

## Shareholders Rights

### Shareholders Resolutions

The original signatories to a company's Memorandum & Articles are the original shareholders or "members". A persons to whom shares are issued and whose name is entered in the Members Register, becomes a member of the company. It is possible to have a one person company. The procedures in respect of decision making is varied under Companies legislation to accommodate one person companies.

A resolution of the members or class of members of a private company can be made as a written resolution or in a meeting of the shareholders. Resolutions to remove auditors or directors are exceptions and an actual meeting is required.

The Companies Act 2006 attempts to simplify the provisions of earlier Companies legislation, which assumed a public company model of shareholder meetings. Written resolutions are assumed to be the normal mode of decision making by members of private companies. Meetings are still the normal mode for public companies. All private and public companies must hold a meeting if a sufficient number of members request one.

The resolution must specify whether it is "ordinary" or "special". A special resolution requires a larger than 75% in value majority. Ordinary resolutions require a majority in value of vote of eligible members. In the case of certain limited classed of fundamental matters, there are rights for a certain percentage to apply to Court to have the resolutions cancelled on the basis that the minority have been treated unfairly,.

### Matters Requiring Shareholders' Consent

Certain fundamental company decisions require the consent of the members. These include the following:-

- Amending the company's Memorandum and Articles (its basic rules);
- Special resolutions;
- Re-registering as a private company or public company;
- Approving certain director's service contracts, if it guarantees employment for more than two years;
- Approving substantial property transactions with a director or shadow director of the company or its holding company or persons connected with them;
- Approving loans, quasi loans or credit transactions to directors, shadow directors of the company or its holding company or connected persons;
- Approving compensation to a director, shadow director of the company or its holding company for loss of office;
- Ratifying conduct by a director which is negligent or in breach of duty to the company;
- Authorising certain political donations over £5,000 a year;
- In certain cases appointing an arbitrator;
- Unless certain other authorities exist, authorising directors to allot new shares;
- Disapplying members pre-emption rights to new shares;
- Approving agreement to acquire non cash assets from founder members;
- Sub-division and consolidation of stock;
- Certain other variations of capital;
- Reduction of share capital;
- Authorisations for the purchase of the company's own shares;
- Resolution that the company be voluntarily wound up;
- Acceptance by liquidator in a members voluntary liquidation of shares in another company

## **Resolution Procedure**

A written majority passed by a majority vote (of the votes entitled to be cast) is sufficient for decision making purposes. A written resolution may be proposed by the directors of

a private company. The proposed resolution must be sent to every member in hard form, electronic form or by means of a website. Alternatively, if it will not cause undue delay, a single document can be passed from one member to another.

A resolution sent to members must be accompanied by a statement informing them how to signify agreement to the resolution. If the resolution is to be a special resolution, this must be stated. The circulation date of a written resolution is the date upon which copies are sent or submitted. Members' agreement to a written resolution is signified when the company receives an authenticated document (hard or electronic) which identifies the resolution and indicates agreement. Certain means of authentication are specified.

## **Calling Shareholder's Meetings**

Since October 2007, the rules on annual general meetings have been changed. Private companies can choose to hold them, but they need not do so. These new provisions only apply if the Memorandum & Articles do not say otherwise (which will often be the case). If a company does hold an AGM, it must send written notice to the directors and shareholders 14 days in advance.

It is no longer necessary to circulate copies of the company accounts before an AGM. They must be sent to members before they are due to be filed in Companies House. Directors and shareholders can vote on the appointment of directors and auditors if required. Ordinary resolutions can be passed by a simple majority and special resolutions by 75% majority. Extraordinary special resolutions must be filed at Companies House.

In normal course, the directors convene meetings of the shareholders. The shareholders of a private company, with the requisite percentage of voting rights, may require a company to circulate a resolution which they propose together with accompanying statements. The requisite percentage is 5% unless the Articles specify a lower percentage. The statement cannot be more than 1,000 words.

A sufficiently large number of members of either a public or private company may require a director to call a general meeting within 21 days. The required percentage for a private company is 5% unless no more than 12 months has passed since the last general meeting in relation to which members had equivalent rights to get their own message on the agenda.

The Company Court has power to order company meetings upon application in appropriate circumstances.

## **Unfair Prejudice of Shareholders**

A member of a company may apply to court for an order on the grounds that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself) or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

This right seeks to protect minority shareholders in circumstances where the majority shareholders act in a way which is unfairly prejudicial to their interests. What conduct is classed as unfairly prejudicial is a matter of interpretation. Broadly, there is a right to apply to court if the majority shareholder(s) run the company in a manner that damages their position and the worth of their shareholding, often done deliberately and often by misapplying or misusing company assets.

The misconduct must be serious and must stand up to objective analysis. It is not enough that the minority shareholder disagrees with the way that the majority shareholder and their nominee directors are running the company. Examples of unfairly prejudicial conduct might be using company assets or money for the personal benefit of a shareholder or the majority shareholder(s) paying themselves far more than people in their position could objectively justify.

Where an unfair prejudice can be established, the Companies Act provides that the court may make such order as it thinks fit. The most common order made by the court is an order that one or more of the shareholders should purchase the shareholding of the other shareholder(s). Normally, the court will order the majority shareholders must purchase the shareholding of the minority shareholder(s) at a fair value.

## Derivative Action

The Companies Act 2006 introduces a new procedure enabling a shareholder to bring a claim against the directors of the company for negligence, default, breach of duty or breach of trust. Claims for actual or proposed acts or omissions will be allowed. There is a two stage test requiring the shareholder to obtain the court's permission to continue a claim. The court must bring proceedings to a end if there is no prima facie case; and Second the court has a discretion to refuse or grant leave to continue a claim, taking account of specified matters.

The court has to refuse permission for the claim if the directors acting in accordance with their duty to promote the success of the company would not seek to continue the claim or the matter complained of has been authorised in advance or has been ratified subsequently. In considering whether to give permission the court must take into account

- the views of any independent members,
- the importance a director promoting the success of the company would attach to continuing the claim, plus whether:
- the shareholder is acting in good faith;
- the company is likely to authorise or ratify the matter;
- the company has decided not to bring a claim; and
- the case could be brought by the shareholder in his own right rather than on behalf of the company.

---

*This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.*

*This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.*

*While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.*

© Paul McMahon, Lavelle Coleman 2009