Power of shareholders to manage a company

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A Jersey company's articles of association normally give its directors the power to manage the company's affairs, unless the shareholders intervene by passing a special resolution. Two-thirds or more of the shareholders are required to pass such a resolution, depending on what the articles say.

But can a *simple majority* of the shareholders ever direct the board how to manage the company?

This question was considered recently by the Royal Court of Jersey in *Galasys plc [2016] JRC 188.* The Galasys board was unable to make certain key management decisions due to the directors' conflicts of interests. Further, because of ongoing litigation involving the company, the shareholders were prevented by injunction from appointing additional directors. A majority of the shareholders therefore passed an ordinary resolution directing the board to take certain actions with a view to breaking the deadlock.

The Royal Court had to decide whether this direction, given by a simple majority of the shareholders, was valid. In summary, the Court concluded that:

- where the articles give the directors power to manage the company subject to the passing of a special resolution, a simple majority of the shareholders alone generally cannot intervene;
- however, in exceptional situations where the board is unable or unwilling to act, a simple majority of the shareholders can, by ordinary resolution, exercise a *reserve power*. This would arise where, for example, the board is deadlocked; there are no directors; a quorum of directors cannot be formed; or the directors are disqualified from voting;
- this reserve power allows a simple majority of the shareholders to appoint additional directors so that the decision-making capability of the board is restored; and
- if no new directors can be appointed (as was the case in *Galasys*), the reserve power also allows a simple majority of the shareholders to exercise management powers that would otherwise have belonged to the board.

Further, the Court inclined towards the view (but did not have to reach a conclusion) that the majority shareholders' reserved power may potentially extend more widely to taking substantive management decisions which the board is unable or unwilling to take, *even if the board could be reactivated by new or replacement directors being appointed*.

Whilst this case serves as a further endorsement of the established position that the overall management of the company rests firmly with its directors, it also cements the ability of a shareholder majority to resolve a deadlock when the directors are unable or unwilling to act and no new directors can be appointed.

Perhaps more importantly, however, the case suggests a possible willingness by the Court to support (in the absence of an effective board) the exercise by a majority of shareholders of wider reserved management powers as an alternative to appointing new directors to resolve the issue. Although potentially helpful in certain situations, any such development would raise important questions regarding the protection of the shareholder minority if a shareholder majority (with no fiduciary duties akin to those applicable to directors) was able to exercise substantive management power for its own benefit instead of re-empowering the board. Such a development should, we would suggest, be approached with caution.

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