




Company's bodies



Company's bodies

- ▶ **Ownership**

- ▶ **Management**

- ▶ **Supervision**

- ▶ **Shareholders' meeting**

- ▶ **Director** (-s / Board of directors)

- ▶ Management board (double tier system)

- ▶ **Board of statutory auditors**

- ▶ Supervisory board (double tier system)
- ▶ Committee for management supervision formed within the board of directors (single tier system)

Company's bodies

- ▶ Different management and control systems
- ▶ Company's will
- ▶ Listed vs non listed companies



Shareholders' meeting



Company's bodies

Shareholders' meeting

(traditional system)

- ▶ What is it?
- ▶ Call
- ▶ Conduction
- ▶ Resolution

Shareholders' meeting - Call

- ▶ How?
- ▶ Where?
- ▶ When?
- ▶ Who ..
 - ▶ should call?
 - ▶ may participate?
 - ▶ conducts the meeting?

Shareholders' meeting

- ▶ Why?

- ▶ Ordinary
 - ▶ Extraordinary

- ▶ How does it work?

- ▶ Voting

- ▶ Invalid resolutions

How?

- ▶ **Notice of the meeting**
 - ▶ Risk capital market vs not
 - ▶ Day/time/place of the meeting
 - ▶ Formality
 - ▶ Agenda: sets the matters that may be dealt with at the meeting
 - ▶ Totalitarian meeting

Where?

- ▶ In the municipality where the registered office of the company is located
- ▶ Or where the by-laws specify
- ▶ (2363 c.c.)

When?

- ▶ At any time the management body deem it to be desirable
- ▶ At least once a year to approve the financial statements
- ▶ When the shareholders (20%-10%) ask for it (2367 c.c.)

Who?

- ▶ ...may/shall call the meeting?
 - ▶ Director/Board of directors
 - ▶ Board of statutory auditors (2406 c.c.)
 - ▶ Court

Who?

- ▶ ...can participate and/or vote?
 - ▶ Shareholders ...who can vote
 - ▶ Proxy
 - ▶ Persons who are not shareholders but can vote
 - ▶ Directors
 - ▶ Statutory auditors

Who?

- ▶ ...conducts the meeting?
 - ▶ By-laws or
 - ▶ the shareholders must elect the Chairman
 - ▶ Secretary
- ▶ duties
- ▶ MINUTES

Why?

▶ Ordinary

- ▶ Approves the financial statements
- ▶ Appointment/revocation directors/board of directors/statutory auditors
- ▶ Remuneration
- ▶ Liability action
- ▶ Other matters by the law to ordinary meetings as well as on authorisations (without prejudice to the directors' liability for the actions taken!)
- ▶ Approves the rules for the shareholders' meeting

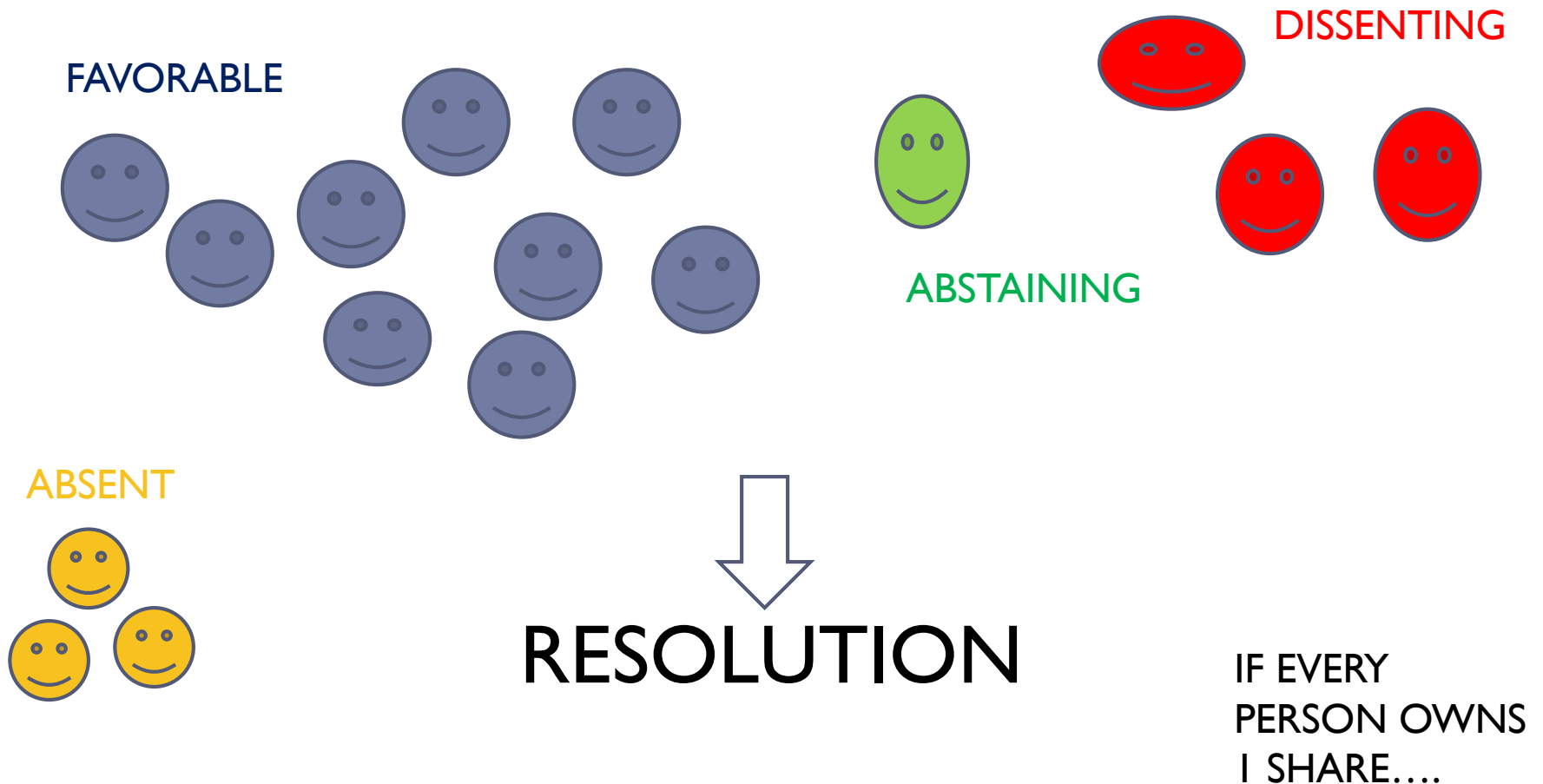
Why?

- ▶ **Extraordinary**

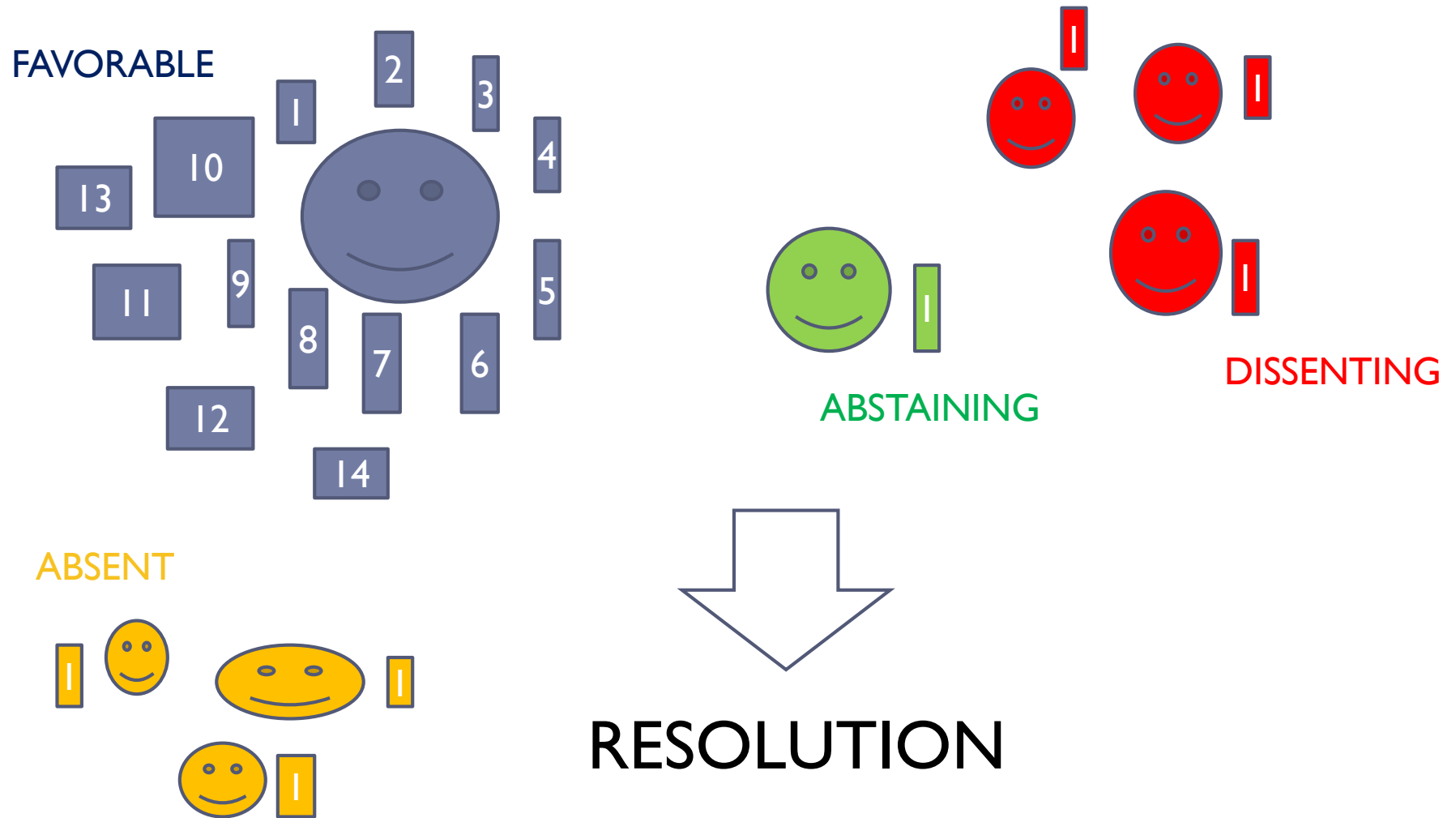
- ▶ Amendments to the articles of association
- ▶ Appointment, replacement and powers of the liquidators
- ▶ Other matters reserved to it
 - ▶ Attribution by the by-laws to the board of directors
 - debentures

How does it work?

MAJORITY RULE



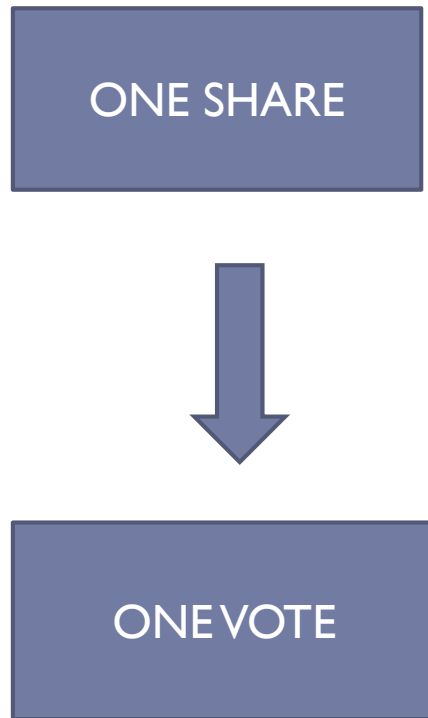
MAJORITY RULE



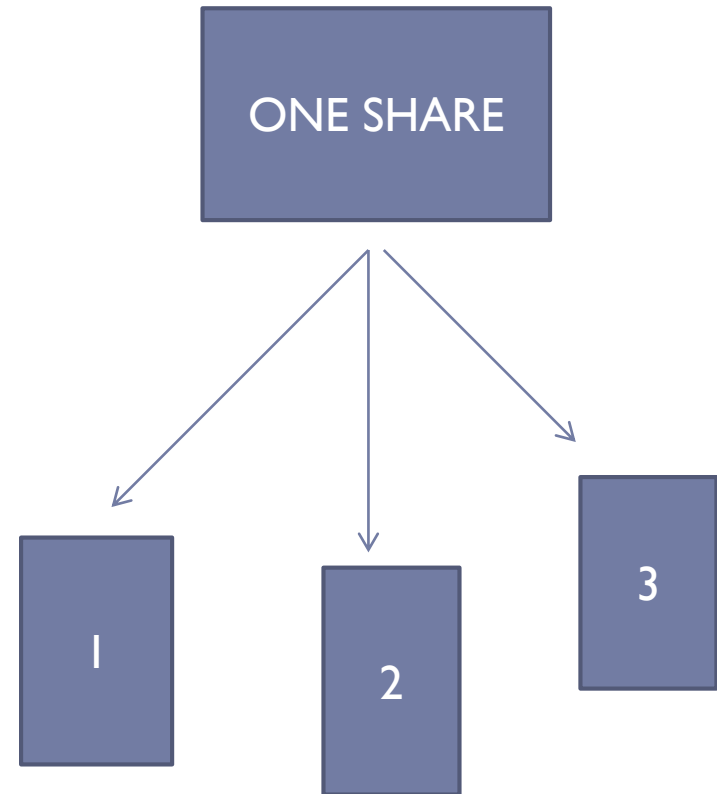
ABSENT

How does it work?

ORDINARY SHARES



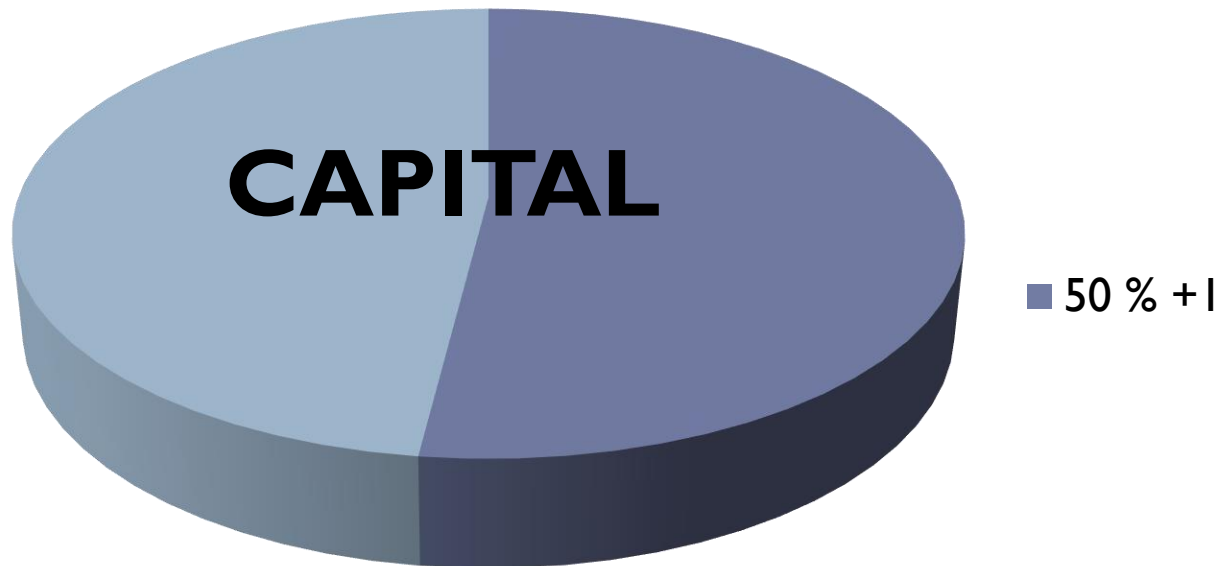
MULTIPLE-VOTE SHARES



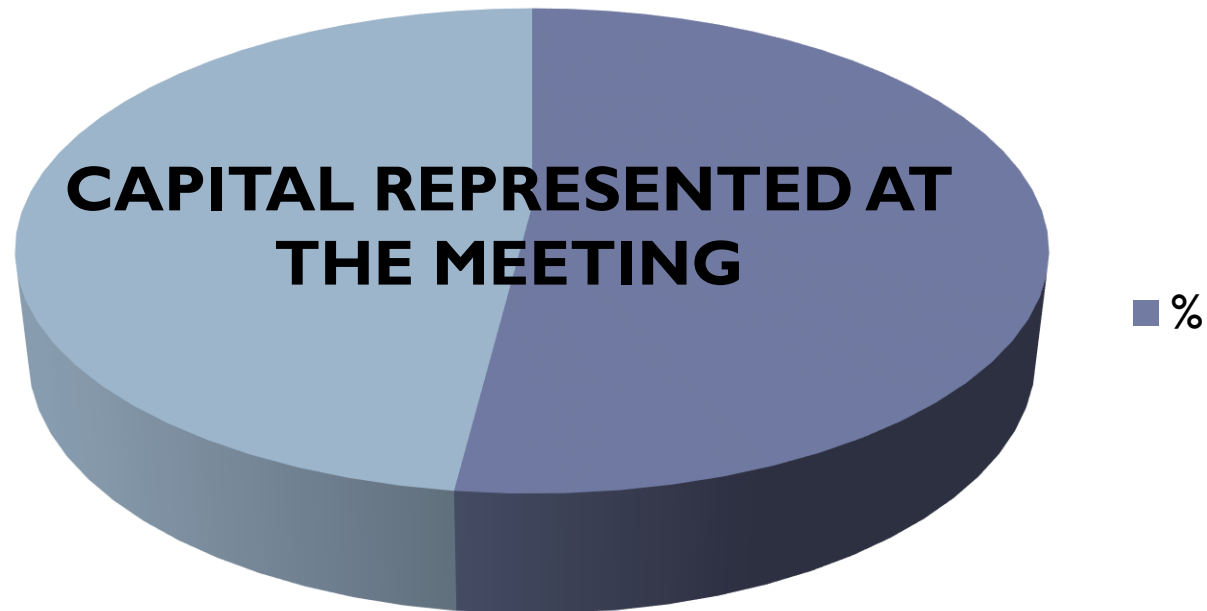
Voting - rules / Overview

- ▶ Constitution vs resolution majority/quorum
- ▶ Ordinary < Extraordinary
- ▶ 1st call > 2nd call
 - ▶ Risk capital market

MAJORITY



MAJORITY



Shareholders' agreements

- ▶ 2341bis c.c. – 122 TUF
- ▶ Voting agreements
- ▶ Tag-along and drag-along rights
- ▶ Duration (5/3 years)
- ▶ Information

Conflict of interest

- ▶ 2373 c.c.
- ▶ Consequences on the resolutions
 - ▶ Voidable if
 - ▶ Potential damage
 - ▶ Endurance test
- ▶ Misuse of power

Resolutions' invalidity

- ▶ Breach of the rules governing the shareholders' meeting procedure
- ▶ Content
- ▶ Void vs voidable

Void resolutions (2379 c.c.)

- ▶ Impossibility or illegality of the object
- ▶ Absence of notice of the shareholders' meeting
- ▶ Absence of the meeting's minutes
 - ▶ Everyone/judge ex officio
 - ▶ Time: 3 years, but anytime if the object of the company is changed to impossible or illegal activities, 2379-ter c.c.
 - ▶ Sanatoria

Voidable resolutions (2377 c.c.)

- ▶ Why are resolutions voidable?
 - ▶ Adoption not in compliance with the law or the articles of association
 - ▶ But....
 - 2377, V co., c.c.

Voidable resolutions (2377 c.c.)

- ▶ Who is entitled to challenge?
 - ▶ Absent, dissenting or abstaining shareholders
 - ▶ 5% - 1/1000
 - ▶ Directors
 - ▶ Board of statutory auditors

Voidable resolutions (2377 c.c.)

- ▶ **Terms**

- ▶ 90 days from ...

- ▶ Consequences

- ▶ Sanatoria

Special shareholders' meeting (2376)

- ▶ Different classes of shares/financial instruments
- ▶ Which grant administrative rights
- ▶ Every resolution which affects those rights
- ▶ Must be approved by the special meeting

Debenture holders' meeting (2415 c.c.)

- ▶ Meeting and common representative
- ▶ Meeting
 - ▶ Appointment/removal common representative
 - ▶ Amendments of the terms of the loan
- ▶ Call
- ▶ Quorum