

Corporate Finance

SFC and HKEx Joint Statement: Should listed companies hold shareholders' meetings under the COVID-19 group gathering prohibition regulation?

Introduction

In response to the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Chapter 599G of the Laws of Hong Kong) (the "**Regulation**") promulgated by the Hong Kong Government, which became effective on 29 March 2020 and would last for a period of 14 days subject to extension (the "**Specified Period**"), the Securities and Future Commission (the "**SFC**") and The Stock Exchange of Hong Kong Limited (the "**Stock Exchange**") issued a joint statement in relation to general meetings in light of the Regulation on 1 April 2020 (the "**Joint Statement**") to clarify the obligations of listed companies to hold annual general meetings (the "**AGMs**"), extraordinary general meetings (the "**EGMs**") and special general meetings (the "**SGMs**") in compliance with the Regulation and in response to the COVID-19 pandemic. The Specified Period has been subsequently extended till 7 May 2020, and may be further extended by notice.

Under the Regulation, gatherings of more than four persons in public places are prohibited, subject to the exhaustive exemptions set out in Schedule 1 to the Regulation. In particular, paragraph 11 of Schedule 1 to the Regulation provides that any group gathering at a meeting of a body that must be held within a specified period in order to comply with any ordinance or other regulatory instrument that governs the operation of the body or its business is exempted (the "**Exemption**").

Holding General Meetings

How does the Exemption apply to AGMs, EGMs and SGMs?

After consultation with the Hong Kong Government, the SFC and the Stock Exchange clarified in the Joint Statement that the Exemption will general apply to AGMs of companies as required under the Companies Ordinance (Cap. 622) and/or the Rules Governing the Listing of Securities on the Stock Exchange (the "**Listing Rules**") and the Rules Governing the Listing of Securities on GEM of the Stock Exchange (the "**GEM Listing Rules**"). As such, a listed company whose shares are listed on the main board or GEM of the Stock Exchange may hold AGMs in the Specified Period.

However, EGMs and SGMs of listed companies will only fall within the Exemption if the meeting **must be** held within the Specified Period in order to comply with: (i) any law or

regulation in Hong Kong or overseas that is applicable to the listed company or a subsidiary of the listed company (as part of the listed issuer's business); (ii) any Listing Rules (or the GEM Listing Rules) or The Codes on Takeovers and Mergers and Share Buy-backs; (iii) the listed company's own constitutional documents; or (iv) other regulatory instruments.

To interpret the Exemption conservatively, it is suggested that if it is possible to adjourn or postpone an EGM or SGM until a later date beyond the Specified Period without any breach of the applicable law or regulation, the Exemption will not apply. In addition to the regulatory requirements and capability of extension, waivers or other variation as allowed by applicable laws or regulations, the SFC and the Stock Exchange have also suggested that listed companies should consider, when deciding the timing of the general meetings, whether any business to be considered at the meeting is of such urgency and importance that an adjournment or delay would, taking into account all facts and circumstances, materially harm the interests of the listed company and its shareholders considered as a whole.

Managing physical meetings

For listed companies which have decided to proceed with a physical general meeting in Hong Kong during the Specified Period, it is recommended in the Joint Statement that the listed companies should take all practicable precautions to ensure the safety of attendees, including mandatory screening of body temperatures of attendees before allowing them to enter the meeting venue, mandatory use of face masks by attendees and provision of hand sanitisers at the meeting venue. Listed companies should also arrange any seating in the meeting venue with sufficient physical distance between each and every attendee. Provision of food and beverage and handing out of corporate gifts at the meeting are not recommended. Listed companies should also adopt other appropriate measures to manage the number of attendees where possible. For instance, they should consider using multiple meeting rooms or venues linked by telecommunication facilities to reduce the headcount at a single venue and restricting the number of non-shareholder attendees at the meeting. The listed companies should also encourage the shareholders to submit proxy form and appoint the chairman of the AGM as his/her proxy to vote on the resolutions to be proposed at the AGM instead of attending the AGM in person.

Maintaining communications with shareholders

Apart from taking precautions suggested above, listed companies which have called general meetings during the Specified Period should also publish an announcement as soon as practicable to confirm whether their general meetings will proceed as scheduled during the Specified Period. If the general meetings were to proceed as scheduled during the Specified Period, the announcement should further explain why it is necessary to hold the meetings during the Specified Period and outline the meeting arrangements and precautionary measures to be adopted to ensure compliance with the Regulation.

Takeaways

Listed companies should check or consult their legal advisers as to whether it is permissible under the company law of their place of incorporation and their constitutional documents (i.e. articles of association or bye-laws) to hold general meetings via video-conferencing. When considering whether to hold technology-assisted virtual meetings, listed companies should consider factors such as verification of the identity of attendees, vote-counting, setting up of the facilities, ensuring stable electronic access by the attendees, participation of attendees during the meeting and any contingency arrangements in case of technical errors.

In light of the present circumstances and ongoing development of the COVID-19 pandemic, it is likely that the Hong Kong Government will continue to implement measures to prevent the spread of COVID-19 including the prohibition on group gathering. It is therefore recommended that listed companies to plan ahead as to what measures to be undertaken in relation to the convention of general meetings in order to comply with the requirement to hold AGM on time on one hand and the requirement in relation to group gatherings under the Regulation on the other hand.

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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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