DUOMATIC PRINCIPLE

A note considering the scope, application and limitations of the common law principle of shareholder decision-making by informal unanimous consent (commonly referred to as the *Duomatic* principle).

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RESOURCE INFORMATION

RESOURCE ID

3-519-4794

RESOURCE TYPE

Practice note

PUBLISHED DATE

Created from a maintained practice note on 23 August 2017

JURISDICTION

United Kingdom

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WHAT IS THE DUOMATIC PRINCIPLE?

The common law principle of decision-making by shareholders by way of informal unanimous consent has evolved over time, culminating in the case of *Re Duomatic Ltd [1969] 2 Ch 365*, the leading modern authority in this area. For this reason, the principle of informal unanimous consent is commonly referred to as the *Duomatic* principle. In *Re Duomatic*, the company had two classes of shares: ordinary shares with a right to vote, and preference shares with no right to vote. Buckley J held that it was sufficient for all the shareholders with a right to vote to reach unanimous agreement in order to bind the company to some matter which a general meeting could carry into effect; the agreement of the non-voting shareholders was not necessary. Buckley J summarised the principle as follows:

> *"where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be."*

(*Re Duomatic, Buckley J at page 373.*)

Position under the Companies Act 2006

The Duomatic principle was not codified under the Companies Act 2006 (CA 2006), but is expressly preserved in *section 281(4).*

Requirements for application of the Duomatic principle

Where a matter is within the scope of the *Duomatic* principle (see *Scope of the Duomatic principle*), the following elements must be established for the principle to apply:

- The consent of shareholders to the relevant matter must be unanimous.
- The consent must be given by the shareholders in full knowledge of what they are consenting to.

For further information on the requirements for unanimous consent and informed consent, see *Meeting the requirements of the Duomatic principle.*

SCOPE OF THE DUOMATIC PRINCIPLE

Although the *Duomatic* principle has been invoked successfully in a wide range of circumstances, its application is not universal. The limits on the scope of the principle have been considered by the courts on a number of occasions.

Position where a formal resolution would be invalid

To the extent that a formal members' resolution would not have been valid (for example, because it constitutes a fraud or is otherwise unlawful or *ultra vires* the company), then any relative *Duomatic* assent will likewise be invalid. For example, the *Duomatic* principle cannot be applied to approve or ratify a transaction amounting to an unlawful return of capital (*Stakefield (Midlands) and others v Doffman and another [2010] EWHC 3175*).

Amendment of articles by conduct

A company's articles may be altered by special resolution (*section 21*, CA 2006). They may also be altered by the common law principle of unanimous consent in accordance with the Duomatic principle (*Cane v Jones [1980] 1 WLR 1451* and *The Sherlock Holmes International Society Ltd v Aidiniantz [2016] EWHC 1076 (Ch)*). An agreement to amend the constitution of a company may be inferred from conduct, and this may include acquiescence in circumstances where members knew that their assent was being sought or where conscience should have demanded that they acted sooner rather than later (*Sharma v Sharma [2013] EWCA Civ 1287*). However, when relying on conduct in support of an informal amendment of the articles, the conduct must be such that on a balance of probabilities the members intended to amend the articles in the particular way contended for.

In *Sherlock Holmes International Society Ltd*, the company's articles stated that only a member could be a director of the company. On three previous occasions, directors had been appointed in breach of this requirement, and the sole member challenged the appointments. The company argued that the articles had been amended by informal agreement of the members to permit the appointment of any person as a director, such agreement to be inferred from their conduct. The court agreed that, in assenting to the appointment of non-members as directors, the members evinced an intention that non-members should be directors and that the most compelling inference to be drawn from their conduct was that they intended to amend the articles to permit non-member directors to serve.

For further information concerning the decision in this case, see *Legal update, Articles: amendment by conduct (High Court)*.

Limitations of the Duomatic principle: specific statutory procedures

There is some debate as to whether the *Duomatic* principle is capable of applying to all types and aspects of corporate transactions, in particular those that must follow a set statutory procedure. It seems that this will depend upon the purpose of and rationale for the statutory provision concerned. In particular, it may not be possible to rely on the *Duomatic* principle to remedy a failure to comply with a statutory provision where the relevant provision is not simply for the benefit and protection of members, but also for the benefit of other persons or groups, such as creditors.

The courts have examined the scope for application of the *Duomatic* principle in relation to a number of specific provisions of the CA 2006 (or equivalent predecessor provisions under the Companies Act 1985 (CA 1985)).

Substantial property transactions

The courts have, on more than one occasion, held that the Duomatic principle is capable of being applied in relation to the requirement for shareholder approval of a substantial property transaction under *section 190* of the CA 2006 (formerly section 320 of the CA 1985). For example, see *Re Torvale Group Ltd [1999] 2 BCLC 605, Re Conegrade Limited [2002] EWHC 2411 (Ch)* and *NBH Ltd & Anor v Hoare & Ors [2006] EWHC 73 (Ch)*.

Share buybacks

In *Re RW Peak (Kings Lynn) Ltd [1998] BCC 596*, the court held that the Duomatic principle was not available to override a want of compliance with the statutory requirements of the CA 1985 in relation to a share buyback. In particular, Lindsay J held that sections 162 and 164 of the CA 1985 (now *sections 690* and *694* of the CA 2006) were not merely procedural, and not for the benefit of current members only.

However, in *BDG Roof Bond Ltd v Douglas [2000] B.C.C. 770*, Park J concluded that the Duomatic principle could rectify a failure to display a buyback contract at the company's registered office for 15 days before a general meeting (as required by section 164(6) of the CA 1985, now *section 696* of the CA 2006), noting that this provision was designed solely for the benefit of shareholders, and that there was no element of creditor protection in it at all.

While it may be tempting to consider that many of the statutory requirements relating to share buybacks are designed for the benefit of shareholders and are therefore within the scope of the *Duomatic* principle, there are limits. In *Kinlan v Crimmin [2006] EWHC 779 (Ch)*, Mr Philip Sales, sitting as a deputy judge of the High Court, found that certain defects in a shareholders' resolution approving a buyback (namely that it was described as an ordinary resolution at a time when a special resolution was required, referred incorrectly to "redemption" rather than "repurchase", and was passed at a meeting of which the statutory notice had not been given) could be cured by the operation of the Duomatic principle. However, Mr Sales made it clear that there had to be a clear print of a resolution. The Duomatic principle could not be used to argue that, in the absence of a resolution, the assent of the sole shareholder entitled to attend and vote had been given before the contract was entered into. The requirement that a resolution is kept as part of the company's records, and that a print is sent to the Registrar of Companies, suggests that the wider public, including creditors, have an interest in reviewing an accurate record of the true capitalisation of the company.

Further, in *Dashfield and another v Davidson and others [2008] EWHC 486 (Ch)* the court distinguished *Re Peak*, noting that the facts were quite different. In *Re Peak*, the company did not have authority in its articles to purchase its own shares nor was there any special resolution proposed or passed authorising the purchase contract before it was entered into. By contrast, *Dashfield* involved a buyback of the shares of a deceased member which was effected under a power inserted in the company's articles of association by a unanimous resolution of the shareholders. On the facts, if there was any non-compliance with section 164 of the CA 1985 (now *section 694* of the CA 2006) by a technical failure to approve the buyback contract before resolving to enter into it, it was remedied under the *Duomatic* principle by the fact that all the shareholders in the company approved the resolution and did so because each was fully aware of what could happen if provision were not made for the purchase of a deceased member's shareholding. The relevant article was valid and enforceable at the time of the shareholder's death. The court concluded that it could not be said that the *Duomatic* principle could never cure non-compliance with section 164 of the CA 1985.

For further consideration of the application of the *Duomatic* principle in the context of share buybacks, see *Practice note, Share buybacks: overview: Unanimous consent (Duomatic principle)*.

Approval of directors' service contracts

In *Atlas Wright (Europe) Ltd v Wright and another [1999] EWCA Civ 669*, the Court of Appeal found that the *Duomatic* principle could apply to the approval of a long term director's service contract under section 319 of the CA 1985 (now *section 188* of the CA 2006).

Again, the decision in *Re Peak* (see *Share buybacks*) was distinguished by the court. The court considered that the only purpose underlying section 319(3) (requirement for advance approval by resolution of a company) and section 319(5) (requirement to display contract at company's registered office fifteen days before meeting) could be the benefit and protection of shareholders, in requiring them to have notice of, and approve, an agreement of the company. Accordingly, those requirements could be waived by the class of shareholders they were intended to protect, provided that it was clear that such class had consented to an agreement which they had known of for at least the required 15 day period.

For further information concerning the decision in this case, see *Legal update, Validity of agreements*.

Removal of director under section 168 of the CA 2006

In *Bonham-Carter and another v Situ Ventures Limited [2012] EWHC 230 (Ch)*, the judge commented, obiter, that there was a strong argument that a failure to comply with any of the requirements of *section 169* of the CA 2006 (director's right to protest against removal) would invalidate any informal decision purporting to remove a director taken using the *Duomatic* principle. The reasoning underlying this view is that the requirements imposed by section 169 of the CA 2006 are, at least in part, for the benefit of the director whose removal is sought. The purpose of the statutory provision therefore goes beyond the protection of the class of shareholders who have purported to waive the requirements of that provision.

For further information on the procedure for removing a director under sections 168 and 169 of the CA 2006, see *Practice note, Directors: termination of appointment: Removal under section 168 of the Companies Act*.

Distributions

The decision in *Bairstow and others v Queens Moat Houses plc [2001] EWCA Civ 712* reinforces the position that the statutory provisions governing distributions protect creditors, and are not, therefore, capable of being waived under the *Duomatic* principle.

In that case, dividends had been paid by the parent company at a time when the company had insufficient distributable reserves, in breach of the statutory requirements. It was argued that the existence of distributable reserves in wholly owned subsidiaries elsewhere in the group structure meant that the action of the parent company in declaring dividends in excess of its own distributable reserves must be taken to have amounted to the informal declaration of dividends by its wholly owned subsidiaries sufficient to cover the parent company's dividend. The Court of Appeal rejected this argument.

The statutory distribution rules could not be regarded as merely a procedural technicality that could be waived or dispensed with by members. The rules on distributions were strict and mandatory. Even if it could be shown that distributable profits did in fact exist elsewhere in the group and could have been paid up to the parent company, this would go to the issue of relief (from the claim for breach of directors' duties) rather than liability.

Creditor and insolvency issues

A company's financial circumstances may preclude the application of the *Duomatic* principle. If a company is facing financial difficulties such that, at common law, the requirement to consider the interests of its creditors (as opposed to its members) arises, it may not be possible to apply the *Duomatic* principle to ratify breaches of duty or non-compliance with the CA 2006 on the part of the directors. This may also be the case even if the company is not at that stage strictly insolvent.

The principle that a company's financial circumstances may preclude the application of the *Duomatic* principle has been recognised in case law. See *Stakefield (Midlands) and others v Doffman and another [2010] EWHC 3175 (Ch)* at paragraphs 44 and 45, where Newey J refers to the fact that interests of creditors can "intrude" and the application of the *Duomatic* principle may be barred, even when a company may not technically be insolvent but is in financial difficulties to the extent that the interests of its creditors are at risk.

In *Re Finch (UK) Plc [2015] EWHC 2430 (Ch)*, the liquidators brought a joint action against the company's directors for, amongst other matters, misfeasance and breach of trust on the issue and allotment and subsequent redemption of redeemable shares. It was alleged that the company had given its director a preference by redeeming the shares and crediting the director's loan account while it was at serious risk of insolvency. The allotment of the redeemable shares was in breach of Companies Act requirements (including for independent valuation of the non-cash consideration for the shares), but the court held that the breach of the statutory requirements was cured at that stage by application of the *Duomatic* principle (because the company was financially healthy). However, the redemption of the redeemable shares could not be cured by application of the *Duomatic* principle since at that stage that company was in financial difficulties and there were insufficient profits for the redemption.

By contrast, the *Duomatic* principle can be used to assist shareholders in placing a company into an insolvency process, for example where a shareholders' resolution is required but there is no quorate board to propose and circulate the resolution to shareholders. This is on the assumption that all members are capable of exercising their voting rights. See, however, *Randhawa and another v Turpin and another [2017] EWCA Civ 1201*, where the fact that one registered holder of voting shares was a dissolved corporation precluded the operation of the principle (see *Shares which are not capable of being voted* and *Legal update, Duomatic: dissolution of registered corporate member (Court of Appeal)*).

Class consents and procedures under shareholders' agreement

In *Re Torvale Group Ltd [1999]* (see *Substantial property transactions*) the court indicated that the *Duomatic* principle could be extended to shareholder class consents that may be required under a company's articles or the CA 2006.

Further, in Monecor (London) Ltd v Euro Brokers Holdings [2003] EWCA Civ 105, the Court of Appeal held that the *Duomatic* principle could also apply to formal corporate procedures set out in a private shareholders' agreement. For further information

relating to the Monecor decision, see *Legal update, Shareholders' agreement - Duomatic principle*.

Written resolution procedure

The availability of the *Duomatic* principle appears to have come under the spotlight since October 2007 when new, more prescriptive, requirements for passing shareholders' written resolutions were introduced by the CA 2006. Applying the *Duomatic* principle may offer some scope, depending on the facts, to save a procedure that may not have followed the strict requirements for passing written resolutions under the CA 2006.

Under the CA 1985, all that was required in order to pass a written resolution was for all the shareholders to sign the resolution. While as a matter of good practice it was common for the directors to meet and agree to circulate a proposed written resolution, this was not a legal requirement. Members could simply draw up and sign a written resolution and present it to the board as a *fait accompli*, without the board having had any advance notice of it. This approach was often used in situations where it would not be desirable to give prior notice to, or otherwise involve, the board in a particular decision. This might occur, for example, where shareholders wished to step in to prevent the board from undertaking a proposed course of action.

Under the CA 2006, the procedure for passing written resolutions is much more prescriptive, in that:

- Written resolutions must be proposed either by the directors (*section 291, CA 2006*) or by the members (*section 292, CA 2006*).
- Where the resolution is proposed by the members, the CA 2006 contemplates that it will be submitted to the board. Therefore, it is technically no longer possible for shareholders to pass a formal written resolution without involving the board and giving the board advance notice of the proposed resolution.
- Where a written resolution is requisitioned by the members, the company has 21 days to circulate the resolution. As a result, if the board wishes to drag its heels, it could take a few weeks for the resolution to be passed. Crucially, this may mean that the shareholders are unable to prevent the directors taking a proposed course of action.

Given these concerns, in relevant circumstances, and assuming that they all agree, shareholders may be able to fall back on the informal unanimous consent principle to ensure that they can continue to step in where necessary, to prevent the board acting against their wishes.

MEETING THE REQUIREMENTS OF THE DUOMATIC PRINCIPLE

For the *Duomatic* principle to apply, the shareholders must give both unanimous consent (see *Unanimous consent*) and informed consent (see *Informed consent*) to the matter in question. The matter must be within scope of the *Duomatic* principle (see *Scope of the Duomatic principle*).

Unanimous consent

The application of the *Duomatic* principle is dependent upon the consent of all the shareholders with a right to vote, and it is clear that a majority will not be sufficient to invoke the principle.

Shares which are not capable of being voted

In *Randhawa and another v Turpin and another [2017] EWCA Civ 1201* the sole director had appointed administrators even though the articles provided for a quorum of two for directors' meetings. D held 75% of the shares in the company on behalf of his father, R. The remaining 25% were registered in the name of a dissolved Isle of Man company (and R was probably also the beneficial owner of those shares). No one else was on the register in place of the dissolved company. In the High Court, the appointment of the administrator was upheld, partly on the basis that the acquiescence or consent of the 75% shareholder alone was sufficient to trigger the *Duomatic* principle because the other shareholder was incapable of voting. However, this was unanimously overturned by the Court of Appeal which held that the *Duomatic* principle requires "all shareholders who have a right to attend and vote" to assent (*Randhawa and another v Turpin and another, Sir Geoffrey Vos C at paragraph 81*). If one or more shareholders are incapable of being notified of a proposal or assenting to it, the principle will not apply.

It seems, following *Randhawa and another v Turpin and another*, that if a company has on its register of members a registered holder of voting shares that is incapable of voting those shares for any reason (such as a deceased member or a dissolved corporate entity), this fact will serve as a bar to the company being able to avail itself of the *Duomatic* principle in relation to

shareholder decisions. Although *Randhawa* concerned a dissolved corporate entity, it seems logical that the same analysis would apply to a deceased member (where the shares are not capable of being voted until the personal representatives have elected to become holders or to have the shares transferred).

For further information concerning the decision in this case, see *Legal update, Duomatic: dissolution of registered corporate member (Court of Appeal)*.

Assent by beneficial owners of shares

There is some uncertainty as to whether the assent of the beneficial owner (rather than the registered holder) of a share will be sufficient for the purposes of the *Duomatic* principle.

In *Deakin and another v Faulding and another [2001] EWHC Ch 7*, the court found that although one of the registered shareholders had not assented to the transaction in question, as she was, in effect, a nominee for another, her assent did not have to be proved and it was sufficient that the beneficial owner of those shares had assented to the transaction. However, in *Domoney v Godinho [2004] EWHC 328*, the court (without having to determine the issue in question) proceeded on the assumption that the *Duomatic* principle applies to registered members and not beneficial holders of shares.

These two cases were considered in *Shahar v Tsitsekkos and others [2004] EWHC 2659 (Ch)* where Mann J, although deciding that it was not a point for determination on summary judgment, was of the view that there was no reason why the *Duomatic* principle should not operate in relation to the beneficial owner of shares in an appropriate case if the facts justify it. He commented that the appropriate analysis may be that the beneficial owner is acting as agent of the nominee (as reasoned in *Deakin*) and that, in many cases, it would be possible to argue that a nominee shareholder has left all the real decisions to his beneficiary. In such cases, the consent of the beneficiary is technically the consent of the registered shareholder.

Further, in *Demite Ltd v Protec Health Limited [1998] BCC 638*, the court held that a sale agreement signed by two directors could not amount to an informal unanimous consent to that sale by the shareholders, even though the directors were the principal beneficiaries of the offshore vehicles that were the principal shareholders of the company (see further *Legal update, Sale by company in receivership*).

In *Randhawa and another v Turpin and another [2017] EWCA Civ 1201* the Court of Appeal did not support the suggestion given in the High Court that in a case where there is only one beneficial owner and the registered holder is a bare trustee bound to act in accordance with the beneficial holder's directions, the wishes of the beneficial holder are those that count. Sir Geoffrey Vos C commented at paragraph 84 that, "For what it is worth, I would be reluctant to express any view on whether it would be sufficient in any event for *Duomatic* purposes to obtain the consent of the person ultimately entitled to the beneficial interest in a shareholding if there is nobody entitled in formal terms to agree on behalf of the registered shareholder".

Board approval where directors represent all shareholders

In *Re Conegrade Limited* (see *Substantial property transactions*), the High Court held that, although a transaction amounted to a substantial property transaction requiring shareholder approval under section 320 of the CA 1985 (now *section 190* of the CA 2006), all those entitled to vote at the shareholders' meeting were present at the board meeting which approved the transaction and so, applying the *Duomatic* principle, the requirements of section 320 were satisfied in this instance.

Approval by director and sole shareholder of holding company

In *NBH Ltd & Anor v Hoare & Ors* (see *Substantial property transactions*), the court held that the informal approval of a director who was also the sole shareholder of the holding company of a subsidiary company which entered into a substantial property transaction was sufficient to satisfy the requirement for shareholder approval under section 320 of the CA 1985 (now *section 190* of the CA 2006).

Capacity

In *Re Express Engineering Works Ltd [1920] 1 Ch. 466* the Court of Appeal held that shareholders need not specify themselves as acting in a particular capacity so long as they all agree. In that case, although a meeting at which it was resolved to issue debentures was described as a directors' meeting (at which all the directors were precluded from voting under the articles) all five of the shareholders were present and it might have turned into a general meeting to transact the same business. The court therefore held that the issue of the debentures was valid and approved by the unanimous agreement of the members.

Shares held by executors

In *Rolfe and another v Rolfe and another [2010] EWHC 244 (Ch)*, the court considered the application of the *Duomatic* principle in circumstances where a sole shareholder held one of two shares as legal and beneficial owner, and the other as executor of a deceased shareholder's will. The court determined that the sole shareholder could not rely on the *Duomatic* principle for the purpose of establishing informal unanimous consent to the appointment of a director, where it was apparent from the evidence that the sole shareholder did not regard himself as being entitled to make decisions in respect of the share held in his capacity as executor and had, in fact, treated those beneficially entitled to the share under the deceased shareholder's will as entitled to make such decisions.

Informed consent

In order to satisfy the *Duomatic* test, the shareholders' consent must be fully informed. Where the shareholders have assented to a matter without being fully aware of its extent or implications, the *Duomatic* principle may not be available to save the transaction.

The requisite approval can be expressly given or assumed in certain circumstances (see *Is acquiescence as good as consent?*) but it is important that shareholders understand that their consent is necessary to the proposed act. In *EIC Services Ltd v Phipps [2003] EWHC 1507 (Ch)*, one issue was whether the issue and allotment of bonus shares had been effectively authorised by the members (as required by the company's articles). The members had been told about the proposed issue but there was no question of their consent being sought or given. Neuberger J held that this was not sufficient to authorise the bonus issue (and although the case went on to the Court of Appeal, the decision was not overturned on the authorisation issue).

The shareholders must, therefore, ratify or mandate the act in question, whether formally or informally, in the knowledge that their consent is necessary. It is not enough that consent or ratification would have been forthcoming had it been sought (*Re D'Jan of London Ltd [1993] 1 BCC 646, Hoffman LJ*). A similar conclusion was reached by the courts in *Re Logic Alliance Ltd* (see *Distributions*) and *Bonham-Carter and another v Situ Ventures Limited* (see *Removal of director under section 168 of the CA 2006*).

Similarly, in *Vinton and another v Revenue & Customs [2008] UKSPC SPC00666*, the Special Commissioner determined that the *Duomatic* principle could not be applied to give the character of a rights issue to what had been expressed as a share subscription.

Conversely, once the members have reached the requisite agreement, they cannot claim that they are not bound by that agreement because the formal procedures have not been followed (*Monecor (London) Ltd v Euro Brokers Holdings Ltd*).

What constitutes consent?

Is acquiescence as good as consent?

Acquiescence can be as good as consent, so long as the acquiescence is made with full knowledge of the relevant matters. In *Bailey, Hay & Co Ltd [1971] 1 WLR 1357*, shareholders who attended a meeting for winding up a company but abstained from voting were barred from later contending that they did not assent to the resolution purportedly passed at that meeting.

In *Re Home Treat Ltd [1991] BCLC 705*, Harman J commented (at page 709) that for the purposes of the *Duomatic* principle, acquiescence by shareholders with knowledge of the matter is as good as actual consent.

In addition, in the Government White Paper, *Modernising Company Law, July 2002*, it is specifically noted at paragraph 2.35 that the common rule allows for acquiescence by doing nothing in certain circumstances.

However, the limits of consent by acquiescence in this context came under the microscope in *Schofield v Schofield and Others [2011] EWCA Civ 154*. In this case, the court was required to consider whether a purported general meeting (at which an aggrieved minority shareholder was removed as sole director) was valid and effective under the *Duomatic* principle, despite being called without the proper period of notice required by the CA 2006. It was alleged that, by virtue of attending the meeting, the minority shareholder had treated the meeting as valid and effective despite the lack of proper notice and that by attending and voting, the shareholder had actively agreed to the validity of the meeting and the business transacted. Rejecting this argument, the court held that nothing short of unqualified agreement, objectively established would suffice and that, on the facts, there was no such agreement by the minority shareholder to the meeting's validity or the business transacted at it.

Requirement for outward manifestation of consent

In order for the *Duomatic* principle to apply, there must be an outward manifestation of the shareholders' consent. This requirement was drawn out in *Rolfe and another v Rolfe and another* (see *Shares held by executors*), where the judge did not accept that a shareholder's internal decision could constitute consent for *Duomatic* purposes. In his judgement, Newey J summarised the position on this point as follows:

> *"...for a mere internal decision, unaccompanied by outward manifestation or acquiescence, to be enough would, as it seems to me, give rise to unacceptable uncertainty and, potentially, provide opportunities for abuse. A company may change hands or enter into an insolvency procedure; in either event, it is desirable that past decisions should be objectively verifiable. In my judgment, there must be material from which an observer could discern or (in the case of acquiescence) infer assent."*

(*Rolfe and another v Rolfe and another, Newey J at paragraph 40.*)

Timing of consent

Where a resolution of the company must be passed before a particular transaction may take place, it may be necessary to show that the *Duomatic* assent was given before the transaction occurred, in order to satisfy the resolution requirement. If those required to give their assent were not aware of the transaction at the time, this may not satisfy the *Duomatic* test (although a subsequent ratification of the transaction may be available, subject to the restrictions on ratification contained in *section 239* of the CA 2006). It appears that this issue was relevant to the distinction made to *Re Peak* compared to the later cases considering the application of the *Duomatic* principle in the context of a share buyback (see *Share buybacks*).

Subject to the above, it does not matter whether the shareholders give their consent in different ways or at different times (see the statement of principle by Astbury J in *Parker and Cooper Ltd v Reading [1926] Ch 975*, endorsed by Buckley J in *Re Duomatic*).

FILING OBLIGATIONS

If a matter agreed to by way of informal unanimous consent would, if passed by resolution, have had to be passed by way of special resolution, a copy of that agreement or a memorandum of its terms must be filed at Companies House (*sections 29 and 30, CA 2006*).