

## Guidance Note: Can a sole director run a company?

Simple Law Ltd

**Hashmi v Lorimer-Wing [2022] EWHC 191 (Ch)**

### 1. Introduction

This Guidance Note sets out the facts of the High Court case of Hashmi v Lorimer-Wing [2022] EWHC 191 (Ch). The case has called into question the validity of board decisions taken by a sole director with model articles and whether two or more directors are required to constitute a quorum at a board meeting.

This guidance does not provide a full summary of the case, which can be accessed [here](#), rather it looks at the key issues raised for sole director companies and how these have been resolved.

### 2. The Case

The case considered whether a sole director could commence a counterclaim against a company. The company's articles included a bespoke article regarding director decisions.

The High Court had to consider whether the sole director could take decisions collectively. The company's articles for private companies required decisions to be taken collectively, which set the quorum at two directors.

It was successfully argued that the sole director's decision was invalid as the company's articles (both model and bespoke) required a quorum of two directors. Therefore, the sole director did not have authority to make the relevant decision on the counterclaim. The court considered the provisions in the articles requiring a quorum of two directors and the company to have a minimum of two directors.

### 3. The Decision, Model Articles and the Quorum

**Article 7** of the model articles states:

(1) The general rule about decisions of the directors must be either a decision taken at a meeting or a decision taken in accordance with article 8.

(2) If (a) the company only has one director,

(b) no provision of the articles requires a decision to be taken at a meeting,

the general rule does not apply and the sole director may take decisions without regard to the provisions of the articles relating to directors' decision-making.

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### Conclusions

The court concluded that the sole director's decision was invalid as the company's articles required a quorum of two directors. Therefore, the sole director did not have authority to make the relevant decision on the counterclaim.

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**Article 11(2)** of the model

(2) The quorum for directors' meetings shall be fixed from time to time by a decision of the directors, but it must not be less than two.

The bespoke article 16 in the company's articles was two directors.

In the case it was successful, the counterclaim was invalid. Article 16 (bespoke Article 16) required a quorum of two or more directors were required.

#### 4. **Previous Understanding**

It has long been known that there was a contradiction between Article 11(2) and Article 7(2). Article 7(2) trumped Article 11(2) and a minimum number of directors could make decisions.

Comments in the High Court would need to be adapted in the absence of a bespoke article.

#### 5. **Implications for Sole Director**

This case questions the ability of sole director companies to run a company and therefore the whole viability of sole director companies. There is now a question mark over whether a single director can pass board resolutions, it opens the door for all sole director companies.

The general legal consensus is that sole director companies are suitable for private companies. The decision in this case is ultra vires, i.e., open to challenge as precedent.

This presents real practical problems. Disputes arise. This may be a problem if a sole director company disputes previous decisions. This may be a problem if a sole director company is looking for financing where a lender would not be able to enforce a loan agreement. Or if a sole director company is deemed to be in breach of an existing loan agreement by the sole director.

#### 6. **Solutions**

It is hoped that the government will amend the model articles to alleviate this. However, it is unlikely that this will happen. Existing sole director companies

ed from time to time by a decision of the directors, but it must not be less than two, and unless otherwise fixed it is two.

at the quorum for board meetings

sion of the sole director to bring a claim (both Article 11 and bespoke Article 16) required a quorum of two or more directors were required.

contradiction in the model articles. The previous understanding had been that Article 7(2) trumped Article 11(2) and a minimum number of directors could make decisions. This view was rejected in the case.

that unamended model articles are not suitable for a sole director to run a company, even in the absence of a bespoke article in this case.

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Considering the above, the sole director should consider.

They may want to:

- 6.1 appoint another director;
- 6.2 amend their articles of association;
- 6.3 get retrospective member approval of previous decisions made by the sole director.

#### **Appoint another director**

Companies may decide to appoint another director notwithstanding that the company is run successfully by the sole director. If a company is run successfully by the sole director, it may not be practical or desirable to appoint another director. However, it may be necessary to appoint another director under the model articles (article 11(3) (i.e., the model articles require the appointment of an additional director without any additional authority).

#### **Amend Articles:**

The most likely course of action for sole director companies will be to adopt new articles of association. This will clarify that article 11(2) is not a restriction on the sole director within the meaning of the model articles. This will however only apply to decisions made after the adoption of the new articles.

#### **Ratify previous decisions**

Changing the articles or appointing another director will not prevent challenges to any past decisions made by the sole director. Such decisions should be ratified by a written shareholders' resolution.

## **7. Templates**

In addition to this guidance, the following templates to assist sole directors who wish to amend their previous decisions:

- 7.1 Articles of association for private companies based on the model articles;
- 7.2 Shareholders' written resolution to adopt new articles of association;
- 7.3 Letter to Companies House to change articles and resolution;
- 7.4 Letter to the company to ratify previous decisions;
- 7.5 Explanatory note regarding the articles to auditors and other interested parties;
- 7.6 Shareholders' written resolution ratifying the sole director's previous decisions; and
- 7.7 Letter to Companies House to ratify previous decisions by ordinary resolution.