

Corporate Governance Q & A—”Regulations Governing Procedures for Board of Directors Meetings of Public Companies”

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***In case of any discrepancy between the Chinese version and the English one, the Chinese version shall prevail.**

1. The reasons for calling a board of directors meeting shall be notified to each director and supervisor at least 7 (seven) days in advance, but a meeting may be called on shorter notice in emergency circumstances pursuant to paragraph 2, Article 3 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”. How is the timeframe, “at least seven days in advance” determined?

A: Ministry of Economic Affairs Order No. 09502101500 published on July 14, 2006, defines “seven days in advance” described in Article 204 of the Company Act, as the date following the date of the notice to the date one day prior to the date of the meeting as per the regulatory requirement pursuant to the Company Act.

2. Can any additional proposal be added to the meeting agenda after the notice of the meeting is sent out to each director and supervisor but before the date of the meeting?

A: In consideration of the legal purpose of the provisions of Article 204 of the Company Act and paragraph 2, Article 3 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, any additional proposal arising under emergency circumstances that occurs after the notice of a board of directors meeting is sent out may be added to the existing agenda items prior to the meeting for discussion in the scheduled meeting. Any new proposal arising during the aforesaid period not requiring immediate resolution may also be added to the agenda items for discussion in the scheduled meeting.

3. Shall any director (such as a worker director) who is an interested party with respect to the discussion of the proposal for employee profit sharing/bonus enter recusal when such

matters are being discussed?

A:

1. Pursuant to paragraph 1, Article 16 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, if any director or a juristic person represented by a director is an interested party with respect to any agenda item, the director shall state the important aspects of the interested party relationship at the respective meeting. When the relationship is likely to prejudice the interests of the company, the director may not participate in discussion or voting on that agenda item, and further, shall enter recusal during discussion and voting on that item. As such, any director who is an interested party with respect to any agenda item shall state the important aspects of the interested party relationship in accordance with the aforesaid requirements. At present, it is not a legal requirement for a director who is an interested party to an agenda item to enter recusal where the relationship is confirmed unlikely to prejudice the interests of the company.
2. Where a director, who is an employee of the company, is not an interested party with respect to the discussion of the proposal for employee profit sharing/bonus (i.e. proposal for profit sharing or bonus of all employees but not for the director himself/herself or the juristic person he/she is representing) is not required to enter recusal unless he or she is an interested party, and the relationship is likely to prejudice the interests of the company with respect to the proposal.

4. What is the distinction between a regular board of directors meeting and a meeting called in emergency circumstances?

A: Ministry of Economic Affairs Order No. 09502145290 published on October 12, 2006 by the refers to the term “in case of

emergency” referred to in Article 204 of the Company Act as sudden and unexpected events requiring immediate resolution by the board of directors. The same Article provides that “in case of emergency, the meeting may be convened at any time”, meaning that the 7-day advance notice for a board meeting is not required in emergency circumstances. Whether directors shall be notified of an extraordinary meeting in writing depends on whether such a requirement is clearly stipulated in the company’s articles of incorporation. The determination of whether a board meeting is convened in case of emergency and whether the procedures for convening the meeting are effective is a judicial matter and any dispute shall be handled in accordance with judicial procedures.

5. How is the term “regular board of directors meetings” defined?

A: According to paragraphs 1 and 2, Article 3 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, “A board of directors shall meet at least quarterly, which shall be set out in the rules of procedure.....In emergency circumstances, however, a meeting may be called on shorter notice”. As such, meetings not called in emergency circumstances are regular board of directors meetings.

6. The “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” stipulate that each director and supervisor shall be notified of a meeting at least 7 (seven) days in advance. Does the aforesaid requirement apply to extraordinary meetings? Shall the procedures for

extraordinary board of directors meetings also be in compliance with the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”?

A:

1. According to Article 3 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, “The reasons for calling a board of directors meeting shall be notified to each director and supervisor at least seven days in advance. In emergency circumstances, however, a meeting may be called on shorter notice”. As such, all directors and supervisors shall be notified to attend meetings called in emergency circumstances.
2. Article 2 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” clearly sets out that “A public company shall adopt rules of procedure for meetings of its board of directors; the main agenda items, operational procedures, required content of meeting minutes, public announcements, and other compliance requirements for board meetings shall be handled in accordance with these Regulations”, where Article 6 of the same Regulations stipulates that “Agenda items for regular board of directors meetings shall include at least the following...”. Therefore, except the adoption of Article 6 of the aforesaid Regulations for agenda items, of extraordinary board of directors meetings, the aforesaid Regulations shall be applied accordingly for all procedures associated with the conduct of board meetings.

7. Can proposals be adopted without the actual board of directors meeting being convened, but instead with the directors' approval in writing? Are directors unable to attend a meeting in person permitted to attend the meeting by way of a telephone conference?

A:

1. Paragraph 1, Article 205 of the Company Act provides that each director shall attend the meeting of the board of directors in person, unless otherwise provided for in the Articles of Incorporation whereby a director may be represented by another director. Paragraph 2 of the same Article provides that in case a meeting of the board of directors proceeds via visual communication network, then the directors taking part in such a visual communication meeting shall be deemed to have attended the meeting in person. Paragraph 2, Article 9 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” provides that all board directors shall attend board meetings in person; if attendance in person is not possible, they may, pursuant to the company's articles of incorporation, appoint another director to attend as their proxy. Attendance via video-conference is deemed as attendance in person. The aforesaid provisions clearly stipulate that all directors shall attend board meetings in person or appoint another director to attend as their proxy. As such, no proposal can be adopted by way of written consent from directors without the company actually conducting the board of directors meeting.
2. Ministry of Economic Affairs Order No. 09202189710 published on September 15, 2003 provides that in consideration of the advancement in telecommunication technology, communications between people are no longer

restricted to meeting at a certain location. Attendance via video-conference is deemed as attendance in person provided that communications are effective. As such, companies are allowed to conduct board meetings via video-conference. Meetings conducted by means other than video-conferencing shall not be treated as attendance in person. That is, attendance via telephone-conference shall not be treated as attendance in person.

8. Are internal audit managers required to attend both extraordinary and regular board of directors meetings? Shall the agenda working group make an attendance book available for signature by internal audit managers attending the board of directors meetings?

A:

1. Article 204 of the Company Act provides that “in case of emergency, a meeting may be convened at any time”. The board has the discretion to decide whether to invite internal audit managers to attend extraordinary meetings as non-voting participants and to give a report. As for other board meetings, internal audit managers shall attend and give a report according to regulatory requirements.
2. As set forth in paragraph 1, Article 17 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, “minutes shall be prepared of the discussions at board of directors meetings. The meeting minutes shall record the following:...4. Names and titles of those attending the meeting as non-voting participants”. Although the

aforesaid regulations do not enforce the provision of an attendance book for signature by those attending meetings as non-voting participants, the minutes of the board meetings shall record the names and titles of those attending meetings as non-voting participants. To avoid any dispute, the agenda working group shall still make the attendance book available for signature by those attending meetings as non-voting participants for future reference.

9. When a board of directors meeting is held via telephone or video conferencing, shall the audio and visual documentation of the meeting form a part of the meeting minutes?

A: Paragraph 3, Article 18 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” provides that where a board of directors meeting is held via telephone or video conferencing, the audio and visual documentation of the meeting form a part of the meeting minutes and shall be well preserved during the existence of the company.

10. Shall the rules of procedure for meetings of its board of directors formulated by a public company in accordance with paragraph 8, Article 26-3 of the Securities and Exchange Act be approved by resolution at a board of directors meeting or shareholders’ meeting?

A: Paragraph 8, Article 26-3 of the “Securities and Exchange Act” stipulates that a company shall formulate rules for the conduct of directors meetings; regulations governing the content of deliberations, procedures, matters to be recorded in the meeting minutes, public announcement, and other matters for compliance

shall be prescribed by the Competent Authority. The FSC has put in place the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” in accordance with the aforesaid provisions. The contents of procedures for board of directors meetings put in place by a public company shall satisfy the requirements of the aforesaid Regulations. The procedures for the conduct of board of directors meetings shall also be approved by the board of directors at their meeting. A company has the discretion to decide as to whether to present the procedures for the conduct of board meetings for approval in the shareholders’ meeting.

11. What shall be included in the “Corporate Business Plan” referred to in subparagraph 1, paragraph 1, Article 7 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”?

A: Contents of the “Corporate Business Plan” as described in subparagraph 1, Paragraph 1, Article 7 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” shall include the company’s annual management guidelines, forecasted sales and the basis of the forecasts, and key production and marketing policies. Public companies shall present the corporate business plan for discussion in board of directors meetings in accordance with the aforesaid Regulations.

12. In case of unanimous consent of all directors present at the meeting to a proposal, shall the minutes of the meeting record a summary of the comments made by directors, supervisors, experts, or other persons?

A: Subparagraphs 7 and 8, paragraph 1, Article 17 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” stipulate that minutes of the board of directors meetings shall record in detail the proposals, proposals of extraordinary motions, and a summary of the comments made by directors, supervisors, experts, or other persons. As such, the minutes of the board meeting shall record in detail a summary of any comments made by directors, supervisors, experts or other persons, but not just the comments made by directors objecting to or expressing reservations about a matter.

13. How shall withdrawn proposals or proposals postponed for future discussion of a public company’s board of directors meeting be recorded in the minutes of the meeting?

A: As set out in Article 6 of “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, agenda items for regular board of directors meetings shall include at least the minutes of the last meeting and actions arising therefrom. Article 17 of the same Regulations stipulates that the minutes of board of directors meetings shall record the method of resolution and the result for each proposal. According to the aforesaid provisions, the method and results of resolution for any proposal resolved to be withdrawn or be postponed for discussion at future board meetings shall be recorded in detail in the minutes of the board of directors meetings for reporting in the next board meeting. However, the status of action of withdrawn proposals or proposals postponed for future discussion not requiring resolution, is not required to be reported in the next board meeting or be recorded in the minutes as

no action is required for such matters.

14. As set forth in paragraph 1, Article 10 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, the first meeting of each newly elected board of directors shall be called and chaired by the director entitled to call the meeting and if there are two or more directors so entitled to call the meeting, they “shall choose one person by and from among themselves to do so”- does this mean that all directors entitled to call the meeting shall choose one person from among themselves or shall all directors choose one person from among all directors entitled to call the meeting to be the chairperson of the board?

A: Pursuant to paragraph 1, Article 10 of the “Regulation Governing Procedures for Board of Directors Meeting of Public Companies”, “however, the first meeting of each newly elected board of directors shall be called and chaired by the director who received votes representing the largest portion of voting rights at the shareholders' meeting in which the directors were elected; if there are two or more directors so entitled to call the meeting, they shall choose one person by and from among themselves to do so.” As such, any director who receives votes representing the largest portion of rights at the shareholders’ meeting is entitled to call the meeting. Should there be more than two directors entitled to call the meeting, these directors shall choose one person from among themselves to chair the meeting.

15. If all directors give unanimous consent to alter a proposal, is

the minute of the board of directors meeting required to record only the newly amended proposal and results of resolution for the new proposal?

A: Paragraph 1, Article 17 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” stipulates that “Minutes shall be prepared of the discussions at board of directors meetings. The meeting minutes shall record the following:...7. Agenda items: the method of resolution and the result for each proposal...”. Therefore, the minutes of the board of directors meetings shall still document the details of any proposal changed with the unanimous consent of all directors and the resolution of the results of the new proposal.

16. Can the board of directors delegate general authority to the Chairman to act on behalf of the board of directors during the time the board is in recess?

A: According to Article 8 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, when the board of directors delegates any exercise of its powers pursuant to laws or regulations or the company's articles of incorporation, matters such as the level and substance of the delegation shall be concretely and specifically set out. As such, when the board of directors delegates any exercise of its power pursuant to laws or regulations or the company’s articles of incorporation, matters such as the level and substance of the delegation shall be concretely and specifically set out.

17. Irrespective of whether there is a change in the Interpretive

Order of business on the agenda, may the meeting chair only declare the meeting closed with the approval of a majority of directors present at the meeting? Shall the meeting minutes also record that “the meeting was declared closed with the approval of a majority of directors present at the meeting”?

A:

1. The provisions “A board of directors meeting shall be conducted in accordance with the order of business on the agenda as specified in the meeting notice.... The meeting chair may not declare the meeting closed without the approval of a majority of directors present at the meeting” are set out in Article 13 of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, which aim at regulating the conduct of board of directors meetings. Board meetings shall be conducted in the order of business on the agenda and the meeting chair shall not close the meeting with all agenda items being discussed.
2. The meeting chair may close the meeting after all scheduled agenda items are completed. However, the meeting chair may not close a meeting during the proceeding unless with the consent of more than half of the directors present at the meeting and upon closure of the meeting, the matter shall be recorded in the minutes of the board of directors meeting.

18. What are the common deficiencies associated with the procedures for board of directors meetings?

A:

1. Procedures for the conduct of board of directors meetings are incomplete:

- (1) Failure to incorporate all requirements of the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies” into the company’s procedures for the conduct of board of directors meetings. For example, failure to specifically set out “the agenda working group that shall be appointed by the board of directors”, “agenda items for board of directors meetings”, “items for discussion at board of directors meetings”, “details to be recorded in the meeting minutes”, “method of vote monitoring and counting”, “no matter may be raised by extraordinary motion”, “postponement of deliberation of proposal”, “postponement of a meeting”, “suspension of a meeting”, “list of directors prohibited from exercising voting rights”, and “record on audio or video tape the entire proceedings of the board meeting” and so on.
- (2) Board of directors meetings are held four times during the year. The practice is not consistent with that prescribed by the “Regulations Governing Procedures for Board of Directors Meetings of Public Companies”, which stipulate that a board of directors shall meet at least quarterly.
- (3) The articles of incorporation do not provide that a board of directors meeting may be called in case of emergency without notifying directors in writing. Only the company’s “Procedures for Board of Directors Meeting” provide that extraordinary board of directors meetings called in case of emergency may be convened without notifying the directors and supervisors in

writing.

- (4) Items for mandatory discussion at board of directors meetings set out in the company's Procedures for Board of Directors Meetings exclude significant items such as "The offering, issuance, or private placement of any equity-type securities" or "Any matter required by Article 14-3 of the Securities and Exchange Act or any other law, regulation, or bylaw to be approved by resolution at a shareholders' meeting or board of directors meeting, or any such significant matter as may be prescribed by the competent authority".
- (5) Specification of the scope of authority delegation during the period when the board of directors is in recess including mandatory items for discussion at board meetings in accordance with regulatory requirements, matters such as "establishment of an effective and appropriate internal controls system", "appointment of managerial personnel" and "appointment of an independent certified public accountant".
- (6) The scope of authority delegation during the period when the board of directors is in recess is not specifically set out, such as using the company's "General Rules for Decision-making Authorization" and "Procedures for Loan to Others" in replacement of a proper authority delegation.

2. Incomplete operational procedures:

- (1) Failure to send out the notice of the board of directors meeting or sufficient meeting information to all directors and supervisors at least 7 days in advance (a total of seven days from the date following the date of notice to the date one day

prior to the meeting date).

- (2) The notice of board of directors meeting is undated or the posting date cannot be traced, rendering it impossible to verify whether the notice was posted to all directors and supervisors at least 7 days in advance. In addition, there is no evidence proving that related agenda items are “enclosed in the meeting notice”, rendering it impossible to ascertain whether sufficient pre-meeting materials were provided.
- (3) Board of directors meetings have not been fully recorded on audio or video tapes.
- (4) Documentary evidence of distributing the minutes of board of directors meetings to each director and supervisor is not properly preserved.

3. Agenda items are incomplete:

- (1) Failure to include important items in the regular board of directors meetings such as “Minutes of the last meeting and actions arising”, “Reporting on important financial and business matters”, “Reporting on internal audit activities”, and “items discussed and continued from the last meeting”.
- (2) The internal audit managers have not attended regular board meetings as non-voting participants and given a report on the internal audit status.

4. Minutes of meetings are incomplete: the minutes of board of directors meetings are incomplete and fail to record details such as “Session (or year) of meeting”, “attendance of directors at the meeting, specifying the names and number of members present, excused, and absent”, “names and titles of

those attending the meeting as nonvoting participants”, and “a summary of the comments made by directors, supervisors, experts, or other persons or comments made by directors objecting to or expressing reservations about a matter”.

5. Other:

- (1) Proxies are undated.
- (2) Failure to announce significant information such as change of a natural person representative of a juristic person director and investments in Mainland China.
- (3) Supervisors have been found not to have attended board meetings as nonvoting participants in person but instead, appointed a proxy to attend the meetings on their behalf.