

Resolutions and meetings of Guernsey companies

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This briefing note considers the legal requirements and the issues to be addressed when passing company resolutions, calling a general meeting and preparing a notice of general meeting in respect of a Guernsey limited liability company. Specific issues arising in respect of incorporated cell companies and protected cell companies are discussed separately in Carey Olsen briefing notes in respect of those particular types of companies.

The articles of incorporation (the "Articles") of a company must always be checked for specific requirements relating to general meetings. Note, however, that in certain circumstances the Articles may be overridden by The Companies (Guernsey) Law, 2008 (as amended) (the "Law"), which provides for certain basic shareholder protections in specific circumstances.

Types of resolutions

The Law provides for four different types of shareholder resolution:

- an ordinary resolution;
- a special resolution;
- a waiver resolution; and
- a unanimous resolution.

Some actions that a company might perform are only possible if approved by a certain type of shareholder resolution. For example, in order for a company to waive its requirement under the Law to have its accounts audited for the financial year, it would have to pass a 'waiver resolution'.

Any resolution may be passed either at a general meeting (by a show of hands or on a poll) or by a written resolution, and the legal requirements governing the effective passing of each type of resolution differ in each situations, as explained below.

Ordinary resolutions are be passed by simple majority subject to the articles.

- When passed as a written resolution, an ordinary resolution is passed by a simple majority if passed by members representing a simple majority of the total voting rights of 'eligible' members.
- When passed at a meeting on a show of hands, an ordinary resolution is passed by a simple majority if it is passed by a simple majority of the members who, being entitled to do so, vote in person or by proxy on the resolution.
- An ordinary resolution is passed by simple majority on a poll taken at a meeting if passed by members representing a simple majority of the total voting rights of members who, being entitled to do so, vote in person or by proxy on the resolution.

Special resolutions are passed by a majority of not less than seventy five per cent. (75%).

- Such a resolution may be passed in writing if passed by members representing not less than seventy-five per cent. (75%) of the total voting rights of the eligible members. Written special resolutions must be specifically proposed as such.
- A special resolution passed at a meeting on a show of hands is passed by a majority of not less than seventy-five per cent. (75%) if it is passed by not less than seventy-five per cent. (75%) of the members who, being entitled to do so, vote in person or by proxy on the resolution.
- A resolution passed on a poll taken at a meeting is passed by a majority of not less than seventy-five per cent. (75%) if it is passed by members representing not less than seventy-five per cent. (75%) of the total voting rights of the members who, being entitled to do so, vote in person or by proxy on the resolution.

Waiver resolutions are resolutions of a company passed by a majority of not less than ninety per cent. (90%).

- Such a resolution is passed as a written resolution if passed by members representing not less than ninety per cent. (90%) of the total voting rights of 'eligible' members. Waiver resolutions must be specifically proposed as such.
- A waiver resolution passed at a meeting on a show of hands is passed by a majority of not less than ninety per cent. (90%) if it is passed by not less than ninety per cent. (90%) of the members who being entitled to do so, vote in person or by proxy on the resolution.
- A waiver resolution passed on a poll taken at a meeting is passed by a majority of not less than ninety per cent. (90%) if it is passed by members representing not less than ninety per cent. (90%) of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.

A unanimous resolution of the members of a company are those agreed to by every member entitled to vote on it.

- A unanimous resolution passed at a meeting on a show of hands is passed by every member entitled to vote on it if
 - a. all members who, being entitled to do so, vote in person; and
 - b. all persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
- A unanimous resolution passed on a poll taken at a meeting is agreed to by every member entitled to vote on it if it is passed by members representing all of the voting rights of the members who, being entitled to do so, vote in person or by proxy on the resolution.

Written resolutions to be passed as unanimous resolutions must be proposed and then passed as such.

A copy of any special, waiver or unanimous resolution passed by the members of a company must be delivered to the registrar of companies in Guernsey within thirty (30) days, or the company guilty of an offence. The resolution is not, however, rendered void if the resolution is not delivered within this time.

Written resolutions

Where a resolution is passed as a written resolution, the resolution must be passed by the relevant majority of the total voting rights of the 'eligible' members. For example, if the members of the company have equal voting rights and are 'eligible', a special resolution would be passed by seventy-five per cent (75%) or more of the votes of the total issued shares in the company, and an ordinary resolution would be passed by more than fifty per cent. (50%). However, where members have differing voting rights under the Articles or questions of eligibility arise, this determination becomes more complicated.

'Eligible' members in respect of a written resolution are those members who would have been entitled to vote on the resolution on the circulation date. If members change during the course of the day then the eligible member are those at the time that the first copy of the written resolution is sent or submitted to a member for his agreement, subject to any different provision in the company's Articles or memorandum.

A written resolution may be proposed by the directors of a company or by a requisition of five per cent. (5%) (or such lower percentage as may be specified in the Articles) of the members. When circulating the written resolution, a copy of the resolution to be passed must be accompanied by a statement informing the member how to signify agreement to the resolution and specifying the date by which the resolution must be passed if it is not to lapse.

A member signifies his agreement to a proposed written resolution when the company receives from him a document identifying the written resolution to which it relates and indicating his agreement to it. Whilst the type of document is not defined in the Law, the most prudent course of action would be to receive an original of the proposed resolution signed by the member. The resolution is passed when the requisite majority of eligible members have signified their agreement to it.

A proposed written resolution lapses if it is not passed before the end of the period specified for this purpose in the company's memorandum of incorporation or Articles or if none is so specified, the period of twenty-eight (28) days beginning with the circulation date.

Any provision in the Articles precluding the proposal and passing of company resolutions as written resolutions is void.

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Meetings called by the board

Annual General Meetings (“AGMs”)

All Guernsey companies are required to hold an AGM of its members within a period of eighteen (18) months beginning on the date on which it is incorporated. Thereafter, an AGM must be held at least once in every calendar year. Unless a waiver resolution has been passed in respect of the need to hold an AGM, no more than fifteen (15) months may elapse between one AGM and the next. If a company fails to comply with this requirement, a member may apply to the Court to have the Company wound up or to direct the company to hold a meeting.

However, the members of a company may resolve by waiver resolution to waive the requirement to hold an AGM, for a definite or indefinite period.

The directors have the power to call AGMs and most other general meetings will be called by the board of directors of a company. It is advisable to have board minutes documenting the board meeting at which the directors resolve to call a general meeting and to table the notice of the meeting to the board, preferably at that same board meeting.

General meetings and notice period

Any other general meeting of the members of a company may be called by its directors or, more unusually, by a request from the requisite proportion of the members of the company. The statutory notice period required to be given for a general meeting is ten (10) clear days. However, the Articles may prescribe a longer period. Alternatively, a shorter period may be agreed to by all the members entitled to attend and vote at the meeting. Exceptionally, if the directors are aware that, pursuant to a member’s requisition, a resolution is proposed to be passed concerning the removal of the auditors, the directors must give at least fourteen (14) days notice of that resolution to the members.

The notice of a general meeting of the company must be sent to all of the members and directors of the company.

Meetings called by members

Members who hold more than ten per cent. (10%) of such capital of the company as carries the right of voting at general meetings of the company (excluding capital held as treasury shares) may request that the directors convene a general meeting. Such request of the directors must state the general nature of the business to be dealt with at the meeting and may include the text of a resolution that may properly be moved and is intended to be moved at the meeting. A resolution would not be properly moved if:

- it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company’s memorandum or Articles or otherwise),
- it is defamatory to any person or
- it is frivolous or vexatious.

Upon receipt of such a request, the directors must call a general meeting within twenty-one (21) days after the date on which the company received the request. The date for which the meeting is held must be a date not more than twenty-eight (28) days after the date of the notice convening the meeting.

If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution. If the proposed resolution is a special resolution, the text of it must appear in the notice of the meeting and the intention to propose the resolution as a special resolution must be specified.

If the directors fail to call a meeting, the members who requested the meeting (or any of them representing more than one half of the total voting rights of the members who requested the meeting) may call a general meeting. Again, the notice of the resolution must be included in the notice of meeting. The meeting must be called for a date not more than three (3) months after the date on which the company received the request to call the meeting. The meeting must be called in the same manner or as near as possible to that in which meetings are required to be called by the directors of the company. Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors to call a meeting must be reimbursed by the company. The company can set such costs off against the directors’ remuneration to which any defaulting directors are entitled.

Holding valid meetings and general housekeeping

Quorum

If the company has a sole member, one ‘qualifying person’ present at a meeting is a quorum. However, in practice, most business will be transacted by a sole member by written resolution. Where companies have more than one member, the statutory quorum for a general meeting is two ‘qualifying persons’ (being a member (or his proxy) holding five per cent. (5%) of the total voting rights of the company. However, the Articles may stipulate a different quorum, including a quorum of one qualifying person.

Chairman

Subject to the provisions of the Articles, a member or proxy of a member may be elected to be chairman of a meeting by a resolution passed at the meeting. Unless the Articles provide otherwise, in the case of equality of votes at a general meeting, the chairman has a second or casting vote.

Voting

The voting rights of members vary depending on any provisions in the Articles and how the resolution is being passed. Subject to any additional voting rights contained in the Articles, when voting on a show of hands at a meeting each member present in person or by proxy has one vote. However, when voting on a written resolution or on a poll taken at a meeting each member has one vote in respect of each share held by that member.

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In relation to a resolution required or authorised by an enactment, any provision in the Articles will be void if it provides that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting. In default, a member will have the same number of votes in relation to the resolution when it is passed on a poll as he has when it is passed as a written resolution.

Voting on a show of hands at a general meeting

Where a resolution is passed at a general meeting on a show of hands, the majority in question is a majority in the number of members (or their duly appointed proxies) who are entitled to vote on the resolution, and do so. This is distinct from the procedure for written resolutions in that the focus is on the number of persons voting, not the number of shares they hold and the voting rights attached to those shares.

Demanding a poll and voting on a poll at a general meeting

The Articles can only preclude the right to demand a poll in respect of the election of the chairman of the meeting or the adjournment of the meeting.

Either (i) five (5) members having the right to vote on a resolution or (ii) a member or members representing not less than ten per cent. 10% of the total voting rights of all the members having the right to vote on the resolution, may demand a poll.

A resolution that is passed at a general meeting on a poll is passed by the relevant majority of the total voting rights of members who, being entitled to do so, vote in person or by proxy on the resolution. Hence, the requirements for a poll are similar to those for a written resolution, except that the majority is assessed not against the total voting rights of the company, but against the total voting rights of those members who actually do choose to vote.

Class meetings

The directors of a company may call a general meeting of holders of a class of shares (a "Class Meeting"). The law relating to Class Meetings is largely the same as applies to general meetings, except that members are not able to require the directors to call such a meeting, and there is no requirement to hold an annual Class Meeting. Furthermore, where a Class Meeting is held to vary the rights attached to a class of shares, there are specific provisions regarding the quorum at such a meeting.

Contents of the notice of meeting

Notice of a general meeting of a company must:

- state the time and date of the meeting;
- state the place of the meeting;
- contain any information which may be required by the company's Memorandum and Articles, in respect of an ordinary resolution which is proposed at the meeting;
- if the proposed resolution is a special resolution, contain the text of the resolution and specify the intention to propose the resolution as a special resolution;
- if the proposed resolution is a waiver resolution, contain the text of the resolution and specify the intention to propose the resolution as a waiver resolution; and
- if the proposed resolution is a unanimous resolution, contain the text of the resolution and specify the intention to propose it as a unanimous resolution.

Any notice of general meeting must, subject to any provision by the company's Memorandum and Articles, state the general nature of the business to be dealt with at the meeting.

Any notice of general meeting must, subject to any provision by the company's Memorandum and Articles, state the general nature of the business to be dealt with at the meeting. In the case of a special, waiver or unanimous resolution, if passed as a written resolution it must be expressly proposed as a special/ waiver/unanimous resolution, as appropriate. If such a resolution is passed at a meeting, the notice of the meeting must include the text of the resolution and the intention to propose the resolution as a special/waiver/ unanimous resolution, as appropriate (once this has been specified, the resolution may only be passed as such).

In every notice of meeting, there must be a statement informing the shareholder of his right to appoint a proxy and any more extensive rights conferred by the company's Articles to appoint more than one proxy. Failure to comply with this requirement does not affect the validity of the meeting or anything done at the meeting, but the company will be guilty of an offence.

Proxies

A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote and demand a poll at a meeting of the company. Each member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him.

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The company is entitled to notice of the appointment of a proxy and any document necessary to show the validity of or otherwise relating to, the appointment of a proxy. The company cannot, by any provision in its Articles, require any such appointment or document to be received by it or any other person earlier than:

- in the case of a meeting or adjourned meeting, forty-eight (48) hours before the time of the holding of the meeting or adjourned meeting;
- in the case of a poll taken more than forty-eight (48) hours after it was demanded, twenty-four (24) hours before the time appointed for taking the poll, and
- in the case of a poll taken not more than forty-eight (48) hours after it was demanded, the time at which it was demanded.

In calculating the timeframes, no account can be taken of any part of a day that is not a working day.

Termination of the proxy's authority to act does not affect his counting in the quorum, his actions as chairman or the validity of any poll he has demanded unless the company has received notice of the termination before the commencement of the meeting. Similarly, a termination of a person's authority to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of termination before commencement of the meeting or adjourned meeting at which the vote is given or in the case of a poll taken more than forty-eight (48) hours after it is demanded, before the time appointed for the taking of the poll.

Any provision of the Articles is void if it requires notice of termination to be received by the company earlier than:

- in the case of a meeting or adjourned meeting, forty-eight (48) hours before the time for holding the meeting or adjourned meeting,
- in the case of a poll taken more than forty-eight (48) hours after it was demanded, twenty-four (24) hours before the time appointed for the taking of the poll, and
- in the case of a poll taken not more than forty-eight (48) hours after it was demanded, the time at which it was demanded.

In calculating the above time periods, no account can be taken of any part of a day that is not a working day.

Communicating the notice of meeting

In the absence of any provisions in the Articles governing the manner in which notices may be given to members, notice may under the Law, be served on the following persons in the following ways:

- an individual by being delivered to him or by being left at, or sent 'by post' to, his usual or last known place of abode or 'transmitted' to his relevant electronic address. The "relevant electronic address" is one which the person or body has a personal, business or other connection and a document transmitted to which is likely to come to his attention, for example, a business email address;

- a company by being left at, or sent 'by post' to, its registered office or by being 'transmitted' to its relevant electronic address;
- an overseas company, by being left at, or sent 'by post' to, its principal or last known principal place of business in the Bailiwick of Guernsey or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere or by being 'transmitted' to its relevant electronic address;;
- an unincorporated body, by being given to or served on any partner, member, manager or officer thereof at his usual or last known place of abode, or by being left at, or sent 'by post' to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known place of business elsewhere or by being 'transmitted' to its relevant electronic address.

The expression 'by post' means by registered post, recorded delivery service or by ordinary letter post. The expression 'transmitted' means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, in which event the document is regarded as served when it is received.

Deemed delivery

Documents sent by post are, unless the contrary is proved, deemed to have been received:

- in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the second working day after the day of posting; and
- in the case of a document sent elsewhere, on the third day after posting, excluding in each case any day which is not a 'working' day. A 'working' day is a day which is not a Saturday, a Sunday, Christmas Day, Good Friday, a bank holiday or a day appointed as a public holiday by the States of Guernsey.

Electronically "transmitted" documents are deemed to be served immediately after they are transmitted unless the contrary is shown.

Electronic communications

The Law prescribes the circumstances in which communications may be sent electronically by a company to its members or their proxies and vice versa. A document can only be sent in any electronic form if the recipient has agreed either generally or in a particular case. The document must be sent to an address specified by the member for the purposes of receipt of electronic communications. Similarly, documents can only be sent by means of a website if the member has so agreed either generally or in a particular case. In each scenario, the agreement of a member to such service may be deemed by virtue of a provision to this effect in the Articles.

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If a company seeks to publish notices by making them available on a website, the company must notify the intended recipient of:

- the presence of the document on the website;
- the address of the website;
- the place on the website where it may be accessed; and
- how to access the document.

Where the relevant document is a notice of meeting, the notification of the availability of the notice of meeting must:

- state that it concerns a notice of a company meeting; and
- specify the place, date and time of the meeting.

The document is taken to be sent on the date on which the notification is sent or if later, the date on which the document first appears on the website after the notification is sent.

The company must make the document available on the website throughout the period specified as applicable by any provision in the law, or if no such period is specified, the period of twenty-eight (28) days beginning on the day on which the notification required is sent to the person in question.

Accidental failure to give notice

Failure to make a document available on a website throughout a period is disregarded if it is made available on the website for part of the period and if the failure to make it available throughout the period is wholly attributable to circumstances that it would not be reasonable to expect the company to prevent or avoid.

Records

Every Guernsey company must maintain records with:

- copies of all written resolutions;
- minutes of all proceedings at general meetings; and
- where the company is a sole member company, details of certain decisions made by the member. Such records must be kept for at least six years after the relevant resolution, meeting or decision.



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