

## COVID-19 – The Law Un-Masked: Corporate General Meetings in the Time of COVID-19

In our fifth article in the series of “The Law Un-masked”, Andrew Lau discusses the Government’s latest ban on public gatherings, its impact on corporate general meetings, and the possible options companies may have.

The Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) (“**Regulation**”) prohibits “*group gatherings*”, i.e. a gathering of more than four persons, in any public space during a “*specified period*”.<sup>1</sup> As of writing, the “*specified period*” is from 29 March 2020 to 11 April 2020.<sup>2</sup>

Certain group gatherings are exempted. A full list of exempted gatherings is set out in Schedule 1 to the Regulation. Paragraph 11 of Schedule 1 exempts any “[g]roup 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” (“**Paragraph 11**”).

### Annual General Meetings (“AGMs”)

AGMs as required under Companies Ordinance (Cap. 622) and/or the Rules Governing the Listing of Securities on the Stock Exchange (“**Main Board Listing Rules**”) or the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange (“**GEM Listing Rules**”) should fall under the Paragraph 11 exemption. This was confirmed in a joint statement issued by the Stock Exchange and the Securities and Futures Commission (“**SFC**”) on 1 April 2020 (“**Joint Statement**”).<sup>3</sup>

Companies that decide to proceed with a physical AGM during the specified period must take all safety precautions, such as scanning the body temperature of all attendees, requiring face masks to be worn, providing hand sanitizers and physical distancing. Where necessary, it is also helpful to reduce the number of attendees at a single venue by using multiple meeting rooms connected by telecommunication facilities.

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<sup>1</sup> Section 3(1) of the Regulation.

<sup>2</sup> G.N. (E.) 19 of 2020.

<sup>3</sup> See the press release entitled “Joint Statement in Relation to General Meetings in Light of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation” dated 1 April 2020: [https://www.hkex.com.hk/News/News-Release/2020/200401news?sc\\_lang=en](https://www.hkex.com.hk/News/News-Release/2020/200401news?sc_lang=en)

### **Extraordinary General Meetings (“EGMs”)**

EGMs of Hong Kong-listed issuers are exempted under Paragraph 11 if the meeting must be held within the specified period in order to comply with:

- (1) Any law or regulation in Hong Kong or overseas that is applicable to the listed issuer or a subsidiary of the listed issuer (as part of the listed issuer’s business);
- (2) Any Main Board Listing Rules or GEM Listing Rules or The Codes on Takeovers and Mergers and Share Buy-backs;
- (3) The issuer’s own memorandum or articles of association; or
- (4) Other regulatory instrument.<sup>4</sup>

For EGMs that fall outside those categories, one may rely on the defence under section 7 of the Regulation, i.e. whether there is a “*reasonable excuse*” for participating, organising and allowing the taking place of the gathering. What is, or is not, “*reasonable excuse*” depends on the particular circumstances of each case. There is clearly a risk of uncertainty. Companies should consult their legal advisors before proceeding.

It must also be emphasised that the Regulation does not only apply to “*a person who organizes the gathering*”, i.e. the company, but also to “*a person who participates in the gathering*”, i.e. the shareholders, and “*a person who (i) owns, controls or operates the place in which the gathering take place; and (ii) knowing allows the taking place of the gathering*”, i.e. the venue owner/operator.<sup>5</sup> Thus, in the event of a breach, a company may face criminal liability, as well as potential civil claims from shareholders and/or the venue owner/operator.

### **Adjournment**

In light of the above, companies should consider whether it is possible to adjourn or delay their AGMs/EGMs for a reasonable period until after the specified period has ended, unless the general meeting is subject to any mandatory legal or regulatory requirement on timing. This is easier said than done, as there is no telling whether the “*specified period*” may be renewed upon expiry, and if so, for how long.

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<sup>4</sup> *Ibid.*

<sup>5</sup> Section 6 of the Regulation.

### **Use of Technology**

Video conferencing has skyrocketed in popularity since the COVID-19 pandemic began and is worth exploring as an alternative to enable non-physical attendance and voting, subject to the applicable laws and the company's constitutional documents. Currently, virtual-only AGMs are not viable for Hong Kong listed companies, but if a company's constitutional documents permit, a company may hold a hybrid AGM, whereby a physical AGM is held in conjunction with an electronic AGM. In other words, shareholders are able to participate and vote whether they attend physically or electronically. This has the benefit of reducing the number of attendees at a single venue but will require extra costs in setting up the necessary technology.

### **Vote by Proxy**

Proxy voting is normally frowned upon as being detrimental to board accountability as it is important for shareholders to be able to make statements and ask questions. However, increasing calls for social distancing may justify companies to encourage more shareholders to vote by proxy. Practically speaking, there would still be a physical meeting, but with a specific request to shareholders not to physically attend the meeting and to make maximum use of proxies. For companies adopting this option, it is important to check, among other things, whether multiple proxies can be issued to one person.

This article was produced by [Andrew Lau](#).



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