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New Era of Governance: Hong Kong Modernises its Requirements for Shareholder Meetings

Introduction

Recent advancements in communication technology have rendered it possible to hold and participate in online meetings (using services such as Zoom and Microsoft Teams) and the COVID-19 pandemic made such meetings necessary. Such online or virtual meetings are now an everyday occurrence but they are actually out of step with Hong Kong's legal requirements for holding general meetings.

The manner of holding shareholders meetings in Hong Kong is governed by the Companies Ordinance (Cap. 622, "CO") as well as each company's own articles of association ("Articles").

Under the current provisions of the CO (section 584), a general meeting can be held at two or more places, by using technology that enables effective communication amongst participants and voting by members. Although this provision seems to permit virtual meetings, there is no express reference for holding general meetings either in a fully virtual manner or in a hybrid mode (i.e. virtual and physical) and reference to "place or places" implies that a physical venue is necessary. Accordingly, the validity of holding general meetings on a virtual or hybrid basis has been unclear.

New Legislation

With the above legal loophole in mind, the Hong Kong government drafted an amendment to the CO which was passed by the Legislative Council on 18 January 2023. When it comes into effect on 28 April 2023, the Companies (Amendment) Ordinance 2023 ("**Amended CO**") will modernise the practice of general meetings for companies here in Hong Kong. It introduces a new section 583A to the CO by clarifying that:

- (i) a general meeting can be physical, fully virtual or hybrid;
- (ii) fully virtual or hybrid meetings are possible as long as the articles of association does not expressly preclude them or require general meetings to be held at a physical venue; and
- (iii) a person who attends a general meeting by using virtual meeting technology specified in the notice of the meeting is to be regarded as being present while attending.

The Amended CO allows companies to hold virtual or hybrid general meetings even if their Articles refer to a physical place or places for conducting one. For added clarity, companies can adopt the updated Model Articles (expressly permitting virtual or hybrid shareholders meetings) simply by amending their current Articles adopting the version of the Model Articles in force as of 28 April 2023. Alternatively, if they have tailored Articles, they can simply adopt the relevant amending provisions.

Companies that prefer not to allow virtual meetings can either leave their Articles as is or amend them to expressly preclude the holding of shareholders meetings by virtual means or require them to be held at a physical venue.

Whether or not they choose to embrace these changes, companies will still be required to specify the principal place of the meeting in their notices whenever the meeting is proposed to be held in two or more physical venues.

With enhanced shareholder accessibility and potentially reducing costs, the Amended CO is a welcome and timely update that will give companies additional flexibility for holding general meetings.

Final Thoughts

The Amended CO will come into operation on 28 April 2023. In the meantime, companies should take this opportunity to review their Articles and consider whether or not adopting virtual or hybrid arrangements might boost shareholder engagement and participation and if so, consult their lawyers about making the necessary amendments to their Articles.

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