PATRICK CHU, CONTI WONG LAWYERS LLP

Newsletter

How to Restart a Company When Its Only Shareholder and Director Passes Away

Many small companies in Hong Kong are owned and run by one person, who holds all the shares and is also the only director. This is simple and works well, until that person dies. Suddenly there is nobody left who can sign documents, make decisions or appoint someone else to take over.

This newsletter explains why that happens, how the law allows the estate to fix it, and the practical steps involved. It ends with some simple planning that can avoid the problem altogether.

In short: the people dealing with the deceased's estate (the executors or administrators) can ask the High Court to order a shareholders' meeting under section 570 of the Companies Ordinance (Cap. 622) (the "**Ordinance**"). A new director can be appointed at that meeting, and the company can then operate again.

1. Key terms

- **Shareholder (or member):** an owner of shares in the company. Shareholders make the major decisions, such as appointing directors, at a "general meeting" (a formal meeting of shareholders).
- **Director:** a person who manages the company. The directors together form the "board".
- **Articles of association:** the company's internal rulebook.
- **Personal representatives:** the people legally responsible for handling a deceased person's property (their "estate"). An executor is named in the will. An administrator is appointed where there is no will, or no executor able to act. Before they can act, they need a court document: a grant of probate (for executors) or letters of administration (for administrators).

2. Why the company gets stuck

A company can only act through people. Normally, if a director leaves, the shareholders appoint a replacement. If a shareholder dies, the directors record the new owner of the shares in the company's register of members. When one person was both the only shareholder and the only director, both routes close at the same time:

- there is no director left to hold a board meeting or approve anything; and
- there is no shareholder left to hold a general meeting and appoint a new director.

You might expect the personal representatives simply to step into the deceased's shoes. In law, the deceased's shares do pass to them automatically on death (this is called "transmission"). However, under most companies' articles, a person who receives shares in this way cannot attend or vote at shareholders' meetings until they are entered on the register of members. And entering them on the register needs the approval of the board, which no longer exists.

The result is a closed loop. There is no director to register the new shareholder, and no registered shareholder to appoint a new director. Until the loop is broken, the company is effectively frozen: for example, its bank accounts cannot be operated and its business cannot be carried on.

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3. The solution: section 570 of the Ordinance

Section 570 allows the court to step in where it is "impracticable" (that is, not realistically possible) to call or hold a general meeting in the usual way. The court can order that a meeting be called and held, and can decide how it is to be run.

The key provision for estates is section 570(6), which says:

> *"(6) The legal personal representative of a deceased member of a company is to be regarded in all respects, for the purposes of this section, as a member of the company having the same rights with respect to attending and voting at a meeting of the company as the deceased member would, if living, have had."*

In plain terms, for the purposes of section 570, the executors or administrators are treated as if they were the shareholder, with the same rights to attend and vote that the deceased had, even though they are not yet on the register of members. This gives them the legal right to apply to the court (known as "standing") and to vote at any meeting the court orders. That breaks the loop.

4. What the Hong Kong courts have done

The High Court has used section 570(6) in exactly this situation. Three recent cases show how it works in practice:

- **Re Estate of Leung Kwok Chiu (HCMP 2691/2024).** The deceased had been the company's only shareholder and director. The administrator successfully applied under section 570 for a meeting to be called and for herself to be appointed director.
- **Re Good China Holdings Limited (HCMP 1082/2023).** The court confirmed that the administrator of a deceased sole shareholder and director has standing under section 570(6) to apply for an order calling a general meeting. It noted that without such an order, "it would not be possible for the administration of the deceased's estate to be carried out and brought to a conclusion."
- **Re Tiger Consulting (HCMP 1236/2024).** Again, the company had no living shareholder or director, and the application was made under section 570. The case is particularly useful because it confirms that the person applying to court does not have to be the person who becomes director. An executor or administrator can put forward a beneficiary or another suitable person instead.

5. Step by step: what the personal representatives should do

In broad terms, the process is as follows:

1. **Obtain the grant:** Apply for a grant of probate or letters of administration. Until it is issued, the personal representatives cannot act for the estate, including for the purposes of section 570.
2. **Check the company's records and articles:** Confirm who holds the shares and who the company's officers are, and what the articles say about passing on shares after death and about calling meetings.
3. **Choose the new director:** This can be the personal representative or, as Tiger Consulting shows, a beneficiary or another suitable person.
4. **Apply to the court under section 570 :** The application should explain why a meeting cannot be held in the normal way, propose how the meeting should be run, and name the person to be appointed director.
5. **Hold the court-ordered meeting:** The new director (or directors) is formally appointed at the meeting, in the way the court has directed.

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6. **Complete the follow-up:** With a board in place again, the company can register the transmission or transfer of the shares, notify the Companies Registry of the change of director within the time limit set by law, and update its bank mandates and other records.

6. Planning ahead: how to avoid the problem

The court route works, but it takes time and money, and the company remains frozen while the application is under way. For a one-person company, the problem can often be avoided with some simple planning:

- **Nominate a reserve director:** A private company whose only shareholder is also its only director can nominate a "reserve director" to act as director if the owner dies (section 455 of the Ordinance).
- **Review the articles:** Consider adding a provision allowing the personal representatives of a deceased sole shareholder to appoint a director.
- **Plan the will with the company in mind:** Make sure the owner's will and wider succession arrangements deal with the company and its shares.

Conclusion

The death of a company's only shareholder and director does not leave the company beyond help. Section 570 of the Ordinance, and in particular section 570(6), allows the executors or administrators to ask the court to order a shareholders' meeting even before they are registered as shareholders. The recent cases show that the court takes a practical approach, including allowing someone other than the applicant to be appointed director, so that the estate can be dealt with and brought to a close.

If you are dealing with the estate of a sole shareholder and director, or would like to review the succession arrangements for your own company, please feel free to contact us.

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