



Special Release No.2

The Companies Act 2006

May 2007

Meetings And Resolutions

Introduction

The Companies Act 2006 (the 'Act') was finally passed in November of last year. The Act is the culmination of eight years of consultation, and repeals and restates almost all of our current company law. Due to this, the government has provided for staged implementation of the Act. Some of the Act has already come into force, but the first principle date for implementation is 1 October 2007. Part 13, dealing with resolutions and meetings, is one of the main areas coming into force on this date, and this bulletin highlights some of the most significant changes for companies. One of the central themes of the Act is "think small first" – the legislation is set out so that provisions applicable to private companies come first, with any supplementary provisions for public and/or quoted companies following on afterwards. This bulletin takes a similar approach.

Private Companies

The two main changes to bear in mind are:

- private companies will no longer need to hold annual general meetings ('AGMs'); and
- it will become the norm for private companies to take decisions by way of written resolution.

General meetings

A private company may still hold an AGM each year if it wants to, but there will no longer be the obligation to do so. The follow-on from this is that for private companies there will no longer be a requirement to lay accounts and reports at a general meeting. In addition, auditors will not need to be reappointed at a meeting – instead they will be deemed to be reappointed unless a company's Articles of Association ('Articles') require actual reappointment or 5% of the shareholders send notice to the company that the auditors should not be reappointed. In terms of what this means for existing companies, any express requirement to hold an AGM in a company's Articles will need to be removed before such company can take advantage of this relaxation. However, any indirect inferences to an AGM can be disregarded, for example if the Articles require that directors shall retire by rotation at an AGM, their appointment will continue until terminated in accordance with the Act or other provisions in the Articles.

Notice periods for general meetings will be 14 days, regardless of the type of resolution being proposed, unless a company's Articles provide for a longer period. However, the Act will allow members of a private company holding 90% of the share capital to agree to hold a meeting on short notice (rather than the current 95%).

Written resolutions

Written resolutions will be able to be passed by private companies with the same consent level as ordinary and special resolutions (as

appropriate). So an ordinary resolution in writing will require the agreement of more than 50% of shareholders eligible to vote, and a special resolution in writing will require the agreement of not less than 75% of shareholders eligible to vote. This contrasts with the current unanimity requirement for passing both such types of resolution. Note, however, that as currently, written resolutions cannot be used to remove a director or auditor before the end of their term office. Points to note on the new procedure include:

- a written resolution can be proposed by the directors or by members holding not less than 5% of the total voting rights;
- the resolution can be sent to members in hard form copy, electronic form or by means of a website depending on how the company has agreed to communicate with its members;
- the resolution does not have to be physically signed by shareholders – a shareholder is treated as signifying his agreement to a resolution when the company receives from him an authenticated document (in hard copy or electronic form) identifying the resolution and indicating his agreement;
- the company must send out guidance to its members explaining how to signify agreement to the resolution and the date by which the resolution must be passed if it is not to lapse;
- a proposed written resolution lapses if it is not passed before the end of the period specified in the Articles or (if silent) 28 days beginning with the circulation date;
- members can require any resolution to be moved as a written resolution unless it would if passed be ineffective, it is defamatory of any person, or it is frivolous or vexatious; and
- there is no longer a requirement to send a copy of the resolution to the auditors.

Other Changes

- Member's rights to **appoint proxies** are enhanced for all companies, and proxies will have the **same rights to attend and to speak and vote** at meetings as the member.
- On a **vote on a show of hands, every proxy** present at the meeting will have **one vote**. Articles will not be able to provide that a proxy has fewer votes on a resolution on a show of hands than the member would have if he was present in person.
- Members will have the **statutory right to appoint more than one proxy**, provided each is appointed to exercise the rights attached to different shares held by the member.
- All companies will be able to include a provision in their articles of association allowing **the registered member to nominate another person to enjoy and exercise all or some of his member's rights**, including: to require circulation of a resolution for the AGM; to require directors to call a general meeting; to receive notice of general meetings; to be sent a copy of the annual report and accounts; and to appoint a proxy. This provision is obviously aimed at giving rights to the indirect investor who holds shares through an intermediary member. Note, though, that not only does the company need to include the appropriate authorities in its Articles, the registered member must agree to confer such rights on the indirect investor.

Public And/Or Quoted Companies:

- In addition to the right noted above relating to all companies, a member of a quoted company who holds shares on behalf of others may request that the **beneficial owner of shares should enjoy certain information rights**, such as receiving a copy of all communications that the company sends to members generally or to any relevant class of members, and to receive a hard copy version of a document provided in another form (e.g. on a website). Unlike the right referred to above, there is no need for companies to amend their Articles for these information rights provisions to take effect.
- A quoted company must **publish the results of any poll on its website**. Members will in certain circumstances be able to request an **independent report** on any poll taken or to be taken at a general meeting of the company. The request must be made no later than one week after the date on which the poll is taken by: (i) members holding at least 5% of the total voting rights of all members who have a right to vote on the poll; or (ii) at least 100 members who have a right to vote on the poll and who hold shares in the company with an average sum of not less than £100 paid up on those shares.
- Where directors are compelled to **circulate a members' statement** of up to 1,000 words explaining any members' resolution or any other matter to be discussed at a general meeting by some of the members, the **cost of this will now have to be borne by the company** if the company is a public company, the meeting for which the statement is relevant is an AGM, and the circulation of the statement has been requested before the end of the financial year preceding the meeting.

Conclusion

The changes which are being brought into force in October 2007 will have a significant administrative impact on the way in which private companies carry on their business. Other changes are designed to enhance the rights of certain groups, such as indirect shareholders, and to increase transparency. In this area at least the government can rightly claim that the Act has fully shaken up company law.

Contacts

This Special Release is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

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