

## HKCGI Company Law Guidance Note (Ninth Issue) - The Hong Kong Companies Ordinance and virtual meeting technologies for general meetings (Part 1)

### Introduction

Over the years, the Institute has been promoting the use of hybrid meetings and also, during the pandemic, called for virtual meetings to be allowed in discussions with regulatory authorities. The Institute is pleased that with effect from 28 April 2023, the Hong Kong Companies Ordinance (**CO**) and Companies Model Articles Notice (**Model Articles**) will be amended to expressly cater for the scenario of Hong Kong incorporated companies holding general meetings that are fully virtual or hybrid (i.e. meetings that are attended both at a physical location or locations and virtually) using virtual meeting technology (**VMT**).

In response to the coming into force of the amendments, the Hong Kong Companies Registry issued a guidance note on '[Good Practice on Holding Virtual or Hybrid General Meetings](#)' (**CRGN**). In this Guidance Note, we will use a series of questions and answers to bring out the applied governance aspects from the amendments, and summarising the CRGN, where relevant, on this important topic for governance professionals, directors and senior management, along with those dealing with company administration.

### Can a Hong Kong company hold fully virtual or hybrid general meetings?

Currently, there is no express provision in the CO dealing with virtual general meetings. This led to uncertainty for Hong Kong companies, particularly during the pandemic, although a general consensus emerged that hybrid meetings might well be supported under the CO in the absence of contrary provisions in the articles of association (**Articles**) of a Hong Kong incorporated company.

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The CO amendments will make clear that Hong Kong companies:

1. Can hold fully virtual or hybrid meetings if the Articles do not contain any 'Preclusions' (see below)
2. Can hold hybrid meetings, but not fully virtual ones, if the Articles do not contain Preclusions 1 and 2, but 3 only
3. Cannot hold fully virtual or hybrid meetings if the Articles contain Preclusions 1 or 2

#### Preclusions

- Preclusion 1. Articles expressly preclude the use of VMT for general meetings
- Preclusion 2. Articles require meetings to be held only at a physical venue
- Preclusion 3. Articles require at least one physical venue, e.g., require notice of a general meeting to specify a physical venue

**Tip 1:** Subject to any contrary Preclusions in their Articles, Hong Kong companies' general meetings can be held either in physical location(s), fully virtually or in a hybrid manner. Enabling provisions in their Articles are not required.

**Tip 2:** Study the Preclusions under the Articles, if any, to determine whether the company incorporated in Hong Kong you are concerned with can or cannot hold virtual and/or hybrid meetings. For example, you might have amended the Articles in response to the pandemic, which might well have resulted in there being one or more Preclusions. If you have adopted the Model Articles, there should be no preclusions to holding virtual and/or hybrid meetings.

#### Are there different rules for Hong Kong-listed companies?

The amendments are only relevant to Hong Kong-incorporated companies. For Hong Kong listed companies (wherever incorporated), the HKEX and SFC issued [FAQs](#) in 2022, which noted the Listing Rules do not impose requirements on the format for general meetings, and companies may hold fully virtual meetings if allowed under relevant company laws and their Articles.

The HKEX updated its [Guide on General Meetings \(HKEX Guide\)](#) on 28 February 2023 to give guidance on listed issuers' virtual and hybrid meetings. In brief, the HKEX Guide:

1. Encourages issuers to consider holding virtual or hybrid general meetings to promote shareholder engagement and participation (where permitted under the relevant company laws and constitutional documents)
2. Requires the notice of a general meeting to specify the meeting format (i.e., physical, virtual or hybrid) and the arrangements for a virtual or hybrid meeting, including clear instructions on how to access the VMT and pre-registration and verification procedures (if any)

3. Requires shareholders attending virtually to be able to listen, speak, submit real-time questions and cast their votes electronically in real-time, with safeguards in place to validate/accurately count the votes, and voting record provided for audit
4. For hybrid/physical meetings, meetings should be held at a time convenient to the largest possible number of shareholders to attend the physical venue
5. Refers issuers to the CRGN and replicates some of the safeguards recommended in the document, e.g., contingency plans for technical issues, technical support to shareholders prior to or during the meeting, and consider authentication methods such as unique login ID and password or sending one-time unique PIN. Where issuers implement registration and authentication, relevant information should be provided to shareholders prior to the meeting

**Tip 3:** The HKEX Guide is a good summary of common law concerns as well as good governance, and even where you run a private company, the document, along with the CRGN, could serve as a good reference for running general meetings.

**Tip 4:** In practice, some listed issuers may avoid fully virtual meetings due to shareholder expectations and benefits arising out of communications in person. One proxy adviser stated in its Hong Kong proxy voting guidelines that fully virtual meetings have the potential to curb meaningful communication with shareholders, and it would look for issuers to make robust disclosures in the event of a fully virtual meeting (e.g., posting the company's answers to questions raised by shareholders on the IR section of their websites).

### What should Hong Kong companies consider prior to adopting virtual/hybrid general meetings?

Whether a company should adopt VMT will depend on factors specific to the company, such as the number and location of shareholders and any resource constraints. The Guidance Note specifies there is no one-size-fits-all approach – the overall aim is to opt for the most appropriate mode of a meeting, having considered the best interest of the shareholders. Prior to any adoption, Hong Kong companies should consider the following:

1. Assess if the company's Articles contain any Preclusions. Articles that require a notice of general meeting (**Notice**) to specify a physical venue do not itself preclude the use of VMT but may prevent the holding of fully virtual meetings.
2. Assess if the Articles sufficiently address the risk of technical issues impacting the meeting, e.g., if the VMT fails, is there an ability for the chairperson to adjourn without needing to obtain the meeting's consent?
3. Consider the content of Notices for virtual meetings in light of the statutory requirements to specify the VMT, as well as detailed recommendations in section 3 of the CRGN.
4. Choose the right technology or mix of technologies, which must allow members to listen, speak and vote at the meeting. The CRGN emphasises security and authentication as key considerations and recommends allowing members to also see the proceedings of the meeting.

**Tip 5:** the amended CO requires the chosen VMT to allow a member to speak at a meeting. Under the Model Articles, a person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting. However, the CRGN states the VMT should preferably allow members to raise real-time questions both orally and electronically by typing into a dedicated meeting application or platform. In addition, it is currently not clear if companies may rely solely on non-oral communication methods to satisfy the CO requirement. Accordingly, companies should aim for a higher level of governance and put in place VMT that gives members the opportunity to speak and be heard during the meeting. Where other methods of communication are relied upon, advice should be obtained on whether those methods satisfy the legal requirement.