

Talking Companies

The Right to Call Shareholders' Meetings in terms of the Companies Act 2008 ("the Act")

The board of directors of a company ("the board"), or any other person specified in the company's Memorandum of Incorporation ("Mol") or rules, may call a shareholders' meeting at any time.

A company must hold a shareholders' meeting:

- At any time that the board is required by the Act or the Mol to refer a matter to the shareholders for decision;
- Whenever required to fill a vacancy on the board. (This complex issue will be dealt with in a future issue of Talking Companies.);
- Whenever the Mol of the company requires a meeting to be held by the company;
- When it is necessary to hold an annual general meeting;
- When one or more shareholders deliver written and signed demands to the company, which must:
 - describe the specific purpose for which the meeting is proposed; and
 - be supported by demands for substantially the same purpose made by the holders, in aggregate, of at least ten percent (or a lower percentage specified in the company's Mol) of the voting rights entitled to be exercised in relation to the matter proposed, to be considered at the meeting.

The company or any shareholder other than the proposing shareholder/s, may apply to court for an order setting aside a demand for a meeting on the grounds that the demand:

- is frivolous (i.e the proposed matter is so trivial it does not require a shareholders' meeting to decide it);
- calls for a meeting to consider a matter that has already been decided by the shareholders;
- is otherwise vexatious (i.e. without any merit).

A shareholder who submitted a demand for a meeting may withdraw that demand at any time before the start of the shareholders' meeting. If the withdrawal results in the voting rights of the remaining shareholders continuing to demand the meeting, falling below the minimum percentage of voting



rights required to call a meeting, the company must cancel the meeting.

If –

- A company is unable to convene a meeting because it has no directors or because all of its directors are incapacitated, any other person authorised by the company's Mol may convene the meeting;
- No other person has been authorised by the Mol to call the meeting, the Companies Tribunal may, on a request by a shareholder, issue an administrative order for a shareholders' meeting to be convened.

If a company fails to convene a meeting:

- At a time required in accordance with its Mol;
- When requisitioned by the shareholders;
- Within the time period provided for an Annual General meeting

then a shareholder may apply to a court for an order requiring the company to convene a meeting.

The failure by a company to hold a required meeting does not affect its existence or the validity of any action by that company.

Contact Information

Horwath in Southern Africa (Pty) Ltd
 Edwin Selbst
 Tel: +27 11 217 8000
talking.companies@horwath.co.za

Johannesburg

Horwath Leveton Boner
 Tel: +27 11 217 8000
 Email: info@horwath.co.za

Cape Town

Horwath Zeller Karro
 Tel: +27 21 481 7000
 Email: hzk@horwath.co.za

Durban

Horwath Mahomedy
 Omar Paruk
 Tel: +27 31 337 3311
 Tel: +27 32 551 1111 (Stanger)
 Email: hmpop@horwath.co.za

Botswana

Horwath Gurugroup
 Tel: +267 391 2805
 Email: guru@gurugroup.bw

Compiled by Graeme Fraser and Veldra Morris - www.companiesactonline.co.za in association with Horwath in Southern Africa (Pty) Ltd. The advice contained in these newsletters is of general application and is not intended to be legal advice.

Companies Act Online

www.companiesactonline.co.za