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Virtual AGM of shareholders of a limited-liability company

In view of the current context of prevention and control of the COVID-19 outbreak, it is wise for a limited-liability company to hold its AGM of shareholders in an audio or video conference format. You will find hereafter the legal feasibility and guidelines for organising such meeting.

Legal feasibility for holding a virtual general meeting

Under Chinese law and regulations there are no rule demanding the physical attendance in the same place of all those taking part in a general meeting.

Article 41, second paragraph of the "Law regarding the companies of the People's Republic of China" specifies simply that: « *minutes about the topics discussed during the general meeting of the shareholders must be taken, shareholders present at the meeting must sign them* ». Shareholders present at the meeting means not only those who physically attend the meeting, but also those present online, who have the opportunity to gain information in real time and in a synchronous mode and may take part in discussions. All arrangements regarding the provision of information and the way they voice their opinion remain the same as for a meeting with physical attendance.

Besides, in accordance with the article 43 of the "Law regarding the companies of the People's Republic of China", shareholders are free to make a statutory provision for all methods of deliberation and voting procedures as well as organisation methods for the general meeting which can be held online in an audio or video format.

Important points for organising a general meeting

1. Calling a general meeting: possibility of e-mail invitation

Calling a general meeting online can be done in the same way as for a general meeting with a physical attendance, subject to the provisions of the company statutes. The Invitation must be issued in the form of a written notification by reference to article 11 of the « Law of the People's Republic of China regarding *Contracts* », written notification means by paper mail, but also by email. Postal and e-mail addresses of the recipients should be checked beforehand and business postal/email addresses are preferable to private ones while using an acknowledgment of receipt is also recommended.

2. Invitation to a general meeting online

2.1 Advance notice

In accordance with the article 41 of the "Law regarding the companies of the People's Republic of China ", unless otherwise specified in the company statutes or unless otherwise agreed by all shareholders, advance notice must be given at least 15 days before the general meeting is held. Therefore, under the regulations, shareholders are free to set a shorter or longer period of notice.

In addition, in the absence of special provisions in laws, if advance notice of 15 days cannot be respected, it is advisable, in order to avoid any future risk, to ask all shareholders to give their written consent regarding the organisation of the general meeting when the legal notification deadlines have not been respected...

2.2 Invitation content

Besides the usual content of a traditional invitation (meeting time, list of participants, agenda, documents and matters to be discussed, contact details of the organisers, etc..), in the case of an online meeting, it is recommended to specify the technical means necessary to access the meeting, the communications methodology during the general meeting, the voting rules and the electronic signature (if appropriate). Moreover, if the possibility of holding an online general meeting is not planned in the company regulations, it is recommended to ask shareholders for their consent regarding all arrangements for organising the general meeting.

3. Establishing the number of shareholders attending and checking participants identity

Calculating the number of shareholders present and checking their identity is a key factor to guarantee the legality of the general meeting, notably, in order to reach the required quorum. Indeed, if the required quorum (in terms of number of shareholders attending or rights to vote) is not reached, the general meeting should not be held, as any decision taken would not be legally binding.

It should be specified that the « Law of the People's Republic of China regarding companies » is also silent about the possibility of shareholders mandating a third party to represent them and vote in their name during the general meeting. Therefore, reference should be made to the provisions of the company statutes.

During an online meeting, the principles for checking the number and identity of participants are similar to those used for a meeting with physical attendance. Checking must be done on an individual basis and audio or video records must be kept, to be available for inspection purposes. It should be noted that when the shareholder is a legal person, the person attending the general meeting in the name of the shareholder must provide the necessary delegation documents to take part, either under electronic form or by secure email. These different documents must be kept.

4. Online vote

Voting rules remain the same for an online meeting and must respect statutory provisions. Either an oral or a written vote can be used and the vote result must be justified by video evidence and in the content of the minutes.

5. Signature of minutes

Article 41 of the "Law of the People's Republic of China regarding companies" includes clear requirements regarding the signature of minutes by the participants of the general meeting. In case of an online general meeting in an audio or video conference format, it is recommended to record the meeting, audio and video files should be shared (for example, the access link to Cloud can be provided by e-mail). Following the meeting, the minutes must be distributed to all participants and signed by them, and then kept in the records of the company.

Similar rules can be applied when holding an executive board meeting online.

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