

Companies (Amendment) Bill 2022

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A BILL

To

Amend the Companies Ordinance and its subsidiary legislation to facilitate the holding of general meetings by using virtual meeting technology.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2022.
- (2) This Ordinance comes into operation on the expiry of 3 months after the day on which this Ordinance is published in the Gazette.

2. Enactments amended

- (1) The Companies Ordinance (Cap. 622) is amended as set out in Part 2.

Companies (Amendment) Bill 2022

Part 1

Clause 2

C2617

- (2) The Companies (Model Articles) Notice (Cap. 622 sub. leg. H) is amended as set out in Part 3.
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Part 2

Amendments to Companies Ordinance

3. Section 547 amended (interpretation)

(1) Section 547(1), English text, definition of *electronic address*—

Repeal

“means.”

Substitute

“means;”.

(2) Section 547(1)—

Add in alphabetical order

“*virtual meeting technology* (虛擬會議科技) means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.”.

4. Section 573 amended (publication of notice of general meeting on website)

Section 573(2)—

Repeal paragraph (b)

Substitute

“(b) specify the date and time of the meeting;

(ba) specify—

(i) if the notice specifies only the physical venue of the meeting—the physical venue;

- (ii) if the notice specifies only the virtual meeting technology to be used for holding the meeting—the virtual meeting technology; or
- (iii) if the notice specifies both the physical venue of the meeting and the virtual meeting technology to be used for holding the meeting—both the physical venue and the virtual meeting technology; and”.

5. Section 576 amended (contents of notice of general meeting)

(1) Section 576(1)—

Repeal paragraph (b)

Substitute

“(b) specifies either or both of the following—

- (i) the physical venue of the meeting;
- (ii) the virtual meeting technology to be used for holding the meeting;

(ba) if 2 or more physical venues are specified under paragraph (b)(i)—specifies the principal venue, and the other venue or venues, of the meeting;”.

(2) Section 576(2)—

Repeal

“(b)”

Substitute

“(b), (ba)”.

(3) After section 576(2)—

Add

“(2A) To avoid doubt—

- (a) a notice of a general meeting of a company may specify the virtual meeting technology to be used for holding the meeting (whether or not the notice also specifies the physical venue of the meeting) unless—
 - (i) the company’s articles expressly preclude the holding of a general meeting by using virtual meeting technology; or
 - (ii) the company’s articles require a general meeting to be held only at a physical venue; and
- (b) for the purposes of paragraph (a)(ii), a provision of the company’s articles having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself a provision that requires a general meeting to be held only at a physical venue.”.

6. Section 583A added

Part 12, Division 1, Subdivision 7, before section 584—

Add

“583A. Mode of holding general meeting

- (1) A company may hold a general meeting—
 - (a) at a physical venue;
 - (b) by using virtual meeting technology; or
 - (c) both at a physical venue and by using virtual meeting technology.
- (2) Subsection (1) has effect subject to any provision of the company’s articles.
- (3) To avoid doubt—

- (a) a company may hold a general meeting by using virtual meeting technology (whether or not also at a physical venue) unless—
 - (i) the company's articles expressly preclude the holding of a general meeting by using virtual meeting technology; or
 - (ii) the company's articles require a general meeting to be held only at a physical venue; and
- (b) for the purposes of paragraph (a)(ii), a provision of the company's articles having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself a provision that requires a general meeting to be held only at a physical venue.”.

7. Section 584 amended (meeting at 2 or more places)

- (1) Section 584, heading—

Repeal

“places”

Substitute

“physical venues”.

- (2) Section 584—

Repeal subsection (1)

Substitute

- “(1) If a general meeting of a company is held at 2 or more physical venues (whether or not also by using the virtual meeting technology specified in the notice of the meeting), the company must use any technology that allows the members of the company

who are not together at the same physical venue to listen, speak and vote at the meeting.”.

8. Section 585 amended (quorum at meeting)

After section 585(4)—

Add

“(4A) For the purposes of this section, a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present while so attending.”.

Part 3

Amendments to Companies (Model Articles) Notice

9. **Schedule 1 amended (model articles for public companies limited by shares)**
- (1) Schedule 1, English text, article 1(1), definition of *transmittee*—
- Repeal**
“law.”
- Substitute**
“law;”.
- (2) Schedule 1, article 1(1)—
- Add in alphabetical order**
“*virtual meeting technology* (虛擬會議科技) means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.”.
- (3) Schedule 1, article 39(4)—
- Repeal subparagraph (b)**
- Substitute**
“(b) specify either or both of the following—
- (i) the physical venue of the meeting;
 - (ii) the virtual meeting technology to be used for holding the meeting;
- (ba) if 2 or more physical venues are specified under subparagraph (b)(i)—specify the principal venue, and the other venue or venues, of the meeting;”.

- (4) Schedule 1, article 42(4) and (5)—

Repeal

“place”

Substitute

“physical venue”.

- (5) Schedule 1, after article 42(5)—

Add

“(6) A person attends a general meeting by using virtual meeting technology if—

- (a) the person uses the virtual meeting technology specified in the notice of the meeting; and
- (b) where the person has the rights to speak and vote at the meeting, the person is able to exercise them.”.

- (6) Schedule 1, after article 43(1)—

Add

“(1A) For the purposes of paragraph (1), a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present while so attending.”.

- (7) Schedule 1, article 46—

Repeal paragraph (1)

Substitute

“(1) If a quorum is not present within 30 minutes after the time appointed for holding a general meeting, the meeting must—

- (a) if called on the request of members—be dissolved; or

- (b) if not called on the request of members—be adjourned.
- (1A) If a general meeting is adjourned under paragraph (1)(b), the directors must determine—
 - (a) the date and time of the adjourned meeting;
 - (b) either or both of the following—
 - (i) the physical venue of the adjourned meeting;
 - (ii) the virtual meeting technology to be used for holding the adjourned meeting; and
 - (c) if 2 or more physical venues are determined under subparagraph (b)(i)—the principal venue, and the other venue or venues, of the adjourned meeting.”.
- (8) Schedule 1, article 46(2)—

Repeal

“half an hour from”

Substitute

“30 minutes after”.

- (9) Schedule 1, article 46—

Repeal paragraph (5)**Substitute**

- “(5) When adjourning a general meeting under paragraph (3) or (4), the chairperson must specify—
 - (a) the date and time of the adjourned meeting;
 - (b) either or both of the following—
 - (i) the physical venue of the adjourned meeting;

- (ii) the virtual meeting technology to be used for holding the adjourned meeting; and
 - (c) if 2 or more physical venues are specified under subparagraph (b)(i)—the principal venue, and the other venue or venues, of the adjourned meeting.”.
- (10) Schedule 1, after article 46(8)—

Add

- “(9) If no notice of an adjourned meeting is given, a person who attends the adjourned meeting by using either of the following virtual meeting technologies is to be regarded as being present while so attending—
- (a) the virtual meeting technology determined by the directors under paragraph (1A);
 - (b) the virtual meeting technology specified by the chairperson under paragraph (5).”.

10. Schedule 2 amended (model articles for private companies limited by shares)

- (1) Schedule 2, English text, article 1(1), definition of *transmittee*—

Repeal

“law.”

Substitute

“law;”.

- (2) Schedule 2, article 1(1)—

Add in alphabetical order

“*virtual meeting technology* (虛擬會議科技) means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.”.

- (3) Schedule 2, article 35(4)—

Repeal subparagraph (b)

Substitute

- “(b) specify either or both of the following—
- (i) the physical venue of the meeting;
 - (ii) the virtual meeting technology to be used for holding the meeting;
- (ba) if 2 or more physical venues are specified under subparagraph (b)(i)—specify the principal venue, and the other venue or venues, of the meeting;”.

- (4) Schedule 2, article 38(4) and (5)—

Repeal

“place”

Substitute

“physical venue”.

- (5) Schedule 2, after article 38(5)—

Add

- “(6) A person attends a general meeting by using virtual meeting technology if—
- (a) the person uses the virtual meeting technology specified in the notice of the meeting; and
 - (b) where the person has the rights to speak and vote at the meeting, the person is able to exercise them.”.

- (6) Schedule 2, after article 39(1)—

Add

“(1A) For the purposes of paragraph (1), a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present while so attending.”.

- (7) Schedule 2, article 42—

Repeal paragraph (1)

Substitute

“(1) If a quorum is not present within 30 minutes after the time appointed for holding a general meeting, the meeting must—

- (a) if called on the request of members—be dissolved; or
- (b) if not called on the request of members—be adjourned.

(1A) If a general meeting is adjourned under paragraph (1)(b), the directors must determine—

- (a) the date and time of the adjourned meeting;
- (b) either or both of the following—
 - (i) the physical venue of the adjourned meeting;
 - (ii) the virtual meeting technology to be used for holding the adjourned meeting; and
- (c) if 2 or more physical venues are determined under subparagraph (b)(i)—the principal venue, and the other venue or venues, of the adjourned meeting.”.

- (8) Schedule 2, article 42(2)—

Repeal

“half an hour from”

Substitute

“30 minutes after”.

- (9) Schedule 2, article 42—

Repeal paragraph (5)

Substitute

“(5) When adjourning a general meeting under paragraph (3) or (4), the chairperson must specify—

(a) the date and time of the adjourned meeting;

(b) either or both of the following—

(i) the physical venue of the adjourned meeting;

(ii) the virtual meeting technology to be used for holding the adjourned meeting; and

(c) if 2 or more physical venues are specified under subparagraph (b)(i)—the principal venue, and the other venue or venues, of the adjourned meeting.”.

- (10) Schedule 2, after article 42(8)—

Add

“(9) If no notice of an adjourned meeting is given, a person who attends the adjourned meeting by using either of the following virtual meeting technologies is to be regarded as being present while so attending—

(a) the virtual meeting technology determined by the directors under paragraph (1A);

(b) the virtual meeting technology specified by the chairperson under paragraph (5).”.

11. Schedule 3 amended (model articles for companies limited by guarantee)

(1) Schedule 3, English text, article 1(1), definition of *proxy notice*—

Repeal

“48(1).”

Substitute

“48(1);”.

(2) Schedule 3, article 1(1)—

Add in alphabetical order

“*virtual meeting technology* (虛擬會議科技) means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.”.

(3) Schedule 3, article 35(4)—

Repeal subparagraph (b)

Substitute

“(b) specify either or both of the following—

(i) the physical venue of the meeting;

(ii) the virtual meeting technology to be used for holding the meeting;

(ba) if 2 or more physical venues are specified under subparagraph (b)(i)—specify the principal venue, and the other venue or venues, of the meeting;”.

- (4) Schedule 3, article 38(4) and (5)—

Repeal

“place”

Substitute

“physical venue”.

- (5) Schedule 3, after article 38(5)—

Add

“(6) A person attends a general meeting by using virtual meeting technology if—

- (a) the person uses the virtual meeting technology specified in the notice of the meeting; and
- (b) where the person has the rights to speak and vote at the meeting, the person is able to exercise them.”.

- (6) Schedule 3, after article 39(1)—

Add

“(1A) For the purposes of paragraph (1), a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present while so attending.”.

- (7) Schedule 3, article 42—

Repeal paragraph (1)

Substitute

“(1) If a quorum is not present within 30 minutes after the time appointed for holding a general meeting, the meeting must—

- (a) if called on the request of members—be dissolved; or

- (b) if not called on the request of members—be adjourned.
- (1A) If a general meeting is adjourned under paragraph (1)(b), the directors must determine—
 - (a) the date and time of the adjourned meeting;
 - (b) either or both of the following—
 - (i) the physical venue of the adjourned meeting;
 - (ii) the virtual meeting technology to be used for holding the adjourned meeting; and
 - (c) if 2 or more physical venues are determined under subparagraph (b)(i)—the principal venue, and the other venue or venues, of the adjourned meeting.”.
- (8) Schedule 3, article 42(2)—

Repeal

“half an hour from”

Substitute

“30 minutes after”.

- (9) Schedule 3, article 42—

Repeal paragraph (5)

Substitute

- “(5) When adjourning a general meeting under paragraph (3) or (4), the chairperson must specify—
 - (a) the date and time of the adjourned meeting;
 - (b) either or both of the following—
 - (i) the physical venue of the adjourned meeting;

- (ii) the virtual meeting technology to be used for holding the adjourned meeting; and
 - (c) if 2 or more physical venues are specified under subparagraph (b)(i)—the principal venue, and the other venue or venues, of the adjourned meeting.”.
- (10) Schedule 3, after article 42(8)—

Add

- “(9) If no notice of an adjourned meeting is given, a person who attends the adjourned meeting by using either of the following virtual meeting technologies is to be regarded as being present while so attending—
- (a) the virtual meeting technology determined by the directors under paragraph (1A);
 - (b) the virtual meeting technology specified by the chairperson under paragraph (5).”.
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Explanatory Memorandum

The purpose of this Bill is to amend the Companies Ordinance (Cap. 622) (*principal Ordinance*) and the Companies (Model Articles) Notice (Cap. 622 sub. leg. H) (*principal Notice*) to facilitate the holding of general meetings by using virtual meeting technology.

2. The Bill is divided into 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Principal Ordinance

4. Clause 3 amends section 547 of the principal Ordinance to add a new definition of *virtual meeting technology*.
5. Clause 4 amends section 573 of the principal Ordinance. Before the amendment, that section 573 provides that when a company notifies a member of the availability of a notice of a general meeting on a website, the notification must specify, among other matters, the place of the meeting. After the amendment, the notification must specify the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both.
6. Clause 5 amends section 576 of the principal Ordinance. Before the amendment, that section 576 provides that a company must ensure that a notice of a general meeting specifies, among other matters, the place of the meeting. After the amendment, the

company must ensure that the notice specifies the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both. A new section 576(2A) is also added to the principal Ordinance to provide that the notice may specify the virtual meeting technology to be used for holding the meeting unless the company's articles expressly preclude the holding of a general meeting by using virtual meeting technology or require a general meeting to be held only at a physical venue.

7. Clause 6 adds a new section 583A to the principal Ordinance to set out the mode of holding a general meeting. That section 583A also provides that a company may hold a general meeting by using virtual meeting technology unless the company's articles expressly preclude the holding of a general meeting by using virtual meeting technology or require a general meeting to be held only at a physical venue.
8. Clause 7 amends section 584 of the principal Ordinance to clarify that when a general meeting of a company is held at 2 or more physical venues, the company must use any technology that allows the members of the company who are not together at the same physical venue to listen, speak and vote at the meeting regardless of whether virtual meeting technology is also used for holding the meeting.
9. Clause 8 amends section 585 of the principal Ordinance to provide that a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present.

Part 3—Amendments to Principal Notice

10. Clauses 9, 10 and 11 amend the respective model articles in Schedules 1, 2 and 3 to the principal Notice—
- (a) to add a new definition of *virtual meeting technology* (clauses 9(2), 10(2) and 11(2));
 - (b) to provide that a notice of a general meeting must specify the physical venue of the meeting, or the virtual meeting technology to be used for holding the meeting, or both (clauses 9(3), 10(3) and 11(3));
 - (c) to provide that a person who attends a general meeting by using virtual meeting technology is to be regarded as attending the meeting if—
 - (i) the person uses the virtual meeting technology specified in the notice of the meeting; and
 - (ii) the person is able to exercise their rights to speak and vote at the meeting (clauses 9(5), 10(5) and 11(5));
 - (d) to provide that a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present (clauses 9(6), 10(6) and 11(6));
 - (e) to provide that when a general meeting that is not called on a request of members is adjourned because a quorum is not present, the directors must determine, among other matters, the physical venue of the adjourned meeting or the virtual meeting technology to be used for holding the adjourned meeting, or both (clauses 9(7), 10(7) and 11(7));

- (f) to provide that when the chairperson adjourns a general meeting, the chairperson must specify, among other matters, the physical venue of the adjourned meeting or the virtual meeting technology to be used for holding the adjourned meeting, or both (clauses 9(9), 10(9) and 11(9)); and
- (g) to provide that if no notice of an adjourned meeting is given, a person who uses virtual meeting technology to attend the adjourned meeting is to be regarded as being present if the person attends the adjourned meeting by using the virtual meeting technology determined by the directors or specified by the chairperson (clauses 9(10), 10(10) and 11(10)).