



Newsletter No. 176 (EN)

**Meetings of Directors and Shareholders of
a Private Hong Kong Company**

May 2017

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I. Introduction

Every company is required by law to conduct an Annual General Meeting (“**AGM**”) of shareholders (Section 610 of the Hong Kong Companies Ordinance (“**CO**”). For private companies, if the first accounting reference period of the company is longer than 12 months, the first AGM should be held within 9 months after the anniversary of the company’s incorporation or 3 months after the end of that accounting reference period, whichever is later. Each subsequent AGM should be held within 9 months after the end of its financial year. In practice, most companies hold their AGM at the same time each year; e.g. every first Monday in March. Section 565 and 576 CO provide that the exact time and location of the AGM is decided by the company’s directors.

The AGM provides the shareholders with an opportunity to question the directors on any matter, but in particular on the company’s accounts and audit report, which are usually presented at the meeting.

The business of the AGM may include deciding upon the distribution of dividends, electing new directors and appointing auditors. The AGM can be held, either by way of a traditional in-person meeting or in the form of written resolutions.

1. Convention of an AGM

It is the directors’ responsibility to convene an AGM every year. The directors are required to give 21 days notice to the shareholders of the proposed AGM date. The

AGM notice must contain sufficient material and particulars to enable any shareholder to decide whether the proposed resolutions for the AGM would affect their interests.¹

Further, the shareholders must be able to see and understand the entire AGM process and all the decisions that are proposed prior to the actual AGM. If a special resolution is to be passed at the AGM, then the precise wording of this resolution must be cited in the AGM notice. To pass a special resolution, at least 28 days’ notice must be given to the company by a member of his intention to move the proposed resolution.

Section 565 CO provides that the directors may call a general meeting. The company secretary may call a general meeting on the instruction of the board. In addition, Sections 566, 569 and 570 CO also give authority to the directors, members and the Court to convene meetings under special circumstances.

2. Extraordinary General Meetings

In addition to the AGM, the shareholders may hold other meetings throughout the year as and when required. These meetings are called “Extraordinary General Meetings” (“**EGM**”). An EGM may be convened at the request of:

- The Directors;²
- The shareholders;³
- The auditors;⁴
- The liquidators; or
- A Court order.⁵

¹ *Hong Kong Racing Pigeon Association Ltd. v. Lam Koon Nam* (2002) 3 HKLRD 133, Section 576 (1)(e), (3), (4), (5) and (7) CO.

² Cap 622H Companies (Model Articles) Notice, Schedule 1, Sec 38 (2); Schedule 2 Sec 34 (2).

³ Section 569 (1) CO at least, however, 2 representing at least 10 % of the total voting rights.

⁴ Section 421 CO.

⁵ Section 570 CO.

The notice period for an EGM is 14 days, unless the Articles of Association require a longer time.

II. Proceedings at Company Meetings

The way in which business is conducted at a company meeting is determined by the CO and by the Articles of Association of the company. The procedure can also be decided during the meeting itself. Please note that the following information applies equally to AGMs, EGMs and Board of Director (“**BoD**”) meetings.

1. Quorum

No business can be conducted at a meeting unless a quorum is present for the entire duration of the meeting.⁶ Two members who are present in person or by proxy shall be a quorum.⁷

If a quorum is not present within 30 minutes of the appointed time for opening the meeting, the meeting will be adjourned for 7 days or as otherwise decided by the directors. If at the adjourned meeting, a quorum is not present within 30 minutes of the appointed time, the members which are present will constitute a quorum.⁸

2. Chairman

Unless the company’s articles provide otherwise, any member may be elected as the Chairman of the meeting by the other attendees.⁹ The Chairman of the meeting will be elected at the meeting. The powers of the Chairman are set out in the company’s Articles of Association. However, at common law the Chairman must ensure that all entitled persons are given a reasonable opportunity to debate and vote. If the Chairman is

a member of the BoD but he is not a shareholder, he is not eligible to vote at an AGM or EGM.

3. Proxy

Any member of the company is entitled to appoint another person, whether a member or not, as his proxy to attend and vote in his place. The proxy also has the same right to speak at the meeting on the appointing member’s behalf.¹⁰ The member’s right to appoint a proxy must be stated in the notice for the meeting.

A member may appoint multiple proxies to represent whatever number of shares is specified in the instrument of appointment.¹¹ The proxy’s appointment may be permanent, i.e. the proxy may act as such at all company meetings. A permanent proxy is sometimes described as a general proxy. However, if the Articles of Association of a company specify the form for appointment of a proxy and that form does not provide for permanent appointments, the proxy will only be empowered to act at the single meeting which is specified in the form.

Unless the company’s Articles of Association provide otherwise, a proxy cannot participate in a show of hands vote.¹² The instrument appointing the proxy is therefore deemed to confer authority to demand or to join in demanding a poll vote.¹³ If a shareholder has appointed a proxy but exercises his right to vote in person, the proxy is revoked. The proxy is merely the agent of the member who appoints him and that agency can be terminated at any time unless it has been agreed that the proxy is irrevocable. Even if the proxy has been given for a fixed period of time, the member is still entitled to receive notice of all meetings during that period.

⁶ Cap 622H Companies (Model Articles) Notice, Schedule 1 Sec 43 (2); Schedule 2, Sec 39 (2).

⁷ Cap 622, Section 585 (3).

⁸ Cap 622H Companies (Model Articles) Notice, Schedule 1 Sec 46; Schedule 2, Sec 42.

⁹ Section 586 (1) CO.

¹⁰ Section 596 CO.

¹¹ Section 596 CO.

¹² Section 588 (2) CO.

¹³ Section 591 (3).

4. Voting

a) Voting by hands

At any meeting, a resolution which is put to the vote of the members is decided on a show of hands, unless a poll vote is demanded before or on the declaration of the result.¹⁴ On a show of hands, every member present in person has one vote irrespective of the number of shares he holds.¹⁵ A proxy usually cannot vote on a show of hands.

b) Demanding a poll vote

Under the CO, all proposals put to the meeting, except for the election of the Chairman and adjournment of the meeting, may be decided by a poll vote. A company's Articles of Association may provide less stringent requirements for calling a poll vote than those provided by the CO, but they may not impose requirements which are more stringent. The Chairman may also demand a poll vote.

In a poll vote, every member shall have one vote for each share that he holds. A member who is entitled to more than one vote does not have to use all of his votes in the same way.¹⁶ For example, a member may cast some of his votes for one director candidate and some for another. The votes may be cast personally or by proxy.

c) Casting vote

If there is an equality of votes, whether on a show of hands or on a poll vote, the Chairman of the meeting has the casting vote.

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions, please do not hesitate to contact us.*

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¹⁴ Section 591 (1) CO.

¹⁵ Section 588 (1) CO.

¹⁶ Section 593 CO.