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Meetings and Written Resolutions

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Meetings and Written Resolutions – How do the changes affect your company?

One of the stated aims of the Companies Act 2006 (the “2006 Act”) was to make it easier to set up, run and manage a private limited company. It has done this by introducing new provisions relating to members’ (shareholders) meetings and resolutions.

The main changes are:

- abolition of compulsory AGM for private companies, unless required by the Articles of Association;
- shortening of the notice period for general meetings to 14 days;
- written resolutions can now be passed by a majority;
- electronic communications are encouraged.

The FAQ’s below will give you some guidance, if you should have any further questions we will be happy to advise.

Can we use a written resolution instead of calling a general meeting?

Yes, unless the resolution relates to the removal of a director or auditors from office before the expiration of their term of office.

What percentage of votes is required for a written resolution to be passed?

It depends on the resolution. If it is an ordinary resolution, it will be passed by a simple majority of those eligible to vote. If it is a special resolution it will need a 75% majority of those eligible to vote.

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What is the procedure for sending the written resolution to members?

It will depend on whether the directors or the shareholders propose the resolution. Common provisions include:

- A copy of the resolution must be sent to every eligible member at the same time (in hard copy form, via email or even by means of a website if certain requirements are fulfilled);
- A copy of the resolution must include guidance as to how members may signify their agreement to the resolution, and the date by which the resolution must be passed if it is not to lapse;
- Unless the Articles of Association say otherwise a written resolution will lapse if it is not agreed within 28 days of the circulation date of the resolution;
- The agreement to a resolution by a member is not revocable once it has been given;
- The agreement by a member after the requisite time period will be ineffective.

What is the length of notice we need to give to shareholders for a general meeting?

14 days, regardless of the type of resolution proposed to be passed at the general meeting, unless different arrangements are specified in a company's Articles. The period of notice excludes the day of the meeting and the day on which the notice is given.

Can we still call a general meeting on short notice?

Yes, provided you obtain the consent of shareholders entitled to attend and vote at the general meeting who together hold 90% in nominal value of the shares.

Do we still need to have an Annual General Meeting?

This is no longer a requirement for private companies, although there is nothing preventing them from holding an AGM if they wish.

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Do I need to change my Articles of Association to comply with the new provisions on AGM's?

If your Articles expressly require the company to have AGMs then the company will still have to have an AGM unless your Articles are changed. The fact that the Articles may contain references to an AGM does not mean you have to hold one.

You should have your Articles of Association checked and consider amending them if you want to benefit from the shorter notice periods.

If you would like to discuss any of the points raised above, please contact a member of the company / commercial team on 0118 977 4045 or e-mail michelle.lamberth@herrington-carmichael.com

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