Corporate & Commercial

New Companies Ordinance:
General Meetings and Shareholders’ Written Resolutions

Introduction

In this newsletter, we will discuss the key changes relating to the general meetings and shareholders’ written resolutions under the new Companies Ordinance (Cap. 622) (the “New CO”). All these changes are set out in Part 12 thereof.

Notice of general meetings

Except for annual general meeting (“AGM”), the notice period for calling a general meeting of a limited company (regardless of whether an ordinary or a special resolution is proposed at such meeting) or a meeting for the passing of resolutions requiring special notice has been shortened to 14 clear days. The notice period for calling an AGM remains the same (i.e. 21 clear days).

Besides, a company may give members a notice of meeting by making it available on its website from the date of such notification to the conclusion of the meeting.

Electronic general meetings

Subject to the company’s Articles of Association (“Articles”), a company may hold a general meeting at multiple locations by using electronic technology which enables members at different locations to listen, speak and vote at the meeting. A company may set out rules and procedures for holding a dispersed meeting in its Articles.

Right to demand a poll

The threshold requirement for members to demand a poll in general meetings is reduced from 10% to 5% of total voting rights. Further, a chairman of the general meeting is empowered to demand a poll under the New CO.

Rights and obligations of proxies

All members (including members of a company limited by guarantee, who are only entitled to appoint proxies if provided for in the Articles under the current regime) may appoint proxy. Further, unless the Articles provide otherwise, a member may appoint more than one proxy, instead of two under the current regime.
A proxy may demand a poll. In addition, subject to the provisions of the Articles, a proxy may vote on a show of hands (except for multiple proxies who can only vote on a poll) or be appointed as a chairman of the meeting.

A proxy is required to vote in accordance with the way specified in the appointment of the proxy. Should the appointor attends the meeting in person and exercises his or her voting right, the proxy will be revoked.

Expenses of circulating the members’ statements
Members of a company are no longer required to bear the expenses of circulating the member’s statement that relates to a resolution or other business at an AGM, provided that such statement is made by a member representing no less than 2.5% of the total voting rights or from 50 members having the rights to vote at the meeting. Further, such notice should be received by the company within the required time. In such case, the expenses shall be borne by the company.

AGMs
Accounting reference period is a new concept brought by the New CO, which sets out the time interval by which a company’s financial statements are to be prepared. For all private companies and companies limited by guarantee, they are required to hold their AGMs within 9 months of the end of their accounting reference periods. For other companies, they are required to hold their AGMs within 6 months of the end of their accounting reference periods.

Dispensation of AGMs
A company is empowered to dispense with the requirement for holding of AGMs by passing a written resolution or a resolution at a general meeting by all members. After passing such resolution, a company is not required to hold any AGM for the financial year(s) to which the resolution relates. Having said that, the company is still required to provide all documents that are required to be laid before an AGM (e.g. financial statements, directors reports and auditors reports) to the members.

Having said that, any member may request the company to convene an AGM for a particular year by serving a notice no later than 3 months prior to the last day that the company would otherwise be required to hold an AGM for the relevant financial year. In addition, a company may revoke such resolution by passing an ordinary resolution to that effect.

A single member company is not required to hold AGMs at all. However, such company still needs to send all documents required to be laid before an AGM to its sole member.
Members’ written resolutions

The New CO provides a comprehensive set of statutory rules regarding the necessary procedures for proposing, passing and recording written resolutions.

Any member or director of a company may propose a resolution as a written resolution (except for removal of a director or an auditor). Upon receipt of a proposed resolution, the company should circulate the same to all members if such request is sent out by a director, a member of not less than 5% of the total voting rights or a lower threshold set by the company in its Articles. Unless the Articles provide otherwise, the proposed resolutions should be agreed by all eligible members within 28 days. After passing the written resolutions, the company is required to send a notice of that fact to each member and its auditor within 15 days.

Actions to take

We encourage the responsible officers (e.g. directors or company secretary) to review the Articles of their companies and see if it is necessary to modify the provisions therein for purpose of complying with the New CO and suiting their needs in practice. Further, they are encouraged to have a plan for the next general meeting, including AGM. For instance, is the company going to dispense with the forthcoming AGMs by passing a written resolution?

Should you need any assistance in this aspect, please feel free to contact us for further information.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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