CALMCO CORPORATE SERVICES LTD

A GUIDE TO HOLDING AND CONDUCTING ANNUAL GENERAL MEETINGS OF COMPANIES

This guide is based on the normal provisions of the Articles of a company as laid down in Table A of the Cyprus Company Law, Cap. 113.

Frequency of meetings

Every company must hold a general meeting in each calendar year as its annual general meeting. Not more than 15 months must pass between the date of one annual general meeting and the next.

Apart from the concession that the first annual general meeting must be held within 18 months of incorporation, the annual general meeting cannot be postponed and the 15 month rule must be observed. If, as a result of a change in the accounting period or for any other reason, it is not possible to have financial statements ready as required, the meeting must nevertheless be held and the financial statements presented at a subsequent general meeting.

If it is impracticable to hold an annual general meeting as explained above, a director (or any member entitled to vote) may apply to the Court for the meeting to be held in such manner as the Court thinks fit.

Who may convene

The directors are the usual convening authority for the annual general meeting. If however they fail to convene it within the specified time limits, the Council of Ministers is empowered to call, or instruct the calling of a general meeting on the application of any member. In addition, the court has the power either on its own or on the application of a director or member of the company, to order the calling of an annual general meeting.

Business to be transacted

There are two kinds of business, namely special business and ordinary business. Ordinary business is (by virtue of Table A):

- the consideration of the accounts and the reports of the directors and auditors and the declaration of a dividend;
- the election of directors in the place of those retiring; and
- the appointment, and the fixing of the remuneration, of the auditors.

All other business is considered to be special business.

An indication of the nature of all business to be transacted must be given in the notice calling the meeting. So far as special business is concerned, more detailed information should be given including the text of any resolutions to be proposed.

Accounts and reports of the directors and auditors and declaration of a dividend

Although copies of the accounts have to be circulated, the directors are obliged to lay the accounts before the company in general meeting; this means that the accounts with the balance sheet signed by directors on behalf of the board and having attached the signed report of the auditors, must be formally tabled at a

general meeting. There is no legal provision and it is unlikely that there will be a provision in articles that requires the accounts to be "adopted" by the company in general meeting. It is nevertheless a fairly common practice to submit a resolution at a general meeting providing for the accounts to be "received and adopted", but the passing or rejection of such a resolution is of no effect so far as the contents of audited accounts are concerned. The accounts are an historical record of past transactions and there is nothing the company in general meeting can do to alter what has already taken place. At best, the rejection of a resolution to "receive and adopt" the accounts is tantamount to an expression of no confidence in the directors.

Although the accounts of a company are usually presented at the annual general meeting, it is permissible for them to be submitted at an extraordinary general meeting. This would be most likely to be done following a change in the accounting period. For example, accounts for twelve months to 30 September may be presented at an annual general meeting held in the following February. The company then changes its accounting period to 30 June and the next accounts are ready for presentation in October. An annual general meeting having already been held in the calendar year, the accounts to 30 June may accordingly be laid before an extraordinary general meeting in October.

Appointment, removal and remuneration of directors

The appointment of directors at a general meeting of a public company must be voted on individually unless a resolution to the contrary has been agreed to without any votes being cast against it. If a single resolution is passed to appoint two or more directors of a public company, that resolution is not valid.

The Articles lay down the manner in which a director may be appointed and usually, in public companies, include a provision requiring the directors to retire by rotation. Table A provides that the company at the meeting at which a director retires by rotation may elect a director to fill the vacancy and that the retiring director, if offering himself for re-election, is deemed to have been re-elected unless:

- another person is elected;
- a resolution not to fill the vacancy is passed;
- or a resolution for his election is lost.

Table A also states that no person, other than the retiring director or a person recommended by the directors, is eligible for election as a director unless a notice of intention to propose him, signed by a member entitled to vote, is left at the registered office not less than 3 nor more than 21 days before the meeting, together with a signed notice of the proposed director's willingness to assume his duties.

The Articles may appoint a named person as permanent director of the company, so that no re-election is necessary in his case.

A director may be removed by an ordinary resolution passed at a general meeting before the expiration of his period of office. There is specific provision about this matter in section 178 of the Companies Law and it is noted that the removal of a director does not necessarily affect the contractual rights of the removed director.

Special notice (not less than 28 days) must be given of any resolution to remove a director or to appoint another person in place of a removed director at the meeting at which he is removed. The company must send a copy to the director concerned, who is entitled to have his representations in writing sent to the members or read out at the meeting and is also entitled to be heard during discussion of the resolution at the meeting.

A director, unless he holds a salaried office, is not entitled to remuneration in the absence of a provision for payment in the Articles. Unless authorised in the Articles, directors cannot vote remuneration to themselves or appoint one of their number to a salaried position with the company. Table A provides that "the remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day."
Approval of the directors' remuneration is therefore not required under Table A at each and every annual general meeting.

Appointment and remuneration of auditors

At each annual general meeting the company must appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting. The retiring auditor is re-appointed without any resolution being passed unless special notice (28 days) has been given to the company by a person entitled to attend and vote of his intention to propose of either, a resolution to appoint as an auditor a firm or person other than the retiring auditor, or a resolution providing expressly that a retiring auditor shall not be re-appointed.

On receipt of such notice the company must send a copy to the auditor and must give to its members notice of the proposed resolution. The auditor is normally entitled to make representations in writing and have them circulated among the members and speak on the resolution at the meeting.

The remuneration of the auditors' for the following year is fixed by the company in general meeting. More usually a resolution is passed authorising the directors to fix the auditors' remuneration.

Required notice

The minimum period of notice that must be given for convening an annual general meeting is 21 "clear" days, ie exclusive of the day the notice is served and the day of the meeting. Beyond the 21 "clear" days, time must be allowed for the receipt of the notice in cases where the Articles have a provision as to when a notice is deemed to be received. The Articles of the company determine the persons entitled to receive notice. Most Articles provide for notice to be given to every shareholder. If a company has non-voting shares in issue, the Articles will usually provide that notice of general meetings shall be given to every shareholder entitled to attend and vote.

Accordingly holders of non-voting shares will not be entitled to receive notice. Most Articles contain a clause designed to protect the company from having resolutions which have been passed invalidated as a result of accidental omission to give notice to any person entitled to receive it.

Failure on the part of the company to give the required notice (ie 21 days) will render all the proceedings at the meeting invalid. If however all the members entitled to attend and vote agree, the giving of insufficient; notice will not invalidate the proceedings.

Contents of notice

The notice of the annual general meeting must state the time, place and date of the meeting and the nature of the business to be transacted. It should be signed by or on behalf of the convening authority eg, by order of the board. As stated earlier, all items of special business should be shown in detail including any resolutions to be proposed. Since the ordinary business which may be transacted at an annual general meeting is defined in the Articles and because no other business (ie special business) may be transacted unless details of it are shown in the notice, it is not in order to include in the notice an item "to transact any other business". Such an inclusion is purposeless and of no effect.

In every notice calling a meeting of the company there must appear a statement to the effect that a member entitled to attend and vote may appoint a proxy and that the person appointed need not be a member. Such statements usually also state that the proxy forms must be received by the company not less than 48 hours before the meeting. (It should be noted that the Articles of the company may not provide for receipt of proxy forms more than 48 hours before the meeting).

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