



Hong Kong

May 2020

EASING OF CERTAIN SOCIAL DISTANCING MEASURES AND HOW THEY APPLY TO SHAREHOLDERS' MEETINGS

To curb the spread of COVID-19, the Government enacted the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) which came into force on 29 March 2020 (the “**Group Gathering Regulations**”). Over the last few weeks Hong Kong has seen a steady decline in the number of reported COVID-19 cases in the city with a significant decline in the number of locally transmitted COVID-19 cases. In light of this, the Government announced on Tuesday, 5 May 2020 the easing of certain social distancing measures pursuant to an amendment to the Group Gathering Regulations (the “**Amended Group Gathering Regulations**”). The Amended Group Gathering Regulations came into effect on 8 May 2020 and will last until 21 May 2020 (the “**Specified Period**”).

The Amended Group Gathering Regulations address a number of areas with respect to social distancing and group gatherings in public places.

1. Group Gathering Regulations and the Shareholders' Meeting Exemption

Background

The Group Gathering Regulations prohibited any group gatherings of more than 4 persons in public places (defined as a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or not) (“**Public Places**”), except that certain group gatherings as set out in schedule 1 thereto are exempt from such prohibition. One of the exemptions set out in schedule 1, at paragraph 11, refers to:

“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” (the “**Exemption**”).

The lack of specific details or guidance on the ambit of the Exemption created uncertainty in the market as to which meetings held by companies would be exempt. Initially, it was clear that the Exemption would apply to annual general meetings (“**AGMs**”) of Hong Kong incorporated companies. However, there were different views in the market as to whether the Exemption would apply to AGMs of companies incorporated in offshore jurisdictions whether or not they are registered with the Companies Registry as Part 16 companies, as there was a lack of guidance as to whether the phrase “*other regulatory instrument*” (Paragraph 11) would extend to offshore laws and regulations or the Rules Governing the Listing of Securities on the Stock Exchange (the “**HKEx Listing Rules**”). This raised particular issues in respect of general meetings of HKEx listed companies. As a result of this uncertainty, the Securities and Futures Commission (“**SFC**”) and the Stock Exchange of Hong Kong Limited (“**HKEx**”) issued a Joint Statement in relation to General Meetings in light of the Control of Disease (Prohibition on Group Gathering) Regulation¹ (“**Joint Statement**”). For a detailed analysis of the Joint Statement and the initial Group Gathering Regulations, please see Charltons’ newsletter SFC and HKEx Joint Statement Explains how COVID-19 regulations Apply to Shareholders Meetings of HKEx Listed Companies.²

- ¹ https://www.hkex.com.hk/news/regulatory-announcements/2020/200401news?sc_lang=en
- ² <https://www.charltonslaw.com/sfc-and-hkex-joint-statement-explains-how-the-covid-19-regulations-apply-to-shareholders-meetings-of-hkex-listed-companies/>

Amended Group Gathering Regulations

In light of the steady decline in number of reported COVID-19 cases in Hong Kong, the Government has through the Amended Group Gathering Regulations relaxed the restrictions on gathering in public places by increasing the number of persons allowed in a group gathering in Public Places from four to eight.

The Amended Group Gathering Regulations have also modified the Exemption (an exemption intended to cover AGMs and other general meetings of companies) in paragraph 11 of schedule 1 to reads as follows:

“Group gathering during any of the following meetings at which no food or drink is served and, in the case of a group gathering of more than 50 persons, measures are in place for separating them in different rooms or partitioned areas, each accommodating not more than 50 persons:

- a) 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;*
- b) a shareholders’ meeting of a company listed on a recognised stock market (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) that is held in accordance with any Ordinance or other regulatory instrument that governs the operation of the company or its business.” (the “Amended Exemption”)*

The Amended Exemption clarifies that the relevant exemption applies to AGMs and other general meetings which is required by applicable law governing a body or, in respect of a shareholders meeting of companies listed on the HKEx, required by any applicable law or other regulatory instrument governing its operations (including the HKEx Listing Rules). The Amended Exemption also included qualifications for the exemption to apply, namely, that (i) no food or drink could be served; and (ii) measures must be in place for separating people in different rooms or partitioned areas, each with no more than 50 persons, where the gathering involves more than 50 persons (collectively, the “Conditions”).

In addition to the amendment to the Group Gathering Regulations, the Companies Registry have also updated their frequently asked questions with respect to holding general and special meetings (the “CR FAQs”). In particular, it noted that with effect from 8 May 2020, subject to compliance with

the Conditions, all shareholders’ meetings including (i) annual general meetings (“AGMs”), as required under the Companies Ordinance (Cap. 622) and/or the rules governing the listing of securities on the Main Board and GEM of the HKEx; and (ii) extraordinary general meetings (“EGMs”) and special general meetings (“SGMs”) of Hong Kong listed companies, regardless of whether or not these meetings need to be held within a specified period, are generally exempt.

Therefore, subject to compliance with the Conditions, companies (private and listed on the HKEx) may proceed with holding their physical meetings in Hong Kong.

2. Clarity for private Hong Kong companies

In addition, the CR FAQs note that paragraph (a) of the Exemption applies to private Hong Kong companies. Notwithstanding this, private Hong Kong companies are reminded under the CR FAQs that they should consider the possibility of adjourning or deferring their general meetings until after the expiration of the Specified Period taking into account: (i) whether or not the holding of such meeting is subject to any statutory requirement; (ii) whether such statutory requirement is capable of extension, waiver or otherwise; and (iii) whether the business to be dealt with at the relevant meeting is of such an urgent nature and importance that necessitates the holding of the meeting.

The Amended Group Gathering Regulations only apply to gatherings of more than 8 persons in a “Public Place.” Therefore, private Hong Kong companies may proceed with their general meetings in a place that is not a Public Place, without having to worry about compliance with the Restrictions. This was also covered by the CR FAQs wherein it is noted that if a general meeting is not held in a Public Place (as defined by the Amended Group Gathering Regulations), that being at a place to which the public do not have access, then the Amended Group Gathering Regulations do not apply and such meeting will not generally be subject to the Conditions.

3. Does the Shareholders’ Meeting Exemption apply if the relevant meeting can be lawfully adjourned?

It appears that even if a company (private or listed on the HKEx) can lawfully adjourn their AGM, EGM and/or SGM, to a reasonable time beyond the Specified Period, they may still rely on the Exemption and proceed with the relevant meeting subject to compliance with the Conditions. This view is

supported by the statement in the CR FAQs that regardless of whether or not the meetings need to be held within a specified period, they are generally exempt.

4. Group gathering at a place of work for the purposes of work

The Amended Group Gathering Regulations have retained the exemption for a group gathering at a place of work for the purposes of work. This means that a company may continue holding its regular work meetings in Hong Kong during the course of its business without contravening the Amended Group Gathering Regulations. Similarly, it is expected that meetings of boards of directors of companies can take place at the relevant company's place of work in Hong Kong. However, the board of a company should consider the issue carefully and may determine that is safer to arrange such meetings by video conference.

5. Recommendations to companies proceeding with physical meetings

Companies wishing to proceed with their physical meetings are reminded to ensure they comply with the Amended Group Gathering Regulations and to take the necessary precautions. To this extent, please see Charltons newsletter SFC and HKEx Joint Statement Explains how COVID-19 regulations Apply to Shareholders Meetings of HKEx Listed Companies,³ for an analysis of some of these recommendations and precautions that companies holding physical meetings ought to be aware of.

³ <https://www.charltonslaw.com/sfc-and-hkex-joint-statement-explains-how-the-covid-19-regulations-apply-to-shareholders-meetings-of-hkex-listed-companies/>

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