Horwath in Southern Africa (Pty) Ltd
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Talking Companies

Shareholders' Resolutions in terms of the Companies Act 2008 ("the Act")

Shareholders exercise their voting rights by passing or rejecting resolutions that are proposed to them by the directors or by any two shareholders of the company.

The notice sent to the shareholders proposing a resolution must be:

- sufficiently clear and specific; and
- accompanied by sufficient information or explanatory material to enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to attempt to influence whether the resolution is passed or rejected by the meeting

At any time before the start of a shareholders' meeting at which a resolution will be considered, a shareholder or director who believes that the proposed resolution does not satisfy the above requirements, may apply to court for an order restraining the company from putting the proposed resolution to a vote. Once a resolution has been approved, it may not be challenged in any forum on the grounds that it did not satisfy the specified requirements.

Any resolution can be proposed as either:

- an ordinary resolution – which requires the support of more than 50% of the exercised voting rights; or
- a special resolution – which requires the support of at least 75% of the exercised voting rights.

The Act requires special resolutions for the following matters:

- the amendment of the company's Memorandum of Incorporation ("MoI");
- the approval of the voluntary winding-up of the company;
- the disposal of the major part of the business or assets of the company;
- a proposed merger or amalgamation of the company;
- a proposed scheme of arrangement involving a re-organisation of the company's shares;
- the remuneration to be paid to the directors for their services as directors, unless the MoI does not permit such remuneration to be paid;
- the ratification of an action taken by the directors that was not authorised by the MoI.

The MoI of a company may:

- alter the percentages required for an ordinary or special resolution but there must always be a margin of at least ten percentage points between the requirements for approval of an ordinary resolution and a special resolution;
- specify that a shareholders' resolution on a particular matter is required to be passed as a special resolution (even when the Act does not require a special resolution) or some other percentage of the votes exercised (e.g. unanimously).

Generally resolutions are passed at a shareholders' meeting but any ordinary or special resolution may be submitted for consideration in writing to the shareholders entitled to exercise voting rights in relation to the resolution and requiring them to vote in writing within 20 business days after the resolution was submitted to them. However, this procedure (sometimes called a "round robin resolution") may not be used where the matter to be determined is required by the Act or where the company's MoI is to be considered at an Annual General Meeting.

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