DenisonTill

# Company Commercial Newsletter
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## A fair Kop for majority shareholders?

At the end of the tunnel leading out onto the pitch at Liverpool Football Club's home ground there is a sign that simply reads "This is Anfield". Presumably it is to put fear into the hearts of their opponents before they step out onto the pitch. However, it is a fair bet that Messrs Hicks and Gillett, the former owners of Liverpool FC, are also probably rueing the day they ever heard of Anfield.

The board room battles of Liverpool FC have been well documented in recent weeks on both the front and back pages of the national newspapers. The struggle between the Club's ultimate owners and the directors of its holding company (who were backed by the group's bankers, RBS) finally came to an end last week when the High Court ruled (for the second time in as many days!) that Hicks and Gillett could not remove the directors. This then left the board free to sell the Club against the very clearly expressed wishes of its majority shareholders.

But how could this happen? Don't majority shareholders have the power to hire and fire the board as they wish?

Well, clearly the case of Liverpool FC turned on some very specific facts that went against Hicks and Gillett (principally the existence of undertakings they had given to RBS confirming that they would allow the chairman to manage certain board appointments). However, their fate nevertheless serves as a warning to majority shareholders in all companies that they cannot simply remove directors at the drop of a hat to stop them going against their wishes.

### Statutory procedure to remove directors

The default position under the Companies Act 2006 is that a simple majority of the shareholders (i.e. 50%+) may pass a resolution to remove a director before the expiry of his period of office. However, majority shareholders often overlook the fact that there is also a set statutory procedure that must be followed in exercising this right. In particular, this includes the requirement that not less than 28 days notice must be given before the resolution can be voted on. During this time the director continues in office and is free to exercise all of his powers. These may include the right to issue more shares, sell the company's business or assets or enter into new banking arrangements.

It should also be noted that even if the director can ultimately be removed from office he may still have an employment claim he could bring against the company in respect of his position as an employee.

### Additional restrictions of removal

However, of perhaps even greater concern for majority shareholders is the fact that their right to remove directors can be restricted by certain provisions included in the company's Articles of Association or by contractual obligations they entered into (such as a shareholders agreement or investment or banking documents).

### Comment

It is therefore vital that majority shareholders know exactly what their constitution documents say and what rights they have to remove a director if relations break down. In addition, there are a number of additional provisions majority shareholders should consider including within their Articles, or in a separate shareholders agreement, that maximise their rights of hiring and firing and guard against the risks of a director “going rogue”.

The time to take such action is at the outset or when relations between the parties remain amicable. By the time the board have turned against you it will probably be too late. Something Messrs Gillett and Hicks have discovered to their cost as they take a final trip on the Ferry Cross the Mersey on their long journey back to the USA.

**For general company law queries please contact Martin Frost or Andrew Lindsay on 01904 611411 or email mfbf@denisontill.com.**



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