

Client Alert

Corporate Finance

2 February 2023

The Hong Kong Companies Ordinance will facilitate the holding of fully virtual or hybrid general meetings with effect from 28 April 2023

The manner of holding general meetings of Hong Kong-incorporated companies is governed by the provisions in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (**CO**) as well as provisions of the companies' own articles of association. Under the current provisions of the CO, a general meeting can be held at two or more places, by using technology that enables effective communication amongst participants and voting by members. There has been general consensus that these provisions facilitate hybrid meetings, namely, a physical meeting together with a form of electronic participation using tele-conferencing, video-conferencing or other means (e.g. online platform). However, the validity of holding fully virtual general meetings is less clear, in particular because the relevant provisions refer to a place or places for holding general meetings, which would appear to suggest that there must be a physical venue for general meetings.

For companies listed in Hong Kong (whether incorporated in Hong Kong or elsewhere), the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Exchange**) do not impose any requirement on the mode of general meetings. In light of the earlier public gathering ban affecting listed companies' general meeting arrangements, the Exchange clarified in an [FAQ](#) last year that where allowed under company laws and the issuer's own articles of association, general meetings may be held virtually in entirety.

The [Companies \(Amendment\) Ordinance 2023 \(Amendment Ordinance\)](#), which was gazetted on 27 January 2023, will come into operation on **28 April 2023**, modernising the CO and the Model Articles to expressly cater for the scenario of Hong Kong-incorporated companies holding fully virtual or hybrid general meetings by:

- introducing a new definition of "virtual meeting technology";
- providing that a company may hold a general meeting by using virtual meeting technology *unless* the company's articles (i) expressly preclude the holding of a general meeting by using virtual meeting technology or (ii) require a general meeting to be held only at a physical venue;

Companies are advised to review their articles to see if a fully virtual or hybrid general meeting is permissible. In this regard, please note that the Amendment Ordinance will allow companies to hold general meetings by using virtual meeting technology without amending their articles, notwithstanding their articles:

- refer to a place or places for conducting a general meeting; and/or
- contain a provision having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting.

- providing that notice of a general meeting to members or on a website must specify, among other matters, the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both; and
- providing that a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present.

The Amendment Ordinance does not remove the option of holding physical general meetings. Companies should choose the most appropriate mode of meeting and will need to consider, in addition to convening a valid meeting in accordance with the law and their articles, whether a physical general meeting continues to be the most appropriate mode or that holding a fully virtual or hybrid general meeting may promote better engagement with and maximise participation by members.

To facilitate implementation of the Amendment Ordinance, the Companies Registry has set up a [new thematic section](#) on its website, which contains, among others, the full text of the Amendment Ordinance, "[Guidance Note – Good Practice on Holding Virtual or Hybrid General Meetings](#)" and a list of [frequently asked questions](#).

The Guidance Note provides general information and good practices on the holding of fully virtual or hybrid general meetings by Hong Kong-incorporated companies. For example, companies are encouraged to:

- provide detailed information on the meeting arrangements in the notice of the meeting, including, among others:
 - the technology to be used and the device members need to participate in the meeting;
 - instructions to members on how they may (i) pre-register and verify their identity for access to the meeting; (ii) download or install any specific software or App in order to use the virtual meeting technology to attend the meeting; (iii) access to the relevant documents (e.g. proxy forms); (iv) submit their questions prior to the meeting or raise their questions at the meeting; (v) contact technical support for troubleshooting before and during the meeting; (vi) cast their votes (e.g. through an online electronic voting system or App); and (vii) some tips to note regarding internet connectivity;
- where notice of a general meeting is given by a company by making it available on a website, dedicate a section or webpage of the company website to also inform members of the above details of the meeting arrangements, including any updates and changes in a timely manner;
- give an electronic address in an instrument of proxy or an invitation to appoint a proxy issued by the company such that their members may send the instrument of proxy to that address by electronic means, as an alternative to physical delivery;
- where a hybrid general meeting is held, make effort to ensure a fair and balanced representation of questions from those members physically present as well as those virtually are addressed and responded to; and
- consider contingency planning for technical issues, for example, by providing alternative means such as dial in or teleconferencing facility to allow members to continue to participate in the meeting if internet connection is lost or disrupted.

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