

## Tax Break Article\_November 2008



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### All Companies Impacted by New Rules for Directors' and Shareholders

Further to recommendations put forward by its Legal Consultative Committee, the Department of Business Development (Ministry of Commerce) last month announced the following procedural changes to the rules regarding Directors' Board Meetings, such changes having immediate effect:

- 1) Company directors are no longer permitted to appoint proxies to attend, and vote in, board meetings on their behalf;
- 2) The adoption of circular resolutions without holding a directors' meeting is no longer permitted.

With regards to point 2 above, we have discussed with the Legal Section of the DBD the question as to whether a board meeting could be validly held by means of tele- or video-conferencing. The feedback was that, whilst unofficially acknowledging the logic and practicality of conferencing, the DBD's current position is that "real", i.e. physical, meetings have to be held with the requisite number of directors personally present. This means that the timely and efficient conduct of board business will be adversely affected, particularly for those companies whose directors are based in diverse locations or even overseas. However, for companies that have their directors appointed by the same entity/person, one way to reduce the problems that this will cause would be to amend the meeting quorum to the minimum required by law, which at present can be summarised as follows:

No. of Board Directors	Minimum Quorum
1	1
2	2
3	2
3+	either 3 (in the absence of any clause in the company's Articles of Association specifying otherwise (Section 1160, CCC)), or 2 (if so specified by a clause in the company's Articles of Association)

Prior to the announcement of these changes, companies were allowed, under their Articles of Association and by virtue of Section 1158 of the Civil and Commercial

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Code (CCC), considerable latitude in deviating from the standard authority and powers of directors as prescribed under Sections 1159-64 of the Code. Whilst Section 1158 has not been revoked, its scope is now restricted, with the result that any Articles purporting to allow directors to appoint proxies or which allow for circular resolutions to be passed without holding a real directors' meeting, will now be deemed to be in avoidance of compliance with the law and the registration of such Articles henceforth will be rejected by the DBD.

The status of companies whose registered Articles currently allow for proxies or for the adoption of resolutions in the absence of meetings is, in our opinion, unclear. The official translation of the DBD announcement limits itself to calling for the "cooperation" of such companies in filing appropriate amendments to their Articles. However, experience has shown us that such a pronouncement will be taken to be a change in the law and will be applied by the courts in practice. We would therefore advise clients as follows:

- a) To arrange for the deletion of any clauses in their Articles which purport to allow proxies and/or the adoption of resolutions without holding meetings, so as to avoid their inadvertent application in the future and the complications that would arise as a result; and
- b) To revise, to the extent possible, the meeting quorum to the minimum prescribed by law, so as to minimize the logistical problems created by the new rules.

It is also to be noted that another effective change to the law was passed in June which now requires notice of shareholder meetings to be advertised in a local newspaper. All companies have to have at least one shareholder meeting, usually just within 4 months after the financial year end for the purpose of approving the financial statements.

As there will now be a public record of the meeting it is important to remember to record the notice of the meeting at least at the appropriate time (although it is worth mentioning that proxy meetings are still allowed for shareholders).

### ***Conclusion and Action Required***

There are now effectively more requirements for consideration when holding Directors and Shareholders meetings and where we prepare documentation as part of our standard Annual Secretarial package we will be taking care of this without any further charge as we will be publishing the notice of shareholder meetings (again without further charge except that the cost of the newspaper notice will need to be

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reimbursed to us). We will in any case be writing separately about this to all Clients affected and we will be able to evaluate and advise on how to amend the Articles in each case.

For our other Clients, who do not subscribe to the above Annual Secretarial Package, we suggest that the changes now make it more prudent to do so and we are happy to send you details of the service and our package for reviewing your articles to make changes (and most will need to) in order to ensure compliance with the law.

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