

Explanatory Notes on Proposed Amendments to Constitution

Introduction

The 47th Annual General Meeting (AGM) of the HKIE was originally scheduled for 21 June 2022 at the Hong Kong Convention and Exhibition Centre in Wan Chai. Arising from the fifth wave of COVID-19, stringent social distancing measures had been instigated by the authorities in early 2021. These had eventually rendered the arrangements for AGMs of the Divisions and Committees, which are normally held between 6-10 weeks before the Institution's AGM, infeasible. As a result, the Council decided at its meeting held on 17 March 2022 to postpone the AGM for two months to 24 August 2022.

In view of the prevailing restrictions of the Constitution requiring "present and voting" for the AGM and Special General Meetings (SGM) of the Institution and also meetings of the Council and its subordinate Divisions, Committees and the like, the Council Meeting on 17 March also agreed to setting up a task force under the auspices of the Executive and to be led by Ir Eric MA to study the feasibility of adopting electronic voting and online meetings, when the situation demands.

The proposed amendments to the Constitution detailed below are the results of the study and deliberations of the Task Force. Upon establishing the general principles for the change, the Institution's Legal Adviser has been engaged in undertaking the drafting work. The proposed amendments have then received endorsement of the Executive and approval by the Council accordingly.

What will be amended and what are their respective rationale?

(1) The following new terms with defined meanings and a new clarification paragraph will be added in the "Definitions" section of the Constitution:

"Electronic Facility" means any electronic facility, platform, device, system, procedure or method (including, without limitation, websites, application technology and/or collaboration and any form of conference systems (telephone, video, web or otherwise)) providing an electronic means of attendance at and/or participation in and/or voting at a meeting as determined by the Council.

"Electronic Voting Facility" means any Electronic Facility designated or set up by the Council to vote (including by way of show of hands and/or ballot) during a virtual meeting or any election for the Vice President(s) and Elected Ordinary Members on the day of an Annual General Meeting when a decision or order has been made for convening it by way of a virtual meeting or an election by any Electronic Facility, all having regard to the relevant voting arrangements and requirements provided in this Constitution, provided always that only votes cast via an Electronic Voting Facility by persons present within the geographical boundaries of the Hong Kong Special Administrative Region shall be considered as validly cast.

“place” means (i) in relation to any meeting held by way of a physical meeting, the place of the physical meeting or (ii) in relation to any meeting held by way of a virtual meeting, the applicable Electronic Facility(ies).

“virtual meeting” means a meeting which is held and conducted by virtual attendance and participation by means of an Electronic Facility through which participants of the meeting can each communicate to the others any information or opinions they have on any particular item of the business of the meeting, provided always that attendance of the virtual meeting shall be within the geographical boundaries of the Hong Kong Special Administrative Region.

In this Constitution, unless the context otherwise requires, references to a person being present at any meeting means that such person is present at a physical meeting or, as the case may be, is present at a virtual meeting via the Electronic Facilities specified by the Council. Accordingly, any references to attending or doing anything at the meeting “in person” and “personally” and references to “attend”, “participate”, “vote”, “elect”, “attending”, “participating”, “voting”, “electing”, “attendance”, “participation”, “election” and any other similar expressions shall be read accordingly.

Commentaries:

The above additions are made to facilitate the operation under the Constitution of (a) online meetings for AGM, SGM, and/or meetings of the Council; and (b) electronic voting during such meetings and the election for Vice Presidents and Elected Ordinary Members that would take place on the day of AGM which is changed to become an online meeting. It is also stipulated that attendance of the online meetings and/or voters of electronic voting must be physically present within the geographical boundaries of the Hong Kong Special Administrative Region.

(2) Article 18 – New sub-articles (1B) and (1C) will be added:

Article 18. Proceedings, powers and duties of the Council

*(1B) Notwithstanding any provisions stipulated to the contrary in this Constitution, a meeting of the Council may be held by way of a virtual meeting as determined by the Council from time to time. Such arrangement shall be proposed by the Secretary to all Council Members entitled to attend such meeting upon the written request of three (3) Council Members received within two (2) days of the issuance of the relevant notice of such meeting. The Secretary shall issue a notice requesting for all Council Members entitled to attend such meeting to vote through electronic mails on the said proposed arrangement (“**Voting Notice**”) on the business day immediately following the receipt of the said written request. The decision to conduct such meeting by way of a virtual meeting shall be determined*

by a majority of Council Members voting through electronic mails (i.e. a majority of the total number of votes received by the Secretary at his designated electronic mail address within three (3) days of the issuance of the Voting Notice through electronic mails). The proceedings of such virtual meeting of the Council shall follow the provisions of this Article 18. For the avoidance of doubt, any proposal, resolution or questions arising in such virtual meeting shall be determined through the Electronic Voting Facility as determined by the Council. For the purpose of this Article 18, any reference to a “business day” means a day (other than a Saturday, Sunday, public holiday or day on which a tropical cyclone warning no.8 or above or a black rainstorm warning signal is hoisted in Hong Kong at any time between 9:00 a.m. and 5:00 p.m.) on which licensed banks in Hong Kong are generally open for business.

(1C) In this Constitution, any notice, document or communication given to or by any Council Member by electronic mail shall be deemed to be duly given to or by such Council Member if it is sent to or from his last known electronic mail address registered with the Institution. Every Council Member shall register with the Institution (through written notice to the Secretary) an electronic mail address to which notices, documents or communications can be served upon him in the capacity as a Council Member.

Commentaries:

New sub-articles 18(1B) and 18 (1C) will be added after sub-article 18(1A). The purpose is to empower the Council to change the Council Meetings to virtual ones to deal with eventualities, like the pandemic which triggered stringent social distancing measures in early 2022 that had rendered in-person meetings of more than a certain number of people impossible. Council will be able to make such decision by a majority vote via electronic mails.

(3) Article 25(A) – A new Article will be added after Article 25:

Article 25A. General Meetings during special circumstances

(1) Notwithstanding any provisions stipulated to the contrary in this Constitution, the Council may, at its absolute discretion, determine by a majority of at least three-fourths of the Council Members present and voting at a meeting of the Council that circumstances are exceptional such that any Annual General Meeting or Special General Meeting shall be conducted by way of a virtual meeting when convening such Annual General Meeting or Special General Meeting.

(2) The notice requirements and the procedure of any Annual General Meeting or Special General Meeting conducted by way of a virtual meeting shall follow the provisions of Article 26. Any resolution put to the vote of the Annual General Meeting or the Special General Meeting shall be decided through the Electronic Voting Facility as determined by the

Council from time to time.

(3) For the avoidance of doubt, notwithstanding the provisions in Article 16(j), any election for the Vice President(s) and Elected Ordinary Members on the day of an Annual General Meeting which has been ordered to be convened by way of a virtual meeting pursuant to clause (1) of this Article shall be conducted through the Electronic Voting Facility as determined by the Council, instead of at physical voting centre(s), and the proceedings of such election shall follow the provisions of Article 16.

Commentaries:

A new Article 25A will be added after Article 25. This addition specifically deals with the General Meetings (AGM or SGM). With the addition of this sub-clause, the Council will be empowered to convert General Meetings to virtual ones.

In resolving that General Meetings shall be converted to virtual meetings, two criteria must be met:

- (a) a test of “exceptional circumstances” is to be included, meaning that Council shall only make such decision when the circumstances are exceptional; and
- (b) the Council shall make the decision only if three-fourths of the valid votes are in favour of the decision.

The inclusion of the above two criteria is to ensure that the Council will make the decision in a very prudent and meticulous manner, thus the change to virtual General Meeting will only take place in situations of contingencies.

Furthermore, the addition of sub-clause Article 25A also makes possible that, in case the General Meetings are converted to virtual ones, any resolutions requiring voting at virtual AGM or SGM will adopt the electronic voting method. Moreover, once the Council has decided that an AGM shall be conducted by virtual means, any election for the Vice President(s) and Elected Ordinary Members which takes place on the same day of the AGM shall be conducted by means of the electronic voting method.

(4) Article 19 – This Article will be amended with additional sentences marked in red as below:

Article 19. Regulations

The Council may from time to time make, vary or rescind any regulations, rules, procedures, directions, guidance notes, guidelines or manuals governing academic requirements, examinations, training, continuing professional development, professional interviews, election, conduct and other matters incidental to the objects or business of the Institution. Such regulations, rules, procedures, directions, guidance notes, guidelines or manuals shall be interpreted by the Council whose decisions in respect thereof shall be

conclusive and binding. No such regulations, rules, procedures, directions, guidance notes, guidelines or manuals, or variation or rescission in respect thereof shall be in any way repugnant to the Ordinance or this Constitution, save for those relating to the means of attendance at, participation in and voting at a meeting of a Committee or a Division or a Division's committee (other than any general meeting of a Division). For the avoidance of doubt, in the event of any discrepancy between (i) the Constitution and (ii) such regulations, rules, procedures, directions, guidance notes, guidelines or manuals, or variation or rescission in respect thereof relating to the means of attendance at, participation in and voting at a meeting of a Committee or a Division or a Division's committee, the latter shall prevail.

Commentaries:

The change is intended to allow the standing or temporary committees, Divisions and Committees more flexibility to conduct their regular meetings via electronic means, instead of adhering strictly to the “present and voting” meeting protocol stipulated in the Constitution. This will particularly accommodate the needs of those members who cannot be physically present punctually at regular meetings of Divisions and Committees due to work or other commitments.

It should however be noted that the change would apply to all meetings of the Divisions and Committees except for their General Meetings which should still follow the general spirit of the Constitution as amended by this proposal.

Frequently asked questions (FAQ)

Q1: Why was this year’s AGM postponed from June to August?

A: The 47th Annual General Meeting (AGM) of the HKIE was originally scheduled for 21 June 2022. Due to the fifth wave of COVID-19, stringent social distancing measures had been instigated. The AGMs of the Divisions and Committees, which are normally arranged between 6-10 weeks before the Institution’s AGM, could not proceed until recently with the epidemic eases in Hong Kong. The AGM of the Institution has therefore been postponed for 2 months in order to suit.

Q2: Does such postponement still fulfil the constitutional requirement?

A: According to Article 25(2) of the Constitution:

(2) An Annual General Meeting shall be held in each calendar year at such time and place as shall be determined by the Institution in General Meeting or by the Council provided that it is not less than nine (9) months nor more than fifteen (15) months after the previous Annual General Meeting.

The 47th AGM to be held on 24 August 2022 still falls within the time allowed under the Constitution.

Q3: Why can't Virtual Meetings be deployed for this year’s AGM?

A: According to the Constitution, members are obliged to attend meetings following the “present and voting” protocol. Therefore, Virtual Meeting and e-voting system cannot be adopted for this year’s AGM unless and until the proposed amendment of Constitution would be approved at the upcoming Special General Meeting (SGM) in accordance with the Constitution.

Q4: What is the procedure of changing the Constitution, and how to proceed?

A: According to the Constitution Article 32, the process of amending the Constitution or Ordinance shall be:

A resolution to amend, revoke or add to this Constitution or to propose to amend, revoke or add to the Ordinance shall not be valid unless: -

- (a) *the intention to propose it shall have been specified in a notice convening a Special General Meeting at which it is proposed;*
- (b) *it shall have been set forth in the notice convening such Special General Meeting; and*
- (c) *it is carried by not less than three-fourths of the Corporate Members present and voting (i.e. three-fourths of the total number of votes for and against the proposed resolution).*

Q5: How to amend the Constitution to make virtual meeting happen? Who should be empowered to do so?

A: To make virtual meeting happen, we have to amend the Constitution to empower the Council to hold virtual meeting, the following considerations are relevant:

- Under normal situations, the Council Meetings (and the General Meetings of the Institution as well) shall still be physical ones.
- To deal with “exceptional circumstances”, the Council shall be empowered under the Constitution to change the Council Meetings to virtual ones.
- Matters requiring confidentiality treatment should still be dealt with by the Council during physical ones.
- The Council should also be empowered to instruct for General Meetings (AGM and SGM) to be conducted as virtual ones.

Q6: Which article in the Constitution will be amended to give the Council such empowerment?

A: By adding a new sub-clause 18(1B) and 18(1C) after Article 18(1A), the Council can decide that a particular Council meeting shall be conducted as virtual meeting.

A new Article 25A is also added to the Constitution in order to empower the Council to decide under certain criteria that General Meetings shall be conducted as virtual meetings.

For the drafting of the new provisions, please see the text in the above.

Q7: Under what kind of criteria will the virtual meeting be applied for General Meetings in the future?

A: It is suggested that a test of “exceptional circumstances” should be included, meaning that Council shall only make such decision when the circumstances are exceptional. This has been stipulated in the new Article 25A. This covers both the AGM and SGM.

Q8: What are "exceptional circumstances" and why is such phrase used?

A: There cannot be a complete list of what constitute “exceptional circumstances”. The Omicron fifth wave which had rendered the holding of AGMs for the Division and Committees early this year infeasible is obviously one example. In fact, such a test is not new and is already included in various parts of the Constitution when decisions are to be made, e.g., Article 16(a) regarding the terms of office of the President and Article 18(6)(a) regarding the terms of office of the Chairman of standing or temporary committee.

Q9: And is there any mechanism to protect the relevant clause from being abused?

A: Apart from the proposed test of “exceptional circumstances”, it is a requirement that at least three-quarters of the voting Council Members have to approve the decision. This is considered a high enough threshold to prevent any abuse.

Q10: Will the Council also be empowered to decide holding e-voting together with virtual meeting?

A: Yes, if the General Meetings are converted to virtual ones, any resolutions requiring voting at virtual AGM or SGM will adopt the electronic voting method, according to the proposed new Article 25(A) of the amended Constitution.

Moreover, once the Council has decided that an AGM shall be conducted by virtual means, any election for the Vice President(s) and Elected Ordinary Members which takes place on the same day of the AGM shall be conducted by means of the electronic voting method

Q11: Why are we not proposing a complete change to virtual meeting and e-voting now?

A: We consider that a complete change to virtual meeting and e-voting for Council Meetings, General Meeting and/or election voting represents a fundamental change to the “present and voting” protocol written in the Constitution. This will deserve more thorough consideration, discussions and engagement with members which will be carried out under the Time to Change roadmap “Undertaking Governance Review”. The changes being proposed now are for the purpose of covering eventuality which has occurred earlier this year. These are required to guard against any “constitutional crisis”. *(See Q13 below)*

Q12: Will virtual AGM/SGM meetings and e-voting be adopted forever once approved in the SGM?

A: Virtual meetings and e-voting will only be deployed under “exceptional circumstances”.

Q13: What will happen if this resolution fails to pass at the SGM?

A: If “exceptional circumstances” just like the fifth wave of COVID-19 happens, stringent social distancing measures may again be instigated and no AGM could be held within the 15 months’ time bar stipulated in Article 25(2) *(see stipulation in Q2)*. This failure to comply with Article 25(2) would constitute a “constitutional crisis”.

Q14: When Council Meetings can be changed to virtual meeting, can Division/Committee meetings do the same?

A: To allow the Divisions and the Committees more flexibility to conduct their regular meetings via electronic means, Article 19 of the Constitution is to be amended. The change would allow all meetings of the Divisions and Committees, except for their General Meetings which should still follow the general spirit of the Constitution, to adopt virtual meetings in a less restrictive manner.

Q15: In terms of the voting rules, is the e-voting mechanism the same as the original in-person voting method?

A: Yes, they are the same.

Q16: Why should we restrict the attendance and voters to be physically in HK and how can we ensure that?

A: By making such restrictions, we wish that the meeting and voting protocols will not deviate from that of the Constitution as a matter of principle.

Ways to control:

- Service provider will check the IP addresses of the voters and remove those that are not from within Hong Kong.
- An honour system will be employed by which attendees and voters are required to make declaration on their physical presence in Hong Kong.

Q17: Can secret ballots be in place during e-voting?

A: Yes, all the voting data are encrypted, and the identities of the voters are stored on the server of the e-voting platform provider and would not be shared with the HKIE.

Q18: How can vote rigging be guarded against during election voting by means of e-voting method?

A: Vote rigging is a serious misconduct and this is a totally unacceptable behaviour for a professional engineer. There are stipulations in the Constitution guarding against misconduct of such nature with the most severe punishment of expulsion from the Institution.