

Post Meeting Matters

1. Copy of Special Resolutions → to Registrar within 15 days (s.30(1))
2. File Special Resolution/Ordinary Resolution
3. Minutes of BM and GM must be entered into minutes book (s.248(1) and s.355(1))
4. (any other Company House filings)
5. (any other updates on company books)

Written procedure s.288:

- Agenda would be: propose written res, approve form and instruct sec to send out WR (to all eligible members and auditors)
- Cannot use it to remove a director or auditor
- Removes the need for a GM – Just one Board Meeting (split-reconvened)
- The requisite percentage takes into account all those entitled to vote, not just the ones who vote on the resolution
- Requirements: s.290/291
- S.297 – Period for agreeing WR if unspecified – 28 days
- Attach any contract/memorandum needed

Short notice – Just reconvene BM1/ Means a GM can be called earlier than 14 days

Exam points:

When doing the PP:

Insert the names of the individuals, apply to the scenario

If converting a shelf company, think about the new directors/members/secretary who will be implementing the resolutions

Full explanation as to why SH resolutions are required

Consider likelihood of any resolutions being passed

Check articles to see if they amend PP

Advise on timing issues

PMM

- TM01, Update Register

Appointment of new chairperson

MA 12(1) – Directors – Board Resolution – BM

PMM

Transfer of subscriber shares

MA 26 - Stock Transfer Form – Executed by transferor shareholder – Board Resolution approving share transfer - BM

PMM

- Minutes, Update Register of Members (the change is only effective once new member is entered), Issue new share certificate, Check no restrictions

Change of registered office

s.87(1) – Directors give notice to registrar – BR to instruct secretary to do so - BM

PMM

AD01, Notify registrar with 14 days s.87(2)

Change accounting reference date

s.392(1) – Directors give notice to registrar – BR to instruct secretary to do so - BM

PMM

AA01, Notify registrar Minutes

Appoint Auditors

s.458(3) – Directors – Board Resolution – BM

PMM

Applies to ALL

s.248 – Board meeting Minutes MUST be recorded

s.355 – GM Minutes must be recorded

s.357 – One member → MUST provide company with details of the GM

Types of shares

Ordinary – One vote/share, right to a dividend if one declared

Preference share – Rank higher priority in being paid dividend, return of capital on winding up

Participating preference shares – Surplus profits (after receiving their dividend) and surplus assets of a company on a winding up

Deferred shares – No voting rights, no ordinary dividend

Redeemable shares – Company can buy them back

Transfer of Shares

s.544(1) – Shareholders are free to transfer subject to any restrictions within the articles

s.771 – Company must give reasons if they refuse to register a transfer

Pre-emption rights: Will be set out in Articles

Method of transfer:

- Instrument – Stock Transfer Form
 - Stamp Duty
 - Legal and equitable ownership
- Legal title passes on registration, and beneficial title passes on the execution of the stock transfer form

Shareholders can bring derivative action

Future profitability	Company's any obliged to pay dividends out of profits. Profits can be put away as a reserve on balance sheet	Regular interest payments (making it harder to build up reserved on the balance sheet)
Risks for Company if it experiences financial difficulties	No obligation to declare dividend if insufficient profits	Bank can call event of default for breaches of covenants (e.g. to pay interest when due) Could accelerate loan, enforcement of any security and potential winding up

Main Debt Finance Documents

Term sheet – statement of the key terms of the transaction (not binding, works the same way as heads of term)

Loan Agreement – Main commercial terms, heavily negotiated, essentially the contract, used for committed facilities e.g. term loans

- Conditions Precedent – Must be satisfied before Company can get loan
- Representations and Undertakings – Statements of fact that gives the bank assurances (even state of the secured assets) - Undertakings – Promises to provide information
- Negative Pledge – Borrower promises not to grant further security over assets without banks consent
- Events of default → Accelerate Loan/Enforce Security in Debenture

Security Document – Separate document. Will set out what assets are given by way of security (and sets out the type of security). Also undertakings in relating to the assets (e.g. obligation to insure any property)

- Usually need to be registered and made available to public inspect s.859A/P

(Post Meeting Matters)

- S.859A – Charge must be registered
- S.859D – Particulars must be delivered to registrar
- **Failure** to do so means the charge is **void** under s.859H

Shareholder approval

If it is a substantial property transaction then an ORDINARY RESOLUTION will need to be passed (unless s.190(4)(b) exception)

IF the director/connected person is a director of a company's holding company, it will need an ORDINARY resolution from the members of that holding company – s.190(2)

Exceptions (s.192, s.193, s.194)

+ s.190(4)(b) – Shareholder approval is not required of any company which is a wholly owned subsidiary

Consequences for failure – s.195

- Transaction is voidable unless:
 - Restitution is no longer possible
 - Company has been indemnified by another person for the loss suffered
 - Bona fide rights have been acquired by a third party
- Persons liable to account to the company and indemnify for any loss or damage
 - Director or connected person
 - Who entered into transaction
 - Authorised it

The transaction can be subsequently affirmed by shareholders s.196

Procedure Plan (to add to skeleton)

Board Meeting

- For the director to disclose their interest (s.177)
- For any other directors indirectly interested to disclose their interest (doesn't have to necessarily be a "connected person")

Agenda:

- To propose Board Resolutions to:
 - Call a GM to approve the entry into the property transaction (s.190(1)(a))

General Meeting

Agenda:

To propose an ordinary resolution to approve entry into the property transaction (give party names and property)

Board Meeting

Agenda:

Propose Board Resolutions to:

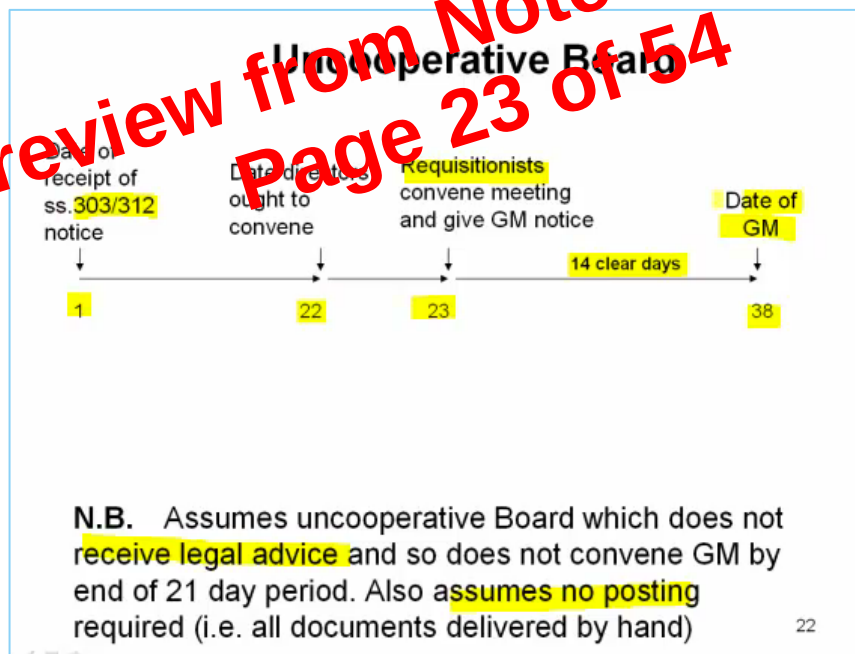
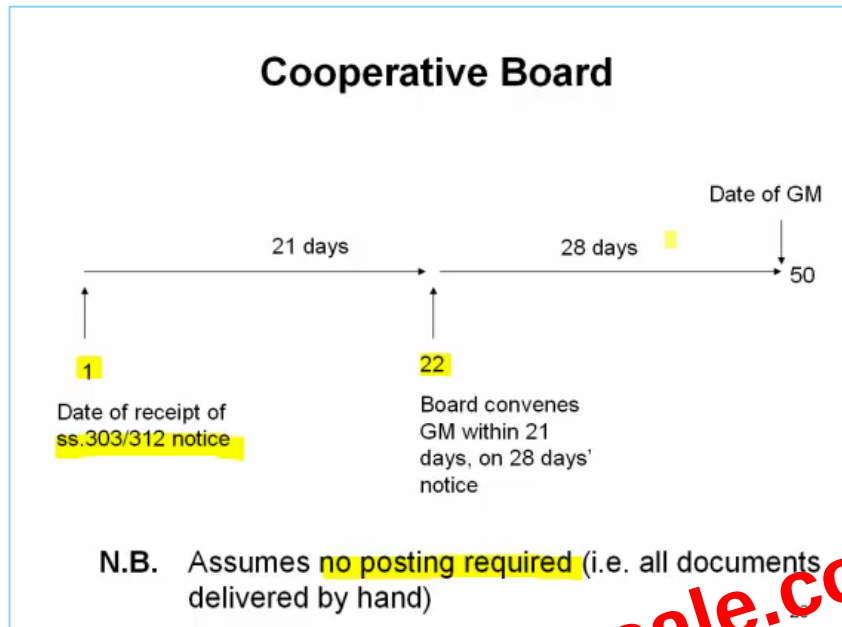
- Approve the terms and entry into the transaction contract*
- Authorise a signatory for the contract on behalf of the company*

Voting:

- *The directors directly or indirectly interested in the transaction cannot count in the quorum for or vote on the board resolutions above (MA 14(1))

To ensure the resolution to remove a director is head asap, the shareholders should serve their s.312 (special) notice AND s.303 notice at the same time:
This will ensure that the directors put the removal resolution on the GM or if they fail to then the shareholders can call a GM themselves under s.305

Timeline for extending out the process to negotiate with shareholders



Director has the right to protest against removal s.169

- The company must be sent a copy of the special notice to the director immediately
- The Director can make written representations stating reasons for why he feels he shouldn't be removed
- The representations should then be circulated to members, unless it's too late to do so
- If it's too late, the representations should be read out at the GM

Additionally s.168(5) – A removal does not deprive a person from any right to compensation or damages payable by reason of termination e.g. if his employment contract is breached by the removal, he may be entitled to compensation

Check documents!

Check Articles for:

Bushell v Faith clause

Will give a director, who is also a shareholder, weighted voting rights at which a s.168 resolution is proposed

Any transfer provisions – For example, requiring a director to transfer his shares to the other shareholders if he is removed as a director

Shareholder agreements should also be checked

Think about the voting pattern when voting on the Removal Resolution

If someone is abstaining – your vote and shares are disregarded. E.g. 11 shareholders and one abstains. The vote will be out of 10

When voting – Think about the benefits for the client on voting on a show of hands or voting on a poll and whether they can demand a poll. It may be the case that they lose on a show of hands but due to the amount of shares they own they could win on a poll

Remember to adjust shareholding if shareholders abstain. As the percentage of shares will reduce

E.g. if a shareholder has 23% and it is now out of 77% (of the shares are voting) because X holding 23% has abstained then the new sum will be:

$\frac{23}{77} \times 100$

Derivative Claim s.260

Allows a shareholder to bring a claim on behalf of the company arising from an actual or proposed act or omission involving the negligence, default, breach of duty or breach of trust by a director of the company (wrong done TO the company)

- Includes breach of directors duties

- There company must also have non-redeemable shares in issue at the time it issues redeemable shares s.684(4)
- Shares to be redeemed must be fully paid up s.686(1)
- The redeemed shares are treated as CANCELLED s.688
- Check the accounts used to determine the distributable profits were not prepared to a date more than 3 months before the date of the directors statement given under s.714
- Only private companies can fund redemption out of capital s.687(1)
- The Gazette notice required under s.719 must state
 - That the company has approved payment out of capital
 - Where the directors statement and auditors report is available for inspection
 - That any creditor of the company may, within 5 weeks immediately following the date of the resolution, apply to the court under s.721 for an order preventing the payment
- Under s.721 creditors/members can apply to court to cancel the resolution within 5 weeks of the special resolution being passed

Out of Capital

Procedure Plan

Board Meeting

- Disclose interest – If it is a director selling the shares
- Ensure directors statement and auditors report is ready
- Board Resolution to propose:
 - Special Resolution to approve purchase of redeemable shares

General Meeting

- Vote on special resolution

Voting:

- Shareholder involved can vote but his shares to be redeemed cannot carry the vote

Board Meeting

- The interested parties could not count in quorum/vote

PMM

- Publish notice in Gazette/give notice to creditors
- File special resolution
- Amend Register of members
- Notice to CH and statement of capital
- Cancel/re-issue share certificates

- Seeking independent financial advice
 - Not incurring further credit
 - Consulting an insolvency practitioner for advice
 - Ensuring adequate, up to date, financial information is available
- Test – s.214(5) – Reasonable diligent person test – When looking at whether the director ‘ought to have concluded’ or the steps he ‘ought to have taken’ are based on what would have been done/known by a REASONABLY DILIGENT PERSON having both
 - The general knowledge, skill and experience that may reasonably be expected of a person like a director
 - The ACTUAL knowledge, skill and experience of that particular director
 - Sanction – Contribution to assets – Court can apportion liability between directors based on their culpability
 - Court can't relieve a director from liability under s.1157 CA

MISFEASANCE

- Any breach of duty by the directors
- Liquidator will bring the action, upon winding up
- Court can order that person to compensate the company as a result of the misfeasance
- Can be brought against a person who is/has been an OFFICER of the company (managers, secretaries, directors), any others who acted in the promotion, formation or management of the company, liquidator/administrative receiver/administrator
- **Misfeasance covers lots of directors duties, therefore includes:**
 - Misapplication of any money or assets of the company
 - Breach of a statutory provision/duty:
 - Unlawful loans to directors
 - S.177
 - S.190 – Not getting approval for SPT
 - S.171 – Not acting within powers
 - S.238 – Transactions at an undervalue
 - S. 239 – Preferences
 - S.174 – Breach of duty to exercise reasonable care, skill etc
- Unlikely that shareholders will ratify directors liability under s.239
- Relief under s.1157 CA can only be given where the wrong is done to the COMPANY not where the claim is brought by a creditor