RE: GUIDELINES ON THE CONDUCT OF HYBRID AND VIRTUAL GENERAL MEETINGS BY COMPANIES

These Guidelines are issued pursuant to section 876, Registrar’s Powers to make Rules, and is applicable to the holding and the conduct of General Meetings of all companies registered under the Companies Act, No 17 of 2015.

1. Requirements of the Companies Act, 2015 (“the Act”)
   a) The Companies Act, 2015 in section 275A imposes a statutory requirement for annual general meetings for all companies, except single member companies.
   b) Subject to their Articles of Association, the Act permits private companies to pass written resolutions having effect as if passed by the Company in a general meeting.
   c) By virtue of the provision in section 262(4)(a), private companies whose membership exceeds the prohibited numbers (Government directives on public gathering to curb spread of COVID-19) can pass written resolutions in lieu of a meeting of members. The written resolution is to be signed by members of the company who are entitled to attend and to vote at a general meeting as at the date of circulation of the resolution.
   d) The exception made here is passing of resolutions to remove a director or an auditor before the expiry of their term of office.
   e) Public Companies in section 310 of the Act are required to hold an annual general meeting within six months from and including the day following its accounting reference date in each year, whether or not it holds other meetings during that period. Failure to comply with this provision is an offence.
   f) The COVID-19 pandemic and ensuing Government directives on public gatherings to curb the spread of the pandemic poses a challenge to companies on the conduct of general meetings.
The options available to companies during this period include:

2. Delaying or Postponing the AGM
   a) The Act grants the Registrar power either on the application of the company or for any other reason the Registrar thinks fit, to extend the period within which the Company is to conduct an AGM even if, as a result, the period is extended beyond the calendar year. Companies who may wish to delay or postpone their AGMs may thus apply to the Registrar for an extension of the period within which to conduct their AGM in view of the restrictions in place. The applications should be submitted electronically through eo@brs.go.ke.
   b) However, before a company exercises this option, the applicant company needs to consider the potential effects of that delay or postponement of their AGM and how such delay or postponement would affect their businesses and interests of their shareholders. That is the inability to pass resolutions otherwise passed only in General Meetings, for instance:
      i. laying the company's annual accounts and reports before its Members;
      ii. removal of a director or auditor before the expiry of their term of Office;
      iii. re-electing directors retiring by rotation and appointing new directors to the company's board;
      iv. appointing or re-appointing the company's auditors;
      v. authorizing the directors to allot shares and disapplying pre-emption rights;
      vi. authorizing the purchase by the company of its own shares;
      vii. if a final dividend has been recommended by the directors, declaring that dividend; and
      viii. for quoted companies, voting on the company's directors' remuneration report and policy, and authorizing the holding of other general meetings on 14 days' notice.

3. Hybrid and Virtual Meetings
   a) All Companies can leverage on technology and be able to hold General Meetings (GM) during the pandemic period. This is pursuant to Orders issued by the Court in NRB Miscellaneous Civil Application No. E721 of 2020 In the Matter of Kenya Private Sector Alliance Limited (KEPSA) for all companies and NRB Miscellaneous Application No E680 of 2020 (WPP Scangroup Plc) for listed Companies. This may be a hybrid where there is a physical in-person meeting (subject to the public
gathering restrictions) and the option to participate remotely or a virtual only GM that is conducted solely online. Virtual meetings are conducted online, without a physical meeting and the only venue in the conduct of a fully virtual meeting is the broadcast venue.

b) The Companies Act, 2015 does not contain any provisions on the conduct of hybrid or virtual meetings, however, companies can make provision for virtual or hybrid meetings in their articles of association.

c) The model articles for private companies, public companies and companies limited by guarantee provides that in determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.

d) This provision in the model articles thus allows a company that has adopted the model articles to hold a General Meeting of its members at two or more venues using any appropriate technology that gives members as a whole reasonable opportunity to participate in the meeting and where the articles stipulate conditions on how such meeting shall be conducted then such conditions must be complied with. Such companies that have adopted the model articles or whose articles of association provides for holding of their General Meetings virtually need not refer to the Court Orders cited above.

e) Companies therefore, whose articles of association do not provide for virtual or hybrid meetings, reference and compliance should be made pursuant to the Court Orders cited above.

4. Virtual Conduct of the meeting, considerations to be put in place:
   a) The Company needs to put in place appropriate technology that enables members to participate in the meeting and ability to record attendance.
   b) The infrastructure needs to be reliable and should enable members the right to speak and to vote.
   c) The online voting process must be able to allow members to cast their votes in time during the proceeding of the general meeting.
d) Members with no access to the internet can cast their votes via proxy forms appointing the Chairperson of the meeting, or any other individual, to vote on the members’ behalf. The proxy forms should be submitted within the stipulated time and through a manner (for example electronic means or postal) as determined by the Company. However, this is not a mandatory requirement but can be exercised on election by members.

e) The Company needs to provide guidance to shareholders on the requirements and method of participating and voting in the general meeting using the selected platform, the means by which the meeting can be electronically accessed and the mode of participation.

f) All protocols/rules of procedure must be circulated in advance to all shareholders, on how participants would use the selected technology, how the member may provide questions or matters to be raised at the meeting, the relevant cut-off time within which questions must be submitted and voting/polling procedures.

g) The company should implement secure authentication measures to identify attendees and verify that a quorum is present and maintained throughout the meeting.

h) The Company to consider the technological implications, including user accessibility, data security, management of Q&A, shareholder participation and voting arrangements.

5. All other requirements on conduct of meetings must be complied with. That is:

a) A company need to comply with requirements on notice by ensuring that all shareholders entitled to receive the notice do receive the notice. The notice can be circulated electronically (e-mail, website, newspaper or other electronic means). The notice to stipulate the aforementioned information on the manner in which the meeting shall be accessed and conducted.

The notice to advise whether the proceedings of the meeting will be recorded or not, and that attendance at the meeting would be express permission by the attendees for the recording of their images. The notice period must be complied with.

b) For a hybrid meeting, the main venue of the physical meeting shall be at the registered office of the company or a venue determined by the Board of Directors and the following key persons may be present at the physical location:
chairperson, directors, company secretary, external auditor and executive Management and shall observe any directive or/and protocol on public gatherings as determined by the Government from time to time. The composition of those attending the meeting in-person shall be the prerogative of the Chairperson.

c) The quorum requirements of holding a valid meeting must be met. The quorum requirements must be complied with throughout the meeting.

d) A company must ensure that proper record of the meeting is kept and maintained. Where the meeting is held on a digital platform, it is encouraged a video/audio record of the meeting be kept.

These Guidelines are issued with effect from **20th June 2020**, and shall supersede in its entirety the Guidelines on the conduct of virtual meetings issued on **29th May 2020**.

![Signature]

JOYCE KOECH
REGISTRAR OF COMPANIES

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