

# *Director and shareholder meetings: the importance of getting them right*

*LegalTalk Alert*

31 January 2012

**pwc**

*What would  
you like to grow?*

# Director and shareholder meetings: the importance of getting them right

**Author: Hayley Preston**

The matter of *Winlyn Developments Pty Ltd* [2011] NSWSC 1218 (13 October 2011) gives rise to some important points that should be remembered when preparing director/shareholder resolutions and calling those meetings.

In summary, this case highlights the importance of:

- ensuring that director/shareholder resolutions are clear and meaningful to avoid such resolutions being devoid of legal effect
- ensuring that any business to be addressed by a directors/shareholders meeting is within the power of the directors /shareholders (as applicable) to avoid such business being devoid of legal effect, and
- to the extent that companies intend to displace or modify the replaceable rules in the *Corporations Act 2001* (**Corporations Act**), ensuring that is made clear within the constitution of the company.

## The facts

Two shareholders of Winlyn Developments Pty Ltd (**Winlyn**) convened a shareholders' meeting to "make rectification and notify the Australian Securities and Investments Commission of the appointment of Mr Jinbiao Zheng as a director of Winlyn", and to approve the issue of shares and the repayment of loans by Winlyn.

The third shareholder of Winlyn, Taiqi Investments (Aust) Pty Ltd (**Taiqi**), sought orders of the Court which included an order to restrain Mr Zheng from acting as a director of Winlyn on the basis that he had not been validly appointed, and an order restraining the shareholders from proceeding with the shareholders meeting.

His honour, Barrett J, first noted that certain provisions of Winlyn's constitution displaced and modified the "replaceable rules" contained in the Corporations Act, and that (by virtue of s 135 of the Corporations Act) those of the replaceable rules that were not displaced or modified by the constitution of Winlyn continued to apply. One of the replaceable rules that continued to apply to Winlyn included s 201G of the Corporations Act which provides that a company in a general meeting may make an appointment of director by resolution.

Notwithstanding the above, Barrett J concluded that the proposed resolution to appoint My Zheng as a director was not a resolution that the shareholders could meaningfully pass. In particular, Barrett J was not persuaded that the resolution was a resolution to appoint a director or even of that character. The use of the words "make rectification" and that the Company "notify ASIC" showed that the resolution related to some existing and established circumstance and not a resolution to appoint Mr Zheng as director.

In relation to the other proposed resolution of the shareholders, Barrett J noted that the replaceable rule in s 198A of the Corporations Act applied to those resolutions. Pursuant to the s 198A of the Corporations Act, it is the board of directors of a company that has the power to manage the business of a company (which includes the power to issue shares, and making of payments to a bank).

Barrett J concluded that, given the replaceable rule in s 198A of the Corporations Act, the proposed resolutions of the shareholders in relation to the approval of the issue of shares and the repayment of loans were not within the power of the shareholders. The resolutions would not, if passed by the shareholders, have any legal effect.

## Conclusion

This matter highlights the importance of ensuring that when calling a meeting of directors/shareholders the business to be addressed within those meeting is within the powers of the directors/shareholders (as applicable). The resolutions of those meetings should also clearly set out the intent of the resolution to ensure their legal validity.

Further, when preparing a company constitution, if a company intends on displacing or modifying the replaceable rules within the Corporations Act, those intentions should also be made clear within the constitution.

## Further information

**Andrew Wheeler**

Partner

+61 (2) 8266 6401

[andrew.wheeler@au.pwc.com](mailto:andrew.wheeler@au.pwc.com)

**John Cannings**

Partner

+61 (2) 8266 6410

[john.cannings@au.pwc.com](mailto:john.cannings@au.pwc.com)

**Stephen Moulton**

Partner

+61 (3) 8603 4788

[stephen.moulton@au.pwc.com](mailto:stephen.moulton@au.pwc.com)

**Tim Manefield**

Partner

+61 (2) 8266 2939

[tim.manefield@au.pwc.com](mailto:tim.manefield@au.pwc.com)