¶8-001 Introduction

We saw in Chapter 6 that the power to make decisions in relation to the structure and operation of companies is divided between the board of directors on the one hand and the members in general meeting on the other. Each is sovereign with respect to its decision-making powers and neither can appropriate the power allocated by law to the other.

In Chapter 7 we summarised those matters on which members have a say in the life of their company. In some cases, members have the power to propose and adopt changes, such as changes to the company's memorandum and articles of association or (in the case of members of a public company) to remove the directors. In other cases, members' approval is required before the board can implement certain decisions taken by it in the course of exercising its power to manage the business of the company. Certain increases and decreases in the company's issued capital and related party transactions fall into this category. In these circumstances, company law gives members the power not to approve such decisions.

In this chapter we look at the procedural requirements in accordance with which members must exercise their decision-making power. The first part looks at members' meetings. The second part looks at decision-making without a meeting.

Company law contains detailed requirements for members' meetings.

These requirements are designed to ensure that all members have the opportunity to know the business of the meeting and participate in the decision-making process in an informed and fair way.

MEMBERS' MEETINGS

¶8-100 Annual general meetings

Generally, all companies are required under s 175 of the *Companies Act* to hold a meeting of members (referred to as the "annual general meeting") at least once in every calendar year.[1] The annual general meeting (or "AGM") should be held within 15 months of the previous AGM. Companies need not hold an AGM in their first year of incorporation so long as their first AGM is held within 18 months of the date on which they are incorporated. The time restriction may be extended by the Registrar if, for any special reason, he or she thinks it fit to do so.[2] The Act requires that the directors of every company shall lay the accounts before its members at the AGM.[3] This is necessary unless there is resolution under s 175A (which allows private companies to dispense with the need to call for AGMs) in force at the relevant time.[4]

1 Private companies may, however, elect to dispense with annual general meetings. This is discussed below.

2 Section 175(2) of the *Companies Act*.

3 Section 201 of the *Companies Act*.

4 Section 201C of the *Companies Act*.

Members may also be asked to vote on the appointment of auditors where the company is not exempt from audit requirements or a dormant company.[5]

It is the practice for companies to also include the following matters for discussion and approval at their AGMs, either because the Act or the company's articles requires such action or member's sanction in respect of such matters:

- the election of directors;
- the re-appointment of directors of a public company or of its subsidiary who have reached the age of 70 years old;
- the authorisation (or mandate) for directors to issue new shares in the company;
- the approval of dividends declared by the directors; and
- the fixing of auditors' remuneration. Companies are also free to include other business to be considered at their AGM.

Dispensing with the need to hold an annual general meeting

Traditionally, company law treated the need to have a meeting at least once a year as sacrosanct. The purpose for such a meeting was to report to members on the affairs of the company and to give members the opportunity to question the directors and give their views on matters. Modern company law, however, recognises that this may not always be necessary, especially among small companies where the members are the ones who actually run and manage the company. Private companies are now permitted to dispense with the need to hold an AGM. Section 175A allows this where there has been a resolution passed by all of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at the meeting to dispense with the need for an AGM — ie a unanimous resolution of all members of the company who are entitled to vote. Where such a dispensation is in effect, any provision under the Act that requires something to be done at the AGM may be done through the passing of a resolution by written means under s 184A.[6] Any member of the company may, however, require an AGM to be held for any particular year by giving notice to the company of his or her request at least three months before the end of that year.

¶8-120 Other types of meetings

All public limited companies with share capital are required to hold a general meeting not earlier than one month and not later than three months after they commence business. Such a meeting is referred to as a "statutory meeting".[7] The purpose of this meeting is to require the directors of the company to report to the members on the various matters specified in s 174(3), which include details on the share capital of the company, the cash received by it, particulars pertaining to directors, managers, auditors, debenture holders, etc.

5 Section 205(2) read together with sections 205 and 295 of the *Companies Act*.

6 Section 175A(10) of the *Companies Act*. See ¶8-540 for a discussion of this.

7 Section 174 of the *Companies Act*.

Meetings of the company other than AGMs and the statutory meeting are referred to as ***extraordinary general meetings***. A company may also hold a ***class meeting*** where a separate resolution by members of a class is required, for example under s 74 of the *Companies Act* to approve a variation or cancellation of class rights.

CONVENING MEETINGS

¶8-200 How are members' meetings convened?

The manner in which general meetings are convened is governed primarily by the articles of association of a company and the provisions of the *Companies Act*. Generally, the board of directors arranges for AGMs. Most articles of association also give the board (or individual directors) the right to convene extraordinary general meetings.[8] Also, members can, under specified circumstances either request (or requisition) the directors to call a meeting or convene one themselves. In addition, where for some reason or other it is impractical for a meeting to be convened in accordance with any of the prescribed procedures, the court may, either of its own accord or upon an application being made by a director or member, order a meeting to be held.[9]

There are several procedural requirements that are prescribed for the convening of meetings such as the need to give to sufficient advance notice of the meeting to all members and to provide full and fair disclosure about the matters to be considered at the meeting.

In this part, we look at the following:

- Who can arrange for a meeting to be held?
- Who determines the agenda of the meeting?
- What are the notice requirements?

The *Companies Act* and the general law imposes overriding requirements in relation to the calling of meetings, that they must be called only for a proper purpose and that they must be held at a reasonable time and place.

¶8-220 Requesting and calling meetings

Generally a company's articles of association will state who can arrange for a meeting of members to be held. The articles of association are supplemented by provisions of the *Companies Act*.

Meetings convened by the board

The ***board of directors*** may convene general and class meetings when those meetings are necessary for the administration of the company's affairs. The power to do so is part of the board's general powers of management under the articles of association and at common law.

8 For example, see Art 43 and 44 of Table A.

9 Section 182 of the *Companies Act*.

Section 176 of the *Companies Act* provides that, notwithstanding anything in the company's memorandum or articles of association, the board must convene a meeting of members when such a meeting is requisitioned by:

- members holding not less than 10% of such of the paid-up capital as at the date of the deposit of the requisition carries the right of voting at general meetings; or
- in the case of a company not having a share capital, of members representing not less than 10% of the total voting rights of all members having at that date, a right to vote at general meetings.

The requisition must state the intended objects of the meeting and must be signed by those requisitioning for the meeting and sent to the registered office of the company.

Upon receipt of such a requisition, the directors must immediately proceed to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.

However, the directors can refuse to act on the request where the purpose of the meeting is an improper one (for example, where the purpose of the meeting is to vote on some matter which is solely within the authority of the directors).[10]

If the members have requisitioned a meeting under s 176 for a proper purpose, and the board has failed to convene the meeting within 21 days, members with more than 50% of the votes held by members who made the original requisition can proceed to convene the meeting at the expense of the company, under s 176(3) and (4).

Meetings convened by an individual director

It was mentioned in Chapter 6 that the powers of management given to the directors must be exercised by the board collectively. It follows that individual directors do not have the power to exercise the board's power to call for meetings in the absence of any specific power or authority granted to the director to do so. Many companies have articles that permit individual directors to convene meetings.[11] An individual director also has the standing under s 182 to make an application to the court for an order that a meeting be convened where it is impractical to convene a meeting otherwise.

Meetings convened by or at the request of members

Two or more members holding not less than 10% of the issued share capital or, if the company does not have a share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company under the procedures laid down in s 177. This power cannot be excluded by a contrary provision in the

10 *Credit Development Pte Ltd v IMO Pte Ltd* [1993] 2 SLR 370.

11 For example, see Art 44 of Table A.

company's articles. If the members convene the meeting themselves under s 177, they must pay the expenses of calling and holding the meeting.

A member who wants the company to hold a members' meeting can thus choose either to request the directors to convene the meeting under s 176 (in which case the expenses of the meeting will be borne by the company) or act directly to convene the meeting under s 177 (in which case the member will bear the costs of the meeting). A member may prefer to proceed under s 177 if the member is anxious to avoid delays in holding the meeting.

Meetings convened by the court

Under s 182, the court may convene a meeting if it is impractical to call the meeting any other way. The meeting may be called either on the court's own motion or on the application of any director or member of the company.

¶8-240 Determining the agenda for the meeting

Generally, the person who convenes the meeting will determine its agenda.

In the ordinary course, members' meetings are convened by the board of directors and will consider the matters proposed by the directors. When the meeting has been requested or convened by the members, the matters to be considered by it will be or include the matters proposed by the members.

However, the agenda cannot include resolutions that the general meeting has no power to pass. It was held in *Credit Development Pte Ltd v IMO Pte Ltd*[12] that the members do not have a right to move a resolution that:

- is *ultra vires* the company or the company in general meeting;
- is in respect of a matter which requires a particular type of resolution and the resolution sought is not of that type; or
- is contrary to public policy.

Any member or members holding at least 5% of the votes that may be cast on the resolution, or numbering at least 100 where there has been paid up an average sum, of not less than $500, per member, may propose resolutions to be considered at a meeting of the company under the procedure set out in s 183 of the *Companies Act*. Members may use this procedure, for example, to have a matter included for consideration at a forthcoming AGM of the company or at any extraordinary general meeting. The request must be given in the prescribed form and lodged with the company at least six weeks before the date of the meeting.

Members may also use the procedure under s 183 to request that statements not exceeding 1,000 words in length in respect of any resolution or business that is to be transacted at a specified meeting be circulated to other members. In this instance, the request needs to be made at least one week before the date of the meeting.

12 Note 8 above.

The cost of any resolution proposed or any statement to be circulated is to be borne by the requisitionists unless the company at general meeting resolves otherwise.

¶8-260 The notice requirements

A key principle of the law governing meetings is that members should receive adequate notice of the matters to be considered at the meeting. To that end, the law imposes requirements relating to:

- who must receive the notice of meeting, and the effect of failure to provide notice to a member or members;
- the amount of notice that must be given (that is, how far in advance of the meeting the members must be told about the meeting);
- the content of the notice (that is, what must be included in the notice and the amount of detail that is required); and
- the matters that may be dealt with at the meeting (in particular, through restricting the matters that may be considered at the meeting to those of which adequate notice has been given).

These requirements are discussed below.

Who must be given the notice of meeting?

Written notice of a proposed meeting of members must be given individually to each member entitled to vote at the meeting and to each director and to any other person specified in the articles.[13]

The notice may be given personally, by post, facsimile or email, or by any other means permitted in the company's articles of association.[14] If the company has appointed an auditor, the auditor must also be given the notice of meeting.[15]

Sometimes, due to an administrative error, the company may fail to give the notice of meeting to one or more members. Section 392(3) provides that accidental omission to give notice of the meeting to a person, or non-receipt by any person of notice of the meeting, does not invalidate the meeting unless the person applies to the court for a declaration that the proceedings of the meeting are void. Procedural irregularities are discussed in ¶8-600.

How far in advance of the meeting must the notice be given?

The amount of notice that must be given is prescribed by the *Companies Act* and is dependent on both the type of company involved and the type of resolution that the meeting intends to pass. Section 177(2) states that the minimum period of notice is 14 days, although the company's articles may provide for a longer period of notice. This notice period can be reduced, in the case of AGMs, by agreement of all members entitled to attend and vote at the

13 See Art 111 of Table A.

14 For example, see Art 108 of Table A. See also s 387A of the *Companies Act* dealing with electronic transmission of notices of meetings.

15 Section 207(8) of the *Companies Act*.

company.[19] Similar to the register of members, the register of substantial shareholders is open to the inspection of any member without charge and of any other person on payment of $2 or less for each inspection.[20] In addition, it is also possible to obtain information on who the substantial shareholders of a company are from the company's annual report. A company listed on the SGX is required to set out in its annual report the names of the company's substantial shareholders and a breakdown of their interests as well as the names of the 20 largest shareholders and the number of shares held by them.[21]

¶16-320 What is membership?

All companies are required to have at least one member.[22] The company's members are, loosely speaking, its owners. They are the people who have invested money with the company in the expectation that they will receive a return on their funds if the company is successful, either in the form of distributions (called "dividends") paid out of the company's profits during its trading life, or in the form of a growth in the value of their investment in the company over time. In the case of a company limited by shares, the members are the company's shareholders — the people who have subscribed for or purchased shares in the company.

The nature of share capital — the interest in the company held by members — was discussed at length earlier in this chapter. Shareholders in a company may hold shares of different classes, entitling them to different distribution or control rights. The concept of classes of shares was also discussed earlier.

The question of who is a member of a company is an important one because many of the important rights and remedies available under the *Companies Act* depend on the person claiming them being a "member".

Who can be a member of a company?

Any person who can hold property in their own name can be a member of a company. This includes humans [23] and artificial persons such as companies themselves.

Who are the members of a company?

Section 19(6) of the *Companies Act* states that a person becomes a member of a company:

- by subscribing to the company's memorandum of association; or

19 Section 81(1) of the *Companies Act*.

20 Section 88(2) of the *Companies Act*.

21 *SGX Listing Manual* r 1207(9).

22 Section 20A of the *Companies Act* states the minimum number of members to be one.

23 The *Civil Law (Amendment) Act 2009* which was passed by Parliament on 19 Jan 2009 and came into operation on 1 Mar 2009 has lowered the age of full contractual capacity from 21 to 18 years. The effect of the statutory amendments is to generally remove the special status accorded by the common law to minors who are between 18 to 21 years of age (ie law with respect to minors below 18 not affected). A person may be a director (see ¶10-310) and may contract to subscribe for shares at age 18.

- if they agree to become a member of the company after its registration and their name is entered on the register of members.

¶16-340 How does someone become a member of a company?

A person can become a member of a company when it is formed or after it is formed.

On registration. A person becomes a member on registration of the company by being named (with their consent) in the memorandum as a subscriber. Section 19(6) of the *Companies Act* treats these people as becoming members at the time the company is registered.[24]

After the company is registered. A person may become a member after registration of the company either by:

- subscribing for new shares in the company; or
- acquiring already-issued shares from another shareholder (for example, by buying or inheriting them).

The person becomes a member once they are entitled to be entered in the register of members. The register is a list of the names and addresses of the members that the company is required to keep under s 190 of the *Companies Act*.[25]

How does a person subscribe for shares?

"Subscription" is the process by which a person acquires new shares in a company after its registration. The process of subscription is:

- The company invites a particular person[26] or people generally to subscribe for new shares in the company. The company will determine the terms (including the price) on which the shares are issued, and the rights and restrictions attaching to them. Special rules may apply to companies proposing to offer new shares to investors depending, amongst other things, on the method of offering and the number of shares being offered. These rules are discussed in Chapter 17.
- If someone decides to take up that invitation, the person makes an offer by making a written application for shares and paying all or part of the subscription amount to the company. That payment may be in cash or by transferring property to the company. An example of a person paying the subscription amount in property rather than cash is found in *Salomon's* case, where Mr Salomon transferred his business to the company in return for the issue of new shares.[27] Where someone pays

24 Application for registration is discussed in Chapter 4.

25 The requirement to keep a register of members is discussed in ¶15-160.

26 Invitations to particular people are sometimes referred to as "private placements".

27 *Salomon's* case is discussed in Chapter 3.

only part of the subscription amount, they are issued with a "partly paid" share.[28]

- After the application is received, the company's board of directors meets to decide whether to accept the application. If the application is accepted, new shares are "allotted" to the applicant, which means that they are set aside for that person.
- After allotment, the applicant's name is entered into the register of members and they are notified of the allotment. Generally, the person will be sent a share certificate or "share scrip" or, if the company is listed on SGX and the person's shareholding is "scripless", they will be sent a statement similar to a bank statement showing the number of shares they hold.

These last two steps make up the "issue of shares". Once these steps are completed, the person is a member of the company.

How does a person acquire already issued shares?

A person may also become a member of a company by acquiring already issued shares in the company from an existing shareholder. Usually, this occurs where a person buys shares from another person.

Where a person acquires already issued shares, the amount paid for the shares is paid to the seller, not the company.

Share transfers (whether conducted through the SGX or not) attract a government tax called "stamp duty", which is calculated as a percentage of the value of the shares sold. Share markets are governed by the *Securities and Futures Act* and, where the company is listed on the SGX, by the *SGX Listing Manual*.

Buying listed shares. If the company's shares are listed on the SGX, the transaction may be "order driven" or a "married order". For transactions that are "order driven", matching of the buy order and the sell order is done electronically at the price determined by the market. SGXAccess FIX is an open interface for securities trading through which SGX provides both order routing functionality as well as market data for participation in the SGX Securities Trading (SGX-ST) market. The stock broking companies connect their own Order Management System with a messaging interface to SGXAccess FIX to route orders into and communicate with the SGX-ST Trading Engine. Orders are routed through this access to the central trade matching engine, known as the Central Limit Order Book (CLOB), for the matching of trades before such information is transmitted to the Central Depository Pte Ltd (CDP) clearing and settlement systems. In a typical case, a person wanting to sell their shares will instruct a stockbroker to offer the shares for sale at a particular price or at the current market price. A person wishing to buy shares will instruct their stockbroker to buy shares at a particular price or at the current market price. The two brokers will match the

28 The circumstances in which a company may choose to issue partly paid shares is discussed in ¶16-240.

offers *via* the CLOB system and, where there is a matching "buy" and "sell" order the sale and purchase will be made. The CDP maintains accounts for each depositor. When a depositor sells his or her shares, CDP debits his or her account and credits the account of a corresponding buyer.

In a typical case of a "married order", the seller and purchaser would have earlier on agreed on the terms of the transaction. Each party would instruct his or her broker to execute the "married order" at the agreed price and for the agreed quantity. Each broker will, among other information, key in the terminal number and code of the other party as well as indicate that the order is a "married order". The quantity transacted will be made available to the public as part of the volume of shares traded that day but the price will not be made available. The public will only have access to information on transaction prices that are "order driven". Once the "married order" is routed to the SGX and the two orders matched, the usual settlement procedure as indicated above applies. The parties concerned may be required to report the transaction to the SGX.[29]

Buying shares which are not listed. Where a purchase is not conducted through the SGX (generally, because the company is unlisted), the procedure is governed by the law of contract and the articles of the company. In a typical case, the seller and purchaser will come to an agreement on the sale and purchase of certain shares. The sellers are normally registered owners who will have in their possession a share certificate bearing their name. Section 123(1) of the *Companies Act* provides that the share certificate is *prima facie* evidence of the title of the member to the share. They will execute a document called a "share transfer" indicating that they are transferring the shares to the buyer. The share certificate and transfer form are passed to the buyer in exchange for the purchase price of the shares. The documents are then lodged with the company. The company will then register the transfer by removing the name of the seller and inserting the name of the purchaser in its register of members. Section 190(4) of *Companies Act* provides that the register of members is prima facie evidence of matters inserted therein.

Where a person is to become a member through transfer or sale of "unlisted" shares and has paid the price, that person may have rights against the seller and the company which arise primarily because of the use of transfer forms and share certificates and the updating of the register of members in the procedure to effect the transfer or sale of such shares.

The main right against the seller is to be provided with the registrable instrument of transfer (ie a signed transfer form) together with the relevant share certificate representing the shares being transferred) so that the buyer, by producing these documents to the company, can arrange to have the

29 For instance, in a take-over situation, dealings of securities during the offer period have to be disclosed pursuant to r 12 of Singapore *Code on Take-over and Mergers*. Similarly a substantial shareholder dealing with his or her company's shares will have to comply with Part IV, Div 4 of the *Companies Act* and sec137 of the *Securities and Futures Act*.

buyer's name entered on the register of members in substitution of the seller's.[30]

With regards the company, the following scenario will illustrate some of the actions that may be brought against the company:

A company issues a share certificate to B stating that B is the owner of 1,000 shares. C, on the faith of the certificate, pays B $2000 for the transfer of the shares to C. C then submits the relevant documents to have his name entered into the company's register of members and this is subsequently effected. It is found out subsequently that B was, in actual fact, not the true owner of the shares. B had obtained from the company a certificate showing B's name as owner because he had presented to the company a forged transfer purporting to be signed by the true owner, A.

A, by virtue of the fact that he is the true owner of the shares in question, may bring an action against the company to have his name restored to the company's register to have himself reflected once again as the registered owner of the shares in question and to require the company to pay him dividends that he missed. Section 194 permits a person whose name "is without sufficient cause entered in or omitted from the register" to apply to the court for rectification of the register, and the court "may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application."

C, who has lost out by having his name removed from the company's register of members, may then bring an action against the company on the basis of an action often referred to as "share certificate estoppel". By issuing a share certificate in B's name, the company represents that the person named as the holder is entitled to the shares.[31] The company's representation is important if the statement in the certificate is incorrect and a person, unaware of the true position, acts on the faith of the company's representation. The company is therefore estopped from denying, against C, that B was the owner and may have to pay C damages for the loss which he suffers from having the company's register of members rectified.

In the scenario created above, B was both the person certified to be the holder of the shares and the fraudulent party. What if a transferor purports to transfer shares that are not registered in his own name? Consider the following scenario:

A had to provide security to his stock broker, B, as security for losses that may be incurred on A's account. A had signed a blank transfer and left the share certificate with B. B, who wanted to defraud A, disposed of the shares within the scope of B's actual authority, to C. C will have good title to the shares *vis à vis* the true owner, A.

The position may, however, be different, if C had obtained a forged transfer from B. In such a case, C would not have good title to the shares *vis à vis* A. If C had relied on a forged share certificate, C would also not be able to sue the

30 Section 127 of the *Companies Act*.

31 *Re Bahia and San Francisco Rail Co* (1868) LR 3 QB 584 at 598

company since there is no representation by the company that B is the owner of the shares.

Restrictions on transfer. The memorandum and articles of association of private companies are required to provide for restrictions on share transfers.[32] However, restrictions that are too onerous or unduly restrictive do not find much favour with the courts. For example, some companies' memorandum and articles of association require the directors to approve a transfer before it is registered. This allows the current directors to control who becomes a member of the company. Like all other powers of directors, the power to refuse to register a transfer must be exercised in good faith, in the interests of the company and for proper purposes.[33]

Acquiring shares by operation of law. A person may also become the owner of shares by operation of law, for example where the person has inherited the shares from a shareholder who has died, or the person is the trustee in bankruptcy of a shareholder who has become bankrupt. Alternatively, a court may have made an order requiring that a person transfers their shares to another person.[34] In these cases, the person acquiring the shares gives the company appropriate evidence of their entitlement to the shares and the company then makes the necessary alterations to its share register.

Acquiring shares by compulsory acquisition. A person may be entitled to have another person's shares transferred to them without the consent or cooperation of that person in certain other circumstances. For example, this occurs where a person is entitled to acquire compulsorily another person's shares following a take-over of the company, where the offer has been approved by the holders of not less than 90% of the total number of those shares, excluding treasury shares, to which the offer relates. The total number of shares to which the offer relates does not include shares already held at the date of the offer by the offeror. Under such a circumstance the offeror may within two months after the offer has been approved, give notice to any dissenting shareholder that it desires to acquire those shares.[35]

¶16-360 How does someone cease to be a member of a company?

A person will no longer be a member of a company if, among other things:

- they transfer their shares to another person
- they transfer their shares back to the company under a "buy-back"
- their shares are cancelled by the company under a reduction of capital

32 Section 18 of the *Companies Act*. Public companies do not have such restrictions.

33 See Chapter 11.

34 For example, we saw in Chapter 14 that the court may make an order requiring one member of a company to buy the shares of another member, where the company's affairs have been conducted oppressively.

35 Section 215 of the *Companies Act*. The *Code on Take-overs and Mergers* is further discussed in Chapter 24.