

This is a guide to the different types of company resolution and when they are passed. It is only intended as a brief introduction to the subject, so you should read it in conjunction with the relevant law which is found in the Companies (Guernsey) Law, 2008, Part XIII (the "Law").

1. What is a resolution?

A 'resolution' is an agreement or decision made by the directors or members (or a class of members) of a company. This note deals with resolutions made by members only.

A 'proposed resolution' is a motion.

When a resolution is passed a company is bound by it.

The Law allows for four different types of resolutions:

- ordinary resolution – which is usually passed by a simple majority (subject to the terms of the Company's articles of incorporation);
- special resolution – which is passed by a majority of 75%;
- waiver resolution – which is passed by a majority of no less than 90%; and
- unanimous resolution – which is passed by every member of the company.

2. How are resolutions passed?

A company can pass a resolution either by the required majority of members agreeing to a written resolution or by a vote taken at a meeting of the members.

Members indicate whether they are for or against a resolution and, if a sufficient proportion of the members are for the resolution, then the resolution is passed. If the necessary majority is not obtained then the proposed resolution fails.

The number of votes required for a resolution to be passed will depend on the type of resolution proposed.

Companies can pass all resolutions as written resolutions except a resolution to remove an auditor which needs to be passed at a general meeting.

Votes are cast (a) at a meeting by either a show of hands or a poll or (b) by members signing the written resolution and returning it to the company.

3. Who is entitled to vote?

Whether or not a member has a right to vote on a specific matter will depend on the voting rights attached to his shares. If a company has issued only 'ordinary' shares then (subject to the company's articles) every member will be entitled to vote on every resolution.

The company's articles of incorporation may state the conditions on a member's voting rights but generally a member's voting power is decided by the number and type of shares that he owns. Usually a member who owns 10% of the shares issued by the company has 10% of the votes. A member will have the same number of votes whether passing a resolution in a poll at a general meeting or on a written resolution. On a show of hands at a meeting he will have only one vote (hence why polls are often demanded by shareholders).

If the member is unable to be present at the meeting he may appoint a proxy to vote for him. In the case of joint holders of shares it is the vote of the holder named first in the register of members that will be counted, unless the company's articles say something different.

4. Who must receive copies of the resolution before and after approval?

Notice of the intention to propose a resolution must be circulated to the company's members before it is passed.

Special resolutions, waiver resolutions and unanimous resolutions must be delivered to the Registrar of Companies within 30 days of their being passed.

5. Technicalities of passing resolutions

5.1 Passing resolutions at a general meeting

To pass a resolution at a general meeting, the meeting must be called in accordance with the Law and the company's articles (see below).

The vote on a resolution in a general meeting (or in a meeting of a class of members) is by a show of hands and a declaration by the chairman that the resolution is carried on a show of hands is all this is required for a resolution to be passed. The number of votes for or against on a show of hands need not be counted.

Alternatively a member may demand that a poll is taken which means each member will have the same number of votes as the number of shares he holds. On a poll a member may split how he uses his votes and need not cast them all in the same manner.

5.2 Passing resolutions by written resolution

A resolution may be proposed as a written resolution by either the directors or the members of a company.

As shares are transferred it can be hard to see who is entitled to vote on a written resolution. The Law is clear that the members eligible to vote on a written resolution are those who would have been eligible to vote on the date the resolution was sent out or submitted to any of the members.

A copy of a written resolution is sent to the members and must be accompanied by a statement informing the member of (a) how to signify agreement to the resolution and (b) the date by which the resolution must be passed if it is not to lapse under the Law. If the written resolution has been proposed by the members then they may require the company to circulate with the draft resolution a statement of not more than 1,000 words on the subject matter of the resolution. A written resolution can be circulated and agreed to electronically or by hard copy. Notice of a written resolution and the statement relating to it may, in certain circumstances, be given by a company by means of its website.

A proposed resolution lapses if it is not passed before the end of either (a) the period specified in the company's articles of incorporation or if none is specified, (b) the period of 28 days beginning with the circulation date. The agreement of a member to a written resolution is ineffective after the expiry of that period.

A member has signified his agreement to a proposed resolution when the company receives from him (or someone acting on his behalf) an authenticated document identifying the resolution to which it relates and indicating his agreement to the resolution. A member's agreement to a written resolution, once signified, may not be revoked.

6. What records of resolutions and meetings does the company need to keep?

The company must keep records comprising of all written resolutions, minutes of all proceedings at general meetings and all decisions made by a sole member. These must be kept for at least 6 years after the date of the resolution, meeting or decision.

7. General Meetings

To call a general meeting, the company must give notice of at least 10 days or such longer period as the company's articles may provide. A general meeting may be called at shorter notice than otherwise required if all the members entitled to attend and vote so agree.

Notice of a meeting can be given:

- By electronic form (but see below);
- In hard copy form;
- By means of a website (provided the requirements set out in the Law have been fulfilled); or
- A combination of any of the above.

The notice must state the time, date and location of the meeting and the general nature of the business to be dealt with at the meeting including any resolutions to be agreed.

Notice of a general meeting must be sent to every member and every director.

The Company may choose to communicate with members in electronic form if members so agree. Agreement of a member may be deemed by virtue of a provision made by the articles of incorporation or a resolution of the company.

8. Waiving the requirement to have an annual general meeting

Guernsey law now permits a company to waive the requirement to hold an annual general meeting for a particular year or years or indefinitely. This means it can dispense with meetings altogether except in the limited circumstance referred to below.

The members of a company may waive the requirement to hold an annual general meeting by passing a waiver resolution.

However even if a company has waived the requirement to have an annual general meeting, the shareholders and directors still have the power to call a meeting should they wish one to occur.

Even if the requirement to have an annual general meeting is waived the shareholders will continue to be involved in the decision making process of the company. Every decision can be made by written resolution except that the company will still need to hold a meeting to remove an auditor before the end of his term of office.

When deciding whether or not to waive the requirement to hold an annual general meeting regard should be had to the company's articles, particularly a company which was incorporated prior to 1 July 2008 (an 'existing company'). An existing company is likely to need to pass a special resolution wherein it decides to remove any existing clauses regarding the holding of annual general meetings from its articles.

RIDER

This paper is intended as a general review and aide memoire. It does not create a retainer or lawyer-client relationship and does not provide comprehensive or specific legal advice concerning the matters contained within it. This paper should not be relied upon as giving or providing advice on any individual case.