

UK SHAREHOLDER ACTIVISM

Briefing

Effecting Board Changes

August 2014

Shareholders looking to effect board changes or to obtain board representation in a company subject to the United Kingdom's Companies Act 2006 as amended (the 'Companies Act') have a number of options available to them.

Removing a Director

Shareholders can remove a director before the expiration of his or her term of office at any time, with or without cause, by way of an ordinary resolution (i.e., a resolution passed by a simple majority of those present and entitled to vote) at a general meeting. This removal right applies without reference to anything in any agreement between the company and such director, and it exists separately from any other right of removal that may apply (such as through the company's articles of association). Shareholders can require the directors to call a general meeting at any time if they together represent at least 5 percent of the paid-up voting share capital of the company (excluding treasury shares) and can propose that a resolution to remove any director be tabled at that meeting. They can also request that an equivalent resolution be tabled at the company's annual general meeting ('AGM').

The resolution to remove a director in such a manner requires special notice — 28 days' notice before the relevant general meeting must be given, and such notice must be sent to the director concerned. Subject to special notice being given, however, such a meeting can be called at any time.

Directors' Rights

Directors have special rights to protest against their removal:

- The right (whether or not they are also shareholders) to attend and speak at the relevant general meeting; and
- The right to make written representations to the company (not exceeding a reasonable length) and require that they be sent to every member to whom notice of the relevant general meeting is given (or if the written representations are received too late for such distribution, that they be read out at the meeting).

No Need to Show Cause, but Rights Preserved

As noted above, the removal by ordinary resolution does not require any finding of fault with the relevant director. However, the rights of the outgoing director for compensation or damages in respect of the termination of his directorship (or of co-terminous appointments) are expressly preserved — so the company may be required to make termination payments to the outgoing director, and rights under pension schemes or long-term incentive or option plans may crystallise.

Replacement Directors

Special notice is required not only of a resolution to remove directors, but also of a resolution to appoint new directors in their place. Resolutions for the appointment of directors to a public company must be made individually, unless the relevant meeting so agrees.

Voting Against Re-Appointment; Proposing an Alternative Slate

The articles of association of companies which are UK-listed will usually contain, in line with the UK Corporate Governance Code (the 'Code') published by the Financial Reporting Council, provisions for re-election.

Whilst the Companies Act itself does not generally address requirements for a director to resign, a company's articles of association will usually provide for circumstances requiring immediate removal (on, for instance, bankruptcy, court order, prohibition by law (such as under the Company Director's Disqualification Act 1986) or on certain medical grounds).

For FTSE 350 companies, the Code recommends annual election by shareholders. For all other UK main market-listed companies, the Code recommends re-election by shareholders at the first AGM after initial appointment, and re-election thereafter at intervals of no more than three years, and it further recommends that non-executive directors who have served longer than nine years be subject to annual re-election.

Shareholders can require the circulation of resolutions to appoint alternative directors to those proposed by the company at the company's AGM (and where necessary or appropriate increase the size of the board) when the re-election resolutions are typically proposed. In that regard, see our separate *SRZ Briefing*, '[Requisitioning General Meetings and Resolutions, and Utilising Members' Statements](#)'. Unlike in some other jurisdictions (the United States, notably), shareholders are not restricted to a specific window of opportunity in proposing board changes, though the AGM is often viewed as providing an appropriate opportunity to do so.

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If you have any questions concerning this *Briefing*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: [Eleazer Klein](#), [Jim McNally](#) or [Marc Weingarten](#).

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