THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case 2026-077932

(1) REPORTABLE: Yes☐/ No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 01 May 2026 [redacted]

In the matter between:

OASAS CONSULTANTS (PTY) LTD	Applicant
and	
ARWYP MEDICAL CENTRE (PTY) LTD	First Respondent
ARWYP HOLDINGS (PTY) LTD	Second Respondent
MARK JONATHAN GEORGE TAYLOR	Third Respondent
DANIEL BARTHOLOMEUS LE ROUX	Fourth Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Fifth Respondent
ORPHEUS BELEGGINGS CC	Sixth Respondent
AGATHA JANE SMITH	Seventh Respondent
EMMA MARY SHACKLETON	Eighth Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this urgent application, the applicant seeks final declaratory relief concerning the appointment of the third and fourth respondents as directors of the first respondent, Arwyp Medical Centre (Pty) Ltd ("AMC"). The applicant seeks, among the relief, a declaration that the shareholder resolution dated 11 March 2026, purporting to appoint the third and fourth respondents as directors of AMC, is null and void ab initio.

[2] The dispute arises against the backdrop of ongoing conflict among the shareholders of AMC and other related entities, the details of which are unnecessary for the purposes of this judgment. Suffice it to say that there is animosity among the parties involved, with multiple proceedings and attempts by one faction to gain control over the others. This case focuses on the narrow legal question of, essentially, interpreting section 60 of the Companies Act ("the Act").[1]

Background

[3] AMC has three shareholders: Arwyp Holdings (Pty) Ltd ("AH"), the majority shareholder with 78,6%; the applicant with 20,4%; and the sixth respondent, Orpheus Beleggings CC ("Orpheus"), which holds 1%, described as a dissolved closed corporation. From the return of service, it is evident that the primary member is 89 years old and has dementia. The only active protagonists are, therefore, AH and Orpheus, and the various directors that control these companies.

[4] On 25 February 2026, notices were circulated convening general meetings of shareholders for 12 March 2026 (in terms of section 61 of the Act) to consider, amongst other things, the election of the third and fourth respondents as independent non-executive directors of AMC.

[1] 71 of 2008

[5] On 11 March 2026, after the applicant objected to the short notice for the meeting and noted his unavailability, Ms Shackleton (of AH) circulated written shareholders' resolutions for adoption under section 60 of the Act. In the covering email, she asked shareholders to record their votes by completing and signing the voting table at the end of the resolution and to return the signed document "as soon as possible and within 20 business days of this email". The email was sent to the applicant's shareholder. It was not sent to Orpheus, the 1% shareholder.

[6] That same evening, she sent a further email attaching a partially signed resolution reflecting AH's support for the appointment of the third and fourth respondents. On 12 March 2026, Ms Shackleton informed the applicant that the relevant majority had passed the resolutions on 11 March 2026, and that the meeting scheduled for 12 March 2026 was moot and would not proceed. The third and fourth respondents were then registered as directors of AMC.

Urgency

[7] The applicant contends the matter is urgent because, if directors are improperly appointed, it raises liability and corporate governance concerns for the company. The applicant avers that it has a right to protection, and that, as long as it continues, it is jeopardised. It avers that it gave the respondents ample time to respond.

[8] The respondents contended that the matter lacked urgency, that there simply is no anxiety in addressing the issue, citing the delay between 12 March 2026, when the appointments were made, and the application's launch on 2 April 2026.

[9] Even so, the application concerns the validity of appointments of persons who, if validly appointed, would immediately exercise the powers and fiduciary functions of directors in relation to the affairs of AMC. Section 66(1) of the Act makes clear that the business and affairs of a company must be managed by, or under the direction of, its board. Where the complaint is that the board has been altered by the invalid appointment of directors, there is an ongoing governance consequence that cannot be fully addressed by relief obtained in due course. The fairly generous timeframes for

filing the papers also comply with the guidance set out in *Luna Meubels*.[2] The matter was also fully argued on the merits, and it is preferable to deal with the merits and dismiss the application on those grounds, rather than to strike the matter from the roll.

The issues

[10] The applicant initially relied, as its primary argument, on a contention that the terms of AMC's memorandum of incorporation ("MOI") excluded the use of section 60 of the Act for the election of directors. That argument was not persisted in at the hearing and was correctly abandoned.

[11] What remains is a question of statutory interpretation: whether the requirements of section 60 were met on the facts of this case. The applicant advances various contentions. First, it submits that it should have been given adequate notice before the resolutions were circulated. Second, it argues that the 20-business-day period in section 60(1)(b) is mandatory, so that a written resolution cannot be adopted before that period has elapsed. Third, it argues that section 60(2)(a) requires identifying the person who may have voting rights at a properly constituted shareholders' meeting and conferring on them a legal entitlement to participate in the section 60 process. As a result, a resolution cannot be adopted unless Orpheus and the applicant participated. Lastly, it contends that section 60(3) required all shareholders to participate in the poll before the resolutions could be treated as passed. None of these contentions can be sustained.

Section 60 of the Act

[12] Section 60 of the Act reads:

> 60. Shareholders acting other than at meeting.—(1) A resolution that could be voted on at a shareholders meeting may instead be—
> (a) submitted for consideration to the shareholders entitled to exercise voting rights in relation to the resolution; and
> (b) voted on in writing by shareholders entitled to exercise voting rights in relation to the resolution within 20 business days after the resolution was submitted to them.

[2] *Luna Meubels Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W).

(2) A resolution contemplated in subsection (1)—

(a) will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders meeting; and

(b) if adopted, has the same effect as if it had been approved by voting at a meeting.

(3) An election of a director that could be conducted at a shareholders meeting may instead be conducted by written polling of all of the shareholders entitled to exercise voting rights in relation to the election of that director.

(4) Within 10 business days after adopting a resolution, or conducting an election of directors, in terms of this section, the company must deliver a statement describing the results of the vote, consent process, or election to every shareholder who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be.

(5) For greater certainty, any business of a company that is required by this Act or the company's Memorandum of Incorporation to be conducted at an annual general meeting of the company, may not be conducted in the manner contemplated in this section.

[13] Section 60 is a mechanism that enables shareholders to make decisions without the need for meetings. It permits a resolution that could be voted on at a shareholder's meeting to be submitted to shareholders entitled to exercise voting rights in relation to that resolution, and to be voted on in writing within 20 business days after submission. Section 60(2)(a) provides that when such a resolution has been adopted. Section 60(3) deals with the election of a director.

[14] The language of section 60(1)(b) sets a maximum period within which votes may be cast. It does not create a standstill during which adoption is suspended. The words "be voted on in writing *within* 20 business days" support that interpretation. "Within" is a temporal boundary, an outer limit. In other words, a vote cast after 20 days is out of time.[3] There is no merit in the argument that a company must first wait for the 20 days to expire before it can treat a resolution as adopted, even if the requisite voting threshold has already been met. That interpretation would frustrate the evident

[3] *Henochsberg on the Companies Act 71 of 2008*, General Notes on sec 60.

purpose of section 60, which is to provide a practical and efficient alternative to a formal meeting.

[15] Section 60(2)(a) deals with the sufficiency of the voting rights supporting the resolution. It asks whether those who support the resolution have sufficient voting rights to pass it *at a properly constituted meeting*. It relates to voting power, not to the number of shareholders who have voted. The phrase "properly constituted shareholders' meeting" is a reference to the threshold that would have been required at a meeting. It does not require one to meet all the procedural requirements of a meeting, including a quorum based on a headcount of shareholders. *Henochsberg*[4] acknowledges that the phrase is open to two readings. The first reading focused on the minimum quorum threshold; the other on the majority of all eligible members. *Henochsberg* states that the second reading is more logical (with reference to the English Act). Be that as it may, on both readings, AH's 78.6% holding is sufficient to pass an ordinary resolution. The applicant's attempt to read a two-shareholder headcount requirement into section 60(2)(a) finds no support in either the text or the commentary

[16] Section 60(3) requires that an election of directors be conducted "by written polling of all of the shareholders entitled to exercise voting rights." This requirement is intended to ensure that every entitled shareholder receives the written resolution and an opportunity to participate. It does not require every shareholder to vote. The written resolutions were submitted to the shareholders, including the applicant, with a polling table to record each shareholder's vote. The applicant received the document at the email address it had used to correspond with AMC earlier that same day. The fact that the applicant had not yet voted when AH's vote was cast does not mean that the polling requirement was breached. The applicant was included in the poll.

[17] Whether the resolutions were also transmitted to Orpheus, the 1% shareholder, is not established with the same clarity in the papers. No email to Orpheus appears in the documentary record, and the assertion in the answering affidavit that the resolutions were sent to all shareholders is unsupported by any annexure addressed

[4] *Henochsberg on the Companies Act 71 of 2008*, General Notes on sec 60.

to Orpheus. However, any defect in notification to Orpheus does not avail this applicant for two independent reasons. First, the applicant has no standing to rely on a procedural defect suffered by a separate shareholder who entered no appearance, raised no complaint, and sought no relief. Second, and in any event, the defect was incapable of affecting the outcome: AH held almost 80% of the voting rights, sufficient on its own to pass even a special resolution. Orpheus's 1%, whether cast for or against, or not cast at all, could not have changed the result. A procedural defect that is incapable of affecting the result provides no basis to impugn the validity of the election in this case.

[18] *Henochsberg* submits that section 60 is silent on the formal requirements beyond the voting mechanism, and that the ordinary notice requirements applicable to meetings apply mutatis mutandis to the submission of a written resolution. He draws support from *CDH Invest NV v Petrotank South Africa (Pty) Ltd*,[5] (dealing with section 61) and from the English position that a written resolution must be submitted to all shareholders at the same time, or to each in turn, but without undue delay. Under this approach, a shareholder is entitled not merely to receive the written resolution but also to a meaningful opportunity to consider it before the majority acts.

[19] The facts of this case sit uneasily with that principle. The written resolutions were submitted to shareholders at 17h57 on 11 March 2026. Within approximately 90 minutes, AH's signed vote was circulated, and the resolutions were declared passed the following day. The covering email itself indicated the 20-business-day window, which was effectively redundant almost immediately. There is a real tension between that conduct and the notice-based approach in *Henochsberg* and *CDH Invest*.

[20] I am, however, not convinced that this ultimately supports the relief the applicant seeks. The rule in section 60(2)(a) is unambiguous: a resolution is adopted when it is supported by persons holding sufficient voting rights. It may well be that, analogous to section 61, the notice requirement is intended to afford shareholders sufficient time to consider the proposed resolutions. But the Act does not provide that a resolution meeting the section 60(2)(a) threshold is invalidated because the majority

[5] [2018] 1 All SA 450 (GJ) para 71.

acted before the minority had time to respond. The notice requirements identified by *Henochsberg* and *CDH Invest* relate to how the resolution must be submitted. They are not related to the question of when the submission may be treated as adopted. On the papers before this court, the resolution was submitted to shareholders simultaneously. The majority voted, and by then the threshold had been crossed.

[21] The minority's remedy, where a majority shareholder uses section 60 swiftly and strategically, lies perhaps elsewhere, not in an interpretation of section 60 that would, in effect, give a minority shareholder a 20-business-day veto.

[22] The applicant's real grievance is that the majority shareholder was able to carry the resolutions before the minority could organise a response. I acknowledge that this is an uncomfortable feature of the section 60 procedure as it operated in this case. It is true that the timing of the section 60 process, initiated the day before the scheduled shareholders' meeting, on the same day the applicant raised short-service objections, and within hours of a Companies Tribunal referral, invites scrutiny of motive. But once the applicant correctly conceded that the MOI did not preclude the use of section 60, the Act provides no basis for invalidating a written resolution that complied with its requirements simply because it was initiated with a particular strategic purpose in mind.

[23] The requirements of section 60 were met. The resolutions were submitted to the entitled shareholders. The polling mechanism was provided. AH held and exercised sufficient voting rights for adoption. The resolutions were accordingly validly adopted, and the appointments of the third and fourth respondents as directors of AMC are valid.

Order

[24] The following order is made:

1. The application is dismissed, with costs, including costs of two counsel, to be taxed on scale B.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division, Johannesburg

Date of hearing:	28 April 2026
Date of judgment:	1 May 2026
For the applicant:	WB Pye SC & CB Garvey, instructed by Cuthebertson & Palmeira Attorneys Inc
For the first to fourth, seventh and eight respondent:	AE Franklin SC & M Dafel, instructed by Webber Wentzel
For the seventh respondent:	AE Franklin SC & M Dafel Pinsent Masons South Africa Inc