

March 2015

*"I can't change the direction of the wind, but I can adjust my sails to always reach my destination."  
-Jimmy Dean*

## **REQUIREMENTS FOR SPECIAL RESOLUTIONS WHEN SELLING YOUR BUSINESS**

The Companies Act (the "Act") stipulates that a company may not dispose of the greater part of its assets or business unless such a disposal has been approved by special resolution by shareholders and the company has satisfied the requirements set out in the Act.

A notice must be delivered to the shareholders, prior to the resolution being approved, and such notice must include or be accompanied by a written summary of the 'terms of the specific transaction' and include a written summary of the appraisal rights of shareholders.

If the notice was not given to the shareholders, the Act still allows for a waiver of the minimum notice 'period' which states that a company may call a shareholders meeting with less notice, and such meeting may only proceed if every person entitled to vote is present at the meeting (or by proxy) and every person votes to waive the minimum notice. At any time before a resolution is voted on and to which notice was given, a dissenting shareholder may give the company a written notice objecting to the resolution. If the Company failed to include in the notice a statement of the shareholders' appraisal rights, a dissenting shareholder is excused from sending the objection notice.

In short, a resolution proposed to sell the greater part of the assets or business must at minimum stipulate the terms of the transaction and be applicable to a specific transaction only.

*Law & Laughter*

*Q: What do have when a lawyer is buried up to his neck in sand?  
A: Not enough sand.*

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# CANCEL WRITTEN AGREEMENTS BY EMAIL

In the case of Spring Forest Trading v Wilberry the Supreme Court of Appeal upheld an appeal from the Kwazulu Natal High Court concerning a series of emails purporting to consensually cancel written agreements between the parties.

Wilberry concluded a written agreement with Spring Forest in terms of which Spring Forest was appointed as the operating agent of Wilberry's business and products. Spring Forest was not able to meet its commitments in terms of the agreement and the parties agreed to cancel the agreement. The terms of the cancellation were recorded in an email exchange between the parties and the name of the person representing each party was captured at the foot of each party's email correspondence.

Spring Forest proceeded to enter into an agency agreement with another entity on the same terms as with Wilberry. Wilberry then argued that the email correspondence purporting the 'written cancellation' of the agreement could not constitute a cancellation as it was not signed properly by both parties in terms of the Electronic Communications and Transactions Act (the "Act").

The Act states that an 'advanced electronic signature' is to be used on an email when an electronic signature is required by law. The Supreme Court of Appeal held that the email exchange between the parties met the requirements for the cancellation of the agreement in writing. It further held that the typewritten names of the parties at the foot of the emails constituted electronic signatures as envisaged in the Act. The signatures were in compliance with the requirements for the cancellation of the agreement. The Court therefore upheld the appeal and ordered Wilberry to pay the costs of the appeal.

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