

Company Members' Decision Making In Bangladesh And The United Kingdom: Convergence And Diversity

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1. Introduction

The issue of members' right in the decision making roughly relates to the traditional theoretical conception of the member's ownership in the company. In the context of corporate governance, it is generally believed that the members being the owner of the company should be allowed to hold the ultimate control of the company in their hands. To some extent, this belief is reflected in the fabric of the company law which requires member's approval for basic changes to the constitutional structure of the company, and which may give members the right to control the composition of the company's board of directors through a power to elect or remove them. The provisions of the Companies Acts of both the United Kingdom (UK) and Bangladesh regarding the member's right of the decision making maintain a clear resemblance with this belief. In fact, the Company Laws of both the UK and Bangladesh are founded upon the concerns of striking an appropriate balance between, on the one hand, allowing directors to manage the business of the company and, on the other, retaining for members a degree of control over the company that is appropriate in light of their ownership of it. This can be exemplified from the fact that the Companies Act of both the UK and Bangladesh recognizes that the director has power to call meeting of the company at any time in one hand, and similarly, one-tenth of the holders of the issued share capital has right to require the directors to call a meeting of the company on the other.

Given this, the Acts of these two countries converge on some common points regarding the procedure and requirement of decision making on the company's affairs. Thus, under both the jurisdictions, special resolution is required for the alteration of the articles of the company. And the members of the company shall not be bound by the alteration of articles regarding the

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liability. If a corporation is a member of a company, it is common to both the countries that by resolution the directors may authorize a person or persons to act as its representative or representatives at any meeting of the company. Similarly, every member shall be entitled to receive a notice of the meeting of a company with the statement of the business to be transacted at the meeting. But the accidental omission to give notice to or the non-receipt of notice by any members shall not invalidate the proceedings at any meeting. Despite having such convergence, the Companies Acts of the UK and Bangladesh differs on many places. Unlike the UK laws, the company laws of Bangladesh contain no provision that when the net assets of a public company are half or less of its called-up share capital, the directors must call a general meeting of the company to consider whether any steps should be taken to deal with the situation. Again, Bangladesh law does not should provide provision for amending articles of the company by agreement of all members of the company, or by order of the court or other authority having power to alter the company's articles. Maybe, the gravity of divergence on the other points is only marginal. Having said this in the background on making a comparative study between the United Kingdom and Bangladesh, the present article is, however, designed to show all the points of divergence and convergence between the provisions of the Companies Act regarding member's decision making.

2. General Principles of Members' Decision Making and Restrictions

Under the general law of company, the important voting rights are granted to members. This voting rights works as a fundamental tool of member's decision making. Roughly put, members of public companies have more extensive voting rights than members of proprietary or private companies. And members of listed companies have more extensive voting rights than members of unlisted companies. However, members' voting rights are limited to the matters expressly provided for in the Companies Acts. Generally, the members of a company may have a right to vote on some decisions relating to the structure or constitution of the company, including adoption and amendment of memorandum and articles of the company, change of company name and type, certain transaction affecting share capital, appointment and removal of directors, certain part of the directors' remuneration and benefits, the appointment and removal of the company's auditors, certain transaction by or with the company, members' voluntary winding up etc. Generally, corporate actions that vary or cancel rights attaching to a class of shares require the approval of the members whose rights are affected. The power to issue new shares in the company belongs to

the board of directors. Generally member consent is not required for the issue of new shares.

Members may control the composition of the board of directors by exercising their power of electing and removing directors or a power to remove directors or a combination of both. However, the existence of this power depends on the type of company and the terms of its internal governance rules. Generally, the board of directors arranges for members' meeting to be held. But a specified minimum number of members can either request the directors to call a meeting or convene a meeting themselves. The general principle of law requires that meetings must be called for proper purposes and must be held at a reasonable time and place. The board of directors may convene general and class meeting when those meetings are necessary for the administration of the company's affairs. The power to do so is a part of the board's general power of management under the internal governance rules and at common law.

It is also a general rule that the person who convenes the meeting will determine its agenda. But the agenda cannot include resolution that the general meeting has no power to pass, such as resolution relating to matters solely within the powers of the board. A key principle of the law governing meetings is that members should receive adequate notice of the matters to be considered at the meeting. The law also imposes procedural requirements relating to the conduct of meeting such as quorum requirements, requirements for the conduct of meeting via technology, proxy rules and rules about who is entitled to speak at a meeting. A meeting is to be run by a chairperson who can control the conduct of the meeting.

There is also general law authority for the proposition that members of a company are bound by decisions on which they all agree even where the formalities required for a general meeting have not been complied with. And it is based on doctrine of estoppels. For well over a century, the courts have imposed a general restriction on the voting power of the majority. This restriction is called the equitable limitation on majority voting power, which restricts action that is beyond the authorized or legal powers given to the majority. Members have a number of personal rights and these rights cannot be taken away by majority members. Certain action of the majority may be invalid if they are inconsistent with statutory provisions that operate to protect interest of minority shareholders. In certain circumstances, members who have an interest in the outcome of a decision that is different from that of the members generally are prevented from voting on that decision.

3. Members' Decision making and Restrictions under the Law of Bangladesh and UK

3. 1. Members' Decision making and Restrictions under the Law of Bangladesh: The Companies Act, 1994 Structural or Constitutional Decision

- (i) **Adopting and amending the memorandum and articles of the company:** According to section 5 of the Companies Act 1994, some persons have to subscribe their names to a memorandum of association. Under section 12, a special resolution is required for the alteration of the provision of the memorandum with respect to the object of the company. The alteration of the memorandum shall not have any effect until it is confirmed by the court. Before confirming the alteration, the court must be satisfied that sufficient notice has been given to any persons or class of persons whose interest would be affected by such alteration.

According to section 20, a special resolution is required for the alteration, exclusion or addition of any provision in the articles of the company. But such alteration must be subject to the provisions contained in the Act and memorandum of the company.

- (ii) **Changing the Company's Name or Type:** Under section 11, any company may change its name by a special resolution and subject to the written approval of the registrar. The change of the name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company.

According to section 231, if a company alters its article so as to exclude the provisions relating to private company and if it has at least seven members, it shall be treated to be public company from the date of alteration. But section 232 requires that for the conversion of a public company, having not more than fifty members, into private one, the provisions, relating to the public company, must be altered by passing a special resolution so as to include the provisions relating to the private company.

- (iii) **Varying Class Rights:** Where the share capital of a company is divided into different classes of shares, section-71 protects the rights of holders of those classes of shares by requiring that for variation in their rights there should be a provision in the memorandum or articles of association authorizing the variation of the rights attached to any class of shares and these should be sanctioned by a special majority of the shareholders of that class.

- (iv) Any number of dissenting members holding at least ten percent of the issued shares of that class may, within fourteen days of the resolution, apply to the court to have the variation cancelled. Where any such application is made, the variation shall not have effect until it is then confirmed by the court.

- (v) **Approving Certain Corporate Action Affecting Share Capital:** According to section 53, a company, limited by shares, has power, if so authorized by the article, to increase its share capital by the issue of new shares of such amount as it thinks expedient. This power of the company must be exercised in its general meetings.

Generally a company limited by shares has no power to buy its own shares or the shares of the public company of which it is a subsidiary company. Under section-59, a company, having share capital, may reduce its share capital by its special resolution and subject to the confirmation of the court on petition.

Section 58 states that a public company limited by shares shall not give, by way of loan, guarantee, and the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase by any person of the shares in the company.

If so authorized by the articles, under section 53 the company has power to consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares, and also to sub-divide its shares into shares of small amount than is fixed by the memorandum. But such power of company must be exercised in the general meeting.

Selecting the Board and the Auditor

- (i) **Appointing and removing directors:** Only a natural person can be appointed as directors of a company. According to section 91, the subscribers of the memorandum shall be regarded to be directors of the company until the first directors are appointed. The members of the company shall elect the directors from among their number in the general meeting. Under section 101, the members of the company may, by passing a resolution in general meeting, authorize the board of directors to appoint alternate directors.

Section 106 requires that an extraordinary resolution must be passed for the removal of a share holder director of any company before expiration of his period of office. But the company may appoint another person in his stead by passing an ordinary resolution.

- (ii) **Approving directors' remuneration and benefits:** Under section 292, a company can appoint in general meeting one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and fix their remuneration.

According to section 119, the company shall specify the remuneration of the managing agent in the document of the appointment. And any stipulation for

remuneration additional to such remuneration shall not be binding on the company until sanctioned by the special resolution of the company.

According to section 107, the directors of a company or of a subsidiary company of a public company cannot sell or dispose of the undertaking of the company and remit any debt by a director without the consent of the company in general meeting. On the other hand, section 104 states that director cannot hold office of profit under the company without the consent of the company in general meeting.

According to section 210, where the auditors are appointed by the board or the government, the remuneration shall be fixed by the board or the government respectively. And in all other cases, the remuneration of the auditors shall be determined by the company in general meeting.

- (iii) **Appointing and removing auditors:** Under section 210, the board of directors shall appoint the first auditors within the one month of the registration of the company and if the board fails to so appoint, the company may appoint the first auditors in the general meeting. Then every company shall, at each annual general meeting, appoint an auditor or auditors.

The company may, at a general meeting, remove any first auditor appointed by the board and appoint in his place another person who is nominated by any member of the company. On the other hand, any auditor may be removed from his office before the expiration of his term only by a special resolution of the company in the general meeting.

Vetoing Certain Related Party Transactions

According to section 103, a company cannot make loan or give any guarantee or provide any security of a loan made by a third party to any director, firm of the director, private company of which the director of the lending company is the director or member or any public company whose managing agent, manager or director is accustomed to act in accordance with the direction of the director of the lending company, unless it is sanctioned by board of directors and approved by the members in the general meeting.

Under section 132, the directors, interested in the contract for the appointment of a manager or managing agent of the company, shall send an abstract of the terms of such contract and a memorandum clearly indicating the nature of the interest of them in such contract to every member of the company.

Section 130 requires the directors shall, directly or indirectly interested in any contract or arrangement entered into by the company, disclose the nature of his interest at the meeting of the directors at which the contract or

arrangement is determined. Section 131 prohibits such interested directors from voting on such contract or arrangement.

Under section 133, where the company is an undisclosed principal in any contract entered into by any manager or other agent of the company, such manager or agent shall make a memorandum of the terms of the contract specifying the person with whom it is made, and deliver it to the registered office of the company and directors.

Convening Meetings

- (i) **Who can request a members' meeting?** Section-81 provides that every company must hold a general meeting called the annual general meeting every year but more than fifteen months shall not elapse between the meetings. A company must hold the first annual general meeting within eighteen months of its incorporation. But the register has power to extend the time for holding such meetings if an application is made within one month from the date of expiry of the period specified for holding such meeting.

But if a company fails to hold its annual general meeting within the prescribed time, any member of the company may apply to the court and the court may call or direct the calling of a general meeting of the company and give such ancillary or consequential direction as the Court thinks expedient in relation to the calling, holding and conducting of the meeting.

Section 83 provides that any contributory (present and past member liable to contribute to the assets of the company) may apply to the court to wound up a public company in default of holding statutory meeting and filing statutory report. And instead of directing the winding up company, the court may give directions for the presentation of the report or for holding the meeting or make such order as may be just.

According to section 83, every public company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, hold a statutory meeting (general meeting of the members of the company).

Under section 84, one-tenth of shareholders of a company having share-capital or one-tenth of voting power of the company having no share-capital may send a requisition, stating the object of the meeting, to the directors of the company to hold an extra-ordinary meeting of the company. If the directors fail to hold the meeting, the majority of requisitionists in value may call the meeting. And the requisitionists shall be entitled to costs incurred therein.

- (ii) **Who decides the agenda?** Under section 83, the members of the public company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not. But a resolution cannot be passed of which notice has not been given in accordance with the provisions of this Act. Section 84 requires that the requisitionists of the extraordinary meeting must state the object of the meeting and the requisition may consist of several documents.
- (iii) **What are notice requirements?** According to section 85, an annual general meeting may be called by fourteen days' notice in writing, and a meeting other than an annual general meeting or a meeting for the passing of a special resolution may be called by twenty one day's notice in writing. But an annual general meeting may be held on shorter notice with the written consent of all the members entitled to attend and vote thereat. And any other meeting may be held on shorter notice with the written consent of 95% of the shareholders or voting power of the company.

Under section 85, every member shall be entitled to receive a notice of the meeting of a company with the statement of the business to be transacted at the meeting. But the accidental omission to give notice or the non-receipt of notice by any members shall not invalidate the proceedings at any meeting.

Conducting Meetings

- (i) **What is the quorum?** According to section-85, the case of a private company whose number of members does not exceed six, two members and if such number exceeds six, three members, and in the case of any other company, five members personally present shall be a quorum.
- (ii) **Who are proxies?** According to Schedule-I and section-85 of the Company Act, 1994, the instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorized in writing or if the appointer is a body corporate under the common seal or under the hand of an officer or attorney so authorized.

If there are no contrary provisions in the articles, a proxy need not be a member of the company. The appointment of proxy is not allowed in respect of a company limited by guarantee. Proxies must be deposited at least 48 hours before the meeting. The board of directors may send out proxy forms in their own favor with notice of the meeting and for these to be stamped and addressed at the company's expense.

- (iii) **Representative of corporate members:** According to section-86, a company which is a member of another company may, by resolution of the directors, authorize any of its official or any other person to act as its

representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

What Is the Chairperson's Role?

According to section 85, if there is no contrary provision in the articles of the company, the members present at a meeting may elect any member to be chairman thereof. The chairman of the meeting shall be entitled to demand a poll. Under section 87, where a poll is demanded in respect of any extraordinary or special resolution, the poll may, in accordance with the articles, be taken in such manner as the chairman may direct. If the chairman so direct, the poll shall be taken at the meeting at which it is demanded.

Why might a meeting be adjourned?

Section 83 provides that the meeting may adjourn from time to time and any resolution, of which notice has been given whether before or after the former meeting, may be passed at such adjourned meeting. The adjourned meeting shall have the same powers as an original meeting. If there is absence of quorum, the meeting may be adjourned.

According to section 298, 'if the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up of the company.'

Members' voluntary winding up

In respect of members' voluntary winding up, under section-292, the company shall in general meeting appoint liquidators for winding up the affairs and distributing the assets of the company and may fix their remuneration.

Section 295 requires the liquidator to call a general meeting of the company at the end of the first year of the liquidation and lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement of the position of liquidation.

Members' Voting

The voting rights of the members: According to section 85, every member of the company having share capital shall have one vote in respect of each

share and in any other case every member shall have one vote. And on a poll, votes may be given either personally or by proxy.

Under section-85, five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll. But in the case of a private company, if not more than seven members are personally present, one member, and if more than seven members are personally present, two members, shall be entitled to demand a poll.

What are an ordinary resolution and a special resolution?

According to section-87, for passing extra-ordinary or special resolution, there must be three-fourth majority of members having voting rights. At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll may be demanded. 'Twenty one days' notice of the meeting, in which the special resolution is to be passed, has to be duly given specifying the intention.

Restrictions on Members' Decision Making Right in Bangladesh

- (i) **Equitable restriction on majority voting power:** There is an equitable restriction on the voting power of the majority. It restricts action which is beyond the authorized and legal power of the majority given by law. For example, fraud on minority is absolutely prohibited. Majority may take action in breach of equitable limitation but not dishonestly.
- (ii) **Restriction in case of alteration of the constitution:** By an ordinary resolution, a company cannot alter its memorandum and articles of association. A special resolution must be passed for such alteration. Section 12 provides that when provision of memorandum is altered by majority, confirmation by court is pre-condition for its' legal effect.
- (iii) **Procedural restriction:** Proper notice for the meeting, quorum, and proper conduct of the meeting are the procedural requirements for holding meeting of a company. All of these requirements apply to all meetings of members and must be complied with.
- (iv) **Creditors' rights to objection:** The members of a company may approve, by a special resolution, the reduction of its share capital. The majority may only approve a reduction of share capital, if it does not materially prejudice the ability of the company to pay its' creditors and it is also fair and reasonable to the company's members as a whole. Section 62 gives the creditors a right to object to the reduction of share capital. Under section 64, court may confirm the reduction only when it is satisfied that consent of the

creditors entitled to object is obtained or his debt is discharged or has been secured or determined.

- (v) **Special procedure in removal of directors and auditor:** The members of the company has right to vote for the removal of the directors and auditors from their offices. But there is special procedure which must be followed before removing such directors and auditors. For example, according to sections 106 and 210, a director or auditor cannot be removed from his office by an ordinary resolution.
- (vi) **Special procedure in alteration of class rights:** A special procedure is provided for the alteration of the class right. This procedure must be observed for giving effect to the consent of the majority. For example, section 71 provides that if there is no provision in the articles or memorandum authorizing the alteration of class rights and sanctioned by the specified majority of that class of share holders, a company cannot change the class rights.
- (vii) **Protection of minority:** Provisions regarding the protection of minority interests have been provided in the laws. So the decision of the majority must not infringe the interests of the minority so far as protected by the laws. Section 233 provides that where the affairs of the company or exercise of power of directors or action of the company prejudicially affect minority, the minority may apply to the court to cancel or modify any resolution or transaction or for a direction to regulate the conduct of the affairs of the company.
- (viii) **Winding up on just and equitable ground:** The minority members may go the court for an order of winding up of a company on just and equitable ground. Section 241 provides that a company may be wound up by the court, if the court is of opinion that it is just and equitable that the company should be wound up.
- (ix) **Contractual obligation of the company and members:** According to section-22, when the memorandum and articles of association are registered, they bind both members and the company to the same extent. So company cannot do anything which is inconsistent with the provision of the articles, memorandum and the Act.

3. 2. Members' Decision making and Restrictions under the Law of the UK: The Companies Act, 2006

Structural or Constitutional Decision

- (i) **Adopting and amending the internal governance rules:** Section 21 provides that a special resolution is required for the amendment of the articles of a company. Sometimes a company's article may contain provision to the effect that special provision of the articles may be amended

or repealed only if the conditions are met. But section 22 provides that the provision of the articles may be amended by agreement of all members of the company, or by order of the court or other authority having power to alter the company's articles.

Section 25 provides that a member of a company is not bound by an alteration to its articles after the date on which he became a member, if the alteration requires him to take or subscribe for more shares than the number held by him at the date of the alteration, or in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

Section 7 provides that a company is formed when one or more persons subscribe his or their names to a memorandum of association and comply with the requirement under the company Act.

According to section 33, the provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions.

- (ii) **Changing the company's name or type:** According to section-77, the name of a company may be changed by a special resolution or according to the provision of the articles of association. Section 81 provides that the change does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
- (iii) **Varying class rights:** According to section 630, the rights of a class of shareholders of a company, having share capital, may be varied in according with the provision of the articles or with the consent of holders of at least three-quarter in nominal value of the issued share of that class or by a special resolution passed at a special general meeting of the holders of that class sanctioning the variation.

According to section-631, in case of a company having no share capital, the rights of a class of members may be varied in according to the provision of the articles, or the written consent or resolution of members of that class.

Under section 633 and 634, fifteen percent of the non-consenting members or shareholders may apply to the court to have the variation cancelled. The decision of the court on such matter shall be final.

Approving Certain Corporate Action Affecting Share Capital

According to section-618, a company limited by shares may subdivide its shares into shares of a smaller nominal amount or consolidate and divide its

share capital into shares of a larger nominal amount than its existing shares. The company can exercise this power, only if it is so authorized by a resolution passed by members of the company. But the articles of the company may regulate this power.

Under section-620, a company limited by shares may reconvert its stock into paid-up shares of any nominal value on passing a resolution by the members of the company. Section 622 authorizes such company to redenominate its share capital or any class of share capital by a resolution.

Section 626 provides that a limited company that passes a resolution redenominating its shares may, for the purpose of adjusting the nominal values of the redenominated shares to obtain values that are more suitable, reduce its share capital by passing a special resolution within three months of the resolution affecting the redomination.

According to section-641, a company limited by shares may reduce its share capital, in case of a private company by special resolution supported by a solvency statement and in any case by a special resolution confirmed by the court. But section 658 provides that a company cannot buy its own shares except in accordance with the Act.

According to section 656, when the net assets of a public company are half or less of its called-up share capital, the directors must call a general meeting of the company to consider whether any steps should be taken to deal with the situation.

Selecting the Board and the Auditor

- (i) **Appointing and removing directors:** According to section-160- 'At a general meeting of a public company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.'

According to section 168, 169, a company may by ordinary resolution at a meeting remove a director before the expiration of his period of office. Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed. Where the director to be removed makes any representation, the notice shall inform the members of the company about it.

- (ii) **Approving directors' remuneration and benefits:** According section-412, the Secretary of State may make provision by regulations requiring information to be given in notes to a company's annual accounts about

directors' remuneration. The director of the company has a duty to give notice to the company of such matters relating to himself as may be necessary for the purposes of the regulations.

The appropriate level of remuneration for the directors is to be determined by reference to objective commercial criteria in order to see whether the remuneration was within the bracket that executives carrying that sort of responsibility and discharging the sort of duties (respondent) would expect to receive.¹

- (iii) **Appointing and removing auditors:** According to section 485, the members of a private company may appoint auditor by an ordinary resolution for each financial year of the company. But if the private company fails to appoint auditor, the Secretary of State may appoint auditors under section 486. On the expiration of the office of the auditor, he may be reappointed.

According to section-510 and 511, the members of a company may remove an auditor from office at any time by ordinary resolution at a meeting of the company. Special notice is required for a resolution at a general meeting of a company removing an auditor from office.

Vetoing Certain Related Party Transactions

According to sections 188 and 189, a company may not agree to the provision in the director's long term service contract unless it has been approved by the resolution of the members of the company. Any provision, agreed in contravention of the requirement of the approval of the members, is void.

According to section-190, a company may not enter into an arrangement under which a director of the company or of its holding company, or a person connected with such a director, acquires from the company, or the company acquires a substantial non-cash asset from such a director or a person so connected, unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.

Sections 197, 198 and 200 provides that a company may not make a loan or a quasi-loan to a director of the company or of its holding company, or give a guarantee or provide security in connection with a loan made by any person to such a director or to a person connected with the directors unless the transaction has been approved by a resolution of the members of the company.

¹ Paul I. Davies, *Gower and Davies Principles of Modern Company Law* (Sweet and Maxwell, 8th ed, 2008) 697 nn .

Convening Meetings

(i) **Who can request a members' meeting?** Generally the board may convene a meeting of the members of a private or public company at any time. But the directors must convene a meeting on the requisition of holders of not less than one-tenth of the paid-up capital carrying voting rights. But the fraction is 5% in case of a private company which has not held a meeting convened by the members under their statutory powers within the previous twelve months.²

If the directors fails to convene a meeting within 21 days of the deposit of the requisition, the meeting to be held within 28 days of the notice convening it, the requisitionists or any of them representing more than half of the total voting rights of all of them, may themselves convene the meeting and their reasonable expenses must be paid by the company and recovered from fees or remuneration payable to the defaulting directors.³

If it is impracticable, for any reason, to call a meeting in any manner in which meetings of that company may be called or to conduct the meeting in manner prescribed by the articles or the Act, the court may, on the application of any member entitled to vote at the meeting, order a meeting to be called, held and conducted in any manner as the court thinks fit.⁴

(ii) **Who decides the agenda?** In fact, it is normal for these matters to be taken at the annual general meeting and for the shareholders to have an opportunity to question the directors generally on the company's business and financial position. And it is result of practice rather than of law.⁵

(iii) **What are notice requirements?** Generally, though the meeting is convened by the board, the main protection for the shareholders in such a case is information by way of notice. An annual general meeting of a public company must be called by a notice of at least 21 days. And the general meeting of a private company and other meeting of a public company must be called by notice of at least 14 days. A meeting called on shorter notice may be deemed to be duly convened if so agreed by all members entitled to attend and vote.⁶

Under section 312, where any provision of the Act requires special notice of a resolution, the resolution is ineffective unless notice of the intention to move it has been given to the company at least 28 days before the meeting.⁷

² *Companies Act 2006*, s 307 (UK); Ibid. 442 nn 15-29.

³ Ibid 443 nn 15-30.

⁴ Ibid.

⁵ Ibid 441 nn 15-28.

⁶ Ibid 450 nn .

⁷ Ibid 452 nn.

The notice of the meeting must give the date, time, and place of the meeting, a statement of the general nature of the business to be transacted at the meeting and any other matters required by the company's constitution.⁸

Every member and every director of the company are entitled to receive of the notice of the meeting. But accidental failure to give notice to one or more members shall not affect the validity of the meeting or resolution and the company's article may expand this relaxation, except for meetings or resolutions required by the members.⁹

Conducting Meetings

- (i) **What is the quorum?** In the absence of the required quorum, no resolution can be effectively passed. Only two members are required for meeting of shareholders as a whole, unless the company's constitution sets a higher figure and only one member in case of a single-member company.¹⁰
- (ii) **Who are proxies?** In the case of company having a share capital, the member may appoint more than one proxy, provided each proxy is appointed to exercise rights attached to different shares. The proxy's vote will still be valid and the proxy will still count towards the quorum and can still validly join in demanding a poll unless the company receives notice of termination of the authority before the commencement of the meeting.¹¹ Section 329 provides that the appointment of a proxy to vote on a matter at a meeting of a company authorizes the proxy to demand, or join in demanding, a poll on that matter.
- (iii) **Representative of corporate members:** According to section-323, where a corporation is a member of a company, it may, by resolution of its directors or other governing body, authorize any persons to act as its representative or representative at any meeting of the company. Such representative shall be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

What is the chairperson's role?

Under section 319, a member may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting subject to the provision of the articles of the company. On the other hand, under section 328, in the same way a proxy may be elected to be the chairman of a general meeting.

⁸ Ibid.

⁹ Ibid 455 nn 15-40.

¹⁰ Ibid 444 nn .

¹¹ Ibid 457 nn 15-43.

Under section 320, a chairman of a meeting has power to declare on the show of hands that any resolution has been or has not been passed or passed with a particular majority. Such declaration shall be conclusive evidence of that fact without proof of the number or portion of the votes recorded in favour of or against the resolution.

Every company must cause minutes of all proceedings at meetings of its directors to be recorded. Section 249 provides that such recorded minutes purporting to be authorized by the chairman of the meeting are the evidence of the proceeding of the meeting. On the other hand section 356 provides that the minutes of proceedings of a general meeting purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are evidence of the proceedings at the meeting.

Why might a meeting be adjourned?

Section 332 provides that when a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be treated to be passed on the date on which it was in fact passed, and is not to be regarded to be passed on any earlier date. Meeting may adjourn for the absence of quorum.

Member Voting

Voting rights of members: According to section 322, a member entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way on poll taken at a general meeting of the company. A member may appoint a proxy to vote at the meeting of the company.

Section 284 provides that in case of a company having share capital, every member shall have one vote in respect of each share and in any other case; every member has one vote on a vote on a written resolution or on a vote on a resolution on a poll taken at a meeting. Every member or every proxy present shall have one vote on a vote on a resolution on a show of hands at a meeting.

Section 286 provides that in the case of joint holders of shares of a company, only the vote of the senior holder who votes and any proxies duly authorized by him may be counted by the company.

What are an ordinary resolution and a special resolution?

According to section 282, an ordinary resolution of the members or of a class of members of a company means a resolution that is passed by a simple majority. Anything that may be done by ordinary resolution may also be done by special resolution.

According to section 283, a special resolution of the members or of a class of members of a company means a resolution passed by a majority of not less than 75% of total voting rights of eligible members. For passing a written resolution of a private company as a special resolution it must be stated that it was proposed as a special resolution. For passing a special resolution, the notice of the meeting must include the text of the resolution and specified the intention to propose the resolution as a special resolution.

Nomination by Members of another Person

- (i) **Nomination of another person to enjoy governance rights:** Under section 145, a company may make provision in its articles to enable a member to nominate another person to enjoy the governance rights of the member in connection with the company. That nominated person need not be the holder of the beneficial interest in the shares. But it does not confer rights enforceable against the company by anyone other than the member, and do not affect the requirements for an effective transfer or other disposition of a member's interest in the company.
- (ii) **Nomination of another person to enjoy information rights:** Under section-150, a member of a company whose shares are admitted to trading on a regulated market may nominate another person to enjoy information rights, whether the company has provided in its articles for this to happen or not. The rights conferred upon the other person do not deprive the nominating shareholder of his right to the same information. But all nominations are suspended when there are more nominations in force than the nominator has shares in the company, so that the burden of shorting out the errors is removed away from the company.¹²

Decision Making Without a Meeting

Wholly informal consent given by all the members entitled to vote may bind the company. The written resolution procedure allows shareholders to adopt resolution outside meetings. And the unanimous consent rule permits wholly informal methods of giving shareholders consent. The common rules operating to this effect are preserved under the Act of 2006.¹³ The written resolution procedure is not available to the private company in respect of decision required or provided for by the Act and where the company has to proceed by means of a meeting of members.¹⁴

Restriction on Members' Decision Making Right in the UK

- (i) **Equitable restriction on majority voting power:** There is an equitable restriction on the voting power of the majority. It restricts action which is

¹² Ibid 434 nn 15-21.

¹³ Ibid 420 nn 15-8.

¹⁴ Ibid 416 nn 15-4.

beyond the authorized and legal power of the majority given by law. For example, fraud on minority is absolutely prohibited. Majority may take action in breach of equitable limitation but not dishonestly. The majority has an obligation to act for proper purpose.

- (ii) **Restriction in case of alteration of the constitution:** According to section 21 and 22, the provision of articles cannot be altered except by a special resolution, or by agreement of all members or by order of the court or other authority having power to alter company's articles. Section 25 provides that a member is not bound by an alteration which impose more liability than that was on him at the date on which he became a member.
- (iii) **Procedural restriction:** Proper notice for the meeting, quorum, and proper conduct of the meeting are the procedural requirements for holding meeting of a company. All of these requirements apply to all meetings of members and must be complied with.
- (iv) **Creditors' rights to objection:** The members of a company may approve by resolution the reduction of its share capital. The majority may only approve a reduction of share capital, if it does not materially prejudice the ability of the company to pay its' creditors and it is also fair and reasonable to the company's members as a whole.

Section 627 provides that the reduction of capital is not effective until it is registered. Then section 641 provides that a company may not reduce its capital, if as a result of the reduction there would no longer be any member of the company holding shares other than redeemable shares. And section 658 provides that a company cannot buy its own shares except in accordance with the Act. Section 646 provides the creditors with right to object to reduction of the share-capital of the company.

- (v) **Special procedure in removal of directors and auditor:** The members of the company has right to vote for the removal of the directors and auditors from their offices. But there is special procedure which must be followed before removing such directors and auditors.

For example, section 160 requires that the appointment of directors of public company must be voted individually. Special notice is required, under section 511, for a ordinary resolution at a general meeting of a company removing an auditor from office.

- (vi) **Special procedure in alteration of class rights:** A special procedure is provided for the alteration of the class right. This procedure must be observed for giving effect to the consent of the majority. Under section 633 and 634, fifteen percent of the non-consenting members or shareholders may apply to the court to have the variation cancelled.

- (vii) **Protection of minority:** Provisions regarding the protection of minority' interests have been provided in the laws. So the decision of the majority must not infringe the interests of the minority so far as protected by the laws. Section 994 provides that when the affairs or acts or omissions of the company are unfairly prejudicial to the interests of the members of the company, a member may apply to court for an order in this respect. Section 260 provides provisions regarding derivative claims by a member against the unfair prejudicial acts of the company.
- (viii) **Contractual obligation of the company and members:** When the memorandum and articles of association are registered, they bind both members and the company to the same extent. So company cannot do anything which is inconsistent with the provision of the articles, memorandum and the Act. According to section 33, the provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions.
- (ix) **Winding up on just and equitable ground:** The minority member may go the court for an order of winding up of a company on just and equitable ground. According to section 122 of the Insolvency Act, a company may be wound up by the court on the ground that the court is of opinion that it is just and equitable that the company should be wound up.

4. Divergence and Convergence between the Law of Bangladesh and the UK

The major point of the divergence and convergences between the law of the UK and Bangladesh can be summed up as follows:

Convergence

- Special resolution is required for the alteration of the articles of the company. And the members of the company shall not be bound by the alteration of articles regarding the liability.
- If a corporation is a member of a company, it may by resolution of its directors authorize a person or persons to act as its representative or representatives at any meeting of the company.
- Every member shall be entitled to receive a notice of the meeting of a company with the statement of the business to be transacted at the meeting. But the accidental omission to give notice to or the non-receipt of notice by any members shall not invalidate the proceedings at any meeting.
- The director has power to call meeting of the company at any time and one-tenth of the holders of the issued share capital has right to require the directors to call a meeting of the company.
- If the directors fail to hold the meeting, the majority of requisitionists in value may call the meeting. And the requisitionists shall be entitled to costs incurred therein.

- Where a resolution is passed at an adjourned meeting of a company, the resolution shall be valid and the adjourn meeting shall have the same power as an original meeting.
- If the meeting of the company cannot be called and conducted in manner prescribed by the Act and articles for any reasons, any member may make an application to the court and the court may direct the manner in which the meeting will be held and conducted.
- A meeting of a company may be called on shorter notice with the consent of the members of the company.
- A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.
- Five members present in person or by proxy, or any member or members holding one-tenth of issued share capital shall be entitled to demand poll. And on poll, a vote may be given personally or by proxy.
- On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution has or has not been passed, or passed with a particular majority. is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favor of or against the resolution.

Divergence

- In the UK, under section 145, a member may nominate another person to enjoy the governance rights of members regarding the company. Bangladesh laws do not provide such provision.
- In the UK, under section 150, a member of a company whose shares are admitted to trading on a regulated market may nominate another person to enjoy information rights, whether the company has provided in its articles for this to happen or not. Bangladesh laws do not provide such provision.
- In the UK, under section 168, a company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him. In Bangladesh, under section 106, the company may by extraordinary resolution remove any share-holder director before the expiration of his period of office and may by ordinary resolution appoint another person in his stead.
- In the UK, under section 188, a company cannot agree to the provision in the directors' long term service contract without the approval by resolution of the members of the company. Bangladesh has no specific provision.
- In Bangladesh, under section 81, a company must hold the first annual general meeting within eighteen months of its incorporation. But the UK has no specific provision.

- In the UK, under section 336, every public company must hold a general meeting as its annual general meeting in each period of 6 months beginning with the day following its accounting reference date. But in Bangladesh, Section 81 provides that every company must hold a general meeting called the annual general meeting every year but so that not more than fifteen months elapse between the meetings.
- In the UK, under section 307, a general meeting of a private company must be called by notice of at least 14 days. A general meeting of a public company must be called by notice of, in the case of an annual general meeting, at least 21 days, and in any other case, at least 14 days. But in Bangladesh, under section 85, an annual general meeting may be called by fourteen days' notice in writing, and a meeting other than an annual general meeting or a meeting for the passing of a special resolution may be called by twenty one day's notice in writing.
- In the UK, under section 318, in the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum. And in any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum. But in Bangladesh, under section 85, in the case of a private company whose number of members does not exceed six, two members and if such number exceeds six, three members, and in the case of any other company, five members personally present shall be a quorum.
- In the UK, under section 527, the members of a quoted company may require the company to publish on a website a statement setting out any matter relating to the audit of the company's account, any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting. Bangladesh law has no such provision.
- The company laws of the UK specifically mention the cases where the approval of the members of the company is required. And the company laws of the UK are clear and wide enough in respect of members' decision making rights. Company laws of Bangladesh are not so wide and specific.
- The UK law provides the provision regarding the written resolution of a private company. But Bangladesh law does not provide such provision.

5. Recommendations

- Like the UK laws, provisions should be inserted in Bangladesh laws that when the net assets of a public company are half or less of its called-up share capital, the directors must call a general meeting of the company to consider whether any steps should be taken to deal with the situation.
- Like the UK law, Bangladesh law should provide provision for amending articles of the company by agreement of all members of the company, or by

order of the court or other authority having power to alter the company's articles.

- Like the UK laws, the company should have power to change its name according to the provision of the articles of association.
- Like the UK laws, Bangladesh law should provide provision for the protection of class rights of the members of a company having share capital. It is a safeguard against the capricious decision of the majority.
- Like the UK laws, Bangladesh laws should provide that the appointment of directors of public company must be voted individually. A company should have power to remove any director at any time by an ordinary resolution before the expiration of the period of his office.
- Like the UK laws, there should be provision in Bangladesh laws that an auditor may be removed from his office at any time by ordinary resolution with a special notice.
- Like the UK laws, Bangladesh laws should provide that company shall not agree to the provision in the directors' long term service contract unless it is approved by a resolution of the members of the company.
- Like the UK laws, Bangladesh laws should provide that the members of a quoted company may require the company to publish on a website a statement setting out any matter relating to the audit of the company's account, any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting.
- Like the UK laws, Bangladesh laws may provide that subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum of the meeting of the members of a company.
- Like the UK laws, in Bangladesh a member of a company whose shares are admitted to trading on a regulated market should have power to nominate another person to enjoy information rights, whether the company has provided in its articles for this to happen or not.
- Like the UK laws, in Bangladesh a member should have rights to appoint another person to enjoy all governance rights of member of a company.
- Like the UK laws, Bangladesh laws may provide that in the case of joint holders of shares of a company, only the vote of the senior holder who votes and any proxies duly authorized by him may be counted by the company.
- Like the UK laws, provisions regarding written resolution in case of a private company should be provided.
- Like the UK laws, Bangladesh laws should provide specific and wide provisions that where the approval of members is required and where is not required.

6. Conclusion

Under the caprice of Company law, the board of directors is the main organ of management and usually holds the power to manage the business of the company. However, the members in general meeting have powers to participate in the decision making in the company's affairs. Such powers may be reserved to them under the company's internal management rules, the Companies Act and the general law of the particular country. In respects of member's decision making, the Companies Act of Bangladesh and the UK contains, by and large, similar provisions regarding the right to request to call for meeting, the right to receive notice, the process of proxy and representation and the minutes of meeting. The provisions of the Act of Bangladesh and the UK, however, diverge on different points including the issues of nominating another person to enjoy the governance rights of members, the requirements of holding general meeting, and the number of fulfilling the quorum, etc. Apart from this, one of the fundamental differences is that the company laws of the UK specifically mention the cases where the approval of the members of the company is required. Compared to that of Bangladesh, the company laws of the UK may thus be found to be clear and wide enough in respect of members' decision making rights, despite the fact that the gravity of the divergence between the provisions regarding members' decision making is marginal.