Following on from our previous note discussing who is able to make decisions on behalf of a Jersey company, this note provides a brief summary of how such decisions can be made and documented.

The requirements regarding how the decisions relating to a Jersey company are documented is dictated by a combination of the Companies (Jersey) Law 1991, as amended, (the “Law”) and the memorandum and articles of association of the relevant company (the “M&A”).

**Director decisions - do we need a board meeting?**

Having established that the directors have authority to make a particular decision (see our previous note here for more on this), the M&A will always be the starting point when seeking to determine whether the directors can pass resolutions in writing, or if a physical board meeting is required.

Whilst it is common for the M&A to permit the directors to take decisions by way of written resolution, economic substance requirements in Jersey have resulted in board meetings being the preferred method of director decision making wherever practicable. Similarly, although there are no restrictions under the Law as to where meetings must be held, it is typically the case that board meetings are held in Jersey.

**Director decisions - who needs to be told about the meeting?**

Notice of a board meeting should be given to all the directors. Generally, the M&A will prescribe the relevant notice period, and potentially the form of notice required.

The M&A will also typically state that the requisite notice period can be waived with the unanimous consent of the directors (with attendance at the relevant meeting also constituting consent).

**Director decisions - who needs to attend the meeting?**

The minimum number of directors required for a board meeting to be “quorate” should be clearly set out in the M&A.

Quorum requirements will vary depending on the nature of the company- for example, it would be typical for joint venture companies to have more extensive requirements (perhaps with particular classes of director(s) required to be in attendance).

**Director decisions - can the board pass a resolution in writing?**

The M&A will typically allow for the directors to pass resolutions in writing, although it is common for such resolutions to require unanimous consent (rather than the majority of directors in attendance at a meeting).

As mentioned above, economic substance requirements should be considered when passing resolutions in writing.
Shareholder decisions - do we need an annual general meeting?
There is no requirement to hold annual general meetings for private companies, unless required to do so by the M&A.

Where annual general meetings are required, they must be held annually, and more than 22 months apart.

Shareholder decisions - do we need a general meeting?
If a particular decision requires shareholder approval (or can only be actioned by a resolution of the shareholders), unless the M&A provide otherwise, all shareholders entitled to vote on the resolution may do so by way of a written resolution (other than a resolution to remove an auditor).

The M&A may provide for a specified majority to pass shareholder resolutions in writing. This is often higher than the majority required at a general meeting, but cannot be less than two-thirds in the case of matters requiring approval by special resolution.

Shareholder decisions - who needs to be told about the meeting?
If a general meeting is to be held, all such meetings must be called on a least 14 days’ written notice (unless a prescribed majority of shareholders holding at least 90% of the voting rights agree to short notice).

Shareholder decisions - who needs to attend the meeting?
The default position under the Law (which is subject to anything to the contrary in the M&A), is for two shareholders or their proxies to be present at a meeting in order for the meeting to be quorate. Where a company has a sole shareholder, or where the M&A allow, one shareholder may form the quorum for a meeting. Furthermore, unless the M&A specify otherwise, shareholders may participate in meetings by way of telephone or video conferences.

The Law provides shareholders of a company with the right to appoint a proxy to attend and vote at a shareholders’ meeting in a shareholder’s absence. The notice of a general meeting must provide details as to how the shareholders should appoint proxies if they wish to do so, and include any requirements and/or the deadline for the return of proxy forms.

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