

Part 1 – An Overview of the Companies (Amendment) Ordinance 2023

Ms Mandy Lam
Solicitor (Company Law Reform)

9 & 10 March 2023



公 司 註 冊 處
COMPANIES REGISTRY

Background (1)

▶ General meetings:

- annual general meetings (“AGMs”) must be held within the prescribed time under the Companies Ordinance (Cap. 622) (“CO”)
- other general meetings may be held out of the company’s own initiatives from time to time

▶ The manner of holding general meetings is governed by the provisions in:

- the CO
- the Companies (Model Articles) Notice (Cap. 622H) (“Model Articles”)
- the company’s own articles of association

▶ CO rewrite exercise in 2012:

- section 584 – a general meeting may be held at 2 or more places using any technology that enables the members of the company who are not together at the same place to listen, speak and vote at the meeting
- no specific provision for a company to hold fully virtual general meetings / hybrid mode of virtual and physical general meetings

Background (2)

- ▶ Advancement of electronic communication technology
 - people can participate in virtual meetings more conveniently and effectively
 - adoption of mobile applications and devices around the world in holding and joining virtual meetings
- ▶ Comparable common law jurisdictions have introduced specific provisions allowing companies to hold virtual or hybrid general meetings
 - UK (Companies Act 2006): persons who are not present together at the same place may by electronic means attend and speak and vote at a general meeting
 - Australia (Corporations Act 2001): temporary amendments enabling companies to hold virtual or hybrid general meetings have been made permanent with effect from 1 April 2022
- ▶ Suggestions from company governance trade to review CO provisions on the mode of general meetings

Companies (Amendment) Bill 2022

Amendments to the CO and the Model Articles

- ✓ To facilitate the holding of general meetings by using virtual meeting technology

The Legislative Process

Consulted the Standing Committee on Company Law Reform (SCCLR)
and stakeholders, all welcome the facilitative proposal



Companies (Amendment) Bill 2022 passed by
the Legislative Council on 18 January 2023



Companies (Amendment) Ordinance 2023 gazetted on 27 January 2023
to commence operation on **28 April 2023**

Key Amendments to the CO (1)

Section 547 (interpretation)

New definition of *virtual meeting technology*:

a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting

Key Amendments to the CO (2)

Section 573

Publication of notice of general meeting on website

Before the amendment

When a company notifies a member of the availability of a notice of a general meeting on a website, the notification must specify, among other matters, the place of the meeting

After the amendment

The notification must specify the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both

Key Amendments to the CO (3)

Section 576

Contents of notice of general meeting

Before the amendment

A company must ensure that a notice of a general meeting specifies, among other matters, the place of the meeting

After the amendment

The company must ensure that the notice specifies the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both

Key Amendments to the CO (4)

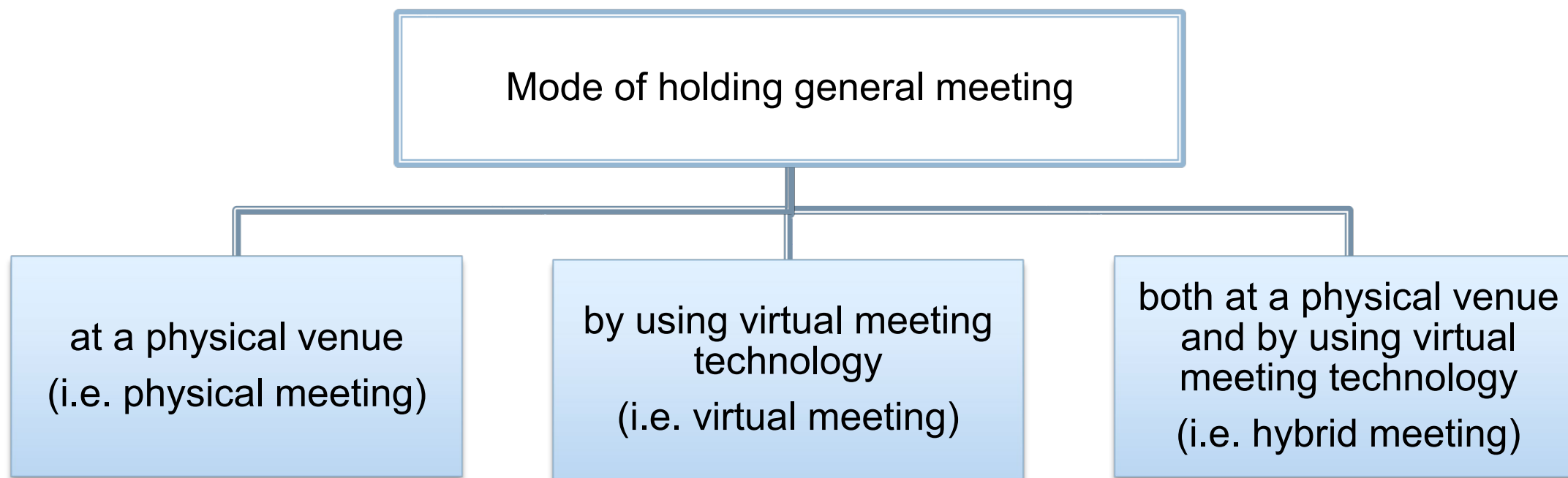
Section 576 (contents of notice of general meeting)

New sub-section (2A):

- ▶ Notice of general meeting may specify the virtual meeting technology to be used for holding the meeting unless the company's articles –
 - expressly preclude the holding of general meeting by using virtual meeting technology; or
 - require general meeting to be held only at a physical venue.
- ▶ Company's articles requiring a notice of a general meeting to specify physical venue of the meeting is not in itself requiring general meeting to be held only at a physical venue.

Key Amendments to the CO (5)

New section 583A (mode of holding general meeting)



Key Amendments to the CO (6)

New section 583A (mode of holding general meeting)

- ▶ A company may hold general meeting using virtual meeting technology unless the company's articles –
 - expressly preclude the holding of a general meeting by using virtual meeting technology; or
 - require a general meeting to be held only at a physical venue.
- ▶ Company's articles requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself requiring a general meeting to be held only at a physical venue.

Key Amendments to the CO (7)

Section 584 (meeting at 2 or more places)

- ▶ Replace the word “places” with “physical venues” in the heading
- ▶ When general meeting is held at 2 or more physical venues, the company must use technology that allows the members who are not together at the same physical venue to listen, speak and vote at the meeting (whether or not virtual meeting technology is also used)

Key Amendments to the CO (8)

Section 585 (quorum at meeting)

New sub-section (4A):

- ▶ Person attending a general meeting by using the virtual meeting technology specified in the notice of meeting is regarded as being present

Key Amendments to the Model Articles (1)

Provisions in the Model Articles	Key Amendments
Article 1(1) of Schedules 1, 2 & 3	“Virtual meeting technology” means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.
Article 39(4) of Schedule 1, Article 35(4) of Schedules 2 & 3	A notice of a general meeting 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.
Article 42(6) of Schedule 1, Article 38(6) of Schedules 2 & 3	A person who attends a general meeting by using virtual meeting technology is to be regarded as attending the meeting if – (a) the person uses the virtual meeting technology specified in the notice of the meeting; and (b) the person is able to exercise his or her rights to speak and vote at the meeting.
Article 43(1A) of Schedule 1, Article 39(1A) of Schedules 2 & 3	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.

Key Amendments to the Model Articles (2)

Provisions in the Model Articles	Key Amendments
Article 46(1), (1A), (5) and (9) of Schedule 1, Article 42(1), (1A), (5) and (9) of Schedules 2 & 3	<ul style="list-style-type: none">▪ When a general meeting that is not called on a request of members is adjourned because a quorum is not present, the directors must determine, among other matters, the physical venue of the adjourned meeting or the virtual meeting technology to be used for holding the adjourned meeting, or both.▪ When the chairperson adjourns a general meeting, the chairperson must specify, among other matters, the physical venue of the adjourned meeting or the virtual meeting technology to be used for holding the adjourned meeting, or both.▪ If no notice of an adjourned meeting is given, a person who uses virtual meeting technology to attend the adjourned meeting is to be regarded as being present if the person attends the adjourned meeting by using the virtual meeting technology determined by the directors or specified by the chairperson.

Part 2 – Good Practice on Holding Virtual or Hybrid General Meetings

Ms Mandy Lam
Solicitor (Company Law Reform)

9 & 10 March 2023



公 司 註 冊 處
COMPANIES REGISTRY

Notice of General Meetings (1)

Notice period (section 571 of the CO)

- AGMs: at least 21 days
- Other general meetings: at least 14 days for limited company & at least 7 days for unlimited company
- If the company's articles require a longer period of notice, the meeting must be called by notice of that longer period

Service of notice (section 572 of the CO)

- Notice of a general meeting shall be given to all members in hard copy form or in electronic form, or by making it available on a website, or partly by one of those means and partly by another
- Companies should comply with Part 18 (communications to and by companies) of the CO

- ▶ Where notice of a general meeting is made 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, including any updates and changes in a timely manner

Notice of General Meetings (2)

Contents of notice (section 576 of the CO)

- All notices of general meetings must –
 - *(a) specify the date and time of the meeting
 - *(b) specify either or both of the following –
 - ✓ the physical venue of the meeting (and if 2 or more physical venues are specified in the notice of the meeting, specify the principal venue and the other venue(s) of the meeting)
 - ✓ the virtual meeting technology to be used for holding the meeting
 - *(c) state the general nature of business to be dealt with at the meeting
 - (d) for notice calling an AGM, state that the meeting is an AGM
 - (e) if a resolution is intended to be moved at the meeting –
 - ✓ include notice of the resolution
 - ✓ (where the company is not a wholly owned subsidiary) include a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution

**Subject to the provisions of the company's articles*

Notice of General Meetings (3)

Notice of meeting to contain statement of rights etc. (section 597 of the CO)

- In the notice calling a general meeting, there must appear, with reasonable prominence, a statement informing members of –
 - ✓ the rights to appoint another person (whether a member or not) as proxy to exercise all or any of a member's rights to attend, speak and vote at the meeting
 - ✓ (in the case of a company having a share capital) a member may appoint separate proxies to represent respectively the number of shares held by the member that is specified in the instruments of appointment
 - ✓ (in the case of a company limited by guarantee) if the company's articles require a proxy must be a member of the company, then only a member of the company may be appointed as proxy
- ▶ In drafting the notice, it is a good practice to:
 - use plain and simple language
 - avoid legal jargon
 - present the information in an easy-to-read manner (e.g. proper use of headings and numberings etc.)

Notice of General Meetings (4)

- ▶ Ensure that the information contained in the notice of meeting is accurate and complete in all material aspects
- ▶ If virtual meeting technology is to be used for holding a fully virtual / hybrid general meeting, it is a good practice to provide detailed information on the meeting arrangements in the notice of meeting, e.g.:
 - arrangements for members to attend the meeting using the virtual meeting technology (e.g. the link to access a “live” webcast)
 - what the technology may cover (e.g. whether the technology will allow members to ask questions both orally and in writing and cast their votes)
 - the device members need to participate in the meeting (i.e. desktop computer, laptop, tablet or mobile phone)
 - (if pre-registration and verification are required) the relevant information for members to pre-register and verify their identity for access to and participate in the meeting
 - (if members are required to download or install a specific software or App for using the virtual meeting technology to attend the meeting) clear instructions as to how to download or install the software or App

Notice of General Meetings (5)

Instructions to members

- access to documents (e.g. proxy forms) or information relating to the business to be dealt with at the meeting
- appoint proxies and corporate representatives
- participate in the meeting, submit or raise questions
- contact technical support, if available, for troubleshooting
- cast their votes

Tips to note

- a reliable internet connection which is fast enough to support video streaming and participation is required
- if the internet connection is not fast enough to keep pace with the proceedings of the meeting, some parts of the meeting may be skipped and missed
- if internet connection is inadequate or interrupted, attendance of the meeting may terminate

Documents

Send documents that are required to be provided or laid before a general meeting together with the notice of meeting

- proxy forms
- financial statements of the company

Consider using electronic communication if so permitted under Part 18 of the CO and the company's articles

- facilitate members' timely access to documents and information relating to the general meeting

Mode of Holding General Meetings (1)

- ▶ For a physical or hybrid general meeting, it is a good practice to arrange a time that is convenient to most of the members to attend
- ▶ To maximise members' participation, companies may consider holding a fully virtual or hybrid general meeting by using virtual meeting technology
- ▶ In deciding the mode of holding general meetings, companies should:
 - aim to promote engagement with members
 - encourage participation of members
 - assess the situation having regard to their members' base and profile and resource restraints
 - opt for the most appropriate mode of meeting having considered the best interest of members

Mode of Holding General Meetings (2)

- ▶ In choosing the technology for holding a general meeting, companies may consider these factors:

How much will the technology cost?

How many attendees are expected and what is the limit on the number of participants?

How long is the meeting expected to run and is there a time limit on the length of the meeting?

Are there help and support available using the technology?

What are the features available to facilitate presentation & participation?

How are the features on facilitating access, verification of identity and voting included?

Mode of Holding General Meetings (3)

- ▶ Consider and mitigate possible risks of holding a fully virtual or hybrid general meeting, e.g. inadequate or unstable internet connectivity
 - consider providing a way for members to check their devices for connection before the meeting
 - consider providing technical support to members who encounter technical difficulties
- ▶ Ensure that members are properly informed and can cast their votes in a well-informed manner

Conduct of General Meetings (1)

Security and Authentication

- ▶ Consider implementing necessary security measures to ensure that members can attend the meeting and no unauthorised persons are allowed to attend
- ▶ If registration and authentication are required to access to general meetings, members should be provided with the relevant information prior to the meeting
 - invitation link to an online electronic platform or website for registration and authentication
 - other secure methods of authentication such as one-time unique identification number sent to a member's phone number or email address

Conduct of General Meetings (2)

Security and Authentication

- ▶ Security measures adopted by the host of the meeting may include:

Setting up a unique meeting ID, strong & unique password

Arranging for one more host to deal with administrative, technical & other contingent issue during the meeting

Setting up a virtual waiting room and validating participants' identities

Locking the meeting when all participants have been admitted to prevent unauthorised access

Informing participants & obtaining their consents before recording the meeting

Conduct of General Meetings (3)

Security and Authentication

- ▶ It is a good practice for companies using video conferencing software for holding general meetings to remind their members:
 - not to share invitation links, meeting ID and password to anyone else
 - ensure that up-to-date security software (e.g. antivirus) has been installed to their connecting device
 - ensure that the video conferencing software is up-to-date and latest security patches have been installed
 - in case of confidential and sensitive information, join the meeting from a secured location without accessibility by third parties

Conduct of General Meetings (4)

Use of Virtual Meeting Technology

- ▶ The virtual meeting technology used for holding the meeting must allow a person to listen, speak and vote without being physically present at the meeting
 - preferably be accessible in both video and audio formats
 - companies are encouraged to use tailored and high-performing virtual meeting technology that best suit their circumstances
 - ensure the adequacy and functionality of the technology used to enable members to follow the proceedings of and participate in the meeting uninterrupted

Conduct of General Meetings (5)

Quorum

Quorum at meeting (section 585 of the CO)

- Where a company has more than one member, subject to the provisions of the company's articles, two members present in person or by proxy is a quorum of a general meeting of a company
 - A person who attends a general meeting using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present while so attending
- ▶ All persons attending the meeting virtually at the time that the quorum is called must be counted for the purposes of determining whether there is a quorum

Conduct of General Meetings (6)

Questions

- ▶ Members should have the right to speak at a general meeting
- ▶ The virtual meeting technology to be used should preferably allow members to submit real-time questions orally and electronically by typing into a dedicated meeting application or platform
- ▶ It is a good practice to give the opportunity to members to submit questions within a reasonable time prior to general meetings
 - provide members with a clear timeframe as to when and where questions should be sent
 - submit questions by electronic means (e.g. email) or by post
- ▶ Companies are encouraged to respond to all substantial and relevant questions promptly, and consider explaining how questions would be responded to (e.g. by grouping and moderation of similar or same questions to avoid repetition)

Conduct of General Meetings (7)

Voting and Proxy

Right to appoint proxy (section 596 of the CO)

- A member is entitled to appoint another person (whether a member or not) as a proxy to exercise all or any of the member's rights to attend and to speak and vote at a general meeting
- Multiple proxies may be appointed in the case of a company having a share capital
- (In the case of a company limited by guarantee) if the company's articles require a proxy must be a member of the company, then only a member of the company may be appointed as proxy

Sending documents relating to proxies in electronic form (section 599 of the CO)

- If an electronic address is stated in an instrument of proxy or invitation to appoint a proxy issued by the company in relating to a general meeting, the company is regarded as having agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the instrument or invitation)

Requirements as to instrument of proxy issued by the company (section 601 of the CO)

- Where an instrument of proxy is issued to a member for use, such instrument must enable the member, according to the member's intention, to instruct the proxy to attend and vote in favour of or against (or in default of instructions, to exercise the proxy's discretion in respect of) each resolution dealing with any business to be transacted at the meeting

Conduct of General Meetings (8)

Voting and Proxy

- ▶ Members attending the meeting virtually should be able to cast their votes by electronic means in real-time during a fully virtual or hybrid general meeting
- ▶ Ensure that necessary safeguards are implemented to validate votes submitted by members
 - where an electronic voting system is used, it should accurately count all votes cast at the meeting and provide record for audit and verification of accuracy
- ▶ Provide an electronic address in an instrument of proxy or an invitation to appoint a proxy such that members may send the instrument of proxy to that address by electronic means

Conduct of General Meetings (9)

Technical Issues

- ▶ Where technical support is available for troubleshooting in case technical issues arise, this support should, where practicable, be made available to members both online and via a telephone number free of charge
- ▶ Consider contingency planning for technical issues
 - provide alternative means such as dial-in or tele-conferencing facility to allow members to continue to participate in the meeting if internet connection is lost or disrupted
- ▶ If technical issues cannot be overcome in a short period of time or result in a number of members being unable to participate in the meeting, companies should consider adjourning the meeting until the issues are resolved

Listed Companies

- ▶ Section 2(1) of the CO: “listed company” means a company (i.e. a locally incorporated company) that has any of its shares listed on a recognized stock market
- ▶ “Guide on General Meetings” issued by the Hong Kong Exchanges and Clearing Limited together with any updates

Further Information

New thematic section on CR's website

External Circular No. 1 / 2023

FAQs

Guidance Note – Good Practice on Holding Virtual
or Hybrid General Meetings

Thank you!

Companies Registry
公司註冊處

www.cr.gov.hk



公司註冊處
COMPANIES REGISTRY