

## Extraordinary General Meeting, Shareholders' Protection and Transparency – Empirical Evidence from Public Listed Companies

Ahmad Saiful Azlin Puteh Salin  
Accounting Research Institute  
Faculty of Accountancy  
Universiti Teknologi MARA Perak, Malaysia  
e-mail: ahmad577@perak.uitm.edu.my

Rashidah Abdul Rahman  
Normah Omar  
Wee She Hui  
Erolyn Jane Devanesam J Samuel  
Accounting Research Institute  
Level 12, Menara SAAS, Universiti Teknologi  
MARA Shah Alam, Selangor, Malaysia

**Abstract**—The aim of the paper is to explore how an EGM can be used to protect the rights of the shareholders and the level of transparency of a company's disclosure in relation with the EGM. To achieve these objectives, two analyses have been conducted. First, the content analysis is employed to assess the effectiveness of the EGM by searching some of the practical issues of the EGM via the newspapers, magazines and other public domain media. Second, we also conduct a document analysis on the annual reports of public listed companies to examine whether these companies complied with the selected international best practices on EGMs set by various globally recognized institutions. The research finds that the EGM can be used as an effective tool to safeguard shareholders rights in their companies. In terms of disclosure, the researchers find that some of the international attributes such as notice of meeting are well complied by a majority of all the companies while a few other practices like disclosure on directors' attendance was just ignored.

**Keywords**—extraordinary general meeting; transparency; shareholders' protection; governance; Malaysia

### I. INTRODUCTION

The report by [1] highlighted 25 perspectives on globally applicable corporate governance that is related to shareholders protection. Among others, active shareholders should not be unduly hindered in their activities such as securities, tax and regulations while their rights to vote and participate in shareholders meetings should be protected and enforced. The investors also should consider the right to vote and participate in annual meetings as an asset that provides an opportunity to influence the direction and management of the company.

These perspectives emphasize that the shareholders themselves must play their role in preserving the good governance of the company. General meetings, that comprise of Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs) are some of the limited platform that can be used by the shareholders to defend their rights and protect their investment in the company. As compared to other many good governance mechanisms, there is a lack of attention been given academically on the EGM. This has motivated the current study to first, explore in what way the EGM can be used to protect the right of the shareholders and

second, to examine the level of the disclosure of the company in relation to the EGM.

### II. LITERATURE REVIEW

Basically, one of the objectives of becoming shareholders by investing in the public listed company is to share the profits and prosperity of the company. This type of investment is quite attractive as the investor can expect different type of returns such as dividend income and capital gains. However, this is not always the case for all companies as in certain situations, the company may not perform well and fulfill the expectations of the shareholders that suit their risk profile.

There are few options that can be taken by the shareholders if they are not satisfied with the management of the company. The easiest option is by selling their shares. Therefore, the shareholders can choose the company that they prefer and are aligned with in their investment profile such as the risk and governance profile.

If the shareholders are the majority or are institutional shareholders, selling their shares may depress the price in the share market and open up opportunities for hostile takeovers by other stronger companies. Afraid of being removed by the new shareholders, this market discipline may protect shareholders in terms of their price of share as the management of the company will strive to ensure the share price remains higher and competitive in the market.

The option discussed above however will make the shareholders be at the losing end. The decision is not viable if the share price is already depressed and low from the acquisition price. Disposing their investment holdings means incurring losses due to irresponsible management. In another situation, assuming the disposal price is higher than the acquisition price and the shareholders use the profit to buy shares in other companies which turn from being responsible management to become irresponsible ones. It's back to the similar situation and the shareholders need to repeat the similar process again. This process tends to be expensive and costly in terms of selling and buying costs, doing research and searching for a suitable and attractive company.

This action also may not be preferred especially by the loyal shareholders who have held the shares for a long time. In addition, if the shareholders perceive that the company has the potential to become a blue chip company but due to

mismanagement, it just recorded a lower profit, forgoing ones' holding means the potential profit will be taken by other entities. This option also may not be recommended by the stock exchange administrator and government because substantial liquidation will affect the performance of the exchange overall and may influence the market sentiments and give a negative signal to foreign investors.

The other option that can be used by shareholders is to fully utilise their rights in the EGM. It is a meeting of members of an organisation or shareholders of a company which occurs at an irregular time. The term is usually used where the group would ordinarily hold an AGM but where any issue arises which requires the input of the entire membership, and it is too serious or urgent to wait until the next AGM.

If authorised by the articles, any of the directors who think fit can convene an EGM, subject to adequate notice being given. The power of a director to convene a general meeting is a part of his/her fiduciary duty and must be exercised in the best interests of the company [2].

An EGM also can be convened by members on requisition. The board shall convene the EGM on requisition of members holding at the date of deposit of the requisition not less than 10% of the paid up capital that has the right to vote at the general meeting while for that company that does not have share capital, members representing not less than 10% of the total voting rights of all members [2].

Why do shareholders need to participate in the EGM? These relate to the good principles of governance of shareholders namely shareholders activism. The issue of shareholders' activism or shareholders engagement in corporate governance is not new in the academic literature. The OECD principles on corporate governance clearly stated that one of the rights of the shareholders is to participate in general shareholder meetings. There must be also an equitable treatment for all the process and procedures on such meetings, have equal rights to influence the organization's decision and directions in certain basic issues, such as the election of board members, composition of the board, amendments to the company's organic documents, approval of extraordinary transactions, and other basic issues as specified in the company law and internal company statutes in their country's jurisdiction [3].

A good example of the equal rights of the shareholders is the one-share one-vote rule in the general meetings. This rule will encourage the shareholders in selecting an efficient and effective management team that will enhance the performance of the company [4] although this only may be applicable in the widespread shareholding type of the company. Due to that, a poor corporate governance mechanism frequently found in the markets which are dominated by family owned companies such as in Malaysia [5]. It worsen when institutional and larger groups of shareholders are working closely with the internal management and do not consider the interest of the minority as they feel that they have no duty to repay a good return to the small investor [6].

It then requires passion and perseverance of the shareholders to stand up and speak louder to safeguard their

interests in the company. They must be brave enough to challenge the decisions proposed by the manager such as demanding higher dividend payments, reject underperforming directors, reducing pay and perks of the management and also disapprove company's risky investments. In short, the shareholders cannot depend on other control measures such as auditors or and regulators. They can play their role by exercising their powers by influencing the decision of the company that may undermine their potential returns of an investment. A good example is by voting to oppose excessive directors' remuneration. [7] find that the threat of the shareholders intervention can restrict managerial pay up to the optimum level that can enhance pay-performance link of remuneration.

### III. RESEARCH METHODOLOGY

This paper has two objectives. First, to explore in what way the EGM can be used to protect the rights of the shareholders and second, to examine the level of the disclosure of the public listed company in relation to the EGMs.

To achieve the first objective, content analysis has been conducted in various sources of business media that become the source of the information of the shareholders and investors. This includes the business sections of the daily newspapers, weekly business newspaper and business magazine. This analysis has been conducted for the period from 1 January 2009 until 30 June 2010. The researchers have selected two daily newspaper namely News Strait Times and The Star, one weekly business newspaper namely The Edge Malaysia and one monthly business magazine namely Malaysian Business. There are a few reasons why we select these media. First, the publication is in English. Thus, no translation and language expert opinion is required for research purposes. Second, this media is considered among the leading media in the respective groups or markets. Finally, it is cheap and easily available in the shop, retail outlets and also bookstores.

To achieve the second objective, content analysis was conducted on the annual report of the companies. A measurement instrument was developed with the objective to evaluate the level of compliance of the company's EGM as stipulated by various international best practices. The scores of the companies were computed based on a dichotomous scale of "Yes=1" and "No=0", where a "1-point" score denotes the level of compliance with the best practices whilst a "0-point" score represents no compliance. The best practices are drawn from various international guidelines and the global code of corporate governance.

One hundred (100) PLCs based on the top hundred (100) market capitalization listed in Bursa Malaysia (a Stock Exchange of Malaysian Companies) as at 31 December 2005 were identified as a sample for the study. Due to their size, it was expected that these companies have bigger economic resources to provide more information, better disclosures and a higher effort to company with good governance practices as compared with their counterparts not in the group of top hundred (100). Using this instrument, the latest available annual reports of the companies were analyzed and their

level of disclosure was effectively computed. The annual reports published up to the financial year ending as at 30 June 2006 were used in the survey.

#### IV. FINDINGS AND DISCUSSION

##### A. EGM as a tool for shareholders protection

The first objective of the research is to explore the purpose of the EGM and the reason it was conducted by the company. There are scarce resources of EGMs in academic literature and less effort by researchers to monitor the EGMs conducted by any company. This gives motivation for this study, to understand why companies conduct EGMs and whether these EGMs can provide an appropriate platform for shareholders to protect their rights.

##### 1) Removal of directors and appointment of new directors

EGMs can be used if the shareholders feel their interests are in danger as a result of unwise decisions by the directors. In the fierce and fast pace of the business environment, the shareholders should note tolerate and compromise with underperformers and dishonesty of directors or they will see their money fly away and never come back.

In one Malaysian case, the shareholders of a construction company had voted to remove its existing directors and install a group of new directors. This is because the capital reduction scheme proposed by the former directors to resolve a crisis accumulated losses

In one case of a local finance institution, the EGM was conducted when the existing directors rejected the attractive offer from their rivals for a buyout plan. The shareholders voted not to remove the directors but to appoint more directors in the board with the hope that that the "shareholders' directors will have more power to dominate the board and revive the buyout plan.

##### 2) Rejection of takeover by another company

This happens when the offer price is below the suitable price of the shares. Normally, market price and the net tangible assets will be the basis for a suitable price. This is straight forward but the hardest part is to determine the premium to compensate the opportunities of costs of the existing shareholders. There are no fast rules and hard numbers to determine an appropriate percentage to mark up. The only method we have is the estimation of the potential profit increases as result of the takeover Shareholders, with limited resources, such as brokers and analyst valuers, commentaries in newspapers should demand for a appropriate premium for their shares

##### 3) Undervalued offer price for privatisation

Listed, delisted and relisted. What happens is actually the company in the first place does not have money for its expansion program, so needs public money to finance the project, as borrowing money will cost them too much. A few years down the road, some people who dominate the power see "jewels" and want to take it up all single cent without sharing. So, they apply for delisting by acquiring shares from the retail investors. Again, the problem is in finding the price that can satisfy the current retail shareholders, and it would

still pose a big question, so the EGM can be used as a platform for the shareholders to negotiate good numbers for them.

##### 4) Reject the unfair related party transactions

This normally happened when the disposal or acquiring value of the assets does not reflect its worth and market value. In one case, a company wants to acquire a piece of asset at a specified value and price. However, the quite similar type of asset has been purchased by another company at a one-third lower price than the intended price. Why is the company unable to negotiate and get a good price as the other company? Obviously, if this transaction proceeds with the original price, it will lower the profit of the company and thus, affecting the dividends.

##### 5) Fighting against unreasonable capital reduction schemes

The company operated under losses for a few years. Thus, carrying huge amount of accumulated losses. To "make up" the financial statement, capital reduction has been proposed to clean up the loss. Should the money of the shareholders be used to redeem the management's past sins? If the proposed capital restructuring would dilute the existing power of the shareholders and deteriorate the shareholders value in the long run, it is recommended that the proposal be rejected.

##### B. Disclosures of EGMs

Good management practices will inculcate good governance by the board of the company and its relationship with the shareholders and stakeholders. Currently, there is no standard requirement or regulation to measure or assess how companies should conduct meetings and make their disclosures other than guidelines or best practices recommended by leading professional organizations. In addition, there is also no organized or structured effort by the regulator or other parties to examine or assess the conformance of companies with regards to disclosures or Best Practices of company's EGMs. Thus, the other objective of this paper is to discuss and explore some of the issues and international best practices pertaining to EGMs. The selected best practices include disclosures and matters pertaining to resolutions, notices, and frequency of meetings, directors and shareholders' attendance, voting results, minutes of meetings, venue and time of EGMs.

##### 1) Resolutions

The EGM can be conducted to pass ordinary and special resolutions. The current survey finds that 37 companies conducted in total 48 EGMs. 32 EGMs were conducted to pass ordinary resolutions, seven EGMs to pass special resolutions, seven EGMs to pass both special and ordinary resolutions while two EGMs conducted by two companies do not disclose the type of proposed resolutions.

These resolutions passed were not commendable as they should have been more appropriately passed in AGMs. What is the purpose of having an AGM if it is not used to decide on ordinary matters? For special resolutions, a majority of companies conducted EGMs for the purpose to

amend the Memorandum and Articles of Association of the Company and proposed capital repayments.

#### 2) *Notices*

Majority international governance best practices required that notices convening EGMs shall be given to shareholders at least 14 days before the meeting and 21 days if the EGM is conducted to pass a special resolution. However the meeting may be called in a shorter than the required time if it is agreed by a majority of the members having the right to attend and vote at the meeting whose voting right together makes up not less than 95% of the total voting rights of the company. However, it is indeed an encouraging practice if longer notices can be issued as this will give ample time for the shareholders to examine and justify the resolutions before coming to the meeting.

The research finds that all companies met the above practices. The longest notice recorded for special resolutions is 39 days while for ordinary resolutions is 46 days.

#### 3) *Frequency*

It is not advisable for the company to conduct an EGM more than once in an accounting year and/or conduct EGMs less than 6 months after the AGM. Valid reasons should be explained to the shareholders if the company is practicing this as although it will expedite the important decision, conducting more general meetings in a year will result in the administration cost increasing unnecessarily. Payment should be made for rental of convention rooms in hotels, beverages, postages, while the time, energy and effort of the staff can be diverted to more important activities.

Our research finds that 12 companies conducted EGMs more than once in the period under review. None (0) of the companies disclosed reasons for having EGMs twice in a year. Further examination also revealed that seven (7) companies conducted the second EGM less than six (6) months from the first EGMs. It is a question on the ability of the company to strategize the important decision making for the company.

#### 4) *Place of Meetings*

When the company conducts an EGM, it is highly recommended that the meeting be conducted at the registered office. Apart from its ambience, this can save a lot of cost if it is conducted in the third party premises such as hotels and convention rooms. Other important factors such as the accessibility, the size of the hall that should be large enough to accommodate the expected number of attendees, easy parking, near the public transport facilities and also not forgetting easy accessibility for the disabled shareholders should be taken into account. The researchers find that 13 companies conducted their EGMs at premises other than their registered offices. Nevertheless, with the revolution of information and communication technologies (ICTs), the company is recommended to have a meeting of its members within the country at more than one venue or provide a live telecast using any technology that allows all members to participate.

#### 5) *Time of Meetings*

The company also should conduct the EGM at the appropriate time although what is appropriate may be

subjective to different people. The most important aspect about time of meeting is the company provides adequate time for shareholders to come to the place of the meeting. The meeting can start anywhere between 9.30 a.m. to 3.30 p.m. Our research finds that a majority of the companies conducted EGMs in the above stipulated time while only one company had its meeting at 4.30 pm. This company intended to pass only one resolution.

#### 6) *Directors and shareholders' attendance*

It is good practice for a company to disclose the directors' attendance and level of shareholders attendance at EGM. This information is crucial as the commitment of the directors to spend time and answer the queries from the shareholders can be evaluated through their attendance. For what purpose is of having directors if these people keep on giving excuses and abstain from facing the shareholders and are absent from the company's important activities without any substantial reasons. For the shareholders attendance, the information will highlight the level of shareholders participation in jointly making important decisions for the company with the management. Higher number of shareholders participation indicates the importance of the agenda to be decided on the meeting. The research finds that none (0) of the companies surveyed disclosed the directors' attendance and level of shareholders' attendance at EGMs.

#### 7) *Voting results*

The company also needs to disclose the level of voting both by shareholders and proxies on the resolution passed in the EGM. Again, with this information, the level of support by the shareholders can be determined. Higher percentage of voting shows that the management received very good support from the shareholders in any move taken by the company while a lower percentage exhibit the other way around. The research finds that none (0) of the companies surveyed disclosed the level of the shareholders' voting at the EGMs

#### 8) *Minutes of meetings*

In terms of minutes, the company needs to disclose the information or even the extract minutes of the EGMs either in the Annual Report, Bursa Malaysia's Website or Company's website. This practice however is not normally welcomed by many companies as their regular practice is only providing a simple statement stating that all the resolutions proposed in the previous EGMs at that particular date were passed. In term of disclosure, only one (1) company disclosed its extract minutes of EGMs in the company's website other than the post EGM announcements in the Bursa Securities website.

## V. CONCLUSIONS AND IMPLICATIONS

An EGM is arguably one the most important governance mechanism because it acts as the last line of defense for the shareholders, especially for minorities from being abused by others stakeholders of the company. However, it is also considered controversial because even though it can be used to protect the minority shareholders, yet this group is still helpless if all the other parties are on the opposite direction against the minority shareholders.

The main focus of this paper is to explore the requirements on general meetings by the global best practices. Why does the global best practices matter for the company? Due to its significant importance placed by the government to encourage PLCs to expand their businesses and activities globally, coupled with saturated domestic market, more pressure should be exerted for the company to comply with the international standard of practices. There are many sources of international good practices that can be adopted by the company particularly in conducting the general meetings.

Not only the company, the shareholders also must play their roles effectively to increase the value and quality of general meetings. They can demand for the company to exercise best practices and express any dissatisfaction to the company and relevant bodies such as Bursa Malaysia and Minority Shareholders Watchdog Group (MSWG) for any contravention and practices below minimum standard.

In particular, EGMs should be viewed as the best platform which provides an opportunity for shareholders to express their position and question directly to directors. If the EGM is to remain an important element in governance framework, then there is a clear need for improved processes to ensure the value of the EGMs. Both directors and shareholders must work together enhancing the quality of the meetings so that the shareholders, including both retail and institutional shareholders, see the value in attending the EGMs.

Although there are many ways to protect the shareholders' interest, people should not undermine the

importance of EGMs. In Malaysia, the shareholders perception of just following what is right and proposed by directors during the general meeting, either at AGMs or at EGMs must be changed. Read between the lines, and consider the impact not only in the short but also in the long term. It is good for the relevant authorities to come out with good governance practices on the general meetings so that it can be a lifeline for the shareholders to understand their right and be a benchmark for the companies whether they are actually exercising good governance or not.

#### REFERENCES

- [1] OECD, Report of the Business Sector Advisory Group on Corporate Governance. Paris, 1998.
- [2] K.S. Meng, Handbook on Company Secretarial Practice in Malaysia. 4<sup>th</sup> ed., LexisNexis, Kelana Jaya, 2005.
- [3] The Organisation for Economic Co-operation and Development, Principles of Corporate Governance. Paris, 2004.
- [4] J.S. Grossman, J.S. and O.D. Hart, "One share-one vote and the market for corporate control," Journal of Financial Economics, vol 20, pp. 175-202, 1998.
- [5] C. Graham, R. Litan, and S. Sukhtankar, "The bigger they are, the harder they fall: an estimate of the costs of the crisis in corporate governance," Working Paper, Economic Studies/Governance Studies Program, the Brookings Institution, Washington, DC, 2002.
- [6] K.C. Chen, Z. Chen, and K.C. Wei, "Disclosure, corporate governance, and the cost of equity capital in emerging markets", Working Paper, Department of Accounting – Hong Kong University of Science and Technology, Hong Kong, 2004.
- [7] P.R. Verdú, "Corporate governance when managers set their own pay," European Financial Management, vol. 14, pp. 921–943, 2008.