Convening of general meetings

General meetings are normally convened by the board of directors (CA 2006, s 302), though, as noted above, the court has power to do so in certain circumstances. CA 2006, s 306 gives the court power to order a meeting of the company and to direct the manner in which that meeting is called, held and conducted. The court can order a general meeting on its own motion or on the application of any director or any member who would be entitled to vote at the meeting: section 306(2). If the articles contain provisions relating to the directors' ability to call general meetings, these cannot supersede CA 2006 by preventing the board from calling general meetings.

The company secretary or other executive has no power to call general meetings unless the board ratifies his act of doing so (***Re State of Wyoming Syndicate*** [1901] 2 Ch 431).

As regards the time and place at which the meeting is to be held, this is in general terms a matter for the directors. However, it must be reasonably convenient for the members to attend and this probably prevents general meetings being held overseas. In addition, the directors must act in good faith when they call a meeting. Thus, in ***Cannon* v *Trask*** (1875) LR 20 Eq 669 the directors called the annual general meeting at an earlier date than was usual for the company to hold it in order to ensure that transfers of shares to certain persons who opposed the board would not be registered in time so that they would be unable to vote. An action for an injunction to stop the meeting succeeded. It should also be noted that once the directors have called the meeting they cannot postpone it and the meeting may be held even though the directors try to postpone or cancel it (***Smith* v *Paringa Mines Ltd*** [1906] 2 Ch 193). With the consent of the majority of those present and voting it could, however, once held, be adjourned.

Rights of minorities to requisition general meetings

The articles of a company usually provide that, apart from annual general meetings, meetings of the company can be convened by the directors whenever they think fit. The directors are, therefore, seldom under any obligation to call general meetings at which minority grievances can be put forward. However, under CA 2006, s 303 *et seq.* (formerly CA 1985, s 368) members holding not less than one-tenth of such of the company's paid-up capital as carries voting rights at the general meetings of the company can requisition a meeting. Thus, where a company has 200,000 £1 A ordinary shares, 50p paid, and (say) 50,000 B ordinary shares of £1 each, fully paid, and all the shares carry voting rights, the requisitionists must have paid up on their shares, whether A or B ordinary, one-tenth of £150,000, i.e. £15,000. Where the company does not have a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having a right to vote at general meetings of the company may make a requisition. The required percentage becomes 5 per cent in the case of a private company in which more than 12 months has elapsed since the end of the last general meeting (s 303(3)).

The requisitionists must deposit at the company's registered office a signed requisition stating the objects for which they wish a meeting of the company to be held. The directors must then convene a *general meeting*, and if they have not done so within 21 days after the deposit of the requisition, the requisitionists, or any of them representing more than one-half of their total voting rights, may themselves convene the meeting so long as they do so within three months of the requisition. The requisitionists can recover reasonable expenses so

incurred from the company, and the company may in turn recover these from the fees of the defaulting directors (see CA 2006, ss 304 and 305).

To ensure that the directors do not call the meeting for a date so far in the future as to frustrate the minority's aims the Act provides that the directors are deemed not to have duly convened the meeting if they call it for a date more than 28 days after the notice convening it. If they infringe this rule, the requisitionists' power to call the meeting arises.

The company's articles cannot deprive the members of the right to requisition a meeting although they can provide that a *smaller number* of persons may requisition, e.g. one-twentieth. An article would not be effective if it required a larger number than one-tenth.

It should be noted that CA 2006, s 303 uses the plural expression 'members' throughout so that the section basically requires two or more members holding the one-tenth share or voting requirement. One member would not suffice even though he held the one-tenth requirement. This requirement is presumably to ensure that there will be a quorum at the requisitioned meeting.

CA 2006, s 306(2) allows one member to ask the court to call a meeting and says so but there is no quorum problem here because the court when calling a meeting can fix the quorum even at one if it wishes.

CA 2006, ss 303–305 provide the method by which members may demand a general meeting. Section 303 requires the directors to call a general meeting once the company has received requests for companies with a share capital, from members representing at least 5 per cent of such of the paid-up capital of the company as carries the right of voting at general meetings of the company (excluding any paid-up capital held as treasury shares) and for companies without a share capital, from members who represent at least 5 per cent of the total voting rights of all the members having a right to vote at general meetings.

A member may request a general meeting in hard copy or electronic form pursuant to CA 2006, s 303(6)(a). However, the request must be authenticated under CA 2006, s 303(6)(b). CA 2006, s 303(4)(a) necessitates that the request must state the general nature of the business to be dealt with at the meeting so, for example, the text of a resolution to be presented at the meeting might be included in the general nature statement. CA 2006, s 304 requires the directors to call a general meeting with 21 days of receiving a valid request under s 303 and that the general meeting to be held on a date not more than 28 days after the date of the notice of meeting. Under CA 2006, s 304(2), if the members' request for a general meeting identifies a resolution intended to be moved at the meeting, the notice of meeting must include notice of this resolution.

CA 2006, s 305 (Power of members to call meeting at company's expense) provides that the members who requisitioned the meeting or any of them representing more than half of the total voting rights of the requisitionists may themselves call the meeting where the directors are required to call a meeting under s 303 but fail to do so within the requisite time period set out in s 304. CA 2006, s 305(2) provides that where the members' meeting request identified a resolution intended to be moved at the meeting, the notice of meeting must include notice of this resolution. CA 2006, s 305(3) provides that the meeting must be called for a date not more than three months after the date on which the directors became subject to the requirement to call a meeting. CA 2006, s 305(6) states that members shall be reimbursed their reasonable expenses by the company with CA 2006, s 305(7) requiring that the directors who are in default in relation to calling the meeting having such expenses deducted by the company from their directors' fees or other remuneration due to them.

Notice of meetings

Regulations relating to notice of meetings are usually laid down in the company's articles and these must be referred to, although there are certain statutory provisions with regard to notice which must not be overlooked.

Length of notice

The company's articles must be followed, but CA 2006, s 307 (formerly CA 1985, s 369) provides that any provision in the company's articles is void if it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than:

(a) in the case of the annual general meeting not less than 21 days' notice in writing; and
(b) in the case of a meeting other than an annual general meeting, 14 days' notice in writing.

Where the company's articles do not make provision, the above periods apply. The Combined Code that applies to public limited companies but is an indicator of good practice in all companies generally recommends 20 working days for annual general meeting notice and papers.

Short notice

It should be noted that a meeting of a company, if called by a shorter period of notice than that prescribed in the CA 2006 or by the company's articles, shall be deemed *validly called* if:

(a) in the case of the annual general meeting, *all the members entitled to attend and vote* there at *agree* (CA 2006, s 337(2)); and
(b) in the case of any other meeting, *it is agreed by a majority in number* of the members having a right to attend and vote at the meeting, being a majority together *holding not less than 95 per cent in nominal value of the shares* giving a right to attend and vote at the meeting; *or* in the case of a company not having a share capital, a majority representing *95 per cent of the total voting rights* at the meeting (CA 2006, ss 307(5) and (6)).

Since in both (a) and (b) above *all* the members of the company with voting rights would have to be in attendance the concession is in practice confined to meetings of private companies. Furthermore, it was held in ***Re Pearce Duff Co Ltd*** [1960] 3 All ER 222 that the mere fact that all the members are present at the meeting and pass a particular resolution, either unanimously or by a majority holding 95 per cent of the voting rights, does not imply consent to short notice and anyone who voted for a resolution in these circumstances can later challenge it. In practice a document setting out the agreement of the members to short notice should be signed by members at the meeting if all are present or, if not, consent can be given by means of a number of documents sent out to members and returned by post. There would appear to be no reason why this should not be done after a meeting called by inadequate notice has taken place.

The days of notice must be 'clear days', i.e. exclusive of the day of service and the day of the meeting (CA 2006, s 360).

Persons to whom notice must be given

CA 2006, s 310 sets forth persons entitled to receive notice. Notice of a general meeting must be sent to every member of the company and every director. Section 310 has effect subject to any enactment or provisions of the company's articles. For instance, *Table A* provides that notice of general meetings shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member, and to the directors and auditors. Notice of every general meeting must be given to the auditors, and if notice of a meeting is not given to every person entitled to notice, the proceedings and any resolution passed at the meeting will be invalid.

Young* v *Ladies Imperial Club [1920] 2 KB 523

Mrs Young, who was a member of the club, was expelled by a resolution passed by the appropriate committee. The Duchess of Abercorn, who was a member of the committee, was not sent a notice of the meeting, it being understood that she would not be able to attend. In fact, she had previously informed the chairman that she would not be able to attend. Nevertheless, in this action which was concerned with the validity of the expulsion, it was *held* – by the Court of Appeal – that the failure to send a notice to the Duchess invalidated the proceedings of the committee and rendered the expulsion void. *Per* Scrutton LJ:

> Every member of the committee ought, in my view, to be summoned to every meeting of the committee except in a case where summoning can have no possible result, as where the member is at such a distance that the summons cannot effectively reach the member in time to allow him or her to communicate with the committee. Extreme illness may be another ground, though I should myself require the illness to be extremely serious, because a member of the committee receiving a notice to attend may either write to ask for an adjournment of the meeting or express his views in writing to the committee, and I should require the illness to be such as to prevent that form of action being taken on receiving notice of such a meeting.

However, under CA 2006, s 313 the *accidental omission to give notice* of a meeting, or the non-receipt of notice of a meeting by any person entitled to receive notice, *does not invalidate the proceedings at that meeting* and any resolutions passed.

Re West Canadian Collieries Ltd [1962] Ch 370

The company failed to give notice of a meeting to certain of its members because their plates were inadvertently left out of an addressograph machine which was being used to prepare the envelopes in which the notices were sent. The proceedings of the meeting were not invalidated, it being *held* in the High Court to be an accidental omission within an article of the company similar to *Table A*.

Musselwhite* v *C H Musselwhite & Sons Ltd [1962] Ch 964

The company failed to give notice of a general meeting to certain persons who had sold their shares but had not been paid and remained on the register of members. The directors believed that the mere fact of entering into a contract of sale had made them cease to be members.

Held – in the High Court – the proceedings of the general meeting were invalidated since the error was one of law and not an accidental omission within an article of the company similar to *Table A*.

In the absence of a provision to the contrary in the articles, preference shareholders without the power to vote have no right to be summoned to general meetings (***Re Mackenzie & Co Ltd*** [1916] 2 Ch 450). Where the company has share warrants, some arrangements will have to be made to advertise the meeting if the holders of the warrants have any right to attend under the articles.

CA 2006, s 307 sets out, as we have seen, certain minimum periods of notice for general meetings. This makes it impossible and therefore unnecessary to send notice to persons becoming members after the notice is sent out. Such persons, do, however, have the right to attend and vote at the meeting or appoint a proxy and if this causes difficulty legal advice should be sought on the drafting of an article which states expressly that notice need not be sent to such persons and also that they cannot attend and vote at the meeting.

Method of service

CA 2006, s 308 designates how notice of a general meeting of a company must be given. CA 2006, s 309 indicates when a website notice is appropriate. *Table A* provides for service of notice and this sort of procedure is generally followed. These provisions are as follows:

(i) A notice may be given by the company to any member or his representative either personally or by sending it by post to his registered address.
(ii) A notice may be given to *joint holders* by giving notice to the first joint holder named in the register of members.

The minimum number of days which must intervene between the day of posting the notice and the day of the meeting is not affected by the length of time which it takes for the Post Office to deliver the notice. The articles must, of course, be looked at but under Reg 115 of *Table A* service of a notice of meeting is deemed to have been effected 48 hours after posting. Thus under *Table A* an annual general meeting due to be held on 25 March would be validly convened by notices sent on 1 March whether by first or second class mail. It will be recalled that days of notice must be 'clear days'.

However, such a provision will not always be applied. In ***Bradman*** v ***Trinity Estates plc*** [1989] BCLC 757, the High Court refused to accept deemed delivery of notices posted to shareholders outside London during a postal dispute. Those who attended the meeting were members with London addresses who received their notices by courier. Mr Bradman, a shareholder, asked for and obtained an injunction to prevent the company from acting on a resolution passed at the meeting.

If the letter containing the notice has clearly not been delivered, as where it is returned to the company, notice would under *Table A*, Reg 115 still be regarded as having been given. Evidence of proper posting is, under that regulation, 'conclusive' evidence that notice was given and this cannot be rebutted as is the case with all evidence which is regarded as conclusive. Other articles may not carry a provision regarding the conclusive nature of receipt of notice and evidence of non-delivery would prevent the deeming provisions from applying. These points were decided in ***Re Thundercrest*** (1994) *The Times*, 2 August.

Contents of notice

CA 2006, s 311 sets forth the contents of notices of a general meeting. The notice of a general meeting must state the time and date of the meeting and the place of the meeting. Notice of a general meeting of a company must state the general nature of the business to be dealt with at the meeting. *The articles generally specify what the notice must contain*, but *Table A* provides that it must specify the time and place of the meeting, and the general nature of the business to be transacted.

If the meeting is the annual general meeting of a public company, the notice must under CA 2006, s 337 say so. If it is convened to pass a special resolution, it must say so and the resolution(s) must be set out verbatim (***McConnell* v *Prill*** [1916] 2 Ch 57), as must ordinary resolutions of which special notice is required and resolutions put on the agenda of the annual general meeting by shareholders (see below) (see CA 2006, s 339). In addition, the notice must be adequate to enable members to judge whether they should attend the meeting to protect their interests. Thus in ***McConnell* v *Prill*** [1916] 2 Ch 57 a notice of a meeting called to increase the nominal capital of the company did not say by how much. It was held that the notice was invalid because the eventual issue of the new shares (and there were no pre-emption rights then) could affect the rights of existing shareholders and they were therefore entitled to know by how much the nominal capital was to be increased.

Under CA 2006, s 325 the notice must clearly state the right of a member to appoint a proxy.

Notice of members' resolutions at the Annual General Meeting

Members representing not less than one-twentieth of the total voting rights of all the members, or 100 or more members holding shares in the company on which there has been paid up an average sum of not less than £100 per member, can, under CA 2006, s 314, by making a written requisition to the company, *compel the company*:

(a) to give to members who are entitled to receive notice of the next annual general meeting, *notice of any resolution* which may be properly moved and which they intend to move at that meeting; and
(b) to circulate to members who are entitled to have notice of any general meeting sent to them, any *statement* of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at the meeting.

The amount which has been paid up on the shares is not material so, assuming that a company has 300,000 £1 ordinary shares 50p paid and 100,000 £1 preference shares fully paid all with voting rights, then the requisition could be made by the holders of 80,000 shares. If made by 100 requisitionists, then the amount paid up on their shares if added together would have to come to at least £10,000.

The requisition must be made and deposited in accord with CA 2006, s 314(4) governing procedures for circulation of resolutions for annual general meetings.

Under s 316(1) of the CA 2006, the expenses of the company do not need to be paid by the members who requested the circulation of the statement if (a) the meeting to which the requests relate is an annual general meeting of a public company; and (b) requests are sufficient to require the company to circulate the statement received before the end of the financial year preceding the meeting. Section 316(2) goes on to state that otherwise the expenses of the company must be paid by the members who requested the circulation of the

statement unless the company resolves otherwise, and unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

The company is not bound by the above provisions if, on application to the court by the company or any person affected, the court is satisfied that they are being abused in order to secure needless publicity for defamatory or abusive behaviour (CA 2006, s 317). The above procedures are confined to resolutions to be proposed at the annual general meetings.

Special notice

An ordinary resolution of which *special notice* has been given is required in the following cases:

(a) under CA 2006, s 168, to remove a director before the expiration of his period of office, regardless of any provision in the articles or in any agreement with him. If it is intended to *replace* the director if he is removed, special notice must be given of that also. The section does not prevent companies from attaching special voting rights to certain shares on this occasion (***Bushell* v *Faith***, 1969, see Chapter 5); *or*

See p. 115

(b) removing an auditor before the expiration of his term of office (CA 2006, s 511).

Under CA 2006, s 312, where special notice is required, the resolution is not effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is to be moved. The notice should be posted or delivered to the registered office of the company. The company must give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if this is not possible, must give them notice of it either by advertisement in a newspaper having an appropriate circulation or by any other method allowed by the articles, *not less than 14 days before the meeting*. If a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given in time under the section, shall be deemed to have been properly given.

The above provision is designed to protect shareholders who give notice, e.g. to remove a director or auditor, in case the board calls the meeting of members deliberately at less than 28 days so as to frustrate the removal of the director or auditor.

Procedure at meetings – legal aspects

A consideration of the legal, as distinct from the company secretarial, aspects of procedure once the meeting has been convened involves a discussion of the matter of quorum, voting, proxies, the position of the chairman and the recording of minutes.

Quorum: generally

The concept of quorum relates to the minimum number of persons suitably qualified who must be present at a meeting in order that business may be validly transacted.

If the articles do not lay down the quorum required for general meetings, CA 2006, s 318 provides that in the case of both public and private companies two members *personally* present shall be a quorum.

Therefore, as a general rule and in the absence of a provision in the articles at least two members *present in person* are required to constitute a meeting. The position in regard to single-member companies has already been considered in Chapter 1 but the quorum there is one member present in person or by proxy.

Sharp* v *Dawes (1876) 2 QBD 26

The Great Caradon Mine was run by a mining company in Cornwall and was carried on on the cost-book system, being controlled by the Stannaries Act 1869. The company had offices in London, and on 22 December 1874 notice of a general meeting was properly given. The meeting was held, but only the secretary, Sharp, and one shareholder, a Mr Silversides who held 25 shares, attended. Nevertheless, the business of the meeting was conducted with Silversides in the chair. Among other things, a call on shares was made and the defendant refused to pay it. He was sued by the secretary, Sharp, who brought the action on behalf of the company, and his defence was that calls had to be made at a meeting and there had been no meeting on this occasion.

Held – by the Court of Appeal – the call was invalid. According to the ordinary use of the English language, a meeting could not be constituted by one shareholder.

In Re London Flats Ltd [1969] 2 All ER 744

The company was in liquidation and a meeting was called under what is now the Insolvency Act 1986 to appoint a successor to the liquidator who had died. At the meeting X, one of the only two shareholders, proposed that he be appointed liquidator and put forward an amendment to the resolution before the meeting which substituted his own name in the resolution for the person named therein who was a chartered accountant. The other shareholder, Y, left the meeting saying, 'I withdraw from the meeting, you now have no quorum.' The meeting continued and the amended resolution was put to the vote. There being one vote in favour and none against, X as chairman declared the amendment carried, thus making himself liquidator. Y made application to the court for the removal of X and the appointment of a liquidator by the court on the ground that the appointment of X was invalid, the meeting having consisted of only one shareholder.

Held – by Plowman J – that the appointment of X was invalid. The matter was then referred to chambers for the appointment of an independent liquidator. An accountant unconnected with the parties was appointed.

CA 2006, s 318 calculates the quorum by reference to the numbers of 'qualifying persons' who are present at the meeting. This term includes an individual who is a member of the company; a person authorised under section 323 to act as the representative of a corporation; and a person appointed as proxy of a member. CA 2006 establishes that proxies and corporate representatives will usually count as part of a quorum. In the case of single-member companies, one qualifying person present at a meeting is a quorum. In any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum, unless: they are both a qualifying person as the representative of a corporation, and they are representatives of the same corporation; or they are both a qualifying person as proxy of a member, and they are proxies of the same member.

CA 2006, s 334 provides that the necessary quorum for a variation of class rights meeting is, for a meeting (other than an adjourned meeting), two persons present holding at least

one-third in nominal value of the issued shares of the class in question (excluding any shares of that class held as treasury shares) and, for an adjourned meeting, one person present, holding shares of the class in question. Where a person is present by proxy or proxies, she is treated as holding only the shares in respect of which those proxies are authorised to exercise voting rights. CA 2006, s 334 confirms the position regarding proxies in that they apply equally to class meetings as they would to general meetings.

Regulation 30 of the Model Articles of Association for Public Companies states, and Regulation 38 of the Model Articles of Association for Private Companies states, that no business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum (*Companies (Model Articles) Regulations 2008*). In *Table A*, Reg 40 sets the number of persons required to satisfy a quorum for *Table A* companies.

Quorum of one

Where an annual general meeting or other general meeting is called by the court, the court, as the case may be, may decide upon the quorum which may even be one member present in person or by proxy.

Re El Sombrero Ltd [1958] 3 All ER 1

The applicant in this case held 90 per cent of the shares of the company which was a private company. The company's two directors held 5 per cent of the shares each. The company's articles provided that the quorum for general meetings was two persons present in person or by proxy, and if within half an hour from the time appointed for holding a meeting a quorum was not present, the meeting, if convened on the requisition of the members, was deemed dissolved. On 11 March 1958, the applicant requisitioned an extraordinary general meeting to pass a resolution removing the two directors and appointing others in their place. The directors did not comply with the requisition, so the applicant himself convened an extraordinary general meeting for 21 April 1958. The two directors deliberately failed to attend, and since no quorum was present, the meeting was dissolved. The applicant took out a summons asking for a meeting to be called by the court to pass a resolution removing the two directors, and for a direction that one member of the company should be deemed to constitute a quorum at such meeting. The application was opposed by the directors.

Held – by the High Court – since in practice a meeting of the company could not be convened under the articles, the court had a jurisdiction to order a meeting to be held, and for one member to constitute a quorum, and such an order was made. The applicant was entitled to enforce his statutory right to remove the directors by ordinary resolution, and the directors had refused to perform their statutory duty to call a meeting for the sole reason that, if a meeting was held, they would cease to be directors.

Comment

This case was followed in ***Re HR Paul & Son Ltd*** (1973) *The Times*, 17 November, where Brightman J ordered a general meeting to take place with a quorum of one where a 90 per cent shareholder could not get alterations in the articles because the minority had refused to attend general meetings. In cases such as this it is often impossible for the major shareholder to transfer a few shares to a nominee in order to make a quorum, either because there are pre-emption provisions in the articles or the remaining members are also directors who have a majority on the board and refuse to register the necessary transfers.

CA 2006, ss 334 and 335 are concerned with the matter of quorum at class meetings, fixing it at two persons holding or representing by proxy at least one-third in nominal value of the issued share capital of the class in question. At an adjourned class meeting the required quorum is one person holding shares of the class in question or his proxy. In addition, in ***East* v *Bennet Bros Ltd*** [1911] 1 Ch 163 it was held by Warrington J that *one* member who held *all* the shares of a class constituted a valid class meeting.

The position in single-member private companies has already been considered.

Quorum of one: committees of directors

Table A, Reg 72 authorises delegation by the board to one director acting as a committee of the board. The court accepted in ***Re Taurine Co*** (1883) 25 Ch D 118 that under a similar provision in articles a director meeting alone constituted a valid meeting of the committee.

Effect of no quorum

Unless there is a quorum present, the meeting is null and void, but the articles must be looked at in order to ascertain whether a quorum is required throughout the meeting or only at the beginning. For instance, *Table A* provides that a quorum is required throughout the meeting but if the articles are silent on this particular point the better view is that a quorum need only be present at the beginning and need not be present throughout, though no valid resolutions can be passed if the number of persons present falls to one (***In Re London Flats Ltd***, 1969, but see above).

Table A provides that if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such time and place as the directors may determine. The same provision applies if there ceases to be a quorum during the course of the meeting. There must be a quorum of two at the adjourned meeting or it is similarly adjourned until there is. Ultimately, application to the court would be necessary.

The chairman

It is his duty to preserve order, to call on members to speak, to decide points of order, such as the acceptability of amendments, and to take the vote after a proper discussion in order to ascertain the sense of the meeting. However, he is not bound to hear everyone. He must be fair to the minority but as Lindley MR said in ***Wall* v *London Northern & Assets Corporation*** [1898] 2 Ch 469, the majority can say: 'We have heard enough. We are not bound to listen until everybody is tired of talking and has sat down.' Under CA 2006, s 319 the members present at the meeting may elect one of their number as chairman unless the articles otherwise provide.

Table A provides that the chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting, or if he will not act, the directors present shall elect one of their number to be chairman of the meeting, and if there is only one director present and willing to act he shall be chairman.

If no director is present, or no director present is willing to act within 15 minutes after the time appointed for holding the meeting, the members present must choose one of their number to be chairman of the meeting.

Voting

Unless the articles provide to the contrary, voting is by show of hands only. Articles usually allow an initial vote by show of hands, particularly for routine matters, and each member has only one vote, regardless of his shareholding. Under CA 2006, s 324 there cannot be any voting in respect of proxies held, unless the articles provide. On controversial issues it is usual to demand a poll on which members can vote according to the number of shares they hold and proxy votes can be used. *Table A* allows a poll to be demanded before a vote on a show of hands is taken. The provisions of *Table A* state that in the case of joint holders the person whose name appears first in the register of members shall be allowed to cast the vote in respect of the shares, and no member shall be entitled to vote at any general meeting unless all moneys presently payable by him in respect of the shares have been paid. *Table A* also provides that objections to the qualification of a voter can only be raised at the meeting at which the vote is tendered. Objections are to be referred to the chairman of the meeting whose decision is final and conclusive.

It should also be noted that a shareholder, even if he is a director, can vote on a matter in which he has a personal interest subject to the rules relating to prejudice of minorities (see Chapter 16 See p. 312). Furthermore, a bankrupt shareholder may vote and give proxies if his name is still on the register, though he must do so in accordance with the wishes of the trustee (***Morgan* v *Gray*** [1953] Ch 83).

If no poll is demanded, the vote on the show of hands as declared by the chairman and recorded in the minutes is the decision of the meeting and under *Table A* his declaration is *conclusive*, without proof of the number of votes cast for or against the resolution, unless there is an obvious error, as where the chairman states: 'There being a majority of 51 per cent on the show of hands, I hereby declare that the special resolution to alter the articles has been passed.' The chairman's declaration would not be conclusive either if he had improperly refused a poll.

The articles may set out the provisions governing the demand for a poll, but CA 2006, s 321 lays down that such provisions in the company's articles shall be *void* in certain circumstances:

(a) *They must not exclude* the right to demand a poll at a general meeting on any question other than the election of the chairman or the adjournment of the meeting.
(b) *They must not try* to stifle a demand for a poll if it is made by:
  (i) *not less than five members* having the right to vote at the meeting; *or*
  (ii) a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; *or*
  (iii) a member or members holding shares in the company which confer a right to vote at the meeting and on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all such shares. For example, if the share capital of the company was 10,000 shares of £1 each with 50p per share paid, the company would have received £5,000 from the shareholders and those wishing to demand a poll under this head would have had together to have paid up £500.

Thus, the articles cannot prevent a fairly sizeable group of members from demanding a poll, and under CA 2006, s 329 the holder of a proxy can join in demanding a poll. As such, a proxy for five members could in effect demand a poll on his own. The right of a proxy to demand a poll (CA 1985, s 373(2)) is restated at CA 2006, s 329. CA 2006, s 322 has now