

# Can you hold an AGM by Zoom (during COVID-19 period)

---



26 FEBRUARY 2022

---

**Zeus CPA Limited**

**Authored by: Clement Siu**

**CPA (Practising), FCI Arb, LLM**



---

# Holding an AGM for private company by Zoom during the pandemic of COVID-19

## Virtual AGM

Stipulated by Companies Ordinance, all limited companies are required to hold an Annual General Meeting (“AGM”) within 9 months after financial year ended date for private companies and 6 months for public companies.

During the pandemic of COVID-19, holding a physical AGM is challenging. Such meeting may violate the law Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G of the Laws of Hong Kong) (**the “Prevention Regulation”**).

From 24 February to 9 March, 2022 physical AGMs and EGMs are not permitted. However, virtual meetings held online in accordance with the respective company’s Articles of Association among general management of the company, company secretary, shareholders and auditors are allowed.<sup>1</sup>

*Physical meeting / Virtual meeting / Hybrid meeting*  
*Written resolution*

---

<sup>1</sup> [https://www.coronavirus.gov.hk/eng/social\\_distancing-faq.html#FAQC2](https://www.coronavirus.gov.hk/eng/social_distancing-faq.html#FAQC2), accessed on 26 February 2022

---

## Physical meeting

To mitigate the risk of pandemic of COVID-19, a physically AGM is discouraged. In case a physical AGM is not avoidable, in light of paragraph 11 of Schedule 1 of the Prevention Regulation, if there are more than 20 persons attending the AGM, companies must ensure that there are measures in place to separate the shareholders in different rooms or partitioned areas and each accommodating not more than 20 persons.

## Virtual meeting

According to section 584(1) of the Companies Ordinance, *A company may hold a general meeting at two or more places using any technology that enables the shareholders of the company who are not together at the same place to listen, speak and vote at the meeting.* Provided that all attended shareholders are able to listen, speak and vote.

## Hybrid meeting

In case there are two or more places being used as AGM venue, the principal place of the AGM and the other places of the meeting must be specified in the notice of the meeting<sup>2</sup>. The shareholders must be able to cast their vote even in different places. Simply as showing of hands via video conferencing or an oral response via WhatsApp / WeChat / Zoom conference will be sufficient to court as a vote.

## Written resolution

Instead of holding a physical or virtual AGM, a written resolution can be a good alternative. Companies Ordinance<sup>3</sup> allow company circulating written resolutions for the shareholders. A resolution is passed when all shareholders who eligible to vote

---

<sup>2</sup> Companies Ordinance, s 576

<sup>3</sup> Ibid, s548

---

have signed to it<sup>4</sup>. Such alternative is not recommended to a company it has too many shareholders. Such arrangement increases the risk of dispute on administrative procedure, specially some dissenting views may arise during a physical meet. One more important consideration before deciding to adopt written resolution. Removal of auditor or director before the end of their term of office is not allowed by written resolution.

## **Other considerations**

### Company's Article of Association ("AA")

For some reason, a company may have their tailor-made Article of Association which stipulates that a physical AGM is a must. In such circumstance, virtual AGM is not feasible.

Take the most popular standard AA which designed by Companies Registry<sup>5</sup>. An AGM is permitted to hold in 2 or more places.<sup>6</sup>

### Shareholder agreement

A separate contract between members in a private company to govern how they will exercise their rights in the company. Which is enforceable between the members who are parties to such an agreement. Such agreement is a supplement the company's articles, but not form part of the company's constitution. A shareholder agreement may impose more stringent articles than Companies Ordinance or the companies AA stated. Under the circumstance, there is an article in the shareholders agreement prohibiting a virtual AGM, and such agreement is signed by all shareholders, such agreement binding to all shareholders.

---

<sup>4</sup> Ibid, 556

<sup>5</sup> [https://www.cr.gov.hk/en/companies\\_ordinance/docs/AA\\_Sample\\_A.pdf](https://www.cr.gov.hk/en/companies_ordinance/docs/AA_Sample_A.pdf), accessed 26 February 2022

<sup>6</sup> Companies Registry, AA\_Sample\_A