

A Client's Guide to Company Meetings, Resolutions and Decision-Making

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1. Introduction

1.1 Sources of law

1.1.1 Meetings of a company's shareholders ("General Meetings") and its directors ("Board Meetings") will be governed by:

- (a) the provisions of the Companies Act 2006 (the "Act");
- (b) the company's Articles of Association ("Articles") – in respect of which see the note at 1.1.2 below - and any rules validly made under those Articles relating to the conduct of meetings; and
- (c) principles decided in previous cases which continue to have legal force ("common law").

1.1.2 Most private company Articles are likely to be based on statutory model articles. For companies formed between 1985 and 2009, these were in the form generally referred to as "Table A".

1.1.3 From 01 October 2009 new model articles came into force, referred to in this note as the "New Model Articles". The New Model Articles will apply to private companies limited by shares formed on or after this date (save to the extent their provisions are excluded in the form of a company's Articles registered at Companies House). A copy of the New Model Articles is available at:

<http://www.companieshouse.gov.uk/about/modelArticles/modelArticles.shtml>

1.2 The Shareholders and the Directors

1.2.1 Generally, the Directors will have the power under the Articles to manage the business of the company and to exercise all the powers of the company.

1.2.2 Shareholders do not as a matter of course have any say in the day to day management of the company, although the Articles often provide that the powers of the Directors can be curtailed by a specific instruction from shareholders. For example, Article 4(1) of the New Model Articles provides:

"The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action".

1.2.3 Given the general powers of Directors, in many private companies General Meetings are a relatively rare occurrence and company decision-making is effected almost exclusively at Board level.

1.3 General Meeting Requirements

1.3.1 Whether a meeting is a Board Meeting or a General Meeting, the meeting must be **properly convened, legally constituted and properly held**.

1.3.2 These principles have been defined in detail in common law, in addition to the specific rules set out in the Act and to any requirements of the Articles. Amongst the most important things to ensure are that:

- (a) Any meeting is called and held in accordance with the Articles and the Act.
- (b) Notice is given in an appropriate form to all who are entitled to receive it.
- (c) The time and place of the meeting must not be chosen with a deliberate intention to exclude certain persons by making it impossible or very difficult for them to attend.
- (d) Subject to the Articles, if those attending the meeting are not all in the same room, they must all be able to - at the least - hear each other through telephone conference facilities in respect of Board Meetings; and in the case of General Meetings see and hear each other through audio-visual links.
- (e) The meeting must be quorate (see 2.3.5 and 3.1.2(d)).

1.4 **LLPs and Partnerships**

- 1.4.1 This Chapter deals exclusively with the requirements relating to private companies limited by shares. It does not deal with requirements for other forms of business vehicle, such as limited liability partnerships ("LLPs"), or partnerships.
- 1.4.2 There are less prescribed rules in relation to meetings, resolutions and decision-making under statute and common law in the case of LLPs and partnerships. One of the reasons for this is that, unlike with companies, there is no general separation of management and ownership between directors and shareholders. Generally speaking, the partners in a general partnership, and the members of an LLP, will both own and manage the business.
- 1.4.3 In most cases the requirements for meetings, resolutions and decision-making will be set out exhaustively in the relevant partnership or members' agreement.
- 1.4.4 However, there is no requirement for a partnership or an LLP to have a written partnership/members' agreement in order for it to exist, and statute does set out certain default provisions in relation to partnerships and LLPs which will apply to the extent they are not excluded by agreement of the partners/members.
- 1.4.5 Space prevents a detailed discussion of these statutory rules, and other overriding common law concepts. A handful of the most relevant examples are set out below.
- 1.4.6 The default provisions for partnerships are found in the Partnership Act 1890. This provides that, subject to any express or implied agreement between the parties:
 - (a) Every partner may take part in the management of the partnership business.

- (b) No person may be introduced as a partner without the consent of all existing partners.
 - (c) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
- 1.4.7 Default provisions for LLPs are found in the Limited Liability Partnerships Act 2000, the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) and the Limited Liability (Application of Companies Act 2006) Regulations 2009 (SI 2009/1801). Amongst other things, these rules replicate the provisions mentioned at 1.4.6(a) to 1.4.6(c) above for LLPs.

2. Decision-Making by Shareholders

2.1 General Meetings

2.1.1 When does a General Meeting need to be called?

- (a) As noted at 1.2 above, for many companies General Meetings will be a rare occurrence.
- (b) There is no requirement under the Act to hold an Annual General Meeting (see 2.2). Indeed, there is no general requirement under the Act for companies to hold General Meetings at all, although this may be required under the Articles.
- (c) A General Meeting will be called:
 - (i) Where the Board exercise their power to do so under s.302 of the Act.
 - (ii) Where the Board are obliged to call a General Meeting as a result of a requisition from shareholders. Shareholders representing at least 5% of the paid up share capital can require the company to call a General Meeting by following the procedure set out in s.303 of the Act.
- (d) A General Meeting will need to be called where it is proposed that something is done which requires the approval of shareholders under the Act and/or the Articles (unless that approval is obtained by written resolution (see 2.5)). Examples include:
 - (i) Removal of a director or auditor before the end of their term of office – this cannot be done by written resolution.
 - (ii) Amendment of the articles.
 - (iii) Change of company name.

2.2 Types of General Meeting

- 2.2.1 Under the Act, any General Meeting which is not defined in the notice of the meeting as an Annual General Meeting is simply a "General Meeting".
- 2.2.2 Particularly for older companies, the Articles may refer to General Meetings other than an Annual General Meeting as "Ordinary", "Extraordinary", "Special", or some other similar term. Generally these terms will have no particular significance although it is important to check the Articles carefully to ensure that they do not impose, for example, any additional notice requirements on particular designations of General Meeting.

2.3 Notice period

- 2.3.1 Under the Act, the minimum period of notice for any General Meeting is 14 clear days. The reference to "clear days" means that the notice period is deemed to begin on the day *after* the shareholder is deemed to have received the notice of General Meeting, and end on the day *before* the scheduled meeting date.
- 2.3.2 A notice period of 14 clear days is therefore likely to mean a minimum period of 17 calendar days between the circulation of the notice of General Meeting and the date of the meeting itself. The period may however be longer or shorter depending on which method of circulating notice is used (see 2.3.4) and which rules are used for calculating service of notice.
 - (a) The Articles will normally specify when a shareholder will be deemed to have received the notice of General Meeting. When this is not dealt with in the Articles, s.1147 of the Act sets out default rules.
 - (b) Furthermore, the Articles may require a longer period of notice than 14 clear days. Companies with Articles based on Table A need to be particularly careful here as they may, amongst other things, need to call an Annual General Meeting on 21 clear days' notice.
 - (c) Shareholders holding not less than 90% of the total voting rights of the company (or a higher percentage, not exceeding 95%, if specified in the Articles) may agree to shorter notice.

2.3.3 Content of notice

As a minimum, every notice of General Meeting must contain the following information (together with any other requirements set out in the Articles):

- (a) The date (including year), time and place of the General Meeting.
- (b) The type of General Meeting (see 2.2).
- (c) The exact wording or a general explanation of the nature of any ordinary resolution.
- (d) The exact wording of any special resolution and a statement that any such resolution is special.

- (e) An explanation of the general nature of any other business to be transacted, with any decisions to be made set out clearly enough to enable shareholders to know what is being considered.
- (f) A statement that every shareholder has a right under s.324 of the Act to appoint a proxy (or more than one proxy provided that each proxy is appointed to exercise the rights attaching to different shares), who does not have to be a shareholder of the company, to attend, speak and vote instead of the shareholder.
- (g) The deadline for returning proxy forms, which must not be more than 48 hours before the meeting.
- (h) The date of the notice, together with the details of the person calling, or authorised to call, the meeting.
- (i) Any statements provided by shareholders which the company is obliged to circulate pursuant to sections 314 to 317 of the Act (assuming they are received in time to be circulated with the notice – if not then they need to be circulated as soon as reasonably practicable after the notice).

It is common, but not obligatory, for a proxy form to be circulated with the notice. If a proxy form is not circulated then the notice should contain details of how to obtain a proxy form.

2.3.4 **Method of notice**

- (a) As well as notices being given to shareholders in person or by post, the Act has introduced provisions to make it easier for companies to circulate notices to shareholders by electronic means, including fax, email, or by posting on a website.
- (b) If it is intended to use electronic means of circulation, it is important to ensure that the rules under the Act relating to this are followed. Even if the Articles permit the use of electronic means of circulation, this does not in itself mean that a company can circulate notices of General Meeting electronically. Key points to bear in mind include:
 - (i) Notice can be given by email, fax, posting a CD or similar electronic means only if the shareholder has explicitly agreed to receive notice (of this particular meeting, or all general meetings) by this method.
 - (ii) Notice can be given via a website only if this is allowed under the Articles or by a resolution of the shareholders, *and* the particular shareholder in question has either explicitly agreed to receive notice by this method or can be treated as having given their deemed consent in accordance with the relevant rules in the Act.
 - (iii) If the company does put notice of a General Meeting on a website, this must be notified to each shareholder who has agreed (or is deemed to have agreed in accordance with the Act) to receive notice via the website. The Act again sets out

rules as to the form of this notification and how it can be sent to a shareholder.

- (iv) When a shareholder has received notice electronically or via a website they can still request a hard copy, and this must be provided free of charge.

2.3.5 Quorum

- (a) A General Meeting may not transact business unless it is quorate. A quorum is the minimum number of shareholders with voting rights who have to be present for the General Meeting to make valid decisions.
- (b) Unless the Articles require otherwise (or the company only has one shareholder in which case the quorum is one), the quorum for a General Meeting is two shareholders present personally at the meeting itself, or represented by proxies. However, the two persons present cannot both be representatives of the same corporate member, nor can they both be proxies appointed by the same shareholder.

2.3.6 Voting Procedures

- (a) Decisions at General Meetings will, subject to the requirements of the Articles, be made on a **show of hands** or, if one is validly demanded, on a **poll**.
- (b) On a show of hands, each shareholder present has one vote. Subject to the Articles, each proxy present also has one vote (save that where a proxy has been instructed by one or more shareholders to vote in favour of a resolution, and by other shareholders to vote against, the proxy has one vote for and one vote against).
- (c) Shareholders have a statutory right to demand a poll on any matter except the election of a person to chair a meeting and the adjournment of a meeting. A proxy may take part in a demand for a poll. If proxies have been used then it would be prudent for the chair to call a poll in any case to ensure the result of the voting accurately reflects shareholders' wishes.
- (d) Rules in relation to polls will be set out in the Articles, including specifying what criteria have to be satisfied for a poll to be validly demanded. The relevant provisions will need to be carefully considered, but the following rules in the Act will supersede anything in the Articles:
 - (i) S.321(2) of the Act makes it clear that a provision in the Articles will be invalid if means that a poll cannot validly be demanded by at least 5 shareholders having the right to vote, or by shareholders holding at least 10% of the total voting rights.
 - (ii) Where a shareholder is entitled to more than one vote on a poll, he does not need to use all the votes the same way.

2.3.7 Voting by proxy

- (a) Under the Act, every shareholder has the right to appoint a proxy (or if they hold more than one share, more than one proxy provided that each proxy is appointed to exercise the rights attaching to different shares) to attend, speak and vote on their behalf, regardless of the provisions of the Articles.
- (b) The Articles will generally set out the format and requirements for delivery of the proxy form. The deadline for delivering proxies cannot be more than 48 hours before the relevant General Meeting (excluding all of Saturday, Sunday, Christmas, Good Friday and bank holidays).
- (c) A proxy is entitled to exercise all the votes to which he or she is entitled. So on a poll a person who is proxy for several shareholders may vote on behalf of all of them, and a person who is a shareholder in his or her own right and is also proxy for another shareholder has at least two votes. However, under the Act on a show of hands a proxy can exercise only one vote, or possibly two (see 2.3.6(b)) unless the Articles specify otherwise.

2.4 Types of Shareholder Resolution

2.4.1 Special Resolutions

- (a) A special resolution must have the support of at least 75% of the votes cast if passed at a General Meeting – see 2.5.3(a)(i) in respect of special resolutions proposed as written resolutions. Certain actions can only be carried out by special resolution, such as amendment of the Articles.
- (b) All special resolutions must be notified to Companies House within 15 days of being passed. Depending on the nature of the resolution, a specific Companies House form may need to be filed, as well as the text of the resolution itself.

2.4.2 Ordinary Resolutions

Unless the Act or the Articles specify that a special resolution is required, wherever the approval of shareholders is required an ordinary resolution will suffice. This will need to be passed by a simple majority of the votes cast if passed at a General Meeting – see 2.5.3(a)(ii) in respect of ordinary resolutions proposed as written resolutions.

2.4.3 Entrenched provisions

The Articles may state that amendment or deletion of certain entrenched provisions requires more than 75% of the votes cast at a General Meeting. If it is intended to propose a resolution to effect such a change, the same procedure should be followed as for a special resolution, but applying the higher approval threshold. As well as notifying Companies House of the text of the resolution a form CC03 will also need to be filed.

2.4.4 Resolutions requiring special notice

- (a) The following ordinary resolutions require special notice to be given to the company (but these are not "special resolutions"). "Special notice" means that notice of intention to propose the resolutions must be given to the company at least 28 days before the relevant General Meeting.
 - (i) Removal of a director under s.168 of the Act.
 - (ii) Appointment of a director at the same meeting to replace a director who has been removed pursuant to s.168 of the Act.
 - (iii) To appoint as auditor anyone other than the current auditor.
 - (iv) To remove an auditor before the end of their term of office.
- (b) The special notice requirement is a separate requirement to the requirement to give notice to shareholders (see 2.3 to 2.3.4).

2.5 Written Resolutions

2.5.1 General

Almost any resolution which can be passed by shareholders in General Meeting can also be passed in writing without a General Meeting by following the procedure under the Act, even if this is not permitted in the Articles. The only exceptions are resolutions to remove a director or auditor before the end of their term of office, which must always be dealt with at a General Meeting.

2.5.2 Circulation

- (a) A written resolution must be circulated to every shareholder in the same way as notices of General Meetings. A shareholder who is registered as such after the resolution is circulated will not be entitled to vote on it.
- (b) The resolution must be circulated with the following information:
 - (i) How the shareholder agrees to the resolution (if a shareholder does not agree to the resolution they do not need to take any positive steps to vote against it).
 - (ii) The date by which the resolution must be passed if it is not to lapse. This will be at the end of the period of 28 days beginning with the circulation date.

2.5.3 Approval or rejection

- (a) For a written resolution to be passed:
 - (i) a special resolution must be agreed by shareholders representing not less than 75% of the total voting rights of shareholders eligible to vote; and

- (ii) an ordinary resolution must be agreed by shareholders representing a simple majority of the total voting rights of shareholders eligible to vote;

in each case the percentage is assessed against the total number of shares which could be voted on the resolution, not the number of actual votes cast.

- (b) The written resolution will be passed when the required majority is reached, however if the majority is not reached by the date on which the resolution lapses (see 2.5.2(b)(ii)), the resolution will not be passed.

3. Decision-Making by Directors

3.1 Board Meetings

3.1.1 Board Meetings are less heavily regulated by the Act. Generally the rules relating to Board Meetings will be set out in the Articles, and supplemented as necessary by rules which the Board makes itself for the conduct of its meetings.

3.1.2 The following matters would normally be covered by such rules (and in each case it is important to check the position which applies to the company in question):

(a) Frequency

- (i) There is no statutory requirement to have any specific minimum number of Board meetings per year, although Directors will need to be satisfied that they are meeting sufficiently regularly to fulfil their duties under the Act.
- (ii) Directors have a duty to attend meetings where they are reasonably able to do so. Often the Articles will provide that Directors can be removed if they do not attend meetings for a certain period.

(b) Notice

Normally, a Board meeting can be called by the company secretary, or any Director. Subject to the Articles:

- (i) Reasonable notice of the date, time and location needs to be given, but does not have to be in writing.
- (ii) Notice must be given to all Directors, even if they have said that they cannot attend (often this requirement is relaxed under the Articles for Directors who are not in the UK).
- (iii) It is good practice to circulate an agenda or description of the intended business of the meeting.

If all Directors happen to be together (or at least able to hear each other) at the same time and agree, then a Board meeting can be held even though no notice has been given.

(c) **Chairing**

The Directors will normally elect one of their number to act as chairperson.

(d) **Quorum**

The quorum is invariably set out in the Articles, or at the very least the Articles empower the Directors to set a quorum.

(e) **Decision-making**

Decisions at Board meetings will normally be made by majority vote. The Articles may provide that the Chairman has a casting vote in the event of a tie.

- 3.1.3 Many private company Board Meetings are conducted with one or more Directors present by telephone only and this should not be problematic unless specifically prohibited by the Articles.

3.2 **Written Resolutions**

- 3.2.1 There is no statutory right for Directors to make decisions by written resolution, however this is often provided for in the Articles. Furthermore, there is a general common law right for Directors to make decisions in writing provided the resolution is agreed to by all the Directors entitled to vote on the matter.
- 3.2.2 Where possible however it is generally preferable for decisions to be made at a quorate Board Meeting in order to allow the Directors to debate the issues properly, and effectively make any necessary declarations of interest.

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