



**ENTREPRENEURIAL
BUSINESS LAWYERS**

COMPANY RESOLUTIONS

INTRODUCTION

This article provides only a general guideline to company resolutions. It is not intended to be fully comprehensive and detailed advice should be sought in each case.

Please note that a copy of every resolution or a written record of the passing of that resolution must be forwarded to Companies House within 15 days after it is passed.

TYPES OF RESOLUTION

A company resolution is an agreement or decision made by the members i.e. shareholders (or a class of members) of a company. When a resolution is passed, the company is bound by it.

The members of a company in General Meeting will normally carry out their business by ordinary resolutions. However, a number of matters do require the passing of a special resolution. Each of these types of resolution can be effected by written procedure.

ORDINARY RESOLUTIONS

An ordinary resolution is a resolution which requires over 50% of the votes passed at a meeting of the members of the company of which 14 days notice has been duly given.

For example, ordinary resolutions are used:

- To subdivide, consolidate or reclassify shares;

- To grant directors the authority to allot shares (which may include shares pursuant to warrants and options);
- To approve certain reduction of share capital measures.

Special Notice under Section 312 of the Companies Act 2006 is required for certain ordinary resolutions. These include the removal of a director, the appointment of an auditor to fill the casual vacancy for the office of auditor, and the reappointment of an auditor who is appointed by the directors to fill the casual vacancy. In each case the resolutions will not be effective unless the intention to vote on it has been given to the company at least 28 days before the meeting at which it is considered.

The company should give its members notice of any such resolution in the same manner as it gives notice of the meeting, or where this is not practicable, by advertisement in the appropriate newspapers or any other mode allowed by the Articles.

SPECIAL RESOLUTIONS

Special resolutions are defined by Section 283 of the 2006 Act as a resolution of the members (or of a class of members) of a company passed by a majority of not less than 75% of the votes passed at a meeting. Common examples of special resolutions are

to change the name of a Company or to alter the Articles of a Company.

A declaration of the Chairman of the meeting that the resolution is carried is conclusive evidence of the fact without proof of the number of votes recorded for or against the resolution, unless a poll is demanded. This ensures that a special resolution may not be challenged on the grounds that certain members were not qualified to vote.

Only the votes of those attending the meeting will be counted and unless a poll is demanded, each member in attendance will usually have a single vote, regardless of the number of shares they may hold.

ENTRENCHMENT

Section 22 of the 2006 Act allows the Company to entrench certain provisions of its Articles. This imposes particular requirements on the members of the company which they must comply with before they can amend or remove the entrenched provisions. Such requirements could include the specific authority of named individuals, or a special resolution passed at a higher majority than the default 75%.

Provisions may only be entrenched on the incorporation of the Company or with the unanimous authority of the members.

FILING DEADLINES

There is a 15 day deadline for the filing of resolutions at Companies House. Any changes which affect the Articles must also be embodied in an updated form of Articles which is also filed. The company and every officer of it who is in default of these two requirements will be liable to a fine.

OTHER PROVISIONS REQUISITIONS

The members of a company representing not less than one twentieth of the total voting rights of all members having the right to vote

at a meeting (or 100 members) sum paid up is not less than £100, can requisition the company in writing to hold a general meeting and to circulate to those members entitled to receive notice of any resolution that is proposed and any statement of not greater than 1000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

Unless the company resolves otherwise, the expense of doing so will be met by the requisitionists. A copy of the requisition signed by the requisitionists must be deposited at the registered office of the company at least one week before the meeting together with the money needed to meet the company's expenses. If, however, the requisition requires notice of a resolution, the requisition must be deposited at the registered office not less than six weeks before the meeting. An application to the Court can be made to prevent the circulation of the statement on the grounds that it is being done to secure needless publicity of a defamatory nature.

CIRCULATION OF DIRECTOR'S REPRESENTATIONS

On receipt of notice of a resolution to remove a director the company must send a copy of the notice to the director concerned. The director may protest his intended removal by requesting that the company circulate written representations of a reasonable length. If copies of the representations are not sent the director may, in addition to his right to be heard orally, require that the representations be read out at the meeting.

WRITTEN RESOLUTION PROCEDURE

The 2006 Act removed the requirement of unanimous consent for the passing of a written resolution.

Written resolutions have effectively been placed on a similar footing to the passing of ordinary and special resolutions at a general

meeting, in terms of the percentage vote in favour of the resolution that is required.

The changes to the written resolution regime were designed to make written resolutions more accessible to private companies that have a number of shareholders rather than only really being appropriate for single member companies or companies with very few shareholders.

KEY CHANGES UNDER THE COMPANIES ACT 2006

The main substantive changes under the 2006 Act are the following:

- Private companies have the ability to pass written ordinary resolutions by a simple majority of those eligible to vote and written special resolution with a 75% majority of those eligible to vote, rather than requiring the unanimity required under the 1985 Act;
- Only private companies can pass written resolutions.

GENERAL NOTES

Chapter 1 of the 2006 Act contains the provisions relating to the passing of resolutions and the percentages required to pass a written ordinary and a written special resolution:-

- Section 282(2) (ordinary resolutions) provides that a written ordinary resolution may be passed by members representing a simple majority (over 50%) of the total voting rights of eligible members;
- Section 283(2) (special resolutions) provides that a written special resolution may be passed by members representing not less than 75% of the total voting rights of eligible members.

Note-

- "Eligible members" are defined as the members who would have been entitled to vote on the resolution on the circulation date of the resolution (section 289(1));
- "the circulation date of the resolution" (rather than simply "the date of the resolution") ties the date for determining the eligible members down to an identifiable point in time rather than by reference to a date that is not known until the last member to sign, signs the written resolution (as was the case under the 1985 Act);
- A resolution is not passed as a special resolution unless it states that it was proposed as a special resolution;
- On a vote on a written resolution every member has one vote in respect of each share. The provisions relating to votes will have effect subject to any provisions of the company's articles of association;
- Auditors continue to be entitled to receive copies of written resolutions proposed to be agreed by members.

PROCEDURES TO PROPOSE A WRITTEN RESOLUTION

Written resolutions can be proposed by the directors or the members.

(i) Written resolutions proposed by directors:

Section 291 of the 2006 Act sets out the provisions relating to the circulation of written resolutions proposed by directors. In summary:

- a copy of the resolution must be sent to every eligible member (see above), either in hard copy, in electronic form or by means of a website;

- copies must be sent at the same time (so far as reasonably practicable) to all eligible members; and
- the copy of the resolution must be accompanied by a statement informing the member how to signify agreement to the resolution and as to the date by which the resolution must be passed if it is not to lapse.

Failure to comply with the requirements of section 291 will constitute a criminal offence which is punishable on conviction by a fine. Failure to comply with section 291 will not affect the validity of a written resolution, if passed, however.

(ii) Written resolutions proposed by members and Members Statements:

- Section 292 gives the members of a private company the power to require the company to circulate a resolution that may be passed as a written resolution (that is, not a defamatory, frivolous or vexatious resolution). The members may also require the company to circulate with the resolution a statement of not more than 1,000 words on the subject matter of the resolution.
- A company is required to circulate the written resolution and any accompanying Statement once it has received requests to do so from members representing not less than the "requisite percentage" of the total voting rights of all members entitled to vote on the relevant resolution. For these purposes, the "requisite percentage" is 5% or such lower percentage as is specified for this purpose in the company's Articles.
- Sections 292 and 293 provide for the form of the request from members to

the company to circulate a written resolution as well as the procedure and timing for the circulation of the written resolution.

PASSING WRITTEN RESOLUTIONS

Section 296 of the 2006 Act sets out the procedure to pass a written resolution:

- a member signifies his agreement to a proposed written resolution when the company receives from him (or someone acting on his behalf) an authenticated document identifying the resolution to which it relates and indicating his agreement to the resolution;
- the document signifying the member's agreement to the written resolution must be returned to the company either in hard copy form or in electronic form (if permitted); and
- once a member has signified his agreement to a written resolution, his agreement may not be revoked. This provides certainty for the company as to when the required majority of eligible members necessary to pass the resolution has been reached.

TIME LIMITS

A company may either specify a period for agreement to written resolutions in its articles of association OR, if no such period is specified in a company's articles, the written resolution will lapse if it is not agreed to within 28 days of the circulation date of the resolution. The agreement by a member will be ineffective if it is given after the time period.

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For further details, please contact:

Stuart Hendry

Kenny Mumford

Tracey Ginn

Michael Arnott

Tel:

Edinburgh: 0131 226 8200

London: 0203 962 1796

E-Mail:

stuart.hendry@mbmcommercial.co.uk

kenny.mumford@mbmcommercial.co.uk

tracey.ginn@mbmcommercial.co.uk

michael.arnott@mbmcommercial.co.uk