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SHAREHOLDERS' RIGHTS AND LEGAL RECOURSE:

ANNULMENT OF GMS RESOLUTIONS

The resolution passed by a General Meeting of Shareholders (GMS) is a cornerstone in the governance of a joint-stock company, significantly influencing shareholders, the company itself, and its stakeholders. However, instances arise where GMS resolutions may be illegal or detrimental, triggering a need for annulment. The potential for annulment acts as a significant check and balance within the corporate structure, providing shareholders with a means to challenge and rectify decisions that may otherwise compromise the company's integrity or their equitable interest.

1. Criteria for Annulment of GMS Resolutions

Under the current Enterprise Law, there are two primary grounds for the annulment of a GMS resolution:

Firstly, a resolution may be annulled if the process of convening and decision-making at the GMS grossly contravenes the stipulations of the Enterprise Law or the company's charter. Such egregious violations might include failures in distributing draft resolutions, unauthorized convening of meetings, or breaches of prescribed deadlines for resolution dissemination.

Secondly, a resolution is subject to annulment if its substance directly violates legal provisions or the company's charter. This includes resolutions that infringe upon business law or the company's charter, those that harm the company or its shareholders, or those enacted through abuse of power or deceptive tactics.

However, the Enterprise Law specifies that not all procedural deviations in GMS proceedings warrant annulment. Only serious breaches of the Enterprise Law or the company's charter are grounds for such action. The ambiguity surrounding what constitutes a "serious violation" often leads to varied interpretations in legal disputes. Thus, the resolution of these disputes heavily depends on the discretion of the adjudicating bodies.



2. Determining the Appropriate Forum for Annulment of GMS Resolutions

The question of which authority is competent to address requests for the annulment of GMS resolutions is pivotal. Under the Enterprise Law, these matters fall within the jurisdiction of either Arbitration or the Courts. The chosen forum—Arbitration or Court—depends on the parties' agreement and carries distinct advantages and challenges.

Arbitration is favored for its expediency and flexibility, standing apart from the more procedural nature of court proceedings. It allows parties to select their arbitrators, ensuring expertise and impartiality, and to choose convenient locations and timings for hearings. The confidentiality of arbitration proceedings safeguards sensitive business information, making it an attractive option for many businesses.

To invoke arbitration for annulment of a GMS resolution, the company's charter must reference arbitration, or the parties must have an agreement to this effect, acknowledging that the dispute is commercial in nature. A significant limitation of arbitration is the lack of compulsory enforcement of its awards, relying instead on voluntary compliance, which may lead to non-execution of the award.

Courts, conversely, offer authoritative adjudication with mandatory enforcement of judgments. This binding nature ensures compliance and the protection of the winning party's rights. However, court procedures can be protracted and rigid, often requiring more time and resources, which can be burdensome for businesses where time is of the essence. Moreover, the public nature of court trials can lead to the disclosure of confidential business information, and the possibility of appeals can delay the final resolution.

3. Disclosing Annulments of GMS Resolutions

The obligation to disclose critical information is an integral aspect of corporate governance, especially for public companies. The Securities Law mandates public companies to disclose extraordinary information in certain scenarios, including when a court judgment or decision directly related to the company's operations is issued. This includes decisions to annul GMS resolutions of. Such disclosures are to be made on the company's website, the portal or website of the state ownership representative body, or the enterprise information portal, ensuring shareholders and stakeholders are informed about significant developments affecting the company.

In the complicated landscape of corporate governance, the annulment of GMS resolutions stands as an important legal recourse for shareholders. When used judiciously, it empowers shareholders to actively safeguard their rights and interests against resolutions that are detrimental, unlawful, or in violation of a company's charter. This legal mechanism serves not only as a corrective tool but also as a preventive measure, ensuring that the decision-making processes within a company adhere to legal and ethical standards.