

BUSINESS SALES | MERGERS | ACQUISITIONS

Shareholders Rights

A guide to the legal rights of shareholders

Avondale Business Guides Series



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Shareholders Rights by Percentage

This Guide is not intended to be definitive, and the accuracy of its contents can not be guaranteed. Professional legal and financial advice from your regulated advisors should be taken on all aspects of transactions.

The following table illustrates a complete list of the rights of shareholders and the relevant statutory provisions for each right.

100%		
<p>Can do anything</p> <p>Pass an Elective Resolution</p> <p>An elective resolution is a resolution passed by all the members of a private company entitled to attend and vote at the general meeting. Not less than 21 days notice specifying the intention to propose an elective resolution must be given to shareholders (CA 1985, s 379A(2)(b)). An elective resolution by a private Company must be made by resolution of the Company in a general meeting (or by written resolutions signed by all the members pursuant to CA 1985, s 38 or provisions in the Company's Articles) and may be made for the purposes of:</p> <p>(a) Election to grant authority to directors to allot shares in terms of CA 1985, s 80 for an indefinite period or for a fixed term greater than 5 years.</p> <p>(b) The election to dispense with laying of accounts and reports before the Company in General Meeting.</p> <p>(c) Election to dispense with the holding of AGMs.</p> <p>(d) Election as to majority required to authorise the holding of general meetings or class meetings upon short notice.</p> <p>(e) Election to dispense with the appointment of auditors annually.</p>	<p>CA 1985, s 80A</p> <p>CA 1985, s 252</p> <p>CA 1985, s 366A</p> <p>CA 1985, ss 369(4) or 378(3)</p> <p>CA 1985, s 386</p>	<p>Legality</p>
95%		
<p>Hold an Extraordinary General Meeting ("EGM") on short notice (i.e less notice to the members than would normally be required)</p>	<p>CA 1985, s 369</p>	
75%		
<p>Pass a Special Resolution</p> <p>A Special Resolution is a resolution passed by 75% of the members present in person or by proxy and entitled to vote at a general meeting. Not less than 21 days notice specifying the intention to propose the resolution as a special resolution must be given to the members. The following are examples of matters for which a special resolution is required by CA 1985:</p>	<p>CA 1985, s 378(2)</p>	<p>Weighted voting rights</p> <p>Unfair prejudice (s459)</p> <p>i.e. the court has power to</p>

50% +

50% +		
<p>Pass Ordinary Resolution</p> <p>An ordinary resolution is not defined by Companies Act 1985 but is one passed by a simple majority (i.e 50.01%) of the votes cast by the members entitled to vote and present personally or by proxy at the meeting. Where CA 1985 or the articles do not specify the resolution required an ordinary resolution will suffice and satisfies a requirement of CA 1985 for a resolution of the company or a decision of the company in general meeting. Decisions which may be made by ordinary resolution, include:</p> <ul style="list-style-type: none"> (a) any item of routine business where CA 1985 requires approval of the matter by members in general meeting; (b) exercising authority to alter (but not reduce) the authorised share capital; (c) provide or renew the directors’ authority to allot relevant securities; (d) payment of a final dividend; (e) capitalisation of reserves; (f) approval of transactions between the Company and “connected” persons; (g) revocation of an elective resolution; and (h) removal of a director (providing special notice of the resolution has been given). <p>Ordinary Resolution With Special Notice</p> <p>Special notice of the intention to propose certain ordinary resolutions must be given to the company. These resolutions requiring special notice include those proposing:</p> <ul style="list-style-type: none"> (1) The removal of a director (2) The appointment to a public company of a director over 70 years of age (3) The appointment as auditor of a person other than the retiring auditor (4) The removal of an auditor before the expiration of his term of the office 	<p>CA 1985, s 121</p> <p>CA 1985, s 80(8)</p> <p>CA 1985, s 320</p> <p>CA 1985, s 379A introduced by CA 1989, s 116</p> <p>CA 1985, s 303</p> <p>CA 1985, s 303(2)</p> <p>CA 1985, s293(5)</p> <p>CA 1985, s391A</p> <p>CA 1985, s391A</p>	
25% +		
<p>Block Special Resolution</p>		

10% +

The right to call EGM	CA 1985, s368	A written request for a meeting should be sent to or left at the company's registered office
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5% +

The right to refuse to consent to short notice	CA 1985, s369(4)	Any request must be given to the company in writing six weeks before the AGM.
The right to have an item placed on the Agenda for an AGM	CA 1985, s376	
The right to circulate a written statement	CA 1985, s376	

Any %

The right to ask the court to call an EGM	CA 1985, s371	The act in question must be restrained before any legal obligations are incurred by the company in relation to the "ultra vires" (unlawful) act
The right to restrain an ultra vires act	CA 1985, s35(2)	
The right not to be unfairly prejudiced	CA 1985, s459	The company must be solvent for this to apply
The right to have the company wound up provided that it is just and equitable to do so	Insolvency Act 1986, s122(1)(g)	
The right to vote	CA 1985, s370	
The right to receive notice of general meetings	CA 1985, s370	Directors have power (but are not obliged to) declare a dividend. Members cannot vote to pay themselves more than the directors have recommended.
The right to a dividend if one is declared	Table A Article 104	
The right to a share certificate	CA 1985, s185	

<p>A members right to have his name entered on the Register of Members</p>	<p>CA 1985, s352</p>	<p>This right Depends on the Articles of the company. See the section of this site entitled "selling your shareholding".</p>
<p>The right to a copy of the Annual Accounts</p>	<p>CA 1985, s240</p>	
<p>The right to an AGM</p>	<p>CA 1985, s366</p>	
<p>The right to inspect Minutes of General Meetings</p>	<p>CA 1985, s382, s382A and s383</p>	
<p>The right to prevent the introduction of an elective regime</p>	<p>CA 1985, s379A</p>	
<p>The right to inspect the register of members and index of members' names without charge</p>	<p>CA 1985, s356(1)</p>	
<p>The right to require a copy of the register of shareholders within 10 days of the request subject to a charge</p>	<p>CA 1985, s356(3)</p>	
<p>The right to inspect the register of directors service contracts without charge</p>	<p>CA 1985, s318(7)</p>	
<p>Registers to be maintained at a Company's Registered Office</p>		
<p>Register of Directors and Secretaries</p>	<p>CA 1985, s288, to record the information required by CA 1985, ss289, 290</p>	
<p>Register of Members</p>	<p>CA 1985, ss352-362</p>	
<p>Register of Directors' Interests in Shares Register of Charges, together with copies of all instruments Containing registration with the Registrar under CA 1985, s295</p>	<p>CA 1985, s325(1), (2) CA 1985, ss406-408</p>	
<p>Minute Books</p>	<p>CA 1985, s382 (only minutes of general meetings open for inspection by members (CA 1985, s383).</p>	
<p>The Company shall make the register, index or document available for inspection for not less than 2 hours during the period between 9 a.m. and 5 p.m. on each business day and permit a person inspecting the register, index or document to copy any information made available for inspection by means of the taking of notes or the transcription of the information.</p>	<p>The Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991.</p>	
<p>Although there is no statutory obligation to maintain the following registers, if the Company does keep such registers, they must be open to inspection by shareholders without charge.</p>	<p>SI 1991 No 1998 3(2)</p>	
<p>Register of debenture holders</p>		
<p>Register of share applications and allotments and register of transfers.</p>		

Tax

The Capital Gains Regime is changing dramatically in April 2008. At the time of writing the full details are not known (Feb 08) and therefore we have left any references to the previous regime in these guides pending further edits when all the details are known,

New Regime (post April 2008): Tax considerations when selling a company are complex but need to be understood as they have a huge bearing on the sale and the amount of cash you will either pay or come away with. Ideally planning should take place before signing heads of agreement. There are various ways in which tax charges can be mitigated, or even eliminated. Here are some examples of the things that vendors might need to look at:-

- Be clear about what you are selling.
- Check your entitlement to Entrepreneur's relief which reduces the 18% Capital Gains Tax to 10% on the first £1 million capital gain.

To contact a specialist tax adviser please contact your local Avondale office.

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