

Shareholders' rights in an employee owned business



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The aim of this document is to outline some of the key legal rights of shareholders contained within the Companies Act 2006. This information is likely to be useful to individual employee shareholders and to Trustees of employee benefit trusts and share incentive plans.

Who owns shares in an employee owned company?

In an employee owned company it is likely that all of the issued shares of the company will be owned by one, or a mix, of employees, employee benefit trust, and/or share incentive plan.

Why do you need to be aware of your rights as a shareholder?

Shareholders can make decisions about a number of issues that affect the Company and as an employee owner you have a vested interest in everything the Company does.

Shareholders are able to exert their influence on the Company through making decisions by passing ordinary resolutions or special resolutions.

As a shareholder your input into decisions may enable them to be passed or be blocked.

Types of resolution

Ordinary resolutions are those decisions that can be decided by a simple majority of shareholders voting in person or by proxy (if proxies are allowed).

Some decisions that require a simple majority include:

- ▶ The appointment of directors at a general meeting;
- ▶ Payment of a final dividend
- ▶ Removal of a director before the expiry of their term;*
- ▶ Removal of an auditor before the expiry of their term;*
- ▶ Provide, or renew, the directors authority to allot shares;
- ▶ Exercising the authority to alter (but not reduce) the authorised share capital.

*The removal of directors or auditors before the expiry of their term requires that special notice is given and this notice period cannot be less than 28 days.

Special resolutions are decisions that require at least 75% of the votes cast by shareholders entitled to vote on the resolution, at the meeting in person or by proxy (if proxies are allowed).

The Companies Act 2006 requires that certain decisions be resolved by a special resolution. These might include, but are not limited to:

- ▶ Alter the Articles of Association;
- ▶ Change the name of the Company, sell the Company;
- ▶ Wind up the Company;

- ▶ Reduce the share capital;
- ▶ Allot equity;
- ▶ Re-register the Company (ie list the company and make it a PLC).

Decisions that require a special resolution must be put before the Shareholders and not less than 21 days notice must be given to members.

In addition to those areas detailed by the Companies Act above the Company's Articles of Association may also include other decisions that require a special resolution in order to be approved. Examples of such decisions might include:

- ▶ A decision to undertake a joint venture;
- ▶ Decisions relating to disposals of subsidiaries;
- ▶ Decisions relating to acquisitions;
- ▶ Decisions to borrow money over a certain value.
- ▶ Decisions relating to the EBT trust deed.

The Company must keep written records or minutes of the meetings and any shareholder resolutions that have been put forward and voted on.

A word of caution relating to voting

In a typical conventionally owned company owning more shares will generally mean owning more power. Some employee owned companies also take this approach, but this isn't always the case.

Many employee owned companies want equal opportunity for influence and participation amongst owners and choose to operate a '1 person 1 vote' approach to ownership. In effect this means that regardless of how many shares a person owns they still only have 1 vote at a general meeting of the company.

Example

If a company wants to alter their Articles of Association they would need to pass a special resolution and this would require the approval from 75% of shareholders. (Companies Act 2006 s21 (1)).

ACME Ltd is an employee owned company and employs 30 people. The company has 100 issued shares. five of the employees own 15 shares each, with the remaining 25 employees each owning a single share.

In 'normal' circumstances the special resolution could be passed by the 5 employees each owning 15 shares as collectively they would own 75% of the shares of the company. It wouldn't matter that the other 25 employees might not be in agreement.

However, if the company operated a '1 person 1 vote' system the special resolution would require that at least 23 employees voted in favour of passing the special resolution, even though they might not actually own 75% of the shares.

The Articles of Association for your company will detail the rights relating to votes and specify whether votes are '1 person 1 vote' on a ballot and/or poll. Therefore it is vital that when you are considering your rights as a shareholder that you obtain a copy of the Articles of Association to identify your voting mechanism.

The key rights of shareholders

If you own 100%

In this situation you wholly own the Company and can ultimately decide all decisions relating to the Company. The decisions are still proposed by the Board of Directors but ultimately the decision to approve or not rest with you. As you have more than 75% of the shares you can pass any special resolutions.

Within an employee owned company the only body likely to own 100% of the shares is the Employee Benefit Trust. If an employee benefit trust owns 75% of a Company's shares they will be able to pass a special resolution, but they may be required by the terms of the Trust deed to consult with their beneficiaries when making certain key decisions (such as selling or floating the Company).

If you own 75%

Owning 75% of the Company means that in most cases you will be able to pass a special resolution, unless your company operates a '1 person 1 vote' system.

As above the only body likely to own 75% of the shares would be an Employee Benefit Trust. If an employee benefit trust owns 75% of a Company's shares they will be able to pass a special resolution, but they may be required by the terms of the Trust deed to consult with their beneficiaries when making certain key decisions (such as selling or floating the Company).

If you own 50%

If you own 50% of the Company you will be able to pass any ordinary resolution that requires approval from a simple majority of shareholders. **Unless your company operates a '1 person 1 vote' system.**

As with the above 2 levels of ownership the only body likely to own 75% of the shares would be an Employee Benefit Trust. If an employee benefit trust owns 50% of a Company's shares they will be able to pass an ordinary resolution, but they may be required by the terms of the Trust deed to consult with their beneficiaries when making certain key decisions (such as selling or floating the Company). In order to pass a special resolution they would require other shareholders to vote the same way as them.

If you own 25+%

You will be able to block any special resolution, assuming that the Company doesn't operate a '1 person 1 vote' system. This means that the Company will not be able to make the decisions listed above with your approval and agreement.

A departing owner may be in a position where they still own over 25% of the shares. Additionally an Employee Benefit Trust may own over 25% of the shares, but their decision making process may be effected by the trust deed and a need to consult with beneficiaries.

If you own 10%

You have the right to have the Company's annual accounts audited.

If you own 5%

You will be able to refuse a meeting of shareholders to be called at short notice (CA 2006 s307(5) & (6). You will have the right to circulate a written statement to shareholders (CA 2006 s314). You will also have the right to call a general meeting of shareholders (CA 2006 s303).

If you own any %

If you are an employee with shares, regardless of the %, this section is important for you as it will help you understand some of your rights. You can:

- ▶ Ask the court to call a general meeting (CA 2006 s314);
- ▶ Have the right to vote* (CA 2006 s284)(assuming the shares are voting shares);
- ▶ The right to receive notice of general meetings (CA 2006 s310);
- ▶ The right to a dividend if one is declared (model Articles, Article 30);
- ▶ The right to a share certificate (CA 2006 s769);
- ▶ A right to have your name entered on the register of members (CA 2006 s113);
- ▶ A right to a copy of the annual accounts (CA 2006 s431);
- ▶ The right to an AGM (only if the Articles also require an AGM);
- ▶ The right to inspect minutes of general meetings (CA 2006 s248, 355, 358);
- ▶ The right to inspect the register of members and index of member's names without charge (CA 2006 s116 (1) (a));
- ▶ The right to request a copy of the register of shareholders within 10 days subject to a charge (CA 2006 s116(2));
- ▶ The right to inspect the register of directors service contracts without charge (CA 2006 s 229(1)).

*It is possible to make shares and the holders of shares 'restricted' in circumstances where a member ceases to be an employee. The effect in these instances is normally to stop ex-employees attending and being able to vote at a general meeting. A Company's Articles will detail whether this is the case.

Summary

As a shareholder you are able to have an influence on the direction of the business. What you can influence is determined by the Company Act 2006 and the Company's Articles of Association.

Key decisions made by the business will require the passing of an Ordinary or Special Resolution.

Further Information

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