

HKCGI Company Law Guidance Note (Tenth Issue) - The Hong Kong Companies Ordinance and virtual meeting technologies for general meetings (Part 2)

In part 1 of the Guidance Note, we have set up the background and some practical tips relating to the amendments to the Hong Kong Companies Ordinance (CO) and Companies Model Articles Notice (Model Articles). We have also provided some practical tips and some governance issues. In this part 2 of the Guidance Note, we set out the applied governance approach for good governance practices for holding general meetings for Hong Kong incorporated companies.

New legal requirements and recommended good practices for holding virtual general meetings

We set out in more detail below the new statutory provisions, as well as the recommended practices under the Company Registry's Guidance Note on '[Good Practice on Holding Virtual or Hybrid General Meetings](#)' (CRGN).

	New CO provisions	Recommended good practices under the CRGN
Mode of holding general meetings	Subject to the company's Articles, a company may hold a general meeting: (a) at a physical venue (b) by using VMT, or (c) both at a physical venue and by using VMT.	Companies may consider using VMT to maximise members' participation, but there is no "one-size fits all" approach. The aim is to promote shareholder engagement and encourage participation at meetings while allowing companies to assess their own situations, members'

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New CO provisions		Recommended good practices under the CRGN
	<p>A company may use VMT unless the company's articles expressly preclude the use of VMT or require the meeting to be held only at a physical venue.</p> <p>Articles requiring notice to specify a physical venue are not in themselves a provision that requires a meeting to be held <u>only</u> at a physical venue.</p>	<p>base/profile, and resource restraints, e.g., it may not be cost-effective for some companies to hold virtual meetings.</p> <p>For physical or hybrid meetings, it is good practice to arrange a time that is convenient for the largest possible number of members to attend the <i>physical</i> venue.</p>
VMT	<p>VMT is defined as a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.</p>	<p>The VMT should preferably be accessible in both video and audio formats and should preferably allow members to submit real-time questions during the meeting orally and electronically by typing into a dedicated meeting application or platform.</p> <p>The most appropriate VMT or mix of VMTs will depend on factors specific to the company and its members. The Guidance Note includes a list of factors to consider when choosing the technology.</p> <p>Companies should ensure the adequacy and functionality of the VMT used to enable members to follow proceedings and participate in the meeting uninterrupted.</p>
Content of notice of general meeting	<p>The Notice must specify either or both:</p> <p>(a) the physical venue of the meeting, and</p> <p>(b) the VMT.</p> <p>The ability to specify a VMT in the Notice is subject to any Preclusions in the Articles.</p> <p>If 2 or more physical venues are specified, the Notice must state the principal venue and the other venue(s).</p>	<p>Where VMT is used, it is good practice to provide detailed information on the meeting arrangements in the Notice, for example:</p> <ul style="list-style-type: none"> - the relevant link - what the technology will cover - the device needed details on pre-registration and verification - how to download any required software or app access to documents such as proxy forms, the appointment of proxies/corporate representatives - how to submit questions in advance or at the meeting - how questions will be responded to, how to contact technical support, how to cast votes, and - tips and notes regarding internet connection

	New CO provisions	Recommended good practices under the CRGN
Publication of Notice on the website	If a Notice is given by making it available on a website, the notification for notifying a member of the availability of the Notice on the website must specify the physical venue, VMT or both (in accordance with the Notice).	Where a Notice is given by making it available on a website, it is good practice to dedicate a section or webpage of the company website to inform members of the details of the meeting.
Quorum	A person who attends by using the VMT specified in the Notice is to be regarded as being present while so attending.	All persons attending the meeting virtually at the time the quorum is called must be counted for the purposes of determining whether there is a quorum.
Technical issues	No specific provisions.	Consider: <ul style="list-style-type: none"> - ways for members to check their devices' connection to the VMT in advance - technical support prior to or during the meeting. Where practicable, this should be made available to members online and via telephone free of charge - test run or mock meeting in advance - providing dial-in or teleconferencing in case the internet connection is lost, and - adjourning the meeting if issues cannot be solved promptly or result in a number of members being unable to participate
Security and authentication	No specific provisions.	Security and authentication are crucial considerations. Consider implementing security measures to ensure no unauthorised person attends and members with the right to attend are not excluded. Measures should be simple so as not to become an attendance barrier. Where there is pre-registration and authentication, members should be provided with the information in advance, e.g., link, meeting login ID and password that, where possible, is unique to that member. A one-time unique PIN sent by SMS/email may also be used. The CRGN lists various security measures which may be adopted when using video conferencing software (e.g. validating identities in a virtual waiting room before granting access) and what companies should remind members of (e.g. not to share login IDs and passwords).

	New CO provisions	Recommended good practices under the CRGN
Raising of questions	No specific provisions, save that the VMT must allow the member to speak at the meeting.	<p>VMT should preferably allow members to submit real-time questions during the meeting orally and electronically in writing.</p> <p>It is good practice to allow members to submit questions within a reasonable time prior to the meeting by electronic means or post.</p> <p>Companies are encouraged to respond to all substantial and relevant questions promptly, consider answering questions in advance by publishing answers on their website, explain how questions would be grouped, and the number and nature of questions asked and not answered.</p> <p>At a hybrid meeting, companies should try to ensure a balanced number of questions from physical and virtual attendees are addressed.</p>
Voting	No new provisions, save that the VMT must allow the member to vote at a meeting.	<p>Members should be able to cast their votes electronically in real time. Where an electronic voting system is used, it should accurately count votes cast and provide a record for audit.</p> <p>Companies are encouraged to allow members to send proxy instruments electronically.</p>
Model Articles	Various articles are updated to reflect the potential use of VMT at general meetings and adjourned meetings.	