

A GUIDE TO COMPANY DECISION MAKING

This guide provides an overview of the decision making processes of UK incorporated private companies. In general, the running of a company is a matter for its board of directors. Ownership of shares in a company does not give an entitlement to take part in the company's day today management (although certain decisions must be taken by shareholders as well as directors).

If, having considered this guide you would like to know more, or to discuss your own circumstances in greater detail, please speak to your usual contact at Stevens & Bolton or a contact listed at the end of this guide.

Decisions of directors

The day to day management of a company's business will generally be delegated to its board of directors, with the extent of the board's (typically wide) management powers being set out in the articles of association.

There are however, certain matters which the Companies Act 2006 reserves for shareholder approval. Such matters include: (i) decisions regarding company structure and administration (e.g. amendments to the articles); (ii) decisions impacting shareholder ownership interests (e.g. alterations to share capital); and (iii) corporate governance controls (e.g. transactions with directors). In addition, a company's articles will usually reserve other matters for shareholder approval (e.g. the power to declare final dividends). Further restrictions on director decision-making may be also be set out in a shareholders' agreement.

The power of directors to act is collectively vested in the board as a whole (unless otherwise specified in the articles). However, a company's articles usually empower the board to delegate their functions to an

individual director (often the MD or CEO), or a group of directors (a committee).

The manner in which directors make decisions is not prescribed under the Companies Act 2006, and is therefore a matter for a company's constitution. Normally the articles will set out separate regimes for decision-making at meetings and outside of meetings. Most articles require decisions to be made:

- a) by a majority at a directors' meeting (in the event of a tied vote, the articles may provide the chairman of the board with a casting vote);
- b) unanimously (by indicating agreement to each other, usually in writing); or
- c) where a company has only one director, in any way the director considers appropriate.

There are three requirements to satisfy in order for the business carried out at a directors' meeting to be validly passed:

1. notice of the meeting must have been given to all directors in accordance with the articles. Where no minimum notice period is specified,

the notice period must be 'reasonable' (in the context of the company, the business being transacted and the directors entitled to receive the notice);

2. the minimum quorum (number of people required to conduct valid business at a meeting) specified in the articles must be met; and
3. voting must be conducted in accordance with the articles. Directors will usually be given discretion under the articles to decide how votes are taken. Often they will be taken on a show of hands, on a "one director, one vote" basis, but this can vary

Minutes of a meeting should always be recorded and kept with the statutory books of the company.

Decisions of shareholders

Shareholders deal with matters which cannot be or have not been delegated to the board of directors (e.g. alteration of the articles), or which have been reserved to them in the articles or a shareholders' agreement. Such matters may be determined by passing resolutions at general meetings or by written resolution.

There are two types of shareholder resolution (both of which have more stringent formalities and procedures than directors' resolutions):

1. **Special resolution** - this requires the approval of shareholders representing not less than 75% of either (i) the shareholders entitled to vote (if the resolution is passed on a show of hands at a meeting), or (ii) the total voting rights (if the resolution is passed as a written resolution or a 'poll'/one-vote-per-share vote is requested at a meeting).
2. **Ordinary resolution** - this requires the approval of shareholders representing more than 50% of either (i) the shareholders entitled to vote (if the resolution is passed on a show of hands at a meeting), or (ii) the total voting rights (if the resolution is passed as a written resolution or a 'poll'/one-vote-per-share vote is requested at a meeting).

In practice, most private companies now pass shareholder resolutions by way of written resolution. Written resolutions can be proposed either by the

directors or shareholders, and there are procedural requirements regarding circulation and approval.

If a company holds a shareholder meeting (there is no requirement for a private company to do so) there are certain procedural requirements which must be satisfied. These formalities relate to how the meeting is convened, what information is contained in the notice of the meeting and the minimum length of notice to be given (usually 14 clear days, although this can often be waived if a certain majority agree). As with directors' meetings, there are minimum quorum requirements, and some circumstances where a shareholder's votes must be disregarded (e.g. where the resolution relates to the repurchase by the company of that shareholder's shares).

Under the Companies Act 2006, a private company must pass a special resolution to:

- alter its articles of association;
- change its name (unless otherwise specified in the articles);
- re-register as a public company;
- withdraw or modify the statutory pre-emption rights on an issue of shares;
- reduce its share capital;
- approve a payment out of capital for the redemption or purchase of its own shares;
- sanction a variation of class rights in certain circumstances; and
- ratify an act of the directors which is beyond the powers of the company.

Otherwise, generally only an ordinary resolution will be required, subject to any higher level of approval specified in a company's articles. Examples of matters which typically require an ordinary resolution are decisions to:

- remove a director;
- grant to the directors the authority to allot shares (where a company has more than one class of share);
- approve certain transactions involving directors (e.g. entering into service contracts for a period of two years or more);
- declare a final dividend;
- authorise the terms of a contract for a company to purchase its own shares;

- authorise the sub-division, consolidation or redenomination of share capital;
- remove an auditor;
- ratify acts by directors (subject to those acts having been within the powers of the company).

As with decision-making by directors, shareholders may circumvent the formalities of the stipulated decision-making process where they act unanimously.

Filing of certain resolutions with the Registrar of Companies

Copies of all special resolutions and certain ordinary resolutions must be filed (along with any other relevant documentation) with the Registrar of Companies at Companies House within 15 days of being passed.

FIND OUT MORE

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