

## Chapter 14

### Meetings and Investor Engagement

Here, basic guidance to the end-of-chapter questions will be provided.

**1. Define the following terms:**

- **ordinary resolution;**
- **special resolution;**
- **written resolution;**
- **general meeting;**
- **class meeting;**
- **a poll vote;**
- **proxy;**
- **corporate representative;**
- **institutional investor.**

Term	Definition
ordinary resolution	A resolution of the company that is passed by a simple majority (i.e. over 50 per cent)
special resolution	A resolution of the company that is passed by a majority of not less than 75 per cent
written resolution	A resolution that can be used as a substitute for a resolution at a meeting, that involves a copy of the resolution being sent to every member eligible to vote (e.g. in hard copy, by email or via a website)
general meeting	A meeting of the company
class meeting	A meeting to which only a specified class (or classes) of member are entitled to attend
a poll vote	A vote under which each member has one vote per share (unless the company has no share capital, in which case each member has one vote)
proxy	A person appointed to attend, speak or vote at general meetings on behalf of a member
corporate representative	Where a company (A) holds shares in another company (B), then A can authorize a person (the corporate representative) to act as its representative at any meeting of B
institutional investor	Large bodies (such as banks, pension funds, insurance companies) that purchase significant amounts of shares

**2. State whether each of the following statements is true or false and, if false, explain why:**

- **public companies must make decisions via resolutions at a meeting;**
- **an ordinary resolution is passed if 50 per cent or more of the members vote in favour of it;**

- **only private companies can use the written resolution procedure;**
- **a company can make a decision without a resolution being passed if all the members agree on the matter;**
- **only the directors may call a general meeting of the company;**
- **members must be provided with 21 days' notice of the AGM of a private company;**
- **two qualifying persons attending a general meeting will usually constitute a quorum;**
- **where a vote is taken by poll, each member will have one vote per share;**
- **a member can only appoint a proxy if the articles so provide.**

- **Public companies must make decisions via resolutions at a meeting:** This statement is false as public companies may use the unanimous assent rule (although there are decisions that cannot be taken this way).
- **An ordinary resolution is passed if 50 per cent or more of the members vote in favour of it:** This statement is false. An ordinary resolution is passed in over 50 per cent of the members vote for it. An exact 50:50 split means that the resolution is lost.
- **Only private companies can use the written resolution procedure:** This statement is true.
- **A company can make a decision without a resolution being passed if all the members agree on the matter:** This statement is true (although there are exceptions).
- **Only the directors may call a general meeting of the company:** This statement is false. The members also have the power to call a general meeting if specified criteria are met.
- **Members must be provided with 21 days' notice of the AGM of a private company:** This statement is false. The usual notice period for the AGM of a private company is 14 clear days.
- **Two qualifying persons attending a general meeting will usually constitute a quorum:** This statement is true. Two qualifying persons will constitute a quorum, unless the articles state otherwise.
- **Where a vote is taken by poll, each member will have one vote per share:** This statement is true.
- **A member can only appoint a proxy if the articles so provide:** This statement is false. The ability to appoint a proxy is granted to members by the CA 2006 and the articles cannot restrict this right.

### 3. Discuss the extent to which the UK Stewardship Code has been effective in improving institutional investor engagement.

#### Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.

- This question requires you to discuss the effectiveness of the UK Stewardship Code. Please note that, at the time of writing the relevant Stewardship Code was published in 2012. The 2020 version of the Code has now been published.

### **History**

- Given the extent to which the Code was shaped by previous initiatives, it is worth briefly setting out some historical context to the Code's creation. Briefly cover the work of the Institutional Shareholder's Committee (ISC), the Walker Review's recommendation that a Code should be created, and the ISC Code.
- Point out that the first Code in 2010 was largely a verbatim reproduction of the ISC Code and that the 2012 Code introduced only modest changes. More substantial changes came in the 2020 update.

### **Scope**

- One significant problem with the Code has been its scope. It applies principally to UK institutional asset owners and managers, with the 2020 Code also having dedicated Principles for service providers.
- The issue (as noted at 14.5.2) is that the majority of shares in UK quoted companies are not in the hands of UK asset managers or owners, but overseas asset managers and owners.
- The Code is also voluntary, meaning that only those who sign up to the Code are required to report on it (although certain FCA-regulated firms and persons can report against the Code). Signatories will be required to produce an annual Stewardship Report, which explains how they have applied the Code in the previous twelve months.
- To date, very few overseas asset managers and owners have signed up to the Code.

### **Content**

- Prior to the publication of the 2010 Code, a consultation exercise was engaged in by the FRC. One of the questions asked was whether the ISC Code could form the basis of the new Stewardship Code. The vast majority of responses stated that the ISC Code was not robust enough and the proposed Stewardship Code would need to be considerably stronger.
- Disappointingly, despite this feedback, the 2010 Code was an almost verbatim reproduction of the ISC Code. The FRC justified this on the basis that it allowed for a Code to be published quickly.
- The 2012 update to the Code contained modest updates only. As a result, the perception has been that the Code has not resulted in significant increases in investor engagement.
- The 2020 update to the Code is much more substantial and completely reworks the structure and content of the Code. At the time of writing, although it has been published, it is not yet in effect, and so no comment can be made regarding its effectiveness.

### **Conclusion**

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).

- 4. Katie is a director of Spartan plc and Wraith Ltd. Hades Investments Ltd is a fund manager that holds a significant number of shares in both Spartan and Wraith. Hades has, for some time, had significant doubts regarding Katie's abilities as a director. After discussing the issue with several other dissatisfied shareholders, Hades Investments decides that Katie should be removed from the boards of Spartan and Wraith. Hades therefore seeks your advice regarding the following:**
- **Explain the various ways that Katie's removal from office could be secured.**
  - **Will a meeting need to be called and, if so, explain the procedures that would need to be followed.**
  - **Explain to Hades the practical issues it might face in getting any resolutions passed.**

### **The removal of Katie**

- The first question is whether Katie can be removed. Section 168 provides that a director can be removed by the company passing an ordinary resolution at a meeting.
- The articles could contain an additional method of removal. For example, the articles of most larger companies will provide that a director will be required to vacate office if the other directors so require. If the articles of Spartan or Wraith contain such a provision, Hades could lobby the directors to remove Katie or to convince Katie that resigning is the best course of action.
- Failing that, a removal under s 168 might be the only option.

### **The meeting**

- A section 168 resolution must be passed at a meeting. Hades could either wait and table a s 168 resolution at the next general meeting or it could try and get a meeting called. As Spartan is a public company, it will be required to hold an AGM, so Hades could simply wait for that AGM to take place. Wraith is a private company and so it is not required to hold an AGM, in which case Hades may wish to require the directors to call a meeting, providing it can meet the minimum thresholds (discussed at 14.3.1.1).
- Notice of the meeting will need to be provided. For the AGM of a public company, the normal notice period is 21 clear days, whereas for a general meeting of a private company, the normal notice period is 14 clear days. However, a s 168 resolution requires special notice, and so notice of 28 clear days will need to be provided.
- At the meetings themselves, Katie will need to be given the opportunity to address the meeting.

### **Practical issues**

- Hades does face some practical difficulties. First, its ability to call a meeting and table a resolution at the meeting depends upon meeting the thresholds in the CA 2006 (see 14.3.1.1 for the thresholds to call a meeting and 14.3.4.1 for the thresholds for member-proposed resolutions).
- Even if Hades can meet these thresholds, it will then need to try and raise enough support to pass the s 168 resolution. We are not told how many shares Hades holds in Spartan or Wraith, but it will almost certainly be a minority shareholder. This means that it may need to persuade other shareholder to support its resolution.
- As Wraith is a private company, Hades will need the support of the majority shareholder (which could be a parent company if Wraith is a subsidiary). In Spartan, the directors may have control of a number of proxy votes, which would make it more difficult for Hades to obtain the required majority.