

Your client rings. Their AGM has been convened for next month, or an urgent matter has arisen and a decision must be made, but the directors (or committee) do not wish to risk jeopardising their own or their members' health, and in any event most of the members will not wish to attend a meeting. What can they do?

### **type of meeting**

Is the meeting a one-off meeting of otherwise unconnected persons or of an organisation? If an organisation, is it

- a) a company registered under the Companies Acts 2006 or earlier,
- b) a charitable incorporated organisation (CIO) registered under the Charities Act 2011,
- c) a limited liability partnership,
- d) an ordinary partnership,
- e) some other unincorporated body, such as a charity or a sports club, and
- f) whatever type the organisation, is the meeting of the organisation itself or its governing body?

### **basic principle**

Many legal questions can be answered by asking (first) What is the contract? and (secondly) who are the parties?

### **Part A governing rules**

A one-off meeting does not have any rules and can make decisions in any way that those attending it agree, so your advice falls under Part B below.

A registered company is governed by the model articles in the Companies (Model Articles) Regulations 2008 (SI 2008/3229) or Table A under previous legislation, unless modified or excluded by registered articles (Companies Act 2006, s20).

If the meeting is to be made by the members, the model articles for a private company, reg 42 (in sch 1 of SI 2008/3229), provides for the members to make decisions on a show of hands, but by reg 37(5) "Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them."

If the decision is to be made by the directors, the same model articles enable it to be made by either of two ways as alternative to a face to face meeting.

1. A meeting held in any way as long as the participants "can communicate to the others any information or opinions they have on any particular item of the business of the meeting" (SI 2008/3229, sch 1, reg 10(1)(b)). Decisions are made by a simple majority (ib reg 7(1)).
2. By reg 8 a resolution may be made unanimously by (1)"by any means that they share a common view on a matter", which (2) may be in writing of which copies are signed by all the directors. By Interpretation Act 1978 sch 1 para 1 "In writing" includes electronically if viewed on screen or printed ("...and other modes of representing or reproducing words in a visible form ...").

The Charity Commission has promulgated two forms of model constitution for a CIO, which are modelled broadly on a registered company limited by guarantee.

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## Part B no rules (or not many)

The constitutions of partnerships and unincorporated bodies are not based on official models (but the Charity Commission promulgates model constitution for unincorporated charities). Although a few might have nothing in writing, most of these organisations have some form of written rules. After having, in Part A, touched on the relative formality of registered bodies, whose constitutions probably provide mechanisms to enable decisions to be made without face to face meetings, it is useful to consider briefly decision making under common law, as though your client's constitution is lacking powers similar to those in the model articles.

Contract governs all organisation, but, in this part, without the gloss of statutory or other "officially" promulgated model constitutions, rules etc. The two basic principles relevant to your client's question are (first) that contracts may, unless otherwise agreed, be altered only by all the contracting parties and (secondly) that a written contract, unless it contains an effective entire agreement clause, cannot be assumed to include the entire agreement.

The unanimity implied by my first point does not apply to corporations, which here I use in a wide general sense. The common law about meetings of corporations was summarised by Wills J in the *Staple of England v the Bank of England* (1887) 21 QBD, 160, in the following passage.

The acts of a corporation are those of the major part of the corporators, corporately assembled: ... ; and, omitting the words "corporately assembled," this is declared by 33 Hen. VIII., c. 27, to be the common law. This means that, in the absence of special custom, the major part must be present at the meeting, and that of that major part there must be a majority in favour of the act or resolution. ... By "corporately assembled" it is meant that the meeting shall be one held upon notice which gives every corporator the opportunity of being present: see *Smyth v. Darley*. The notice need not necessarily be special, but there must be such knowledge, or such means of knowledge, as to give each corporator the opportunity of attending.

Where there are matters not deal with in written rules, you need to form a view of the view that the court might reasonably take about the intention of the parties, bearing in mind that the questions you are now considering are, not about the purpose of the organisation, but how it may do what it is intended to do, particularly (but not only) when the circumstances do not permit it to be done in the way envisaged by the written rules. Here are two more modern decisions, which provide some guidance.

In *Beer v Bowden* [1982] 1 All ER 1070, business premises were let for a term of ten years at a fixed rent for the first five and thereafter at such rent as the parties agreed. It was held that courts may provide a mechanism to remedy a defective rent review clause instead of finding it void for uncertainty.

In *Devani v Wells* [2019] UKSC 4, the contract did not identify the event on which commission would be payable. It was held that the court may imply into a contract anything so obvious that it goes with saying.

My conclusion is that, even if your client's written constitution does not provide for decision making without a face to face meeting, it that it is likely that you will be able to advise that the courts can reasonably be expected to imply an agreement to meet and make decisions by other means of communication.

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