



HONG KONG AGM SEASON 2020 - GET PREPARED!

March 2020

With the unprecedented spread of COVID-19 and the recent protests in Hong Kong, listed companies will need to plan their 2020 AGMs especially carefully.

The guidance below reflects Hong Kong company law and the Hong Kong Stock Exchange Listing Rules ([Listing Rules](#)) and guidance. Companies will also need to consider their own particular circumstances, including their articles of association ([Articles](#)) and any other matters relevant to them.

Adapt your usual AGM arrangements

As AGMs necessarily involve people coming together in numbers, careful planning will be needed to take account of health and safety concerns whilst also ensuring compliance with relevant requirements of company law and the Listing Rules.

Companies will need to consider adapting their usual AGM arrangements in order to address the health and safety of shareholders attending the AGM whilst recognising that many shareholders may prefer not to attend the 2020 AGM. We set out below a number of measures which companies should consider:

- **Introduce appropriate safety measures.** A company's Articles typically contain provisions permitting directors to introduce arrangements before and during an AGM to ensure the safety and security of attendees. Companies could rely on these provisions to take appropriate

measures, including requiring temperature checks, wearing of surgical masks and seating arrangements to ensure appropriate "distancing". To manage the expectations of shareholders, before the AGM takes place, details of the proposed arrangements can be posted on the company's website and the company can also issue an appropriate announcement.

- **Confirm position with venue provider.** Ensure that the venue is still prepared to host the AGM and/or consider booking a fall-back venue. Given some venues may impose their own entry requirements and restrictions, companies will need to take these into account and, where appropriate, publicise them before the AGM. If a company is forced to move the location of its AGM after its AGM notice has been issued, legal advice will be needed to ensure that legal and regulatory requirements are complied with. Depending on the particular circumstances, it may become necessary to hold the AGM at the original venue but adjourn it and then announce the new venue.
- **Arrange supplemental rooms in addition to the main venue.** The Articles may permit the use of supplemental rooms linked by video or some other means. Consider this as a way of restricting the number of attendees in any one particular room, including to take account of any emerging limits on the size of public gatherings. Technology must be put in place that enables all attendees both in the main room and supplemental rooms 'to listen, speak and vote at the meeting'.

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- **Establish a dedicated area on company website.** Communication with shareholders is important and is positively encouraged by the Hong Kong Stock Exchange. Providing a dedicated area on the company's website would demonstrate the significance the company places on shareholder communication and enable the company to manage expectations. This area on the company's website would include the details of any special arrangements for the AGM and can be updated to reflect changes in the situation. Where appropriate, updates can also be given by the company issuing an announcement.
- **Encourage proxy voting.** Include specific provisions in the AGM notice and/or AGM circular to encourage shareholders to vote by proxy. Supplement this with appropriate announcements and website updates.
- **Establish an online shareholder Q&A for the AGM.** Some shareholders attend AGMs so that they can raise questions with the company's management. If they are able to send their questions to the Company before the AGM, they may decide not to attend the AGM, in particular if the AGM is being live streamed.
- **Consider announcing a separate 'shareholder event' to be held later in the year.** This option involves holding the AGM at the appointed time and dealing with all the resolutions set out in the AGM notice and also holding a separate 'shareholder event' at a later date at which shareholders are given the opportunity to engage with management and raise questions.
- **Ensure the AGM will be quorate.** As the quorum requirements for Hong Kong listed companies are generally very small, they are not likely to present a procedural problem for most companies. However, the company's Articles must nevertheless be checked.
- **Restrict the number of non-shareholder attendees.** It is common for companies in Hong Kong to invite a wide range of 'non-shareholder' stakeholders to their AGMs, including customers, suppliers and consultants. For their 2020 AGMs, companies might consider restricting the number of non-shareholders they invite.
- **Enhance registration process.** So that attendees do not have to queue in close proximity to each other whilst registering to enter the AGM venue, streamline the registration and entry procedures.
- **Live stream or video the AGM.** Although shareholders who view the live stream or video of the AGM instead of attending physically are not regarded as having 'attended' the AGM from a legal perspective, they may at least feel they have been given the opportunity to participate in the AGM in some way. In its Guide on General Meetings (Stock Exchange Guide), the Hong Kong Stock Exchange advises companies to consider using technology to maximise shareholder 'participation'.
- **Dispense with the provision of refreshments and any other complimentary offerings at the AGM.** This would reflect certain health and safety concerns. Announcing this in advance is likely to reduce the number of attendees.
- **Attendance by directors.** The Stock Exchange Guide provides that the chairman of the board should attend the AGM and should invite the chairmen of the company's various committees or, in their absence, other representatives of the committees. Independent directors are also encouraged to attend AGMs. The underlying principle is that the appropriate directors should be available to answer questions from shareholders. If directors are unable to attend the AGM, companies could consider making them available by electronic means to answer questions.

Delaying/postponing/adjourning the AGM

A company which has not yet issued its AGM notice can delay its dispatch and potentially change the location and date of its AGM. However, given companies listed on the Hong Kong Stock Exchange are required to hold their AGMs within 6 months of the financial year-end, companies with a 31 December year-end will have little flexibility.

If a company has already issued its AGM notice, its ability to postpone the AGM is more restricted and it may have to hold the AGM in accordance with the AGM notice and then adjourn it to a later date. If it is known in advance of the AGM that it will be opened with the intention of adjourning it, an announcement to this effect should be issued and the company's website should be updated.

Delaying, postponing and/or adjourning AGMs may have consequences of varying degrees of significance, for example, there could be an impact on the timing of dividend payments.

Virtual and hybrid AGMs

Virtual-only AGMs are those where all participants - both the board members and shareholders - participate electronically. From a legal perspective, virtual-only AGMs are not viable for Hong Kong listed companies. However, if a company's Articles permit, it could conduct a 'hybrid' AGM which is a combination of a normal physical AGM plus an electronic AGM. All shareholders are able to participate and vote whether they attend physically or electronically. Hybrid AGMs are extremely rare in Hong and require complex IT and other arrangements to be put in place, in particular to ensure that shareholders can vote electronically. Systems must be properly tested in good time before the AGM date so that the validity of resolutions that are passed at the AGM is not challenged if the IT systems fail.

Watch out for new emergency advice/legislation

The Hong Kong Government is encouraging individuals to reduce non-essential contact and is advising against the holding of mass gatherings. The Hong Kong Department of Health has issued guidelines for event organisers which include, amongst other things, advice to provide surgical masks and hand sanitisers and a designated area for participants who become sick. The Hong Kong Government is updating its requirements regarding COVID-19 on a regular basis to address the evolving situation and it is very possible that future requirements may have a direct impact on AGMs. Some governments around the world have already introduced legal measures which restrict the size of gatherings. Companies should be ready to alter their AGM plans as necessary as new Hong Kong Government requirements are announced.

How we can help

We have extensive experience, gained over many years, of helping companies prepare for their AGMs, including:

- Advising on the legal and regulatory banana skins
- Rehearsing with the chairman and the board
- Assisting with the preparation of the chairman's script
- Advising on the practical logistics for AGMs to ensure that things go smoothly whilst complying with the legal and regulatory requirements.

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If you would like further information about the impact of COVID-19 on your business, please speak to your usual Slaughter and May contact.



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