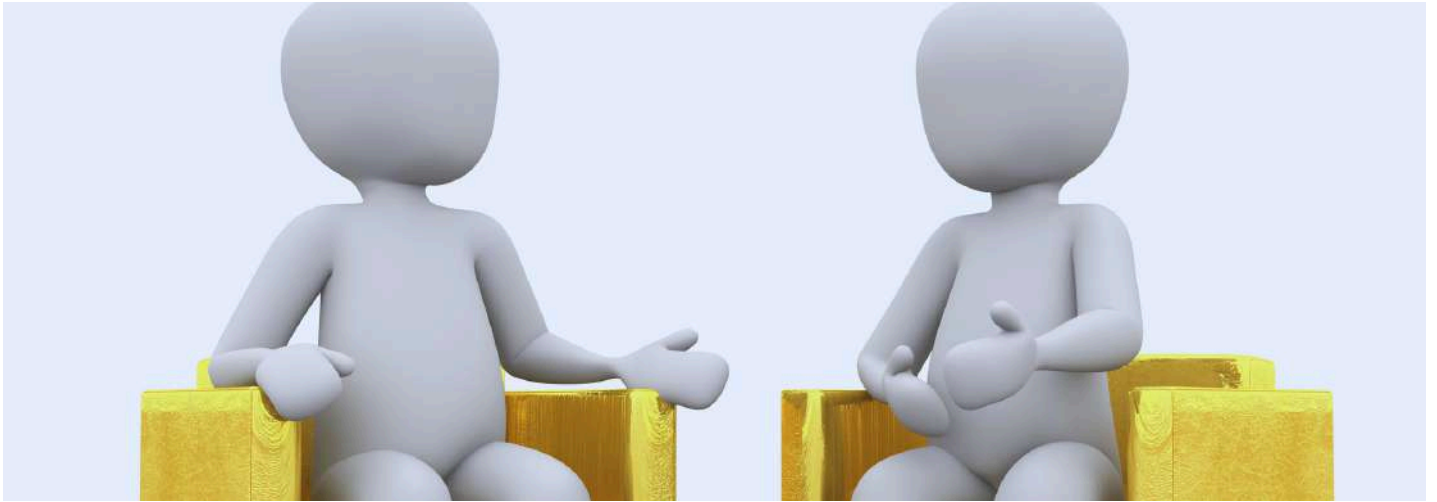


Company Resolutions and Meetings under the Company Act, 2015





Modes of Passing Resolutions

For private companies, the law permits two distinct modes through which members can pass resolutions:

- By means of a written resolution, or
- At a general meeting convened for that purpose.

This flexibility, however, is not extended to public companies. In the case of public companies, resolutions may only be passed during duly convened general meetings according to Section 255 of the Companies Act, 2015. Written resolutions are strictly a mechanism available only to private companies.

Classification of Resolutions

Company law recognises two primary types of resolutions:

- **Ordinary Resolutions**– These are the standard form of resolutions and require a simple majority of votes cast by members (more than 50% or depending on the Articles of the Company) in order to be passed.
- **Special Resolutions**: These are reserved for matters of greater significance such as altering the articles of association and require a supermajority of not less than 75% of the votes to pass. In the case of a written special resolution, it must expressly state that it is a “**special resolution**.” When passed at a meeting, the notice convening the meeting must contain both the text of the resolution and a statement identifying it as a special resolution. Voting may then proceed either by a show of hands or by a poll.

Voting Rights and Procedures

Voting procedures vary depending on whether a resolution is passed in writing or at a meeting.

For written resolutions in companies with a share capital, each member's voting power corresponds to the number of shares held. On the other hand, in companies without share capital, each member has one vote.

At General Meetings, each member present in person is entitled to one vote. In addition to that, any duly appointed proxies also have the right to vote, in the formula of, one vote per proxy.

It is important to note that a Company's Articles may dictate to the contrary or otherwise on the rights and procedure for voting. In the absence of the same, the aforementioned procedures and rights as contained in the Companies Act take precedence.

However, according to Section 259 of the Companies Act, if a member who is entitled to vote on a resolution appoints only one proxy, and the company's articles attempt to give that proxy fewer votes than the member would have had on a show of hands, such a provision is void.



In that case, the proxy is entitled to the same number of votes on a show of hands as the member would have exercised if they were present in person.

Additionally, where a member appoints more than one proxy, the same rule applies, that is: all proxies combined are treated as having the same voting power the member would have had individually. This ensures that members do not lose their voting strength simply because they vote by proxy rather than in person.

Furthermore, Where shares are held jointly by two or more persons, only the vote of the senior joint holder who casts a vote along with any proxies properly appointed by that holder is counted by the company.

The seniority of the joint holders is not determined by age or stake but by the order of names as recorded in the company's register of members; the first-listed name is considered the senior.

Additionally, if someone who is not entitled to vote on a resolution purports to do so, and the company's articles specify a procedure for raising and determining objections to voting entitlement, that person's vote will still be considered valid unless an objection is properly made under that procedure. Even where an objection is raised, the vote remains valid if the objection is ultimately rejected following the proper process outlined in the articles.

Special Rules for Written Resolutions

Certain corporate actions cannot be authorised through written resolutions for private companies. These include:

- The removal of a director before the expiry of their term; and
- The removal of an auditor prior to the expiry of their term of office (Section 262).

A written resolution may be proposed by either the directors or the members of the company. Where directors propose the resolution, they are obligated to circulate the resolution to all eligible members. The notice must include clear instructions on how to signify agreement and the deadline by which the resolution must be passed.

It is important to note that failure to comply with circulation requirements does not invalidate a resolution that is otherwise passed.

However, such non-compliance may attract liability, with both the company and any defaulting officers subject to a fine not exceeding Kshs 500,000.

Members of a private company also have the right to request that a written resolution be circulated. This request must:

- Be submitted in hard copy or electronic form;
- Identify the resolution and any explanatory statement (not exceeding 1,000 words);
- Be authenticated by the requesting members.

A company must comply with this request if it is made by members representing at least 5% of the total voting rights, or such threshold as may be stipulated in the articles.

However, the resolution must not be **unlawful, defamatory, frivolous, or vexatious**. If these conditions are satisfied, the company must circulate the proposed resolution and any accompanying statement as soon as practicable.

Unless the company's articles prescribe a different deadline, a written resolution must be passed within 28 days from the date of circulation. Any agreement received after the expiry of this period is invalid. In cases where the resolution is circulated via the company's website, it must remain continuously accessible to members throughout the 28-day period.

Annual General Meetings (AGMs)

With the exception of single-member companies, all companies are mandated to convene an Annual General Meeting (AGM) at least once every calendar year. Failure to hold an AGM constitutes an offence, attracting a penalty of up to Kshs 100,000 for the company.

Directors are generally empowered to convene general meetings. However, members also enjoy the right to requisition a meeting. Such a requisition must specify the general nature of the business or proposed resolution and be submitted in an authenticated hard copy. Upon receipt, the directors are obliged to call a meeting as soon as practicable if the request is made by:

- Members holding at least 10% of the paid-up share capital carrying voting rights; or

- Where the company has no share capital, members representing at least 10% of the total voting rights.

Additionally, the courts may, on their own motion or upon application by a member or director, issue an order compelling the company to convene a meeting.

Notice Requirements for General Meetings

The notice period for general meetings is prescribed as follows:

- Private Companies: At least 21 days' notice is required.
- Public Companies:
 - AGMs require a minimum of 21 days' notice;
 - Other meetings require at least 14 days' notice.

The company's articles may stipulate a longer notice period. Members may, however, consent to a shorter notice period. In private companies, such consent requires approval by members holding 90-95% of the shares or voting rights. In public companies, at least 95% approval is necessary.

A valid notice must indicate:

- The date, time, and location of the meeting; and
- The general nature of the business to be discussed.



Quorum and Voting at Meetings

The quorum for a general meeting is usually set out in the articles of association. In the absence of such a provision, the default quorum is **two qualifying persons**. For single-member companies, one person constitutes a valid quorum.

Decisions at meetings are typically made either by a **show of hands or by a poll**.

The chairperson or presiding officer may declare the outcome of a resolution, and this declaration serves as conclusive evidence of the result without the need to prove the number or proportion of votes cast.

Members are entitled to demand a poll in the following circumstances:

- Where the demand is made by at least five members;
- Where it is made by a member holding at least 10% of the total voting rights; or

- By members holding paid-up shares representing at least 10% of the total paid-up capital.

The right to demand a poll is a statutory right that cannot be excluded by the company's articles, except in relation to a resolution appointing the chairperson of the meeting or adjourning the meeting.