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27 January 2023

Companies Registry External Circular No. 1 / 2023

Commencement of the Companies (Amendment) Ordinance 2023 Holding of General Meetings by Using Virtual Meeting Technology

This circular announces that the Companies (Amendment) Ordinance 2023 (“the Amendment Ordinance”) will come into operation on **28 April 2023**.

Background

2. At present, the Companies Ordinance (Cap. 622) (“CO”) provides that a company must hold an annual general meeting within the prescribed time. A company may also hold a general meeting out of its own initiatives from time to time as necessary.
3. The manner of holding a general meeting is governed by the provisions in the CO and the Companies (Model Articles) Notice (Cap. 622H) (“Model Articles”) as well as provisions of the company’s own articles of association.
4. Pursuant to section 584 of the CO, a company may hold a general meeting 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. Yet, there is no reference in the CO for a company to hold fully virtual general meetings or the hybrid mode of virtual and physical general meetings.
5. The Amendment Ordinance seeks to modernise the CO and the Model Articles to expressly cater for the scenario of companies holding fully virtual general meetings without the requirement for presence of members at any physical locations; as well as a mixed mode of such virtual general meetings and members attending at physical location(s), i.e. hybrid general meetings.

The Amendment Ordinance

6. The major elements of the Amendment Ordinance include :
 - (a) introducing a new definition of virtual meeting technology;
 - (b) providing that notice of a general meeting to members or on a website 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;
 - (c) providing that the notice may specify the virtual meeting technology to be used for holding the meeting 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;
 - (d) setting out the mode of holding a general meeting;
 - (e) clarifying that when a general meeting of a company is held at 2 or more physical venues, the company must use any technology that allows the members of the company who are not together at the same physical venue to listen, speak and vote at the meeting regardless of whether virtual meeting technology is also used for holding the meeting; and
 - (f) providing that 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.

7. Details of these key elements are summarised at the **Annex**.

Implementation of the Amendment Ordinance

8. To facilitate implementation of the Amendment Ordinance, the Companies Registry ("CR") has issued the "Guidance Note – Good Practice on Holding Virtual or Hybrid General Meetings" ("the Guidance Note").

9. The Guidance Note seeks to provide general information and good practices on the holding of fully virtual or hybrid general meetings by locally incorporated companies. Companies should choose the most appropriate mode of meeting and will need to consider, in addition to convening a valid meeting in accordance with the law and their articles, whether a physical meeting continues to be the most appropriate mode or that holding a fully virtual or hybrid general meeting may promote better engagement with and maximise participation by members.

10. **A new thematic section on the Amendment Ordinance has been set up on the website of the CR at www.cr.gov.hk/en/legislation/co2023/overview.htm.** The section contains the full text of the Amendment Ordinance, the Guidance Note and frequently asked questions etc. in relation to the implementation of the Amendment Ordinance.



Enquiries

11. Enquiries concerning this circular can be directed to Ms Cindy Leung, Assistant Registry Manager (Customer Services & Management), at (852) 2867 4570 or crenq@cr.gov.hk.

Miss Helen TANG
Registrar of Companies

Companies (Amendment) Ordinance 2023

A Summary of the Key Elements

(A) Companies Ordinance (Cap. 622) (“CO”)

Provisions in the CO	Key Elements
Section 547(1)	<ul style="list-style-type: none"> ➤ “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.
Section 573(2)	<ul style="list-style-type: none"> ➤ 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 physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both.
Sections 576(1) and (2A)	<ul style="list-style-type: none"> ➤ A company must ensure that a notice of a general meeting specifies, among other matters, the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both. ➤ A notice of a 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 a general meeting by using virtual meeting technology or require a general meeting to be held only at a physical venue. ➤ Regarding the company’s articles requiring a general meeting to be held only at a physical venue, a provision of the company’s articles having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself a provision that requires a general meeting to be held only at a physical venue.
Section 583A	<ul style="list-style-type: none"> ➤ A company may hold a general meeting – <ul style="list-style-type: none"> (a) at a physical venue; (b) by using virtual meeting technology; or (c) both at a physical venue and by using virtual meeting technology.

Provisions in the CO	Key Elements
Section 584(1)	<ul style="list-style-type: none"> ➤ A company may hold a general meeting by 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. ➤ Regarding the company’s articles requiring a general meeting to be held only at a physical venue, a provision of the company’s articles having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself a provision that requires a general meeting to be held only at a physical venue. ➤ When a general meeting of a company is held at 2 or more physical venues, the company must use any technology that allows the members of the company who are not together at the same physical venue to listen, speak and vote at the meeting regardless of whether virtual meeting technology is also used for holding the meeting.
Section 585(4A)	<ul style="list-style-type: none"> ➤ 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.

(B) Companies (Model Articles) Notice (Cap. 622H) (“Model Articles”)

<p style="text-align: center;">Provisions in the Model Articles</p>	<p style="text-align: center;">Key Elements</p>
<p style="text-align: center;">Article 1(1) of Schedules 1, 2 & 3</p> <p style="text-align: center;">Article 39(4) of Schedule 1, Article 35(4) of Schedules 2 & 3</p> <p style="text-align: center;">Article 42(6) of Schedule 1, Article 38(6) of Schedules 2 & 3</p> <p style="text-align: center;">Article 43(1A) of Schedule 1, Article 39(1A) of Schedules 2 & 3</p> <p style="text-align: center;">Article 46(1), (1A), (5) and (9) of Schedule 1, Article 42(1), (1A), (5) and (9) of Schedules 2 & 3</p>	<ul style="list-style-type: none"> ➤ “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. ➤ 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. ➤ A person who attends a general meeting by using virtual meeting technology is to be regarded as attending the meeting if – <ul style="list-style-type: none"> (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. ➤ 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. ➤ 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.