
Changing Articles of Association

Posted by Sue - 2008/07/14 12:22

My family business has put through an Ordinary Resolution at a General Meeting (67% voted in favour, 2 people) that only voting shares can be transferred to someone who already has voting shares.

My question: currently (as at 11 July 2008) can a change to the Articles of Association go through on an Ordinary Resolution or can we insist that it should go through as a Special Resolution which I think needs 75% agreement.

Thank you so much for your help.

=====

Re:Changing Articles of Association

Posted by Merlin - 2008/07/15 08:46

Hi Sue

Changes to the Articles require a Special Resolution (s9 Companies Act 1985). This can be 75% of those attending (either in person or by proxy) and voting at a meeting of the members as opposed to 75% of the total votes available.

Alternatively it can be done by written resolution which, following the Companies Act 2006 changes, requires the same majority as at a meeting only difference being that it is 75% of the total votes available that have to sign the resolution.

Once passed a copy of the resolution and a copy of the revised Articles have to be filed at Companies House within 14 days of the date of the resolution.

If the transfer provisions are contained in the current articles they cannot be changed by an Ordinary Resolution.

=====

Re:Changing Articles of Association

Posted by Sue - 2008/08/05 14:57

The company say they have taken legal advice and said that the resolution could go through as an ordinary resolution because the directors already had the power to change the way the shares were allocated and it was therefore deemed not to require a special resolution.

The Articles of Association say that all General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings. Also all business shall be deemed SPECIAL that is transacted at an Extraordinary General Meeting

=====

Re:Changing Articles of Association

Posted by Merlin - 2008/08/07 09:27

I would need to see the articles to comment fully.

However, nothing in the articles can remove or reduce a statutory requirement. It can increase the benefit or right given by statute.

No alteration can be made to the articles, the rights of the shareholders either as a single group or by class without a special resolution of the members - the directors can vote on this but only in their capacity as members (for members you can also read shareholders)

If the directors are saying that they can change the articles with an ordinary resolution they are either being economical with the truth or have bad advice. It is very unlikely that the articles will have given the directors power to change the way that the shares are allocated to suit themselves without the members' consent. They certainly cannot create a whole new class with reduced rights and put certain members into that class without the consent of those members.

The word "Special" in connection with the business conducted refers only to the business itself. That business may be dealt with by passing (or not) a resolution which may be Ordinary, Special or Extraordinary.

Hope this helps - if you would like to get more specific you will need to contact me directly.

Merlin

=====

Re:Changing Articles of Association

Posted by Sue - 2008/08/10 18:34

Thank you so much for your help.

=====

Re:Changing Articles of Association

Posted by Sue - 2008/08/29 05:21

Removed

=====

Re:Changing Articles of Association

Posted by Merlin - 2008/08/29 08:09

Hi Sue

I have been way on holiday so missed your previous post.

The Companies Act says that any changes to the Articles require a Special Resolution as I said previously - get a copy of the Act and read it (Companies Act 1985 s9 - which has not yet been changed). No wording in any of the articles can detract from this position.

To change the Articles requires a 75% shareholders majority of those attending and voting at a meeting which has to have 21 days notice and, since the 2006 Act, a similar majority by written resolution. Prior to April 2008 a written resolution required unanimous consent.

If you have three shareholders with a one third share each no Special Resolutions can be passed with one dissenting shareholder.

I recently had a similar problem which was a nightmare to resolve - we got there in the end.

I do not know where your co-shareholders are getting their advice (if indeed they are) or just making it up as they go along. What they are doing is totally wrong

Merlin

=====

Re:Changing Articles of Association

Posted by kps75 - 2008/08/29 08:32

Sue your link doesn't seem to work

=====

Re:Changing Articles of Association

Posted by Merlin - 2008/08/29 08:50

Hi Sue

Me again.

Have just had a look at the M&AA of the company.

On quick reading of the Memorandum the A ordinary shares are non-voting other wise they carry rights to dividends and equity distribution alongside and equal to the Ordinary Shares.

The rights of the A Ordinary Shares cannot be changed in any way without the consent of a 75% majority of the A Ordinary shareholders regardless of anything that the M&AA may say about the class not receiving notices or being able to attend a General Meeting.

Have you been receiving dividends? Have dividends been paid to the Ordinary Shareholders and not the A Ordinary shares?

Unless the Ordinary Shareholders agree to the A Ordinary Shareholders being enfranchised for voting purposes you will just have to live with it. The resolution passed as an Ordinary Resolution and purporting to change the Articles is, in my opinion, invalid and open to challenge.

Merlin

=====

Re:Changing Articles of Association

Posted by Sue - 2008/08/29 11:35

Removed

=====

Re:Changing Articles of Association

Posted by Sue - 2008/08/29 11:48

No real dividend paid since 2000 (there was a dividend in 2002 but this was paid for by one of the directors - the one who is ill now). The firm has made losses since but has still paid the preference share dividend out of losses. The Articles, and it appears Company Law, says this is not allowed. They pay the preference share dividend because the Articles say if the preference dividend is 6 months in default preference shareholders may attend meetings and vote.

Dividends to Ordinary Shareholders only - no, not that I am aware of.

Any help is really gratefully received

Sue

=====

Re:Changing Articles of Association

Posted by Merlin - 2008/08/29 12:44

Hi Sue

I really don't think that an open forum which is open to all is the best place to follow this up.

I will drop you a line direct.

Merlin

=====

Re:Changing Articles of Association

Posted by mahutchinson - 2008/09/19 14:54

All changes to the articles require a special resolution. There is no exemption from this. Don't get confused between special business and a special resolution - they are not connected. The dividends are certainly illegal if the company has net losses and not just losses in particular years.

=====

Re:Changing Articles of Association

Posted by Sue - 2008/09/19 15:17

What is the difference between "losses" and "net losses".

What precisely is "special business". I am so confused about this term.

Thanks

=====

Re:Changing Articles of Association

Posted by KyleTully - 2010/01/25 12:11

Merlin wrote:

Hi Sue

Changes to the Articles require a Special Resolution (s9 Companies Act 1985). This can be 75% of those attending (either in person or by proxy) and voting at a meeting of the members as opposed to 75% of the total votes available.

Alternatively it can be done by written resolution which, following the Companies Act 2006 changes, requires the same majority as at a meeting only difference being that it is 75% of the total votes available that have to sign the resolution.

Once passed a copy of the resolution and a copy of the revised Articles have to be filed at Companies House within 14 days of the date of the resolution.

If the transfer provisions are contained in the current articles they cannot be changed by an Ordinary Resolution.

Thank You Merlin this was just the information I was looking for. You really know your stuff. Anyway thanks alot.

Evaluate some tinnitus miracle together with the the diet solution this substance fat burning furnace properly lemonade diet by cleanse.

=====

Re:Changing Articles of Association

Posted by shilpaworld3 - 2010/02/01 08:34

where is your articles now?

youtube subscriber bot

=====

Re:Changing Articles of Association

Posted by Jamiespencer8 - 2010/07/30 10:17

Thank You Merlin this was just the information I was looking for. You really know your stuff. Anyway thanks alot. Yes, you are right, i also thought that the article containing very informative and interesting content that really helpful. Thanks all of you guy. keep up the good work

Jamie,
Truth About abs Reviews

Buy Natural Health Supplements

Re:Changing Articles of Association

Posted by amittayal76 - 2010/08/09 15:53

The company say they have taken legal advice and said that the resolution could go through as an ordinary resolution because the directors already had the power to change the way the shares were allocated and it was therefore deemed not to require a special resolution.

The Articles of Association say that all General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings. Also all business shall be deemed SPECIAL that is transacted at an Extraordinary General Meeting

.....

Granite Tile
Graham and Brown wallpaper

Re:Changing Articles of Association

Posted by rjc - 2010/11/09 14:18

What happens if you only have 3 shareholders (30%/30%/40%) holding all the shares. How can you obtain a 75% majority to force change in a company?

Re:Changing Articles of Association

Posted by JADvocate - 2010/12/16 06:46

You can talk directly to solicitors online about your problems at Expert Answers. They have a panel of legal experts including barristers, lawyers, solicitors and legal executives online waiting to answer legal questions and provide legal advice on all aspects of UK law. They have helped hundreds of customers to answer their legal problems.

Re:Changing Articles of Association

Posted by Merlin - 2010/12/22 23:52

To RJC - with a share split 30/30/40 you will never have the requisite majority unless all of the shareholders are in accord - other than for ordinary resolutions requiring a simple majority. In this case any two out of three.

I suspect that the company was deliberately set up in this way and unless all of the shareholders agree to change this situation it will remain in place.

The only remedy available, which will preserve the business of the company, is for the majority shareholders to buy out the dissenting member.

Hope this helps but I cannot offer any words of consolation other than to hope that if there is a problem that good sense will eventually prevail.

Re:Changing Articles of Association

Posted by Merlin - 2010/12/22 23:52

To RJC - with a share split 30/30/40 you will never have the requisite majority unless all of the shareholders are in

accord - other than for ordinary resolutions requiring a simple majority. In this case any two out of three.

I suspect that the company was deliberately set up in this way and unless all of the shareholders agree to change this situation it will remain in place.

The only remedy available, which will preserve the business of the company, is for the majority shareholders to buy out the dissenting member.

Hope this helps but I cannot offer any words of consolation other than to hope that if there is a problem that good sense will eventually prevail.

=====