

## Interpretation of Articles of Association

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### Pirrwitz-v-Al, PI and Vilsmeier: Royal Court, Unreported Judgment: 24 January 2013

### Summary

The case involved a claim by a former director of two Jersey companies (each a Company, and together, the Companies) for sums due under service contracts with those Companies. He claimed that under each service contract the sums of 700,000 and 600,000 Euros respectively were payable upon him ceasing to be a director (the "exit payments").

The Companies contended, inter alia, that (a) the board of directors lacked the authority under the articles of association of each Company (which were in materially identical terms) to agree the exit payments; (b) the exit payments were never properly authorised by the board of directors but were negotiated without authority from the board by the chairman of each Company; and (c) the exit payments were subject to certain preconditions which had not been met.

In dismissing the defences raised by the Companies and holding that the former director be paid the sums which he claimed were due to him under the service contracts, the court helpfully clarified its interpretation of certain provisions in the articles of association of the Companies. It is a useful judgment because the provisions reviewed by the court are similar to provisions which are found in the articles of association of many Jersey companies.

### Scope of the power of the board to manage its own business

The articles of association of each Company contained an article which stated that "the business of the company shall be managed by the board which may pay all expenses incurred in forming and registering the company and may exercise all the powers of the company, including without limitation the power to dispose of all or any part of the undertaking of the company."

The court held that subject to the powers of the board being exercised honestly, in good faith, and for the corporate benefit of the company, such wording confirmed the general power of the board to manage the business of the company, which must include the contractual arrangements which govern its relationship with its directors.

The court also held that a separate article headed "Executive Directors" which gave the board the power to enter into a contract "with any director for his employment by the company or for the provision by him of any services outside the scope of the ordinary duties of a director" should be read so that the word "any" includes both executive and non-executive directors, notwithstanding the heading of the article.

## Power to delegate

One of the provisions of the articles of association of each Company gave the board the authority to delegate any of its powers "to a committee of one or more directors or other person as the directors think fit."

In finding that such wording allowed the board, as a matter of capacity, to delegate to the chairman of each Company the power to determine the quantum of exit payments of its directors, the court also stated that it was in their view not essential that the form of delegation should include reference to "a committee" or to the article giving the board the authority to delegate. Rather, it was a matter of fact whether the board has delegated its power.

## Board minutes as sufficient evidence of the proceedings of meetings

The articles of association of each Company contained an article that board minutes "purporting to be signed by the chairman of the meeting to which they relate or of the meeting at which they are read, shall be sufficient evidence of the proceedings without any further proof of the facts stated in them."

The court considered that a provision to this effect contained in the articles of association of a company would reflect the arrangements agreed between a company and the board, and as such would be binding on both unless there was some obvious error on the face of the record or the record were to be vitiated by fraud.

On the facts of the case, the person who had signed the relevant minutes was the chairman of each respective Company, not the chairman of the relevant meetings. Although the court stated that one

could understand how the chairman of each Company may consider that it was his place to sign the minutes, given the aforementioned article, the minutes should not be treated as being conclusive evidence of the meetings in question without further proof.

## Comment

The judgment makes it clear that the scope of the general power of management contained in most Jersey companies' articles of association includes the negotiation and agreement of contractual arrangements with a company's directors. The judgment also shows the willingness of the Royal Court to treat the wording of each article on its own merits in finding that non-executive directors can fall under a specific article headed "Executive Directors."

In relation to provisions in a company's articles of association relating to the delegation of powers to a committee, the judgment is helpful in clarifying that where standard wording is used, the form of delegation does not need to refer to a "committee" or the relevant provision giving the board the authority to delegate.

Finally, the case is also useful in reminding us of the importance of a company's record-keeping responsibilities. Of particular note is the court's suggestion that, where a company's articles contain wording to the effect that properly signed board minutes shall be sufficient evidence of the proceedings of meetings, such minutes will be binding on both the company and the board unless there is some obvious error or fraud. This could have implications where a company attempts to amend minutes after they have already been signed.

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## Meet the Author



Edward Mackereth

Global Managing Partner

Jersey

E: [edward.mackereth@ogier.com](mailto:edward.mackereth@ogier.com)

T: +44 1534 514320

## Key Contacts



Nick Williams

Partner

Jersey

E: [nick.williams@ogier.com](mailto:nick.williams@ogier.com)

T: +44 1534 514318



James Campbell

Partner

Jersey

E: [james.campbell@ogier.com](mailto:james.campbell@ogier.com)

T: [+44 1534 514230](tel:+441534514230)



Josephine Howe

Partner

Jersey

E: [josephine.howe@ogier.com](mailto:josephine.howe@ogier.com)

T: [+44 1534 514201](tel:+441534514201)

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