

Hong Kong



An overview: how to call a general meeting for a Hong Kong company

At Marbury, we are commonly asked by clients for advice on the steps and procedure for calling a general meeting of a Hong Kong company. In this briefing, we explain the steps involved and the requirements for calling a meeting.

This overview is not an exhaustive checklist as the Ordinance has many exceptions and carve-outs that need to be considered.

The rules regulating company meetings are primarily contained in the company's articles of association (**articles**) and Part 12 of the Companies Ordinance (Cap 622) (the **Ordinance**).

Most companies are required under the Ordinance to hold a general meeting each year. So it is important to call and hold a general meeting in accordance with the articles and the Ordinance. It goes without saying that one needs to ensure that it is a valid meeting. A resolution of a company is validly passed at a general meeting if:

- notice of the meeting and of the resolution is given
- the meeting is held and properly conducted
- the resolution is passed in accordance with the Ordinance and the articles.

An overview: how to call a general meeting for a Hong Kong company

Requirement to hold an annual general meeting (AGM)

Generally, an existing company must, in respect of each financial year of the company, hold a general meeting as its AGM within the following period (in addition to any other meetings held during the period):

- (a) in the case of a private company or a company limited by guarantee, 9 months after the end of its accounting reference period; and
- (b) in the case of any other company, 6 months after the end of its accounting reference period.

However, a company is not required to hold an AGM under the following circumstances:

- (a) if it is a dormant company
- (b) if a written resolution *in lieu* of the AGM is passed
- (c) if it is a single member company
- (d) if all members pass a resolution to dispense with the holding of an AGM and the resolution is filed with the Companies Registry within 15 days after it has been passed.

Who can call a general meeting?

Meetings are generally called by a company's directors. Companies, and accordingly the directors, are required by the Ordinance to call an AGM, except of course where they meet one of the exemptions set out above.

Meetings are called in a few ways, including:

- (a) members of the company representing at least 5% of the total voting rights of all the members may request that the directors call a general meeting. The directors must then call a general meeting within 21 days. A meeting called in this way must be held on a date not more than 28 days after the date of the notice convening the meeting
- (b) where the directors do not call a meeting or do not follow the requirements of the Ordinance in calling a meeting, then members, representing more than half of the total voting rights of all of them, may themselves call a general meeting. A meeting called this way must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a general meeting
- (c) if, for whatever reason, the directors of a company do not call a meeting because, for example, it does not have any directors or does not have sufficient directors capable of acting to form a quorum, then, any director (or any two or more members of the company representing at least 10% of the total voting rights of all the members having a right to attend and vote at a general meeting) may call a general meeting in the same manner, or as near as possible, as that in which general meetings may be called by the directors of the company.

Notice of Meetings

Notice of a general meeting of a company must be given to every member, every director, and every auditor and must be given in hard copy or electronic form, by making the notice available on a website, or partly by one of those means and partly by another.

An overview: how to call a general meeting for a Hong Kong company

Subject to a company's articles, generally, the following notice periods apply when calling a general meeting:

- (a) for an AGM, at least 21 clear days
- (b) in any other case, at least 14 clear days for a limited company and at least 7 clear days for an unlimited company
- (c) if special notice is required to be given of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 clear days before the meeting at which it is moved. The company must, if practicable, give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting.

It should be noted that a general meeting is deemed to be valid, despite the fact that it is called by a shorter notice period than that provided above, if:

- (a) in the case of an AGM, it is so agreed by all members entitled to attend and vote at the meeting, and
- (b) in any other case, it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all members.

What must a Notice of Meeting contain?

The notice of general meeting must contain the following information:

- (a) the date and time of the meeting
- (b) the place of the meeting
- (c) the general nature of the business to be dealt with at the meeting
- (d) if calling an AGM, a statement that the meeting is an AGM
- (e) where a resolution is intended to be moved at the meeting -
 - (i) notice of the resolution, and
 - (ii) (where the company is not a wholly-owned subsidiary) inclusion of a statement containing details, if any, that is reasonably necessary to show the purpose of the resolution.

Subject to the articles, a notice must also contain a statement specifying a member's right to appoint a proxy. But a failure to include such a statement (a proxy notice) does not invalidate the notice.

Where should general meetings be held?

There is no requirement that a general meeting be held in Hong Kong. Location, including an address, is specified in the Notice of Meeting. The company may, if it so chooses, hold a general meeting at two or more places using any technology that enables the members of the company who are not together at the same place to listen, speak and vote at the meeting.

An overview: how to call a general meeting for a Hong Kong company

Who attends a general meeting?

All members may attend (except members who do not have a right to attend and vote). However, a quorum is required for the meeting to be valid (see below). The chairman of the board and the company secretary usually attend and may direct proceedings. All directors may attend.

Quorum

A quorum is the minimum number of members required to attend a meeting for the meeting to be valid. The quorum is usually specified in the articles of the company.

If a company has only one member, that member present in person or by proxy is a quorum of a general meeting of the company. If that member of the company is a body corporate, that member present by its corporate representative is also a quorum of a general meeting of the company.

In any other case, where not specified in the articles, the default position under Schedule 2 of the Companies (Model Articles) Notice (Cap 622H) is that two members present in person or by proxy is a quorum of a general meeting of the company.

The company secretary's role

It is often the job of the company secretary to call general meetings, particularly the AGM. If no other resource is available the company secretary will coordinate the opening and running of the general meeting with the chairman and generally can prepare resolutions and circulate them for approval and signing.

Marbury provides these services for all companies and can also provide a meeting room with audio and/or video conferencing when necessary.

For more information on any aspect of this briefing please contact Fion Sham on +852 2110 3561 or fion.sham@marburys.com.

Disclaimer

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