FAQs on Extension of Time (EOT) for the Holding of the Annual General Meeting (AGM), only public companies with financial years ended between 1 September 2019 and 31 December 2019 can apply for an extension of time.</p>
7	<p>What is the length of the extension of time for public companies to hold annual general meetings?</p>	<p>Based on the FAQs on Extension of Time (EOT) for the Holding of the Annual General Meeting (AGM) and the Companies Act 2016: Practice Directive No 6/2020 the extension will be for a period of 90 days. This 90 days'</p>

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		extension of time will be effective from the original deadline to hold the annual general meeting.
8	Can companies utilise technology to hold annual general meetings?	Public companies who wish to comply with the original deadline of 30 June 2020 nonetheless could consider holding the annual general meetings with the assistance of technology as provided for under section 327(1) of the Companies Act 2016. This would allow for social distancing as the meeting could take place at a number of venues. However, the main venue of the meeting must be in Malaysia, and the chairperson must be present at the main venue (section 327(2) of the Companies Act 2016). This may present a problem for as long as the MCO remains in force. In addition, there could be a large number of people present at the main venue as the chairperson would likely be joined by the board of directors, the company's secretary and the auditors, at the very least.
9	What are the deadlines to watch out for in terms of the circulation of financial statements and reports?	<p>Under sections 257 and 258 of the Companies Act 2016, a copy of the financial statements and reports would have to be circulated to, among others, every member of the company. In the case of a private company, the said documents are to be circulated within six months of its financial year-end. This means that private companies with financial years ending 31 December 2019 would have to circulate the financial statements and reports latest by 30 June 2020.</p> <p>In the case of a public company, the documents must be circulated at least 21 days before the date of the annual general meeting.</p>
10	In light of the COVID-19 outbreak and the imposition of the MCO, must companies still proceed to circulate a copy of the financial statements and reports?	While companies are currently unable to hold annual general meetings, there is nothing to stop companies from circulating their financial statements and reports just because of the MCO. Companies can still proceed to circulate their financial statements and reports.

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		<p>On 17 March 2020, Bursa Malaysia issued the following guidance in respect of public listed companies:</p> <ol style="list-style-type: none"> 1. Firstly, in a case where a public listed company has issued its annual report together with the notice of annual general meeting prior to 17 March 2020, the listed company may issue its notice of annual general meeting again if the annual general meeting is adjourned for 30 days or more, in the same manner as in the case of the original annual general meeting (section 318 of the Companies Act 2016). 2. Secondly, a public listed company who has yet to issue a notice of annual general meeting may do so separately from the annual report so long as the information set out in the latter is made up to a date which is not earlier than six weeks from the issuance of the annual report. Additionally, as long as a listed company announces its annual report to Bursa, through Bursa Link, within four months from the close of its financial year, the listed company is deemed to have complied with the requirements under paragraph 9.23 of the Main Market Listing Requirements or the ACE Listing Requirements. This means that the annual report can be presented to the members at the annual general meeting which will only take place after the four months period stipulated under paragraph 9.23 of both the Main Market and the ACE Listing Requirements. 3. Thirdly, where a notice of an annual general meeting or a notice of an adjourned annual general meeting is issued subsequently, there is no need for the annual report to be updated as required under paragraph 9.25(2) of the Main Market Listing Requirements or the ACE Listing Requirements.

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		<p>4. Lastly, public listed companies who are unable to meet the filing deadlines of the quarterly or annual reports can now apply to Bursa Malaysia for an extension of time. This application will be considered on the following bases:</p> <ul style="list-style-type: none"> (a) whether the preparation of the listed company's financial statements is affected due to the MCO or other measures imposed by the authorities in response to the COVID-19 outbreak; or (b) whether the operations of the listed company are significantly affected by the COVID-19 outbreak. <p>The announcements by Bursa Malaysia in relation to the Main Market are accessible here while those in relation to the ACE Market can be accessed here.</p>
11	What are the deadlines to watch out for in terms of the filing of statutory documents by companies?	<p>Section 259(1)(b) of the Companies Act 2016 requires a public company to lodge its financial statements and reports with the CCM within 30 days from its annual general meeting.</p> <p>In the case of private companies, they are required to lodge their financial statements and reports with the CCM within 30 days from the date of circulation pursuant to section 258(1)(a) of the Companies Act 2016 (see section 259(1)(a) of the Companies Act 2016).</p>
12	In light of the COVID-19 outbreak, what are the flexibilities accorded to companies in terms of filing or circulation of statutory documents?	<p>Pursuant to recently published FAQs on the Moratorium of Submission of Statutory Documents to SSM, the CCM will be introducing a 30 day-moratorium from the end of the MCO for companies to lodge all affected statutory documents with the CCM. This moratorium applies, but is not limited to, the following:</p> <ul style="list-style-type: none"> (a) Submission of annual returns; (b) Submission of financial statements; (c) Updating of shareholder information; (d) Updating information on changes of directors and shareholders;

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		<p>(e) Updating of registered and business address.</p> <p>In a separate set of FAQs on Extension of Time (EOT) For Circulation and Lodgement of Financial Statements the CCM has announced that it will also grant an extension of time of 90 days for the circulation and lodgement of financial statements for companies with financial year ending between 1 September 2020 and 31 December 2019, in addition to the 30 days' moratorium.</p> <p>The 90 days' extension will start from the original deadline for the circulation and lodgement of the financial statements.</p>
13	What is the application process in terms of the 30 days' moratorium with respect to the lodging of statutory documents?	No application is required. The moratorium will be applied automatically, and there will not be a late lodgement fee.
14	Who is eligible for the 30 days' moratorium in respect of the lodging of statutory documents?	The 30 days' moratorium is applicable to all companies and limited liability partnerships with an obligation to file statutory documents during the MCO period. It is applicable irrespective of the companies' financial year-ends.
15	What is the application process in terms of the 90 days' extension of time for the lodgement of financial statements for companies with financial year ending between 1 September 2019 and 31 December 2019?	<p>All companies with the financial years ending between 1 September 2019 and 31 December 2019 can apply for an extension of time by sending their application to eot@ssm.com.my.</p> <p>This would mean that companies with financial years ending between 1 September 2019 and 31 December 2019 have the option of applying for an additional 90 days' extension of time for the filing of financial statements, in addition to the 30 day-automatic moratorium.</p>
16	When can companies begin to apply for the 90 days' extension?	Applications for an extension of time for the filing of financial statements can be made beginning 9 April 2020 until 30 June 2020

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.

About the Author

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Janice is a commercial and corporate litigator with experiences and interest in company law and shareholders' disputes. She has also acted as lead counsel in various contested winding-up proceedings and has dealt with commercial disputes involving breaches of contracts, and breaches of officer and trustee duties. Janice is a member of the International Women's Insolvency & Restructuring Confederation. Janice is also an associate of the Malaysian Institute of Arbitrators, and has been involved in arbitral-related court proceedings such as applications to set aside and/or stay of court orders enforcing arbitral awards as well as applications for enforcement of foreign arbitral awards.

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