



Guidance on Meeting Arrangements (Update)

May 2022

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In March, in the deep midst of the need to arrange and send out notices for annual general meetings (**AGMs**) of listed companies for the upcoming meeting/reporting season, the Institute published its 'Guidance on Meeting Arrangements' (**March Guidance**) for AGMs and extraordinary general meetings (**EGMs**) (together **GMs**). This Guidance should be regarded as an update to the March Guidance which should be read before reading this Guidance.

The March Guidance was well received by members. This was because, at the time, the Government's gathering restrictions were so strict that it became difficult to arrange for the physical portion of GMs. This was especially relevant for those listed companies that desired for their meetings to retain some form of physical participation for shareholders in line with pre-pandemic proxy advisers' recommendation to maximise shareholder engagement in good governance¹.

The solution as set out under the March Guidance for listed companies that need to hold physical meetings was to hold them at the place of work with their directors, who should also quorate the meetings through their own shareholdings or shareholders' proxies in the listed company concerned. The hosting

of the meeting could also be supported by a minimal production crew to produce and webcast the meeting to the virtual attendees, which was an important clarification obtained by the Institute after having consulted with the relevant Government bureau.

Also, as noted under the March Guidance, the Institute has also called for emergency regulations to allow for virtual or hybrid meetings, and with the easing in the pandemic the Institute is pleased that the Government is now proposing a more permanent solution, consistent with the Institute's call, to amend the Companies Ordinance (CO) to enable Hong Kong incorporated companies to use technology for holding virtual or hybrid GMs where these are not contrary to the provisions of their articles of association².

Latest changes in the gathering restrictions and social distancing laws and regulations and impact on holding shareholder meetings

During the short interim period from March to date, the Government's gathering restrictions had an about-turn with effect from 21 April 2022. On the question of whether physical gatherings for AGMs and EGMs could take place, instead of being 'no',

- 1 This listed issuer should consider having some backup legal opinion for the first time virtual or hybrid meeting is done, in case of doubt. Service providers would be familiar to help on the matter.
- 2 The legislative proposal to amend the CO was discussed on 3 May 2022 at the Legislative Council Panel on Financial Affairs on proposed legislative amendments to the Bankruptcy Ordinance and Companies (Winding up and Miscellaneous Provisions) Ordinance www.legco.gov.hk/yr2022/english/panels/fa/papers/fa20220503cb1-217-6-e.pdf

Gratitude is expressed to the following persons for input to the guidance:

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- Ernest Lee FCG HKFCG(PE), Institute President, and Technical Partner, Deloitte China
- Edmond Chiu FCG HKFCG(PE), Institute Council Member, and Managing Director, Corporate Services, Vistra Corporate Services (HK) Ltd
- Catharine Wong, Head of Share Registry and Issuer Services, Tricor Hong Kong, and
- Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive as the author of the guidance

If you have any comments and/or suggestions relating to any thought leadership matters, please contact Mohan Datwani at mohan.datwani@hkcg.org.hk

the Government's position is now set out under the updated Q&A B21 of Cap. 599F Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation³ as follows:

B21. Whether Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs) can be held from May 5 to May 18?

From May 5 to May 18, physical AGMs and EGMs are allowed to be held at event premises in compliance with the relevant Cap. 599F and Cap. 599L directions.

This means that listed companies now need to reconsider their meeting formats. There could be some listed companies, that despite being able to hold virtual meetings, may want some form of shareholder attendance, say, for example, to maximise physical shareholders' engagement. Also, there could be some Hong Kong listed companies that may come under some pressure from their shareholders to physically attend their meetings. For now, event premises could be hired with physical attendance not exceeding 50%⁴ capacity in groups of four spread out at the venue. Managers of event premises or organisers of specified events must continue to comply with the relevant restrictions, including ensuring customers use the 'LeaveHomeSafe' app under Cap. 599F and 'Vaccine Pass' under Cap. 599L. These, along with other precautionary measures at meeting venues, consistent with those advised by the Companies Registry⁵ should be communicated to shareholders under meeting announcements/circulars. To recap, the other precautionary measures include:

- arranging for body temperature to be taken for all persons entering the meeting venue, and those with high body temperature will not be allowed to enter the venue,
- requiring all persons entering the meeting venue to wear a face mask,

- providing hand sanitizers for use by persons entering the meeting venue,
- providing sanitizing mats at the entrance of the meeting venue, and
- arranging for appropriate physical distancing between seats.

Practical points for companies to consider

Despite the relaxation, it is important to note that companies are still advised to consider and adopt measures to minimise the risk of the transmission and spread of COVID-19 and hence should reduce the need for large group of physical gatherings. In addition, if a listed company would like to consider having some form of physical meeting, venue availability and the associated costs as well as timing constraints would be issues to consider. The governance professional should also attend to the revised arrangements and regulatory compliance matters, including to arrange for the necessary supplemental announcements/meeting circulars.

As a thorough decision-making process, a listed company should also consider whether it is an option not to make changes to the meeting arrangements already announced. In this case, a listed company may consider the following non-exhaustive questions and/or consult its service providers or other professionals, as appropriate. The relevant questions include:

1. Whether the current meeting arrangements comply with applicable legal requirements?
2. Will these arrangements also comply with section 2.3 of the Exchange's 'Guide on General Meetings'⁶ which stipulates that 'meetings should be held at a place and a time convenient to the largest possible number of shareholders to attend. Issuers should

3 https://www.coronavirus.gov.hk/eng/social_distancing-faq.html#FAQB21

4 https://gia.info.gov.hk/general/202205/04/P2022050300895_392000_1_1651595707876.pdf

5 FAQ7 under FAQs on the Holding of General Meetings by Companies during the period of the Novel Coronavirus (COVID-19) Pandemic <https://www.cr.gov.hk/en/faq-covid-19.htm>

6 https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/Practices-and-Procedures-for-Handling-Listing-related-Matters/gm_guide.pdf?la=en

consider the use of technology (e.g. webcast, video conference) to maximise shareholder participation amongst other matters’?

An affirmative answer to each of the questions above may well indicate there is no legal requirement or immediate urgency to change the meeting arrangements. Other relevant questions include:

3. What are the practical matters/ difficulties that need to be managed and dealt with, in order to change the meeting arrangements to allow for physical attendance?

4. The countervailing issue of the need for certainty of meeting arrangements and not to leave shareholders in a state of flux on meeting arrangements which is not in good governance.

In all, there may well be justifications for limiting changes to meeting arrangements brought about by changes in Government regulations. At some stage, when the dust settles, and certainty and normality return, meeting formats could be reviewed to ensure these are appropriate, and in good governance including to maximise shareholders’ engagement.