

**KEY CLAUSES ON VIRTUAL GENERAL MEETINGS OF BUSINESS TRUSTS AND VARIABLE CAPITAL COMPANIES IN THE DRAFT COMPANIES, BUSINESS TRUSTS AND OTHER BODIES (MISCELLANEOUS AMENDMENTS) BILL**

	<b>Clause</b>	<b>Proposed amendment(s)</b>	<b>Consultation question(s)</b>
3.	Clauses 1, 6 and 7	To amend the BTA to introduce a new section 53AA <sup>1</sup> which:  (a) enables the unitholders of a registered business trust to hold general meetings <sup>2</sup> :  (i) at a physical place; (ii) at a physical place and using virtual meeting technology <sup>3</sup> ; or (iii) using virtual meeting technology only;	<b>Question 3a:</b> Is it appropriate to align the BTA with the CA by also amending the BTA to enable business trusts to have the option to conduct fully virtual or hybrid general meetings?  <b><u>In the context of business trusts:</u></b>  <b>Question 3b:</b> Is the proposed definition of “virtual meeting technology” in footnote 3 appropriate?

<sup>1</sup> See clause 6 of the draft Bill.

<sup>2</sup> See subsection (2) of section 53AA. The following types of meetings are covered under section 53AA (see subsection (1) of section 53AA):

- (a) an annual general meeting of the unitholders of a registered business trust;
- (b) an extraordinary general meeting of the unitholders of a registered business trust; and
- (c) a meeting of a class of unitholders of the registered business trust.

For ease of reference, this document will refer to general meetings of a registered business trust only.

<sup>3</sup> “Virtual meeting technology” is proposed to be defined to mean “any technology that allows a person to participate in a meeting without being physically present at the place of meeting”. See clause 6 of the draft Bill.

	Clause	Proposed amendment(s)	Consultation question(s)
		<p>(b) clarifies how references in the BTA that are applicable to a general meeting<sup>4</sup> may be applied in the context of a meeting held using virtual meeting technology;<sup>5</sup> and</p> <p>(c) enables the trust deed of a registered business trust to, on or after 1 July 2023, be modified to exclude the application of paragraphs (a)(ii) and/or (a)(iii) or exclude or modify the application of any of the rules mentioned in paragraph (b), in respect of all or any meetings to which section 53AA applies<sup>6</sup>.</p> <p>Section 53AA will come into operation on 1 July 2023<sup>7</sup>.</p>	<p><b>Question 3c:</b> Are the rules in subsection (4) of the new section 53AA appropriate<sup>9</sup>? Are there any other references in the BTA that should be covered under subsection (4)?</p> <p><b>Question 3d:</b> Are the areas mentioned in footnote 8 appropriate? Are there any other areas that should be covered by the Authority's power to regulate the use of virtual meeting technology for general meetings?</p>

<sup>4</sup> The references in the BTA include:

(a) attendance (e.g. sections 55(3)(a); 55(3)(b); 55(4); 59; 60(1); 60(2); 60(3); 63(2); 84(7)(a); and 84(7)(c));

(b) presence (e.g. sections 20(a); 36(1); 44(3)(c); 47(1)(a)(ii); 57(1)(a); 57(1)(b); 57(1)(c); and 63(1));

(c) voting (e.g. sections 20(a); 36(1); 44(3)(c); 47(1)(a)(ii); 51(1)(a); 51(1)(b); 57(2); 60(3); 60(4); 60(5); and 63(1); 63(3); 63(5); 82(2) 82(4); 82(7)(a); and 82(7)(b));

(d) entitlement or right to vote (e.g. sections 54(1); 55(1)(a); 55(3)(a); 55(3)(b); 55(4); 56(1)(b)(i); 56(1)(b)(ii); 56(2); 56(3); 57(1)(c); 57(2); 58; 59; 60(1); 60(5); 63(2); 63(4)(a); and 63(4)(b));

(e) voting on a show of hands (e.g. section 57(1)(c));

(f) entitlement or right to be heard (e.g. sections 82(6); and 84(7)(c));

(g) right to speak on a resolution (e.g. section 59);

(h) right to speak at a meeting (e.g. section 60(2));

(i) reading out a representation or declaration (e.g. sections 63(3); and 82(6));

(j) reading out an auditor's report (e.g. section 84(6)(b));

(k) production of a register and keeping it open and accessible (e.g. section 13(6));

(l) laying of a profit and loss account or statement (e.g. section 76(1); and 83(1)(e)); and

(m) accounts, balance sheet etc being laid or caused to be laid (e.g. sections 76(5); 76(7)(a); 76(9); 76(14); 76(18); 78(1); and 84(1)).

<sup>5</sup> See subsection (4) of section 53AA.

<sup>6</sup> See subsection (5) of section 53AA. I.e. section 53AA will override a registered business trust's trust deed to enable the holding of virtual general meetings on and after 1 July 2023, even if the registered business trust's trust deed immediately before 1 July 2023 expressly prohibits the holding of virtual general meetings or does not expressly provide for virtual general meetings. A registered business trust's trust deed may be modified after 1 July 2023 to expressly prohibit the registered business trust from holding virtual general meetings.

<sup>7</sup> See clause 1 of the draft Bill.

<sup>9</sup> Please refer to the draft Bill for the wordings of subsection (4) of the new section 53AA.

	Clause	Proposed amendment(s)	Consultation question(s)
		To amend section 144 of the BTA to enable the Authority to make regulations for or with respect to regulating the use of virtual meeting technology for meetings mentioned in paragraphs (a)(ii) or (a)(iii) <sup>8</sup> .	
4.	Clauses 1, 8, 9, 10, 11 and 12	To amend the VCCA to introduce a new section 76A <sup>10</sup> which: (a) enables a variable capital company to hold general meetings <sup>11</sup> : (i) at a physical place; (ii) at a physical place and using virtual meeting technology <sup>12</sup> ; or (iii) using virtual meeting technology only;	<b>Question 4a:</b> Is it appropriate to align the VCCA with the CA by amending the VCCA to enable variable capital companies to have the option to conduct fully virtual or hybrid general meetings?  <u><b>In the context of variable capital companies:</b></u>  <b>Question 4b:</b> Is the proposed definition of “virtual meeting technology” in footnote 12 appropriate?

<sup>8</sup> Regulations may be made to regulate the use of virtual meeting technology for the meetings, including:

- (i) restricting or mandating the types of virtual meeting technology that may be used;
- (ii) restricting the means by which voting may be carried out, or mandating how voting may be carried out, using virtual meeting technology;
- (iii) imposing record keeping and auditing requirements in respect of the use of virtual meeting technology;
- (iv) imposing requirements relating to the verification or authentication of the identities of persons attending meetings using virtual meeting technology; and
- (v) mandating the notices and documents (including physical notices and documents) to be sent to persons attending or eligible to attend a meeting using virtual meeting technology.

<sup>10</sup> See clause 9 of the draft Bill.

<sup>11</sup> See subsection (2) of section 76A. The following types of meetings are covered under section 76A (see subsection (1) of section 76A):

- (a) an annual general meeting of a variable capital company;
- (b) an extraordinary general meeting of a variable capital company; and
- (c) a meeting of a class of members of a variable capital company.

For ease of reference, this document will refer to general meetings of a variable capital company only.

<sup>12</sup> “Virtual meeting technology” is proposed to be defined to mean “any technology that allows a person to participate in a meeting without being physically present at the place of meeting”. Please see clause 8 of the draft Bill.

	Clause	Proposed amendment(s)	Consultation question(s)
		<p>(b) clarifies how references in the VCCA that are applicable to a general meeting<sup>13</sup> may be applied in the context of a meeting held using virtual meeting technology;<sup>14</sup> and</p> <p>(c) enables a variable capital company to, on or after 1 July 2023, amend its constitution to exclude the application of paragraphs (a)(ii) and/or (a)(iii) or exclude or modify the application of any of the rules</p>	<p><b>Question 4c:</b> Are the rules in subsection (4) of the new section 76A appropriate<sup>18</sup>? Are there any other references in the VCCA that should be covered under subsection (4)?</p> <p><b>Question 4d:</b> Are the areas mentioned in footnote 17 appropriate? Are there any other areas that should be covered by the Minister's power to</p>

<sup>13</sup> The references in the VCCA include:

- (a) attendance (e.g. section 79 (incorporating by reference section 177(3) of the Companies Act 1967); and 80(1) (incorporating by reference sections 180(1); 181(1); 181(2); and 181(1C) of the Companies Act 1967));
- (b) presence (e.g. sections 80(1) (incorporating by reference sections 179(1)(a); 179(1)(b); and 179(4) of the Companies Act 1967); and 80(2) (incorporating by reference section 184(1) of the Companies Act 1967));
- (c) voting (e.g. sections 20(1)(b); 80(1) (incorporating by reference section 180(2) of the Companies Act 1967); and 80(2) (incorporating by reference section 184(1) of the Companies Act 1967));
- (d) entitlement or right to vote (e.g. sections 19(4)(f)(i); 20(1)(b); 34(4)(b); 78(4); 79 (incorporating by reference sections 176(1); 176(3); and 177(3) of the Companies Act 1967); 80(1) (incorporating by reference sections 180(2); 181(1); 181(1C); 181(2); 182; and 183(2)(a) of the Companies Act 1967); 80(2) (incorporating by reference sections 184(1); 184(2); 184(4)(a); and 184(4)(b)(ii) of the Companies Act 1967); and 80(3) (incorporating by reference sections 184A(3); 184A(4); 184C(1); and 184D(1)););
- (e) voting on a show of hands (e.g. section 80(1) (incorporating by reference sections 179(1)(c)(i); and 181(1D) of the Companies Act 1967));
- (f) entitlement or right to be heard (e.g. sections 52 (incorporating by reference sections 152(2); and 152(3) of the Companies Act 1967); 107(1) (incorporating by reference section 205(6) of the Companies Act 1967); and 109(3) (incorporating by reference section 207(8) of the Companies Act 1967));
- (g) right to speak on a resolution (e.g. section 80(1) (incorporating by reference section 180(1) of the Companies Act 1967));
- (h) right to speak at a meeting (e.g. section 80(1) (incorporating by reference sections 181(1); and 181(1C) of the Companies Act 1967));
- (i) reading out a representation or making a declaration (e.g. sections 52 (incorporating by reference sections 152(3); and 152(4) of the Companies Act 1967); 80(2) (incorporating by reference section 184(3) of the Companies Act 1967) and 107(1) (incorporating by reference section 205(6) of the Companies Act 1967));
- (j) reading out an auditor's report (e.g. section 109(3) (incorporating by reference section 207(7) of the Companies Act 1967));
- (k) laying a statement, financial statement, consolidated financial statement, balance sheet, auditor's report or other document (e.g. sections 67 (incorporating by reference section 164A(1)(e) of the Companies Act 1967); 100(1); 105(6); 105(7); and 109(1) (incorporating by reference section 206(1)(e) of the Companies Act 1967)); and
- (l) a financial statement etc being laid or caused to be laid (e.g. sections 100(3); 100(6) (incorporating by reference sections 201(8); 201(10)(a); 201(10)(b); 201(11); and 201(16) of the Companies Act 1967); 101(1)(a); 102(2); 104(1) (incorporating by reference 202A(1)(b) of the Companies Act 1967); 105(1); and 109(3) (incorporating by reference 207(1) of the Companies Act 1967)).

<sup>14</sup> See subsection (4) of section 76A.

<sup>18</sup> Please refer to the draft Bill for the wordings of subsection (4) of the new section 76A.

	Clause	Proposed amendment(s)	Consultation question(s)
		<p>mentioned in paragraph (b), in respect of all or any meetings to which section 76A applies.<sup>15</sup></p> <p>Section 76A will come into operation on 1 July 2023<sup>16</sup>.</p> <p>To amend section 165 of the VCCA to enable the Minister to make regulations for or with respect to regulating the use of virtual meeting technology for meetings mentioned in paragraphs (a)(ii) or (a)(iii)<sup>17</sup>.</p>	<p>regulate the use of virtual meeting technology for general meetings?</p>

<sup>15</sup> See subsection (5) of section 76A. I.e., section 76A will override a variable capital company's constitution to enable the variable capital company to hold virtual general meetings on or after 1 July 2023, even if the variable capital company's constitution immediately before 1 July 2023 expressly prohibits the variable capital company from holding virtual general meetings or does not expressly provide for virtual general meetings. A variable capital company may amend its constitution after 1 July 2023 to expressly prohibit the variable capital company from holding virtual general meetings.

<sup>16</sup> See clause 1 of the draft Bill.

<sup>17</sup> Regulations may be made to regulate the use of virtual meeting technology for the meetings, including:

- (i) restricting or mandating the types of virtual meeting technology that may be used;
- (ii) restricting the means by which voting may be carried out, or mandating how voting may be carried out, using virtual meeting technology;
- (iii) imposing record keeping and auditing requirements on the variable capital company in respect of the use of virtual meeting technology;
- (iv) imposing requirements on the variable capital company relating to the verification or authentication of the identities of persons attending meetings using virtual meeting technology; and
- (v) mandating the notices and documents (including physical notices and documents) to be sent to persons attending or eligible to attend a meeting using virtual meeting technology.