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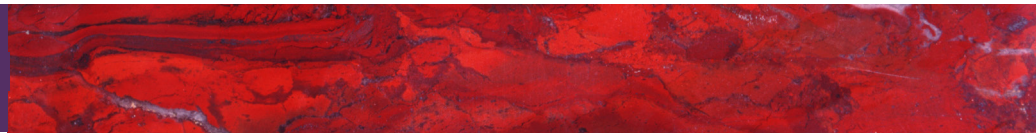
Members' Meetings

COMPANIES ACT 2014



The Companies Act 2014 (the "**Act**") came into effect on 1 June 2015 and has introduced significant reforms in company law in Ireland. The Act has since then been amended and updated.

Whilst much of the law relating to meetings of directors of a company is unchanged by the Act, there are some reforms worth mentioning.

The law relating to directors' meetings of a private company limited by shares (LTD) is set out in Chapter 4 of Part 4 of the Act. Insofar as applicable the provisions cover meetings of a committee of a board of directors.

Key Features

- An LTD may dispense with holding an AGM.
- Any other company type may dispense with an AGM if it has only one member.
- Majority written resolutions are available to companies (other than public limited companies (PLCs), companies limited by guarantee (CLGs) and unlimited companies (UCs)) but the constitution of a designated activity company (DAC) can disapply same.
- Unanimous written resolutions are available to companies but the constitution of a PLC, DAC, CLG or a UC can disapply same.
- AGMs need not be held in the State.

Annual General Meetings (AGM)

There remains an obligation on an LTD to hold an AGM in every year, and at not more than 15 month intervals, however, the first AGM may be held within 18 months. An LTD need not hold an AGM in any year where all the members entitled to attend and vote at such general meeting sign, before the latest date for the holding of that meeting, a unanimous written resolution:

a) acknowledging receipt of the financial statements that would have been laid before the AGM;

b) resolving all such matters as would have been resolved at that meeting; and

c) confirming no change is proposed in the appointment of the person (if any) who, at the date of the resolution stands appointed as statutory auditor of the company.

No longer must AGMs be held in the State and now all general meetings, including AGMs, may be held inside or outside the State. Where any general meeting is held outside of the State, unless all of the members entitled to attend and vote consent in writing to its being held outside of the State, the company has a new duty to ensure that members can by technological means participate in any such meeting without leaving the State. A general meeting can be held in two or more venues (whether inside or outside the State) at the same time using any technology that provides members as a whole with a reasonable opportunity to participate.

The Director of Corporate Enforcement is empowered to direct the calling of an AGM where a member of the company applies to him.

Convening Extraordinary General Meetings (EGM)

The Act provides that the directors of a company may, whenever they think fit, convene an EGM. If there are insufficient directors capable of acting to form a quorum for a directors' meeting, then any director or any member may convene an EGM in the same manner (as nearly as possible) as that in which meetings may be convened by the directors.

Even where there are sufficient directors capable of forming a quorum, the Act confers both optional rights that apply unless the constitution provides otherwise ('optional default rights') and mandatory rights that cannot be taken away by the constitution ('mandatory rights') to members to convene or cause to be convened a general meeting.

The optional default right is that, one or more members holding not less than 50% (or such percentage as may be specified in the constitution) of the paid up share capital carrying the right to vote at general meetings may convene an EGM. This is a new provision in Irish company law and confers the right to convene, as opposed to require to be convened, an EGM.

The mandatory right of members holding not less than 10% to require the directors to convene an EGM is broadly a restatement of the previous law.

The previous power of the court to convene a general meeting is enhanced under the Act.

Notice of General Meetings

The Act now confers a statutory right on the following persons to receive notice of every general meeting: every member (whether or not entitled to vote), the personal representative of a deceased member who has the right to vote, the assignee in bankruptcy of a bankrupt member (who has the right to vote), and the directors and secretary of the company. Where a company has auditors they are entitled to attend, receive notices and other communications relating to general meetings and be heard at general meetings.

Unless a company's constitution provides for longer notice, the statutory minimum notice of general meetings applies:

a) 21 days for AGMs and EGMs for the passing of a special resolution; and

b) 7 days for EGMs.

In calculating a notice period you exclude the day it is served and the day of the meeting (*ie clear days* notice is required). Unless the constitution provides otherwise, the accidental omission to give notice or its non-receipt shall not invalidate proceedings. Shorter notice can be given where all of the members entitled to attend and vote agree and, where there are auditors, the auditors also agree. Where a notice is posted, it is deemed to have been delivered 24 hours later.

A notice of a meeting must specify the place, date and time of the meeting, the general nature of the business to be transacted, the text or substance of any special resolution and a statement that a member entitled to attend and vote is entitled to appoint a proxy and related proxy information.

Quorum for General Meetings

No business can be transacted at a general meeting unless a quorum is present and, save to the extent that a constitution provides otherwise, two members of a company present in person or by proxy shall be a quorum. In a single-member company, one member present in person or by proxy is a quorum, and this implicitly provides authority for the fact that one person can constitute a meeting.

Unless the constitution provides otherwise, if within 15 minutes (under the default rule in Table A to the Companies Act 1963 the period was 30 minutes) after the appointed time a quorum is not present, then where it had been convened by the members it is dissolved; otherwise, it will stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the directors determine and if at the adjourned meeting a quorum is not present within 30 minutes, the members present will be a quorum.

Proxies and Authorised Persons

The rights of members who are entitled to attend and vote at meetings of the company to appoint a person (who needs not be a member) as their proxy to attend and vote on their behalf are contained in the Act. A member is only entitled to appoint one person as proxy, but the constitution can provide otherwise. The Act contains provisions on the creation of a proxy, its deposit with the company and the time within which this must be done (48 hours unless a lesser time is prescribed in the constitution and the proxy may be deposited using electronic means). The form of a proxy is set out in the Act and includes a new choice, namely, to "abstain" (*ie* it is not just confined to voting "for" or "against" as was previously the case). A proxy form confers the authority to demand a poll.

Bodies corporate continue to be allowed to appoint authorised persons to represent them at meetings.

The Business of the AGM

The Act sets out a non-exhaustive list of what the business of an AGM must include, namely:

a) the consideration of the company's financial statements, directors' report and, if applicable, auditors' report;

b) the review by the members of the company's affairs;

c) unless the constitution provides otherwise: the declaration of a dividend (if any) of an amount not exceeding the directors' recommendation and the authorisation of the directors to approve the auditors' remuneration (if any);

d) where the constitution so provides, the election and re-election of directors;

e) the appointment or re-appointment of the statutory auditors (if applicable); and

f) where the constitution so provides, the remuneration of the directors.

The distinction between ordinary and special business in previous law is not included in the Act.

Chairing of General Meetings and proceedings

Unless a company's constitution provides otherwise, all of the following provisions apply to the proceedings at general meetings as a statutory default:

- The chairperson of the board of directors presides, or if there is none, or he or she is not there within 15 minutes, the directors elect one of their number to chair, or if none is willing to act, the members must choose one of their number to chair.
- The chairperson may with the consent of a quorate meeting, and must if directed, adjourn the meeting from time to time and place to place.
- Only unfinished business can be transacted at the meeting from which the adjournment took place.
- Unless a poll is demanded, voting is to be by a show of hands and a declaration by the chairperson as to whether or not a resolution has been carried, or carried by a particular majority, and an entry in the minutes to that effect, is conclusive evidence of that fact.
- The chairperson has a casting vote (whether the equality of votes arises on a show of hands or a poll).

Votes of Members

Unless a company's constitution provides otherwise, all of the following provisions apply:

- subject to the rights or restrictions attaching to any class of shares, on a show of hands every member present in person and every proxy has one vote, but no individual member has more than one vote; and on a poll every member has one vote for each share held;
- in the case of joint holders, the vote of the senior holder (first named in the register of members) who tenders a vote whether in person or by proxy must be accepted;
- persons of unsound mind or who have made an enduring power of attorney or in respect of whom an order has been made by a court having jurisdiction in cases of unsound mind may vote by his or her committee, donee, receiver, guardian or other court-appointed person. Such persons can also speak and vote by proxy;
- no member can vote unless all calls or other sums immediately payable in respect of his or her shares have been paid;
- no objection can be raised to the qualification of any voter except at the meeting or adjourned meeting and every vote not disallowed at such meeting is valid. Any objection is to be decided upon by the chairperson whose decision is final and conclusive.

The Right to Demand a Poll

A poll may be demanded at a meeting in relation to a matter, whether before or on the declaration of the result of the show of hands. This is a mandatory provision which the constitution cannot vary.

Those entitled to demand a poll are specified as being the chairperson, at least three members present in person or by proxy, any member or members representing not less than 10% of the total voting rights of all the members of the company having the right to vote at meetings, and any member or members holding shares conferring the right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on the shares conferring that right. The right to demand a poll may be withdrawn.

If a poll is demanded it is to be taken in such a manner as the chairperson directs (however a poll demanded with regard to the election of a chairperson or on a question of adjournment must be taken forthwith).

On a poll a member, whether present in person or by proxy, who is entitled to more than one vote need not, if he or she votes, use all of his or her votes or cast them in the same way.

Ordinary and Special Resolutions

For the first time, "ordinary resolution" is defined as "a resolution passed by a simple majority of the votes cast by members of a company as, being entitled to do so, vote in person or by proxy at a general meeting of the company."

Special resolution is afforded a different definition to that in the Companies Act 1963 and now means a resolution that:

a) is referred to as such in the Act, or is required (whether by the Act or by a company's constitution or otherwise) to be passed as a special resolution, and

b) is passed by not less than 75% of the votes cast by such members of the company concerned as, being entitled to do so, vote in person or by proxy at a general meeting, and

c) is passed at a meeting of which 21 days' notice has been given and which complies with the requirements of the Act as to place, date, time, nature of business, text of the special resolution (as mentioned above).

A resolution may still be proposed and passed as a special resolution at a meeting of which lesser notice has been given where it has been so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority either (a) together holding not less than 90% in nominal value of the shares giving that right, or (b) together representing not less than 90% of the total voting rights at that meeting of all the members.

It is also specifically provided that "written resolution" (discussed below) means either an ordinary resolution or a special resolution passed in accordance with the Act.

A resolution passed at an adjourned general meeting is treated as having been passed on the date on which it was in fact passed and not at any earlier date.

Unanimous Written Resolutions

The Act provides that a resolution in writing signed by all of the members entitled to attend and vote on such a resolution at a general meeting is as valid and effective for all purposes as if it had been passed at a general meeting duly convened and held (and if described as a special resolution is deemed to be a special resolution). Under previous law, such a resolution could only be passed by certain types of company if their constitution so permitted.

A written resolution may consist of several documents in like form signed by one or more members and is deemed to have been passed on the date on which it was signed by the last member to sign; and where a signature is dated, that is *prima facie* evidence that it was signed on that date.

The signatories of a written resolution are required to deliver it to the company within 14 days of its passing and where a resolution is not contemporaneously signed, the company must notify the members of its passing within 21 days of the company itself having been notified. The company is required to retain the resolution sent to it as if it were minutes of a meeting. The failure to comply with the foregoing administrative requirements does not invalidate the resolution.

As was previously the case, a unanimous written resolution does not apply to the removal of a director or of a statutory auditor. It is still possible for the sole member of a single member company to remove a director by means of a written decision. The Act also provides that the unanimous written resolution procedure does not apply to the acquisition by a company of its own shares.

Majority Written Resolutions

Majority written resolutions, whether ordinary or special, are a welcome reform of Irish company law. A resolution in writing:

a) that is described as being an ordinary resolution;

b) that is signed by a member or members who alone or together, at the time of signing, represent(s) more than 50% of the total voting rights of all the

members who would have the right to attend and vote at a general meeting at that time; and

c) the proposed text of which, and an explanation of its main purpose, has been circulated, by the directors or the other person proposing it, to all the members of the company who would be entitled to attend and vote on the resolution,

is as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held. This process cannot be used to remove a director or auditor.

Where such a resolution is described as being a special resolution and is signed by a member or members representing 75% of the total voting rights and (c) above is complied with, it is as valid as a special resolution passed at a general meeting.

As with a unanimous written resolution, a majority written resolution may consist of several documents in like form signed by one or more members.

An important point to note is the mandatory delayed effect of majority written resolutions (unlike a unanimous written resolution which is effective once the relevant members sign same). The Act provides that an ordinary resolution passed as a majority written resolution is deemed to have been passed at a meeting held 7 days after the date on which it was signed by the last member to sign and a special resolution passed as a majority written resolution is deemed to have been passed at a meeting held 21 days after the date on which it was signed by the last member to sign. The mandatory delayed effect can be waived where all of the members who are entitled to attend and vote on the resolution state, in a written waiver signed by each of them, that the delayed effect is waived.

The members who sign a written resolution must deliver the resolution to the company (mandatory, see below) and within 3 days of the resolution being delivered to the company, the company must notify every member of the fact that the resolution was signed by the requisite majority and the date that it is deemed to be passed and the company must retain the resolution as if it were minutes of a meeting.

Note that a majority written resolution is of no effect unless it is delivered to the company, however, non-compliance with the other administrative rules described above do not affect the validity of the resolution.

Single-Member Companies

The Act confirms that all the powers exercisable by a company in general meeting are exercisable by the sole member without the need to hold a general meeting; this includes the power to remove a director, although this is expressed to be *"without prejudice to the application of the requirements of procedural fairness to the exercise of that power of removal by the sole member"*.

Statutory auditors may not, however, be removed by a sole member without holding the requisite meeting.

Any provision of the Act which enables or requires any matter to be done or to be decided by a company in general meeting or requires any matter to be decided by a resolution, is deemed to be satisfied by a decision of the sole member drawn up in writing and notified to the company.

Registration of Resolutions and Agreements

As under previous law, copies of certain resolutions (being all special and certain ordinary resolutions) and agreement must be forwarded by the company concerned to the registrar of companies within 15 days after the date of their passing or making.

Minutes of Meetings

A company must, as soon as may be after the holding of a meeting of members or passing of a resolution, cause minutes and the terms of all resolutions to be entered in books.

Designated Activity Companies

The law of meetings as it applies to the DAC is that set out above as applying to the LTD, subject to some modifications:

- a DAC may only dispense with holding an AGM if it has one member;
- the unanimous written resolution process applies to a DAC unless its constitution expressly disallows the use of same; and
- the majority written resolutions process also applies to a DAC unless its constitution expressly disallows the use of same.

Guarantee Companies

The law of meetings as it applies to the CLG is that set out above as applying to the LTD, subject to certain modifications and supplemental provisions (having regard to the fact that a CLG has no share capital), the main ones being:

- the provisions on majority written resolutions are expressly disapplied in respect of CLGs;
- a CLG may not dispense with holding an AGM unless it has one member;
- the constitution of a CLG can remove the right to appoint a proxy (note that no such right is contained in the default rules in Table A);
- unless the constitution provides otherwise, every member of a CLG has one vote, whether on a show of hands or a poll, and a member has no vote unless all monies payable to the company in respect of that member have been paid; and
- the unanimous resolution procedure can be disapplied where a CLG's constitution so provides.

Unlimited Companies

The law of meetings as it applies to the UC is that set out above as applying to the LTD, subject only to one disapplication and some modifications:

- a UC cannot use the majority written resolution procedure;
- a UC can dispense with the holding of an AGM if it has only one member; and
- the unanimous written resolutions process applies to a UC unless its constitution expressly disallows the use of same.

Generally, it may be noted that there are no differences introduced in relation to the law of meetings as it applies to the private unlimited company (ULC), public unlimited company (PUC) or public unlimited company without a share capital (PULC).

Public Limited Companies

The law of meetings as it applies to the PLC is that set out above as applying to the LTD subject to certain disapplications, modifications and supplemental provisions, the main ones being:

- the provisions on majority written resolutions are expressly disapplied in respect of PLCs;
- the unanimous resolution procedure can be disapplied where a PLC's constitution so provides;
- there is specific permission for a PLC that is a "participating issuer" to set a "record date" up to 48 hours before a meeting is held in order to determine members' rights to attend and vote at a meeting and how many votes may be cast;
- a PLC may only dispense with holding an AGM if it has one member;
- the unanimous written resolution process applies to a PLC unless its constitution expressly disallows the use of same;
- there is specific permission for a PLC that is a participating issuer for the purposes of serving notices of meetings, to determine that persons entitled to receive notices are those entered on the relevant register of securities at the close of business on a determined day;
- in the case of every PLC, at least 14 days' notice must be given of an EGM;
- the directors of a PLC must convene a general meeting in the case of a serious capital loss;

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(continued)

- notwithstanding anything in the constitution of a PLC, whose shares are admitted to trading on a regulated market in any Member State (a traded PLC), certain provisions (required under EU law concerning shareholder rights) are retained.

Action Required

Company secretaries and others involved in the administration of companies need to become familiar with the provisions in the Act, in particular the reforms introduced by the Act concerning members' meetings and resolutions. Template documentation requires amendment and the changes necessary depend on the company type involved.

In certain instances, members of a company have enhanced rights under the Act when it comes to convening meetings for example, so each member ought to consider such rights in detail.

For further information please contact

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