

# Informal shareholder resolutions: the *Duomatic* principle considered

January 19, 2017

A recent High Court decision has considered whether a company's shareholders had informally amended the company's articles of association under the so-called *Duomatic* principle. The case highlights issues which can arise from the principle.

## Background

Under the *Duomatic* principle the informal consent or acceptance of all the voting members of a company can bind the company as if the members had passed a formal shareholders' resolution. Earlier cases, including most recently *The Sherlock Holmes International Society Ltd v. Aidiniantz* [2016] EWHC 1076 (Ch), confirm that it is possible for a company's articles to be amended informally in this way.

## Facts

Administrators of a company were appointed by a decision of a sole director (DW). However, the company's articles stipulated a quorum of two for a board meeting. They also stated that a sole director could only call a general meeting or appoint another director. The administrators' appointment was therefore, on the face of matters, invalid.

The quorum for a shareholders' meeting was also two. DW was the registered holder of a 75% shareholding in the company, although he held those shares for his father (RW). The other 25% of the shares were registered in the name of an Isle of Man company. This had been dissolved many years previously, although it was likely that RW was also the beneficial owner of these shares.

After the administration, the applicants had obtained legal title to the 75% shareholding in the company that DW held for RW. The applicants tried to claim that the administrators had not been validly appointed.

## Decision

The court rejected the applicants' claim. It found that, under the *Duomatic* principle, there had been an effective variation or departure from the company's articles. This had allowed the exercise of all the directors' powers by one director alone. In its decision the court made various observations about the scope of the *Duomatic* principle.

- The 25% shareholder no longer existed and no-one capable of voting had been entered on the register in place of the dissolved company. Therefore, the acquiescence of the 75% shareholder alone ought to be enough to trigger the application of *Duomatic*. But if it was necessary to go further, the requirement of unanimous consent was satisfied because the beneficial owner did acquiesce in the exercise of the board's powers by the sole director.

There being no registered shareholder of the 25%, only the beneficial owner could count, if it were necessary to look beyond the 75% at all.

- Where the registered holder holds shares in trust as bare trustee for the beneficial owner, there is much to recommend the view that the wishes of the beneficial owner are those that count. The registered holder must act as the beneficial owner dictates and therefore has no say in the matter. However, as DW and RW had acted in agreement with each other, the court did not have to decide whether what mattered for *Duomatic* purposes was beneficial ownership or being on the register as bare trustee for the sole beneficiary.

## Comment

This case is a useful reminder of the *Duomatic* principle and highlights areas of uncertainty which can arise. Perhaps the most controversial part of the decision is the suggestion that, in the circumstances, it was possible to disregard the 25% shareholder. The applicants have appealed the decision. The Court of Appeal may, therefore, in due course clarify the uncertainties highlighted by the case.

*Randhawa & Ors v. Turpin & Anor* [2016] EWHC 2156 (Ch)

## Your Key Contacts



**Richard Barham**

Partner, London

D +44 20 7246 7109

[richard.barham@dentons.com](mailto:richard.barham@dentons.com)



**Candice Chapman**

Partner, London

D +44 20 7246 7141

M +44 7525 174223

[candice.chapman@dentons.com](mailto:candice.chapman@dentons.com)