McCann FitzGerald

Briefing
Companies Act 2014:
General Meetings

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The Companies Act 2014 (the "**Act**") came into effect on 1 June 2015. The Act has introduced significant reforms in company law in Ireland.

While much of the law relating to general meetings is unchanged by the Act, it has introduced some important reforms. The law relating to general meetings of members of a private company limited by shares (**LTD**) is set out in Chapter 6 of Part 4 of the Act. Many of the provisions also apply to class meetings.

Key Features

- An LTD may dispense with holding an AGM.
- Any other company type may dispense with an AGM if it has only one member.
- Majority written resolutions are available to companies (other than public limited companies (PLCs), companies limited by guarantee (CLGs) and unlimited companies (UCs)) but the constitution of a designated activity company (DAC) can disapply same.
- Unanimous written resolutions are available to companies but the constitution of a PLC, DAC, CLG or a UC can disapply same.
- AGMs need not be held in the State.

The annual general meeting (AGM)

There remains an obligation on an LTD to hold an AGM in each year, and at not more than 15 month intervals. However, the first AGM may be held within 18 months of incorporation. An LTD need not hold an AGM in any year where all the members entitled to attend and vote at such general meeting sign, before the latest date for the holding of that meeting, a unanimous written resolution:

(a) acknowledging receipt of the financial statements that would have been laid before the AGM;

(b) resolving all such matters as would have been resolved at that meeting; and

(c) confirming no change is proposed in the appointment of the person (if any) who, at the date of the resolution stands appointed as statutory auditor of the company.

No longer must AGMs be held in the State and now all general meetings, including AGMs, may be held in Ireland or abroad. Where any general meeting is held outside of the State, unless all of the members entitled to attend and vote consent in writing to its being held outside of the State, the company has a new duty to ensure that members can by technological means participate in any such meeting without leaving the State. A general meeting can be held in two or more venues (whether inside or outside the State) at the same time using any technology that provides members as a whole with a reasonable opportunity to participate.

The Director of Corporate Enforcement is empowered to direct the calling of an AGM where a member of the company applies to him.

The extraordinary general meeting (EGM)

The Act provides that the directors of a company may, whenever they think fit, convene an EGM. If there are insufficient directors capable of acting to form a quorum for a directors' meeting, then any director or any member may convene an EGM in the same manner (as nearly as possible) as that in which meetings may be convened by the directors.

Even where there are sufficient directors capable of forming a quorum, the Act confers both optional rights that apply unless the constitution provides otherwise ('optional default rights') and mandatory rights that cannot be taken away by the constitution ('mandatory rights') to members to convene or cause to be convened a general meeting.

The optional default right is that, one or more members holding not less than 50% (or such percentage as may be specified in the constitution) of the paid up share capital carrying the right to vote at general meetings may convene an EGM. This is a new provision in Irish company law and confers the right to convene, as opposed to require to be convened, an EGM. The previous power of the court to convene a general meeting is enhanced under the Act.

Notice of general meetings

The Act now confers a statutory right on the following persons to receive notice of every general meeting: every member (whether or not entitled to vote), the personal representative of a deceased member who has the right to vote, the assignee in bankruptcy of a bankrupt member (who has the right to vote), and the directors and secretary of the company. Where a company has auditors they are entitled to attend, receive notices and other communications relating to general meetings and be heard at general meetings.

Quorum for general meetings

No business can be transacted at a general meeting unless a quorum is present and, save to the extent that a constitution provides otherwise, two members of a company present in person or by proxy shall be a quorum. In a single-member company, one member present in person or by proxy is a quorum, and this implicitly provides authority for the fact that one person can constitute a meeting.

Unless the constitution provides otherwise, if within 15 minutes (under the default rule in Table A to the Companies Act 1963 the period was 30 minutes) after the appointed time a quorum is not present, then where it had been convened by the members it is dissolved; otherwise, it will stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the directors determine and if at the adjourned meeting a quorum is not present within 30 minutes, the members present will be a quorum.

Ordinary and special resolutions

For the first time, "ordinary resolution" is defined as "a resolution passed by a simple majority of the votes cast by members of a company as, being entitled to do so, vote in person or by proxy at a general meeting of the company."

Special resolution is afforded a different definition to that in the Companies Act 1963 and now means a resolution that:

(a) is referred to as such in the Act, or is required (whether by the Act or by a company's constitution or otherwise) to be passed as a special resolution, and

(b) is passed by not less than 75% of the votes cast by such members of the company concerned as, being entitled to do so, vote in person or by proxy at a general meeting, and

(c) is passed at a meeting of which 21 days' notice has been given and which complies with the requirements of the Act as to place, date, time, nature of business, text of the special resolution (as mentioned above).

It is also specifically provided that "written resolution" (discussed below) means either an ordinary resolution or a special resolution passed in accordance with the Act. A resolution passed at an adjourned general meeting is treated as having been passed on the date on which it was in fact passed and not at any earlier date.

Unanimous written resolutions

The Act provides that a resolution in writing signed by all of the members entitled to attend and vote on such a resolution at a general meeting is as valid and effective for all purposes as if it had been passed at a general meeting duly convened and held (and if described as a special resolution is deemed to be a special resolution). Under previous law, such a resolution could only be passed by certain types of company if their constitution so permitted.

A written resolution may consist of several documents in like form signed by one or more members and is deemed to have been passed on the date on which it was signed by the last member to sign; and where a signature is dated, that is prima facie evidence that it was signed on that date.

The signatories of a written resolution are required to deliver it to the company within 14 days of its passing and where a resolution is not contemporaneously signed, the company must notify the members of its passing within 21 days of the company itself having been notified. The company is required to retain the resolution sent to it as if it were minutes of a meeting. The failure to comply with the foregoing administrative requirements does not invalidate the resolution.

As was previously the case, a unanimous written resolution does not apply to the removal of a director or of a statutory auditor. It is still possible for the sole member of a single member company to remove a director by means of a written decision. The Act also provides that the unanimous written resolution procedure does not apply to the acquisition by a company of its own shares.

Majority written resolutions

The majority written resolution, whether ordinary or special, is a welcome reform of Irish company law. A resolution in writing:

(a) that is described as being an ordinary resolution;

(b) that is signed by a member or members who alone or together, at the time of signing, represent(s) more than 50% of the total voting rights of all the members who would have the right to attend and vote at a general meeting at that time; and

(c) the proposed text of which, and an explanation of its main purpose, has been circulated, by the directors or the other person proposing it, to all the members of the company who would be entitled to attend and vote on the resolution,

(d) is as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held. This process cannot be used to remove a director or auditor.

Where such a resolution is described as being a special resolution and is signed by a member or members representing 75% of the total voting rights and (c) above is complied with, it is as valid as a special resolution passed at a general meeting. As with a unanimous written resolution, a majority written resolution may consist of several documents in like form signed by one or more members.

An important point to note is the mandatory delayed effect of majority written resolutions (unlike a unanimous written resolution which is effective once the relevant members sign same). The Act provides that an ordinary resolution passed as a majority written resolution is deemed to have been passed at a meeting held 7 days after the date on which it was signed by the last member to sign and a special resolution passed as a majority written resolution is deemed to have been passed at a meeting held 21 days after the date on which it was signed by the last member to sign. The mandatory delayed effect can be waived where all of the members who are entitled to attend and vote on the resolution state, in a written waiver signed by each of them, that the delayed effect is waived.

The members who sign a written resolution must deliver the resolution to the company (mandatory, see below) and within 3 days of the resolution being delivered to the company, the company must notify every member of the fact that the resolution was signed by the requisite majority and the date that it is deemed to be passed and the company must retain the resolution as if it were minutes of a meeting.

Note that a majority written resolution is of no effect unless it is delivered to the company, however, non-compliance with the other administrative rules described above do not affect the validity of the resolution.

Single-member companies

The Act confirms that all the powers exercisable by a company in general meeting are exercisable by the sole member without the need to hold a general meeting; this includes the power to remove a director, although this is expressed to be "*without prejudice to the application of the requirements of procedural fairness to the exercise of that power of removal by the sole member*". Statutory auditors may not, however, be removed by a sole member without holding the requisite meeting.

Registration of resolutions and agreements

As under previous law, copies of certain resolutions (being all special and certain ordinary resolutions) and agreements must be forwarded by the company concerned to the registrar of companies within 15 days after the date of their passing or making.

Law applicable to other company types

The law of meetings as it applies to the DAC, the CLG, the UC and the PLC is that set out above as applying to the private company limited by shares subject to certain disapplications, modifications and supplemental provisions.

Designated activity companies

The law of meetings as it applies to the DAC is that set out above as applying to the LTD, subject to some modifications:

- a DAC may only dispense with holding an AGM if it has one member;
- the unanimous written resolution process applies to a DAC unless its constitution expressly disallows the use of same; and
- the majority written resolutions process also applies to a DAC unless its constitution expressly disallows the use of same.

Guarantee Companies

The law of meetings as it applies to the CLG is that set out above as applying to the LTD, subject to certain modifications and supplemental provisions (having regard to the fact that a CLG has no share capital), the main ones being:

- the provisions on majority written resolutions are expressly disapplied in respect of CLGs;
- a CLG may not dispense with holding an AGM unless it has one member;
- the constitution of a CLG can remove the right to appoint a proxy (note that no such right was contained in the default rules in Table A);
- unless the constitution provides otherwise, every member of a CLG has one vote, whether on a show of hands or a poll, and a member has no vote unless all monies payable to the company in respect of that member have been paid; and
- the unanimous resolution procedure can be disapplied where a CLG's constitution so provides.

Unlimited companies

The law of meetings as it applies to the UC is that set out above as applying to the LTD, subject only to one disapplication and some modifications:

- a UC cannot use the majority written resolution procedure;
- a UC can dispense with the holding of an AGM if it has only one member; and
- the unanimous written resolutions process applies to a UC unless its constitution expressly disallows the use of same.

Generally, it may be noted that there are no differences introduced in relation to the law of meetings as it applies to the private unlimited company (ULC), public unlimited company (PUC) or public unlimited company without a share capital (PULC).

Public limited companies

The law of meetings as it applies to the PLC is that set out above as applying to the LTD subject to certain disapplications, modifications and supplemental provisions, the main ones being:

- the provisions on majority written resolutions are expressly disapplied in respect of PLCs;
- there is specific permission for a PLC that is a "participating issuer" to set a "record date" up to 48 hours before a meeting is held in order to determine members' rights to attend and vote at a meeting and how many votes may be cast;
- there is specific permission for a PLC that is a participating issuer for the purposes of serving notices of meetings, to determine that persons entitled to receive notices are those entered on the relevant register of securities at the close of business on a determined day;
- in the case of every PLC, at least 14 days' notice must be given of an EGM;
- the directors of a PLC must convene a general meeting in the case of a serious capital loss;
- notwithstanding anything in the constitution of a PLC, whose shares are admitted to trading on a regulated market in any Member State (a traded PLC), certain provisions (required under EU law concerning shareholder rights) are retained.

Action Required

Company secretaries and others involved in the administration of companies need to become familiar with the provisions in the Act, in particular the reforms introduced by the Act concerning members' meetings and resolutions. Template documentation requires amendment and the changes necessary depend on the company type involved.

As companies review their existing constitutional documents, decisions will be required as to the approach to be taken to those sections in the Act that regulate members' meetings, unless the constitution provides otherwise.

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