**Corporate Bulletin – Corporate governance**

Corporate governance and the authority of directors are often key areas of focus when drafting and/or negotiating articles of association, shareholders' agreements and other corporate documents; which we do on a daily basis at Trinity. It is for this reason that a recent High Court case in the UK (in relation to a sole director and model articles) piqued our interest in the Trinity Corporate team.

The case (*Hashmi v Lorimer-Wing (also known as Re Fore Fitness Investments Holdings Ltd*) [2022] EWHC 191 (Ch) (02 February 2022)) centred around whether a single director had the authority to cause a company to commence a counterclaim despite the company's articles indicating that the company required at least two directors. As background, the company's articles included two articles from the model articles for private companies limited by shares (article 7: directors to take decisions collectively, and article 11: quorum for directors' meetings). They also contained a bespoke article which stated that the quorum for board meetings was two directors, one an investors' director and one the executive, but in the event that a quorum was not present within half an hour the meeting would stand adjourned and if at the adjourned meeting a quorum was not present within half an hour, at least two directors would represent a quorum. Articles of association (and shareholders' agreements) more often than not include reduced quorum requirements at a lower threshold so that directors do not hobble the decisions of the board by not attending meetings in which they are required to form the initial quorum.

Despite the provisions of the articles mentioned above, circumstances had arisen that meant that the company only had, and was acting by, a sole director who attempted to commence a counterclaim on behalf of the company.

The High Court held, among other things that:

- the bespoke article clearly required two directors to form a quorum;
- article 7(2) of the model articles only permitted a sole director to manage the company where no provisions of the articles required it to have more than one director. An article that required two directors to constitute a quorum was logically a requirement that the company have two directors to manage its affairs. As a result, article 7(2) of the Model Articles was disapplied;
- reading article 11(2) to require a company to have two directors did not create a clash between section 154 of the UK Companies Act, under which a private company must have at least one director, and the Model Articles. Although section 20 of the Companies Act provides that the Model Articles apply if no other articles are registered, nothing requires a company to adopt them. Section 154 of the Companies Act permits single director companies, and section 20 permits the Model Articles to be amended to achieve that end;
- the Model Articles needed to be amended to permit a single director to run the company; and
- as the director was acting as sole director, he did not have the power to commence the counterclaim.

This case affirms the well held tenet that directors should always act in accordance with a company's articles. We would recommend that before any major decision is to be taken by a company's director(s), the articles should be checked to ensure that the relevant decision is made in accordance with those articles.

As a reminder, a shareholders' agreement is a private agreement which is binding between the parties to it whereas a company's articles are public and the company is bound by law to comply with its articles. The parties to a shareholders' agreement should therefore ensure that once the shareholders' agreement is negotiated and entered into, the articles of the company are updated to reflect the relevant terms of the shareholders' agreement.