LORD HARDWICKE LC: It cannot be disputed that wherever a certain number are incorporated, a major part of them may do any corporate act; so if all are summoned, and part appear, a major part of those that appear may do a corporate act, though nothing be mentioned in the charter of the major part.

This is the common construction of charters, and I am of opinion that the three are a corporation for the purpose they are appointed, and the choice too was confirmed, and consequently not necessary that all the three should join; … it is not necessary that every corporate act should be under the seal of the corporation, nor did this need the corporation seal.

### Who can propose a written resolution?

As noted earlier, written resolutions provide an alternative to formal meetings for decision-making. In private companies only, written resolutions can be proposed by the directors (ss 288(3)(a) and 291), or by members holding 5% of the voting rights or some lower percentage if so specified in the articles (ss 288(3)(b) and 292(5)). There are clear rules for circulating written resolutions (ss 290–295) and agreeing them (ss 296–297). Public companies cannot use this statutory procedure.

### What are the essentials of a 'meeting'?

***To constitute a meeting, there must prima facie be more than one person present.***

Although see Notes 1 and 2, following the extract, indicating exceptions for single member companies.

**[4.10] Sharp v Dawes (1876) 2 QBD 26 (Court of Appeal)**

A meeting of a company governed by the Stannaries Acts[24] was summoned for the purpose, inter alia, of making a call (ie a demand from the company that members pay further unpaid amounts on their shares). It was attended by only one member, Silversides, and the secretary (who was not a member). The proceedings were conducted formally, as recounted in a notice sent to all members. The call was in due course made, and one member, Dawes, refused to pay it. It was held that the meeting was a nullity and the call was invalid.

LORD COLERIDGE CJ: This is an attempt to enforce against the defendant a call purporting to have been made under s 10 of the Stannaries Act 1869. Of course it cannot be enforced unless it was duly made within the Act. Now, the Act says that a call may be made at a meeting of a company **(p. 195)** with special notice, and we must ascertain what within the meaning of the Act is a meeting, and whether one person alone can constitute such a meeting. It is said that the requirements of the Act are satisfied by a single shareholder going to the place appointed and professing to pass resolutions … [The] word 'meeting' prima facie means a coming together of more than one person. It is, of course, possible to show that the word 'meeting' has a meaning different from the ordinary meaning, but there is nothing here to show this to be the case. It appears therefore to me that this call was not made at a meeting of the company within the meaning of the Act.

MELLISH LJ: In this case, no doubt, a meeting was duly summoned, but only one shareholder attended. It is clear that, according to the ordinary use of English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended. No business could be done at such a meeting, and the call is invalid.

BRETT and AMPHLETT JJA concurred.

## ➤ Notes

1. CA 2006 s 318(1) now provides that in the case of a company limited by shares or guarantee and having only

one member, one qualifying person present at a meeting is a quorum. In any other case, two qualifying people must be present (provided they do not both represent the same member). To be a qualifying person under this section, one must be a member in person, a corporate representative or appointed by proxy (s 318(3)). Section 324 extends the right to appoint proxies to members of all companies.

2. The single member company having a one-person 'meeting' presents evidentiary problems which CA 2006 s 357 attempts to meet by requiring the decision to take the form of a written resolution, or the single member to provide the company with a written record of the decision. Failure to comply with this requirement is punishable by a fine, but non-compliance does not affect the validity of the decision itself.

3. Some amusement can occasionally be found in all this procedural detail. *Neptune (Vehicle Washing Equipment) Ltd v Fitzgerald* [1995] BCLC 352 shows that a literal approach to statutory provisions can lead to absurdity bordering on farce. The case concerned the rule laid down by CA 1985 s 317 (now CA 2006 s 177), which imposed on directors a duty to declare any personal interests in contracts or proposed contracts with the company 'at a meeting of the directors of the company'. The company in question had only one director. Lightman J said (at pp 818–819, 359–360):

> … a sole director cannot evade compliance with s 317 by considering or committing the company to a contract in which he is interested otherwise than at a director's meeting or by delegating the decision-making to others.
>
> In the context of legislation which specifically authorises sole directorships and where Table A provides for a committee of one, the legislature cannot have intended by use of the word 'meeting' in s 317 to exclude from its ambit and the achievement of the statutory object sole directors, and I so hold. This conclusion is reinforced by the consideration that the concept of the holding of a director's meeting in case of a sole directorship is familiar to company lawyers.
>
> Two different situations may arise. The sole director may hold a meeting attended by himself alone or he may hold a meeting attended by someone else, normally the company secretary. When holding the meeting on his own, he must still make the declaration to himself and have the statutory pause for thought, though it may be that the declaration does not have to be out loud, and he must record that he made the declaration in the minutes. The court may well find it difficult to accept that the declaration has been made if it is not so recorded. If the meeting is attended by anyone else, the declaration must be made out loud and in the hearing of those attending, and again should be recorded. In this case, if it is proved that the declaration was made, the fact that the minutes do not record the making of the declaration will not preclude proof of its making. In either situation the language of the section must be given full effect: there must be a declaration of the interest.

**(p. 196)** 4. CA 2006 s 177 now replaces Companies Act 1986 (CA 1986) s 317, but fails to solve this problem, it seems. There is a specific rule (a writing requirement) where a sole director makes a declaration at a directors' meeting if the company is required to have more than one director; and s 177 itself provides that a declaration need not be made 'to the extent that the other directors are already aware of the interest'. The Company Law Review (CLR) had proposed that sole directors be required to make a declaration to the company's *members* prior to entering into a transaction in which they had a personal interest. This would have been ridiculous, and thankfully there is no such requirement in CA 2006.

5. The court is given power to order meetings pursuant to CA 2006 s 306 (see *Union Music Ltd v Watson* **[4.13]**). Section 306(4) specifically provides that 'such directions may include a direction that one member of the company present at the meeting be deemed to constitute a quorum'. See also *Wheeler v Ross* [2011] EWHC 2527 (Ch) and*Smith v Butler* **[3.14]**.

***Being together in the same physical location is not essential.***

**[4.11] Byng v London Life Association Ltd [1990] Ch 170 (Court of Appeal)**

[Another part of this decision is extracted at **[4.12]**.] More members turned up to attend a meeting than could be accommodated in the cinema which had been notified as the venue. Overflow rooms with audio-visual links had been arranged, but these facilities did not work; and, in any case, some people could not get in and had to stay outside in the foyer. The Court of Appeal held, inter alia, that: (i) the assembly in the cinema was a 'meeting' which was capable of being adjourned to another place, even though (since many members who wished to attend were excluded) it was not capable of proceeding to business; and (ii) that it was not essential to a meeting that all members should be present in one room or face to face, provided that proper audio-visual links were in place which would enable everyone present to see and hear what was going on and participate in the proceedings.

> BROWNE-WILKINSON V-C: The rationale behind the requirement for meetings in the Companies Act 1985 is that the members shall be able to attend in person so as to debate and vote on matters affecting the company. Until recently this could only be achieved by everyone being physically present in the same room face to face. Given modern technological advances, the same result can now be achieved without all the members coming face to face: without being physically in the same room they can be electronically in each other's presence so as to hear and be heard and to see and be seen. The fact that such a meeting could not have been foreseen at the time the first statutory requirements for meetings were laid down, does not require us to hold that such a meeting is not within the meaning of the word 'meeting' in the Act of 1985. …
>
> I have no doubt therefore that in cases where the original venue proves inadequate to accommodate all those wishing to attend, valid general meetings of a company can be properly held using overflow rooms provided, first, that all due steps are taken to direct to the overflow rooms those unable to get into the main meeting and, second, that there are adequate audio-visual links to enable those in all the rooms to see and hear what is going on in the other rooms. Were the law otherwise, with the present tendency towards companies with very large numbers of shareholders and corresponding uncertainty as to how many shareholders will attend meetings, the organisation of such meetings might prove to be impossible.

➢ Questions

Do you think that it is essential for a valid meeting being held by electronic link-up that the participants should be able to: (i) *see* as well as to hear each other or (ii) intervene or participate, verbally, in any discussion taking place at meeting?

**(p. 197)** In what ways could the law be further changed so as to facilitate the use of modern (and developing) technology, in regard to communication with members, meetings held at several locations, electronic voting, etc? The 2010 amendments to the Insolvency Rules are instructive.

➢ Note

In Canada, a 1970s decision (now overruled by statute) held that two persons cannot hold a 'meeting' by telephone: *Re Associated Color Laboratories Ltd* (1970) 12 DLR (3d) 388. This decision surely misses the point, for the essence of a meeting is not physical presence, but the ability of all the members to participate simultaneously, and instantaneously, in the proceedings—a need which modern communications technology is well fitted to meet, even where there are multiple participants. It also fails to meet an obvious commercial need. It is therefore not surprising that CA 2006 and the Model Articles provide for meetings 'at a distance'.

### The role of the chairman

It is the chairman's function at a general meeting to preserve order, see that proceedings are properly conducted

and ensure that the sense of the meeting is properly ascertained. The chairman has no power to take into his or her own hands decisions that the meeting itself is competent to make: *National Dwelling Society v Sykes* [1894] 3 Ch 159. If the meeting is not competent to act, the next case indicates what the chairman is to do.

**[4.12] Byng v London Life Association Ltd [1990] Ch 170 (Court of Appeal)**

[See **[4.11]** for another extract from this case.] An extraordinary general meeting of the company had been summoned for 12 noon at Cinema 1, The Barbican Centre, London. Because of an unexpectedly large turnout of some 800 members, this venue was too small. At 12.45 pm Dawson, the chairman, acting on his own initiative and without following the procedure prescribed by art 18 of the company's articles, announced that he was adjourning the meeting to 2.30 pm at the Café Royal, about one mile away. Only 600 people could attend this adjourned meeting, at which certain resolutions were passed. Byng and others sought declarations that these resolutions were invalid. The Court of Appeal upheld their contentions, ruling that although the chairman had a common law power to adjourn the meeting in circumstances such as these where the views of the members could not be ascertained, and despite the fact that he had acted throughout on advice and in good faith, he had failed in his duty to take into account all relevant considerations, such as the fact that members who were unable to attend the afternoon meeting could not arrange proxies in the time available, with the consequence that the adjourned meeting would not be representative.

> BROWNE-WILKINSON V-C: In my judgment, were it not for article 18, Mr Dawson would at common law have had power to adjourn the meeting at the cinema since the inadequacy of the space available rendered it impossible for all those entitled to attend to take part in the debate and to vote. A motion for adjournment could not be put to the meeting as many who would be entitled to vote on the motion were excluded. Therefore, at common law it would have been the chairman's duty to regulate the proceedings so as to give all persons entitled a reasonable opportunity of debating and voting. This would have required him either to abandon the meeting or to adjourn it to a time and place where the members could have a reasonable opportunity to debate or vote. I see no reason to hold that in all circumstances the meeting must be abandoned: in my judgment the chairman can, in a suitable case, merely adjourn such meeting.
>
> **(p. 198)** What then is the effect of article 18 which expressly confers on the chairman power to adjourn but only with the consent of a quorate meeting? Mr Potts submits that the chairman's power to adjourn having been expressly laid down and expressly circumscribed, there is no room for the chairman to have any implied power at common law …
>
> Like the judge, I reject this submission. In my judgment article 18 regulates the chairman's powers of adjournment to the extent that its machinery is effective to cover the contingencies which occur. Therefore if the circumstances are such that it is possible to discover whether or not the meeting agrees to an adjournment, article 18 lays down a comprehensive code. But if the circumstances are such that the wishes of the meeting cannot be validly ascertained, why should article 18 be read as impairing the fundamental common law duty of the chairman to regulate proceedings so as to enable those entitled to be present and to vote to be heard and to vote? … Say that there was a disturbance in a meeting which precluded the taking of any vote on a motion to adjourn. Would this mean that the meeting had to be abandoned even though a short adjournment would have enabled peace to be restored and the meeting resumed? Again, say that in the present case the adjoining Barbican theatre had been available … so that a short adjournment to the theatre would have enabled an effective meeting of all members wishing to attend to be held that morning. Can it really be the law that because a valid resolution for such an adjournment could not be passed in the cinema (many members entitled to vote being excluded from the cinema) no such adjournment could take place?
>
> I do not find that any principle of construction requires me to hold that an express provision regulating adjournment when the views of the meeting can be ascertained necessarily precludes the existence of implied powers when consent of the meeting cannot be obtained … Accordingly, I reach the conclusion that in any circumstances where there is a meeting at which the views of the majority cannot be validly ascertained, the chairman has a residual common law power to adjourn 'so as to give all persons entitled a reasonable opportunity of voting' and, I would add, speaking at the meeting …

Since such power is only exercisable for the purpose of giving the members a proper opportunity to debate and vote on the resolution, there must in my judgment be very special circumstances to justify a decision to adjourn the meeting to a time and place where, to the knowledge of the chairman, it could not be attended by a number of the members who had taken the trouble to attend the original meeting and could not even lodge a proxy vote. To overlook this factor is to leave out of account a matter of central importance. True it is that those who were available for the afternoon meeting would have been inconvenienced by an adjournment to another date or the convening of a wholly new meeting since they would either have to have attended at the fresh meeting or to have lodged proxies. But in my judgment this could not outweigh the central point that the form of the adjournment was such as undoubtedly to preclude certain members from taking any part in the meeting either by way of debate or by way of vote …

Accordingly, although Mr Dawson acted in complete good faith, his decision to adjourn to the Café Royal on the same date was not one which, in my judgment, he could reasonably have reached if he had properly apprehended the restricted nature and purposes of his powers. Therefore in my judgment his decision was invalid …

MUSTILL and WOOLF LJJ delivered concurring judgments.

➢ Question

This and other similar cases are concerned with the role of the chairman at a meeting of members (or, indeed, any other meeting, such as a meeting of class members, or a meeting of creditors). Depending upon the terms of the company's articles, this person will often be the chairman of the board of directors. Does this make any legal or practical difference to proceedings?

### (p. 199) Who can call a meeting?

Clearly the expense in calling and conducting a meeting is far greater than in calling for a written resolution, or in calling for a resolution to be proposed at a meeting that is already scheduled (see 'Who can propose a resolution (or circulate a statement) at a meeting?', p 203). Nevertheless, the directors can call a general meeting (s 302), and members holding 5% of the voting capital or voting rights can require the directors to call a meeting (ss 303 and 304), or can do so themselves if the directors refuse (s 305). But the directors are not obliged to act on such a requisition if its object is something that the general meeting is not competent to decide, for example to give direction to the board on matters of business policy (see 'Dividing corporate power between members and directors', p 179ff): *Rose v McGivern* [1998] 2 BCLC 593. Finally, the court may call a meeting if these other means are impracticable (s 306).

The statutory conditions attached to all these rights to call meetings merit close attention. This is especially so because if notice of a meeting is issued by someone who does not have authority to issue such notices, then the notice is void, and any decisions taken at the meeting will also be void (although the court will not intervene if it is clear that the same decisions would have been reached had the correct procedure been followed: *Browne v La Trinidad* (1887) 37 Ch D 1; *Boschoek Proprietary Co Ltd v Fuke* **[4.31]**).

***Power of the court to order meetings: CA 2006 s 306.***

**[4.13] Union Music Ltd v Watson [2003] EWCA Civ 180, [2003] 1 BCLC 453 (Court of Appeal)**

This case concerned Russell Watson (W), the internationally famous opera singer. U applied under CA 1985 s 371 for an order for a general meeting of Arias (A), a company of which U was the majority shareholder (51%) and one of its directors. W was the only other shareholder and director. A shareholders' agreement provided that shareholders should exercise their voting rights so that A could not hold any meeting or transact any business at a meeting unless all shareholders or their representatives were present. A disagreement arose between W and U. W

threatened not to attend any meetings. This created a deadlock. No business could be transacted, and no new directors could be appointed to deal with business without a shareholders' meeting. The trial judge refused the application. The Court of Appeal allowed the appeal, agreeing that s 371 did not allow the court to override entrenched or class rights, or to break the deadlock between two equal shareholders, but the instant case involved no such rights and the shareholdings were not equal.

PETER GIBSON LJ: … I venture to make a few preliminary observations about s 371. It is a procedural section plainly intended to enable company business which needs to be conducted at a general meeting of the company to be so conducted. No doubt the thinking behind it is that a company should be allowed to get on with managing its affairs, and that should not be frustrated by the impracticability of calling or conducting a general meeting in the manner prescribed by the articles and the Act. …

… But the power confers on the court a discretion and, like all discretions, it must be exercised properly having regard to the relevant circumstances. The authorities provide examples of cases where the power has been exercised and where it has not. The fact that there are quorum provisions in Table A requiring two members' attendance will not in itself be sufficient to prevent the court making an order under s 371, where the applicant is seeking a proper order such as the appointment of a director, something which a majority shareholder would have the right to procure in ordinary circumstances. …

**(p. 200)** … I can see no sufficient reason why the order should not be made so that the deadlock in the board can be broken. Of course, I acknowledge that that means that the majority shareholder will have his way by the appointment of a director of its choice, save where the parties have agreed to complete equality. One side or the other has to prevail, and I cannot see that the contractual provisions in the agreement provide a sufficient reason why the power should not be exercised. Companies should have effective boards able to take decisions. I would therefore be prepared to make an order for the calling of a meeting to consider the question of the appointment of a further director and to allow the voting on that, even though only one member is present at that meeting. …

*Harman v BML Group Ltd* [1994] 2 BCLC 674, [1994] 1 WLR 893 turned on the fact that there was a class right attached to a class of shares, which the convening of a general meeting was designed to override. That, this court held, could not be done. I add the comment that that is hardly surprising in view of the elaborate provisions in Ch II of Pt V of the Act prescribing the procedures and conditions for varying any class rights [CA 2006 ss 629–640]. The company in question had a share capital consisting of 290,000 A shares and 210,000 B shares. There were four A shareholders but only one B shareholder, a Mr Blumenthal. A shareholders' agreement provided that Mr Blumenthal should be entitled to remain in office as director so long as he, or any family company of his, should be the owner of the B shares, and that a general meeting should be inquorate unless the B shareholder, or his proxy or representative, attended.

Dillon LJ, giving a judgment with which Leggatt and Henry LJJ agreed, said that the provision requiring the B shareholder to be present was essential to entrench Mr Blumenthal's right to remain a director and was a special provision to secure his directorship. Dillon LJ also said ([1994] 2 BCLC 674 at 680, [1994] 1 WLR 893 at 898):

> 'Class rights have to be respected and I regard the right of Mr Blumenthal, as the holder of the B shares, to be present in the quorum as a class right for his protection which is not to be overridden by this [the s 371] machinery.'

He made it clear that it was not for the court to make a new shareholders' agreement and impose it on the parties.

The present case is not one with entrenched or any class rights, as it seems to me. There is nothing in the agreement or in the memorandum and articles of Arias which confers any right on Mr Watson as shareholder which is not also conferred on Union as shareholder. There are simply no classes of shares:

there is but a single class. I would add at this point that we were taken by Mr Freedman to *Cumbrian Newspapers Group Ltd v Cumberland & Westmorland Herald Newspaper & Printing Co Ltd* **[11.05]** for the proposition that a class right could exist even though there was only one type of share in issue and the rights of the shareholders were the same. In my judgment, nothing that was said by Scott J in the *Cumbrian* case supports so broad, and indeed astonishing, a proposition. There is, in my view, no assistance from the Cumbrian case towards resolving the dispute in the present case.

The *Ross* case [*Ross v Telford* [1998] 1 BCLC 82, CA] was a case where a husband and wife were the only two directors of each of two companies. They were equal shareholders of one of the companies. The shareholders of the second company were the husband and the first company. In an acrimonious divorce the district judge had directed that the net proceeds arising out of the liquidation or sale of either company should be divided equally. An action had been brought by the second company against a bank, alleging that the wife had forged the husband's signature on cheques. The husband wanted a meeting to be called under s 371 to ratify the second company's action, with a nominee chosen by him representing the first company shareholder. Thus, the deadlock would have been broken if the order had been made. … [In allowing the appeal against the order] this court accepted submissions from the wife that the court cannot make an order under the section so as to permit a 50 per cent shareholder to override the wishes of the other 50 per cent shareholder, **(p. 201)** that s 371 was a procedural section not designed to affect substantive voting rights or to shift the balance of power between shareholders in a case where they had agreed that a power should be shared equally, and where the potential deadlock is something which must be taken to have been agreed for the protection of each shareholder.

In the present case the shareholdings were not equal. The agreement was not designed to ensure that power should be shared equally. Initially, as I have noted, Mr and Mrs Watson, who might be expected to have been in one camp, were the majority on the board, with the majority shareholder left as the minority on the board. The deadlock happens to have been caused by Mrs Watson ceasing to be a director. Union, as the majority shareholder, could be expected to be able to remove or appoint a director. I do not agree with the judge's suggestion that the parties had contracted for a situation of deadlock. What the parties had contracted for, I accept, was that if Mr Watson chose not to attend or be represented at a general meeting, then there could be no general meeting.

Clause 6.1.18 [of the shareholders' agreement], however, seems to me more in the nature of a quorum provision than a provision for a class right, which it plainly was not, or a substantive right. …

There is no doubt that if, as one would expect, Union exercises its voting rights at a meeting not attended by Mr Watson or his proxy, it would be doing so in contravention of cl 6.1.18. For the reasons which I have already given, I do not see that as being an insuperable obstacle in the way of the court making an order under s 371. The court should consider whether the company is in a position to manage its affairs properly. It ought also to take into account the ordinary right of a majority shareholder to remove or appoint a director in exercise of his majority voting power. A meeting would be limited to the single act of enabling the appointment of a new director to be considered and voted on. Taking the view that I do that cl 6.1.18 is in the nature of a quorum provision rather than a provision confirming a substantive right, it seems to me that the judge was wrong to rely on that provision to refuse to order the meeting.

I would add that I also disagree with the judge's view that Union had chosen the wrong means in view of the possibilities of a derivative action or a s 459 petition [CA 2006 s 994]. I see no reason why a shareholder in the position of Union should not utilise the simple means afforded by s 371 rather than incur the greater difficulties and expense of the other possibilities. …

[He therefore proposed to make an order for the calling of a meeting to consider the question of the appointment of a further director and to allow the voting on that, even though only one member would be present at that meeting.]

BUXTON LJ delivered a concurring judgment.

MORLAND J concurred with both.

➢ Notes

1. Where it is 'impracticable' to call a general meeting of the company in the ordinary way, the court may direct that a meeting may be called or conducted in any way that it thinks fit (CA 2006 s 306). See, eg, *Hussain v Wycombe Islamic Mission and Mosque Trust Ltd* [2011] EWHC 971 (Ch). In particular, it may direct that one person shall be deemed to constitute a quorum at a meeting—a power which is commonly invoked where the number of members has fallen to one.

2. In *Re British Union for the Abolition of Vivisection* [1995] 2 BCLC 1, the court held that the section could be applied where previous attempts at holding a general meeting had been frustrated by a disruptive minority, leading to breaches of the peace and intervention by the police. It was ordered that the meeting should be held with only an executive committee attending in person, the bulk of the membership voting by postal ballot.

**(p. 202)** 3. In *Wheeler & Another v Ross & Others* [2011] EWHC 2527 (Ch), Arnold J made an order under s 306 for a meeting to be conducted, in the light of the complete breakdown of mutual trust and confidence between the majority shareholder and the minority shareholder. A s 306 order would overcome the problem of the extraordinary general meeting not being quorate if the minority shareholder chose not to attend the meeting.

4. The Court of Appeal in *Smith v Butler* **[3.14]** held that a trial judge's decision to grant a s 306 order was a discretionary judgement and that the court would therefore not interfere on appeal unless the decision was clearly wrong or some material factor was wrongly taken into or left out of account.

5. However, the s 306 machinery may not be used to override class rights, or rights entrenched in a shareholders' agreement: see *Harman v BML Group Ltd* [1994] 1 WLR 893, CA; or to resolve a deadlock where the company's own constitution contains no provision to cope with such a situation: *Ross v Telford* [1998] 1 BCLC 82, CA (both cases dealing with the predecessor, CA 1985 s 371). *Union Music Ltd v Watson* **[4.13]** and, more recently, *Wheeler & Another v Ross & Others* [2011] EWHC 2527 (Ch), explain the limits of these restrictions and the potential usefulness of the court's power.

➢ Question

In *Wheeler & Another v Ross & Others* [2011] EWHC 2527 (Ch), Arnold J clarified that the s 306 power 'will enable Mr Wheeler to enforce his rights as majority shareholder. It will not extinguish Mrs Ross' rights as the minority shareholder' [31]. Does this accurately reflect the practical reality?

### What sort of notice must be given if a meeting is proposed?

In every case when meetings are called, there are strict rules on giving timely (s 307) and appropriate (s 311) notice to all those entitled to attend (ss 307–317).[25] See especially s 310 on who is entitled to notice. CA 2006 s 301 makes the validity of any resolution passed at the meeting depend on proper notice being given (also see*Musselwhite v CH Musselwhite and Son Ltd* [1962] Ch 964).

CA 2006 s 311 requires the notice of a general meeting to state the time and date of the meeting, as well as the location where it is to take place. Subject to any provisions in the company's articles, the notice must also state the general nature of the business to be dealt with. In the case of a listed company, an explanatory circular must also be sent out if any business other than ordinary business is to be discussed or decided at a general meeting (Listing Rules r 13.8.8R(1)). What constitutes ordinary business is to be decided by each company.[26]

If the notice convening a meeting is not sufficiently full and specific to enable the members receiving it to decide

whether or not they ought in their own interest to attend, then any resolutions passed at such meetings may be held invalid: *Tiessen v Henderson* [1899] 1 Ch 861.

In calling a meeting and in advising members about proposed resolutions, directors must exercise their powers only for the purposes for which they were conferred (s 171, and see 'Duty to act within powers: CA 2006 s 171', pp 331ff, and *Dawson International plc v Coats Patons plc* **[14.13]**).

Note, however, that notice requirements, as with other formalities required under the Companies Act, may be waived in accordance with the *Duomatic* principle **[4.15]**:*Schofield v Schofield* [2011] EWCA Civ 154, Note 2 following *Re Duomatic* **[4.15]**, p 208. This, of course, **(p. 203)** applies only if the notice requirement is inserted for the protection of the shareholders generally: in those circumstances, the shareholders can waive that protection. By contrast, the requirements laid out in CA 2006 ss 168 and 169 are inserted for the protection of the impugned director, and cannot be waived by any shareholder majority.

### Who can propose a resolution (or circulate a statement) at a meeting?

Clearly the directors can propose resolutions, but so too can a sufficiently large group of members of a public company (not a private one—they can use the written resolution procedure): the group must hold 5% of the total relevant voting rights, or must comprise at least 100 members with an average paid up share value of £100 each (ss 338 and 338A). Notice must be given in the same manner as notice of a meeting (s 339), and the members making the request must carry the cost unless the company resolves otherwise (s 340).

Similarly, a sufficiently large group of members (this time of any type of company) may require the company to circulate a statement before a meeting, being a statement that concerns either a proposed resolution or some other business that is to be dealt with at the meeting (s 314). The group of members who may do this is defined in the same way (s 314), their statement must be no more than 1,000 words (s 314), the notice sent out must generally comply with all the requirements for notice of the meeting (ss 315 and 317) and the members making the request must carry the cost unless the company resolves otherwise (s 314).

Also see s 338A, allowing a specified group of members of a traded company (the group defined in the same way as noted earlier) to request the company to include other matters in the business to be dealt with at the annual general meeting.

### Are members' meetings compulsory?

When companies first became part of the landscape, it was considered important to conduct regular meetings of members to enable them to hold the directors to account. By the mid-nineteenth century, these were less frequent, but an '*annual general meeting*' was compulsory. (Other general meetings which were not these ordinary or annual meetings were called '*extraordinary general meetings*', although this term is now no longer used in CA 2006.) Public companies are still required to hold annual meetings linked to their reporting cycle (s 336(1)). This annual meeting and the required 'accounts meeting' (for laying the company's reports and accounts before the members, s 437) are usually combined, and the same meeting will usually also deal with resignations and appointments of directors.[27] Private companies, by contrast, need not hold annual general meetings at all.

### How must meetings be conducted?

If members are to be bound by the decisions taken at meetings (whether they are present or not), then they must be given proper notice of the meeting (see earlier, so that they can decide whether or not to attend), and the meeting must be properly conducted: there must be a quorum, and the voting must be properly conducted.

The underlying reason for holding meetings was always said to be to allow members to attend in person so as to debate and vote on matters affecting the company (*Byng v London Life Association Ltd* **[4.12]**). Over the years, however, the perceived need to be together in the same venue has waned, and now the Model Articles provide for meetings where not all members are in the same place (private companies, art 37; public companies, art 29).

**(p. 204)** The quorum for a meeting is two, unless the company is a one man company (in which case it is one, see Note 1 following *Sharp v Dawes* **[4.10]**, p 195), or unless the articles specify otherwise (s 318). The meeting

can elect a chairman, unless the articles provide otherwise (s 319)—they usually do, the chairman usually being a person selected by the directors. Neither CA 2006 nor the Model Articles give the chairman the casting vote. Indeed, CA 2006 s 282 does not permit a members' ordinary resolution to be passed by means of a casting vote, even though this used to be a common provision in private company articles. This outcome seems to have been unintended, and regulations now validate provisions for casting votes, although only if they were in the company's articles before 1 October 2007 (SI 2007/3495, art 2(6) and Sch 5, para 2(1) and (5)).

Voting at a meeting can be by show of hands or by poll (see earlier), and in person or by proxy (ss 324–330 and Model Articles art 45 (private companies) and art 38 (public companies). A proxy must vote in accordance with any instructions given by the member by whom the proxy is appointed (s 324A). Also see s 323, allowing corporate shareholders to appoint human representatives.

CA 2006 adopts a policy of enfranchising indirect investors, and now allows members (such as corporate trustees) to appoint more than one proxy for a meeting (so as properly to represent the different indirect or beneficial owners), and allows proxies to vote and speak at meetings notwithstanding anything in the company's articles (CA 2006 ss 324ff).

Even more changes have been introduced recently. Note in particular the provisions concerning advance voting on a poll (s 322A), electronic meetings and voting (s 360A), and a wide variety of provisions concerning traded companies (ss 307, 311, 319, 327, 333, 334, 336, 337, 338, 340, 341, 360A and 360B).

The outcome of the meeting must be formally recorded (ss 355–359).

### 'Voice' in decision-making

***Even with large numbers of members, proper democracy is difficult.***

**[4.14] Re Dorman Long & Co Ltd [1934] Ch 635 (Chancery Division)**

These remarks were made in reference to a scheme of arrangement under CA 1985 ss 425–427, but are applicable generally.

> MAUGHAM J: It may be observed that when the Joint Stock Companies Arrangement Act 1870 was passed, in the majority of cases all the persons concerned with an arrangement could go to the meeting, listen to what was said and vote for or against the arrangement according to the views which they were persuaded to take. In these days, in many of the cases that come before me, only a fraction of the persons who are concerned can get into the room where the meeting is proposed to be held, and in the great majority of cases, the proxies given to the directors before the meeting begins have in effect settled the question of the voting once for all. It is perhaps not unfair to say that in nearly every big case not more than 5 per cent of the interests involved[28] are present in person at the meeting. It is for that reason that the court takes the view that it is essential to see that the explanatory circulars sent out by the board of the company are perfectly fair and, as far as possible, give all the information reasonably necessary to enable the recipients to determine how to vote. I am assuming, of course, that following the usual procedure, explanatory circulars are sent out, because, I may observe, there is nothing in the Act to render them essential. In a sense, in all these cases, the dice are loaded in favour of the views of the directors: the notices and circulars are **(p. 205)** sent out at the cost of the company, the board have had plenty of time to prepare the circulars and all the facts of the case are known the them, proxy forms are made out in favour of certain named directors and, although it is true that the word 'for' or 'against' may be inserted in the modern proxy form, the recipients of the circulars very often are in doubt as to whether the persons named as proxies are bound to put in votes by proxy with which they are not in agreement. If we contrast with that position the position of a [member of a] class of objectors … he has a minimum of information, his personal interest in the matter may be exceedingly small, probably he knows few persons in the same position as himself and [the procedural, financial and timing barriers to effective action are high].

➢ Note

In this context, see the reforms introduced by the UK Corporate Governance and Stewardship Codes (Chapter 5), and also note the common law limitations on the free exercise by shareholders of their votes (‘Limitations on the free exercise of members’ voting rights’, pp 213ff).

### Reform of the law relating to general meetings

Both the CLR and a separate, earlier, Department of Trade and Industry (DTI) consultation document raised issues relating to the general meeting (especially the annual general meeting (AGM)) and members’ resolutions. These were accompanied in some (but not all) cases by recommendations for reform. It is perhaps best simply to list the most important of the questions upon which comments were invited, so that the perceived concerns are apparent:

**(i)** Many shares are now held by nominees, and with the growing use of CREST (see ‘Share certificates, uncertificated shares and dematerialised securities’, p 574), the proportion is bound to increase: what steps can, or should, be taken to see that the beneficial (ie the ‘real’) owners of the shares receive information from the company, and possibly also be permitted to attend meetings, to vote, etc? See CA 2006 ss 145–153.
**(ii)** Should CA 2006 require institutional investors to disclose how they have voted, the different types of shares they own or in which they have an interest? Would a voluntary regime be preferable? What is the reasoning behind the moves to compel disclosure, and the different methods of enforcing it? See the UK Stewardship Code for best practice in this area (‘Regulation of institutional investors by the UK Stewardship Code’, p 267).
**(iii)** Given that AGMs of public companies are usually only attended by a very small percentage of members, that those who do attend are often quite unrepresentative and that everything may well have been settled by proxies well in advance of the meeting, it seems clear that the AGM no longer serves its original democratic function as an occasion for general debate and decision-making on matters of company policy. Alternatively, any discussion may well be hijacked by ‘campaigners’ who have bought a few shares in order to gain publicity for their own separate agendas. Should the traditional AGM therefore be abolished? Is there a better replacement? Should some restrictions be put on the rights of institutional and ‘campaigning’ shareholders to speak? See CA 2006 ss 324–331, and ss 318–323 and 360B.
**(iv)** Should the law be changed so as to oblige companies to circulate members’ resolutions without charge? What are the advantages and disadvantages? See CA 2006 ss 292–295, especially s 294; and ss 314–317, especially s 316; ss 338–340B, especially ss 340, 340B.

## (p. 206) Informal decision-making—the ‘*Duomatic*’ principle

Members may make decisions formally, by written resolutions (for private companies) or by vote in general meeting, as we have seen. As well, informal assent is possible. In principle, the informal procedures described later apply to both private and public companies. In practice, however, they are only ever likely to be relevant to private companies. The informal unanimous assent rule provides that a formal general meeting or written resolution is unnecessary if all the members entitled to vote on the matter informally assent to the transaction. It does not matter if the members’ assent is conveyed simultaneously at a meeting or is given at different times.[29]

***A company is bound in a matter* intra vires *by the unanimous but informal agreement of its voting members*.**

**[4.15] Re Duomatic Ltd [1969] 2 Ch 365 (Chancery Division)**

The liquidator of Duomatic claimed repayment of remuneration from one of the company’s directors, Mr Elvins, on the ground that the payments were not formally authorised by the company in general meeting.

BUCKLEY J: It is common ground that none of the sums which I have mentioned were authorised by any