Business Law: CIMA Year One

Corporate Administration

Under the Companies Act 1985, a public company must have at least two directors, while a private company may have only one. Directors have power as agents of the company and exist in order to manage the company, while shareholders merely own the company and have little say into how the company is run. This naturally leads to tension, with both parties having different aims and objectives.

This set of notes looks at the relationship between the directors, shareholders, and the company; how the relationship is regulated; and how decisions are made.

Directors' Meetings

Meetings between directors are called "board meetings". Board meetings determine the overall policy of the company, leaving the running of the company to managers within the company. The board only meets to discuss important matters as and when such matters arise. Any director may call a board meeting, with reasonable notice given to all other directors.

In some cases, the board is not legally allowed to make some decisions, and must consult with its shareholders at an extraordinary general meeting (see below).

In most companies, decisions made in board meetings are taken by majority vote. Assuming that reasonable notice has been given to all directors, the quorum for meetings is set at two (under Table A, but this can be varied). Often the board has a chairman director with a casting vote. If the number of votes is equal, then the proposed resolution is defeated.

If a director has a personal interest in a matter, they are not allowed to vote at the board. They may attend the meeting and speak to influence the decision, but their attendance does not count towards the quorum and their vote does not count.

Shareholders' Meetings

There are three types of shareholders' meetings:

- Annual General Meetings (AGMs)
- Extraordinary General Meetings (EGMs)
- Class meetings

Class Meetings

These are meetings held between all shareholders of a particular class. They must only discuss matters affecting shareholders of that particular class.

Annual General Meetings

An AGM must beheld within 18 months of the date of incorporation, and thereafter once every twelve months (that is, once in every calendar year). When an AGM is called (by the directors), each shareholder (and directors and auditors) must be given at least 21 days' notice in writing. If the AGM s not called in the required timeframe, any shareholder may ask the Department of Trade and Industry to call the meeting and determine how it is run.

A private company can pass an *elective resolution* (see later) not to hold an AGM.

An AGM's main business consists of:

- Approval of accounts
- Approval of directors' and auditor's reports
- Approving a dividend or lack thereof
- Election of directors

Other business may be proposed by any director or member, but only a shareholder with more than 5% of the total voting rights may insist that the item is included on the agenda (under s376 of the Companies Act 1985).

Extraordinary General Meetings

An EGM is any meeting other than an AGM. An EGM may be called in a number of ways:

a) The directors of a company may call an EGM at any time, giving 14 days' notice to all members (using standard Table A provisions). Members must be given an indication of the purpose of the meeting so they can decide whether to attend.

b) s368 of the Companies Act 1985 gives provision that a small minority of shareholders can insist that directors call an EGM: members with at least 10% of the voting rights must give written notice to the directors that they require a meeting to be called no more than 28 days after the notice was received. This then follows the path of (a) above.

c) s370 of the Companies Act 1985 gives provision that two or more members who hold one tenth of the issued share capital (distinct from paid-up share capital, which is what carries voting rights and is used in) above) may call and EGM themselves (unless excluded by the Articles – Table A dos not exclude this). No notice is required to the directors, but 14 days' notice must be given to other members.

d) s371 of the Companies Act 1985 gives provision that if it is impractical for a meeting to be called properly or conducted properly, the courts may order that one be held or may determine how it is run. The courts normally act on the request of one or more shareholders or directors, but may act on their own initiative.

Re El Sombrero Ltd (1958) ES had three shareholders: one owned 90% of the shares, and the other two held 5% each. The minority shareholders were the directors of the company. The company was mismanaged and the majority shareholder wished to remove the two directors by ordinary resolution with special notice. He called a number of EGMs to achieve this; however, the quorum for the meetings was set at two and neither director attended. The courts called an EGM with a quorum of one.

e) When an auditor resigns, he may order the directors to call an EGM.

f) s142 of the Companies Act 1985 states that directors must call an EGM if the company suffers a major loss of capital.

Resolutions passed by shareholders

There are six types of resolutions that may be passed at shareholders' meetings or by shareholders outside of meetings.

g) An ordinary resolution. This can be passed at an AGM or EGM by a simple majority of votes cast. Normally (under Table A), the chairman has a casting vote in the case of votes being equal. Shareholders not able to attend the meeting can normally vote by post or by proxy. Votes are cast on the basis of one vote per share, with some exceptions:

Bushell v Faith (1970) Bushell, Faith and Vane each held 100 shares of a company; the issued share capital was 300 shares. All three were also directors. B and V wanted to sack F as a director, so called an EGM with 28 days' notice and passed an ordinary resolution with special notice (see below). F was then sacked. However, article 9 of the Articles of Association stated that "where a resolution is proposed to remove a director, that director shall have 300 votes". The courts held that this article prevailed, so F remained a director.

- An ordinary resolution with special notice. This may be passed by majority of votes cast as an ordinary resolution. However, notice of the moving of this resolution must be given to the company 28 days before the meeting, and members must be notified of the resolution when they are notified of the meeting.

This is normally used to remove a director or auditor (under s303 of the Companies Act 1985), or to appoint a director over the age of 70.

- A special resolution. This requires a 75% majority of votes cast at an EGM or AGM, and 21 days' notice must be given of both the meeting and the resolution to be moved (therefore extending the EGM's normal notice period of 14 days). Special resolutions are required (by statute) for changes of company name, changes in the Memorandum or Articles of Association, or reductions in or creation of share capital.

- An extraordinary resolution. This requires a 75% majority of votes cast at a general meeting as with a special resolution, but requires only 14 days' notice. An extraordinary resolution is normally moved for decisions made when the company is being wound up.

- A written resolution. This requires 100% agreement from all members, not just those attending or voting at a meeting. Indeed, a meeting is not required. Each shareholder must sign an agreement (but each may sign on a separate sheet of paper), and no shareholder may abstain or the resolution is lost. A written resolution can take the place of any other type of resolution, but cannot be used to remove a director or auditor (since they will then not have had the opportunity to present their case). Due to the logistics of getting all shareholders to sign up to the resolution, written resolutions are very rare in public companies.

- An elective resolution. A private company can use an elective resolution to remove some of the requirements for administration imposed by the Companies Act. For example, an elective resolution may be used to remove the need for an AGM. It must be passed by 100% of the members who are entitled to vote (tat is, not just 100% of votes cast), and requires 21 days' notice at a meeting (or I may be passed by written resolution).

Conduct at meetings

Any general meeting has a quorum of at least two people (although this may be increased by the Articles, and there are special provisions for single-member companies).

The chairman of the meeting is, in order of preference:

- The chairman of the board of directors,
- A director, chosen by the directors in attendance, or
- A shareholder, chosen by the members in attendance.

Table A does not provide for the chairman to have a casting vote, but this may be changed.

Rights and Duties of Shareholders

The Articles of a company bind the shareholders in a rather loose contract. Generally, majority rule exists in decisions, but courts have the power to restrict any shareholder's right to vote if these shareholders are not acting "in good faith".

Clemens v Clemens Bros Ltd (1976)
One shareholder had 55% of the shares, and used the voting rights these held to pass a resolution issuing new shares. The effect of this new issue was not proportional on existing shareholding, and pushed the minority shareholding from 45% down to below 25%. This therefore allowed the majority shareholder to pass special resolutions. The court held that this issue of new shares was not needed and reversed the resolution.