



Net zero engagement in Asia

A guide to shareholder
climate resolutions

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Foreword from the Asia Investor Group on Climate Change

Asia is exposed to extreme weather events exacerbated by climate change and governments in the region are acutely aware of the mitigation and adaptation measures that are required to limit global average temperature rise to 1.5°C above pre-industrial levels. With the growing urgency of climate change, corporate engagement on climate in Asia, once considered a novelty, has transformed in the last five years into a new but widely accepted form of stewardship.

Opportunities have increased for investors to demonstrate their role as good stewards of their assets. International collaborations, such as Climate Action 100+, AIGCC Asian Utilities Engagement Program, Net Zero investor initiatives and global policy statements to governments on the climate crisis, share a common agenda in creating frameworks and increasing expectations around investing for a net zero future and to reach Paris-aligned climate goals through investor collaboration.

In Asia, investor engagement on climate traditionally features close private dialogues that consider companies' roles in economies in various stages of development, as well as their positioning amongst global peers and their impact across the value chain.

Constructive discussions in engagements and dialogue guided by climate science, will call for investors exercising responsible stewardship to consider how they use their ownership rights to influence a company's decision making process. Approaches in different jurisdictions will vary, but global momentum for engagement dialogue to be complemented with shareholder proposals on climate is increasing. Shareholder proposals on climate change and proxy voting, along with a range of other stewardship options, can play a complementary role to private dialogue in broader engagement strategies. A carefully crafted shareholder proposal could complement and shape more focused private dialogue.

Regulators in Asia have increasingly been signaling support for active ownership. The Korea Stewardship Code, for example, referred to shareholder proposals in setting out the broad scope of activities in implementing institutional investors' stewardship responsibilities as early as 2016. More recent developments include Japan's revised Corporate Governance Code and the Guidelines for Investor and Company Engagement in 2021, where increased mid-to long-term corporate value and engagement between investors and companies are supported. The momentum built by the regulators will undoubtedly bring about more Asian market-level regulatory guidance to follow suit.

"Net Zero Engagement in Asia – A Guide to Shareholder Climate Resolutions" is a practical reference for investors looking to understand the range of stewardship options at their disposal. This is also complementary to the Climate Action 100+ Investor Guide for Engaging in Asia and is to be used in parallel to enable **effective, robust and impactful** corporate engagement in Asia.

Rebecca Mikula-Wright

CEO, Asia Investor Group on Climate Change

1. Executive summary

This guide is intended as a practical reference for institutional investors considering shareholder resolutions as a complement to other stewardship options when engaging with companies on climate-related matters.

It is timely in view of increasing scrutiny of climate-related risks and opportunities faced by companies and the need for robust transition strategies. Institutional investors, including global and regional investor groups and investors in Asia, have called for increased investor engagement with companies on the adoption of robust transition strategies.¹ The UN-supported Principles for Responsible Investment includes the filing of shareholder resolutions consistent with long-term Environmental, Social and Governance (“**ESG**”) considerations and the exercise of voting rights as possible actions that give effect to the principle of active ownership and incorporation of ESG issues in investors’ ownership policies and practices.²

In this guide, leading corporate lawyers from 11 jurisdictions in Asia analyse the jurisdiction-specific nuances of the process of bringing shareholder climate resolutions in private and public listed companies. Their analysis considers the legal requirements and process, including relevant shareholding thresholds, whether an amendment to the company’s charter documents is necessary and what other relevant rights shareholders in each jurisdiction might have. Each jurisdiction’s expert also provides a brief summary of key developments relevant to climate risk and ESG in 2021-22 in that jurisdiction, to situate investor engagement within its appropriate local context.

In all, shareholder climate resolutions can be proposed in all 11 jurisdictions, although the manner and requirements of doing so differ. Institutional investors should be mindful of this when considering such resolutions as part of a suite of complementary, nuanced and case-appropriate engagement options.

1. See for instance the comments by The Investor Agenda, an investor group, on corporate engagement, available [here](#); the Climate Action 100+ Investor Guide for Engaging in Asia, published in July 2022 and available [here](#); p.13 of “Integrating Climate Change into Investment Strategy: A Guide for Investors”, published in July 2020 and available [here](#); AIGCC’s comments to Energy Monitor in “Investors set the pace on corporate climate action”, published on 6 September 2021 and available [here](#).
2. See the PRI’s “Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices” and “Possible actions”, available [here](#).

2. Introduction

Shareholder climate resolutions have emerged as an important component of corporate climate engagement globally. Insightia, a data provider, reports that 146 environmental shareholder resolutions were subject to a vote globally in 2022.³

Shareholder resolutions can be a highly effective stewardship tool. Research found that, in the United States, for shareholder resolutions that received 30% to 50% support, 67% resulted in companies fully or partially meeting the “ask” of the shareholder resolution.⁴

Shareholder climate resolutions in Asia have traditionally been less used, due in part to the novelty of the subject matter, the complexity of relevant legal rules and a traditionally more restrained approach to shareholders’ involvement in a company’s affairs. Yet, with climate-related risks and opportunities concentrated in Asia and an increasing regulatory focus by Asian governments on net zero transition pathways for the corporate sector, investors and shareholders are squarely confronting the importance of climate-aligned strategies for the companies that they invest in.

This has been particularly evident in Japan, which has seen a sharp rise in shareholder climate resolutions in the past three years. In 2022, for the first time, institutional investor group-led shareholder climate resolutions were filed in Japan at Japan’s largest coal power operator, J-Power. The co-filing group included institutional investors with a combined US\$3 trillion in assets under management. The proposed resolutions included a requirement for a Paris-aligned business plan, targets and annual reporting, which received a notable 25.8% support. Overall, Japan faced a record number of climate-focused shareholder resolutions, across the power, banking and trading house sectors.⁵

Amidst this backdrop, it is timely to consider the legal mechanics for how shareholder climate resolutions may be used as a component of effective engagement for investors in Asia. This guide enlists corporate law experts in 11 key Asian jurisdictions to consider this:

- (i) **India** – Cyril S. Shroff, Managing Partner, Anchal Dhir, Partner, and Richa Roy, Partner, of Cyril Amarchand Mangaldas; Umakanth Varottil, Associate Professor at the Faculty of Law, National University of Singapore.
- (ii) **Indonesia** – Pramudya A. Oktavinanda, Managing Partner, and Kirana D. Sastrawijaya, Senior Partner, of UMBRA – Strategic Legal Solutions.
- (iii) **Japan** – Shinsuke Kobayashi, Partner, Kanagawa International Law Office.
- (iv) **Malaysia** – To’ Puan Janet Looi, Senior Partner, Head of the Corporate Division and Co-Head of the ESG Practice Group of Skrine.
- (v) **People’s Republic of China (the “PRC”)**⁶ – Zhong Lun Law Firm, Kong Wei, Partner, and Chen Yuan, Partner.
- (vi) **Hong Kong Special Administrative Region**⁷ (“Hong Kong”) – Mini vandePol, Asia Pacific Head, Investigations, Compliance & Ethics, and Liza Murray, Partner, of Baker McKenzie.

3. See p. 8 of “The Proxy Voting Annual Review 2022” by Insightia, available [here](#).

4. See BlackRock, Our 2021 Stewardship Expectations, Global Principles and Market-level Voting Guidelines, 2021, available [here](#), at p. 5.

5. Fossil Free Japan, ‘Corporate Japan faces record number of climate shareholder resolutions’ (Apr 2022) available [here](#) accessed 22 Nov 2022.

6. Within the text and only for the purpose of this guide, “PRC” does not include the Hong Kong Special Administrative Region of the People’s Republic of China (Hong Kong SAR), the Macau Special Administrative Region of the People’s Republic of China (Macau SAR) and Taiwan.

7. Hong Kong Special Administrative Region of the People’s Republic of China.

- (vii) Philippines** – Norma Margarita B. Patacsil, Founding Partner of C&G Law (Rajah & Tann Asia).
- (viii) Republic of Korea** – Chang Wook Min, Head of Compliance Practice at Jipyong LLC’s Environmental, Social, and Governance Center.
- (ix) Singapore** – Andrew Martin, Managing Principal, and Min-tze Lean, Principal, of Baker & McKenzie.Wong & Leow.
- (x) Thailand** – Melisa Uremovic, Deputy Managing Partner, and Piroon Saengpakdee, Partner, of R&T Asia (Thailand) Limited.
- (xi) Vietnam** – Vu Thi Que, Chairwoman, and Logan Leung, Deputy Managing Partner, of Rajah & Tann LCT Lawyers.

Each set of local experts sets out an overview of the legal framework in their jurisdiction, alongside important climate and sustainability developments in 2021-2022. They then cover answers to key questions on the process of filing shareholder climate resolutions. A list of the legal issues covered is set out in section 2.2 below.

2.1 What is meant by a shareholder climate resolution

There are multiple ways in which the exercise of shareholder voting rights can have a climate-related dimension. For instance, shareholders focusing on strengthened climate governance have voted against director appointments⁸ and shareholders focusing on strengthened climate disclosure have voted against financial statements or auditor appointments.⁹

This guide looks specifically at “shareholder climate resolutions”, understood as shareholder-filed resolutions which concern a company’s governance, disclosure or business strategy on climate change and which can complement other stewardship options.

Common “asks” in shareholder climate resolutions from recent AGM seasons include:

- a.** a call for increased transparency and disclosure by the company in question;
- b.** the setting of a long-term ambition to become a net-zero company;
- c.** the development by the company of a Paris-aligned strategy / transition plan with short-, medium- and long-term goals;
- d.** alignment of future capital investment against emissions targets;
- e.** providing shareholders with the opportunity to approve or vote down the terms and/or implementation of the company’s Paris-aligned strategy / transition plan; or
- f.** disclosure by the company of details of their climate and energy policy lobbying, advertising and advocacy activities.

These are by no means exhaustive.¹⁰ The content of climate business policies that are encapsulated in shareholder climate resolutions could very well differ depending on industry sector and regulatory landscape, and evolve as best practices emerge. Further, climate resolutions can also be proposed by a company. In some cases, a company might propose its own resolution responsive to changes in the regulatory landscape. In other cases, a company might propose its own resolution in response to a shareholder climate resolution having been filed but withdrawn by agreement with the shareholder. Shareholder climate resolutions are amongst a range of engagement options that investors can consider as part of responsible stewardship. Carefully considered resolutions and exercise of voting rights, along with other stewardship activities, can complement and shape constructive engagement between institutional investors and investee companies.

8. See for instance the voting results of Exxon Mobil Corporation (“Exxon”) AGM 2021, available [here](#), in which investors backed 3 nominees of investment firm Engine No. 1 to win Board seats, instead of Exxon’s nominees. See also [here](#) and [here](#).

9. At least one CA100+ lead investor has, in a focus company’s 2022 AGM, [voted against three audit resolutions](#) following purported repeated failure of the focus company in question to meet expectations over climate accounting. Although this was unsuccessful (see results of voting by Sarasin & Partners at CRH plc in [this link](#)), consideration of climate-related accounting is a growing [trend](#).

10. Non-exhaustive examples of shareholder climate resolutions in recent years are set out in the Annexes.

2.2 Legal issues covered by the guide

In their respective jurisdiction-specific sections, each local expert addresses the following legal issues relevant to proposing shareholder climate resolutions.

“Basic right to file?” means “Do shareholders have the basic right to propose a shareholder climate resolution?” The legal process of proposing a shareholder climate resolution differs amongst jurisdictions, and can range from tabling a shareholder climate resolution for consideration at an upcoming shareholders’ meeting, to calling a shareholders’ meeting to specifically consider the resolution. The legal terminology of this process likewise differs and is set out by each local expert.¹¹

“Amendment to charter documents required or recommended?” means “Is it either required or recommended that the shareholder climate resolution be framed as an amendment to the company’s charter documents, and if so, how may such a resolution be framed?” The terminology for charter documents – the constituent documents of the company – varies across jurisdictions as well and can include references to the “Articles of Association” or “Constitution” of the company.

“Types of shareholder resolutions available and voting thresholds?” means “What types of shareholder resolutions are available in the applicable jurisdiction (e.g. ordinary, special or advisory/non-binding) and what proportion of votes is required for such resolution to pass?”

“Type of meeting?” means “Which form of shareholders’ meeting would be most appropriate for proposing and securing favourable votes on shareholder climate resolutions?” This would include consideration of common corporate practice on the kind of meeting at which shareholders would typically vote on resolutions. These could be an annual general meeting (“AGM”), extraordinary general meeting (“EGM”) or other applicable meeting. The terminology of an AGM or an EGM is not ubiquitous in all jurisdictions.

“Thresholds for filing a resolution / calling a meeting?” means “What is the threshold at which shareholders may file a shareholder climate resolution or call for a meeting to consider the resolution? What is the date at which this threshold is to be calculated?”

“Filing restrictions?” means “Are there any restrictions on which shareholders may file a resolution?” This includes consideration of whether shareholders have to be registered in the jurisdiction of incorporation of the company, or need to have owned the shares for a particular period of time.

“Custodian rules?” means “Are there any restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions?”

“Process and formal requirements for filing resolutions / proposing a meeting?” means “What are the necessary formal requirements and processes for filing the shareholder climate resolution / proposing a shareholders’ meeting to consider the resolution (e.g. form of the request, delivery method, signatory of the request, language of the request, recipient at the company)?”

“How must the company respond? Who bears the costs?” means “In terms of process: how, if at all, must the company respond to a request to file a shareholder climate resolution / call a meeting to consider the resolution, once such request is made in accordance with the relevant legal provisions? Who bears the costs of such response?”

11. Local experts comment that the appropriate term in some jurisdictions is “requisitioning” and/or “proposing” a resolution, as “filing” can refer to the process of filing of a passed resolution with the relevant company’s registry/regulatory authority of that jurisdiction. In Hong Kong, for instance, local experts comment that the “filing of a resolution” is understood as the filing of a resolution with the Companies Registry after a resolution has been passed. This is not the relevant process for consideration. Rather, the applicable process is the requisitioning and proposing of a resolution to be considered at a general meeting of shareholders. Please see the section on Hong Kong.

“Can a resolution be withdrawn?” means “Is it possible for shareholders to withdraw a resolution after it has been filed (i.e. either prior to or at the meeting)?”

“Other potentially relevant rights?” means “What other rights do shareholders have that are relevant to proposing and passing shareholder climate resolutions or engaging with the company on climate-related matters (for example, to attend and ask questions at an AGM/EGM or to request a special audit of specified matters)?”

2.3 Some common themes

A striking feature of local experts’ analysis of each of the 11 Asian jurisdictions is how uniquely different each legal landscape is, with particular local nuance. Nonetheless, several common themes run across local experts’ recommendations and observations:

(1) Shareholders should be mindful of whether the proposed shareholder climate resolution falls within the types of matters that they can ordinarily bring resolutions on. The extent to which shareholders have a say in the business of a company varies widely across Asia. In Malaysia, for instance, the local expert observes that shareholders have a broad ability to bring resolutions on a wide range of matters, and shareholder climate resolutions are not precluded.¹² In the PRC, the local expert observes that the range of matters that shareholders can file resolutions and vote on is wide, and include decisions “on the business policies and investment plans of the company.”¹³

In contrast, in some jurisdictions (such as India, for example) local experts observe that shareholder climate resolutions would not normally fall within the prescribed matters on which shareholders can file a resolution.¹⁴ In such cases, and depending on the law of the jurisdiction in question, the appropriate course could be to amend the charter documents to expressly permit the filing of shareholder climate resolutions.¹⁵

However, this is not always possible – a notable example is that of the Philippines, where the local expert observes that even if shareholders propose an amendment to the charter documents, the Board of Directors (the **“Board”**) must still approve the amendment before this is brought before a shareholders’ meeting for approval or ratification.¹⁶ To ensure that all shareholders at least have the opportunity to consider and vote on the shareholder climate resolution, shareholders of a publicly listed company with the requisite shareholding threshold could propose the inclusion of this resolution in the agenda of regular or special shareholders’ meetings, instead of proposing an amendment to the charter documents.¹⁷ While this shareholder climate resolution, if passed, would likely only be recommendatory and non-binding in nature, this could nonetheless have normative force in signalling shareholders’ desire that the Board take action regarding a company’s governance, disclosure or business strategy on climate change.¹⁸ Indeed, such normative force would exist even if a shareholder climate resolution were not passed but managed to secure a substantial amount of votes.¹⁹

12. Please see the section on Malaysia.

13. Please see the section on the PRC.

14. Please see for instance the sections on India and Korea.

15. Please see for instance the sections on India and Korea.

16. Please see section on the Philippines.

17. Please see section on the Philippines.

18. Please see section on the Philippines.

19. Please see section on the Philippines.

- (2) If an amendment to the charter documents is necessary, shareholders should be mindful of the appropriate manner of making such an amendment.** Local experts in some jurisdictions have observed that an amendment to the charter documents could be necessary if a shareholder climate resolution is not within the prescribed matters on which shareholders can file a resolution (either as a default position in that jurisdiction or as stipulated in the company's charter documents).²⁰ In some jurisdictions, it would be more appropriate for a shareholder climate resolution to directly amend the charter documents such that a climate target is reflected within the charter documents. This is the case, for instance, in Japan, where the articles of incorporation should be amended to contain the climate "ask" itself.²¹ In Vietnam, if the subject matter of the shareholder climate resolution will result in a change to any of the existing contents of the charter, such as the company's business lines, then the shareholder climate resolution should be framed as an amendment to the company's charter.²²

Resolutions that amend or have the effect of amending charter documents are becoming increasingly accepted and supported. In the United Kingdom, for example, a number of companies have supported or proposed legally binding special resolutions calling for short-, medium- and long-term targets and strategies aligned with the goals of the Paris Agreement, which have passed with overwhelming shareholder support.²³ In Spain, an airport management company supported an amendment to its Bylaws requiring a climate action plan including decarbonisation targets meeting, amongst others, the objectives of the Paris Agreement and with a detailed annual report on progress.²⁴ Institutional investors have also filed shareholder climate resolutions proposing amendments to the articles of incorporation of companies in Switzerland and France.²⁵

- (3) Shareholders should be mindful of which form of meeting may be more appropriate for the filing and consideration of a shareholder climate resolution, both in terms of the required shareholding threshold and the practicalities of convening a meeting.** Investors may be more used to filing a resolution at an upcoming AGM, instead of calling for a separate shareholders' meeting to consider a resolution. They should however be mindful of local jurisdictional requirements. While local experts in a majority of the Asian jurisdictions observe that a shareholder climate resolution can usually be proposed at an AGM,²⁶ this is not always the case. In India, for instance, the recommendation by local experts is to call an EGM to consider the shareholder climate resolution, because it would not be possible to bring a shareholder climate resolution at an AGM.²⁷

The diversity of approaches across Asia makes it imperative that shareholders proposing any specific shareholder climate resolution obtain appropriate and bespoke legal advice. This guide is a general overview, and is not legal advice and should not be relied on as such. Rather, the views of local experts in this Guide provide a framework to consider the landscape of shareholder climate resolutions in Asia. This, in turn, should be viewed within the broader context of the range of complementary stewardship options that investors can consider when engaging with companies, as appropriate to each engagement.

20. Please see for instance the section on Korea.

21. Please see the section on Japan.

22. Please see the section on Vietnam.

23. For example, the board-supported Climate Action 100+ special resolution on climate change at BP in 2019 ([here](#) at p 4), the company-proposed special resolution at Barclays in 2020 ([here](#) at p 13) and the company-proposed special resolution at HSBC in 2021 ([here](#) at p 5), each of which passed with 99%+ shareholder support.

24. The resolution passed with over 96% shareholder support. See Aena SME, S.A. 2020 AGM resolutions and votes, available [here](#), and "Case Study: Aena" by Say on Climate, available [here](#).

25. Please see for instance [here](#) in relation to Switzerland, and [here](#) and [here](#) in relation to France.

26. Please see for instance the sections on Japan and Korea.

27. Please see the section on India.

3.1 India

3.1. India

Under Indian company law, the management of day-to-day affairs of a company rests with the board of directors (the **"board"**). The board can exercise all powers and carry out all actions of the company, except for powers or actions that require approval of shareholders under Indian law or under the memorandum of association and the articles of association (the **"charter documents"**) of the company.¹ Where shareholder approval is required under Indian law or under the charter documents, a requisite majority of shareholders must pass a resolution before the board can exercise powers or undertake actions as the company.

Shareholder climate resolutions would not ordinarily fall within the prescribed matters² requiring shareholders' approval under Indian law. A shareholder climate resolution can only be brought if the company's charter documents expressly allow shareholders to decide on such matters. If the company's charter documents do not allow this, the shareholders would have to amend the charter documents to provide for this, and then propose the contemplated shareholder climate resolution. Such an amendment could be by way of a resolution to directly amend the charter documents such that a climate objective is reflected within the charter documents. In the alternative, shareholders could propose amending the charter documents to allow shareholders to bring shareholder climate resolutions in the future, and stipulate the percentage of votes required for a shareholder climate resolution to pass. However, it is less feasible for shareholders to attempt, in the same meeting, to simultaneously bring (i) a first resolution to allow shareholders to bring shareholder climate resolutions; and (ii) a second resolution with the climate "ask" that is contingent on the passing of the first resolution. In this scenario, the second resolution may be challenged as invalidly brought.

To the best of our knowledge, the usage of the aforementioned process to pass a shareholder climate resolution is as yet untested in India. This may be because most listed Indian companies have controlling shareholders who bear a significant influence on the boards of such companies as well as voting outcomes, leading to any resolution proposed by a minority public shareholder being ineffective from a voting outcome standpoint. At the same time, whether successful or not, the fact that a shareholder proposes a shareholder climate resolution would call attention to the role of corporations in addressing matters of climate change. This is complementary to the directors' duties to act to promote the objects of the company for the benefit of its shareholders as a whole, and in the best interest of the company, its employees, the shareholders, the community and for the protection of environment.³ Given the catastrophic and permanent harm that carbon emissions can inflict on the environment, the law expressly provides for the 'protection of the environment' as a part of directors' fiduciary duties to counter and mitigate climate risks posed by corporate decision-making. Therefore, the scope of directors' fiduciary duties under Indian company law is wide enough to accommodate the duty to assess a corporate's climate risks.⁴

1. Section 179(1), Companies Act, 2013.

2. Such prescribed matters include: amendments to the memorandum of association (that provides the objects clause defining the purpose of the company) and the articles of association, as well as any capital raising by preferential allotment, appointment (including remuneration) of directors, removal of directors, investments beyond a certain threshold, divestment of assets and mergers or demergers involving the company.

3. Section 166(2), Companies Act, 2013.

4. Umakanth Varottil, '[Directors' Liability and Climate Risk: White Paper on India](#)', Commonwealth Climate and Law Initiative (2021). See also, Shyam Divan, Sugandha Yadav & Ria Singh Sawhney, '[Legal Opinion: Directors' obligations to consider climate change-related risks in India](#)' (7 September 2021).

Thus, while addressing climate change as a matter of company strategy may largely fall within the purview of the board from a management-driven perspective, companies have been considering shareholder resolutions that bear upon climate change in an ancillary manner. These include changes to business strategy to take into account climate risks and opportunities, or resolutions for approving remuneration of a director where ESG performance is one of several metrics for assessment. Therefore, unless a shareholder climate resolution is considered legally non-compliant or suffers from a legal infirmity, we believe that shareholders satisfying the ownership threshold can place such a resolution for consideration by the entire body of shareholders.

This trend runs alongside key regulatory and judicial developments relevant to climate risk and ESG that took place in 2021-22. Briefly:

1. In May 2021, the Indian securities regulator, SEBI (Securities and Exchange Board of India), introduced a mandatory requirement of annual sustainability disclosures applicable to the top 1000 listed companies by market capitalisation effective from financial year 2022-23.⁵ The disclosures are to be issued along with the annual report and in the format of a 'Business Responsibility and Sustainability Report' ("**BRSR**") issued by SEBI. The BRSR is intended to set quantitative and standardised disclosure standards across ESG parameters which would help investors make better decisions, and for stakeholders to look beyond financials towards the social and environmental impact of the company. Certain climate-related disclosures pertain to energy consumption, greenhouse gas emissions, emission reducing projects, environmental clearances and impact assessments, renewable energy usage and details of any business continuity and disaster management plans.
2. Simultaneously, SEBI also strengthened the risk management framework for listed entities by requiring at least one independent director on the risk management committee of the company, making changes to quorum and meeting requirements and delineating responsibilities of the committee to include framing a risk management policy that, amongst others, identifies ESG-related risks.⁶
3. In January 2022, SEBI also began a consultation process in relation to a framework for regulation of ESG ratings providers. The proposed framework envisages accreditation for ESG ratings providers and introduces disclosures pertaining to their methodology, and measures to be taken for prevention of conflicts of interest.⁷
4. In April 2021, the central bank of India, RBI (Reserve Bank of India), joined the Central Banks and Supervisors Network for Greening the Finance System ("**NGFS**") as a member to learn from and contribute to the global efforts on green finance.⁸ This was followed on November 3, 2021 by a statement supporting the NGFS Declaration and specifically committing to (i) explore how climate scenario exercises could be used to identify vulnerabilities in RBI supervised entities, (ii) integrate climate-related risks into financial stability monitoring; and (iii) build awareness of climate-related risks amongst regulated financial institutions.⁹
5. The International Financial Services Centre Authority ("**IFSCA**"), which is the unified regulator for India's first International Finance Centre at GIFT City, Gujarat, published regulations pertaining to the issuance and listing of securities on July 16, 2021. The regulations include provision for external review to ascertain that green or ESG debt securities are aligned with specified international frameworks and additional disclosure norms for green debt securities such as a statement on ESG objectives and quantitative performance of expected or achieved ESG impact.¹⁰

5. SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 titled 'Business responsibility and sustainability reporting by listed entities' dated May 10, 2021.

6. SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021.

7. SEBI Consultation Paper on Environmental, Social and Governance (ESG) Ratings Providers for Securities Markets (January 24, 2022).

8. RBI Press Release, 'RBI Joins Network for Greening the Financial System' (April 29, 2021).

9. RBI Statement of Commitment to Support Greening India's Financial System – NGFS (November 3, 2021).

10. Chapter X, IFSCA (Issuance and Listing of Securities) Regulations, 2021.

6. In March 2022, IFSCA also sought comments on a draft 'IFSCA Guidance Framework on Sustainable and Sustainability linked lending by financial institutions in IFSCs'. The draft Guidance Framework directs registered IFSC Banking Units ("IBUs") and Finance Companies/Finance Units ("FCs/Fus") (undertaking lending activities from IFSCs) to develop board approved policies on sustainable lending within 9 months of issuance of the final framework. Further, these IBUs and FCs/Fus are also required to have at least 10% of their loan assets in the form of lending to sustainability-linked sectors from the financial year beginning April 2023 /calendar year beginning January 2023.¹¹
7. In April 2021, the Supreme Court, in a case pertaining to the habitat of the critically endangered Great Indian Bustard, for the first time in an environmental case, noted that the director of a company is required to act not only in the interest of its shareholders, but also take into consideration other factors such as the protection of the environment. Since the term 'environment' is not defined in the Companies Act, 2013, the court imported the definition from Section 2(a) of the Environment (Protection) Act, 1986 which defines the word to include '*the inter relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property*'.¹²

From a corporate India standpoint, we have seen an increase in ESG consciousness in general and ESG being included as one of the key factors in decision making and investor engagements. This has been particularly noted in shareholder notices and disclosures by companies where ESG-related objectives and performance goals were one of the criteria for assessing performance and compensation of senior management¹³ and where companies have announced the constitution of ESG committees.¹⁴

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11. IFSCA Press Release, Invitation for public comments on draft 'IFSCA Guidance framework on Sustainable and Sustainability linked lending by financial institutions in IFSCs' (March 2, 2022).

12. M. K. Ranjitsinh and Ors. v. Union of India, 2021 SCC OnLine SC 326, at [14].

13. At the AGM of Tata Motors held on July 30, 2021, the shareholders passed a special resolution to appoint a director and to approve his remuneration. His performance payments were linked *inter alia* to ESG-related objectives. Marico, in its Integrated Annual Report for 2020-21 has also proposed to include ESG-linked performance goals in the remuneration structure for its senior management. Welspun India, in its Annual Report, has also mentioned that it has sought to link ESG goals to executive remuneration.

14. From public disclosures, we note that companies such as Axis Bank, Bharti Airtel, Ashok Leyland, Cyient, Welspun India and Infosys have constituted ESG committees of the board for better oversight of and guidance on ESG-related matters in 2021-22.

Overview of Legal Process – India

Basic right to file?	Yes. If allowed by the charter documents of the company (otherwise a resolution amending those charter documents is required first).
Amendment to charter document(s) required or recommended?	Yes. Required if the matters that the charter documents permit shareholders to vote on do not include shareholder climate resolutions. ¹⁵ As mentioned in the Introductory section, an amendment could be by way of a resolution to directly amend the charter documents such that a climate objective is reflected within the charter documents. In the alternative, shareholders could propose amending the charter documents to allow shareholders to bring shareholder climate resolutions in the future, and stipulate the percentage of votes required for a shareholder climate resolution to pass. Assuming that the voting majority to successfully amend the charter documents is secured, it is possible for such amendment to stipulate that future shareholder climate resolutions proposed by shareholders require only a simple majority to pass.
Types of resolutions available and voting thresholds?	Special or ordinary resolution. <i>Special resolution:</i> passed by 75% of total votes. ¹⁶ Amendment of the company's charter documents requires a special resolution. ¹⁷ <i>Ordinary resolution:</i> passed by majority vote. No advisory or non-binding resolutions under Indian law.
Type of meeting?	EGM. An EGM is recommended because: (i) a shareholder climate resolution is likely to be "special business" not within the "ordinary business" that an AGM is supposed to address under Indian law; ¹⁸ (ii) the focus on "special business" at an EGM means that the subject matter of the resolution is more likely to receive greater attention and focus from the company, its board, as well as other shareholders; and (iii) EGMs can flexibly be held any number of times, whereas AGMs take place only annually.
Thresholds for filing a resolution/calling a meeting?	10%. Shareholders that hold 10% of the company's paid-up share capital that carries the right of voting, as on the date of the receipt of the filing of the resolution, may call for an EGM to consider the resolution. ¹⁹ No other threshold requirements apply for filing the resolution.
Filing restrictions?	No. No restrictions other than meeting the voting rights threshold above. Shareholders are not required to demonstrate that they have not sold any of their shares within a certain period of time prior to an AGM or EGM. Instead, the board is required to decide, and disclose in the shareholder notice, the cut-off date for the purpose of reckoning the names of shareholders who are entitled to vote ²⁰ on the resolution(s) to be considered at the AGM or EGM. The cut-off date for determining this must be a date not earlier than seven days prior to the date fixed for the AGM or EGM. ²¹

15. Section 100, Companies Act, 2013.

16. Section 114(2), Companies Act, 2013.

17. Section 13 and Section 14, Companies Act, 2013.

18. Only the board may put a "special business" resolution on the agenda of an AGM.

19. Section 100(2), Companies Act, 2013

20. This includes in-person voting and remote e-voting where applicable: companies listed on a stock exchange are required to provide an e-voting facility.

21. Para 8.4, Secretarial Standards On General Meetings, Issued by the Institute of Company Secretaries of India.

Overview of Legal Process – India

<p>Custodian rules?</p>	<p>Shareholder exercises rights as principal.</p> <p>Custodial services can only be provided by custodians registered with the Securities and Exchange Board of India (SEBI).²² The custodian institutions are not registered owners of the shares and the voting rights in respect of the shares held by a custodian rest with the shareholder. The custodian institution therefore does not exercise any rights on behalf of a shareholder. The shareholder exercises its rights as principal.²³</p>
<p>Process and formal requirements for filing resolutions / proposing a meeting?</p>	<p>Simultaneous filing of resolution and proposal of meeting.</p> <p>Shareholders will file a resolution and propose a meeting simultaneously by making a "proposal"²⁴ that contains a proposed date for the EGM and the resolution(s) proposed to be considered at the EGM.</p> <p><i>Form of proposal:</i> In writing or through electronic mode. It should specify the place, date, day, and hour of the meeting and should also contain the business that is proposed to be transacted at the EGM. Where the shareholders propose to pass the resolution at the EGM by way of a special resolution, they shall specify the same.²⁵</p> <p><i>Deadline for making proposal:</i> At least 21 clear days (exclusive of the day of dispatch of notice and day of the meeting) prior to the proposed date of the EGM.²⁶ An additional 2 days on top of this is recommended, to account for the possibility that the board will deliver the notice of the EGM to other shareholders via post or by courier (please see below).</p> <p><i>Delivery method:</i> Sent to the registered office of the company.²⁷</p> <p><i>Signatory of the request:</i> Signed by all the shareholders or by a shareholder duly authorised in writing by all others on their behalf.²⁸</p> <p><i>Language of the request:</i> English.</p> <p><i>Recipient:</i> The registered office of the company and addressed to the Board of Directors of the Company.</p> <p><i>Supporting documents:</i> Where an EGM is proposed by shareholders, no explanatory statement needs to be annexed to the notice of the EGM proposed to be convened. Rather, the shareholders may disclose their reasons for the resolution(s) which they will propose at such EGM.²⁹</p> <p><i>Other requirements:</i> Shareholders are required to propose an EGM only at the registered office or in the same city or town where the registered office is situated; and such EGM cannot be held on a national holiday.³⁰</p>

22. SEBI (Custodian) Regulations, 1996.

23. However, in case of issuance of global depository receipts of an Indian company, the foreign depository is entitled to vote on behalf of the holders of the depository receipts in accordance with the provisions of the depository agreement entered into between them. Rule 6, Companies (Issue of Global Depository Receipts) Rules, 2014.

24. In India, the technical term used is "requisition".

25. Rule 17(3), Companies (Management and Administration) Rules, 2014.

26. Rule 17(1), Companies (Management and Administration) Rules, 2014.

27. Section 100(3), Companies Act, 2013.

28. Rule 17(4), Companies (Management and Administration) Rules, 2014.

29. Rule 17(5), Companies (Management and Administration) Rules, 2014.

30. Rule 17(2), Companies (Management and Administration) Rules, 2014.

Overview of Legal Process – India

<p>How must the company respond? Who bears the costs?</p>	<p>Board to call EGM. Company bears the cost.</p> <p>The board should call a board meeting to consider the shareholders' proposal and convene an EGM³¹ within 21 days of receipt of the proposal, with the EGM to be scheduled for a date that is within 45 days of the date of receipt of the proposal.³² The board should also ensure that the notice of the EGM is given to those shareholders whose names appear in the 'Register of Members' of the company within three days of the date on which the shareholders made the proposal.³³ The company bears the cost of notifying all shareholders. Further, in discharge of the fiduciary duties of directors, the board should consider providing its view on the resolution in the notice to be issued to the shareholders.</p> <p>If the board does not convene an EGM as above, the shareholders may themselves hold the EGM. In order to hold such a meeting, the shareholders have the right to receive a list of all shareholders, together with their registered addresses and number of shares held. The company is required to give such information by the 21st day from the date of receipt of the proposal and, if there are changes to such information, then by the 45th day from the date of receipt of the proposal.</p> <p>Any reasonable expenses incurred by the shareholders will have to be reimbursed by the company, provided that such EGM is held by the shareholders within three months from the date when the valid proposal was made.³⁴</p>
<p>Can a resolution be withdrawn?</p>	<p>Normally, no.</p> <p>A resolution proposed at an AGM/EGM of an Indian listed company cannot be withdrawn. However, where a resolution is redundant, the company may decide not to consider such resolution for voting at the meeting. For example, there would be no point considering a proposal to remove a director if that director has already resigned.</p>
<p>Other potentially relevant rights?</p>	<p>Shareholders' rights to raise questions; inspect documents; approach regulators.</p> <p>The chairperson of the meeting has to provide shareholders with the opportunity to raise questions relating to the meeting agenda and ensure that shareholders who have sought any clarifications, information or explanations, are given an effective and timely response.³⁵ Climate-related information could be potentially relevant to a number of the ordinary items of business at an AGM in addition to any shareholder climate resolutions. The chairperson can, however, restrict repetitive questions and limit the amount of debate permitted on each resolution.</p> <p>Further, shareholders also have the right to inspect, and in some cases, obtain copies in both electronic and physical form of a number of documents relevant to general meetings. These include any documents referred to in the notice of the meeting, the minutes of proceedings or financial statements (and annexed documents, which are to be made available 21 days in advance of a general meeting).³⁶ These documents may be inspected at the registered office of the company³⁷ during specified business hours without charge. Shareholders may also pay a nominal fee and, within 7 working days of the request, obtain a copy of the minutes of proceedings of a general meeting.³⁸ Non-compliance with such a request can result in monetary penalties for the company and officers in default, and in the case of minutes of general meetings, shareholders may even approach the National Company Law Tribunal (NCLT) seeking a direction to permit inspection or furnish copies.³⁹</p> <p>Shareholders may also approach regulators (Registrar of Companies, the Ministry of Corporate Affairs or SEBI, as relevant) to express any concerns. The Central Government may direct investigation into the affairs of a company if it is informed of a special resolution passed by shareholders of a company that the affairs of the company ought to be investigated.⁴⁰</p>

31. V.G. Balasundaram v. New Theatre Carnatic Talkies P. Ltd., (1993) 77 Com Cases 324 (Mad).

32. Section 100(4), Companies Act, 2013.

33. Rule 17(6), Companies (Management and Administration) Rules, 2014.

34. Section 100(6), Companies Act, 2013.

35. Para. 5.2, ICSI Guidance Note on General Meetings.

36. Sections 102(3), 119, 120 and 136, Companies Act, 2013; Rules 26, 27 and 29, Companies (Management and Administration) Rules, 2014.

37. Copies to also be made available at the head office/corporate office/meeting in the case of notice referenced documents.

38. Paras. 1.2.5, 17.6, Secretarial Standard on General Meetings, Institute of Company Secretaries of India.

39. Section 119(3) and (4), Companies Act, 2013.

40. Section 210(1)(b), Companies Act, 2013.

3.2 Indonesia

3.2. Indonesia

Under Indonesian law, the following actors have oversight of a company's affairs:

- (i) the Board of Directors ("**BOD**") who have primary responsibility to manage the company;
- (ii) the Board of Commissioners who have primary responsibility to supervise the management of the company by the BOD; and
- (iii) the shareholders of the company.

Indonesian law allows the shareholders to direct the management of the company by filing a resolution through proposing an agenda to be discussed at a general meeting of shareholders ("**GMS**"), or passing a written circular resolution (with unanimous consent of all shareholders).

Shareholders can propose resolutions for consideration at a GMS, so long as they are proper and reasonable as well as in accordance with Indonesian Company Law and/or the company's charter documents (i.e. the articles of association ("**AOA**"). A shareholder climate resolution would fall within these criteria. The AOA does not need to specifically permit shareholders to propose any shareholder climate resolution in order for them to propose such a resolution, and it is not common in Indonesia that the AOA regulates this matter.

However, shareholders still need to be mindful so as not to intervene too heavily in the management of the company and overstep on the BOD's authority to manage the company, including the company's Corporate Social and Environmental Responsibility ("**CSR**") implementation. Further, in limited circumstances,¹ such as if they act in bad faith² to exploit the company for personal gain, shareholders could be exposed to personal liability if the company suffers damages and losses.³ Shareholders should naturally ensure that shareholder climate resolutions that are proposed do not fall within these circumstances.

The BOD owes a fiduciary duty to the company, the company's stakeholders and the shareholders, and must always act for the best interest of the company with good faith and duty of care.⁴ Hence, if the shareholder climate resolution has a detrimental effect on the Company, the BOD has a duty to refuse to carry out such resolution even if the resolution is approved by the shareholders.⁵ However, when considering what is detrimental or beneficial to the company, the Directors must take into account factors that influence / pertain to a company's overall business viability and longevity, which arguably should include climate-related strategies, risks and transition plans and external domestic and international pro-climate developments. Similarly, Directors should, of their own accord, implement business plans that make provision for climate-related matters and developments.

Shareholder climate resolutions could be crafted such that their "asks" relate to the company's annual work plan. In this fashion, the resolution is framed as regarding general matters, and will be passed if approved by more than half of the total casted votes (see the box on "Types of resolutions" in the Table for fuller detail.) It would be most useful for shareholder climate resolutions to be crafted as part of the business/work plan for the upcoming year, to provide a clearer and more specific objective.⁶ If successfully passed, this would make such climate resolutions part of the company's CSR plan. The company would have to implement the climate resolutions passed by shareholders into realisation through this annual work plan.

1. Other circumstances are if (i) shareholders are involved in unlawful acts by the Company; (ii) shareholders, either directly or indirectly and in an unlawful manner, use the assets of the Company which results in the assets of the Company falling insufficient to settle the liabilities of the Company; and (iii) the requirements for the Company to become a legal entity are not or not yet fulfilled. In this regard, when establishing a company there is a time period between the deed of establishment and the approval of the Minister of Law and Human Rights. In the event that a legal action is conducted by a shareholder on behalf of the company that has not obtained the status of a legal entity, then a shareholder will be liable personally and the act does not bind the company (shareholder can transfer the liability to the company if it is approved in GMS unanimously)

2. Either directly or indirectly.

3. Although Indonesian law generally limits the shareholders' liability to the extent of its shareholding.

4. If the Company suffers loss and damages, the Board of Directors may be personally liable, unless the Directors may prove that: (a) such loss and damages are not caused by their fault or negligence; (b) Directors have exercised their fiduciary duties in accordance with the best interest of the Company; (c) Directors do not have any direct or indirect conflict of interest which caused loss or damages to the Company; and (d) Directors have taken necessary steps to prevent and stop the loss and damages from continuing.

5. Shareholders must be able to justify why the resolutions are beneficial to the company and the Board of Directors (BOD) has no reason to reject them (and by doing so the BOD is in fact acting against the best interest of the company). And the BOD must be able to justify their opposition against the climate resolution. In principle, shareholders may freely dismiss the directors that are not of the same view as the shareholders in terms of the climate agenda as dismissal/appointment of directors/commissioners are within shareholders' rights, but directors may challenge the dismissal (which they may think unjust) in court.

6. Note that information on what shareholder resolutions are proposed or passed is not publicly available, as this is information internal to the company.

A CSR plan is mandatory for companies whose business activities are in the field of and/or related to natural resources.

Investors may also wish to consider amending the AOA (which requires a higher threshold of votes) to stipulate in the AOA that all business / work plans prepared by the BOD and submitted to the GMS for approval must also contain a climate agenda / plan, to lay an obligation for the BOD and therefore indirectly put the climate agenda into motion. This will give certainty and frame an obligation for the BOD to always consider a climate agenda in the business plan, but also allow some room to align the level of intensity with the company's condition at the given time (e.g. if the company would like to focus more on emissions reduction, or make climate agenda as part of the CSR program, or pick climate-friendly vendors/suppliers, etc). This would balance the BOD's ultimate business judgment role, which the shareholders have to honour, with climate ambition.

In this fashion, even without explicitly bringing shareholder climate resolutions, shareholders can also have a say in the company's CSR plan as they are able to approve or reject the company's work plan containing activity plans and budgets needed for the CSR implementation. This privilege also applies to approving or rejecting the company's annual report which includes a report on the CSR implementation and performance of the business activity. Indonesian law⁷ does not clarify further the criteria for shareholders at a GMS to approve or reject a company's work plan and annual report. Shareholders can thus take climate-related considerations into account when voting on a company's work plan and annual report, and in addition propose shareholder climate resolutions for consideration at a GMS.

The considerations above are all the more pertinent in light of key developments relevant to climate risk and ESG that took place in Indonesia in 2021-22. Briefly:

1. The Indonesian Government is committed to reduce greenhouse gas emissions by 29% (with its own efforts) and by 41% (if it receives international assistance) by 2030.⁸ It has also recently set a target to achieve net zero emission by 2060 or sooner.⁹ To achieve these targets, the Indonesian Government has been carrying out multiple climate-related actions, from collaborating with national and international partners on climate-related projects to issuing several related regulations. For instance, the Asian Development Bank and Indonesia launched a new partnership to establish an energy transition mechanism (ETM).¹⁰ On the transportation side, the first electric vehicle battery factory in South East Asia is being constructed in West Java, Indonesia as a result of collaboration between the Hyundai Consortium and the Ministry of Investment/Indonesia Investment Coordinating Board ("**BKPM**").¹¹
2. Particularly for the electricity sector, PT Perusahaan Listrik Negara (Persero) ("**PLN**") – the single electricity offtaker in Indonesia – plans to increase new and renewable energy power plants development plans from 29.6% to 51.6% or 20.9 GW of the total additional power plants within the next 10 years.¹² PLN also aims for 56.3% of new and renewable energy to be developed by the private sector¹³ which is estimated to require private investment of Rp56.3 trillion per year.¹⁴

7. Indonesian Company Law and GR 47/2012.

8. Indonesia Green Growth Program, "Indonesia's Updated NDC for A Resilient Future", accessed 14 June 2022, <http://greengrowth.bappenas.go.id/en/indonesias-updated-ndc-for-a-climate-resilient-future/>.

9. Agung Pribadi, "Speaking at COP26, Energy Minister Gives Indonesia's Commitment to Net Zero Emission", News Archive, accessed 14 June 2022, <https://www.esdm.go.id/en/media-center/news-archives/speaking-at-cop26-energy-minister-gives-indonesias-commitment-to-net-zero-emission>.

10. ETM is a transformative blended-finance approach that seeks to retire existing coal-fired power plants on an accelerated schedule and replace them with clean power capacity. (Asian Development Bank, "ADB, Indonesia, the Philippines Launch Partnership to Set Up Energy Transition Mechanism", *News Releases*, accessed on 14 June 2022, <https://www.adb.org/news/adb-indonesia-philippines-launch-partnership-set-energy-transition-mechanism>).

11. BKPM, "The First Electric Vehicle Battery Factory in Southeast Asia", *Publication*, accessed 14 June 2022, <https://www.bkpm.go.id/en/publication/detail/news/the-first-electric-vehicle-battery-factory-in-southeast-asia>.

12. Through its 2021-2030 Electricity Supply Business Plan (Rencana Usaha Penyediaan Tenaga Listrik / RUPTL). See also second dictum, letter (a) of the 2021-2030 RUPTL and PLN, "2021-2030 RUPTL Dissemination," 5 October 2021. Such additional power plants will largely consist of 25.6% from hydro power plants, 11.5% from solar power plants, and 8.3% from geothermal power plants: P. V-54 of the 2021-2030 RUPTL.

13. Slide 7 of PLN's 2021-2030 RUPTL Dissemination Presentation Material.

14. P. VI-1 of the 2021-2030 RUPTL.

3. With respect to regulatory development, the Indonesian Government has issued several regulations relating to carbon and climate change:

(a) Presidential Regulation No. 98 of 2021¹⁵ ("**PR 98/2021**") formulates steps to create climate change mitigation and adaptation action plans which includes, among others, carbon pricing.¹⁶ Ministries/agencies, local government, business actors and communities can conduct carbon pricing.

Minister of Environment and Forestry Regulation No. 21 of 2022 on the Procedures for Carbon Pricing Implementation ("**MOEF Reg 21/2022**"), as an implementing regulation of PR 98/2021 further addresses a number of matters, such as, among others, the procedures for implementing carbon trading activities, monitoring, reporting, and verification procedures related to carbon trading activities.

It is reported that the Indonesian Government is currently preparing several other implementing regulations of PR 98/2021, such as:

(i) Ministry of Environment and Forestry regulation on the Implementation of Nationally Determined Contribution ("**NDC**");¹⁷

(ii) Financial Service Authority (*Otoritas Jasa Keuangan*/"**OJK**") regulation on carbon market;¹⁸

(iii) Ministry of Finance regulation relating to the procedure for implementing carbon tax;¹⁹ and

(iv) Ministry of Energy and Mineral Resources regulation on the emission cap for and procedures for implementing carbon pricing on coal-fired power plants.²⁰

(b) Law No. 7 of 2021 on Harmonization of Tax Regulations ("**Law 7/2021**") provides that carbon tax will be imposed on individuals/entities that buy carbon-containing goods (including buying goods that emit carbon within the country) and/or conduct carbon-emitting activities (such as the power sector). Carbon tax will be imposed firstly on entities that engage in coal-fired power plant activities. Its implementation, which initially was supposed to commence on 1 April 2022, was delayed until July 2022²¹ and the Indonesian Government recently announced that the implementation of carbon tax would be postponed again due to the high uncertainty of the global economy (e.g. high food and energy prices).²² The carbon tax rate is set to be higher or the same as the carbon price in the carbon market with a minimum rate of IDR 30.00 per kilogram of carbon dioxide equivalent (CO₂e).²³

(c) As Indonesia has ratified the Paris Agreement, through Law Number 16 of 2016, OJK supports the government's commitment to the Paris Agreement through the Sustainable Finance Roadmap.²⁴ The Indonesia Financial Services Authority ("**IFSA/OJK**") is developing the Sustainable Finance Roadmap consisting of two phases: (i) Phase I (2015-2019) and (ii) Phase II (2021-2025).²⁵

During Phase I of the Sustainable Finance Roadmap, OJK issued regulation concerning the Implementation of Sustainable Finance for Financial Institutions, Issuers, and Public Listed Companies which requires the Financial Services Sector ("**FSS**") to implement sustainable finance principles, submit the Sustainable Finance Action Plan ("**RAKB**") to OJK, as well as a Sustainability Report that must be published to the public.²⁶

15. on the Implementation of Carbon Economic Value to Achieve Nationally Determined Contribution Targets and Control over Greenhouse Gas Emissions in Relation to National Development.

16. Based on Article 47 (1) PR 98/2021, there are four mechanisms of carbon pricing: (i) carbon trading; (ii) performance-based payments; (iii) carbon levies; and/or (iv) other mechanism in accordance with the development of science and technology as determined by MOEF.

17. See above.

18. Presentasi OJK di FGD "Regulation and Linkages to International Carbon Markets" yang diselenggarakan Kementerian ESDM tanggal 17 Mei 2022.

19. Kemenkeu, "Terapkan Pajak Karbon 1 Juli 2022, Pemerintah Siapkan Aturan Teknis Pelaksanaan", <https://www.kemenkeu.go.id/publikasi/berita/terapkan-pajak-karbon-1-juli-2022-pemerintah-siapkan-aturan-teknis-pelaksanaan/>, and Presentation Material of Ministry of Environment and Forestry at Seminar HSSE Talk Series #1 "Operationalization of Carbon Pricing towards Net Zero Emissions by 2060" conducted by PLN on 19 January 2022.

20. See above.

21. Jakarta Globe, "Indonesia Delays Carbon Tax Amid Rising Inflation", Business, accessed on 14 June 2022, <https://jakartaglobe.id/business/indonesia-delays-carbon-tax-amid-rising-inflation/>.

22. M. Ilham Chatarmy, "Implementation of Carbon Tax is Again Postponed", *Market Headlines*, accessed 3 October 2022, <https://www.idxchannel.com/idxc-live/video-1/implementation-of-carbon-tax-is-again-postponed/>.

23. Jakarta Post, "Indonesia Delays Carbon Tax Implementation Again, 1 Week Before Enactment," *Business*, accessed on 28 June 2022, https://www.thejakartapost.com/business/2022/06/24/govt-talks-delaying-carbon-tax-again-1-week-before-enactment.html?utm_campaign=os&utm_source=mobile&utm_medium=ios.

24. OJK, Indonesia Green Taxonomy Edition 1.0 – 2022, <https://www.ojk.go.id/keuanganberkelanjutan/id/publication/detailsflibrary/2352/taksonomi-hijau-indonesia-edisi-1-0-2022>.

25. See above.

26. See above.

Phase II is to continue the implementation of Sustainable Finance Roadmap Phase I and it focuses on, among others:

- (i) finalising the Green Taxonomy (see below);
- (ii) preparing carbon exchange operations in line with government policies; and
- (iii) developing the FSS reporting system including green financing/instruments in accordance with the Green Taxonomy (see below).²⁷

As of now, it has reached Phase II and OJK has issued Indonesia Green Taxonomy Edition 1.0 – 2022 ("**Green Taxonomy**").²⁸ The Green Taxonomy serves as a primary guideline to help the financial services sector in conducting a quantifiable categorisation of their portfolios.²⁹ Under the Green Taxonomy, OJK classifies environmental damages in Indonesia Green Taxonomy into three tiers: (i) green; (ii) yellow; and (iii) red.³⁰ The Green Taxonomy is voluntary.

- (d) The newly-issued Presidential Regulation No. 112 of 2022 on the Acceleration of Renewable Energy Development for Electricity Generation ("**PR 112/2022**") which
 - (i) prohibits new development of coal-fired power plants ("**CFPP**") with certain exceptions;
 - (ii) requires PLN to carry out early termination of its CFPP or power purchase agreements on CFPP with developers; and
 - (iii) requires the government to prepare a road map on CFPP early termination.

In addition, the new and renewable energy bill is being prepared which is expected to serve as an umbrella law for new and renewable energy development in Indonesia and may also regulate energy transition to replace non-renewable energy with new and renewable energy.

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27. See above.

28. Andre Simangunsong, "Indonesia's green taxonomy a path to sustainability", *Today's Paper*, accessed 27 June 2022, <https://www.thejakartapost.com/paper/2022/03/22/indonesias-green-taxonomy-a-path-to-sustainability.html>.

29. OJK, Indonesia Green Taxonomy Edition 1.0 – 2022, <https://www.ojk.go.id/keuanganberkelanjutan/id/publication/detailslibrary/2352/taksonomi-hijau-indonesia-edisi-1-0-2022>

30. (i) green means the operations either protect or improve the environment; (ii) yellow means the operations do no significant harm; and (iii) red means the operations are harmful. (Vincent Fabian Thomas, "OJK Launches Green Finances Taxonomy", *Regulations*, accessed 27 June 2022, <https://www.thejakartapost.com/business/2022/01/24/ojk-launches-green-finance-taxonomy.html>).

Overview of Legal Process – Indonesia

Basic right to file?	<p>Yes.</p> <p>A shareholder climate resolution can be filed for consideration at a general meeting of shareholders.</p>
Amendment to charter documents required or recommended?	<p>Not necessary.</p> <p>A shareholder climate resolution is rarely framed as an amendment to the company's AOA, although there is no regulatory restriction against it.</p> <p>As detailed in the Introductory section, shareholder climate resolutions could be crafted such that their "asks" relate to the company's annual work plan, and proposed at a GMS and passed with more than half the total casted votes. Investors could also consider amending the AOA (which requires a higher threshold of votes) to stipulate that all business/work plans prepared by the BOD and submitted to the GMS for approval must contain a climate agenda/plan.</p>
Types of resolutions available and voting thresholds?	<p>Resolution at general meeting of shareholders; circular resolution.</p> <p>A shareholder climate resolution can be filed as a resolution to be considered at a general meeting of shareholders. For private and public listed companies:</p> <ul style="list-style-type: none"> (i) if the resolution is framed as regarding general matters, and does not amend the AOA, the GMS may be held if more than ½ of the total shares with voting rights are present or represented in the GMS and the resolution is valid if approved by more than ½ of the total casted votes.³¹ (ii) if the resolution is framed as an amendment to the AOA, the GMS may be held if at least ⅔ of the total shares with voting rights are present or represented in the GMS and the resolution is valid if approved by at least ⅔ of the total votes casted. <p>The above is unless the Law³² and/or AOA sets out a higher threshold requirement for the resolutions to pass.</p> <p>A shareholder climate resolution could theoretically be filed by way of circular resolution, which is a resolution passed by shareholders in lieu of convening a GMS, provided that all shareholders unanimously approve and sign the proposed resolution. This is likely to be difficult to achieve, and also, for a public listed company, impractical due to the vast number of shareholders and constant daily trading of shares in the stock exchange.</p> <p>There are no advisory/non-binding resolutions under Indonesian law.</p>
Type of meeting?	<p>AGM or EGM.</p> <p>In Indonesia, shareholders participate in a company's affairs through a "General Meeting of Shareholders" ("GMS"). A GMS comes in two forms: a general meeting that is held annually (the equivalent of an AGM) no later than 6 months after the financial years;³³ and a general meeting that can be requisitioned at any time by shareholders (the equivalent of an EGM).</p> <p>As such, shareholders are not limited to requisitioning a climate-related resolution as an agenda³⁴ item at an AGM. Shareholders can call for a GMS to be convened by the Board of Directors, and propose a shareholder climate resolution as part of the agenda to be considered at the duly convened GMS.</p>

31. The voting threshold of the resolution also applies to a second and third GMS convened to consider the same matter if the quorum requirements are not met in a first GMS.

32. There are higher quorums for some specific corporate actions, such as merger, acquisitions, consolidation, dissolution and spin-off.

33. The Financial Years set out in the AOA, e.g., if the AOA set out the financial year period from June – May, then the AGMS must be held within 6 months from May.

34. The Indonesia Company Law does not recognize the phrase "ballot". Ballot can also be interpreted as a GMS Agenda.

Overview of Legal Process – Indonesia

<p>Thresholds for filing a resolution/calling a meeting?</p>	<p>Varies.</p> <p><u>Filing a shareholder climate resolution</u></p> <p>For a private company, there are no specific shareholding thresholds required to propose a shareholder climate resolution.</p> <p>For a public listed company, shareholders representing 1/20 or more of the total issued shares with voting rights (or lower threshold if set forth in the AOA) may propose an agenda in writing to be discussed at the upcoming GMS no later than 7 days before the Call for GMS is circulated.³⁵</p> <p>Indonesian law does not specifically regulate the date at which the shareholding threshold should be calculated. However, in principle, during the submission period for proposing agenda (no later than 7 days before the Call for GMS is circulated), shareholders already registered at that period in the company's shareholder register may propose an agenda.</p> <p><u>Calling a GMS</u></p> <p>For calling a GMS for a private company, shareholders who individually or jointly represent 1/10 or more of the shares with voting rights (or lower threshold if set forth in the AOA) and are registered in the Company's shareholders Registers may submit a GMS request to the Board of Directors (copied to Board of Commissioners). The request should state the reasoning or motive for such request.</p> <p>For calling a GMS for a public listed company, any shareholders who individually or jointly represent 1/10 or more of the shares with voting rights (or lower threshold if set forth in the AOA) may submit a request to the Board of Directors (copied to the Board of Commissioners) to convene the GMS.³⁶ The call for the GMS must:</p> <ul style="list-style-type: none"> (a) be made in good faith;³⁷ (b) take into account the interest of the public listed company; (c) constitute a request or agenda that requires GMS resolution; (d) include reasoning and material pertaining to the proposed agenda to be discussed at the GMS; and (e) not conflict against the laws and AOA of the public listed company. <p><u>Quorum for GMS</u></p> <p>For private and public listed companies, for a quorum for a GMS³⁸:</p> <ul style="list-style-type: none"> (i) to consider a shareholder climate resolution that is framed as general matters, the GMS may be held if more than 1/2 of the total shares with voting rights are present or represented in the GMS and the resolution is valid if approved by more than 1/2 of the total casted votes. (ii) to consider a shareholder climate resolution that is framed as an amendment to the AOA, a GMS may be held if at least 2/3 of the total shares with voting rights are present or represented in the GMS and the resolution is valid if approved by at least 2/3 of the total casted votes. <p>The above is unless the Law³⁹ and/or AOA sets out a higher threshold requirement for the resolutions to pass.</p>
<p>Filing restrictions?</p>	<p>No.</p> <p>No restrictions on which shareholders may file a resolution. However, if a GMS of a public listed company is successfully called, the shareholders who request for the call for GMS may not transfer their shares for at least 6 months since the date of announcement of the GMS.</p>

35. POJK 15/2020

36. POJK 15/2020

37. See the Introductory section on shareholders not acting in bad faith when proposing a resolution. The same criteria applies.

38. For both private and public companies, if at the first Call for GMS, the quorum is not met, the GMS may be adjourned and the Board of Directors must circulate second Call for GMS. If at the second GMS, the quorum is again not met, then the GMS must be adjourned again. The Board of Directors then must submit an application to the district court which jurisdiction encompass the domicile of the Company to request to court to stipulate a lower quorum to convene GMS.

39. There are higher quorums for some specific corporate actions, such as merger, acquisitions, consolidation, dissolution and spin-off.

Overview of Legal Process – Indonesia

Custodian rules?	<p>Custodians can exercise full rights of legal shareholders.</p> <p>This is only applicable for public listed companies, as the shares of a private company are not held by custodian institutions. Shares registered in the name of the custodian must be treated by the company as shares owned by the legal shareholders.⁴⁰</p> <p>If the beneficial owner of the shares wishes to exercise rights of its own at a GMS, it will require written confirmation from the custodian that it can do so.</p>
Process and formal requirements for filing resolutions / proposing a meeting?	<p>Filing of resolution precedes a call for GMS, for public listed companies.</p> <p><u>Filing a resolution by placing it on the agenda of an upcoming GMS (private and public listed companies):</u></p> <p>A shareholder climate resolution must be proposed and considered at a duly convened GMS.</p> <p>For private companies, Indonesian law does not stipulate specific provisions regarding the procedure for proposing a resolution as an item on the agenda of a GMS. However, the agenda to be discussed at the GMS must be included in the call for GMS, along with a notification that all discussion material for the agenda is available at the Company's office from the date of the Call for GMS until the date the GMS is held.</p> <p>For public listed companies, shareholders may propose an agenda in writing to be discussed at the GMS no later than 7 days before the call for GMS is circulated. Once the requirements discussed in the box on "Thresholds" are satisfied, the agenda proposed by the shareholders must be specified by the company in the call for GMS.</p> <p><u>Requisitioning⁴¹ a GMS for private companies:</u></p> <p><i>Form:</i> Written, hard copy.</p> <p><i>Deadline for making proposal:</i> N/A</p> <p><i>Delivery method:</i> By registered mail or newspaper.⁴²</p> <p><i>Signatory of the request:</i> Shareholders holding 1/10 of shares or Board of Commissioners.</p> <p><i>Language of the request:</i> Indonesia language and/or along with English language or other national language (bilingual).</p> <p><i>Recipient:</i> The Board of Directors (copied to Board of Commissioners).</p> <p><i>Supporting documents:</i> Nothing specific, only have to mention the reasoning for the request and agenda being proposed.</p> <p><i>Other requirements:</i> None other than those in preceding boxes.</p> <p><u>Requisitioning a GMS for public listed companies:</u></p> <p><i>Form:</i> Written, hard copy.</p> <p><i>Deadline for making proposal:</i> N/A</p> <p><i>Delivery method:</i> By registered mail.</p> <p><i>Signatory of the request:</i> Shareholders holding 1/10 of shares or Board of Commissioners.</p> <p><i>Language of the request:</i> Indonesia language and/or along with English language or other national language (bilingual).</p> <p><i>Recipient:</i> To the Board of Directors (copied to Board of Commissioners).</p> <p><i>Supporting documents:</i> The GMS requisition letter accompanied with the reason of the GMS requisition.</p> <p><i>Other requirements:</i> None other than those in the preceding boxes.</p>

40. POJK 53/2020.

41. In Indonesia, "requisitioning" means the Shareholders' request to the Board of Directors to hold a GMS.

42. Registered mail is a mail addressed to the recipient and as evidenced with a receipt signed by the intended recipient which states the date of receipt.

Overview of Legal Process – Indonesia

<p>How must the company respond? Who bears the costs?</p>	<p>By placing the resolution on the agenda for a GMS and calling for a GMS. Typically, the company bears the costs.</p> <p><i>For private companies:</i> If all requirements are satisfied, the Board of Directors is obliged to circulate a call for GMS to consider the shareholder climate resolution no later than 15 days as of the date the call for the GMS is received.</p> <p><i>For public listed companies:</i> If all requirements are satisfied, the Board of Directors shall issue an announcement of GMS to the shareholders no later than 15 days as of the day that they received the call for the GMS. The shareholder climate resolution must be placed on the agenda of the GMS, and that agenda must be part of the announcement. The Board of Directors must notify the Indonesian Financial Service Authority (<i>Otoritas Jasa Keuangan - OJK</i>) of the agenda for the GMS no later than 5 business days prior to the announcement of the GMS.⁴³ Following the announcement of the GMS, the public listed company must call the shareholders to attend the GMS within 21 days of the date set for the GMS.⁴⁴</p> <p>Indonesian law does not specify who pays for costs related to filing the resolution and calling for a GMS. However, in practice, the company will typically bear all the costs related to a GMS.</p>
<p>Can a resolution be withdrawn?</p>	<p>Possibly, although no express stipulation in law.</p> <p>The Indonesia Company Law does not stipulate the withdrawal of the resolution. However, in practice, the shareholder through circular resolution or an EGM may pass another resolution approving the withdrawal of the previous resolution. But this is more for proper record and documentation.</p>
<p>Other potentially relevant rights?</p>	<p>Rights related to the management of the company; to appoint/dismiss directors/commissioners; filing lawsuits; requesting investigations.</p> <p>Shareholders' rights include the right to pass a resolution related to the management of the company, and the right to appoint/dismiss directors/commissioners.</p> <p>Additionally, shareholders also have the rights:</p> <ul style="list-style-type: none"> (a) to file a lawsuit against the company; (b) to file a lawsuit against the member of board of directors/board of commissioners; (c) for share buyback; and (d) to request investigation against the company.

43. Without taking into account the date of the announcement itself.

44. Without taking into account the date of call for GMS and the date of GMS.

3.3 Japan

3.3. Japan

In Japan, the Companies Act provides that the board of directors makes decisions on the management of the company. The Companies Act's default rule is that, at a company with a board of directors (the prevailing governance structure for Japanese listed companies), while the directors are bound by the shareholders' decisions on matters subject to a shareholders' resolution, a director should execute matters relating to the management of the company (a "**Management Matter**") pursuant to his/her fiduciary duty.

A shareholders' meeting can consider resolutions on matters set out in the Companies Act or the company's charter documents (the articles of incorporation ("**AOI**")).¹ However, a shareholder climate resolution would not normally fall within such matters. Unless the AOI allows shareholders to bring such resolutions, the proposed shareholder climate resolution will have to be in the form of an amendment to the AOI that incorporates the climate objective as part of the AOI. Shareholder climate resolutions are brought in Japan predominantly in this form.

The phenomenon of shareholder climate resolutions in Japan is an evolution of the way shareholder resolutions were originally viewed. Since the concept of a shareholder's resolution was introduced into the old Commercial Code in 1981, shareholder's resolutions were mainly used: (a) to promote a social agenda as part of a civil movement; or (b) by a large shareholder to force its will onto the company (e.g., election/removal of directors, large dividends/share buyback). As a result, companies at which such resolutions were brought tended to regard shareholder's resolutions as a nuisance and support from other shareholders was limited. However, since the first shareholder climate resolution at Mizuho in 2020, around 10 shareholder climate resolutions have been filed mostly by reputable NGOs and institutional investors and with clear scientific grounds and logical bases. Such resolutions are increasingly framed as supporting the long-term corporate value of companies rather than being focused on a specific environmental or social issue. Shareholder climate resolutions are now generally perceived to be positive by both the media and investors, and have dramatically changed the landscape of shareholder's resolutions in Japan.

Since a shareholder climate resolution is usually proposed in the form of a special resolution requiring $\frac{2}{3}$ votes, it is often difficult for such a resolution to be passed. However, proposing a credible shareholder climate resolution itself has an influence on the company, which further increases if the resolution obtains substantial support from shareholders. Some companies at which a shareholder climate resolution was proposed took climate-related action after the relevant resolution was voted down but obtained substantial support, although they did not specify that such action was prompted by the climate resolution. For example, Mizuho set a goal to phase out financing of coal-fuelled power plants, MUFJ joined the Net Zero Banking Alliance, and J-Power announced substantial renewable energy investment plans.

A shareholder climate resolution can also increase a shareholder's influence during engagement with a company, which a proposing shareholder usually conducts in parallel with preparing for the proposed shareholder climate resolution.

1. Default matters subject to a shareholders' resolution under the Companies Act can be categorised into: (a) a change to the company's characteristics (such as amendment to the articles of incorporation, capital reduction, dissolution, and merger), (b) appointment and removal of a lower governing body (including directors and auditors), (c) financials (such as annual financial statements, share buyback, and dividends), and (d) conflicts of interest (such as remuneration to directors and removal of a director's liabilities against the company).

Since the Companies Act does not provide any limits on the matters which the AOI may provide as being subject to a shareholders' resolution, one may think that shareholders can resolve any Management Matter by changing the AOI accordingly, and shareholders therefore have unfettered scope to propose all types of shareholder climate resolutions. This issue has long been discussed in Japan, as there had previously been several shareholder's resolutions which proposed a new provision in the AOIs of their respective companies: (1) enabling shareholders to decide a Management Matter (e.g., "a shareholders' meeting can resolve any material business matter"); or (2) requiring a specific action on a Management Matter (e.g., "the company will not build any new coal-fuelled power plants and phase out existing coal-fuelled power plants"). These were not successfully passed.

However, a growing number of practitioners argue that a shareholders' resolution on a Management Matter is problematic and should not be allowed because: (a) it upsets the distribution of power between the board of directors and the shareholders' meeting as contemplated under the Companies Act; (b) a director is bound by such resolution and may not be able to make the best decisions for the company; (c) it is difficult to hold a director liable for his/her actions in damaging the company or a third party if such director was following the resolution; and (d) it is practically impossible to obtain a shareholders' resolution on a Management Matter each time a new issue arises.

Hence, when proposing a shareholder climate resolution, care should be taken not to interfere with the directors' power regarding Management Matters when proposing the climate "ask" as an amendment to the AOI. In this regard, resolutions should be carefully framed to promote the long-term corporate value of the company and strengthened risk management. This might include resolutions regarding climate-related disclosures or matters of business strategy (such as bringing a business plan into alignment with the goals of the Paris Agreement) or strengthening disclosure or management focus on certain climate-related issues such as remuneration and climate governance without being too prescriptive.

Some recent notable shareholder climate resolutions in Japan include:

(i) Mizuho (2020 AGM by Kiko Network)

In March 2020, Kiko Network, a Japanese NGO, made a shareholder's proposal to Mizuho Financial Group seeking a resolution amending the AOI to add a new provision requiring Mizuho to disclose in its annual reporting a plan outlining the group's management strategy to align its investments with the goals of the Paris Agreement. This is understood to be the first major shareholder climate resolution in Japan. While the resolution was voted down, it was widely covered by the media and obtained substantial support from shareholders (34.5% affirmative votes), paving the way for more shareholder climate resolutions in following years.

(ii) J-Power (2022 AGM by HSBC Asset Management, Man Group, Amundi, and ACCR)

In April 2022, a group of institutional investors with a USD3 trillion AUM, co-filing with ACCR, an Australian NGO, made a shareholder's proposal to J-Power seeking a package of three resolutions all amending the AOI to add new provisions requiring J-Power to make certain climate-related annual reporting. While all resolutions did not pass, they obtained substantial support from shareholders (18.1% to 25.8% affirmative votes) despite headwinds against shareholder climate resolutions due to the energy crisis caused by the war in Ukraine. The shareholder climate resolutions also got heightened attention from professional investors as the first major shareholder climate resolutions filed by an institutional investor in Japan.

(iii) Kansai Electric Power

In April 2022, Kyoto City, Osaka City and Kobe City jointly made a shareholder's proposal to Kansai Electric Power ("**KEPCO**") seeking a package of four resolutions requiring KEPCO (i) to contribute to the achievement of a zero carbon society; (ii) to de-carbonise its power business; (iii) to disclose its climate-related risks and opportunities; and (iv) to introduce an Environmental, Social and Governance ("**ESG**") elements-driven remuneration system. While all resolutions were voted down, the news that the local city governments, both major shareholders in the company, had filed climate resolutions has significant impact and would provide further credibility to shareholder climate resolutions.

The above developments run alongside key regulatory and other developments relevant to climate risk and ESG that took place in 2021-22, as follows:

a. Regulator's guidelines

On 12 July 2022, the Financial Services Agency (the "**JFSA**") published for public comment a draft of "the Code of Conduct for ESG Evaluation and Data Providers" to promote sustainable finance by setting guidelines to ensure transparency, quality, and fairness of ESG evaluation and data providers.

On the same date, the JFSA published "Supervisory Guidance on Climate-related Risk Management and Client Engagement," which explains the JFSA's position in its inspection and supervision of a financial institution's handling of climate change.

b. Disclosure of non-financial information in annual reports

A listed Japanese company is required to file an Annual Securities Report (an "**ASR**"), which includes certain non-financial information as mandatory disclosure items. Currently, non-financial information disclosed in ASRs focuses on management strategy, the management's discussion and analysis of financial performance, and explanations of the risks to which the company is exposed. In its report published in June 2022, the Disclosure Working Group set up by the JFSA recommended including sustainability information as an independent and mandatory disclosure item in the non-financial information in an ASR, and suggested companies explain their handling of climate change as part of the sustainability information if the company thinks necessary. The JFSA is expected to publish draft rules setting out the information to be disclosed in an ASR to address proposals made by the Disclosure Working Group's report.

c. Directors' consideration of climate-related risks

Since there is now overwhelming scientific and financial evidence of the material impacts of climate change on businesses, a director's fiduciary duty would arguably include a director's duty to address climate-related risks and opportunities. This was set out in a 2021 report on 'Directors' Duties Regarding Climate Change in Japan'.² Additionally, as explained in (b) above, a listed Japanese company is required to explain the risks to which the company is exposed, and more and more Japanese companies disclose climate-related risks it faces and strategies to address such risks.

Local expert:

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2. Available [here](#).

Overview of Legal Process – Japan

<p>Basic right to file?</p>	<p>Yes.</p> <p>A shareholder satisfying certain shareholding requirements has the right to demand the company put forward its proposed shareholder climate resolution to be considered at the shareholders' meeting it specifies.³</p> <p>A proposed shareholder climate resolution must:</p> <ul style="list-style-type: none"> (i) be within matters subject to a shareholders' resolution under the Companies Act or other law or the company's AOI; (ii) be in compliance with the law and the company's AOI; (iii) not be substantially the same as a shareholder climate resolution which obtained less than 10% of the vote at a shareholders' meeting held within the past three years; and (iv) not fall under an abuse of rights.⁴
<p>Amendment to charter documents required or recommended?</p>	<p>Highly recommended / Required.</p> <p>Matters that the Companies Act provides as subject to a shareholders' resolution do not normally cover shareholder climate resolutions. Unless the company's AOI provide grounds for a shareholder to propose a shareholder climate resolution (which is not normally the case), a shareholder climate resolution should be in the form of an amendment to the AOI that includes the climate "ask" in the AOI. This requires a special resolution at a shareholders' meeting.</p>
<p>Types of resolutions available and voting thresholds?</p>	<p>Special and ordinary resolutions.</p> <p><i>Special resolution:</i> passed by two-thirds (or a higher threshold if provided in the AOI) of voting rights held by shareholders attending the shareholders meeting.⁵ Amendment to the AOI must be approved by a special resolution.</p> <p><i>Ordinary resolution:</i> passed by a majority of voting rights held by shareholders attending the shareholders meeting.</p> <p>In Japan, legally non-binding advisory resolutions are often proposed by the management to confirm shareholders' views (e.g., on the introduction of a takeover defence measure). However, it is generally understood that a shareholder is unable to propose such a resolution, and the company can reject any such proposal, because the Companies Act does not contemplate an advisory resolution, and a legally non-binding resolution may cause confusion in the operation of a shareholders' meeting.</p>
<p>Type of meeting?</p>	<p>Annual general meeting of shareholders (AGM).</p> <p>A company must hold an AGM within a certain predetermined period after the end of each fiscal year.⁶ Usually, a company provides in its AOI the month in which an AGM is to be held (mostly in June for a company with a March end of fiscal year, typical for Japanese companies). A company can also hold an extraordinary general meeting of shareholders (an "EGM") anytime when necessary.</p> <p>Given the shareholding period requirement and filing deadline for a shareholder's proposal, an AGM is an appropriate venue to propose a shareholder climate resolution since the timing of an EGM is usually unpredictable.</p>

3. Article 303, Paragraph 1 of the Companies Act.

4. A shareholder's proposal that seeks to promote the proposing shareholder's personal interests or harass the company. In its nature a shareholder climate resolution is very unlikely to be seen as abuse of shareholder's rights.

5. Article 466 and Article 309, Paragraph 2, Item 11 of the Companies Act.

6. Article 296, Paragraphs 1 and 2 of the Companies Act.

Overview of Legal Process – Japan

<p>Thresholds for filing a resolution/ calling a meeting?</p>	<p>Filing a resolution: 300 voting rights or 1% or more of the total voting rights held for 6 months.</p> <p>Calling a meeting: 3% or more of the total voting rights held for 6 months.</p> <p>A shareholder can propose a shareholder’s resolution if it holds 300 voting rights in the company, or 1% or more of the total voting rights, for a period of 6 continuous months preceding the submission of the shareholder resolution (a company can provide for less than 300, 1% and/or 6 months in the AOI, but such a provision is rare).</p> <p>For most Japanese companies, 100 shares constitute one voting right, and the number of total voting rights is more than 30,000. Therefore, 30,000 ordinary shares are usually the minimum holding required for proposing a shareholder resolution. The 300 voting rights / 1% of the total voting rights threshold can be met either by a single filing shareholder or a group of co-filing shareholders.⁷</p> <p>A shareholder can request a director of the company to convene a shareholders’ meeting if it holds 3% or more of the total voting rights, for a period of 6 continuous months preceding the request (a company can provide less than 3% and/or 6 months in the AOI).⁸</p>
<p>Filing restrictions?</p>	<p>No particular restriction other than meeting the filing threshold and duration of holding requirements.</p> <p>Other than holding, alone or in aggregate with its co-filing shareholder(s), 300 voting rights or 1% of the total voting rights for a period of 6 continuous months, there is no particular restriction on which shareholder may propose a shareholder climate resolution.</p> <p>Taking into account that the shareholder must hold 300 voting rights or 1% of the total voting rights for 6 consecutive months, and that issuance of an Individual Shareholder Notice,⁹ which the shareholder must deliver to the company to evidence its shareholding, may take 10 business days at maximum, it should be noted that, practically, the shareholder must hold 300 voting rights from approximately 8.5 months before the relevant shareholders’ meeting.</p>
<p>Custodian rules?</p>	<p>May need a power of attorney from the custodian.</p> <p>Under the Companies Act, a company is only required to treat a registered shareholder as its shareholder and can refuse to treat a beneficial shareholder behind the registered shareholder as its shareholder. It is typical for a non-Japanese shareholder to hold shares in a Japanese listed company in its global custodian account and not in its own name.</p> <p>In such a case, the registered shareholder is the global custodian, and not the beneficial shareholder that the global custodian holds shares on behalf of. The company can reject a shareholder climate resolution proposed by the beneficial shareholder. While it is possible that the company may recognise the beneficial shareholder as a substantive owner of its shares and allow it to propose a shareholder’s resolution at the company’s risk, this cannot be expected as a matter of course.</p> <p>If the beneficial shareholder cannot transfer a sufficient number of shares into its own account,¹⁰ the only solution is to obtain a power of attorney from the global custodian and propose a shareholder’s resolution on behalf of the global custodian. Whether the global custodian issues a power of attorney will depend on their practice and care should be taken to protect the global custodian’s reputation and fiduciary duty owed to other clients.</p>

7. Article 303, Paragraph 1 of the Companies Act.

8. Article 297, Paragraph 1 of the Companies Act.

9. See note 14 below.

10. Termed a “FIAMI account”.

Overview of Legal Process – Japan

Process and formal requirements for filing resolutions / proposing a meeting?

Advance notice of shareholder climate resolution required before the meeting.

Form: In writing. Although the Companies Act does not specify a form of a shareholder's proposal, a company usually requires in its internal rules that any request to the company must be made in writing. Even if not required, a shareholder's proposal should be made in writing to avoid a potential dispute with the company over what is proposed.

Deadline for making proposal: 8 weeks before the shareholders' meeting.¹¹

Delivery method: Hard copy by registered mail or courier plus electronic copy by email. It is preferable to use a delivery service which can provide evidence of the date of the receipt by the company. In practice, a proposing shareholder, through its lawyer, closely communicates with the company to check the text of the shareholder's resolution and the formality of supporting documents (which is highly recommended, otherwise there is a chance that the company may reject the shareholder's resolution as not in order). Such communications are usually made via email and the company often requests an electronic copy in addition to a hard copy.

Signatory of the request: Representative of the proposing shareholder. His/her authority must be evidenced by supporting documents.

Language of the request: Japanese.¹²

Recipient: Director(s) of the company.¹³

Supporting documents: Individual Shareholder Notice¹⁴ and identification documents of the proposing shareholder and its representative; plus, if made as an attorney of the global custodian, identification documents of the global custodian and its representative.

The Companies Act does not require any supporting documents, but usually a company provides in its internal rules what a shareholder must submit to the company when exercising minority shareholder rights such as making a shareholder's proposal. Internal rules differ company by company, of course, but most Japanese listed companies follow the model rules prepared by the National Association of Shareholders Affairs (the "NASA").

The relevant NASA model rules provide that, when exercising a shareholder right against the company, a shareholder must submit to the company, (a) an Individual Shareholder Notice,¹⁵ and (b) its identification documents, and, if exercised through an attorney, (c) the power of attorney, and (d) the attorney's identification documents.

With respect to identification documents, a Japanese company usually requests a commercial registry record (which shows registered information such as name, address, date of incorporation, and directors) and seal certificate (which shows an impression of the registered seal that a Japanese person or entity uses instead of a signature to execute documents). What will suffice as identification documents for a non-Japanese company and/or individual is difficult to determine due to the differences in legal/registration systems, and sometimes even the company does not know what they should request. Close communication with the company well in advance of the filing deadline is key.

Other requirements: (1) When supporting documentation is not in Japanese, the company usually requires a Japanese translation; and (2) Some Japanese companies require in their internal rules that the reason stated for a shareholder's resolution be 400 characters or less following such requirement in the old Commercial Code. If the reason for the shareholder's resolution exceeds the limit, the excess part will not be included in the convocation notice¹⁶ for the shareholders' meeting.

11. In order to add a shareholder's proposal to the convocation notice for a shareholders' meeting, a shareholder's proposal must be made by the date eight weeks before the shareholders' meeting (Article 305, Paragraph 1 of the Companies Act).

12. The Companies Act does not provide in what language a shareholder's resolution must be made. A company's internal rules usually do not specify the language to be used either. However, as the resolution will be put forward at a shareholders' meeting and will be subject to voting by shareholders, many of whom are typically Japanese, it is preferable to propose the resolution in Japanese.

13. Article 303, Paragraph 1 of the Companies Act.

14. An Individual Shareholder Notice is issued by the Japan Securities Depository Center, a central securities depository, via the system through which all Japanese listed shares are cleared, and shows the shareholder's shareholding in the company for the last six months and 28 days. A shareholder requests an Individual Shareholder Notice through its custodian/depository and it is issued to the company within 4 to 10 business days.

15. See note 13 above.

16. The convocation notice is a formal notice of the shareholders' meeting.

Overview of Legal Process – Japan

<p>How must the company respond? Who bears the costs?</p>	<p>The company must include the proposed shareholder climate resolution in the convocation notice of the specified shareholders' meeting at its cost.</p> <p>If a shareholder climate resolution is proposed legitimately, the company must put forward the proposed agenda item at the relevant shareholders' meeting and describe the proposed agenda in the convocation notice for the shareholders' meeting.¹⁷</p> <p>In the "reference documents" which are required to be attached to the convocation notice, the company must also describe the details of the agenda (i.e., (i) that the agenda was proposed by a shareholder, (ii) the opinion of the board of directors regarding such agenda (if any), and (iii) the reason for the shareholder climate resolution provided by the shareholder (if any)).</p>
<p>Can a resolution be withdrawn?</p>	<p>In practice, yes.</p> <p>The Companies Act is silent on whether a shareholder can withdraw a shareholder's resolution that it proposed. However, it is generally understood that a shareholder's resolution can be withdrawn with the approval of the company and, in practice, the company typically approves the withdrawal without any problem (usually happily since many Japanese companies still see a shareholder's resolution as a "nuisance") at least before a text of the convocation notice is sent to a printing company.</p>
<p>Other potentially relevant rights?</p>	<p>Indirectly through voting "no" to resolutions proposed by the company.</p> <p>A shareholder can create some pressure on the company by warning the company in advance (possibly by way of public announcement) that it will vote "no" on a resolution proposed by the company (indicating that it will vote against a director's appointment is often used as a strategy) if the company cannot meet a certain objective. This tactic is already used by some asset management companies for diversity goals (e.g., nomination of women to the board), but it can be used for other ESG issues.</p> <p>In addition, a shareholder can file a resolution to remove a director and/or statutory auditor (which is an ordinary resolution and requires a majority vote). This is often used in a fight between a major shareholder and the company but can be used alongside a shareholder climate resolution.</p>

3.4 Malaysia

3.4. Malaysia

In Malaysia, shareholders have a broad ability under the Companies Act 2016 (“CA 2016”) to bring resolutions on a wide range of matters, and shareholder climate resolutions are not precluded. There is normally no need to amend the company’s charter document in order to bring a shareholder climate resolution.¹ Resolutions may only be refused in limited situations, such as if they are defamatory, frivolous or “not in the best interests of the company.”² Given the important regulatory developments on climate change and sustainability considerations by companies in Malaysia, and the legal duties of directors to incorporate climate change considerations into their decision making processes,³ it would arguably be challenging for the company’s management to resist the proposal of a shareholder climate resolution by demonstrating that it is “not in the best interests of the company”.

In any case, shareholders have the legal right to bring shareholder climate resolutions by requiring the convening of an EGM to pass the resolution (for public or private companies),⁴ to propose the resolution for consideration at an upcoming AGM or EGM (for public companies),⁵ or as a written resolution (for private companies).⁶ Of these methods, the procedurally simplest would be to circulate a written resolution (for private companies)⁷ or to require the resolution to be passed at an upcoming meeting (for public companies).⁸

Shareholders also have the ability to question, discuss, comment or make recommendations on the management of the company at a shareholders’ meeting and may pass a resolution for making such recommendations to the Board of Directors (the “**Board**”) (for public and private companies).⁹ As there is no minimum shareholding threshold for shareholders to make recommendations, this is an alternative route for consideration for shareholders who do not have the minimum shareholding threshold required to propose resolutions (discussed in the Table below) to make recommendations on management of climate issues.

Such recommendations are not binding unless specific requirements are met: that the recommendation is in the best interests of the company and that (i) the company’s constitution provides for shareholders’ rights to make recommendations, which is uncommon; or (ii) the resolution to make such a recommendation is passed as a special resolution. Shareholders should be mindful that the aforementioned restrictions make it difficult for a shareholder to use this route to pass a binding (as opposed to non-binding) resolution. As it is unusual for the constitution to provide for the right to make recommendations, shareholders would either have to amend the constitution (discussed in the Table below), or propose and pass the recommendation as a special resolution, with the attendant notice requirements and higher threshold requirements required by a special resolution.

There has been a growing trend of shareholders, particularly institutional investors like Permodalan Nasional Berhad (“**PNB**”) and Employees Provident Fund (“**EPF**”), calling for companies to take into account Environmental, Social and Governance (“**ESG**”) considerations in their business plans. For instance, PNB had announced on 21 April 2022 its Sustainability Framework, which contains 10 ESG commitments for its own operations as well as for its

1. Unless the charter document expresses that shareholder climate resolutions are outside the scope of the charter document. Please see the answer in the Overview of Legal Process Table below on “Amendment to charter documents required or recommended?” .

2. See the answer in the Overview of Legal Process Table below on “Basic right to file” .

3. The Malaysian legal opinion on Directors’ Duties and Climate Change found that directors are legally required to incorporate climate change considerations into their decision-making process. Failure to do so is a violation of their fiduciary duty and their duty of care, skill and diligence. See [full opinion here](#).

4. Section 311 CA 2016.

5. Section 323 CA 2016.

6. Section 302 CA 2016.

7. Under Section 302 CA 2016.

8. Under Section 323 CA 2016.

9. Under Section 195 CA 2016. Section 195(1) CA 2016 provides that the chairperson of a meeting of members of a company shall allow a reasonable opportunity for members at the meeting to question, discuss, comment or make recommendations on the management of the company. Section 195(2) CA 2016 further provides that a meeting of members may pass a resolution making recommendations to the Board on matters affecting the management of the company. However, it is to be noted that pursuant to Section 195(2) CA 2016, the recommendation shall not be binding on the board, unless the recommendation is in the best interest of the company, and provided that: (a) the right to make recommendations is provided for in the constitution; or (b) passed as a special resolution (Section 195(3) CA 2016).

investments, and is sustained by the belief that *“by integrating ESG issues more systematically into PNB’s investments and operations, PNB will be better positioned to sieve new opportunities.”*¹⁰ EPF has also issued the EPF Sustainable Investment Policy, which sets out four key guiding principles in sustainable investment: (a) ESG in investment decision-making; (b) stewardship as a top priority; (c) commitment to local and global goals; and (d) focus on capabilities building.¹¹

Although to-date there has been no specific shareholder climate resolution brought in Malaysia, there is a growing trend in Malaysia that encourages companies to address climate change issues, which will prompt more shareholders’ resolutions on ESG and climate change issues. For instance, the Bursa Malaysia Corporate Governance Guide emphasises that the boards of Public Listed Companies (**“PLCs”**) need to determine what are material sustainability risks and opportunities and implement processes to measure and track and implement Key Performance Indicators (KPIs) for management performance on climate risks and sustainability issues. Shareholders will no doubt look closely at whether these steps are being implemented and properly disclosed in PLCs’ annual reports and at AGMs. The Minority Shareholder Watchdog Group, a Malaysian government initiative to protect the interests of minority shareholders through shareholder activism, has also advised minority shareholders to pay attention to how ESG issues are being managed by the Board and the management of their investee companies.¹² A trend of more shareholders’ resolutions on ESG and climate change issues can be expected to follow worldwide and in Malaysia.

The above observations run alongside Malaysian regulators’ active issuance of best practice guides, codes of governance and sustainability guides to incorporate ESG considerations into boards’ decision-making process. Some important developments on climate change and sustainability considerations that took place in Malaysia in 2021 – 2022 include the following:

1. The Securities Commission (**“SC”**) issued its Corporate Governance Strategic Priorities on 24 November 2021 for the years 2021-2023. These called for the strengthening of ESG fitness of boards and included continuous capacity building on sustainability to address discrepancies in ESG fitness of boards (particularly for small and medium-sized enterprises). The Guidelines on the Conduct of Directors of Listed Corporations and their Subsidiaries (issued by the SC on 30 July 2020 and revised on 12 April 2021) imposed on directors of PLCs and their subsidiaries (both listed and unlisted) requirements to discharge their fiduciary duty to exercise their powers for a proper purpose and in good faith in the best interests of the company, and their duty to act with reasonable care, skill and diligence. PLCs and directors are required to ensure there is an adequate group-wide framework for PLCs and their subsidiaries in the oversight of group corporate governance and performance, business strategy and priorities, and management of material sustainability risks, amongst others. This is also applicable to chief executives, chief financial officers and persons performing similar roles in PLCs and their subsidiaries.
2. The SC’s latest edition of the Malaysian Code on Corporate Governance (**“MCCG”**) issued in April 2021 contains express stipulations on the role of the board in the management of sustainability risks. Some examples are:
 - (a) Responsibility for governance of sustainability and setting the company’s sustainability strategies, priorities and targets.
 - (b) Ensuring that the company’s sustainability strategies, priorities and targets, and performance against these targets are communicated to its internal and external stakeholders.
 - (c) Ensuring that they stay abreast with and understand what the relevant sustainability issues are to its business.

10. See PNB’s [press release](#) dated 21 April 2022.

11. Accessible [here](#). See also the following [webpage](#) for further details on EPF’s various ESG commitments.

12. The observer, 25 February 2022 by MSWG. [Click here](#) for full article.

- (d) Performance evaluations of the board and senior management in addressing material sustainability risks and opportunities.
 - e) Disclosure of how key risk areas are evaluated, and controls put in place.
3. In the legal opinion on Directors' Duties and Disclosure Obligations under Malaysian Law in the Context of Climate Change Risks and Considerations,¹³ which was commissioned by the Commonwealth Climate and Law Initiative (CCLI) and launched on 22 July 2022, it was concluded that, amongst others:
 - (a) Directors are duty bound to proactively and urgently apprise themselves of all aspects of climate change that can affect their companies, take action to manage the full spectrum of climate-related risks by integrating them into their corporate strategies, plans and actions, and ensure proper disclosure of such risks;
 - (b) Boards cannot deny their obligation to take into account climate change risks in discharging their duties; and
 - (c) Shareholders would be able to institute legal action (either statutory, derivative or personal) directly against directors if they can demonstrate that the directors have acted in a manner prejudicial to their interests by failing to consider, mitigate or prevent climate risks or by failing to incorporate a climate-positive agenda in the company's decisions.
 4. The Main Market Listing Requirements of Bursa Malaysia ("**MMLR**") (the Stock Exchange) imposes mandatory requirements on PLCs to report on the incorporation of sustainability considerations and the management of environmental risks and opportunities into their business strategies. Disclosure in PLCs' annual reports of implementation of the MCCG principles and practices are also required by the MMLR.
 5. Bursa Malaysia has recently issued a consultation paper on 23 March 2022 setting out proposed amendments to the MMLR and ACE Market Listing Requirements which require:
 - (i) disclosure of sustainability matters and indicators that are deemed material for PLCs across all sectors and for specific sectors with climate change-related disclosures in line with the Task Force on Climate-Related Financial Disclosures ("**TCFD**") Recommendations;
 - (ii) quantitative information on the last three years' financial data and performance targets; and
 - (iii) a statement on whether PLCs' sustainability statements have been internally reviewed or independently assured. The paper envisages that these enhanced disclosure requirements will come into force for annual reports with financial year end of 2023 or 2024 depending on the relevant proposal. The above confirms the urgency for directors of PLCs to act on sustainability and climate change issues.
 6. Financial institutions and companies should also factor in Bank Negara Malaysia ("**BNM**")'s Climate Risk Management and Scenario Analysis Exposure Draft (issued in December 2021) whereby insurance and takaful operators¹⁴ are required to identify, assess and avoid under estimation of climate risks and strengthen management of climate-related financial risks. The Exposure Draft also requires financial institutions to make annual climate-related disclosures that are aligned with the TCFD Recommendations by 31 December 2024.

13. The Malaysian legal opinion on Directors' Duties and Climate Change, was authored by Tan Sri Zarinah Anwar and To'Puan Janet Looi.

See [full opinion here](#) and [key findings of the legal opinion here](#).

14. "Takaful" is derived from an Arabic word which means mutual guarantee – the simple concept of takaful is the foundation of the takaful business, which is the present Shariah-compliant insurance. "Takaful Operators" means a person licensed under Section 10 of the Islamic Financial Services Act 2013 to carry on takaful business and includes a licensed international takaful operator and a licensed retakaful operator. Takaful Operators provide Islamic protection and coverage for Islamic financing products offered by the Islamic banks.

Given all of the shareholders and institutional investors as well as regulators' strong emphasis on the need for companies and directors to identify, evaluate, measure and report on climate-related risks and their management, it is clear that companies and their Boards have a duty to take into account climate risks and opportunities in their business strategies and plans for their companies' long term sustainability, in order to properly discharge their directors' duties. Failure to do so attracts risks of litigation or shareholder revolt against the directors, and desertion by investors, customers and employees, given the various avenues available to shareholders and investors to act against boards and companies which fail to do so. A summary of shareholders' rights and avenues available for action in Malaysia are briefly summarised in the Table below.

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Overview of Legal Process – Malaysia

<p>Basic right to file?</p>	<p>Yes.</p> <p>Shareholders can file any type of resolution unless:</p> <p>(a) if passed, it would be ineffective whether by reason of inconsistency with Malaysian Law or the company's constitution;</p> <p>(b) it is defamatory of any person;</p> <p>(c) it is frivolous or vexatious; or</p> <p>(d) if passed, it would not be in the best interest of the company.</p> <p>The applicability of the restrictions mentioned above would depend on the specific form and content of the resolution and, in the case of (a), the specific requirements under the constitution of the company. A well-drafted shareholder climate resolution with a company's long term sustainability as its goal which does not contain any proposals which are outside the scope of a company's constitution or any of the elements in items (b) or (c) would stand a fair chance of not being struck down by a court as being not in the best interest of the company, given the current direction of legal requirements and regulatory guidance requiring climate change issues to be taken into account.¹⁵</p> <p>Filing of the resolution is done by circulation of a written resolution (for private companies), or by proposing the resolution and calling a shareholders' meeting (for public¹⁶ and private companies).¹⁷</p>
<p>Amendment to charter document(s) required or recommended?</p>	<p>Normally, no.</p> <p>Amendment of the company's constitution (the charter document) is only needed in the unlikely event that the shareholder climate resolution proposes an action which is outside the scope of the constitution.¹⁸ A company may not have a constitution, in which case default provisions of Malaysian company law will govern the company.¹⁹ As mentioned in the Introductory section, the default provisions of Malaysian company law are unlikely to prohibit the bringing of a shareholder climate resolution.</p> <p>Also as mentioned in the Introductory section, an alternative way for a shareholder climate resolution to be brought could be through a shareholder's resolution to make recommendations to the board.²⁰ There is no minimum shareholding threshold required to make such a recommendation. This recommendation will only be binding if it is in the best interests of the company, provided that: (i) the company's constitution provides for shareholders' rights to make recommendations, which is not common; or (ii) the resolution is passed as a special resolution. Hence, shareholders may consider amending the company's constitution to expressly provide shareholders with the right to make recommendations to management and thus increase a shareholder's breadth of influence over the management of the company, including where it concerns the incorporation of sustainability and climate-relevant considerations in the company's business.</p>
<p>Types of resolutions available and voting thresholds?</p>	<p>Special resolution and ordinary resolution.</p> <p><i>Special resolution:</i> passed by 75% of total votes. Amendment of the company's constitution requires a special resolution.²¹</p> <p><i>Ordinary resolution:</i> passed by majority vote. Some ordinary resolutions (such as the removal or appointment of a director or auditor) require special notice of at least 28 days.²² Do note that for resolutions requiring special notice (i.e. removal of directors,²³ auditors,²⁴ liquidators²⁵ or to appoint a person as an auditor under certain circumstances²⁶), the notice of the intention to move the resolution should be given to the company at least 28 days before the meeting at which the resolution is moved.²⁷</p>

15. Please refer to CCLI Opinion, at note 3 above.

16. This includes a listed or unlisted public company limited by shares.

17. Section 311 CA 2016.

18. Mohd Radwan Alami v Ibrahim bin Mohd Yusof & Ors [2019] 10 MLJ 761.

19. Under the previous Companies Act 1965 ("CA 1965"), companies would be required to adopt a memorandum of association and articles of association, which are two separate documents. Under the CA 2016, which supersedes the CA 1965, companies now have the option (as opposed to being required under the CA 1965) to adopt a constitution, which is a single document. The provisions of the constitution will govern the company to the extent permitted by the CA 2016. If there is no constitution adopted, then the provisions of the CA 2016 will govern the company. Do note that under Section 619(3) of the CA 2016, for companies already existing as at the commencement of the CA 2016, their memorandum of association and articles of association will continue to have effect as if adopted under the CA 2016. Hence, there are some companies who still retain the dual memorandum of association and articles of association under the CA 1965, unless they expressly choose to adopt the single constitution under the CA 2016.

20. Under Section 195 CA 2016.

21. Section 36(1) CA 2016. Other matters requiring special resolution include altering or reducing the share capital of a company (Section 84 (1), 115 CA 2016), and conversion from a public company to a private company or vice versa (Section 41(1) CA 2016).

22. Section 322(1) CA 2016.

23. Section 206 CA 2016.

24. Section 277(1) CA 2016.

25. Section 445(3) CA 2016.

26. Section 280 CA 2016.

27. Section 322 CA 2016.

Overview of Legal Process – Malaysia

<p>Type of meeting?</p>	<p>Either AGM or EGM.</p> <p>Shareholders at private and public companies can call for an EGM to consider a shareholder climate resolution at any time.²⁸</p> <p>Shareholders at public companies can also propose the resolution for consideration at an upcoming AGM or EGM.²⁹</p> <p>For public companies, an AGM may be preferred if shareholders wish to consider the shareholder climate resolution alongside potentially relevant matters dealt with at an AGM³⁰ (for instance, voting on the appointment of directors with a track record of climate governance). Private companies are not mandatorily required³¹ to hold AGMs unless it is a requirement in their constitutions.</p>
<p>Thresholds for filing a resolution/ calling a meeting?</p>	<p>In the case where shareholders at public companies are to propose a shareholder climate resolution for consideration at an upcoming AGM or EGM: 2.5% paid up capital, or 50 members who have the relevant right to vote and hold shares in the company where the paid up on an average sum per member is at least RM500. 2.5% voting rights if company has no share capital.</p> <p>In the case where shareholders at private and public companies are to call for an EGM to consider a shareholder climate resolution: 10% paid up capital, or 5% of voting rights if company has no share capital.</p> <p>For a written resolution for private companies: 5% voting rights or such lower percentage as specified in the constitution.</p> <p>For proposing a resolution for consideration at an upcoming meeting (Section 323 CA 2016)</p> <p>Shareholders must represent at least 2.5% of the paid up capital of the company carrying the right of voting excluding any paid up capital held as treasury shares,³² or at least 50 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per shareholder, of at least RM 500.³³ If the company does not have a share capital, the shareholders must represent at least 2.5% of the total voting rights of all members.³⁴ Thresholds are calculated as at the date the requisition is deposited with the company.³⁵</p> <p>For filing a resolution and calling a meeting to pass a resolution (private and public companies) (Section 311 CA 2016)</p> <p>Shareholders must hold 10% or more of the paid up capital of the company carrying the right of voting at meetings of members of the company, excluding any paid up capital held as treasury shares.³⁶ If the company does not have a share capital, 5% of the total voting rights of all members having a right of voting is needed.³⁷ Thresholds are calculated as of the date the requisition is deposited with the company.³⁸</p> <p>For a written resolution (private company)</p> <p>For private companies, any shareholder having a total of 5% of the total voting rights of all eligible members of the company, or such lower percentage as specified in the constitution, may require the company to circulate a written resolution for consideration.³⁹ The specific point in time at which the threshold is calculated is not expressly stated but is in practice taken to mean the date on which the request to circulate the written resolution is made by the shareholders.</p>
<p>Filing restrictions?</p>	<p>No.</p> <p>Shareholders do not have to be from the same jurisdiction as the company, and need not have held shares for a particular period of time to be eligible to file a resolution.</p>

28. Section 311 CA 2016.

29. Section 323 CA 2016.

30. Section 340(1) CA 2016.

31. Under CA 2016.

32. Section 323 (2)(a) CA 2016.

33. Section 323 (2)(b) CA 2016.

34. Section 323 (2)(c) CA 2016.

35. Section 323 (5) CA 2016.

36. Section 311(1) and (3) CA 2016.

37. See above. Additionally, Section 311(4) CA 2016 provides that, in the case of a private company, members representing at least 5% of the paid up capital of the company carrying the right of voting at meeting of members of the company may require a meeting of members to be convened if more than 12 months has elapsed since the end of the last meeting of members convened pursuant to a requisition under Section 311(1) CA 2016.

38. Section 311(6) CA 2016. The term "requisition" is used under Section 311 CA 2016 to refer to the written document circulated by the shareholders requiring the convening of the meeting. The term "requisition" is also used in the context of Section 323 CA 2016 in respect of the written document circulated by the shareholders proposing for a resolution to be considered at an upcoming meeting. We have also generally used the term here to refer to the written request circulated by the shareholders for the circulation of a written resolution under Section 302 CA 2016, since said provision refers to the shareholders having the right to *require* the circulation of the written resolution.

39. Section 302(1) CA 2016.

Overview of Legal Process – Malaysia

<p>Custodian rules?</p>	<p>Custodian exercises rights on behalf of shareholders, if authorised.</p> <p>The custodian institution or nominee company may exercise shareholders' rights on the shareholders' behalf if shareholders provide them with authority to do so.</p> <p><i>Reporting Framework for Beneficial Ownership</i></p> <p>Do also note that a company is required to obtain, verify and report on information regarding its beneficial owners pursuant to the Guidelines for the Reporting Framework for Beneficial Ownership of Legal Persons dated 1 March 2020 (revised 17 December 2020) issued by the Companies Commission of Malaysia.⁴⁰ Companies are to include beneficial ownership information in their annual returns.⁴¹</p>
<p>Process and formal requirements for filing resolutions / proposing a meeting?</p>	<p>For proposing a resolution for consideration at an upcoming meeting: The members of the company entitled to receive notice of an AGM or EGM shall be notified accordingly by the directors.</p> <p>For calling a meeting to pass a resolution: The resolutions shall state the general nature of the business to be dealt with at the meeting and may include the text of a resolution to be moved at the EGM and the resolutions should be in hard copy or electronic form. Every member, director and auditor of the company is entitled to receive a notice of meeting.</p> <p>For passing a written resolution: The directors shall send copies of the resolutions not more than 21 days from receipt of the requisition and the recipients shall be the members who would have been entitled to vote on the resolution on the circulation date of the resolution.</p> <p><u>For proposing a resolution for consideration at an upcoming meeting (public companies) (Section 323 CA 2016)</u></p> <p>Shareholders at public companies may require the company to: (a) circulate a statement of not more than 1000 words with respect to (i) a matter referred to in a proposed resolution to be dealt with at that meeting, or (ii) other business to be dealt with at that meeting; or (b) the giving of a notice of a resolution for consideration at an upcoming AGM or EGM.⁴² For the purposes of this section, we will discuss limb (b), in that it allows for the consideration of a shareholder climate resolution at an upcoming AGM or EGM.</p> <p><i>Form:</i> Hard copy or electronic form.⁴³</p> <p><i>Deadline for making requisition:</i> The requisition requiring notice of resolution must be made at least 28 days before the meeting,⁴⁴ or such longer period as the Constitution may require if a special resolution is proposed.</p> <p><i>Delivery method:</i> Upon receipt of the requisition to propose a resolution at an upcoming meeting, the directors shall send a copy of the proposed resolution⁴⁵ to each shareholder of the company who is entitled to receive notice of the meeting: (a) in the same manner as the notice of the meeting; and (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.⁴⁶</p> <p><i>Signatory of the request:</i> Signed or authenticated by the shareholder making the requisition⁴⁷</p> <p><i>Language of the request:</i> English.</p> <p><i>Recipient:</i> The members of the company entitled to receive notice of an AGM or EGM shall receive such notice.⁴⁸</p> <p><i>Supporting documents:</i> No specific documents mentioned under CA 2016.</p> <p><i>Other requirements:</i> None.</p>

40. Referred to as "CCM" and "Beneficial Ownership Guidelines" respectively, Paragraph 6 of the Beneficial Ownership Guidelines, read together with the FAQs issued by CCM, defines "beneficial owners" as natural persons or individuals who ultimately own or control a legal entity or arrangement. This needs to be read together with Section 2 of the CA 2016, which defines a "beneficial owner" as "the ultimate owner of the shares and does not include a nominee of any description". Section 56 of the CA 2016 empowers companies to require the disclosure of beneficial ownership information from its members or other persons and to record such information in a separate section of the company's register of members. Further, Section 51(c) of the CA 2016 requires the company to notify CCM of the changes in the particulars of its register within 14 days from the date the information required under Section 56 of the CA 2016 is received by the company or recorded in its register.

41. On 17 December 2020, CCM announced that the transitional period for the Beneficial Ownership Guidelines will be extended from 1 January 2021 to a date to be determined and that the new enforcement date will coincide with the coming into operation of the proposed Companies (Amendment) Bill and the Limited Liability Partnerships (Amendment) Bill (collectively "Bills"). The Bills have, to date, not been passed by the Malaysian Parliament. Notwithstanding the extension of the transitional period, CCM had clarified in its FAQs that companies are to continue with the current practice of including beneficial ownership information in their annual return as currently required under Section 56 of the CA 2016.

42. Section 323(1)(b) CA 2016.

43. Section 323(3)(a) CA 2016.

44. Section 323 (3)(d)(i) CA 2016.

45. Note that the reference in the CA 2016 here is to the circulation of the statement under limb (a) above, but can be taken to refer to the notice of resolution referred to in limb (b) above as relevant here.

46. Section 324(1) CA 2016.

47. Section 323 (3)(c) CA 2016.

48. Section 323 CA 2016.

Overview of Legal Process – Malaysia

Process and formal requirements for filing resolutions / proposing a meeting? (Continued)

For calling a meeting to pass a resolution (private and public companies) (Section 311 CA 2016)

Shareholders may require the directors to convene an EGM and the requisition shall state the general nature of the business to be dealt with at the meeting and may include the text of a resolution to be moved at the EGM.⁴⁹

Form: Hard copy or electronic form.

Deadline for making requisition: No specific deadline.

However, do note that for resolutions requiring special notice (i.e. removal of directors,⁵⁰ auditors,⁵¹ liquidators⁵² or to appoint a person as an auditor under certain circumstances⁵³), the notice of the intention to move the resolution should be given to the company at least 28 days before the meeting at which the resolution is moved,⁵⁴ or such longer period as the Constitution may require if a special resolution is proposed.

Delivery method: Upon receipt of the requisition to convene an EGM, the directors will need to call the meeting within 14 days from the date of the requisition; and the EGM must then be held within 28 days after the date of the notice to convene the meeting.⁵⁵ For notice of meetings,⁵⁶ the hard copies shall be delivered either personally or by post to the address supplied by the member, the electronic form for notice of meetings shall be transmitted to the electronic address provided by the member. There is also an option for the notice of meeting to be transmitted by publishing on a website.

Signatory of the request: Signed or authenticated by the shareholder making the requisition.

Language of the request: English.

Recipient: Every member, director and auditor of the company is entitled to receive a notice of meeting.⁵⁷

Supporting documents: No documents, but requisition shall state the general nature of the business to be dealt with at the meeting and may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.⁵⁸ Furthermore, if the requisition identifies a resolution intended to be moved at the meeting, the notice of the meeting shall include the text of the resolution.⁵⁹

Other requirements: None.

For a written resolution (private companies)

Shareholders may circulate written resolutions for consideration. The shareholder may also require the company to circulate with the written resolution a statement of not more than 1,000 words on the subject matter of the written resolution.⁶⁰

Form: Hard copy or electronic form

Deadline for making requisition: No specific deadline.

However, do note that for resolutions requiring special notice (i.e. removal of directors,⁶¹ auditors,⁶² liquidators⁶³ or to appoint a person as an auditor under certain circumstances⁶⁴), the notice of the intention to move the resolution should be given to the company at least 28 days before the meeting at which the resolution is moved.⁶⁵

Delivery method: Upon receipt of the requisition to circulate a written resolution, the hard copies shall be delivered either personally or by post to the address supplied by the member; the electronic form for written resolutions (private companies) and notice of meetings shall be transmitted to the electronic address provided by the member.⁶⁶ The directors shall send copies of the resolutions not more than 21 days from receipt of the requisition.⁶⁷

49. Section 311(1) and 2 CA 2016.

50. Section 206 CA 2016.

51. Section 277(1) CA 2016.

52. Section 445(3) CA 2016.

53. Section 280 CA 2016.

54. Section 322 CA 2016.

55. Section 312(1) CA 2016.

56. Section 319 CA 2016, which provides for the manner in which notice of meetings should be delivered.

57. Section 321 CA 2016. The reference to member also includes any person who is entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting and the company has been notified of the person's entitlement in writing.

58. Section 311(2) CA 2016.

59. Section 312(2) CA 2016.

60. Section 302(3) CA 2016.

61. Section 206 CA 2016.

62. Section 277(1) CA 2016.

63. Section 445(3) CA 2016.

64. Section 280 CA 2016.

65. Section 322 CA 2016.

66. Section 300 CA 2016.

67. Section 303(3) CA 2016.

Overview of Legal Process – Malaysia

<p>Process and formal requirements for filing resolutions / proposing a meeting? (Continued)</p>	<p><i>Signatory of the request:</i> Signed or authenticated by the shareholder making the requisition.⁶⁸</p> <p><i>Language of the request:</i> English.</p> <p><i>Recipient:</i> For a written resolution of a private company, the recipients shall be the members who would have been entitled to vote on the resolution on the circulation date of the resolution.⁶⁹</p> <p><i>Supporting documents:</i> The proposal should state the resolution and provide any accompanying statement.⁷⁰</p> <p><i>Other requirements:</i> None.</p>
<p>How must the company respond? Who bears the costs?</p>	<p>Board to circulate proposed resolutions in advance of the EGM/AGM. Company bears the cost.</p> <p><u>For proposing a resolution for consideration at an upcoming meeting (public companies) (Section 323 CA 2016)</u></p> <p>Upon receipt of the requisition to propose a resolution at an upcoming meeting, the directors of a public company are required to send a copy of the statement to each member of the company who is entitled to receive notice of the meeting in the manner as the notice of the meeting. This should be done at the same time, or as soon as reasonably practicable after, the directors give notice of the meeting.⁷¹</p> <p><u>For calling a meeting to pass a resolution (private and public companies) (Section 311 CA 2016)</u></p> <p>Upon receipt of the requisition to convene an EGM, the directors shall circulate the proposal to all shareholders and call for the meeting within 14 days, and hold the meeting not more than 28 days after the date of the notice to convene the meeting.⁷² Furthermore, if the requisition identifies a resolution intended to be moved at the meeting, the notice of the meeting shall include the text of the resolution.⁷³</p> <p>The company bears the cost. If the directors fail to act, shareholders representing more than one half of the total voting rights of the shareholders who had made the proposal can call for the meeting / circulate the proposed resolution and claim reasonable reimbursement from the company.⁷⁴</p> <p><u>For a written resolution (private company) (Section 302 CA 2016)</u></p> <p>Upon receipt of the requisition to circulate a written resolution, the directors shall circulate to every eligible member in hard copy or electronic form a copy of the resolution and a copy of any accompanying statement,⁷⁵ at the same time, so far as reasonably practicable.⁷⁶ Furthermore, the copy of the resolution shall be accompanied by a statement as to the procedure for agreeing to the resolution, and the date the resolution will lapse if not passed.⁷⁷</p> <p>Shareholders requesting the circulation bear the cost and must deposit this amount with the company one week before the directors have to make the circulation.⁷⁸ If the directors fail to act, the shareholders can circulate the resolution themselves and claim reasonable reimbursement of expenses from the company.⁷⁹</p>
<p>Can a resolution be withdrawn?</p>	<p>Unclear.</p> <p>There is no specific Malaysian statutory provision or case law stating that a shareholders' resolution may be withdrawn after it has been filed. That said, it is possible that there could be no issue with withdrawing the resolution if all members who proposed the resolution agree to it.</p>

68. Section 306 CA 2016.

69. Section 298(1) CA 2016.

70. Section 302(5)(b) and (c) CA 2016

71. Section 324(1) CA 2016.

72. Section 312(1) CA 2016.

73. Section 312(2) CA 2016.

74. Section 313(1) and 313(6) CA 2016. The company can then offset such amounts from the remuneration due to the directors who failed to act: Section 313(7) CA 2016.

75. Section 303(1) CA 2016.

76. Section 303(2) CA 2016.

77. Section 303(4) CA 2016.

78. Sections 303 and 304 CA 2016.

79. Section 303(7) CA 2016.

Overview of Legal Process – Malaysia

Other potentially relevant rights?

Shareholders' rights of management review; appointment / removal of directors before expiry of term and voting on remuneration.

The chairperson of a meeting of shareholders shall allow a reasonable opportunity for shareholders at the meeting to question, discuss, comment or make recommendations on the management of the company.⁸⁰ This complements the shareholders' right to make recommendations to the Board at a shareholders meeting on matters affecting the management of the company, and pass these recommendations as a resolution at the meeting (discussed above).

Shareholders have the right to remove or appoint a director, and approve a director's fees and benefits.⁸¹ They may exercise this right based on their consideration of a director's track record on climate governance.

80. Section 195(1) CA 2016.
81. Sections 206(1) & (3), 230(1) CA 2016.

3.5

People's Republic of China

3.5. People's Republic of China

In the People's Republic of China (the "PRC"),¹ shareholders have rights to propose and vote on shareholder climate resolutions and receive protection of such rights under PRC law.² The range of matters that shareholders can file resolutions and vote on is wide, and include decisions "on the business policies and investment plans of the company".³ As such, a shareholder climate resolution can normally be proposed as an ordinary resolution. Further, a company's charter documents (i.e. the Articles of Incorporation ("**Articles**")) shall have no limitation or restriction on the bringing of a shareholder climate resolution.

Shareholders are investors in a company and enjoy shareholder rights based on their capital contributions. A shareholders' meeting is the ultimate authoritative body of the company and decides on important matters of the company. The board of directors is the permanent management decision-making body of the company, and also carries out matters in accordance with the resolutions passed at the shareholders' meeting. They are assisted by management personnel who are accountable to the board of directors and carry out the day-to-day management and operation of the company. Finally, the board of supervisors are the supervisory and inspection bodies of the company, responsible for inspecting and supervising the performance of duties by the board of directors, managers and other senior management personnel. Their duties include convening shareholders' meetings if the board of directors fail to act.

Companies in the PRC are divided into two categories: limited companies⁴ and joint-stock companies⁵. Unlike other jurisdictions, this distinction is not based on whether a company is private or publicly listed. Rather:

- (i) Joint-stock companies can either be private or publicly listed, although in practice the majority of them are publicly listed companies. Shareholders' voting rights correspond to the shares they hold.
- (ii) For limited companies, the laws governing them provide for more flexibility in their governance and structure. Shareholders' voting rights do not necessarily correspond to their shares, but can be agreed in the charter documents of the company (i.e. the Articles).

Certain parts of the legal process for bringing shareholder climate resolutions differ for limited companies and joint-stock companies. These distinctions are set out in the Table. For joint-stock companies, the route which requires the lowest voting threshold for shareholders to bring a shareholder climate resolution is for shareholders holding at least 3% of voting rights to propose a shareholder climate resolution at an already-scheduled meeting of shareholders.

1. Within the text and only for the purpose of this guide, "PRC" does not include the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR), the Macau Special Administrative Region of the People's Republic of China (Macau SAR) and Taiwan.

2. The organization and conduct of companies are regulated by the Company Law of the People's Republic of China (effective on 26.10.2018, currently in force) ("**Company Law**").

3. Article 37 and 99 of the Company Law for limited companies and joint-stock companies respectively.

4. Also called limited liability companies.

5. Also called joint-stock limited companies. Article 2 of the Company Law provides that the term "company" as mentioned in this Law refers to a limited liability company or a joint-stock limited company limited set up within the territory of the People's Republic of China according to the provisions of this Law.

While shareholder climate resolutions are not common in the PRC,⁶ proposing such a resolution would be in line with key regulatory developments relevant to climate risk and environmental, social and corporate governance (“**ESG**”), as proposed carbon peak and carbon neutrality targets have significant implications for the PRC’s regulatory environment and corporate governance mechanisms. 2021-2022 has seen an active response from various corporate entities at the corporate governance level, reflecting the current regulatory environment and the need for investors to manage climate risks in terms of energy efficiency, corporate governance and information disclosure. These are in line with common “asks” globally in shareholder climate resolutions.

In practice, the governance mechanisms related to shareholder climate resolutions are mainly implemented at the level of the company’s decision-making body and in the form of ESG reports and other disclosure measures related to environmental governance, commitment to energy saving and emission reduction related goals. Producing such reports is a manifestation of the power of the company’s board of directors, while at the same time, the shareholders’ meeting has the right to consider and approve the report of the board of directors. There has been an increasing trend of listed companies issuing reports on ESG and sustainability matters.⁷

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6. To the best of the authors’ knowledge, within the scope of disclosure by public listed companies on resolutions that have been proposed in recent years, a shareholder climate resolution is not common, notwithstanding that there is no material legal obstacle to bringing such a resolution.

7. “listed companies” here refers to companies with ordinary shares registered in PRC and listed on PRC stock markets, subscribed and traded in RMB. They do not include PRC companies listed in other forms, or on other stock markets (such as the U.S. or HK SAR market).

Overview of Legal Process – PRC

Basic right to file?	<p>Yes.</p> <p>Shareholders can file shareholder climate resolutions, so long as the formal requirements of filing the resolutions are met.</p>
Amendment to charter documents required or recommended?	<p>No.</p> <p>An amendment to the Articles is not needed. A shareholder climate resolution can normally be proposed as an ordinary resolution. Further, the Articles shall have no limitation or restriction on the bringing of a shareholder climate resolution.</p>
Types of resolutions available and voting thresholds?	<p>Ordinary or special resolution.</p> <p><i>Ordinary resolution:</i> For a joint-stock company, an ordinary resolution is passed by a majority of the voting rights held by the shareholders present at the meeting. For a limited company, the threshold for passing an ordinary resolution is determined in the Articles. A shareholder climate resolution can normally be proposed as an ordinary resolution.</p> <p><i>Special resolution:</i> For a joint-stock company, passed by 2/3 or more of the voting rights held by the shareholders present at the meeting.⁸ For a limited company, passed by 2/3 or more of the voting rights held by the shareholders.⁹ Amendments to the Articles must be made by special resolution.</p> <p>All validly passed resolutions are binding.¹⁰</p>
Type of meeting?	<p>Shareholders' meetings are divided into a regular meeting ("RM") or extraordinary meeting ("EM").</p> <p>RMs are meetings that are held periodically. For a joint-stock company, a RM is held once a year (and is sometimes also referred to as the "annual shareholder's meeting"); for a limited company, the frequency is stated in the Articles.</p> <p>EMs are additional meetings that can be called by shareholders. For a joint-stock company, they may be called by shareholders holding separately or aggregately more than ten percent of the company's shares. For a limited company, they may be called by shareholders representing at least one-tenth of the voting rights.</p> <p>A shareholder climate resolution can be proposed at either a RM or an EM. PRC law does not limit the matters that can be considered at shareholders' meetings. As a matter of practice, significant matters such as annual budget and final accounts proposals, annual reports, etc. are considered at the company's annual shareholders' meeting.</p>
Thresholds for filing a resolution/ calling a meeting?	<p>10% of voting rights to call an EM; voting rights to file a resolution varies.</p> <p>For a joint-stock company: Shareholders holding 3% or more of the shares may file a resolution¹¹ for consideration at an upcoming shareholders' meeting (RM or EM).¹² Shareholders with at least 10% of voting rights may call an EM.</p> <p>For a limited company: the threshold for filing a resolution at an RM or EM will be stated in the Articles. An EM may be called by shareholders representing at least 10% of voting rights.</p>
Filing restrictions	<p>Generally, no.</p> <p>No filing restrictions beyond the shareholding thresholds above, and formal proof of ownership of shares.¹³ For joint-stock companies (except for public listed companies), there can be no changes to the register of shareholders in the 20 days preceding the date of the meeting.¹⁴</p>

8. Article 103(2) of the Company Law.

9. Under the Company Law, joint-stock companies currently have one vote per share, but the draft amendments to the Company Law (released on December 2021, not yet effective) have incorporated a special voting rights mechanism and provide for classes of shareholders, the details of which are subject to further confirmation upon entry into force.

10. Binding on the company, its shareholders, directors, supervisors, employees, etc.

11. Termed an "interim written proposal".

12. Article 102(2) of the Company Law.

13. Such as the name of the shareholder having been recorded in the Articles or the register of shareholders, or the shareholder holds the certificate of capital contribution issued by the company.

14. Article 139 of the Company Law.

Overview of Legal Process – PRC

<p>Custodian rules?</p>	<p>“Custodian” has no directly equivalent legal concept in the PRC.</p> <p>PRC law does not provide for the exercise of the voting rights of shares held by a “custodian institution”, nor does “custodian institution” have a clear equivalent in PRC law. An institution that seeks to exercise voting rights on behalf of a beneficiary is subject to rules specific to that institution and circumstance.¹⁵ Any beneficial shareholder would have to seek advice on a case by case basis to ascertain if they can bring a shareholder climate resolution.</p>
<p>Process and formal requirements for filing resolutions / proposing a meeting?</p>	<p>Largely set by the Articles.</p> <p><u>For joint-stock company:</u></p> <p><i>Form:</i> In writing, by hard copy or in electronic form.</p> <p><i>Deadline for shareholders making proposal:</i> 10 days before the meeting.</p> <p><i>Delivery method:</i> No mandatory requirements.</p> <p><i>Signatory of the request:</i> No mandatory requirements.</p> <p><i>Language of the request:</i> No mandatory requirements.</p> <p><i>Recipient:</i> No mandatory requirements.</p> <p><i>Supporting documents:</i> No specific documents need to be provided, unless required by the Articles. Beyond this, shareholders can provide any supporting documents they wish.</p> <p><i>Other requirements for public listed companies include:</i></p> <p>The Board has to circulate the proposed resolution by those holding 3% or more of the shares to all shareholders within 2 days upon receipt of the resolution. The notice of the shareholders’ general meeting and the supplementary notice shall contain full and complete disclosure of the specific contents of all proposals and all information or explanations necessary to enable shareholders to make reasonable judgments on the matters to be discussed. The notice of the shareholders’ meeting shall specify the time and place of the meeting and determine the date of registration of shares.</p> <p>After the notice of the shareholders’ meeting is issued, the meeting shall not be postponed or cancelled, and the proposed shareholder resolutions specified in the notice shall not be withdrawn unless there are justifiable reasons.¹⁶</p> <p>The particular PRC Stock Exchanges on which a company is listed may also have specific requirements for proving share ownership,¹⁷ or even specific requirements for other documents to be provided to the convener of the shareholders’ meeting.¹⁸</p> <p><u>For a limited company:</u></p> <p>The process is set out in the Articles and specific to that company.</p>
<p>How must the company respond? Who bears the costs?</p>	<p>Company must circulate the filed resolution to all shareholders, and call for the requested meeting. Company normally bears the cost.</p> <p><u>For a joint-stock company:</u></p> <p>Shareholders with the requisite voting threshold should file the resolution at least 10 days before a shareholder’s meeting. Upon receipt of the proposed resolution, the Board of directors shall notify other shareholders within 2 days of this, and submit the proposed resolution to the shareholders’ meeting for deliberation.¹⁹</p> <p>If shareholders with the requisite voting threshold call for an EM to consider a resolution, the Board has to hold the EM within 2 months of such call.</p>

15. For example, if the “custodian institution” is understood to be the fund manager of a securities investment fund, the Securities Investment Fund Law and related laws and regulations do not provide for the exercise of voting rights by the fund manager with respect to the equity interests held by the fund. If a securities investment fund holds shares in a company, the voting rights of the fund’s holdings are exercised by its representative (usually the fund manager) on behalf of the fund’s shareholders in the fund’s own name based on the principle of diligence and fidelity, and how the fund manager votes is determined through the decision-making process set out in the fund’s documents.

16. The Rules for the General Meetings of Shareholders of Listed Companies (Revised 2022).

17. For e.g., the Shanghai Stock Exchange requires the shareholders to provide the convener with supporting documents such as a register of shareholders. If the shareholders jointly make a proposal by proxy, the shareholders shall issue a written authorization document to the proxy.

18. For e.g., the Shenzhen Stock Exchange requires that the shareholder deliver, within a prescribed period to the convener, documents proving the shareholder’s identity and share ownership, along with the specific content of the proposed resolution, and various other statements of compliance and guarantees of authenticity of the provided documents.

19. Article 102(2) of the Company Law.

Overview of Legal Process – PRC

<p>How must the company respond? Who bears the costs?</p>	<p><u>For a limited company:</u></p> <p>The Articles will provide for the process by which the company has to respond, and this is specific to that company. Typically, the company would have to circulate the proposed resolution to all shareholders in advance of the shareholders' meeting, within the time period specified by the Articles. In the case of a request for an EM, the Board of directors have to call for that EM. The Articles determine who bears the costs, though normally the company will bear this.</p> <p>For both joint-stock and limited companies, if the directors refuse or fail to call a meeting, the shareholders may request that the board of supervisors do so.²⁰ Where the board of supervisors refuses or fails to convene and preside over the meeting, a shareholder that has independently held, or the shareholders that have held in aggregate, 10% or more of the shares of the company (also for 90 or more consecutive days if it is a joint-stock company) may themselves convene and preside over the meeting.²¹</p> <p>The company normally bears the cost, regardless of whether the meeting is convened by the board of directors, the board of supervisors, or the shareholders.</p>
<p>Can a resolution be withdrawn?</p>	<p>Generally, yes.</p> <p>A resolution may be withdrawn before a valid vote is taken, provided the rules of procedure for shareholders' general meetings and the Articles do not prohibit the withdrawal. For a limited company and a joint stock company that is not publicly listed, the Articles govern any withdrawal. For a public listed joint stock company, the relevant rules require that after the notice of the shareholders' meeting is issued, the proposed shareholder resolutions specified in the notice shall not be withdrawn unless there are justifiable reasons.²²</p>
<p>Other potentially relevant rights?</p>	<p>Shareholders' participatory rights; rights to inspect documents, be informed, and raise questions.</p> <p>Generally, shareholders have the right to vote (including on the appointment, removal and remuneration of directors on any basis, such as a director's track record on climate governance), the rights to inspect documents and be informed, and in some cases, the right to raise questions.</p> <p><u>For joint-stock company:</u></p> <p>Shareholders are entitled to review the Articles, the register of the shareholders, the stubs of corporate bonds, the minutes of the shareholders' general meetings, the minutes of the meetings of the board of directors, the minutes of the meetings of the board of supervisors and the financial reports, and may put forward proposals or raise questions about the business operations of the company.²³</p> <p><u>For limited company:</u></p> <p>Shareholders are entitled to review and duplicate the company's Articles, the minutes of the shareholders' meetings, the resolutions of the board of directors' meetings, the resolutions of the board of supervisors' meetings, as well as the financial reports.²⁴</p>

20. For a joint-stock company that is listed, if the board of supervisors agree to hold an EM, it must call for the meeting within 5 days, notifying all shareholders of when that meeting is to subsequently take place. The board of supervisors will then preside over that meeting: Art. 9 paragraph 4 of the Rules for the General Meetings of Shareholders of Listed Companies (Revised 2022).

21. Article 101 of Company Law for joint-stock company; Article 40 for limited company.

22. The Rules for the General Meetings of Shareholders of Listed Companies (Revised 2022). Please also refer to the box on "Process and formal requirements for filing resolutions / proposing a meeting".

23. Article 97 of the Company Law.

24. Article 33(1) of the Company Law.

3.6 Hong Kong SAR

3.6. Hong Kong Special Administrative Region (SAR)

In Hong Kong Special Administrative Region (“**Hong Kong**”),¹ shareholders can bring resolutions on a wide range of matters, including shareholder climate resolutions.² This is the general position unless specifically prohibited by the company’s articles of association (the charter document of the company). If the company has not adopted specific articles of association (the “**Articles**”), Hong Kong law stipulates that “model articles of association” (the “**Model Articles**”)³ apply as a default. These contain no restrictions on the bringing of shareholder climate resolutions.

In limited circumstances, such as where the resolution contravenes public policy,⁴ the board of directors may refuse to place the proposed resolution before a meeting of shareholders for consideration. That said, contravention of public policy is a high bar. It is likely that an objective person may consider that a shareholder climate resolution would generally be in the best interest (and to the benefit) of the company, so the chance of the board of directors refusing to take such a resolution would likely be low. In terms of the manner in which shareholders may propose shareholder climate resolutions, shareholders have the right to do so via two routes:⁵

- (a) Where an annual general meeting (“**AGM**”) is upcoming, the shareholders can request the company to give notice of a proposed resolution to be considered at the AGM. The company *must* give notice of the resolution if it receives the request from (A) shareholders representing at least 2.5% of the total voting rights of all the shareholders who have a right to vote; or (B) at least 50 shareholders who have a right to vote. This is a relatively low requirement for many public companies.
- (b) The shareholders with at least 5% of the total voting rights of all shareholders having a right to vote can themselves request the directors to call a general meeting (“**GM**”) and include the text of a proposed shareholder climate resolution in the initial request to the board of directors and subsequent meeting notice to shareholders. The shareholder climate resolution will then be considered at the GM.

As for the form of the resolution, shareholder climate resolutions may be proposed as ordinary resolutions or special resolutions. Much depends on the nature of the climate “ask” and the Articles of the company in question. For instance, in the scenario where the Model Articles apply, if, for instance, the resolution is to authorise or ratify a transaction or conduct of the directors, then an ordinary resolution is usually sufficient. However, if, for instance the shareholders would like to direct the directors to take, or refrain from taking, specified action; or to direct the company to take any climate-related action (for example, setting any net zero transition plan) and the shareholders are or may be adverse to the directors (i.e. it is possible that the directors may not conduct such climate-related acts unless the shareholders direct so), then this would require the passing of a special resolution.⁶

1. Hong Kong Special Administrative Region of the People’s Republic of China.

2. The main legislation which governs corporate entities and shareholder rights in Hong Kong is the Companies Ordinance (Cap. 622) (the “**CO**”). The articles of association of a company, or a commercial agreement to which the shareholders and the company are parties, typically a shareholders agreement, may also provide for other bespoke reserved rights of shareholders.

3. Companies (Model Articles) Notice (Cap. 622H), available at <https://www.elegislation.gov.hk/hk/cap622H>. There are three slightly different versions – one for public companies, one for private companies limited by shares, and one for companies limited by guarantee.

4. Other circumstances include the situation where the resolution is invalid and cannot be properly proposed (for example, if an ordinary resolution has been proposed in respect of a matter which would otherwise require the passing of a special resolution under the CO). They might also include resolutions which are not in the best interests of the company for which the directors of a company have a fiduciary duty to safeguard. However, presumably, the company would have been incorporated to a certain extent for the purpose to further ESG initiatives, and the application of these other exceptions should be limited.

5. Note that a shareholder also has the right to propose a resolution to be passed as a written resolution (s. 549(b), 551 and 552 of the CO). However, if the resolution is proposed to be passed by written resolutions, all the shareholders entitled to vote will have to approve the resolution (Section 556 CO) – this would be an unlikely method for passing a shareholder climate resolution due to the benchmark requirement of attaining unanimity.

6. In this scenario where the Model Articles apply, shareholders have this “reserve power” and may use it to direct the board of directors of the company by special resolution to undertake any climate-related action. This right is not automatic – shareholders will first have to go through the procedures set out above for proposing a resolution at an AGM / requesting for a GM to consider the special resolution. The only exception to this right is that the shareholders may not invalidate any action the directors have undertaken prior to the passing of the resolution. See Part 2 of the Model Articles for public companies (Schedule 1); Part 3 of the Model Articles for private companies (Schedule 2); and Part 2 of the Model Articles for companies limited by guarantee (Schedule 3).

Another factor that shareholders may wish to consider is whether they would like their proposed resolution to be made public. Generally in the case of an ordinary resolution, the company is not required to file the resolution with the Companies Registry in Hong Kong (“**CR**”) and make such resolution available to the public. Conversely, after a special resolution is passed by a company, the resolution must be filed with the CR which will thereafter be made public.⁷ The Articles are themselves also public documents. Shareholders who wish to make their climate “ask” publicly known could therefore consider proposing a special resolution to amend the Articles to incorporate a climate objective.

In Hong Kong, there has been some investor focus on climate-related issues with respect to companies that are dual-listed in Hong Kong and another jurisdiction. In 2021, ShareAction, a charity promoting responsible investments, coordinated the filing of a resolution at HSBC Bank plc (“**HSBC**”). HSBC is a financial institution headquartered in London, but has a dual primary listing in both London and Hong Kong. The resolution would have required the company to publish short, medium and long-term targets to reduce its exposure to fossil fuel assets. This resolution was based on HSBC’s commitment to “*reduce financed emissions from [its] portfolio of customers to net-zero by 2050 or sooner*”. Subsequently, the co-filing institutions voluntarily withdrew the request, as HSBC agreed to put forward an alternative resolution concerning its net-zero alignment.⁸

This development runs alongside increasing regulatory focus on climate-related issues in Hong Kong over 2021 – 2022. These include:

- (a) In October 2021, the government of the Hong Kong Special Administrative Region presented the Climate Action Plan 2050 (the “**Plan**”), which proposed a goal of halving carbon emissions before 2035 and carbon neutrality before 2050.⁹ The government outlined four broad decarbonisation measures in the Plan: (a) net-zero electricity generation; (b) energy saving and green buildings; (c) green transport; and (d) waste reduction, and agreed to contribute around HK\$ 240 billion to implement these measures. The Plan demonstrates the government’s new strategic emphasis on environmental protection and combating climate change.
- (b) In Hong Kong, all companies (both public and private) are generally required to disclose their environmental policies and performance in an annual directors’ report if this is necessary for understanding the development, performance or position of the company’s business, unless they fall within one of the stated exemptions.¹⁰ Specific categories of companies may be subject to additional requirements implemented by the applicable regulator(s). For example:
 - (i) The Stock Exchange of Hong Kong amended its ESG Reporting Guide for listed issuers in December 2019 (the “**Guide**”), which came into effect in July 2020.¹¹ The Guide sets out broad mandatory and “comply or explain” disclosure obligations relating to all aspects of environmental protection and climate change. Under the Guide, a listed issuer’s board of directors is responsible for effective governance and oversight of ESG matters, as well as assessment and management of material environmental risks.
 - (ii) The Hong Kong Securities and Futures Commission issued an amended circular in June 2021 for unit trusts and mutual funds that incorporate ESG factors as their key investment focus (the “**Circular**”), which came into effect in January 2022.¹² The Circular requires relevant entities to disclose information about how they incorporate ESG factors, as well as report and reference ESG criteria, showcase portfolio measurement approaches, and release periodic assessments annually.

7. This process could be more administratively cumbersome to the company since it would need to file the special resolution with the CR within 15 days from passing the same. The company may wish to line up with its company secretary to ensure it remains compliant with these additional filing obligations.

8. Please see HSBC’s Notice of the 2021 AGM [here](#) for additional information.

9. <https://www.info.gov.hk/gia/general/202110/08/P2021100800588.htm> (press release)

10. https://www.climate-ready.gov.hk/files/pdf/CAP2050_booklet_en.pdf (full Plan)

11. Schedule 5, CO. The exemptions are set out under Section 388(3) CO.

12. Appendix 27 at https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_3841_VER18584.pdf

13. <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/doc?refNo=21EC27>

(c) Further, certain legal experts¹³ have indicated that directors are under a general duty to consider and address climate-related risks when making business decisions where such risks intersect with and affect the interests of the company. This obligation forms a part of the broader duty to act in the best interests of the company and to exercise reasonable care, skill and diligence. In this respect, a director could be held liable for any losses to the company where this results from, for example, failing to make proper business decisions that reflect climate change risks, or exposing the company to climate change litigation.

(d) In view of the above, although we are not aware of any shareholder-proposed resolutions on climate change in Hong Kong, we expect such resolutions to become more common in Hong Kong, in line with the corporate and regulatory trends in the region.

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13. For example, see the Legal Opinion on Directors' Duties and Disclosure Obligations under Hong Kong Law in the Context of Climate Change Risks and Consideration by Alexander Stock SC and Jennifer Fan of Temple Chambers dated 19 October 2021 [here](#) and Directors' Liability and Climate Risk: White Paper on Hong Kong by Ernest Lim for the Commonwealth Climate and Law Initiative dated 21 December 2021 [here](#).

Overview of Legal Process – Hong Kong SAR

Basic right to file?	<p>Yes.</p> <p>Shareholders have a right to request the company to call a GM to consider the shareholder climate resolution,¹⁴ or alternatively request the company to give notice of a proposed resolution to be moved at an AGM that is upcoming.¹⁵</p>
Amendment to charter documents required or recommended?	<p>Depending on whether the Articles of the company contain any prohibition – No need to amend if the Model Articles are adopted.</p> <p>Unless a company has adopted specific Articles that prohibit or restrict shareholder climate resolutions, shareholders can bring shareholder climate resolutions without the need to amend the Articles.</p> <p>In the rare scenario that the Articles do contain such prohibition or restriction, shareholders would have to amend the Articles to permit this. Shareholders must first propose and pass a special resolution to remove the prohibition. Thereafter, the shareholders may lawfully propose and pass the shareholder climate resolution(s) in accordance with the Companies Ordinance (“CO”) and the Articles.</p>
Types of resolutions available and voting thresholds?	<p>Ordinary and special resolutions.</p> <p><i>Ordinary resolution:</i> passed by a simple majority of shareholders holding more than 50% of shares or rights entitled to vote, and present in person.¹⁶</p> <p><i>Special resolution:</i> passed by shareholders holding at least 75% of shares or rights entitled to vote, and present in person.¹⁷ A resolution is not a special resolution unless the notice of the meeting included the text of the resolution, and specified the intention to propose the resolution as a special resolution.¹⁸ An amendment to the articles of association must take the form of a special resolution. If the Model Articles are adopted by the company, a direction to the directors to take climate-related acts (for example, setting any net zero transition plan) may require the passing of a special resolution if the shareholders are or may be adverse to the directors.</p>
Type of meeting	<p>AGM, although a GM is possible as well.</p> <p>In Hong Kong, shareholder meetings are convened as GMs of a company. The term “EGM” no longer applies to companies in Hong Kong.¹⁹ An AGM is effectively a GM that is held annually.</p> <p>An AGM may be preferable as a lower threshold is required to propose a shareholder climate resolution at an AGM than to request for a separate GM to consider such resolution.</p>
Thresholds for filing a resolution²⁰/ calling a meeting?	<p>Varies, 2.5% voting rights to propose resolution at an AGM; 5% to request for a GM to consider the resolution.</p> <p>The company is required to give notice of a shareholder climate resolution to be considered at an AGM if a request to do so is made by (A) shareholders representing at least 2.5% of the total voting rights of all the shareholders who have a right to vote; or (B) at least 50 shareholders who have a right to vote. This is a relatively low requirement for many public companies.</p> <p>If shareholders with at least 5% of the total voting rights of all the shareholders having a right to vote make a request to convene a GM to consider the shareholder climate resolution, the directors are required to comply with the request and convene a GM.</p> <p>The percentages specified above are calculated at the time that the request is made.</p>

14. And include the text of the proposed resolution in the initial request to the board of directors and subsequent meeting notice to shareholders (Sections 566(1) and (3) CO).

15. Section 615(1) CO.

16. Or through a duly appointed proxy at a meeting that has been duly convened and held (Section 563 CO).

17. Or through a duly appointed proxy at a meeting that has been duly convened and held (Section 564 CO).

18. As expressly provided in Section 564(4) CO.

19. Under the CO (which came into force in March 2014).

20. In general, the “filing of a resolution” in Hong Kong refers to the filing of a resolution with the CR by the board of directors / company secretary of the company after a resolution has been passed (if so required under Section 622 of the CO). As a result, please note that our responses in this memo to the “filing of a climate-related resolution” refers to the requisitioning and proposing a resolution to be considered at a GM or AGM, unless stated otherwise.

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Filing restrictions?	<p>No.</p> <p>There is no legal requirement for a shareholder²¹ to hold shares for a certain period of time before it may exercise its shareholder rights. There is also no legal requirement for a shareholder of a Hong Kong company to be registered or be resident in Hong Kong.</p>
Custodian rules?	<p>Only persons holding legal title to the shares can exercise shareholder rights (regardless of whether they are custodians or not).</p> <p>Hong Kong law does not recognise the holding of shares of a Hong Kong company by nominee, trustee or any person in such capacity including custodians. No notice of any trust (whether expressed, implied or constructive) may be entered in the register of members of a company.²² Accordingly, a Hong Kong company only registers the legal but not the beneficial title to the shares.</p> <p>If any shares are held on trust or by a custodian, that person is still the legal owner to the shares if its name is registered on the register of members of the company. If the beneficial shareholder wants to exercise its right, it will have to act through the trustee or custodian, who is registered as the legal owner of the shares.</p>
Process and formal requirements for filing resolutions / proposing a meeting?	<p>Varies, and subject to articles of association.</p> <p>The following is subject to additional procedural requirements that may be set out in a company's Articles.</p> <p><u>Proposing a shareholder climate resolution for consideration at an AGM</u></p> <p><i>Form:</i> Hard copy form or in electronic form.²³</p> <p><i>Deadline for making proposal:</i> The shareholders' proposal must be received by the company not later than six weeks before the AGM to which the request for consideration of the proposal relates; or if later, the time at which notice is given by the company of that meeting.²⁴</p> <p><i>Delivery method:</i> No specific requirements under the CO.</p> <p><i>Signatory of the request:</i> Authenticated by the person or persons making it.²⁵</p> <p><i>Language of the request:</i> No specific requirements under the CO, but presumably English or Chinese as these are the official languages in Hong Kong.</p> <p><i>Recipient:</i> The company.</p> <p><i>Supporting documents:</i> N/A</p> <p><i>Other requirements:</i> Must identify the resolution of which notice is to be given.²⁶</p>

21. A shareholder means an existing holder of shares of a Hong Kong company.

22. Section 634(a) CO.

23. Section 615(3)(a) CO.

24. Section 615(3)(d) CO. If notice of the AGM is given by the company say 4 weeks before the AGM is to occur, the proposal has to be received by the company not later than such time (i.e. 4 weeks before the AGM is to occur). After receipt of the proposal, the company is required to give the notice of the proposed resolution to the shareholders at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting (Section 616(1)(b) of the CO). For the sake of completeness, please note that under law, a notice for the AGM should be sent no later than 21 days in advance (Section 571(1)(a) of the CO).

25. Section 615(3)(c) CO. For a document sent in electronic form to a Hong Kong company by its shareholder, such document is sufficiently authenticated if the shareholder's identity is confirmed in a manner specified by the company. Where no manner has been specified, the document is sufficiently authenticated if it is accompanied by a statement of the shareholder's identity and the company has no reason to doubt the truth of the statement (Sections 828(5) and 831(5) CO). For a document sent in hard copy form to a Hong Kong company by a shareholder who is not a Hong Kong company, such document is sufficiently authenticated if it is signed by the shareholder (Section 829(3) CO). For a document sent in hard copy form to a Hong Kong company by its shareholder which is also a Hong Kong company, such document is sufficiently authenticated if it is signed by a director or company secretary of the Hong Kong corporate shareholder or by an officer of the Hong Kong corporate shareholder authorized for the purpose (Section 832(3) CO).

26. Section 615(3)(b) CO.

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<p>Process and formal requirements for filing resolutions / proposing a meeting? (continued)</p>	<p><u>Request for calling a GM to consider a shareholder climate resolution</u></p> <p><i>Form:</i> Hard copy form or in electronic form.²⁷</p> <p><i>Deadline for making proposal:</i> Not applicable, the request to call a GM may be made at any time.</p> <p><i>Delivery method:</i> No specific requirements under the CO.</p> <p><i>Signatory of the request:</i> Authenticated by the person or persons making it.²⁸</p> <p><i>Language of the request:</i> No specific requirements under the CO, but presumably English or Chinese as these are the official languages in Hong Kong.</p> <p><i>Recipient:</i> Directors of the company.</p> <p><i>Supporting documents:</i> N/A</p> <p><i>Other requirements:</i> Must state the general nature of the business to be dealt with at the GM, and may include the text of a resolution to be moved at the GM.²⁹</p>
<p>How must the company respond? Who bears the costs?</p>	<p>By circulating the shareholder climate resolution for consideration at the AGM / calling a GM. Company bears the costs.</p> <p>The company shall bear the costs of giving notice of the resolution(s) to be considered at the AGM, and will normally bear the costs relating to resolution(s) to be considered in other GMs unless the Articles have specific requirements.</p> <p>Upon receipt of a shareholder climate resolution to be proposed at an AGM:³⁰</p> <ul style="list-style-type: none"> (i) The company must send a copy of the resolution to eligible shareholders in the same manner as the notice of the AGM, and at the same time as, or as soon as reasonably practicable after, it gives notice of the AGM.³¹ (ii) If the company fails to circulate a copy of the resolution,³² the company and every responsible person commits an offence, and is liable to a fine of up to HK\$ 50,000.³³ <p>Upon receipt of a request to convene a GM to consider the shareholder climate resolution:³⁴</p> <ul style="list-style-type: none"> (i) The board of directors of the company must issue a notice convening a GM within 21 calendar days after the request, and must hold the GM not more than 28 calendar days after the date of the notice convening the meeting.³⁵ (ii) The notice convening the meeting must include a notice of the proposed resolution identified in the initial request to the board of directors. If the proposed resolution is a special resolution, the notice of the meeting must include the text of the resolution, and specify the intention to propose the resolution as a special resolution.³⁶ (iii) If the board of directors fail to convene a GM:³⁷ <ul style="list-style-type: none"> (A) The shareholders who requested the board of directors to convene the GM; or (B) shareholders representing more than 50% of the total voting rights of all such shareholders may themselves call a GM.³⁸ The company must reimburse any reasonable expenses incurred by the shareholders from the fees or remuneration owed (or to be owed) by the company to the directors who were in default.³⁹
<p>Can a resolution be withdrawn?</p>	<p>Yes.</p> <p>Typically, shareholders would normally withdraw a resolution if the company has satisfactorily addressed or resolved the issues concerned. A resolution can be withdrawn even <i>after</i> it was circulated to shareholders in an AGM notice.⁴⁰ This is unless there are additional requirements or restrictions set out in the company's articles of association.</p>

27. Section 566(5)(a) CO.

28. Section 566(5)(b) CO. See also note 25 above regarding authentication.

29. Section 566(3) CO.

30. Pursuant to Section 615 CO.

31. Section 616(1) CO.

32. In accordance with Section 616(1) CO.

33. Approximately US\$ 6,350. Section 616(4) CO.

34. Pursuant to Section 566 CO.

35. Sections 567(1) and (2) CO.

36. Sections 567(3) to (5) CO.

37. In accordance with Section 567 CO.

38. Section 568(1) CO.

39. Sections 568(6) and (7) CO.

40. While the CO is silent on this point, we are aware of instances in which withdrawal of resolutions have occurred. For example, see [here](#).

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Other potentially relevant rights?

Rights to seek information, participate in meetings and inspect documents.

Seek background information:

Shareholders attending the GM may seek background information relating to the subject matter of the resolution before it is put to vote. Specifically:

- For non-listed companies, under the CO, shareholders who meet threshold requirements⁴¹ can require the company to circulate a statement⁴² on the proposed shareholder climate resolution or any matter to be dealt with at the meeting in question.⁴³ This right is open to all shareholders, not just the shareholder(s) who proposed the resolution, and can be used to inform other shareholders of the reason for supporting or opposing any proposed resolution.
- For Hong Kong-listed companies, they must provide all material information on the subject matter to be considered at the GM to shareholders in a supplementary circular or by way of an announcement no later than 10 business days before the date of the GM.⁴⁴

Engagement at the GM:

Every shareholder attending the GM has a right to speak and voice his/her support or opposition to any proposed resolution, subject to any applicable restrictions in the Articles.

Inspection of documents:

Shareholders have a general right to inspect certain company records, including past resolutions and minutes of GMs.⁴⁵ Shareholders holding (A) at least 2.5% of the total voting rights of all the shareholders who have a right to vote; or (B) at least five shareholders, may collectively apply to the court for an order to inspect any record or document of the company.⁴⁶ Before the court may make such order, it must be satisfied that the application is made in good faith, and the inspection is for a proper purpose.⁴⁷

41. The company must comply with the request and circulate the statement if (A) the request is received from shareholders representing at least 2.5% of the total voting rights of all the shareholders who have a right to vote, or at least 50 shareholders who have a right to vote (Section 580(3) CO); (B) the request identifies the statement to be circulated, and is authenticated by the person or persons making it (Sections 580(5)(b) and (c) CO); and (C) the request is received at least seven calendar days in advance of the relevant GM (Section 580(5)(d) CO).

42. Of no more than 1,000 words.

43. Section 580(1) CO.

44. Main Board Listing Rules (Listing Rules), Rule 13.73.

45. Sections 618 and 620 CO. The relevant procedures are set out in the Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I), available [here](#).

46. Under Sections 740(1) and (6) CO.

47. Section 740(2) CO.

3.7 Philippines

3.7. Philippines

In the Philippines,¹ it is the Board of Directors (the “**Board**”) which generally exercises corporate powers, conducts all business, and controls all properties of the company.² Unless otherwise provided under Philippine law or in the charter documents of the company (the Articles of Incorporation (the “**AOI**”)³ or bylaws⁴), Board approval – without the participation of the shareholders – usually suffices to authorise and effect corporate actions.

The approval of shareholders is required only for select corporate actions under Philippine law, such as the election or removal of directors, certain fundamental corporate actions⁵ or where the charter documents require shareholders’ approval. Deference is given to the Board’s business judgment – unless the Board acts in bad faith or in a manner contrary to law, the Board’s decisions for the company are valid and will be upheld.

Shareholder climate resolutions would not ordinarily fall within the prescribed matters requiring shareholders’ approval. A shareholder climate resolution can only be brought if the company’s charter documents expressly allow shareholders to decide on such matters. If the company’s charter documents do not allow this, the shareholders would have to amend the charter documents to provide for this, and then propose the contemplated shareholder climate resolution. In order to balance the need for binding commitments to achieve climate targets with the need for flexibility, shareholders could amend the charter documents by proposing two resolutions in the same meeting, as follows:

- (i) Resolution 1 to amend the charter documents to grant shareholders a general right to bring shareholder climate resolutions. This provides flexibility in terms of the scope and content of future shareholder climate resolutions that could be proposed; and
- (ii) Resolution 2 which would be the shareholder climate resolution itself that contains the climate objective, the passing of which would be contingent on the passing of Resolution 1. This would address the need to create commitments that bind the corporation to achieve specific climate objectives.

However, even if shareholders propose an amendment to the charter documents, the Board must still approve the amendment before this is brought before a shareholders’ meeting for approval or ratification. Unless the Board is acting in bad faith or contrary to law, Board action (or inaction) on such an amendment cannot be challenged. This means that shareholders proposing the amendment may not even get the opportunity to present the amendment for all shareholders’ consideration and vote. On top of this, after Board and shareholder approval is obtained and the amendment is passed, it must still be approved⁶ by the Securities and Exchange Commission (the “**SEC**”).⁷ However, in general, SEC approval is typically given if the amendment is compliant with law and the formal requirements for passing it.⁸ So long as the climate-related amendment complies with these requirements, given increasing awareness of climate-related financial risks and the importance of the net zero transition, the SEC could have no basis to refuse approval of the amendment.

1. The principal general Philippine law governing the relationships among a corporation, its shareholders, its board of directors (“**Board**”), and its officers/management is Republic Act No. (“**RA**”) 11232, which is the Revised Corporation Code of the Philippines (“**RCC**”).

2. Section 22, RCC. The focus of this section is on Philippine law as relevant to stock corporations, which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends or allotments of the surplus profits on the basis of the shares held.

3. The AOI is also called the charter of a corporation and typically contains the more important provisions relevant to the company, and hence requires a higher threshold to amend. It contains the contractual relationships between a corporation and the State, between its stockholders and the State, and between a corporation and its stockholders: *Forest Hills Golf Club v. Gardpro Inc.*, G.R. No. 164686, October 22, 2014. The AOI’s contents are binding on the corporation and its shareholders: *Lanuzo v. Court of Appeals*, G.R. No. 131394, March 28, 2005.

4. The bylaws typically concern the day to day running of the company, and can be amended by a lower threshold than the AOI. The shareholders can delegate the amendment of the bylaws to the Board. The bylaws (or, for public companies, their corporate governance manuals) may provide for corporate committees, such as executive, audit, corporate governance, and board risk oversight committees. The members of such committees are usually directors as well, and in any event the Board normally retains final decision-making powers for the corporation.

5. Other corporate acts requiring shareholder approval include the amendment of the AOI; incurring, creating or increasing any bonded indebtedness; investing corporate funds in any other corporation, business or for any purpose other than the primary purpose for which the corporation was organised; declaring stock dividends; or merger and consolidation with another corporation or corporations.

6. Once the amendment has been approved by the Board and the shareholders, the company files with the SEC (among other requirements) a copy duly certified under oath by the corporate secretary and at least a majority of the directors, with a statement that the amendments have been duly approved by the required vote of the stockholders (Section 15, RCC).

7. The SEC is the Philippine government agency which has general supervision and jurisdiction over all corporations (Section 179(a), RCC). No corporation in the Philippines is formally incorporated and existing without SEC approval (Section 18 of the RCC). The SEC may issue rules and regulations to implement the provisions of the RCC (Section 179(c), RCC).

8. Sections 15 and 16, RCC.

To ensure that all shareholders at least have the opportunity to consider and vote on the shareholder climate resolution, the proposing shareholders in a publicly listed company (“**PLC**”)⁹ could propose the inclusion of this resolution in the agenda of regular or special shareholders’ meetings, instead of proposing an amendment to the charter documents. So long as the shareholders hold at least 5% of the outstanding capital stock of a PLC, the Board must include this proposal on the agenda of the meeting.¹⁰ The minutes of the meeting would have to reflect shareholders’ discussions and concerns raised in the meeting regarding this agenda item, as well as the Board’s reaction to this. While this shareholder climate resolution, if passed, would only be recommendatory and non-binding in nature (as it is unlikely to fall within the prescribed matters requiring shareholders’ approval¹¹), it could have significant normative force in signalling shareholders’ desire that the Board take action regarding a company’s governance, disclosure or business strategy on climate change. Indeed, such normative force would exist even if a resolution were not passed but managed to secure a substantial amount of votes.

The above framework for shareholder climate resolutions runs alongside notable recent developments relevant to climate risk in the Philippines,¹² as follows:

1. Sustainability Guidelines: In 2019, the SEC issued MC No. 4, series of 2019, which provides for the guidelines for sustainability reporting of PLCs (“**Sustainability Guidelines**”).

The Sustainability Guidelines aim to help PLCs assess and manage their non-financial performance across economic, environmental, and social aspects of their organisation and measure and monitor their contributions towards achieving universal targets of sustainability, such as the United Nations Sustainable Development Goals, as well as national policies and programs, such as *AmBisyon Natin 2040*.¹³

Sustainability reporting is made through accomplishing a reporting template provided by the SEC, to be submitted with the corporation’s annual report.¹⁴ For the first three years from the implementation of the Sustainability Guidelines, the sustainability reporting is made through a “comply or explain” approach where corporations can provide explanations for items in the reporting template which they still have no data on.¹⁵

2. Sustainability Bonds: The SEC has also issued MC No. 8 and 9, series of 2019, which contain the guidelines on the issuance of Sustainability Bonds under the Association of Southeast Asian Nations (“**ASEAN**”) bond standards in the Philippines. ASEAN Sustainability Bonds refer to bonds which comply with ASEAN Green Bonds Standards and the ASEAN Social Bonds Standards, where the proceeds will be exclusively applied to finance or refinance a combination of Green and Social Projects that respectively offer environmental and social benefits.¹⁶

3. Code of Corporate Governance: Under MC 24-2019 (on the Code of Corporate Governance), the Boards of public companies¹⁷ should, as part of its governance responsibilities, “ensure that the company discloses material and reportable non-financial and sustainability issues” by disclosing to its shareholders and other stakeholders the company’s strategies and objectives and their impact on sustainability issues involving the environment. The regulation also encourages covered companies to employ value chain processes which take into consideration environmental issues and concerns.

The Code adopts a “comply or explain” approach, which combines voluntary compliance with mandatory disclosures. Under this approach, companies “must state in their annual corporate governance reports whether they comply with the [Code’s] provisions, identify any areas of non-compliance, and explain the reasons for non-compliance.”¹⁸

9. PLCs are a type of public company. A public company is a company with assets of at least PHP50,000,000.00 (approximately USD937,000.00) and having 200 or more shareholders holding at least 100 shares each of equity securities. A public company has also been defined as a company that: (1) issues proprietary and/or non-proprietary shares/certificates; (2) issues equity securities to the public that are not listed in an Exchange; or (3) issues debt securities to the public that are required to be registered to the SEC, whether or not listed in an Exchange.

10. All shareholders, regardless of those in private or public companies, and regardless of voting threshold, may propose to include items on the agenda of a meeting. In private companies, the Board has the discretion to include this on the agenda. In PLCs, the Board must include this on the agenda so long as a 5% shareholding threshold is reached.

11. Whether as a matter of the default position under Philippine law, or if the charter documents were not successfully amended to permit shareholders to approve the subject matter of the shareholder climate resolution.

12. Although these occurred prior to 2021/2022.

13. *Sustainability Reporting Guidelines for Publicly Listed Companies*, p. 1-2.

14. *Sustainability Reporting Guidelines for Publicly Listed Companies*, p. 1-2.

15. *Sustainability Reporting Guidelines for Publicly Listed Companies*, p. 1-2.

16. Section 2(F), SEC MC 8-2019.

17. See note 9 above.

18. Code of Corporate Governance, Introduction (emphasis supplied).

4. BSP Sustainable Finance Framework: The Bangko Sentral ng Pilipinas ("**BSP**", the Philippine central bank) issued Circular No. 1085, series of 2020, setting out the Sustainable Finance Framework, which requires banks to embed sustainability principles, including those covering environmental and social risk areas, in their corporate governance framework, risk management systems, and strategic objectives consistent with their size, risk profile, and complexity of operations. The BSP circular was issued in recognition of the effects to financial stability of climate change and other environmental and social risks. It also recognises the critical role of the financial industry in pursuing sustainable and resilient growth. The BSP circular governs the issuance of sustainable financing,¹⁹ reporting and management of Environmental and Social Risk²⁰ and implementation of an Environmental and Social Risk Management System.²¹ Under this circular, banks are mandated to adopt a time-specific transition plan detailing board-approved strategies and policies integrating sustainability principles into their corporate governance, risk management frameworks, and strategic objectives and operations.²² By 2023, all banks should have fully complied with the provisions of the BSP circular.²³ After the launch of this framework, banks such as BDO Unibank, Inc., and Rizal Commercial Banking Corporation started offering sustainability bonds.

To guide banks in implementing the BSP Sustainable Finance Framework, the BSP encouraged all banks to explore and consider the strategies, priorities, and principles outlined in the Philippine Sustainable Finance Roadmap ("**Roadmap**")²⁴ and the Sustainable Finance Guiding Principles ("**Guiding Principles**")²⁵ developed by the Inter-Agency Technical Working Group on Sustainable Finance. The Roadmap provides a comprehensive approach that will serve as the foundation for effective strategies to facilitate the mainstreaming of sustainable finance in the country while the Guiding Principles provide a common understanding among various stakeholders of the economic activities considered "sustainable."²⁶

Local expert: *Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law). C&G Law is a full-service law firm in the Philippines specialising in areas such as corporate and commercial transactions, litigation and arbitration, taxation, labour and employment, and competition law. It is a member firm of Rajah & Tann Asia, Southeast Asia's largest legal network (<https://www.cagatlaw.com>; <https://ph.rajahtannasia.com/>). Norma Margarita B. Patacsil, Eunice A. Malayo, and Maria Angelica C. Torio of C&G Law prepared the Philippine input for this report.*

19. This refers to any form of financial product or service which integrates environmental, social, and governance criteria into business decisions that supports economic growth and provides lasting benefit for both clients and society while reducing pressures on the environment. This also covers green finance which is designed to facilitate the flow of funds towards green economic activities and climate change mitigation and adaptation projects.

20. This refers to potential financial, legal, and/or reputational negative effects of environmental and social issues on a bank. E&S issues include environmental pollution, climate risk (both physical and transition risks), hazards to human health, safety and security, and threats to the community, biodiversity and cultural heritage, among others.

21. This refers to policies, procedures and tools to identify, assess, monitor and mitigate exposures to E&S risks.

22. BSP Circular No. 1085, series of 2020, Section 3.

23. BSP Circular No. 1085, series of 2020, Section 3.

24. BSP Circular Letter No. CL-2022-011.

25. BSP Circular Letter No. CL-2022-011.

26. BSP Circular Letter No. CL-2022-011.

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Basic right to file?	<p>Yes.</p> <p>If allowed by the charter documents of the company (otherwise a resolution amending those charter documents is required first). If not allowed by the charter documents, shareholders (of a PLC, and with at least 5% shareholding) could also propose the shareholder climate resolution at a shareholders' meeting, which would then be passed as a non-binding resolution.</p>
Amendment to charter documents required or recommended?	<p>Amendment of charter documents or putting resolution on agenda.</p> <p>Amendment of the charter documents is required if the matters that the charter documents permit shareholders to vote on do not include shareholder climate resolutions. The Board has to approve the proposal to amend, before shareholders can vote on it. After the amendment is passed by the Board and stockholders, the SEC must approve this to be binding (discussed in the Introductory section above).</p> <p>As mentioned in the Introductory section, to amend the charter documents, two resolutions would simultaneously be filed: Resolution 1 to first amend the AOI and bylaws to permit shareholders to file and vote on shareholder climate resolutions; and resolution 2 would be the shareholder climate resolution itself that contains the climate target, the passing of which would be contingent on the passing of resolution 1.</p> <p>Assuming that the required shareholder vote²⁷ to successfully amend the AOI and bylaws is secured, it is possible for such amendment to stipulate that future shareholder climate resolutions proposed by shareholders require only a simple majority to pass, unless the future resolution requires a further amendment to the charter documents or the future resolution falls under a corporate action where the law requires a higher shareholder approval vote. The bylaws may also be (further) amended to include a provision detailing the process for the exercise of the right to bring a shareholder climate resolution.</p> <p>Shareholders of a PLC that have at least 5% shareholding could also propose the shareholder climate resolution at a shareholders' meeting. While the resolution is unlikely to be within the scope of matters that shareholders can vote on, it could be passed as a non-binding resolution to express shareholders' views on aspects of the company's net zero transition / climate ambition.</p>
Types of shareholder resolutions available and voting thresholds?	<p>Resolutions passed by at least a majority vote; resolutions requiring at least two-thirds (⅔) vote; non-binding resolutions.</p> <p>No terminology of "ordinary" or "special" resolutions. Resolutions are generally categorised according to voting thresholds.</p> <p>An amendment to the company's AOI would require approval from shareholders representing at least two-thirds (⅔) of the outstanding capital stock, unless the charter documents set out a higher vote requirement.²⁸</p> <p>An amendment to the bylaws would require approval from shareholders representing at least a majority of the outstanding capital stock, unless the charter documents set out a higher vote requirement.²⁹</p> <p>Even shares which are classified or described in the AOI as non-voting shares can vote on amendments to the AOI and bylaws.³⁰</p> <p>Non-binding resolutions have been explained in the box above.</p>
Type of meeting?	<p>AGM or EGM.</p> <p>Meetings are in the form of:³¹</p> <ul style="list-style-type: none"> (i) regular stockholders' meetings ("AGM"). These are held once a year and are the equivalent of AGMs. For public companies, it is recommended that shareholder climate resolutions be proposed at AGMs, as shareholders usually consider resolutions requiring their approval at an AGM. (ii) special stockholders' meetings ("EGM"). These are the equivalent of EGMs, and the time and manner of calling and conducting special meetings may be contained in the bylaws.

27. The amendment of the AOI and bylaws requires approval by shareholders representing at least ⅔ of the outstanding capital stock for AOI amendment and at least a majority of the outstanding capital stock for bylaws amendment.

28. Section 15, RCC. The voting threshold for the amendment to the AOI and bylaws can be stipulated in the charter documents but it must not be less than the threshold provided in the law (i.e. at least ⅔ of the outstanding capital stock for AOI amendment and at least a majority of the outstanding capital stock for bylaws amendment).

29. Section 47, RCC.

30. The RCC recognises that shares of a corporation may be classified, and in that regard some shares may be non-voting. Except in cases specified by law (such as Section 6 of the RCC) and the charter documents (that is, where even shares classified as non-voting can vote), only shares with voting rights can vote in shareholders meetings.

31. Section 48, RCC.

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<p>Thresholds for filing a resolution/calling a meeting?</p>	<p>Variable for private companies; for PLCs, at least 5% to file resolution and at least 10% to call EGM.</p> <p>For private companies, the procedure, requirements and thresholds for filing a resolution or calling for an AGM or EGM are contained in the bylaws.</p> <p>For PLCs, shareholders, either alone or together with other shareholders, must hold at least 5% of the outstanding capital stock in order to have the right to include items on the agenda prior to an AGM or EGM (thereby “filing” the shareholder climate resolution).³²</p> <p>There is no threshold requirement to call an AGM, as the Board will call for this. An EGM can be called by any number of shareholders of a PLC who hold at least 10% of the outstanding capital stock.</p>
<p>Filing restrictions?</p>	<p>Yes, for shareholder climate resolutions filed at EGMs.</p> <p>The shareholders calling for an EGM should have continuously held their shares for a period of at least one year prior to the receipt by the Corporate Secretary of a written call for an EGM.³³</p> <p>The shareholder climate resolution to be discussed at the EGM must affect the legitimate interests of the shareholders on corporate actions where shareholders’ approval is required.³⁴ In addition, in order to be passed as a binding resolution, the shareholder climate resolution must be within the corporate actions where shareholders’ approval is required under the charter or as a matter of law. If it is not within this scope of actions, it will be passed as a non-binding resolution.</p> <p>No shareholder may call an EGM:</p> <ul style="list-style-type: none"> (i) within 60 days from a previous meeting of the same nature and where the same matter was discussed, unless the company’s bylaws provide otherwise or the special meeting is approved by the Board; (ii) if the proposed shareholder climate resolution will be covered in the next AGM or EGM, provided that the next AGM or EGM is scheduled not later than 30 days from the date of the call for the meeting; or (iii) if the proposed shareholder climate resolution has already been discussed and resolved with finality in previous meetings.
<p>Custodian rules?</p>	<p>No.</p> <p>A custodian institution which is the shareholder of record of shares in a company would enjoy full shareholder rights as regards those shares, unless there are limitations in the bylaws or the relevant agreements with the custodian institutions which are notified to the company.</p>

32. SEC MC 14-2020.

33. SEC MC 7-2021.

34. It also should not concern the removal of any director under Section 27 of the RCC

Overview of Legal Process – Philippines

Process and formal requirements for filing resolutions / proposing a meeting?

Largely set by the bylaws.

For filing an amendment to the AOI or bylaws to be considered at a meeting.

The following are general requirements³⁵ unless more stringent ones are set out in the bylaws.

Form: As set out in the bylaws.

Deadline for making proposal: Anytime before the notice of meeting is issued, unless a specific time is stated in the bylaws. The notice of the meeting itself must be sent by the company at least 21 days prior to an AGM, or at least 1 week prior to an EGM. This is unless a different period is required in the bylaws, or other laws and regulations.

Delivery method: As set out in the bylaws.

Signatory of the request: As set out in the bylaws.

Language of the request: As set out in the bylaws.

Recipient: As set out in the bylaws.

Supporting documents: As set out in the bylaws.

Other requirements: The shareholders must be shareholders of record in the company's stock and transfer book at least 20 days before the AGM date or 7 days prior to the scheduled EGM date, unless the bylaws provide for a longer period.³⁶ Amendments to the AOI or bylaws shall be indicated by underscoring the changes made.

For proposing a shareholder climate resolution that is not an amendment to the AOI or bylaws as an agenda item at a meeting

The procedure and requirements for the exercise of this power may be set out in the bylaws.

For calling an EGM to consider the shareholder climate resolution³⁷

The requirements for private companies are set out in the bylaws. For PLCs:

Form: In writing / as set out in the bylaws.

Deadline for making proposal: As set out in the bylaws.

Delivery method: For PLCs, transmitted through the Corporate Secretary at least 45 days prior to the proposed date of the special meeting.

Signatory of the request: Signed by the shareholders calling the EGM.

Language of the request: As set out in the bylaws.

Recipient: Addressed to the Board.

Supporting documents: Shareholders must provide proof of shareholdings and at least one government-issued identification card.

Other requirements: Call for EGM must set out

- (i) the names of the proposing shareholders and their respective percentage of shareholdings;
- (ii) the purpose of the call for EGM, which must be stated with sufficient clarity;³⁸
- (iii) the proposed date and time of the requested EGM; and
- (iv) the proposed agenda items to be discussed.

35. Section 15 of the RCC.

36. Section 49, RCC.

37. The time and manner of calling and conducting special meetings may be contained in the bylaws (Section 46(b), RCC). Other requirements for public listed companies are set out in SEC MC 7-2021.

38. And, as stated in the preceding box, must affect the legitimate interest of the shareholders on corporate actions where shareholders' approval is required.

Overview of Legal Process – Philippines

<p>How must the company respond? Who bears the costs?</p>	<p>By placing the resolution on the agenda / calling the meeting. Not clear who bears the costs.</p> <p>If a shareholder climate resolution is validly filed, it should be permitted to be placed on the agenda for shareholders' consideration at the meeting. Likewise, if the meeting is validly called, it should be convened.</p> <p>Regarding a call for an EGM, the Board will determine if the requirements for such call are met, and if so, shall issue a notice to convene the EGM at least 7 days prior to the proposed date of the EGM.³⁹</p> <p>If the requirements are not met, within 20 days from receipt of the request, the Board shall send a written notice to the requesting shareholders setting this out clearly and indicating that a meeting cannot be called.</p> <p>There are no clear laws on who bears the costs. The bylaws may provide for this.</p> <p>However, for PLCs, if an agenda item is added by stockholders⁴⁰ before the Definitive Information Statement ("DIS"), a reporting requirement, is filed with the SEC and disseminated to the stockholders,⁴¹ and so the agenda item is included in the DIS, then the company would bear that cost. In this regard, the DIS must be filed with the SEC and disseminated to the stockholders at least 15 business days prior to the meeting date."⁴²</p>
<p>Can a resolution be withdrawn?</p>	<p>Depends.</p> <p>A resolution can be withdrawn if the bylaws allow this. Where the bylaws are silent, the Board arguably has the discretion to exclude or still maintain agenda items proposed by shareholders, even after shareholders have attempted to withdraw their proposed resolutions.</p>
<p>Other potentially relevant rights?</p>	<p>Right to inspect; shareholders may ask questions in meetings.</p> <p>Shareholders have the right to inspect or reproduce corporate records⁴³ and financial statements.⁴⁴ This right must be exercised for a legitimate purpose. Further, shareholders who inspect or reproduce corporate records cannot disseminate these to the public, as they are bound by confidentiality rules.⁴⁵ However, it is permissible to reproduce and disseminate the corporate records to other shareholders of the company to ensure further discussion and engagement on a company's net zero transition plans / climate strategy.</p> <p>While Philippines law does not expressly grant to shareholders the right to ask questions during an AGM, it is a usual practice in Philippine corporations, including PLCs, that shareholders may ask questions during meetings. The minutes must record the questions asked and answers given. This provides a helpful record of the company's net zero transition plans / climate strategy.</p> <p>All shareholders, regardless of those in private or public companies, and regardless of voting threshold, may propose to include items on the agenda of a meeting. In private companies, the Board has the discretion to include this on the agenda. In PLCs, the Board must include this on the agenda so long as a 5% shareholding threshold is reached.</p>

39. In accordance with Sections 49 and 50 of the RCC, SEC MC No. 6, series of 2020, and other relevant laws and SEC regulations, as well as the company's bylaws.

40. Pursuant to SEC MC 14-2020.

41. The DIS is filed by public companies every annual or other meeting of stockholders. This is one of the reporting requirements under the Securities Regulation Code to notify its shareholders who are entitled to vote or give an authorisation or consent to any matter to be acted upon.

42. See 20.3.3.4., Rule 20, implementing rules and regulations of the Securities Regulation Code.

43. Section 73 of the RCC. This includes the AOI and bylaws of the corporation and all their amendments; the current ownership structure and voting rights of the corporation, including lists of stockholders structures, intra-group relations, ownership data, and beneficial ownership; a record of all business transactions; and the minutes of all meetings of stockholders and the Board.

44. Section 74 of the RCC. The company must furnish a stockholder its most recent financial statements within 10 days from receipt of his written request.

45. RCC, Section 73.

3.8 Republic of Korea

X. Republic of Korea

In the Republic of Korea (“**Korea**”), a corporation’s decision-making bodies are the general meeting of shareholders and the board of directors (the “**BOD**”). Under Korean law, some matters “may be determined by the authority of a general meeting of shareholders”,¹ while other matters are within the BOD’s purview.

Shareholder climate resolutions² would not ordinarily fall within matters that may be determined by shareholders. A shareholder climate resolution can only be brought if the company’s charter documents (i.e. the Articles of Incorporation (“**AOI**”)) expressly allow shareholders to decide on such matters. If the AOI does not allow this, the shareholders would have to amend the AOI to provide for this, and then propose the contemplated shareholder climate resolution.

If an amendment is necessary, one suggestion could be to frame this as a resolution to directly amend the AOI such that the climate objective is reflected within the AOI (“**Scenario 1**”). Such an amendment is within the scope of matters that shareholders can propose resolutions on for consideration at a general shareholders meeting (such as an annual general meeting (“**AGM**”)).³ Another alternative (“**Scenario 2**”) would be for shareholders to simultaneously propose (i) a first resolution to amend the AOI to grant shareholders a general right to bring shareholder climate resolutions; and (ii) a second resolution that contains the climate objective, the passing of which would be contingent on the passing of the first resolution. However, in this scenario, the BOD can decide to place only the first resolution on the agenda of the meeting, without placing the second resolution on the agenda.⁴ If the first resolution passes, the second resolution can only be considered at the next general meeting, as it was not placed by the BOD on the agenda of the present meeting. In the event that the BOD places both resolutions on the agenda, a vote on the second resolution would occur only after the first resolution is successfully passed.

One benefit of Scenario 2 is that if the first resolution is successfully passed at a general meeting of shareholders, shareholders will, in the future, be able to propose a variety of shareholder climate resolutions at subsequent general meetings of shareholders. However, on the other hand, it is to be noted that the resolution in Scenario 1 may be more likely to be passed at a shareholders’ meeting than Scenario 2, because other shareholders may find it less desirable for the company to face a situation in which a number of unexpected shareholder climate resolutions are proposed in the future.⁵

Shareholders can file a resolution by proposing a resolution as an agenda item of an AGM (which is convened annually by the BOD). The proposal should be made in writing at least six weeks before the meeting date. The BOD shall then include a valid⁶ shareholder climate resolution in the list of agenda for the meeting. Shareholders also have the right to request the convening of an extraordinary general meeting (“**EGM**”) of shareholders to consider a resolution. Practically, shareholders tend to propose resolutions for consideration at an AGM instead of an EGM as it is logistically easier to do so (as discussed in the Table below).

1. These would be (i) fundamental changes to the company (e.g., amendments to the AOI, merger, business transfer, split-off or split merger, dissolution, etc.); (ii) appointment or removal of an officer in charge of the company’s governing body (e.g., appointment or removal of a director, an auditor, a liquidator, etc.); and (iii) operation of the general meeting (e.g., the resumption or postponement of a meeting, etc.)

2. Shareholder resolutions are known as “shareholder proposals” in Korea. Both terms are used interchangeably in this chapter.

3. Under the Commercial Act of the Republic of Korea. Hence it is highly likely that the BOD will present the proposed resolution to the general meeting of shareholders as an agenda item so that shareholders can vote on it at the scheduled general meeting of shareholders.

4. This is because the first resolution would be within the scope of authority of the general meeting of shareholders to consider, but the second resolution remains within the scope of authority of the BOD until the first resolution is successfully passed.

5. For example, in January 2022, there was an industrial accident involving the collapse of an apartment building being constructed by Hyundai Development Company (“**HDC**”), one of Korea’s major construction companies, killing six workers. A shareholder proposal to amend the Articles of Incorporation for HDC’s 2022 ordinary general meeting of shareholders was presented by the Solidarity for Economic Reform, a non-profit organization in Korea that represented APG, a Dutch pension investment firm that operates pension funds for Dutch public officials. As a result, among the shareholder proposals relating to amending the Articles of Incorporation listed as the agenda for HDC’s ordinary general meeting of shareholders on March 29, 2022, the agenda items on (i) newly introducing a statement stipulating HDC’s obligations on sustainable management, safety management, and compliance with construction-related laws, etc.; (ii) establishing a safety and health committee in the board of directors; and (iii) introducing a mandated disclosure of HDC’s sustainable management were passed by shareholders. Meanwhile, the agenda item on (iv) creating a new system for making advisory shareholder suggestions pertaining to the ESG issues obtained a significant 30.6% positive votes and 69.4% negative votes and did not ultimately pass. Although this case focuses on a social (S) issue rather than an environmental (E) issue, it demonstrates that a shareholder proposal to amend a company’s Articles of Incorporation could be more likely to be passed at a meeting if it specifies a specific issue (e.g., (ii) establishing a safety and health committee in the board of directors) rather than making a general proposal to amend the Articles of Incorporation (e.g., (iv) introducing a system for making non-binding shareholder proposals).

Press coverage: http://www.ser.or.kr/fbs/board.php?bo_table=B11&wr_id=20543

6. For the conditions for such validity, see the answers to the queries “Basic right to file?” and “Amendment to charter documents required or recommended?” in the Table below.

In Korea, shareholders do not as yet routinely and actively engage with a company's business management. While such engagement is more likely to occur in listed companies, it is still challenging for shareholders to acquire the shares necessary to propose a resolution, or get the support of majority shareholders to pass the resolution, or propose a resolution at an EGM they have convened. Notwithstanding, due to the rise of Environmental, Social and Governance ("**ESG**") considerations, shareholders are increasingly attentive to a company's ESG policies. They may seek the appointment of a director who takes an eco-friendly stance,⁷ or consider filing shareholder climate resolutions.

To more effectively allow shareholders to engage in the management process, it has been suggested⁸ that (i) a "non-binding advisory vote" system be introduced so that shareholders may freely make proposals that, while non-binding, have normative force; and/or (ii) a "Say-on-Climate" system be introduced in which shareholders are allowed to regularly vote on climate-related policy agenda by way of ordinary resolution, without having to amend the AOI as discussed above (which requires a higher voting threshold). Aside from this, there are increasing cases where activist funds, institutional investors, etc., actively express their opinions by sending a shareholders' letter to companies raising specific environmental and climate concerns and objectives.⁹ This form of engagement is complementary to (and usually precedes) the filing of shareholder climate resolutions.

The above trend runs alongside key developments relevant to climate risk and ESG that took place in 2021-22. Briefly:

1. The Framework Act on Carbon Neutrality and Green Growth to Cope with Climate Crisis (the "**Framework Act**") has become effective on 25 March 2022. The Framework Act specifies an interim goal of lowering Korea's emissions of greenhouse gases to be more than 35% below 2018 levels by 2030.¹⁰ To reach that goal, it requires some businesses which negatively affect the environment to conduct a climate change impact assessment as a mandatory obligation.¹¹
2. Under the Environmental Technology and Industry Support Act (the "**ETIS Act**"),¹² publicly listed companies whose total asset value is KRW 2 trillion or more shall mandatorily disclose their environmental information, such as greenhouse gas emissions.¹³ Furthermore, under Article 10 – 4 (2) of the ETIS Act, the Minister of Environment disclosed the guidelines on K-taxonomy,¹⁴ a guidance to define green economic activities, in December 2021. The Korean government plans to launch pilot projects using the K-taxonomy in the financial sectors effectively from the second quarter of 2022.
3. The Financial Services Commission announced its plan to mandate the disclosure of sustainable management reports. First, the Commission will encourage companies to voluntarily disclose the information through its guidance on ESG Reporting issued by the Korea Exchange by 2025. Second, it will mandate the reporting by large-sized companies listed on the KOSPI market from 2025 to 2030. Third, it will mandatorily require the disclosure of sustainable management reports by all the companies listed on the KOSPI market after 2030.¹⁵

7. However, in the case of a publicly listed company, shareholder proposals regarding the removal of an executive such as a director cannot be submitted. In the case of a non-listed company, a shareholder may propose the removal of an executive, in certain circumstances, with care needed in articulating any reason proffered.

8. The People's Solidarity for Participatory Democracy and the Solidarity for Economic Reform (two of the most prominent non-profit organisations in Korea) as well as the Economic Reform Research Institute (ERRI) (a think tank focusing on the economy), are the organisations which have called for the introduction of a "non-binding Shareholder Proposal" system (i.e., a system for non-binding shareholder resolutions). See [here](#). The National Pension Service ("**NPS**") also expressed its intention in favour of the introduction of a non-binding shareholder resolution system. For example, the Special Committee on Responsible Investment & Governance of the NPS has voted in favour of the shareholder proposal submitted as an agenda item for Hyundai Development Company's AGM by APC, a Dutch pension investment company, in March 2022, which aims to amend the Articles of Incorporation to permit a non-binding shareholder resolution for ESG. However, the resolution did not pass.

9. For instance, on 17 February 2022, All Pension Group ("**APG**"), a subsidiary of ABP, a Dutch's national civil pension fund, sent a shareholders' letter to the 10 major corporations in Korea (Focus 10, which are Samsung Electronics Co., Ltd., SK Hynix Inc., SK Inc., Hyundai Steel Company, LG CHEM Ltd., Posco Chemical Co., Ltd., Lotte Chemical Corp., SK TELECOM Co., Ltd., LG Upluss Corp., and LG Display Co., Ltd.) to step up their efforts to combat climate change and reduce carbon emissions. Through the letter, APG asked the management and the directors of each company (i) whether the company perceives that the strategies to combat climate change and reduce carbon emissions disclosed by the company are sufficiently future-oriented; (ii) whether the company believes that it has fulfilled its carbon reduction goal for the past 5 years; (iii) whether the company sufficiently communicates and consults about this issue with its long-term investors, and (iv) whether it is showing a consistent and determined leadership in combatting climate change, and urged those companies to present their action plans for carbon reduction before and after their AGM.

10. Framework Act Article 8.

11. Framework Act Article 23.

12. Amended to be effective as of 1 January 2022.

13. ETIS Act Article 16-8.

14. This was developed to provide clear principles and criteria for defining green economic activities in order to help more green funds flow into green projects and technologies and prevent greenwashing. Although K-taxonomy used the concept and principles of EU Taxonomy, there are differences in the criteria for each activity and the list of activities included in the green economic activities.

15. <https://www.energydaily.co.kr/news/articleView.html?idxno=123304>

4. Climate-related soft laws and best practices have also spread in the private sector. For example, on 9 March 2021, 112 Korean financial institutions also announced their commitment to implement 'climate finance' to achieve carbon neutrality by 2050.¹⁶ Further, in August 2021, the Korea Corporate Governance Service ("KCGS")¹⁷ amended its Codes for ESG Best Practices¹⁸ to include the requirement that companies must analyse the risks and opportunities caused by climate change and manage them in connection with their management strategies. The "KCGS Codes for ESG Best Practices"¹⁹ issued by KCGS recommends that the management board of a company should establish guidelines for environmental protection that expressly indicate its dedication to act on environmental management, and form a strategy to implement this. Based on such guidelines, a company may voluntarily add provisions related to environmental management to its AOI, and a shareholder may request the company to amend its AOI.

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16. <https://shindonga.donga.com/3/all/13/2526589/1>

17. As a non-profit corporation that promotes public interest, KCGS establishes and revises important codes of practice for the development of the Korean capital markets, and carries out ESG evaluations, proxy analysis, and policy research to help the codes be adopted and implemented across the market.

18. http://www.cgs.or.kr/news/press_view.jsp?no=185

19. Available [here](#).

Overview of Legal Process – Republic of Korea

<p>Basic right to file?</p>	<p>Yes.</p> <p>If allowed by the AOI of the company (otherwise a resolution amending the AOI is required first).</p> <p>If within the scope of the AOI, a shareholder climate resolution could be filed as an ordinary resolution, and shareholders can do so by:</p> <ul style="list-style-type: none"> (a) filing a shareholder climate resolution for consideration at an AGM; or (b) filing a shareholder climate resolution and calling an EGM to consider the resolution. This can potentially be a logistically difficult route, and is not recommended. <p>However, even if the AOI permits the filing of a shareholder climate resolution, the resolution may be refused by the company in certain situations, the most relevant being if it has the same content as a prior proposed resolution that was rejected because it obtained less than 10% of votes at a prior shareholders' meeting held within the past 3 years.²⁰</p>
<p>Amendment to charter documents required or recommended?</p>	<p>Yes.</p> <p>Required if the matters that the AOI permits shareholders to vote on do not include shareholder climate resolutions.</p> <p>Please see the Introductory section for some suggested ways to amend the AOI.</p> <p>Assuming that the voting majority to successfully amend the AOI is secured, it is possible for such amendment to stipulate that future shareholder climate resolutions proposed by shareholders require only a simple majority to pass. This is unless the resolution concerns a matter that requires a special resolution of the general meeting of shareholders under the Commercial Act.</p>
<p>Types of resolutions available and voting thresholds?</p>	<p>Special or ordinary resolution.</p> <p>Unless otherwise specified in the AOI,²¹ voting thresholds are as follows:</p> <p>Special resolution: passed by the affirmative vote of at least two-thirds (⅔) of the voting rights of the shareholders present at the meeting and at least one-third (⅓) of the total number of issued and outstanding shares.²² Amendment of the AOI requires a special resolution.</p> <p>Ordinary resolution: passed by majority vote of the voting rights of shareholders present and representing at least a quarter (¼) of the total number of issued and outstanding shares.²³ If within the scope of the AOI, a shareholder climate resolution could be filed as an ordinary resolution.</p> <p>No advisory or non-binding resolutions under default provisions of Korean law. Shareholders have proposed amending the AOI to introduce a system for making non-binding shareholder proposals (please see the example in footnote 5).</p>
<p>Type of meeting?</p>	<p>AGM.</p> <p>Filing a resolution for consideration at an AGM is logistically easier than at an EGM. Shareholders only need to be aware of the date of the AGM of the <i>preceding</i> year, and file at least 6 weeks in advance of that date.²⁴</p> <p>In contrast, while a shareholder can exercise its right to call an EGM, it will not know when the company will fix the date of the EGM. A resolution has to be proposed 6 weeks before the EGM. This means that the shareholder is unable to effectively exercise its right to propose a resolution if the company does not notify shareholders of the date of the EGM 6 weeks before the EGM will occur. The company has no obligation to make such notification. For this reason, in practice, most of the shareholders' proposals are filed at the AGM.</p>

20. Commercial Act, Article 363-2 (3); its Enforcement Decree, Article 12. Other situations are: if the resolution concerns a shareholder's personal grievance; concerns certain rights and obligations by minority shareholders to hold shares in excess of a certain ratio; concerns the removal of an incumbent officer of a listed company; and concern an evidently false matter or a matter that defames a particular person – in this regard, shareholders shall not request the removal of a director of a listed company who is not environmentally conscious by filing a resolution for removal. However, shareholders are free to propose the appointment of a director who takes an eco-friendly stance.

21. Or required by the Commercial Act.

22. Commercial Act, Article 434 and Article 522.

23. Commercial Act, Article 368 (1); Supreme Court Decision No. 2016Da217741 dated January 12, 2017.

24. Commercial Act, Article 363-2.

Overview of Legal Process – Republic of Korea

Thresholds for filing a resolution/calling a meeting?	<p>3% of shareholding to file resolution for private companies; threshold to file resolution varies for public listed companies (minimum of 0.5%).</p> <p>For private companies, shareholders can file a resolution if they hold not less than 3% of the total number of issued and outstanding shares.²⁵</p> <p>For public listed companies, in order to file a resolution, shareholders must hold either 1% or 0.5% of the total number of issued and outstanding shares in a listed company for six months or more (depending on the size of the company²⁶) or 3% of such shares without any period of ownership requirement.²⁷</p> <p>The shareholding threshold is calculated by the later²⁸ of (i) the date of exercise of the right to propose or (ii) the date immediately preceding the closing date of the shareholders' register.²⁹ It may be satisfied by a single shareholder or jointly by several shareholders.</p>
Filing restrictions?	<p>None.</p> <p>As long as they are the actual shareholders of the company, there are no particular restrictions except for the shareholding threshold and the period of ownership requirements (for the shareholders of a publicly listed company).</p>
Custodian rules?	<p>Verification of beneficial ownership of shares.</p> <p>Shareholders shall verify that they are the beneficial shareholders of the company. Publicly listed companies shall appoint a transfer agent who will verify ownership and the period of ownership based on documents submitted by the shareholders.³⁰ Transfer agents cannot exercise rights on behalf of the beneficial shareholders. Only beneficial shareholders can exercise shareholder rights.</p>
Process and formal requirements for filing resolutions / proposing a meeting?	<p>Advance notice of resolution required before AGM.</p> <p>Shareholder climate resolutions are filed by sending a notice containing the resolutions to be added to the agenda of the AGM.</p> <p><i>Form:</i> In writing or in electronic form.</p> <p><i>Deadline for making proposal:</i> As the company may suspend changes in the register of shareholders 6 weeks before the meeting, shareholders with the requisite voting threshold should file the resolution more than 6 weeks prior to the meeting.</p> <p><i>Delivery method:</i> Sent to the registered address (in written form) or email (in electronic form) of the company.</p> <p><i>Signatory of the request:</i> Mostly the signature(s) of the shareholder(s) who submitted the resolution is required. (It depends on the company's policy.)</p> <p><i>Language of the request:</i> Korean or English (It depends on the company's policy).</p> <p><i>Recipient:</i> To the director having the authority to convene the relevant meeting.</p> <p><i>Supporting documents:</i> The notice should include documents verifying share ownership and the period of ownership.³¹</p> <p><i>Other requirements:</i> None.</p>

25. Commercial Act, Article 363-2.

26. The 0.5% threshold applies to "listed companies with equity capital valued at 100 billion won or more as at the end of the latest business year." Commercial Act, Article 542-6 (2) and Enforcement Decree Of The Commercial Act, Article 32. Listed companies with a smaller equity value will require a 1% threshold.

27. Commercial Act, Article 363-2 and Article 542-6.

28. See Kwon, Sunil, et al. Commercial Act with Comments, Vol. 3 Company, Part 4 Company Limited by Shares. Korean Institute of Judicial Administration, pp. 49-50; See also KIM, Gunsik et al. Corporate Law (the 6th edition). Parkyoungsa, p. 303.

29. Commercial Act, Article 354 (Closure of Register of Shareholders and Record Date). (1) In order to designate the person who shall exercise the voting right, receive dividends or exercise other rights as a shareholder or a pledge, the company may suspend changes of the entries in the register of shareholders for a specified period or it may deem any shareholder or pledgee whose name appears in the register of shareholders on a specified date to be the shareholder or pledgee who shall be entitled to exercise such rights.

30. Such as the certificate of the beneficial shareholder and the statement of the sale and purchase transactions. To be recognised as a shareholder by a company, a person who has acquired shares must undergo a stock transfer procedure in which his or her name and address are recorded in the shareholders' register. A publicly listed company is required to have a transfer agent. The person who has acquired shares must submit the share certificates to the transfer agent and receive confirmation from that agent in order to complete the share transfer procedure. In practice, companies designate either the Korea Securities Depository or a bank as their transfer agent. The transfer agent may issue documents such as the certificate of real shareholder or the statement of sale and purchase transactions, etc., after confirming that the person who acquired the shares is the real shareholder. The transfer agent only deals with businesses associated with the stock transfer procedure, but does not exercise a shareholder's rights on behalf of shareholders.

31. For example, a certificate of the beneficial shareholder or a statement of the sale and purchase transactions issued by the Korea Securities Depository. If several shareholders jointly exercise the right to file the resolution(s), documents verifying their respective ownership should be submitted, along with a power of attorney if one shareholder acts on others' behalf.

Overview of Legal Process – Republic of Korea

<p>How must the company respond? Who bears the costs?</p>	<p>BOD to include proposed resolutions in the AGM agenda and circulate notice in advance of the AGM. Company bears the cost.</p> <p>The director that receives the filed shareholder climate resolution must report this to the BOD. BOD shall include a validly filed resolution in the agenda of the relevant AGM,³² at the company's cost. The company shall send the notice of the filed resolution to all shareholders in advance of the AGM, at the company's cost.</p> <p>If the BOD does not act, the shareholder may file an injunction seeking a court order for the resolution to be placed on the agenda of the AGM,³³ or for the convening of a separate general meeting of shareholders to discuss the resolution.³⁴ The company usually bears the cost if the shareholder is successful in obtaining a court order.</p>
<p>Can a resolution be withdrawn?</p>	<p>Yes.</p> <p>Shareholders can withdraw a resolution prior to the date of the meeting at which the resolution is to be considered.</p>
<p>Other potentially relevant rights?</p>	<p>Shareholders' rights to explain resolution in shareholders' meeting; to request inspection of the legitimacy of the meeting / filing process; to inspect accounts; to request removal of directors or auditors.</p> <p>A shareholder who filed the resolution shall, on his/her request, be given an opportunity to explain the resolution at the general meeting of shareholders.³⁵</p> <p>Shareholders' other rights include: the right to file an injunction,³⁶ bring representative suits,³⁷ the right to inspect books of account,³⁸ and the right to request the removal of a director or an auditor.³⁹</p> <p>At an AGM or EGM, an inspector may be appointed to examine documents submitted by the directors and auditors' reports.⁴⁰ Further, before the convening of an AGM or EGM, a shareholder who owns 1% or more of the total number of issued and outstanding shares of the company may request a court to appoint an inspector to examine the legitimacy of procedures for convening the general meeting or filing the resolution.⁴¹</p> <p>With respect to EGMs, an inspector may be appointed at an EGM convened upon the request of shareholders to inspect the affairs of the company and the current condition of its assets.⁴²</p>

32. Article 363-2 of the Commercial Act.

33. The Korean court has maintained that a shareholder whose proposal is refused by a company may file an injunction to include such a proposal in the agenda: Seoul Northern District Court Decision 2007KaHap125 and Seoul Central District Court Decision 2017KaHap80321.

34. Article 366 of the Commercial Act.

35. Commercial Act, Article 363-2 (3).

36. Commercial Act, Article 402 and Article 542 (2). The right to bring an injunction is reserved separately from the right to convene a general meeting for shareholders. According to this right, if a director commits an act in contravention of any statute or the articles of incorporation, and such act is likely to cause irreparable damage to the company, the auditor or a shareholder who holds no less than one percent of the total number of issued and outstanding shares may demand on behalf of the company that the relevant director stop such act.

37. Commercial Act, Article 324, Article 403, Article 415, Article 542 (2).

38. Commercial Act, Article 466.

39. Commercial Act, Article 385 (2) and (3), Article 415.

40. Commercial Act, Article 367 (1).

41. Commercial Act, Article 367 (2).

42. Commercial Act, Article 366 (3).

3.9 Singapore

3.9. Singapore

Under Singapore law, shareholders may propose resolutions on a wide variety of matters. This includes proposing and passing shareholder climate resolutions unless the company's constitution (which is the charter document of the company) expressly prohibits resolutions of such nature from being proposed. Shareholder climate resolutions may be passed by an ordinary resolution (requiring a simple majority of the voting shareholders to pass) unless the resolution touches upon matters requiring a special resolution (requiring three-quarters of votes from the voting shareholders to pass). An example of a special resolution would be a shareholder climate resolution to amend the constitution to include the climate-relevant "ask", such as the setting of goals to become a net-zero business.

As a general rule, the passing of an ordinary resolution does not of itself trigger any legal right or remedies,¹ although directors could be required to demonstrate that they were acting appropriately and in proper discharge of their duties if they do not implement a resolution. In the case where it is explicitly stated in a company's constitution (which is the charter document of the company) that a climate matter requires shareholder approval, there will be strong grounds for a shareholder to require that the shareholder climate resolution be implemented. As a matter of corporate practice, unless there are compelling reasons to do otherwise, companies would usually implement ordinary resolutions. Notwithstanding, shareholders may wish to amend the constitution through a special resolution (i) to create a framework by which the company is legally bound in considering and implementing shareholder climate resolutions once passed; and (ii) to prevent a future ordinary resolution from easily amending or overriding a previously passed shareholder climate resolution. Amending the company's constitution can ensure that frameworks are in place to set the stage for the consideration of climate-related matters through specific committees or the implementation of net zero transition policies and processes.²

Shareholders can propose a shareholder climate resolution through (i) proposing a resolution to be included on the agenda of an annual general meeting ("**AGM**") – this requires the lowest shareholding threshold, with the requirement being a minimum holding of 5% of the total voting rights or not less than 100 shareholders holding shares in the company on which there has been paid up an average sum, per shareholder, of not less than S\$500; (ii) requiring directors to call an extraordinary general meeting ("**EGM**") for consideration of the resolution; or (iii) calling an EGM themselves to consider the resolution. If the shareholder wishes to have the most engagement with other shareholders, route (i) would be preferable as more shareholders will usually attend AGMs rather than an EGM. This route would also have the lowest shareholding requirement.

1. A resolution is a formal decision of the company and is not a contract between the members of the company themselves or between the company and third parties. (Koh Sin Chong Freddie v Singapore Swimming Club [2015] 1 SLR 1240). As such, in the event that the company does not implement the resolution, the shareholder does not have recourse against the company for a breach of contract. Resolutions do not have legal effect in and of themselves but may be binding if the constitutional documents of the company or a statutory provision provide for it to be so. While this is generally true, it should also be noted that the declaration of dividends by way of a resolution itself would give rise to a debt owed to the shareholders and chose in action.

2. While we have yet to see examples of companies having done this in practice, this is technically possible under the Companies Act 1967 (the "**CA**").

3. "SGX mandates climate and board diversity disclosures", 15 December 2021, available [here](#).

While shareholder climate resolutions are not common in Singapore and we have not seen any examples of Singapore companies whose constitutions embed climate change-related policies or procedures, the increasing emphasis placed on climate-related financial disclosures, propelled by the Singapore Exchange's announcement of its plans to require Singapore-listed companies to provide climate-related financial reporting based on the recommendations of the Task Force on Climate-Related Financial Disclosures ("**TCFD**") and disclosures on board diversity,³ has cast a spotlight on the climate-related and sustainability strategies that Singapore-listed companies have implemented. The recent developments in the regulatory space of Singapore have brought environmental risk and sustainability reporting to the forefront, and regulatory developments impacting Singapore listed companies set the stage for shareholders to consider the methods through which they may influence companies to consider climate-related matters in a company's operations. The growing consciousness of the importance of climate-related strategies has also been further encouraged by several Singapore-listed companies which have taken the lead in actively making climate-related disclosures in line with the TCFD.⁴ Some important developments on climate change and sustainability considerations that took place in Singapore in 2021 – 2022 include the following:

(a) Regulatory developments from the Singapore Exchange ("SGX**")**

- (i) On 15 December 2021, the SGX announced that all issuers on the Singapore Exchange must now provide climate reporting on a 'comply or explain' basis in their sustainability reports from the financial year ("**FY**") commencing 2022.⁵ The 'comply or explain' approach requires companies to describe their climate reporting practices in respect of the recommendations of the TCFD and where there are deviations from such recommendations, explanations must be provided, including the alternative measures taken to mitigate the risks that the guidelines are intended to address.

Climate reporting will subsequently be mandatory for issuers in the financial, agriculture, food and forest products and energy industries from FY 2023; and the materials and buildings and transportation industries from FY 2024.

Other key changes effective from 1 January 2022 include requiring:

- (A) issuers to subject sustainability reporting processes to internal review;
- (B) all directors to undergo a one-time training on sustainability;⁶
- (C) sustainability reports to be issued together with annual reports unless issuers have conducted external assurance; and
- (D) issuers to set a board diversity policy that addresses gender, skill and experience, and other relevant aspects of diversity. Issuers must also describe the board diversity policy and details such as diversity targets, plans, timelines and progress in their annual reports.
- (ii) On 19 July 2022, SGX RegCo announced that it intends to incorporate the global guidelines on sustainability and climate disclosures from the International Sustainability Standards Board (ISSB) under the International Financial Reporting Standards Foundation into the Singapore Exchange listing rules as mandatory disclosure requirements once such global guidelines have been made available by the end of this year.⁷
- (iii) On 12 September 2022, the Monetary Authority of Singapore and the SGX jointly launched the ESGenome disclosure portal, a digital disclosure portal for companies to report environmental, social and corporate governance ("**ESG**") data and for investors to access ESG data in a consistent and comparable format, to allow for meaningful peer benchmarking and tracking of sustainability commitments.⁸

4. These include companies such as City Developments Limited, Olam Group Limited and Wilmar International Limited.

5. "SGX mandates climate and board diversity disclosures", 15 December 2021, available [here](#).

6. In this regard, please see "Legal Opinion on Directors' Responsibilities and Climate Change under Singapore Law", 14 April 2021, written by Jeffrey W T Chan, SC, Joseph Chun, Ernest Lim, Peter Doraisamy and Quek Wen Jiang, Gerald, available [here](#), for further elaboration as to how the consideration of climate change matters into a director's decision making calculus is arguably necessary in order for a director's obligation to use reasonable diligence in the discharge of his duties (Section 157(1) of the CA) to be fulfilled.

7. "Keynote Speech by Tan Boon Gin, CEO of SGX RegCo, for the "Climate Reporting in ASEAN – State of Corporate Practices" launch event", 19 July 2022, available [here](#).

8. "MAS and SGX Group launch ESGenome Disclosure Portal to streamline sustainability reporting and enhance investor access to ESG data", 12 September 2022, available [here](#).

(b) Regulatory developments from the Monetary Authority of Singapore (“MAS”)

- (i) On 8 December 2020, MAS released guidelines on environmental risk management for banks,⁹ asset managers¹⁰ and insurers.¹¹ While such guidelines do not have the force of law, they set out best-practice standards and will factor into MAS’ overall risk assessment of the financial institution. In particular, asset managers are expected to exercise sound stewardship to help shape the corporate behaviour of investee companies positively through engagement, proxy voting and sector collaboration. This includes supporting investee companies’ efforts in the transition towards more sustainable business practices while maintaining risk management standards.¹² Therefore, the release of the guidelines has signaled strong intent from MAS to draw the attention of financial institutions, specifically, banks, asset managers and insurers, towards taking into account environmental risk management in their ordinary course of business (which for asset managers, would include exercising sound stewardship in respect of the companies in which they invest).
- (ii) On 28 January 2021, the Green Finance Industry Taskforce (“**GFIT**”) convened by MAS released a handbook for financial institutions on implementing environmental risk management. Following from the guidelines from MAS, the handbook is intended to guide financial institutions as they build resilience to environmental risk as part of their business and risk management strategies.
- (iii) On 9 November 2021, MAS announced that it would partner with industry to pilot four digital platforms under Project Greenprint, in efforts to address the financial sector’s needs for good data on sustainability. The four platforms are namely:
- (A) the Greenprint Common Disclosure Portal, developed with SGX (also known as ESGenome, launched on 12 September 2022);
 - (B) the Greenprint Data Orchestrator, which will aggregate sustainability data from multiple data sources such as the ESGenome and from other major ESG data providers and utilities providers;
 - (C) the Greenprint ESG Registry, in partnership with Hashstacs Pte Ltd, a blockchain-powered, industry-wide ESG Data and Certification Registry. The use of a blockchain-based registry is intended to provide financial institutions, corporates, and regulatory authorities with a single point of access to certified data, and facilitate trusted data flows; and
 - (D) the Greenprint Marketplace, in partnership with API Exchange which will connect green technology providers in Singapore to a community of investors to facilitate investment in green technology.¹³
- (iv) On 12 May 2022, GFIT published a second version of the Green and Transition Taxonomy for public consultation, with newly included detailed thresholds and criteria for economic activities in the energy, transport, and real estate sectors. Building upon the first version of the Green and Transition Taxonomy, the aim of the taxonomy is to provide a common framework for the classification of economic activities and allow stakeholders to determine which financial products and services can be classified as green, or environmentally sustainable, over the long term.

9. MAS, “Guidelines on Environmental Risk Management (Banks)”, December 2020, available [here](#).

10. MAS, “Guidelines on Environmental Risk Management (Asset Managers)”, December 2020, available [here](#).

11. MAS, “Guidelines on Environmental Risk Management (Insurers), December 2020”, available [here](#).

12. Paras 6.1 and 6.2 of the “MAS Guidelines on Environmental Risk Management (Asset Managers)”, December 2020, available [here](#).

13. “MAS and Industry to Pilot Digital Platforms for Better Data to Support Green Finance”, 9 November 2021, available [here](#).

- (v) On 31 May 2022, following from the guidelines on environmental risk management for banks, asset managers and insurers that MAS released on 8 December 2020, MAS released additional information papers on environmental risk management for banks,¹⁴ insurers¹⁵ and asset managers,¹⁶ focusing on the progress made in implementing the 8 December 2020 guidelines on the same matter. Among other things, MAS noted that while asset managers established processes and controls for regular monitoring and reporting on environmental risk management matters, some of the reporting frameworks developed tended towards qualitative rather than quantitative metrics. Asset managers were encouraged to enhance consistency in reporting of environmental risk management to the management and to enhance the comprehensiveness of metrics reported.¹⁷
- (vi) On 26 July 2022, MAS also announced the joint launch of the Point Carbon Zero Programme with Google Cloud. The Point Carbon Zero Programme is a collaboration under Project Greenprint and seeks to use climate FinTech solutions to bolster financial sector access to accurate and granular climate-related data, for more efficient deployment of capital towards green and sustainable projects. Google Cloud will launch a world's first open-source cloud platform dedicated to climate finance to support the programme.¹⁸
- (vii) On 28 July 2022, MAS released its Sustainability Report 2021/2022, setting out MAS' strategy and progress in strengthening the financial sector's resilience against environmental risks. Notably:
- (A) efforts have been made to strengthen the comparability and reliability of sustainability-related disclosures for listed companies, major financial institutions and retail ESG funds with a number of guidelines (as stated earlier) released to encourage a standardisation in level of disclosures; and
 - (B) MAS has earmarked S\$50 million from the Financial Sector Technology and Innovation Grant Scheme (FSTI) to support Green FinTech projects in Singapore, among other things.¹⁹
- (viii) On 28 July 2022, MAS also released a circular on the Disclosure and Reporting Guidelines for Retail ESG Funds, in which MAS sets out their expectations on how the existing requirements under the Code on Collective Investment Schemes and the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations apply to retail ESG funds, and the disclosure and reporting guidelines applicable to these funds. The guidance provided is meant to mitigate the risk of "greenwashing".

(c) Regulatory developments from the Ministry of Finance

- (i) On 9 June 2022, the Singapore Government published the Singapore Green Bond Framework, a governance framework for sovereign green bond issuances under the Significant Infrastructure Government Loan Act 2021. The Singapore Green Bond Framework was designed as part of the Singapore Government's commitment to ensure that green bonds issued by public sector agencies adhere to market best practices, and supports the Singapore Government's intention for the public sector to issue up to S\$35 billion of green bonds by 2030.²⁰

14. MAS, "Information Paper on Environmental Risk Management (Banks)", 31 May 2022, available [here](#).

15. MAS, "Information Paper on Environmental Risk Management (Asset Managers)", 31 May 2022, available [here](#).

16. MAS, "Information Paper on Environmental Risk Management (Insurers)", 31 May 2022, available [here](#).

17. Paragraph 2.3 of the "Information Paper on Environmental Risk Management (Asset Managers)", 31 May 2022, available [here](#).

18. "MAS and Google Cloud Launch Point Carbon Zero Programme to Catalyse Climate FinTech Solutions", 26 July 2022, available [here](#).

19. "MAS 2021/2022 Sustainability Report", available [here](#) and "Remarks by Mr Ravi Menon, Managing Director, MAS,

"From Green Finance to Transition Finance", at the MAS Sustainability Report 2021/2022 Media Conference on 28 July 2022", available [here](#).

20. Singapore Ministry of Finance, "Singapore Green Bond Framework" available [here](#) and the Press Release on the Framework, 9 June 2022, available [here](#).

For more information on the successful issuance of Singapore's first sovereign S\$2.4 billion green bond, please see [here](#).

While the developments listed above are more relevant to listed companies and financial institutions in Singapore, the rapid developments and influx of government and industry-led initiatives in the ESG sphere have made it difficult for companies and their directors to completely disregard the need to factor in ESG concerns in the management and operations of a company. The information set out below is intended to inform shareholders on the options available for climate-related shareholder proposals within Singapore's legal framework.

Local experts:

Andrew Martin Managing Principal, Baker & McKenzie.Wong & Leow.

Min-tze Lean Principal, Mergers & Acquisitions, Baker & McKenzie.Wong & Leow.

(With contributions from Natania Ng, Chew Min, Melissa Lee and Rheyra Panjwani)

Overview of Legal Process – Singapore

Basic right to propose?	<p>Yes.</p> <p>Shareholders can propose a shareholder climate resolution for consideration at an AGM, require the directors of the company to convene an EGM to consider the resolution, or call a meeting of the company on their own accord to consider the resolution.</p>
Amendment to charter documents required or recommended?	<p>Not required. Recommended if shareholders wish to entrench climate considerations into the company's constitution.</p> <p>A shareholder climate resolution can be brought as an ordinary resolution. As explained in the introduction, although generally an ordinary resolution does not of itself give rise to legal rights or remedies, as a matter of corporate practice, unless there are compelling reasons to do otherwise, directors would usually take steps to ensure that companies implement the ordinary resolution.</p> <p>However, if there is a particular concern that an ordinary resolution may not be implemented, shareholders may prefer to amend the constitution such that the content of the shareholder climate resolution is enshrined into the company's constitution, if they can secure the requisite votes. The constitution represents a contract entered into between each of the shareholders, as well as between the shareholders and the company. This allows a shareholder to apply to court to restrain any impending breaches of the constitution, or to set aside breaches of the constitution. Since amending the constitution requires a larger proportion of votes to pass than an ordinary resolution, this also prevents a future ordinary resolution from amending or overriding a shareholder climate consideration that was previously enshrined into the constitution.</p>
Types of resolutions available and voting thresholds?	<p>Ordinary or special resolution.²¹</p> <p><i>Ordinary resolution:</i> passed by a simple majority of the votes of shareholders who vote in person or by proxy.²²</p> <p><i>Special resolution:</i> passed by a majority of not less than three-quarters of the shareholders voting in person or by proxy at a general meeting, and the resolution must be specified as a special resolution in the notice of meeting that is sent out to the shareholders. Alteration of the constitution requires a special resolution.²³</p> <p>There is no concept of advisory or non-binding resolutions under Singapore law. As above, while generally an ordinary resolution would not give rise to legal rights or remedies, as a matter of corporate practice directors would usually take steps to ensure that companies implement the ordinary resolution unless there are compelling reasons to do otherwise.²⁴</p> <p>Private and unlisted public companies²⁵ have the additional option of passing shareholder resolutions by way of written means,²⁶ instead of holding a meeting.²⁷ However, unless the company's constitution otherwise provides, a resolution proposed by written means will lapse if it is not passed before the end of the period of 28 days beginning with the date on which the written resolution has been circulated to the shareholders.²⁸ Agreement to the resolution after the period expires is ineffective.</p>

21. A copy of every special resolution, resolution binding on any class of shareholders and ordinary resolution to issue shares must be filed with the Accounting and Corporate Regulatory Authority ("ACRA") within 14 days of passing such resolution.

22. There are a number of matters which the CA expressly allows to be passed by way of ordinary resolution (subject to any contrary provision in the company's constitution), such as the appointment and removal of directors.

23. Section 26 of the CA. Other matters that must be passed by way of special resolution include: change of company name (Section 28 of the CA) and the reduction of share capital (Section 78B and 78C of the CA).

24. As above, while this is generally true, it should also be noted that the declaration of dividends by way of a shareholders' resolution itself would give rise to a debt owed to the shareholders and chose in action.

25. As per s18(1) of the CA, a private company is a company which has a constitution that (a) restricts the shareholders' rights to transfer its shares and (b) limits the number of shareholders that the Company may have to no more than 50 (counting joint holders of shares as one shareholder and not counting any shareholder who (i) is in the employment of the company or its subsidiary or (ii) while previously in the employment of the company or its subsidiary had become a shareholder and has continued to be a shareholder of the company post-termination of employment). As per s4 of the CA, a public company is any company that is not a private company (i.e. does not fall within the requirements listed above). A listed public company (also known as an Issuer) is a public company that has been listed onto the Singapore Stock Exchange while an unlisted public company would be any other public company that has not been listed on the Singapore Stock Exchange. These could include companies that have been listed on other stock exchanges that are not the Singapore Stock Exchange or a company that has more than 50 shareholders (not including employees or ex-employees). However, please note that "unlisted public company" can have a differing definition depending on the applicable section of the CA. For example, for the purposes of s184A of the CA (the section governing shareholder resolutions passed by written means), an unlisted public company refers to a public company not listed on the Singapore Stock Exchange or any securities exchange outside Singapore.

26. In accordance with Section 184A of the CA. The thresholds for proposing a shareholder resolution by written means are the same as the thresholds required to be met to call a meeting. However, the threshold to pass a shareholder resolution by written means differs. For an ordinary resolution to be passed by written means, the ordinary resolution must be passed by shareholders who on the date of the passed resolution, represent a simple majority (unless a greater majority is required by the company's constitution) of the total voting rights of all shareholders who would have the right to vote on the ordinary resolution at a general meeting of the company (as opposed to just shareholders who are present and voting in person or by proxy). For a special resolution to be passed by written means, the special resolution must be passed by shareholders who on the date of the passed resolution, represent at least 75% (unless a greater majority is required by the company's constitution) of the total voting rights of all shareholders who would have the right to vote on the special resolution at a general meeting of the company (as opposed to just shareholders who are present and voting in person or by proxy).

27. Under Section 184A of the CA, the requisition must set out the text of the resolution and the statement must be in legible or the permitted alternative form, and the notice should state that formal agreement to the resolution is sought under Section 184 of the CA in order for the resolution to be validly circulated.

28. Section 184DA(1) of CA.

Overview of Legal Process – Singapore

<p>Type of meeting</p>	<p>Threshold to propose resolution is lower at an AGM, but an EGM is possible as well.</p> <p>The threshold required to propose a shareholder climate resolution at an AGM is lower than that required to call an EGM (discussed in the box below). On the other hand, an EGM is more flexible as it can be called at any time. In either case, the proportion of votes needed for a resolution to pass is based on those present and voting at the meeting. As such, whether an AGM or EGM is more appropriate for securing favourable votes on shareholder climate resolutions is largely dependent on the number of shareholders the company has, as well as how actively involved the shareholders are in participating in the matters of the company.</p> <p>Further, in the case of a listed public company,²⁹ if a shareholder wishes to engage as many minority shareholders as possible on a climate-related resolution, it may be preferable to propose a shareholders' resolution at the AGM, given that shareholder turnout is generally higher at an AGM where matters relating to the company's direction and strategy are often discussed and aired.</p>
<p>Thresholds for filing a resolution/ calling a meeting?</p>	<p>Varies. Thresholds include holding no less than 5% of the total voting rights to propose a resolution at an AGM; holding no less than 10% of the total voting rights to convene an EGM.</p> <p>To propose a shareholder climate resolution for consideration at an AGM:</p> <p>(a) the shareholder(s) proposing the resolution must collectively hold not less than 5% of the total voting rights of those entitled to vote; or</p> <p>(b) not less than 100 shareholders holding shares in the company on which there has been paid up an average sum, per shareholder, of not less than S\$500.³⁰ These thresholds are calculated at the date on which the shareholders request for the resolution to be included on the agenda of the AGM.</p> <p>To require the directors to convene an EGM at which the shareholder climate resolution will be considered:</p> <p>(a) the shareholder(s) making the request must collectively hold not less than 10% of the total number of paid-up voting shares (excluding treasury shares); or</p> <p>(b) if the company has no share capital, shareholders must represent not less than 10% of the total voting rights of all shareholders.³¹ The thresholds are calculated as at the date the request to convene the EGM is deposited at the registered office of the company.³²</p> <p>To call an EGM on the shareholders' own accord to consider the shareholder climate resolution:</p> <p>(a) two or more shareholders calling the meeting must hold not less than 10% of the total number of issued shares of the company (excluding treasury shares); or</p> <p>(b) if the company has no share capital, shareholders must comprise not less than 5% in number of the shareholders of the company, or a lesser number if the company's constitution provides for a lower threshold to call a meeting of the company.³³ The thresholds should be calculated as at the date that the meeting is called by way of written notice.³⁴</p>

29. See above at note 25.

30. Section 183(2) of the CA.

31. Section 176(1) of the CA.

32. Section 176(1) and (3) of the CA.

33. Section 177(1) of the CA.

34. Although not explicitly stated in Section 177(1) of the CA.

Overview of Legal Process – Singapore

<p>Filing restrictions?</p>	<p>Shares must confer on the shareholder the right to vote on the proposed resolution; registration as shareholders (for private company); no minimum ownership period.</p> <p>In order for a shareholder to pass a resolution, the shares must confer the shareholder with rights to vote on the proposed resolution.³⁵</p> <p>For a private company,³⁶ the shareholder should be entered as a shareholder in the company's electronic register of members³⁷ at the time the meeting is called, or, in the case of an AGM, typically 48 or 72 hours before the AGM is held (depending on the company's constitution).</p> <p>There is no requirement that the shareholders have to be registered in the jurisdiction of incorporation of the company. There is also no minimum share ownership period requirement. However, it is recommended that shareholders retain their shareholding until at least after the resolutions have been voted upon to avoid being vulnerable to accusations of having a lack of commitment to the matter or the company. In the case of public listed companies,³⁸ the typical requirement would be for shareholders to appear on the Register of Members or the Depository Register³⁹ at least 48 hours before the date of the extraordinary general meeting.</p>
<p>Custodian rules?</p>	<p>Custodians can exercise all the rights associated with the shares they hold on behalf of the shareholders they hold shares for.</p> <p>Where shares are held by custodian institutions or through a nominee company, the custodian institution or nominee company would be the registered shareholder entitled to attend and vote at a general meeting of a company. Indirect investors who are beneficial shareholders and who hold the shares via a custodian institution or nominee company can only attend as a proxy of the custodian institution or nominee company (if appointed).⁴⁰</p> <p>Certain custodian institutions⁴¹ may appoint more than 2 proxies in relation to a general meeting to exercise all or any of the indirect shareholder's rights to attend and to speak and vote at the meeting. However, each appointed proxy must exercise rights attached to the relevant shares to which their proxy appointment relates.</p> <p>It should be noted that custodian institutions represent a wide range of shareholders and may be concerned to appear impartial and not represent the voice of a selective block of shareholders. This may pose as a practical consideration for custodian institutions when they decide how to exercise shareholder rights in respect of the shares they hold.</p> <p>A beneficiary's rights are subject to the specific contractual terms imposed by the institution. Beneficial shareholders should seek advice on a case-by-case basis and see if they can negotiate mutually agreeable terms with the custodian in order to obtain a power of attorney to propose a resolution.</p>

35. Section 180(2) of the CA.

36. See above at note 25.

37. Maintained by ACRA. Such an entry is prima facie evidence of the shareholder's shareholding in the company (Section 196A(6) of the CA).²⁹ See above at note 25.

38. See above at note 25.

39. This is a register maintained by The Central Depository (Pte) Limited in respect of book-entry securities. Shareholders who have shares entered against their name in the Depository Register will be eligible to attend the general meeting.

40. [Chapter 2 Steering Committee Report \("SC Report"\) at \[46\]](#). While proxies may generally be appointed to attend, vote and speak at a meeting of a company, there are certain restrictions (set out in Section 181 of the CA). For instance, unless the company's constitution otherwise provides a proxy is not entitled to vote except on a poll.

41. Where the custodian institution is a relevant intermediary as defined by Section 181(6) of the CA. A "relevant intermediary" means (a) a banking corporation licensed under the Banking Act 1970 or a wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity; (b) a person holding a capital markets services licence to provide custodial services under the Securities and Futures Act 2001 and who holds shares in that capacity; or (c) the Central Provident Fund Board established by the Central Provident Fund Act 1953, in respect of shares purchased under the subsidiary legislation made under that Act providing for the making of investments from the contributions and interest standing to the credit of members of the Central Provident Fund, if the Board holds those shares in the capacity of an intermediary pursuant to or in accordance with that subsidiary legislation.

Overview of Legal Process – Singapore

Process and formal requirements for filing resolutions / proposing a meeting?

Varies.

To propose a shareholder climate resolution for consideration at an AGM

Form: In writing and in hard copy.

Deadline for making proposal: For proposals which require a notice of resolution to be sent, the proposal must be deposited not less than 6 weeks before the AGM. For other proposals which do not require a notice of resolution, the proposal must be deposited one week before the AGM.

Delivery method: The request is deposited at the registered office of the company.

Signatory of the request: Signed by the requesting shareholders.

Language of the request: English.⁴²

Recipient: Directors of the company, subject to any notice requirements under the company's constitution.

Supporting documents: (i) Notice of resolution to be passed and a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution;⁴³ (ii) if the resolution is proposed to be passed by written means, there is no need for a notice of resolution but notification that formal agreement to the resolution is being sought under section 184A Companies Act ("CA") is required.⁴⁴

Other requirements: Along with the proposal, a sum reasonably sufficient to meet the company's expenses to give notice of any resolution or to circulate any statement must also be deposited or tendered.⁴⁵

To require the directors to convene an EGM at which the shareholder climate resolution will be considered:

Form: In writing and in hard copy.

Deadline for making proposal: N.A.

Delivery method: The request is deposited at the registered office of the company.

Signatory of the request: Signed by the requesting shareholders.

Language of the request: English.⁴⁶

Recipient: Directors of the company, subject to any notice requirements under the company's constitution.

Supporting documents: If the resolution proposed is a special resolution, notice requirements in respect of the special resolution (for public companies) must be met.⁴⁷

Other requirements: The request should state the objects of the meeting. It may include the text of the proposed shareholder climate resolution.

To call an EGM on the shareholders' own accord to consider the shareholder climate resolution:

Form: In writing and depending on the company's constitution requirements, in hard copy or electronic form.

Deadline for making proposal: No deadline. However, the meeting must be called by written notice with not less than 14 days' notice (or such longer period as may be required in the company's constitution).⁴⁸ If the company is a public company (whether listed or unlisted),⁴⁹ and the resolution proposed to be passed is a special resolution,⁵⁰ the shareholders must call the meeting by written notice with not less than 21 days' notice.⁵¹

Delivery method: Depending on the company's constitution requirements the written notice may be sent in hard copy by post or by electronic means.

42. While the CA does not explicitly require that proposals be made in English, section 397(3) of the CA requires the company to translate any company documents or records (which are necessary to keep under the CA) into English from time to time (with intervals not longer than 7 days). Similarly, rule 217 of the Singapore Exchange Mainboard Listing Rules requires that foreign issuers who are also secondarily listed in Singapore, must release all relevant information and documents (such as notice of general meetings) to the Singapore Exchange in English, as and when such announcements are made in their primary listing jurisdictions. The requirement that announcements and documents be in English is likely to apply to all Issuers on the Singapore Exchange as well. As such, as a practical consideration, the shareholder resolution proposal should be made in English.

43. Section 183(1) of the CA

44. Section 183(3A) of the CA

45. Section 183(4) of the CA.

46. See above at note 42.

47. Section 176(5) of the CA.

48. Section 177(2) of the CA.

49. See above at note 25.

50. A special resolution is a resolution which shall only be passed when it has been passed by a majority of not less than three-quarters of the company's shareholders who are entitled to vote in person or by proxy present at a general meeting. Where the company in question is a public company under Singapore law, a longer notice period of not less than 21 days' written notice must be given to the shareholders. The special resolution in question must also be specified as a special resolution.

51. Section 184(1)(b) of the CA.

Overview of Legal Process – Singapore

	<p><i>Signatory of the request:</i> No signatures are strictly necessary under the CA, however, the shareholders calling the meeting should indicate their names.</p> <p><i>Language of the request:</i> English.⁵²</p> <p><i>Recipient:</i> All shareholders who have a right to attend and vote under the company's constitution.</p> <p><i>Supporting documents:</i> To prepare and serve a written notice to every shareholder who has the right to attend the meeting. The text of the proposed climate-related resolution may be included in the written notice.</p> <p><i>Other requirements:</i> Unless otherwise provided for in the company's constitution, the written notice must specify (i) the place at which the general meeting is held; (ii) the date and time of the general meeting and (iii) the general nature of the business to be transacted at the general meeting.</p>
<p>How must the company respond? Who bears the costs?</p>	<p>Company to circulate proposed resolutions in advance of the AGM, shareholders bear costs. Directors to convene EGM, company bears the costs.</p> <p><u>For shareholders' proposal of a shareholder climate resolution for consideration at an AGM</u></p> <p>The company must give all shareholders notice of the proposed shareholder climate resolution and circulate the relevant supporting statements.⁵³ The shareholders proposing the resolution bear the costs unless the company resolves otherwise. This would normally be the costs of preparing and printing the Notice, the SGX's or the sponsor's review fees (as applicable), and possibly the company counsel's and the company secretary's costs for reviewing the resolutions.</p> <p><u>For an EGM convened by the directors upon the shareholders' request</u></p> <p>Upon receipt of a request for the directors to convene an EGM, the directors of a company, despite anything in its constitution, must immediately proceed to convene an EGM as soon as practicable and no later than 2 months after the receipt by the company of the shareholders' requisition.⁵⁴ The company will bear the costs.</p> <p>If the directors do not, within 21 days of the date of receipt of request, proceed to convene a meeting,⁵⁵ the requesting shareholders, or any of them representing more than 50% of the total voting rights of all of them, may themselves convene a meeting. However, this meeting must not be held after 3 months from the date of the deposit of the requisition. The company must pay the shareholders for reasonable expenses incurred, and any sum paid must be retained by the company out of the fees or remuneration due to the defaulting directors.⁵⁶</p> <p><u>For an EGM called by the shareholders on their own accord</u></p> <p>Singapore law is silent on this and it appears that the costs will be borne by the shareholders who wish to call the meeting.</p>
<p>Can a resolution be withdrawn?</p>	<p>Possibly, if the resolution / notice of the resolution has not yet been circulated to all shareholders.</p> <p>Singapore law is largely silent on whether shareholders can withdraw a resolution after the resolution has been circulated or after notice of the resolution has been given to the shareholders. However, practically, where the EGM notice or agenda of the AGM has yet to be issued, shareholders would likely still have the chance to withdraw their requisition and not convene the general meeting. Where a notice of an EGM has been issued, there have been instances where public listed companies on the SGX have issued announcements to withdraw resolutions ahead of the general meeting,⁵⁷ but the general meeting must still be convened since notice of the meeting has already been given.</p> <p>However, where the proposed resolutions are to be passed by written means, it is unlikely that the resolutions proposed by shareholders (through directors) can be withdrawn once the written resolutions have been circulated to shareholders.</p>

52. See above at note 42.

53. Where the company fails to do so, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

54. Section 176(1) of the CA.

55. The failure of the directors to convene an EGM no later than 2 months after the receipt of the shareholders' requisition is an offence pursuant to Section 407(1) of the CA and the directors shall be liable on conviction to a fine not exceeding \$1,000.

56. Section 176(4) of the CA.

57. For example, withdrawal of resolution by Chemical Industries (Far East) Limited, available [here](#).

Overview of Legal Process – Singapore

Other potentially relevant rights?

Rights to participate in meetings and vote; to restrain acts that are beyond the company's capacity; to have access to records and ask for an audit.

Every shareholder of the company has a right to attend any general meeting of the company and to speak at such meetings, and to be provided due notice of meetings notwithstanding anything to the contrary in the company's constitution.⁵⁸

Shareholders have the right to apply to the court to restrain an impending breach of the constitution,⁵⁹ and the right to restrain a threatened breach of the law⁶⁰ or acts that are beyond the company's capacity.⁶¹

Shareholders also have the right to inspect a number of registers maintained by the company,⁶² the minutes of general meetings and resolutions passed by written means.⁶³

Every shareholder is entitled to be informed of the company's financial position.⁶⁴ Any shareholder is also entitled to receive a copy of the company's accounts, auditor's report and director's report⁶⁵ not less than 14 days before the general meeting at which the accounts are to be presented.

58. Sections 180(1) and 177(4) of the CA respectively.

59. *Salmon v Quin & Axtens Ltd* [1909] 1 Ch 311, CA (Eng).

60. The court may restrain a threatened breach of the CA (or other laws). An application to the court may be made by ACRA or by any person whose interests would be affected by the breach, including a shareholder of the company.

61. Section 25 of the CA.

62. Section 12(2) of the CA. This includes the register of shareholders (Section 12(2)(d) and Section 192(2) of the CA), the register of directors, chief executive officers, secretaries, and auditors (Section 12(2)(c) of the CA), the register of director's and chief executive officer's shareholdings (Section 164(8) of the CA), the register of substantial shareholders (Section 88(2) of the CA), the register of debenture holders (Section 93(3) of the CA) and the register of charges (Section 138(3) of the CA).

63. Section 189(1) and 189(2A) of the CA. Any shareholder can obtain a copy of the minutes at a nominal charge: Section 189(2) CA.

64. Including inspecting all instruments creating registrable charges in respect of the company's property (Section 138(3) of the CA) and requesting, upon payment of a fee, a copy of any instrument or debenture kept by the company (Section 138(3A) of the CA).

65. Specifically, a copy of the last audited profit and loss account and balance sheet (including consolidated accounts where applicable), as well as a copy of the auditor's report (Section 203(1) of the CA) and directors' statement (Section 201(16) of the CA).

3.10 Thailand

3.10. Thailand

Under Thai law, the board of directors of a company wields power to manage and carry out the business operations of the company, which includes the authority to determine the agenda of a shareholders' meeting and to hold extraordinary general meetings of the shareholders ("**EGM**") as they deem appropriate.

The degree to which shareholders have a say in the company's affairs depends on the nature of the company: (i) private limited companies¹ ("**private companies**") are companies which are formed with capital being divided into shares of an equal value and with the liability of the shareholders being limited to the amount unpaid on the shares held by them;² (ii) public limited companies³ ("**public companies**") are companies established for the purpose of offering shares for sale to the public and the shareholders shall have their liability limited up to the amount to be paid on shares; and (iii) public listed companies ("**listed companies**") are public limited companies whose shares are listed on the Securities Exchange or the over-the-counter center.⁴

The balance of power to determine the agenda of a shareholders' meeting is generally in favour of the board of directors in the case of private companies, while being less so in the case of public and listed companies as the law provides further rights to shareholders to place items, including shareholder climate resolutions, on the agenda for consideration at shareholders' meetings.

Shareholders in public companies and listed companies can "file" shareholder climate resolutions by adding these to the agenda of an upcoming annual general meeting ("**AGM**") or an upcoming EGM (either in advance of these meetings in the case of listed companies or at the meeting itself after all agenda items have been considered in the case of public companies and listed companies). They can also call an EGM specifically to consider a proposed shareholder climate resolution. For shareholders in private companies, it is less clear whether they can add shareholder climate resolutions as agenda items to AGMs or EGMs. However, they can call an EGM to consider a proposed shareholder climate resolution.

Shareholder climate resolutions would normally fall within the range of matters for which shareholders can propose resolutions, unless specifically prohibited by the company's policy on the criteria for shareholders' proposal of resolutions. These criteria and restrictions for shareholders' proposal of resolutions are generally not specified in the company's charter documents⁵ (i.e. the Articles of Association or Memorandum of Association). In practice, we note that listed companies generally publish their policy on the criteria and restrictions for shareholders' proposal of resolutions on their website. However, it is uncommon for private and public companies to publish the said policy.

1. The legislation which primarily governs private limited companies is the Civil and Commercial Code ("**CCC**").

2. Section 1096 of the CCC.

3. Public limited companies are governed by the Public Company Limited Act ("**PCLA**").

4. Public limited companies whose shares are listed on the Securities Exchange or over-the-counter center, or who offer for sale newly issued shares to the public (i.e. listed companies), are governed by the Securities and Exchange Act.

5. Note that there is no definition of 'charter document' under Thai law.

As for key developments relevant to climate risk and Environmental, Social and Governance matters (“**ESG**”) in Thailand, although specific climate-related regulations are currently limited, we note that companies and regulators such as the Thai Securities and Exchange Commission (“**SEC**”) are increasing their awareness of climate risks. In 2021, the Thai SEC became an official supporter of the Task Force on Climate-Related Financial Disclosures and the SEC aims to promote awareness and encourage companies to incorporate climate-related risks into their strategic planning and risk management. We have also observed an increasing number of companies which adopt ESG as part of their policy and corporate strategy in Thailand. In light of this, it is anticipated that more climate-related regulations will be launched in the future.

Local expert:

R&T Asia (Thailand) Limited. Contact: Melisa Uremovic, Deputy Managing Partner; Piroon Saengpakdee, Partner.

Overview of Legal Process – Thailand

Basic right to file?	<p>Yes.</p> <p>Shareholders can add the shareholder climate resolution to the agenda of an upcoming AGM or EGM, thereby “filing” the resolution. However, for private companies, there is a risk that such resolution, if passed, could be subsequently challenged if it is considered “significant agenda” which may affect shareholders’ interests, and/or is required to be passed by a special resolution.⁶ It should also be noted that, for a public company, shareholders can exercise the right to add other agenda for the consideration of the meeting only after the meeting has completed its consideration of all previous agenda.</p> <p>Shareholders can also summon an EGM to specifically consider the shareholder climate resolution.</p>
Amendment to charter documents required or recommended?	<p>Amendment to charter documents is not generally required.</p> <p>Shareholder climate resolutions would normally fall within the range of matters for which shareholders can propose resolutions, unless specifically prohibited by the company’s policy on the criteria for shareholders’ proposal of resolutions. At present, it is not a common practice in Thailand for a shareholder climate resolution to be incorporated into the company’s Articles of Association.</p>
Types of resolutions available and voting thresholds?	<p>Ordinary and special resolutions.</p> <p><i>Ordinary resolution:</i> requires the majority vote of shareholders present at the meeting and entitled to vote⁷ to pass. Except for certain matters specified by law or the Articles of Association of the company, most agenda require an ordinary resolution of the shareholders to pass.</p> <p><i>Special resolution:</i> requires at least 75% of the votes of shareholders present at the meeting and entitled to vote⁸ to pass. Examples of matters which require a special resolution include a resolution for amendment to the company’s Articles of Association, increase or decrease of registered capital of the company, and a merger of the company.</p> <p>A shareholder climate resolution would generally take the form of an ordinary resolution unless it falls within the scope of specific matters which require a special resolution (e.g. it involves amendment of the company’s Articles of Association).</p>
Type of meeting?	<p>AGM or EGM.</p> <p>Both AGMs and EGMs are common forms of shareholder meetings in which shareholders vote on resolutions and they should not have different implications in terms of securing favourable votes on shareholder climate resolutions.</p>
Thresholds for filing a resolution/ calling a meeting?	<p>5% voting rights to place a shareholder climate resolution on AGM/EGM agenda of a listed company; other thresholds vary.</p> <p><i>For private companies:</i> Thai law does not specify a threshold for shareholders to propose a resolution as new agenda at an AGM/EGM. Shareholders who call an EGM to consider a shareholder climate resolution must hold not less than 20% of the shares of the private limited company.⁹ Such threshold must be satisfied on the date on which the shareholders submit a written notice to the board of directors of the company to call an EGM.</p>

6. Supreme court decision no. 3413/2560.

7. Section 107 of the PCLA.

8. Section 1194 of the CCC and Section 107 of the PCLA.

9. Section 1173 of the CCC.

Overview of Legal Process – Thailand

	<p><i>For public companies:</i> shareholders holding not less than one-third of the total number of shares are entitled to request the shareholder climate resolution for consideration at a meeting of shareholders (AGM or EGM) after the meeting has completed its consideration of all agenda.¹⁰ The date at which this threshold is to be calculated would be the date of the meeting in which the shareholders exercise such right. The shareholders of public companies holding not less than 10% of the total number of shares also have the right to call an EGM to consider and pass a shareholder climate resolution which they specify in the notice summoning the meeting, subject to compliance with requirements under the applicable law.¹¹ For example, such request must specify reasons for calling the meeting and agenda of the meeting. Such threshold should be satisfied on the date on which the shareholders exercise the right to call an EGM.</p> <p><i>For listed companies:</i> shareholders holding shares with voting rights of at least 5% of the total voting rights of the company may submit a written proposal requesting the board of directors to include the shareholder climate resolution as an agenda of an upcoming AGM or EGM.¹² This threshold shall be calculated at the date on which the shareholders submit a written proposal to the board of directors. Shareholders of listed companies holding not less than 10% of the total number of shares also have the right to call an EGM to consider and pass a shareholder climate resolution which they specify in the notice summoning the meeting. Such threshold should be satisfied on the date on which the shareholders exercise the right to call an EGM.</p>
<p>Filing restrictions?</p>	<p>No statutory restrictions; company may have other restrictions set out in charter documents.</p> <p>There is no statutory restriction on which shareholders may file a resolution, provided that such shareholders satisfy the shareholding threshold and comply with other requirements that may be specified by the company. Certain companies may specify additional requirements such as the form for shareholders' proposal of the agenda, delivery method, supporting documents, or additional restrictions on the scope of the proposed agenda (e.g. such agenda must not be for the benefit of specific persons or entities.)</p> <p>Generally, companies may publish these requirements / restrictions on their websites rather than in the charter documents of the company.</p>
<p>Custodian rules?</p>	<p>No.</p> <p>For public limited companies, the appointment of a proxy must be made in writing in accordance with the form prescribed by the Registrar of the Department of Business Development.¹³</p> <p>There is no specific provision regarding the beneficial shareholders' exercise of right to propose a shareholders' resolution in the event that custodian institutions hold the legal title of the shares. Under Thai law, shareholders who are entitled to exercise the rights of shareholders must be a shareholder who holds legal title and recorded in the share register book of the company.</p> <p>If the custodian institution holds the legal title to the shares and is recorded as a shareholder in the share register book of the company, the beneficial shareholder who wishes to propose a shareholder's resolution may need to obtain a power of attorney from the custodian institution in order for the beneficial shareholder to propose a shareholder's resolution on behalf of the custodian institution.</p>

10. Section 105 of the PCLA.

11. Section 100 of the PCLA.

12. Section 89/28 of the Securities and Exchange Act.

13. Section 34 and 102 of the PCLA. The Department of Business Development is a government agency which is responsible for any registration of public limited companies.

Overview of Legal Process – Thailand

Process and formal requirements for filing resolutions / proposing a meeting?

Varies.

For placing a shareholder climate resolution on the agenda at a shareholders' meeting (AGM or EGM), for private and public companies

Form: The law does not provide a specific form or template.

Deadline for making proposal: No time limit for private company. In practice, however, the proposal for the meeting of shareholders of a private company to consider a climate resolution should be made during the consideration of the 'other matters' agenda in the meeting. For public companies, the shareholders may request the AGM/EGM to consider the shareholder climate resolution which was not specified in the notice calling for the AGM once the meeting has completed its consideration of all agenda.

Delivery method: The law is silent on the delivery method.

Signatory of the request: For private and public companies, the law does not require that this request be made in writing.

Language of the request: No statutory requirement on the language of the notice, but the language used in the request must be understandable to the recipient (e.g. Thai or English).

Recipient: Board of directors of the company.

Supporting documents: The law does not require additional documents to be provided.

Other requirements: N/A.

For requesting the directors to place a shareholder climate resolution on the agenda at a shareholders' meeting (AGM or EGM) of a listed company

Form: Made in writing.

Deadline for making proposal: In the case of an AGM, the proposal must be submitted within the following timeframe (whichever becomes due first): (1) at least one month before the end of the accounting period; or (2) the timeframe specified by the company.¹⁴ The law does not provide a deadline for making a proposal in the case of an EGM, but the shareholders are required to submit a proposal to the company in advance so that the board of directors will have sufficient time for consideration of the proposal before calling the EGM.¹⁵

Delivery method: The law does not provide a specific delivery method. In practice, listed companies generally require that the proposal is sent to the company via email, fax, or registered mail.

Signatory of the request: Shareholders proposing the shareholder climate resolution.

Language of the request: Usually, Thai or English.¹⁶ There is no statutory requirement on the language of the notice, but the language used in the notice must be understandable to the recipient (e.g. Thai or English).

Recipient: Board of directors of the company.

Supporting documents: Copy of the shareholders' identification cards, proof of share ownership, and other supporting documents (if any) as may be required by the company.

Other requirements: Shareholders must specify details of such agenda and indicate whether such agenda is a matter proposed for acknowledgment, for approval or for consideration, and for an EGM or AGM. It should specify the name, address, contact information, and number of shares held by such shareholders, and the representation that the shareholders who submit such proposal hold at least 5% of shares with voting rights of the total voting rights of the company as of the submission date of the proposal.¹⁷

14. Section 1 of the Notification of the capital market supervisory board No. TorJor 78/2564. In practice, listed companies may publish their criteria and timeframe for shareholders' proposal of agenda on their website.

15. Section 1 (2) of the Notification of the capital market supervisory board No. TorJor 78/2564.

16. There is no statutory requirement on the language of the notice, but the language used in the notice must be understandable to the recipient (e.g. Thai or English).

17. Section 89/28 of the Securities and Exchange Act and Section 2 of the Notification of the capital market supervisory board No. TorJor 78/2564.

Overview of Legal Process – Thailand

Process and formal requirements for filing resolutions / proposing a meeting?
(Continued)

Shareholders' proposal to the board of directors for calling an EGM, for private and public companies

Form: In writing.

Deadline for making proposal: No statutory deadline.

Delivery method: The law does not provide a specific delivery method. In practice, the shareholders may deliver such request to the board of directors by hand, registered post, or any other method as specified by the company.

Signatory of the request: Signed by the shareholders who are calling the EGM.

Language of the request: Usually, Thai or English.¹⁸

Recipient: Board of directors of the company.

Supporting documents: None.

Other requirements: The shareholders' proposal to the board of directors to call for the EGM should specify the agenda and reason for calling the EGM¹⁹ (i.e. to consider the shareholder climate resolution). No rules requiring shareholders to have held shares for a specific time.

Shareholders' proposal to the board of directors for calling an EGM, for listed companies

For listed companies, the shareholders who wish to exercise the right to call an EGM²⁰ must comply with the procedures specified in the SEC Guidelines.²¹ For example, the shareholders must submit a request and supporting documents to the Stock Exchange of Thailand ("**SET**") to publish the agenda and details of the meeting via SET's electronic channel.

Form: Application form specified by SET.

Deadline for making proposal: The shareholders must notify SET of the agenda to be published on SET's website at least 14 days before the Record Date or Book Closing date.

Delivery method: The application form and supporting documents must be submitted to SET via electronic means.

Signatory of the request: Shareholders who are calling the EGM.

Language of the request: The agenda and relevant details must be prepared in both Thai and English version.

Recipient: SET.

Supporting documents: Shareholders are required to provide the application form, together with proof of share ownership, and other supporting documents (if any) as may be required by SET.

Other requirements: Shareholders of listed companies who exercise the right to call for a meeting must also notify the Thailand Securities Depository ("**TSD**") of the Record Date or Book Closing date and the shareholders' meeting date by the date on which the shareholders submit the application and documents to TSD via electronic means.

How must the company respond? Who bears the costs?

For listed companies, the shareholder climate resolution which complies with the statutory shareholding thresholds and process above must be placed as an agenda item; company to bear the costs.

For including the shareholder climate resolution as an agenda item in an AGM or EGM, for private and public companies:

For private companies, the law is silent on how the company must respond to the shareholders' proposal of a shareholder climate resolution as an agenda item. For public companies, the company must accept such resolution as an agenda item in an AGM or EGM if the shareholders' proposal satisfies the requirement under the applicable law.²²

18. There is no statutory requirement on the language of the notice, but the language used in the notice must be understandable to the recipient (e.g. Thai or English).

19. Section 1173 of the CCC and Section 100 of the PCLA.

20. Section 100 of the PCLA.

21. Letter of the Securities and Exchange Commission No. SEC KorBor. (Wor) 1/2561 re: Additional Suggestion for Shareholders who will Exercise the Right to Call for Shareholders' Meeting pursuant to Section 100 of the PCLA on the Part Relevant to Securities and Exchange Act B.E. 2535 ("**SEC Guidelines**").

22. The PCLA.

Overview of Legal Process – Thailand

How must the company respond? Who bears the costs?
(Continued)

For including the shareholder climate resolution as an agenda item in an AGM or EGM, for listed companies:

If the requisite shareholding thresholds and process above is adhered to,²³ the shareholder climate resolution must be placed as an agenda item. The company shall bear the costs of giving notice and calling for an AGM/EGM (with the proposed resolution included as an agenda item).

However, the board of directors may refuse to include a shareholder climate resolution in the agenda of the meeting if such resolution falls within any of the following cases:²⁴

- (i) the proposal for the resolution does not comply with the requirement for such proposal under the Securities and Exchange Act;
- (ii) the proposed agenda is relevant to the ordinary business operation and the facts given by the shareholders do not indicate any reasonable ground to suspect the irregularity of such matter;
- (iii) the proposed agenda is beyond the company's power to produce the proposed result;
- (iv) the proposed agenda was submitted to the shareholders' meeting for its consideration within the previous 12 months and received the supporting votes of less than 10% of the total number of the voting rights of the company, unless the facts pertaining to the resubmission have significantly changed from that of the previous shareholders' meeting; or
- (v) any other cases as specified in the notification of the Capital Market Supervisory Board.

Generally, a shareholder climate resolution which was proposed in compliance with the legal requirements should not fall within any of these categories (except where it was previously proposed in (iv)). The board of directors are obligated to provide a reason for rejection of the resolution.

Even if the directors refuse to include the shareholder climate resolution in the present meeting, shareholders in the meeting may pass a resolution (with a majority vote of the total number of the shareholders present at the meeting and having the right to vote) to include the shareholder climate resolution in the agenda of the next shareholders' meeting in the future. If passed, the board of directors is required to include the shareholder climate resolution in the agenda of the next shareholders' meeting.²⁵

Calling an EGM

For private and public companies, if the shareholders validly exercise their right to call an EGM, the directors of the company are required to hold the EGM within the statutory timeframe (30 days for a private company,²⁶ and 45 days for a public company²⁷). It is not clear who bears the costs for private companies. For public companies, if the board of directors refuses to call for the EGM within the statutory timeframe, the shareholders holding at least 10% of shares may call for the EGM by themselves and the company shall be responsible for the necessary costs incurred from the holding of this meeting²⁸ (which includes the costs of giving notice).

For listed companies, if the board of directors refuses to call for the EGM within 45 days, shareholders holding at least 10% of shares may call for the EGM by themselves. The shareholders are also required to follow the procedures for calling the EGM as set forth in the SEC Guidelines. Although the company shall be responsible for the necessary costs incurred from the holding of this meeting, the shareholders will be required to make advance payment for the said expense to TSD in order for TSD to publish the agenda and details of the meeting and send out the AGM/EGM notice.²⁹

23. Section 89/28 of the Securities and Exchange Act and Notification of the capital market supervisory board No. TorJor 78/2564.

24. Section 89/28 of the Securities and Exchange Act.

25. Section 89/28 of the Securities and Exchange Act.

26. Section 1174 of the CCC.

27. Section 100 of the PCLA.

28. Section 100 of the PCLA.

29. SEC Guidelines.

Overview of Legal Process – Thailand

<p>Can a resolution be withdrawn?</p>	<p>Unclear.</p> <p>The laws are silent on the withdrawal of a resolution after it has been filed. In practice, if there is any change to the agenda prior to the date of the AGM/EGM, a new AGM/EGM notice should be sent to the shareholders to notify the shareholders in advance of the change to the agenda.</p>
<p>Other potentially relevant rights?</p>	<p>Right to inspect documents; request the appointment of inspectors (for public companies).</p> <p>Shareholders have the right to inspect minutes of all proceedings and resolutions of meetings of shareholders and directors which are kept at the registered office of the company.³⁰</p> <p>For public companies, shareholders holding at least 5% of the total number of shares sold are entitled to submit a written request to the registrar for appointing inspectors for the purposes of inspecting the business and financial standing of the company, which may include inspecting the conduct of business of the board of directors and specific issues on which the inspection is to be conducted.³¹</p>

3.11 Vietnam

3.11. Vietnam

In Vietnam, a joint stock company ("**company**") is the only form of enterprise that can issue shares (and therefore, have "**shareholders**").¹ This is an enterprise of limited liability,² in which its capital is divided into units of equal value called "shares" (comprising ordinary or preference shares).³ It is also typically the form of enterprise under which a public listed company can exist.⁴

A company can take one of numerous organisational structures. However, in each structure, the General Meeting of Shareholders ("**GMS**") (being a meeting that consists of all shareholders with voting rights) represents the highest decision-making authority of a company.⁵ A company would also be managed by a board of directors (as its primary management body),⁶ a director/general director (as the person responsible for the company's day-to-day business operations)⁷ and such other managers as may be set out in the company charter. An annual general meeting ("**AGM**") or extraordinary general meeting ("**EGM**") will take the form of a GMS. Resolutions passed at a GMS are the Vietnamese equivalent of a shareholders' resolution in other jurisdictions.⁸

The rights and obligations of the GMS are regulated in the company's charter. This document can be construed as the Vietnamese equivalent of the "Articles of Association" in other jurisdictions. The charter, among other contents, contains details of the company's shares, rights and obligations of shareholders, the company's organisational structure, and methods for ratifying company decisions.⁹ While Vietnamese law sets forth default positions concerning the administration of shareholders' meetings and passing resolutions (e.g., timelines, quorum and voting thresholds), in many cases, these positions may be displaceable by the terms of the company charter.¹⁰

Qualifying shareholders¹¹ can "file" shareholder climate resolutions by adding these to the agendas of AGMs or EGMs if they fall within the scope of matters that the GMS can resolve pursuant to the company charter. They can also call an EGM specifically to consider a proposed shareholder climate resolution. Shareholders are able to bring resolutions on a broad range of matters.¹² Among them includes matters as to the company's development orientation and such other matters set out in the company charter. Therefore, a shareholder climate resolution could fall within the range of matters which could be considered and voted on by shareholders at a GMS.

1. In Vietnam, the corporate legal framework for shareholder resolutions in particular (or affairs of enterprises in general) is primarily regulated in the Law on Enterprises. The law regulates the establishment, organisation and management, reorganisation, dissolution and related activities of enterprises, including limited liability companies, joint stock companies, partnerships and sole proprietorships, and group companies (Law on Enterprises, Article 1). Both private and public companies are subject to this law (Law on Securities, Article 40). Public listed companies, however, would also need to observe the Law on Securities with respect to their administration (Law on Securities, Article 32.1). This is a joint stock company that either (1) has a contributed charter capital of at least VND 30 billion and with at least 10% of the voting shares held by at least 100 non-major shareholders or (2) has successfully registered its initial public offering with the State Securities Commission.

2. The shareholders' liability for the company's debts and liabilities will be equal to the amount of capital that it has contributed to the company.

3. Law on Enterprises, Article 24.2.

4. Law on Securities, Article 32.1.

5. Law on Enterprises, Article 138.1.

6. Law on Enterprises, Article 153.1.

7. Law on Enterprises, Article 162.2.

8. Although, circular resolutions of the shareholders are also possible.

9. Law on Enterprises, Article 24.2.

10. In numerous instances in the Law on Enterprises, procedures may be qualified to the extent the charter regulates otherwise.

11. A shareholder or group of shareholders that hold at least 5% of the company's ordinary shares (or a lower proportion specified in the charter). Law on Enterprises, Article 141.1.

12. These are generally prescribed as "rights and obligations" of the GMS. They include the right and obligation to, among others, (a) approve the company's development orientation, (b) decide to invest in or sell assets of a value of at least 35% of the total value of assets recorded in the company's most recent financial statement (unless the charter stipulates a percentage or another value), (c) amend and supplement the charter, (d) approve internal governance regulations and operating regulations of the board, and (e) other rights and obligations as prescribed by the Law on Enterprises and the company's charter. Law on Enterprises, Article 138.2.

However, as the law does not expressly contemplate all climate-related matters as falling within the scope of the GMS to decide, the company charter can be amended (by the GMS itself) to specify that all climate resolutions be decided within the competence of the GMS. In such case, to the extent a climate-related resolution is to be brought to the GMS for the first time (the “**new climate ask**”), shareholders may simultaneously bring in the same GMS a first resolution that broadens the scope of the charter to enable future climate matters to be decided by the GMS and a second resolution in respect of the specific new climate ask itself. The successful passing of the second resolution will be contingent on the passing of the first resolution (although both will be placed on the ballot, and the votes for each recorded.)

If the subject matter of the shareholder climate resolution will result in a change to any of the existing contents of the charter,¹³ such as the company’s business lines, then the shareholder climate resolution should be framed as an amendment to the company’s charter. In such case, it is recommended to incorporate the contents of the resolution into the charter, and further, the resolution should be framed as not only including the relevant climate-related matter, but also as a ratification of an amendment of the charter (e.g., an appendix that amends the existing charter). The procedures for amending the company’s charter will be regulated in the charter itself.

Shareholder climate resolutions in Vietnam remain novel, and there are a dearth of readily published instances of key shareholder climate resolutions passed. However, shareholder climate resolutions are likely to become more prevalent in the future. While they have not necessarily been incorporated into company resolutions, in recent times, ESG has become a central part of business strategy for private and public companies alike.¹⁴

The above is in line with Vietnam’s progress in its policies concerning climate risk – developed and issued in furtherance to its “Nationally Determined Contributions” (NDCs) per the Paris Agreement. Key developments include the following:

- (a) On 1 January 2022, Vietnam’s Law on Environmental Protection No. 72/2020/QH14 came into effect, setting forth a foundation for both the public and private sector to take action in response to climate change. For example:
 - (i) The law sets forth general regulations in response to climate change, including placing a responsibility on organisations and individuals to comply with requirements on environmental protection and climate change responses in their production, business and service activities in accordance with the law.¹⁵
 - (ii) In the field of international cooperation, the law envisages that the State will introduce policies in response to climate change and that the Government will set out a roadmap and method of participation for global greenhouse gas reduction initiatives.¹⁶
 - (iii) The law imposes a general responsibility on organisations and individuals to take initiatives in implementing international environmental-related requirements, conditions and standards that are internationally recognised and widely applied to enhance competitiveness in international trade, as well as to generally prevent and limit adverse impacts on the environment.¹⁷

13. The company charter will typically include the following contents (a) company name and address of its head offices, branches and representative offices; (b) company’s business lines; (c) charter capital; total quantity of shares, types of shares and par value of each type of share; (d) full name, mailing address and nationality of each founding shareholder; number of shares, types of shares and value of each type held by founding shareholders; (e) rights and obligations of the shareholders; (f) organisational structure; (g) number, titles, rights and obligations of each legal representative; (h) method for ratifying the company decisions; rules for settling internal disputes; (i) basis and method for determining salaries and bonuses of managers and controllers; (j) cases in which shareholders may request the company to repurchase their shares; (k) rules for distribution of after-tax profits and settlement of business losses; (l) cases of dissolution; procedures for dissolution and liquidation of the company’s assets; and (m) procedures for amending the company’s charter. Law on Enterprises, Article 24.2.

14. For example, Vinamilk has stated that its business has focused on activities concerning sustainable development and environmental protection: VietnamPlus, *Vinamilk: ESG không còn là lựa chọn, mà là cơ hội cho các doanh nghiệp* (in English: Vinamilk: ESG is no longer an option, but an opportunity for businesses), 28 September 2022, accessible at <https://www.vietnamplus.vn/vinamilk-esg-khong-con-la-lua-chon-ma-la-co-hoi-cho-cac-doanh-nghiep/820742.vnp>. NS BlueScope Vietnam has announced plans for responsible sourcing: Vietnam Economic News, *NS BlueScope Vietnam announces responsible sourcing strategy for addressing climate change*, 24 April 2022, accessible at <http://ven.vn/ns-bluescope-vietnam-announces-responsible-sourcing-strategy-for-addressing-climate-change-45685.html>.

15. Law on Environmental Protection, Article 39.2.

16. Law on Environmental Protection, Article 48.

17. Law on Environmental Protection, Article 156.3.

- (b) In 2020, the Prime Minister endorsed the Plan for National Climate Change Response for 2021 – 2030 (with Vision to 2050) ("**Climate Change Plan**"),¹⁸ with the general objective of reducing vulnerabilities and risks from the impacts of climate change through strengthening resilience and adaptive capacities of communities, economic sectors and ecosystems, as well as to promote the integration of climate change adaptation into relevant strategies and planning.¹⁹ Relevant to the private sector, the Climate Change Plan envisages the development of mechanisms and policies to encourage domestic and foreign organisations to invest and support the implementation of the Climate Change Plan.²⁰ As such, while the specifics of such mechanisms and policies remain to be seen, it foreshadows possible policies that would incentivise the uptake of climate-related resolutions.
- (c) The Government (through the Ministry of Natural Resources and Environment) is in the process of developing a detailed framework on the National Strategy on Climate Change for the period to 2050, which will set out a clear roadmap to implement the country's commitments at the 26th Conference of the Parties to the UN Framework Convention on Climate Change (COP26) and with the view to achieving zero net emissions by 2050.

Local expert: *This guide was contributed by Vu Thi Que (Chairwoman) and Logan Leung (Deputy Managing Partner) of Rajah & Tann LCT Lawyers. Further information and contact details about the contributors can be found at <https://www.rajahtannasia.com/que.vu> and <https://vn.rajahtannasia.com/logan.leung>. Rajah & Tann LCT Lawyers is a Vietnamese law firm with offices in Ho Chi Minh City and Hanoi. The firm is a member of Rajah & Tann Asia – a full-service legal network spread out over 10 countries in ASEAN and beyond.*

18. Approved under the cover of the Prime Minister's Decision 1055/QĐ-TTg.

19. Climate Change Plan, Section II.2(a).

20. Climate Change Plan, Task List, Section A, Item III.

Overview of Legal Process – Vietnam

Basic right to file?	<p>Yes.</p> <p>Qualifying shareholders can “file” shareholder climate resolutions by adding these to the agendas of AGMs or EGMs to the extent they fall within the remit of the GMS to decide (which includes such matters as may be specified in the charter). They can also call an EGM specifically to consider a proposed shareholder climate resolution if the charter permits this.</p>
Amendment to charter documents required or recommended?	<p>Only if the shareholder climate resolution affects the content of the charter.</p> <p>As mentioned in the Introductory section, if the subject matter of the shareholder climate resolution will result in a change to any of the existing contents of the charter, such as the company’s business lines, then the shareholder climate resolution should be framed as an amendment to the company’s charter. In such case, it is recommended to incorporate the contents of the resolution into the charter, and further, the resolution should be framed as not only including the relevant climate-related matter, but also as a ratification of an amendment of the charter (e.g., an appendix that amends the existing charter).</p> <p>However, if the proposed shareholder climate resolution does not affect the content of the charter and falls within the remit of the GMS to decide, it can be simply proposed as a normal resolution at a GMS.</p> <p>As the law does not expressly contemplate all climate-related matters as falling within the scope of the GMS to decide, shareholders could also consider amending the charter to widen the remit of what a GMS can decide, to allow shareholders the general right to bring shareholder climate resolutions to the agendas of GMS and/or to call an EGM specifically in the future. Such an amendment could stipulate that future shareholder climate resolutions can be passed by a simple majority of votes.</p>
Types of resolutions available and voting thresholds?	<p>Thresholds differ depending on subject matter of resolution; thresholds can be prescribed in the company’s charter.</p> <p>Vietnamese law does not classify resolutions into particular types (e.g., ordinary, special, advisory/non-binding, etc.). Rather, resolutions on certain matters will be passed at a shareholders’ meeting if they receive at least 65% of the total votes of all attending shareholders (with specific threshold to be regulated in the charter).²¹ These include changes to the company’s business line(s) and field(s) of operation,²² and changes to the company’s organisational and management structure.</p> <p>Resolutions on all other matters will be passed at a shareholders’ meeting if they receive more than 50% of the total votes of all attending shareholders. The specific ratio will be prescribed by the company’s charter.</p> <p>The 65% / 50% thresholds mentioned above should be treated as floor thresholds. The charter can regulate a higher (but not lower) percentage of required votes.</p> <p>Save for certain matters (unless the charter specifies otherwise),²³ resolutions can also be passed by collecting written opinions from the shareholders, as opposed to holding a shareholders meeting. The resolution will be passed if the total number of shareholders owning more than 50% of the total votes of all shareholders vote in favour of the matter.²⁴ The specific ratio will be prescribed by the company’s charter. Whether or not a shareholder climate resolution can be passed as a written resolution will depend on the matter that the resolution pertains to.</p>

21. Law on Enterprises, Article 148. Other matters are: (i) types of share and total shares of each type; (ii) investment projects or sale of assets with a value of 35% or more of total asset value specified in the company’s most recent financial statement (unless the charter specifies another proportion); (iii) reorganisation or dissolution of the company; and (iv) other matters specified in the company’s charter.

22. And the industry in which the company operates.

23. These include decisions on (1) amendments and supplements to the company charter, (2) the development orientation of the company, (3) types of shares and total number of shares of each class, (4) election, dismissal and removal of members of the board of directors and/or board of controllers, (5) investment or sale of assets with a value of at least 35% of the total value of assets recorded in the company’s most recent financial statement (unless the charter stipulates another ratio or value), (6) approval of annual financial statements and (7) reorganisation and dissolution of the company. Law on Enterprises, Article 147.2.

24. Law on Enterprises, Article 148.4.

Overview of Legal Process – Vietnam

<p>Type of meeting?</p>	<p>AGM, unless the charter permits shareholders to call EGMs to consider a shareholder climate resolution.</p> <p>Shareholders with the requisite shareholding threshold can only call an EGM to vote on a shareholder climate resolution if the company's charter allows it.²⁵ Without charter approval, shareholders can only call for an EGM if the Board of Management seriously violates the rights of the shareholders, the obligations of managers or makes decisions beyond its assigned authority.</p> <p>Particularly for public companies, it would be more appropriate and congruent with common corporate practice for shareholder climate resolutions to be raised at the AGM.²⁶ Shareholders can consider and vote on "<i>issues within (their) competence</i>"²⁷ where these are raised for inclusion into the agenda of the AGM. Such issues would usually include shareholder climate resolutions (unless the charter stipulates otherwise).</p>
<p>Thresholds for filing a resolution/ calling a meeting?</p>	<p>At least 5% of the company's ordinary shares (or a lower proportion specified in the charter).</p> <p>Shareholder(s) that hold at least 5% of the company's ordinary shares (or a lower proportion specified in the charter) can file a shareholder climate resolution for consideration at an AGM, or call an EGM to consider the resolution if it is permitted by the charter.</p> <p>Vietnamese law does not specify the date at which the threshold is calculated. However, it should be construed as the time at which the relevant shareholder(s) serve their proposal to include the shareholder climate resolution into the agenda of the AGM, or at the time the shareholder(s) send a written request to convene an EGM to consider the resolution.</p>
<p>Filing restrictions?</p>	<p>None.</p> <p>Vietnamese law does not set out restrictions other than shareholding thresholds.²⁸ However, practically, shareholders must hold shares for at least 22 days before the meeting (unless the charter provides otherwise). When an AGM or EGM is convened (typically by the Board of Management), the convenor is required to prepare a list of shareholders that are entitled to participate in the meeting, and send meeting invitations to such shareholders.²⁹ Unless the company charter regulates a shorter time limit, the convenor must prepare this list no later than 10 days before the date on which the invitations to the meeting are to be sent.³⁰ These invitations will be sent to such listed shareholders at least 21 days before the date on which the meeting occurs (unless the charter specifies an earlier time).³¹ Therefore, as a matter of corporate practice, this list serves as the basis for participation in the meeting.</p>
<p>Custodian rules?</p>	<p>Shareholders can exercise full shareholder rights, even when their shares are held by custodians.</p> <p>Shareholders can enjoy all rights associated with those shares even if these are deposited at custodian institutions. Custodians can exercise any / all of the rights of these shares on behalf of shareholders if specifically authorised by shareholders.</p>

25. Law on Enterprises, Articles 115.2, 115.3.

26. An AGM is convened each year, within four months from the end of the financial year (deferable by up to six months where necessary); Law on Enterprises, Article 139.2. An AGM is a more accessible forum through which shareholders are able to raise items to the agenda for discussion and voting.

27. Law on Enterprises, Article 139.3. Vietnamese law regulates the specific type of issues that would be discussed at an AGM. In the AGM, the ordinary shareholders will discuss and ratify the following matters: (1) the company's annual business plan, (2) the annual financial statement, (3) the report of the Board of Management on its performance and the members, (4) the report of the Board of Controllers on the company's business performance, performance of the Board of Management and the performance of the Director / General Director, (5) the report of the Board of Controllers on its performance and the controllers, (6) dividends of each type of shares, and (7) other issues within its competence.

28. For example, there are no jurisdictional or minimum holding period requirements that are imposed. Vietnamese law does not set out clear rules surrounding "share-blocking" ahead of the AGM / EGM.

29. This list would contain, among others, the details of the shareholders and the number of shares that they hold in the company. Law on Enterprises, Articles 140.5, 141.2.

30. Law on Enterprises, Article 141.1.

31. Law on Enterprises, Article 143.1.

Overview of Legal Process – Vietnam

<p>Process and formal requirements for filing resolutions / proposing a meeting?</p>	<p>Advance notice of resolution required before AGM. Processes can be modified by the charter.</p> <p><u>To file a shareholder climate resolution for consideration at an AGM</u></p> <p><i>Form:</i> In writing.</p> <p><i>Deadline for making proposal:</i> At least three working days before the date on which the meeting will be opened, unless otherwise prescribed in the company's charter.</p> <p><i>Delivery method:</i> No specific requirement, but the law generally recognises postal, fax and email service for service of shareholder documents.</p> <p><i>Signatory of the request:</i> No specific requirement.</p> <p><i>Language of the request:</i> No specific requirement, but as the minutes of the AGM will be in Vietnamese, the filing should also be in Vietnamese.</p> <p><i>Recipient:</i> No specific requirement.</p> <p><i>Supporting documents:</i> No specific requirements.³²</p> <p><i>Other requirements:</i> The written proposal must contain the name of the shareholder(s), the number of shares of each type of the shareholder(s) and the issues to be proposed in the meeting agenda.³³</p> <p><u>To convene an EGM to consider a shareholder climate resolution</u></p> <p><i>Form:</i> In writing.</p> <p><i>Deadline for making proposal:</i> No specific requirement.</p> <p><i>Delivery method:</i> Sent to the company's head office address.</p> <p><i>Signatory of the request:</i> No specific requirement.</p> <p><i>Language of the request:</i> No specific requirement, but as the minutes of the EGM will be in Vietnamese, the filing should also be in Vietnamese.</p> <p><i>Recipient:</i> The Board of Directors.³⁴</p> <p><i>Supporting documents:</i> No specific requirement.</p> <p><i>Other requirements:</i> Request must contain:³⁵ (i) the name, address, nationality and ID card number (for individual shareholders) or the name, enterprise code or a number of other legal documents³⁶ and head office address (for corporate shareholders); (ii) the number of shares, time of registration of shares of each shareholder, and total number of shares of the group of shareholders and the percentage of ownership in the company; and (iii) grounds and reasons for requesting to convene an EGM.</p>
<p>How must the company respond? Who bears the costs?</p>	<p>Resolution to be included in GMS agenda / EGM to be convened. Company bears the costs.</p> <p>The convenor of the GMS must include the shareholder climate resolution in the GMS agenda, if validly requested by shareholders. The agenda will thereafter be subject to approval by the GMS attendees at the opening session of the GMS,³⁷ and subsequently put to vote.</p> <p>If shareholders validly request to convene an EGM, the Board of Management is required to convene the meeting within 30 days from the receipt of the request.³⁸ If it fails to do so, the Board of Controllers will take over as the convenor of the meeting. If the Board of Controllers also fails to do so, the shareholders would convene the GMS on the company's behalf.³⁹</p> <p>Vietnamese law does not regulate a cut-off date by which a shareholder resolution must be filed in order that the company bears the costs of giving notice of the resolution. As a general rule, the costs of convening and conducting the GMS will be borne by the company (and if costs are incurred by the convenor, they would be reimbursed by the company).⁴⁰</p>

32. However, when responding to the filing of the resolution, the Board of Management, when convening the AGM, must, in the invitations to the AGM, include the meeting agenda, the documents that will be used in the meeting, the draft resolution for each issue in the agenda, and the voting slips: Law on Enterprises, Article 143.3. Note that these documents may alternatively be posted on the company's website.

33. Law on Enterprises, Article 142.2.

34. As the company's Board of Directors is typically responsible for convening the EGM: Law on Enterprises, Articles 140.1, 140.2. Note that in Vietnam, the "Board of Management" and "Board of Directors" are used interchangeably.

35. Law on Enterprises, Article 115.4.

36. The Establishment Decision, Enterprise Registration Certificate or equivalent documents.

37. This is a formality to confirm the agenda of the GMS.

38. Law on Enterprises, Article 140.2.

39. Law on Enterprises, Article 140.4.

40. Law on Enterprises, Article 140.2.

Overview of Legal Process – Vietnam

<p>Can a resolution be withdrawn?</p>	<p>No mechanism for withdrawal.</p> <p>Vietnamese law does not stipulate how shareholders can withdraw a resolution after it has been filed. However, while there is no formal withdrawal procedure, if the convener of the GMS receives a request from a shareholder to withdraw a particular matter prior to the convention of the GMS, it may be excluded from the official agenda when it is put for approval by the GMS.</p>
<p>Other potentially relevant rights?</p>	<p>Rights to participate; have access to documents; request examination of the company's management.</p> <p>Ordinary shareholders have the right to participate in and provide their comments at the GMS.⁴¹ They also have the right to review, look up, extract or copy the company's charter, minutes of the GMS and resolutions of the GMS.⁴²</p> <p>Shareholder(s) that hold at least 5% of the company's ordinary shares (or a lower proportion specified in the charter) can request the Board of Controllers⁴³ to examine specific issues related to the management and operation of the company when it considers it necessary.⁴⁴</p> <p>The charter of the company can include additional rights of ordinary shareholders.⁴⁵</p>

41. Law on Enterprises, Article 115.1(a).

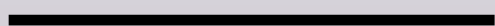
42. Law on Enterprises, Article 115.1(e).

43. The Board of Controllers is a body of the company itself. It has a similar function to a board or committee for internal audit. The Board of Controllers is a compulsory body only in cases where a company has more than 11 shareholders and organisational shareholders hold at least 50% of the total shares of the company. It primarily plays a supervisory function of the company, including among others, in supervising its management and reviewing the reasonableness, lawfulness, honesty and prudence in the company's business management and administration. Law on Enterprises, Article 170.

44. Law on Enterprises, Article 115.2(c).

45. Law on Enterprises, Article 115.1(e).

4. Annexes



Annex 1

"Aiming for A" shareholder resolution brought at BP p.l.c 2015 AGM.¹

Resolution was Board-supported and received over 98% shareholder votes.²

"That in order to address our interest in the longer term success of the Company, given the recognised risks and opportunities associated with climate change, we as shareholders of the Company direct that routine annual reporting from 2016 includes further information about: ongoing operational emissions management; asset portfolio resilience to the International Energy Agency's (IEA's) scenarios; low-carbon energy research and development (R&D) and investment strategies; relevant strategic key performance indicators (KPIs) and executive incentives; and public policy positions relating to climate change. This additional ongoing annual reporting could build on the disclosures already made to CDP (formerly the Carbon Disclosure Project) and/or those already made within the Company's Energy Outlook, Sustainability Review and Annual Report."

Annex 2

Climate Action 100+ investors' shareholder resolution on climate change disclosures brought at BP p.l.c 2019 AGM.³

Resolution received over 99% shareholder votes, and the support of the Board which recommended voting in favour of the resolution.⁴

"That in order to promote the long term success of the Company, given the recognised risks and opportunities associated with climate change, we as shareholders direct the Company to include in its Strategic Report and/or other corporate reports, as appropriate, for the year ending 2019 onwards, a description of its strategy which the Board considers, in good faith, to be consistent with the goals of Articles 2.1(a) (note 1) and 4.1 (note 2) of the Paris Agreement (note 3) (the 'Paris Goals'), as well as:

1. Capital Expenditure: how the Company evaluates the consistency of each new material capex investment, including in the exploration, acquisition or development of oil and gas resources and reserves and other energy sources and technologies, with (a) the Paris Goals and separately (b) a range of other outcomes relevant to its strategy;
2. Metrics and Targets: the Company's principal metrics and relevant targets or goals over the short, medium and/or long-term, consistent with the Paris Goals, together with disclosure of:
 - a. the anticipated levels of investment in (i) oil and gas resources and reserves; and (ii) other energy sources and technologies;
 - b. the Company's targets to promote reductions in its operational greenhouse gas emissions, to be reviewed in line with changing protocols and other relevant factors;
 - c. the estimated carbon intensity of the Company's energy products and progress on carbon intensity over time; and
 - d. any linkage between the above targets and executive remuneration;

1. See BP 2015 AGM Notice of meeting, available [here](#).

2. See BP 2015 AGM Poll results, available [here](#). See note 1 above at p. 2, and BP 2015 AGM Poll results.

3. See BP 2019 AGM Notice of meeting, available [here](#).

4. <https://www.climateaction100.org/news/climate-change-resolution-at-bp-agm-from-climate-action-100-investors-passes-with-over-99-shareholder-support/>.

Annex 2 (continued)

Climate Action 100+ investors' shareholder resolution on climate change disclosures brought at BP p.l.c 2019 AGM.

Resolution received over 99% shareholder votes, and the support of the Board which recommended voting in favour of the resolution.

3. Progress reporting: an annual review of progress against (1) and (2) above.

Such disclosure and reporting to include the criteria and summaries of the methodology and core assumptions used, and to omit commercially confidential or competitively sensitive information and be prepared at reasonable cost; and provided that nothing in this resolution shall limit the Company's powers to set and vary its strategy, or associated targets or metrics, or to take any action which it believes in good faith, would best promote the long-term success of the Company.

Notes

- (1) Article 2.1(a) of The Paris Agreement states the goal of "Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change."
- (2) Article 4.1 of The Paris Agreement: In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
- (3) U.N. Framework Convention on Climate Change Conference of Parties, Twenty-First Session, Adoption of The Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015)."

Annex 3

Resolutions filed by The Children's Investment Fund (TCI) at Aena SME, S.A. 2020 AGM

Resolutions 10, 11 and 12 were Board-supported and received over 99%, 98% and 96% shareholder votes respectively.⁵

"Resolution 10

Approval, where appropriate, of the principles for climate change action and environmental governance.

The Ordinary General Shareholders' Meeting has approved, within the framework of governance in environmental matters and, in particular, within the framework of Aena's Sustainability Strategy, the decision to entrust the Board of Directors with the preparation of a Climate Action Plan was approved. The plan will be multi-year or pluriannual depending on what it establishes and will include actions to mitigate the effects of climate change, as well as monitoring the indicators established for the fulfilment of the decarbonisation objectives in line with:

1. Aena's "Sustainability Objectives on Climate Change", updated appropriately by taking account of Spanish and European regulatory requirements.
2. The recommendations of the Task Force on Climate-Related Financial Disclosure (TCFD) to establish the Risks, Opportunities and Financial Impact of Climate Change.
3. Law 11/2018 on non-financial information and diversity, as well as the guidelines derived from the European Commission's supplement on climate-related information, of Directive 2014/95/EU of the European Parliament and of the Council, which establishes a description of the performance and risk policies linked to environmental issues.

Likewise, the Ordinary General Shareholders' Meeting has approved the delegation to the Board of Directors of the design, management and monitoring of said Plan was approved, as well as the preparation of the documents it deems appropriate for the purpose of keeping the General Shareholders' Meeting informed in a timely manner on issues relating to environmental governance, the content of the Climate Action Plan, its evolution and degree of progress.

Resolutions filed by The Children's Investment Fund (TCI) at Aena SME, S.A. 2020 AGM

Resolutions 10, 11 and 12 were Board-supported and received over 99%, 98% and 96% shareholder votes respectively.

Resolution 11

Instructions to the Board of Directors to present the Climate Action Plan in the Ordinary General Shareholders Meeting occurring in 2021 and Climate Action Update Reports in the Ordinary General Shareholders Meetings that may take place as from 2022 (inclusive), and request a shareholders advisory vote regarding such documents as a separate item on the agenda.

The Ordinary General Shareholders' Meeting has approved, without prejudice to the resolution passed regarding item Ten of the agenda, with the aim of allowing shareholders' engagement in connection with the Climate Action Plan and as the minimum disclosure obligations for the Board of Directors, the shareholders direct the Board of Directors:

- (i) to present in the Ordinary General Shareholders Meeting occurring in 2021, the Climate Action Plan, setting out the actions to mitigate the effects of climate change, as well as monitoring the indicators established for the fulfilment of the decarbonisation objectives in line with: (i) Aena's "Sustainability Objectives on Climate Change", which shall be updated appropriately by taking account of Spanish and European regulatory requirements and which shall meet or exceed the goals of (a) Articles 2.1(a) and 4.1 of the Paris Agreement, (b) the Declaration of Environmental Emergency on 21 January 2020 by the Spanish Government, and (c) the National Integral Plan for Energy and Climate 2021-2030 or such other plan that may be in force from time to time; (ii) the recommendations of the Task Force on Climate-Related Financial Disclosure (TCFD) to establish the Risks, Opportunities and Financial Impact of Climate Change; and (iii) Law 11/2018 on non-financial information and diversity, as well as the guidelines derived from the European Commission's supplement on climate-related information, of Directive 2014/95/EU of the European Parliament and of the Council, which establishes a description of the performance and risk policies linked to environmental issues; and request a shareholders advisory vote as a separate item on the agenda; and
- (ii) to present in each of the Ordinary General Shareholders Meetings that may take place as from 2022 (inclusive), specific detailed annual reports, drawn in accordance with the Task Force on Climate-related Financial Disclosure recommendations, on the progress made by the Company toward the goals set out in the Climate Action Plan and reasoned explanation about any significant variations adopted or to be adopted in the Company's Climate Action Plan and request a shareholders advisory vote as a separate item on the agenda.

Resolutions filed by The Children's Investment Fund (TCI) at Aena SME, S.A. 2020 AGM

Resolutions 10, 11 and 12 were Board-supported and received over 99%, 98% and 96% shareholder votes respectively.

Resolution 12

Amendment of the corporate byelaws to include a new Article 50 Bis.

The Ordinary General Shareholders' Meeting has approved to amend the byelaws of the Company to include a new Article 50 Bis, which shall have the following wording:

"Article 50. Bis. – Climate Action Plan and Climate Action Update Reports.

1. The Company's Board of Directors shall draw up, publish and maintain up-to-date a multi-year or pluriannual Climate Action Plan setting out the actions to mitigate the effects of climate change, as well as monitoring the indicators established for the fulfilment of the decarbonisation objectives in line with: (i) Aena's "Sustainability Objectives on Climate Change", which shall be updated appropriately by taking account of Spanish and European regulatory requirements and which shall meet or exceed the goals of (a) Articles 2.1(a)(i) and 4.1 of the Paris Agreement, (b) the Declaration of Environmental Emergency on 21 January 2020 by the Spanish Government, and (c) the National Integral Plan for Energy and Climate 2021-2030 or such other plan that may be in force from time to time; (ii) the recommendations of the Task Force on Climate-Related Financial Disclosure (TCFD) to establish the Risks, Opportunities and Financial Impact of Climate Change; and (iii) Law 11/2018 on non-financial information and diversity, as well as the guidelines derived from the European Commission's supplement on climate-related information, of Directive 2014/95/EU of the European Parliament and of the Council, which establishes a description of the performance and risk policies linked to environmental issues. Exceptionally, the Climate Action Plan shall not cover the financial year 2020.
2. The Company's Board of Directors shall draw up and publish annually with effect from 2022 a specific detailed annual report on the progress made by the Company toward the goals set out in the Climate Action Plan in force at the time (the "Climate Action Update Report"), which shall be drawn in accordance with the Task Force on Climate-related Financial Disclosure recommendations.
3. If the Climate Action Plan expires, the Company's Board of Directors shall draw up, publish and maintain up-to-date a new Climate Action Plan as per paragraph 1 of this Article 50 Bis. However, if during the validity period of a Climate Action Plan, the Company has or wishes to adopt significant variations in the same, said variations shall be disclosed in the Climate Action Update Report presented to shareholders at the Ordinary General Shareholders Meetings, including the reasons for any such change.
4. The Climate Action Plan in force at the time and the Climate Action Update Reports shall be published by the Company and, in respect of the Climate Action Update Reports, simultaneously with the annual corporate governance report and the report on Directors' compensation.
5. The Climate Action Plans and the Climate Action Update Reports shall be voted upon on an advisory basis, and as a separate item on the agenda, by the Shareholders' Meeting."

Annex 4

HSBC Board-proposed resolution on Climate Change brought at 2021 AGM.⁶

Resolution received over 99% shareholder votes.⁷

"THAT, to promote the long term success of the Company, given the risks and opportunities associated with climate change, the Company should:

- (a) Set, disclose and implement a strategy with short and medium term targets to align its provision of finance (note 1) across all sectors, starting with Oil & Gas and Power & Utilities, with the goals and timelines of the Paris Agreement (note 2).
- (b) Publish and implement a policy to phase out the financing (note 1) of coal-fired power and thermal coal mining by 2030 in markets in the European Union / Organisation for Economic Cooperation and Development, and by 2040 in other markets.
- (c) Report on progress against that strategy and policy on an annual basis, starting with the 2021 Annual Report and Accounts, including a summary of the methodology, scenarios and core assumptions used. This reporting will omit commercially confidential or sensitive information and will be at reasonable cost.

Notes

- (1) For the purposes of this resolution, "finance" and "financing" means providing project finance or direct lending to, or underwriting capital markets transactions for, corporate clients of our Global Banking and Commercial Banking businesses.
- (2) As set out by Article 2.1(a) and Article 4.1 of the Paris Agreement:
https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

Annex 5

Shareholder proposal submitted by BNP Paribas Asset Management at Exxon Mobil Corporation 2021 AGM.⁸

Resolution received over 64% shareholder votes.⁹

"Climate Lobbying Report – Shareholders request that the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, omitting proprietary information) describing if, and how, ExxonMobil's lobbying activities (direct and through trade associations) align with the goal of limiting average global warming to well below 2 degrees Celsius (the Paris Climate Agreement's goal). The report should also address the risks presented by any misaligned lobbying and the company's plans, if any, to mitigate these risks."

6. See HSBC 2021 AGM Notice, available [here](#).

7. <https://www.hsbc.com/news-and-media/hsbc-news/shareholders-back-hsbcs-net-zero-commitments>.

8. See Exxon Mobil Corporation 2021 AGM Notice and Proxy Statement, available [here](#).

9. See Exxon Mobil Corporation 2021 Form 8-K Filing, available [here](#).

Annex 6

Shareholder proposal submitted by Kiko Network at Mizuho Financial Group 2020 AGM.¹⁰

Resolution received approximately 34% shareholder votes.¹¹

"Shareholders' Proposal

Proposal 5: Partial amendment to the Articles of Incorporation (disclosure of a plan outlining the company's business strategy to align its investments with the goals of the Paris Agreement)

...

Details of the proposal

It is proposed that the following provision be added to the Articles of Incorporation:

Noting the company's support for the Paris Agreement and the Task Force on Climate-related Financial Disclosures (TCFD), the company shall disclose in its annual reporting a plan outlining the company's business strategy, including metrics and targets, to align its investments with the goals of the Paris Agreement."

Annex 7

Shareholder proposal submitted by Kiko Network and co-filers at Mitsubishi UFJ Financial Group 2021 AGM.¹²

Resolution received over 22% shareholder votes.¹³

"Proposal by Shareholder

... Partial Amendment to the Articles of Incorporation (Disclosure of a plan outlining the company's business strategy to align its financing and investments with the goals of the Paris Agreement)

...

Proposal details

The following clause shall be added to the Articles of Incorporation: "The company shall adopt and disclose in its annual reporting a plan outlining its business strategy, including metrics and short-, medium- and long-term targets, to align its financing and investments with the goals of the Paris Agreement.""

10. See the proposal available [here](#) at p.55, other 2020 AGM documents [here](#), and the press release by Kiko Network, available [here](#).

11. See the voting results available [here](#) at p.3 and the press release by Kiko Network, available [here](#).

12. See the proposal available [here](#) at p.32 and the press release by Kiko Network, available [here](#).

13. See the voting results available [here](#).

Annex 8

Shareholder resolutions filed by the Australasian Centre for Corporate Responsibility (ACCR) at BHP Group Limited 2021 AGM

ACCR filed two resolutions – Resolution 21: to amend the Constitution of BHP Group Limited to permit shareholders to request for information by way of a non-binding advisory resolution; and Resolution 22: a resolution requesting that the company take certain acts in relation to climate-related lobbying.

Resolution 22 was conditional on the passing of Resolution 21.

Resolution 21 was not supported by the Board, and received approximately 11% shareholder votes. Resolution 22 was supported by the Board, and received over 98% shareholder votes. However, as Resolution 21 did not pass, Resolution 22 was not a valid resolution.¹⁴

“Resolution 21 – Member resolutions at general meeting

The shareholders in general meeting may by ordinary resolution express an opinion, ask for information, or make a request, about the way in which a power of the company partially or exclusively vested in the directors has been or should be exercised. However, such a resolution must relate to an issue of material relevance to the company or the company’s business as identified by the company, and cannot either advocate action which would violate any law or relate to any personal claim or grievance. Such a resolution is advisory only and does not bind the directors or the company.”

“Resolution 22 – Climate-related lobbying

Shareholders request that our company strengthen its review of industry associations to ensure that it identifies areas of inconsistency with the Paris Agreement. Where an industry association’s record of advocacy is, on balance, inconsistent with the Paris Agreement’s goals, shareholders recommend that our company suspend membership, for a period deemed suitable by the Board. Nothing in this resolution should be read as limiting the Board’s discretion to take decisions in the best interests of our company.”

Annex 9

Shareholder proposals submitted by HSBC Asset Management, Man Group, Amundi and ACCR at Electric Power Development Co. (J-POWER) 2022 AGM.¹⁵

Three resolutions filed at 2022 AGM – Proposal 8 received over 25% shareholder votes, Proposal 9 received over 18% shareholder votes, and Proposal 10 received close to 19% shareholder votes.

“Proposal 8: Partial amendment to the Articles of Incorporation

(1) Details of the proposal

The following clause shall be added to the Articles of Incorporation of the Company:

Article X

- 1.** To promote the long-term corporate value of the Company, given the risks and opportunities associated with climate change, and in accordance with the Company's commitment to achieve carbon neutrality by 2050, the Company shall formulate and disclose a business plan with science-based short- and mid-term greenhouse gas emissions reduction targets aligned with Articles 2.1(a) and 4.1 of the Paris Agreement.
- 2.** The Company shall report, in its annual report, on its progress against the business plan specified in the preceding paragraph on an annual basis.

Proposal 9: Partial amendment to the Articles of Incorporation

(1) Details of the proposal

The following clause shall be added to the Articles of Incorporation of the Company:

Article Y

The Company shall disclose, in its annual report, details of how it assesses the alignment of the Company's capital expenditure with its greenhouse gas emissions reduction targets.

Proposal 10: Partial amendment to the Articles of Incorporation

(1) Details of the proposal

The following clause shall be added to the Articles of Incorporation of the Company:

Article Z

The Company shall disclose, in its annual report, details of how the Company's remuneration policies facilitate the achievement of the Company's greenhouse gas emissions reduction targets.”

Annex 10

Shareholder proposal submitted by co-filing group at Credit Suisse Group AG (Credit Suisse) 2022 AGM¹⁶

Proposal received over 18% shareholder votes.

"Subject: Amendment to the articles of association regarding Credit Suisse's climate change strategy and disclosures (fossil fuel assets)

Proposal

Add an article 8.d to the articles of association as follows:

Article 8d Climate Change financing

1. The management report submitted to shareholders should contain, in addition to information on the Company's performance and activities during the past financial year and the other elements required by the provisions of the laws and regulations in force, additional disclosures on the Company's strategy to "align [its] financing with the Paris Agreement objective of limiting global warming to 1.5°C."
2. The report should include additional disclosures on the Company's short-, medium- and long-term steps it plans to take to reduce its exposure (defined as project finance, corporate lending, capital markets underwriting and facilitation, and investments) to coal, oil and gas assets on a timeline consistent with its own alignment objective."

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