

Resolutions of members

Checklist

Contents

Introduction	3
Members' resolutions – types and majorities	3

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the SGA:
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Introduction

A members' resolution is a formal decision of the organisation's members. Such resolutions are usually passed at a meeting of the members (often called a 'general meeting'). However, they are sometimes passed as a written resolution.

Members' resolutions – types and majorities

Checklist

Companies – types of resolution and majorities

- The Companies Act 2006 provides for two types of members' resolution:
 - ordinary resolution; and
 - special resolution.
- An ordinary resolution is passed by a simple majority.
- A special resolution is passed by a majority of not less than 75%.
- The notice period for either type of resolution is normally 14 days. However, if the company's articles require a longer period that longer period of notice must be given. It is quite common for the articles of older companies (especially those incorporated prior to 1 October 2009) to require a 21 days' notice period for a special resolution.

Companies – calculation of majorities (meetings)

- The *calculation* of the majorities required for resolutions is subject to different rules, depending on whether they are to be passed at a general meeting on a show of hands, or at a general meeting on a poll, or by written resolution.
 - At a *meeting*, if the vote is taken on a show of hands the simple majority is calculated based on votes cast (i.e. the 'one person one vote' principle).
 - At a *meeting*, if the vote is taken on a poll the majority is calculated by reference to the total voting rights of the members who actually vote on that resolution.
- Note that proxies and authorised representatives of corporate members may vote whichever method is used to take the vote.
- Those who abstain and those who fail to attend the meeting are not counted, in either case.

Companies – calculation of majorities (written resolutions)

- The calculation of majorities for written resolutions is based on majorities of votes from 'eligible members'. That is, the members who qualify to vote on the relevant resolution at its circulation date (i.e. the date on which copies of the draft resolution are sent or submitted to the members in accordance with the Companies Act rules).
- Note that there is a time limit for obtaining the required majority, otherwise the proposed resolution lapses. If the articles are silent, the time limit is 28 days beginning on the circulation date. However, if the articles specify an alternative time limit that will apply.
- The required voting percentages are:
 - ordinary resolution – a simple majority of the *total voting rights* of the eligible members; and
 - special resolution – not less than 75% of the *total voting rights* of the eligible members.

Charitable Incorporated Organisations and Scottish Charitable Incorporated Organisations

- An alteration to the constitution of a CIO or SCIO requires a resolution of the members passed:
 - a) by a 75% majority of those voting at a general meeting; or
 - b) unanimously by the members, if it is passed otherwise than at a general meeting.
- If the constitution permits the use of proxies or postal voting, votes given by that method are counted in relation to (a).
- Other resolutions – the requirements will normally depend on the constitution of the particular CIO or SCIO.

Procedure

- The procedure required to pass a particular type of members' resolution depends on the legal form of the organisation, whether the resolution is to be passed at a general meeting of the members or by written resolution.
- In some unusual situations, the particular circumstances will also affect procedural requirements (e.g. a proposed forcible removal of a trustee/director or an auditor of a company limited by guarantee – both of which are extremely rare).

Companies

- The relevant Companies Act procedural requirements must be followed. In addition the provisions of the company's articles must be considered.

CIOs and SCIOs

- For CIOs and SCIOs, most of the procedural requirements depend on the terms of the individual organisation's constitution.

Other charities

- Most of the procedural requirements depend on the terms of the individual charity's constitution.

Records and filing

Checklist

- Consider what, if any, statutory requirements apply because of the legal form of the particular organisation.
- Note that CLGs, CIOs and SCIOs are subject to particular statutory requirements.
- Consider any relevant provisions of the organisation's governing document regarding records of members' decisions and records of general meetings, or other formal decisions, of the members.

Procedure

Records of resolutions passed at meetings

- Organisations should always keep records of formal meetings of their members, including any annual general meeting and any other general meetings.
- These records should include details of members' resolutions passed at those meetings.
- The records are usually kept as minutes.

Companies – records of resolutions passed at meetings

- The Companies Act requires companies to keep records of meetings of their members and the decisions taken at those meetings.

Companies – records of written resolutions

- The Companies Act requires a record to be kept of any written resolutions of the members of a company, made pursuant to the statutory procedures in the Act for the passing of written members' resolutions. This includes details of the text of the resolution, the type of resolution, the date it took effect and the names of the eligible members who signed the resolution.

CIOs – records of resolutions passed at meetings

- CIOs are required to keep records of proceedings at all meetings of their members. Those records must be kept for a minimum period of six years from the date of the meeting.

CIOs – records of other decisions of the members

- Decisions of the members of a CIO taken other than at meeting should also be recorded (e.g. written resolutions).
- The CIO regulations specifically require records to be kept of all appointments of the trustees (in many CIOs it is the members who appoint the trustees). Those records must be kept for a minimum period of six years from the date of the appointment.

Filing requirements

Companies House

- The Companies Act specifies which members' resolutions a company must file at Companies House.
- All special resolutions must be filed.
- Certain ordinary resolutions must also be filed (e.g. an ordinary resolution to remove a director/trustee or to remove an auditor – note that these are exceptionally rare).
- Where a filing requirement applies to a particular resolution, it is usually necessary to include one or more statutory forms (or electronic equivalent).
- If there have been changes to the articles, a copy of the altered articles must also be filed.

Charity Commission

- There is no general obligation to file copies of members' resolutions with the Charity Commission. However, some members' resolutions will relate to a matter that triggers a requirement for the charity to notify the Charity Commission – for example, the appointment of a new trustee.

The Office of the Scottish Charity Regulator

- There is no general obligation to file copies of members' resolutions with the OSCR. However, some members' resolutions will relate to a matter that triggers a requirement for the charity to notify the OSCR because there is a change in the charity's registered details on the Scottish Charity Register (e.g. the appointment of a new trustee).
- Other resolutions will need to be notified because they relate to a notifiable change under section 17 of the Charities and Trustee Investment (Scotland) Act 2005 (e.g. a change to the charity's constitution).

Notes

- In companies limited by guarantee, CIOs and SCIOs certain decisions must be taken by their members, not by their trustees. These include alterations to the articles (CLG) or constitution (CIO or SCIO).
- The constitution of an unincorporated members' association is likely to state that certain decisions must be taken by the charity's members, not by its trustees.
- Most members' decisions have immediate effect. However, a notable exception is an alteration of a charity's objects (i.e. charitable purposes). Such an alteration has *no* effect if the prior consent of the Charity Commission (and/or any other relevant charity regulator(s)) has not been obtained.
- In addition, in a CLG the change does not take effect until it has been registered on the company's public record by Companies House. In a CIO the change does not take effect until the Charity Commission has registered it on the CIO's entry on the register of charities.

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