

AGMs: keep it real

Markets in the region are changing laws to make virtual AGMs a permanent fixture, in some cases swiftly converting emergency pandemic measures into new legislative provisions without public consultation or investor support. Shareholders now increasingly face AGMs which do not mirror the interaction, engagement and transparency of a physical setting. The opportunity for shareholders to meet the board face-to-face, ask difficult questions and take directors to task is rapidly being relegated to the history books:

- **More than half of the 12 markets we cover in the region now allow for virtual AGMs by law or regulation, with no exceptional circumstances (such as a pandemic or other emergency situation) required**
- **There was only a limited opportunity in key markets such as Australia and Hong Kong for public comment before legal redrafts took place**
- **Few markets have required issuers to ensure specific shareholder safeguards beyond a generic ability to participate in virtual meetings**
- **Investors are voting against changes to company articles which would enable issuers to host virtual AGMs in several markets, including Japan, Taiwan and Australia**

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Summary

Seven of the 12 markets ACGA covers now have laws or regulations in place which eliminate the need for companies to have a physical encounter with shareholders once a year. Singapore is the latest market in the region to move towards a formal virtual AGM regime where no pandemic or emergency is required to host a fully electronic meeting, launching a [public consultation](#) on 9 February. India and Korea have proposals in the pipeline which may result in a permanent statutory framework for virtual AGMs, while China and Malaysia remain equivocal on the issue.

Most of these permanent shifts to virtual AGMs have taken place with minimal stakeholder input. Australia's redraft of its company law was achieved in just two months, against the backdrop of vocal opposition from a number of shareholder groups. In Hong Kong, virtual AGMs were added to the statute books in just seven weeks during the 2022 Christmas period, despite the market having never introduced interim laws or regulations to facilitate electronic meetings during the pandemic. It did not conduct a formal public consultation or require detailed scrutiny of the bill.

While some regulators attach some caveats to virtual AGMs, in many markets issuers have a free hand in the conduct of electronic meetings in terms of the technology used, how shareholder access is to be ensured, as well as the method and means of speaking and voting. In the event of a shareholder dispute over the conduct of a meeting, including technological glitches and confirmation of electronic votes, regulators largely point to court action as a remedy rather than hardwire formal redress into legislation.

Investors are meanwhile sharing concerns over the conduct of virtual AGMs which limit the ability to exchange with company officials, in particular issuers' tendency to cherry pick (and ignore) questions, answer queries individually by email rather than during the meeting, and the inability to see other participants. There have been voting glitches and shortcomings (Taiwan for example is still working on a mechanism which would enable foreign investors to attend and cast their e-vote at a virtual AGM) and the fundamental loss of the sole opportunity shareholders have during the year to sit before the board and exchange views, raise issues and hold directors accountable. "It suits the issuers' agenda, not shareholders," remarked one investor.

In some markets where companies are seeking to embrace virtual AGMs, shareholders have been seen voting against article changes which would allow them to do so. For example, proxy advice firms in Japan are recommending vetos unless virtual AGMs are to be held only in exceptional circumstances. In Australia, some companies are facing a

shareholder backlash when attempting to alter their articles, and have withdrawn the proposals. Taiwanese issuers have also faced votes against these article changes.

Background

Virtual AGMs emerged as pragmatic response to restrictions on physical gatherings at the height of the pandemic in 2020 and 2021 (and well into 2022 in the case of markets such as Hong Kong and China) and markets moved at varying paces to bring them into play. In *CG Watch 2020*, ACGA gave credit to regulators who moved quickly to pass emergency laws or regulations to ensure alternative virtual arrangements for general meetings, such as Australia, India, Malaysia, the Philippines and Singapore. Such meetings required no physical setting, with business conducted electronically (although the directors themselves sometimes gathered in the same place) and shareholders able to view as a webcast, or in a more participatory Zoom-esque format.

While there are many advantages to a virtual meeting—the option of participating in an AGM shareholders might otherwise not attend is the main one—from a corporate governance perspective, it has never been ideal. During the pandemic, shareholders at some meetings were unable to speak, or to vote. Technological glitches saw shareholders unable to dial in at all. Questions and votes had to be cast in advance. The virtual floor was never truly open for investors to air grievances, or challenge the board. Many issuers opted for a hybrid format, holding a physical AGM, while also giving shareholders the option of taking part by electronic means. ACGA takes the view that an in-person meeting is the preferred format, a hybrid arrangement also being a good option as long as the technology provides shareholders with an equitable experience in terms of being able to speak with the board, raise issues, ask questions (and get a real-time response), and vote.

With most markets back to pre-pandemic life (with corporations themselves actively mandating employees return to the physical office), the argument for a fully virtual meeting should be less potent. Regulators may be prudent in redrafting laws and rules to provide for virtual AGMs in the event of another pandemic, or a natural disaster. Yet this caveat is not appearing in the revised statutes. Instead, the laws now give issuers the option to host virtual AGMs as a convention, rather than mandating that it only be used in exceptional circumstances. A full list of the measures currently in place for virtual AGMs is set out in **Table 1** below.

Is it a virtual AGM, or a webcast?

When Australia was on the cusp of making virtual AGMs a permanent feature back in the autumn of 2021, the reaction from the chair of the Australian Shareholders' Association, Allan Goldin, was blunt: "The AGM is the one chance a year that shareholders, the owners of the company, have the opportunity to actually face their directors, their representatives, and ask the questions they want answers to. The virtual meeting is a sterile format where companies are able to ignore questions, and gloss over details."

Shareholders in the region have shared similar complaints. An investor who joined tech giant Alibaba's virtual AGM in September 2022 described it as "essentially a webcast." The CEO and CFO both gave presentations. Shareholders could then ask questions in a box on the webpage, which the investor described as a "black hole" given he could not see what other questions were being asked, and if they were being answered. There was no visibility on how many other shareholders were present, or transparency on how the company was choosing which questions it would answer. "It suits the issuers agenda, not shareholders'."

In Singapore, Mak Yuen Teen, author of the Governance for Stakeholders website, found virtual AGMs lacking on several fronts, including the inability to see body language and management reactions. "You can't get a sense if they are being defensive. Virtual can't replicate a physical AGM." In Malaysia, the Minority Shareholders Watch Group has received complaints that issuers were only answering questions submitted at virtual AGMs by email privately after the meeting took place. Others were blocked from e-voting and faced other technical errors during meetings.

Table 1: The rise of the machine

Market	Status of virtual AGM regime	Shareholder safeguards
Permanent		
Australia	The Corporations Act 2001 was amended in March 2022 to enable virtual AGMs if companies' Articles permit. A draft bill was issued in August 2021; the law passed in October 2021	Shareholders must be given a 'reasonable opportunity to participate' in the meeting, exercise their right to ask questions and make comments orally and in writing. Members with 5% of vote may request an independent observer for poll oversight
Hong Kong	The Companies Ordinance was amended in January 2023 to enable virtual AGM, unless contrary to a company's Articles. The draft bill had been released on 24 November 2022	Shareholders should be able to 'listen, speak and vote' at the meeting (as was already provided in law)
Indonesia	Indonesia's Law No. 40 of 2007 on Limited Liability Companies provides for fully virtual AGMs, but in practice current rules and guidance still require a hybrid meeting	Participants must be able to see and hear each other in real time and participate in the meeting. The technology system provider for the meeting must be connected to the same system used by the Indonesia Central Securities Depository ("KSEI") and to the securities administration bureau
Japan	New rules enacted in June 2021 under the Industrial Competitiveness Enhancement Act (ICEA) enable companies to amend their Articles to provide for virtual AGMs (with permission of the Minister of Economy, Trade and Industry and the Minister of Justice)	Requirements under the Ministerial Ordinance on General Meetings of Shareholders without a Fixed Place include the need for a dedicated person to deal with communications methods, a policy for shareholders who have difficulty using the internet, and there must be at least 100 shareholders registered
Philippines	Special measures for virtual AGMs adopted during the pandemic under the Revised Corporation Code were given permanence in a March 2022 circular from the Securities and Exchange Commission (SEC). Companies tend to still maintain a broadcast venue for meetings (although shareholders do not attend)	Notice of meeting to include details on the requirements and procedures to follow, manner of casting votes, but companies can use their own internal procedures to decide the mechanism for participation in meetings and electronic voting. Companies shall adopt measures which ensure shareholders have the opportunity to participate, including the opportunity to read or hear the discussion substantially. Internal guidelines should have procedures for documenting the meeting and recording the meeting, making it available to shareholders
Taiwan	March 2022 revisions to the Company Act and Regulations Governing the Administration of Shareholder Services of Public Companies enable companies to amend their Articles to allow virtual AGMs. There was no prior public consultation but the Financial Supervisory Committee is consulting on proposals to refine the regime	Virtual AGMs cannot be held where the agenda includes a director election, director dismissal, or mergers and acquisition activity
Thailand	Thailand permitted virtual AGMs pre-pandemic (if a company's articles provided for this)	The Ministry of Digital Economy and Society prescribes standards for an e-meeting: the meeting must be properly recorded, and the minutes of the meeting must be taken (including answers to shareholder questions)
In the pipeline		
India	Temporary virtual AGM measures brought into force during the pandemic are in force until the end of 2023. However, the Company Law Committee in April 2022 recommended changes to the Companies Act 2013 to allow for virtual AGMs and EGMs—and reduce the notice period for EGMs where conducted entirely in electronic mode	
Korea	Korea has allowed hybrid AGMs during the pandemic. The Ministry of Justice is discussing changes to the law to enable virtual AGMs and e-voting. Legislation is expected in 2023	
Singapore	Temporary pandemic provisions for virtual AGMs expire in July 2023. The Monetary Authority of Singapore (MAS) and Accounting and Corporate Regulatory Authority are proposing legislative amendments to amend the Companies Act to give permanence to measures. A consultation began on 9 February 2023 and runs until 20 February 2023. Under the proposals, companies would be able to host virtual AGMs without changing their Articles from 1 July 2023	
Unclear		
China	Virtual AGMs are being actively encouraged by Shanghai, Shenzhen stock exchanges as China deals with current Covid outbreak. Their permanence is not clear at this stage	
Malaysia	Pandemic measures are still in effect to allow virtual AGMs under the Companies Act 2016	

Never let a good crisis go to waste?

Australia moved quickly in redrafting its company law in October 2021 to make virtual AGMs a permanent feature, just two months after the government released a draft bill. Its passage came despite opposition from investor groups, including the Australian Shareholders' Association and the Australian Council of Superannuation Investors (ACSI), which noted that several company proposals to change articles to allow virtual AGMs had been withdrawn or failed to pass, "reflecting shareholders' concern that virtual-only meetings could become the norm on an ongoing basis for listed companies."

Japan also moved relatively fast by introducing new rules in June 2021 under the Industrial Competitiveness Enhancement Act (ICEA): with regulatory permission, companies could change their articles to allow virtual AGMs. Proxy advisors have however taken the view that virtual meetings may restrict shareholder rights. ISS voting guidelines for example recommend that investors vote against proposals by companies to conduct virtual only AGMs, unless there are unusual circumstances such as a pandemic or natural disaster. A report by the Corporate Governance Consulting Department of Sumitomo Mitsui Trust Bank in June 2022 found that eight companies hosted fully virtual AGMs in 2022, but there were an additional 147 who were proposing article amendments to enable them to do so. Press reports during the summer of 2022 noted that several companies were requiring shareholder questions in advance of virtual AGMs.

Taiwan introduced new rules on virtual AGMs in March 2022, without a prior public consultation. As outlined in a previous [ACGA blog](#) on the move, ironically the measures would be of limited use during a pandemic. Issuers could change their articles to allow virtual AGMs (no pandemic required) but regulators would not permit these to take place if the agenda included a director election, director dismissal, or mergers and acquisition activity. The Financial Supervisory Commission has decided to tweak the rules and launched a [public consultation](#) on 18 January 2023 seeking views on whether virtual meetings should only be held with the support of a majority of the board with two-thirds of members present.

Hong Kong introduced new legislation on virtual AGMs at significant speed: changes to the Companies Ordinance went from draft to law in just over seven weeks during the 2022-2023 Christmas/New Year period. Interestingly, Hong Kong was one of the few markets not to introduce pandemic-specific rules on virtual AGMs during three years of Covid-related restrictions on physical gatherings. Companies instead took it upon themselves to alter their articles to enable hybrid meetings.

The Hong Kong government appeared to be quite selective in seeking views on the proposed legal redraft: there was no general public consultation. The administration did consult the government-appointed Standing Committee on Company Law Reform, the Hong Kong Chartered Governance Institute (which represents the interests of company secretaries), the issuer-centric Chamber of Hong Kong Listed Companies and the pro-business Chinese Chamber of Commerce and Hong Kong General Chamber of Commerce. ACGA is not aware of any investor-focussed group being consulted.

There was also no Bills Committee appointed to study the law in detail prior to its passage where the merits, principles and ramifications of the draft are put under the microscope and stakeholders are invited to address lawmakers at public hearings or make written submissions on the proposed changes. The Bill passed on 18 January 2023.

Singapore announced on 9 February 2023 that it was seeking views on changes to allow fully virtual AGMs without changes to a company's articles from 1 July 2023. The consultation runs until 20 February 2023.

“You’re on mute”

The virtual scenario has not always been a smooth one: during the pandemic, tales of shareholders lingering in waiting rooms, unable to hear, speak or vote, were not uncommon. Real-time voting has often posed a challenge, although technology in some markets has evolved. Some regulators have made attempts to embed more prescriptive rules into legislation to protect minority interests, while others prefer to make use of guidelines and recommendations for best practice.

The consensus on technological glitches appears to be that it would be a matter for the court to decide if this had resulted in an injustice to investors: Singapore’s draft law is proposing that shareholders apply to legally invalidate a fully virtual meeting if there is a technological disruption, malfunction or outage. These occurrences would not invalidate the general meeting per se, unless the court decides that there was a substantial injustice caused as a result. Similarly, Hong Kong officials took the view that there was no need to expressly provide for the chairman of a meeting to have additional powers to adjourn a meeting in the event of a technical failure.

Australia requires that virtual meeting technology is reasonable, and as an overarching principle, the legislation provides for a somewhat ambiguous requirement that shareholders must have a “reasonable opportunity to participate” in a meeting. Hong Kong in contrast made no such provision, despite this point being raised by legal advisers to the Legislative Council who urged requirements for companies to “implement measures to ensure that members (in particular those who do not have access to virtual meeting technology) would be able to participate in a fully virtual or hybrid meeting.” Octaganarean shareholders who in the past turned up to AGMs for the free cake and tea may be disappointed. Nor did Hong Kong opt to require companies to specify the virtual technology to be used, along with instructions for joining the call, in the notice of the meeting.

Markets such as Singapore were more specific on voting requirements during the pandemic, only allowing e-votes if the system accurately counts all votes cast, the system is capable of providing records which allow for the audit and verification of the accuracy of the recording and the counting of votes. Hong Kong steered clear of such prescription in its legislation, the administration preferring to provide “flexibility in communication between companies and members on further, minute details.” It said that companies should be able to make their own general meeting rules, including the detailed protocol in allowing members to vote. Nor did it choose to follow the UK Companies Act which requires companies to confirm the receipt of a vote sent by electronic means to the person who casts the vote.

Every man for himself

Unlike capital markets such as the US or Europe, remedies for shareholders in the event of a meeting being improperly constituted, or other infringements, are limited and cumbersome. For example, Singapore and Hong Kong have no class action regime and shareholder litigation is costly, time-consuming and rare.

Investors in other Asian markets may be less inclined to take legal action where political patronage and the protection of vested interests runs deeply through the courts. Singapore has at least left itself the option of legislating further should issues present themselves down the line. As the adage goes, the devil is in the detail and the breadth of discretion left to issuers to ensure virtual AGMs mirror the physical experience suggests regulators may be soon back at the drawing board.

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