

UK SHAREHOLDER ACTIVISM

Briefing

Requisitioning General Meetings and Resolutions, and Utilising Members' Statements

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The United Kingdom's Companies Act 2006 as amended (the 'Companies Act') enables shareholders of UK-registered companies to require the directors to call a general meeting and table specific resolutions thereat. Further, the Companies Act allows shareholders to compel a company to circulate a statement on their behalf. These are key tools for the activist investor.

Requisitioning General Meetings

Shareholders can require the directors of a company subject to the Companies Act to call a general meeting of its shareholders if they together represent at least 5 percent of the paid-up voting share capital of the company (excluding any voting rights attached to treasury shares). Such a request can be made at any time but must state the general nature of the business to be dealt with at such requisitioned meeting. It may also include the text of a resolution to be moved at the meeting, so long as it is not defamatory, frivolous or vexatious and so long as it would not be ineffective if passed (whether because of inconsistency with law or the constitutional documents of the company or otherwise).

On such a requisition, the directors must call a meeting within 21 days, to be held no later than 28 days after the meeting is called. If the requisition identified a resolution intended to be moved at the meeting, the directors must include notice of that resolution in the notice convening the meeting.

If the directors fail to call a meeting when required, the shareholders who made the requisition, or any of them representing more than one-half of their total voting rights, may call the meeting themselves, at the expense of the company, and the expenses reimbursed by the company are to be deducted from the fees or other remuneration due from the company to the directors in default.

Requisitioning Resolutions and Other Business

Aside from the general right to requisition a meeting, shareholders of public companies holding at least 5 percent of the total voting rights of the company (excluding any voting rights attached to treasury shares) can require the company to give notice of a proposed resolution intended to be moved at the next annual general meeting (AGM), as can 100 members having voting rights and having paid-up share capital of an average of £100 per member. Again, the resolution must not be defamatory, frivolous or vexatious and must not be of a type which would be ineffective if passed, and it must be received by the company not later than six weeks before the meeting (or, if later, the date on which the notice of AGM is given).

Separately, for traded companies, shareholders meeting the 5 percent or 100 members/£100 per member tests can require items of business (i.e., matters to be discussed not being formal resolutions) to be dealt with at the AGM, again subject to the defamatory, frivolous or vexatious exceptions noted above.

Members' Statements

Aside from shareholders' rights to call or have called general meetings, and to requisition resolutions and other business, members can require the company to circulate a written statement of not more than 1,000 words relating to a matter referred to in a resolution to be dealt with at that meeting or relating to other business to be dealt with thereat if they meet the 5 percent or 100 members/£100 per member tests referred to above. The member's statement must be received by the company at least a week before the relevant meeting.

Assuming those requirements are met, the company must circulate members' statements to all members entitled to receive notice of the meeting either along with the notice of the meeting, or, if already given, as soon as practicable thereafter. Companies (or other persons claiming to be aggrieved) have the right to apply to court to dispense with the obligation to circulate members' statements but must satisfy the court that the rights to require their circulation are being abused.

The expenses of the circulation of members' statements are borne by the shareholders making the request unless the company resolves otherwise, unless the meeting to which the requests relate is the company's AGM or unless the requests are made before the end of the financial year preceding the meeting. Otherwise, the company can refuse to circulate a statement until there is deposited with or tendered to it by not later than one week prior to the meeting a sum reasonably sufficient to meet its expenses in doing 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: [Jim McNally](#) or [Marc Weingarten](#).

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