proposed date and time; (b) where it is to take place; and (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting. Notice of a directors' meeting must be given to each director, but need not be in writing. Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Article 10 provides for participation in directors' meetings. Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when the meeting has been called and takes place in accordance with the articles, and they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting. In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other. If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Article 11 provides that unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting. The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed, it is two. If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to appoint further directors, or to call a general meeting so as to enable the shareholders to appoint further directors.

Article 12 allows that directors may appoint a director to chair their meetings who for the time being is known as the chairman. The directors may terminate the chairman's appointment at any time. If the chairman is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Article 13 allows for casting vote procedures, namely, that if the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote. However, this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Article 14 provides that if a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes. However, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

Finally, pursuant to **Article 15**, the directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors. **Article 16** allows directors the discretion to make further rules: 'any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.'

With respect to the Model Articles for Public Companies, there are many similarities to the Model Articles for Private Companies except that there are some additional provisions respecting the more formal decision making processes of public companies.

Article 12 provides that (unlike in the private companies), the directors may appoint other directors as deputy or assistant chairmen to chair directors' meetings in the chairman's absence which are terminable at any time. If neither the chairman nor any director appointed generally to chair directors' meetings in the chairman's absence is participating in a meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Article 15 provides that a director who is also an alternate director has an additional vote on behalf of each appointor who is not participating in a directors' meeting and would have been entitled to vote if they were participating in it.

Article 16 provides that if a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes. A director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes when the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting; the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or the director's conflict of interest arises from a permitted cause. A 'permitted cause' includes: (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries; (b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and (c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

Article 17 provides that any director may propose a directors' written resolution but the company secretary must propose a directors' written resolution if a director so requests. A directors' written resolution is proposed by giving notice of the proposed resolution to the directors indicating the proposed resolution, and the time by which it is proposed that the directors should adopt it. The notice must be given in writing to each director and any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

Article 18 provides that a proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting. It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted. Once a directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a directors' meeting in accordance with the articles. The company secretary must ensure that the company keeps a record, in writing, of all directors' written resolutions for at least 10 years from the date of their adoption.

The powers of the directors must be exercised collectively at a board meeting and not individually, though an informal agreement made by them all will bind the company. This is envisaged by *Table A* which provides that a resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a

committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors; but a resolution signed by an alternate director need not also be signed by his appointor and if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.

A meeting of the board can be called by any director unless the articles otherwise provide. *Table A* provides that a director may, and the secretary shall at the request of a director, summon a meeting of the board. *Regulations 88–98 Table A (Proceedings of Directors)* remains unchanged since the passage of the CA 2006 as there are no comparable provisions in the CA 2006.

Notice of board meetings

Notice of a board meeting should normally be given to all the directors and the time must be reasonable. This may be a matter of days, hours, or even minutes, depending on the circumstances. It has been held that three hours' notice to directors who had other business to attend to was insufficient, even though their places of business and the place where the board meeting was to be held were all in the City of London (***Re Homer District Consolidated Gold Mines Ltd, ex parte Smith*** (1888) 39 Ch D 546). On the other hand, five minutes' notice to a director was held sufficient where neither distance nor other engagements prevented him from attending (***Browne* v *La Trinidad*** (1887) 37 Ch D 1). Notice of a board meeting need not be given to a director whose whereabouts are unknown because, for example, he is travelling, and *Table A* provides that notice need not be sent to a director who is for the time being absent from the United Kingdom, e.g. where he is absent on business; but unless the articles are in the form of *Table A*, notice must be given to all directors if their whereabouts are known.

The effect of failure to give proper notice is uncertain, but it is the better view that it does not render resolutions passed at the meeting void. The law is not entirely clear, but in ***Re Homer***, etc. (above) it was held that all resolutions passed at the meeting were void, whereas in ***Browne* v *La Trinidad*** (above) it was held that failure to give proper notice to a director merely entitles him to require that a second meeting be held if he does not attend the first. If he does not require a second meeting to be held within a reasonable time, then he waives his right to ask for it and the resolutions passed at the first meeting are then valid. The notice need only specify when and where the meeting is to be held. It is not necessary to set out the business to be transacted but in practice it is usual to do so.

Quorum

This is normally fixed by the articles, and *Table A* provides that the quorum shall be fixed by the directors and unless so fixed shall be two. A private company may have only one director, and if this is intended to be so in practice the articles should provide for a quorum of one. Alternatively, the sole director could presumably fix the quorum at one and minute the decision.

A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. This does not, of course, apply to a private company with only one director. Certainly no business can be validly transacted without a quorum, and the quorum must if the articles so require (***Re Greymouth Point Elizabeth Rail & Coal Co Ltd*** [1904] 1 Ch 32) consist of directors who are not personally interested in the business which is before the meeting, although in such a case interested directors are entitled to notice of the meeting and may attend and speak but not vote.

As regards personal interest, *Table A* provides as follows. A director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts, or may conflict, with the interest of the company unless his interest or duty arises only because the case falls within one or more of the following areas:

(a) the resolution relates to the giving to him of a guarantee, security or indemnity in respect of money lent to, or an obligation by him for the benefit of, the company or any of its subsidiaries;
(b) the resolution relates to the giving to a third party of a guarantee, security or indemnity in respect of an obligation of the company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
(c) his interest arises by reason of his subscribing or agreeing to subscribe for any shares, debentures, or other securities of the company or any of its subsidiaries, or by reason of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such shares, debentures or other securities by the company or any of its subsidiaries for subscription, purchase or exchange;
(d) the resolution relates in any way to a retirement benefit scheme which has been approved, or is conditional upon approval, by HMRC for taxation purposes.

For the purposes of *Table A* an interest of a person who is, for any purpose of the Companies Act, connected with a director shall be treated as an interest of the director and in relation to an alternate director, an interest of his appointor shall be treated as an interest of the alternate director in addition to his own interests. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote. A director may vote on the appointment of a fellow director to an office of profit under the company, but not on his own appointment. The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any pro-vision of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors. If the company is to have a listing on the Stock Exchange, the rules of the Stock Exchange require that the company's articles follow the above provisions of *Table A* in terms of directors' interests, otherwise a listing will not be granted.

Voting at board meetings

The voting at board meetings is usually governed by the articles and is normally one vote per director, but *Table A* provides, as we have seen, that directors with a personal interest in the business before the meeting are not allowed to vote. A majority of one will carry a resolution, though an equality of votes means that the resolution is lost, unless the position is resolved by the use of the chairman's *casting vote* if he is given one under the articles. *Table A* gives the directors power to appoint a chairman to preside at board meetings and give him a casting vote.

Minutes

Every company must keep minutes of all proceedings at directors' meetings, and where there are managers all proceedings at meetings of managers must be entered in books kept for that

purpose. When the minutes are signed by the chairman of the meeting, or by the chairman of the next succeeding meeting, they are prima facie evidence of the proceedings. The members have no general right to inspect the minutes of directors' meetings (***R* v *Merchant Tailors Co*** (1831) 2 B & Ad 115), but the directors have.

Meetings by telephone

As we have seen, *Table A* allows written resolutions of directors to be as effective as resolutions passed in a board meeting. Therefore, *Table A* does not require a 'face to face' meeting either in the 1985 version or the 1948 version (see Part I, Art 106 – plcs; and Part II, Arts 1 and 5 – private companies).

Thus, if the relevant provisions were altered to allow valid decisions to be taken by telephone, either by the chairman obtaining the agreement of the majority of the board having contacted them all by telephone or by means of a 'conference' call, there would be no need for a meeting of the board. Impersonation of a director could arise but should not in general be a serious problem. A record equivalent to minutes would have to be kept. As regards general meetings of members, this does not have the same impact for change in the articles as in the case of board meetings. In view of the written resolution procedure and the infrequency of general meetings compared with board meetings, there is obviously less point in such a change. After all, a unanimous written resolution is effective as soon as the last member has signed his copy and a telephone call to each member to ascertain this means that the business which was the subject matter of the resolution can be proceeded with. There is no need to wait until the separate copies are returned (though they must be) and collated in one place.

Resolutions – generally

First, it must be noted that written resolutions under Chapter 2 of Part 13 of CA 2006 are exclusively for the use of private companies. CA 2006, s 281 limits the ways in which resolutions can be passed and has the effect that written resolutions can only be passed using the procedure set out in Chapter 2 of Part 13. While the common law principle of unanimous consent does continue to apply under CA 2006, s 1(4)), CA 2006, s 300 provides that the articles of a private company cannot override the ability to pass written resolutions under Chapter 2 of Part 13 of CA 2006. As such, despite whatever a private company's articles might say, Chapter 2 of Part 13 of CA 2006 predominates. Again it is critical to note that the statutory written resolution procedure cannot be used by public companies at all pursuant to CA 2006, s 281(2)). Moreover, the common law position on unanimous consent also known as the *Duomatic* principle (see below) remains in effect under CA 2006, s 281(4).

At the same time, there are limitations on the use of written resolutions for private companies (CA 2006, s 288 (2)). Such a mechanism, for instance, cannot be used to remove a director from office before the expiration of his term in office under s 168; or the auditors from office before the expiration of their term in office under s 510. Instead, both of these decisions require actual meetings of the company's members to be held and require the special notice provisions as set out in CA 2006, s 312.

1 Special resolutions

A special resolution is one passed by a majority of not less than three-quarters of such members as are entitled to and do vote in person, or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given (CA 2006, s 283). CA 2006, s 307 removed one of the big differences between special and ordinary resolutions for non-traded companies that existed under CA 1985. CA 1985 required 21 clear days' notice for a meeting at which a special resolution was proposed to be passed and 14 clear days' notice was required for a meeting at which an ordinary resolution was to be passed.

CA 2006, s 307(1) now provides that any general meeting of a non-traded private company (other than an adjourned meeting) must be called by notice of at least 14 days (subject always to shorter notice being agreed by the members). The notice period no longer depends on the type of resolutions being proposed and is 14 days for all general meetings of non-traded private companies (and 14 days for all general meetings of non-traded public companies apart from annual general meetings of public companies, where the notice period remains 21 days under CA 2006, s 307(2)). CA 2006, ss 29 and 30 mandate the requirement for copies of all special resolutions that are passed to be filed with the Registrar of Companies within 15 days of the resolutions being passed. This requirement is carried over from CA 1985, s 380.

CA 2006, s 281 states that where any provision of CA 2006 requires a resolution of a company or its members and it does not specify what kind of resolution, an ordinary resolution will be required unless the company's articles require a higher majority or unanimity. When a provision specifies that an ordinary resolution is required, the articles will not be able to specify a higher majority.

CA 2006, s 283 defines a special resolution as a resolution passed by a majority of not less than 75 per cent. Section 283 distinguishes between a special resolution passed at a meeting on a show of hands and a special resolution passed on a poll taken at a meeting. CA 2006, s 283(4) provides that a resolution passed at a meeting on a show of hands is passed by a majority of at least 75 per cent if it is passed by not less than 75 per cent of the votes cast by those entitled to vote. CA 2006, s 283(5) provides a resolution passed on a poll taken at a meeting is passed by a majority of at least 75 per cent if it is passed by members representing 75 per cent (or more) of the total voting rights of members who, being entitled to vote, do so in person or by proxy.

CA 2006, s 283 deals with the situation of special resolutions passed by means of a written resolution. CA 2006, s 283(2) provides that a written resolution is passed by a majority of at least 75 per cent if it is passed by members representing at least 75 per cent of the total voting rights of eligible members. CA 2006, s 283(3) provides that where a resolution of a private company is passed as a written resolution, the resolution will not be a special resolution unless the written resolution states that the resolution was proposed as a special resolution. Accordingly, if the written resolution states that it was proposed as a special resolution, it may only be passed as such. Thus, it is now clear that a written resolution is specifically required to state on its face that it is intended as a special resolution for it to qualify as a special resolution. This brings written resolutions into alignment with special resolutions passed in general meetings which expressly require the statement in the notice of general meeting that the resolution is proposed as a special resolution.

CA 2006, s 283(6) indicates what is to be required to be included in a notice of general meeting at which a special resolution is proposed to be passed. Chiefly, the notice of general

meeting must specify the intention to propose the resolution as a special resolution but also specifies that the text of the special resolution must be included in the notice.

2 Ordinary resolutions

CA 2006, s 281 provides that, where any provision of CA 2006 requires a resolution of a company or its members and it does not specify what kind of resolution, an ordinary resolution will be required unless the company's articles require a higher majority or unanimity. When a provision specifies that an ordinary resolution is required, the articles will not be able to specify a higher majority. Extraordinary resolutions – found in the CA 1985 – was not incorporated into the CA 2006.

Ordinary resolutions are defined in CA 2006, s 282 as a resolution that is passed by a simple majority. The same section also distinguishes between an ordinary resolution passed at a meeting on a show of hands and an ordinary resolution passed on a poll taken at a meeting. Additionally, CA 2006, s 282(2) covers a written resolution that is passed by a simple majority if it is passed by members representing more than 50 per cent of the total voting rights of eligible members.

For companies incorporated before 1 October 2007, the Fifth Commencement Order (paragraph 2(5), Schedule 5) provides that if, immediately before 1 October 2007, the articles of a company provided for the chairman to have a casting vote in the event of equality of votes (whether on a show of hands or on a poll) on an ordinary resolution proposed at a general meeting and that provision has not been removed from the articles, it continues to have effect notwithstanding ss 281(3) and 282. In addition, if there was such a provision in the articles immediately before 1 October 2007 and it was removed from the articles on or after 1 October 2007, the company may, at any time, restore that provision and it will be effective notwithstanding ss 281(3) and 282. For traded companies only, this saving provision for the casting vote was removed from 3 August 2009, by the Companies (Shareholders' Rights) Regulations 2009.

CA 2006, s 282(5) provides that anything that may be done by ordinary resolution may also be done by special resolution.

Sections 29 and 30 (which came into force on 1 October 2007) provide that a copy of every resolution affecting a company's constitution must be forwarded to the Registrar of Companies within 15 days after it is passed. This includes resolutions to which the requirement applies by virtue of 'any enactment' (which could include ordinary resolutions if they affect a company's constitution).

There was no change made by the CA 2006 to the requirement for special notice of at least 28 days in respect of an ordinary resolution to remove a director before the expiration of his period of office (CA 2006, s 168) or remove an auditor before the expiration of his term of office (CA 2006, s 511).

Seconding resolutions

The chairman can put any resolution to the meeting without its being seconded though not if the articles forbid it (***Re Horbury Bridge Coal, Iron & Wagon Co*** (1879) 11 Ch D 109). Whether a resolution requires a seconder and whether that seconder must be a member depends upon the articles. *Table A* does not require a seconder at all so that the motion or resolution could be put to the meeting after proposal and no seconder is required at common law (see ***Re Horbury Bridge Coal, Iron & Wagon Co***, 1879, above).

Registration of resolutions

Special resolutions must be registered with the Registrar of Companies. This is achieved under CA 2006, s 30 by sending a printed copy of the resolution to the Registrar within 15 days after its passing. It is not necessary to send a *printed* copy of the resolution to the Registrar if instead the company forwards a copy in some other form approved by him. A copy of each such resolution must also be embodied in or attached to every copy of the articles of association issued after the passing of the resolution.

See p. 226

It has already been noted (see Chapter 11) that if shares in a public company are forfeited or surrendered to the company, the company must see to it that the shares are disposed of and if this has not been done within three years it must cancel the shares. If the result of this is that the company's issued share capital is brought below the authorised minimum, the company will have to apply for re-registration as a private company, and a resolution of the directors is sufficient to change the company's memorandum of association to prepare it for re-registration. That resolution of the directors is registrable with the Registrar within 15 days of its being passed.

The Electronic Communications Order 2000 enables the Registrar to direct that any document required to be delivered to him under the Companies Act or the Insolvency Act 1986 may be delivered electronically in a manner decided by him.

Ordinary resolutions requiring special notice

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

(a) to remove a director before the expiration of his period of office (CA 2006, s 168). The section does not prevent companies from attaching special voting rights to certain shares on this occasion (***Bushell* v *Faith***, 1969, see Chapter 21); or

See p. 438

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

It should be noted that the actual resolution need not be moved at the meeting by the same member who served the special notice.

Amendments

As regards amendments to resolutions, which must be set out verbatim, such as special and extraordinary resolutions, it is often suggested that no amendment is possible since the Companies Acts require *notice* of the resolution and some say, by implication, of any amendment, because if the resolution is changed by an amendment then proper notice has not been given of that part of it which was amended. It is generally believed that this view is too strict, and indeed in ***Re Moorgate Mercantile Holdings*** [1980] 1 All ER 40 Mr Justice Slade decided that such a resolution could depart in some respects from the text of the resolution set out in the notice, e.g. on account of correction of grammatical or clerical errors, or the use of more formal language. However, apart from alterations of form of this kind, there must be no alterations of substance; otherwise only where all the members (in the case of an annual general meeting) or a majority in number and 95 per cent in value of members (in the case of any

other meeting) have waived their rights to notice, could a special resolution be validly passed. The judge also decided that in the case of notice of intention to propose a special resolution nothing is achieved by the addition of such words as 'with such amendments and alterations as shall be determined on at the general meeting'.

The facts of the case were that the company wished to reduce its share premium account on the grounds that it had been lost in the course of trade. The share premium account to be cancelled was stated in the notice to be £1,356,900 48p. That figure included the sum of £321 17p which had been credited to the share premium account under an issue of shares made on the acquisition of the outstanding minority interest in a subsidiary. This share premium could not be regarded as lost. At the meeting the chairman proposed to amend the special resolution and, although not all the members of the company were present, a special resolution was passed in the following form: 'That the share premium account of the company amounting to £1,356,900 48p be reduced to £321 17p.' The court was then asked to agree to the reduction and the judge refused to do so on the grounds that the special resolution had not been validly passed.

Subject to what has been said above, once a resolution has been moved and, if the articles require, seconded, any member may speak and move amendments. No notice of the amendments is required unless the amendment effects a substantial change in the original resolution, i.e. is the change such that a reasonable man who had decided to absent himself from the meeting would have decided to come if he had received notice of the amended resolution? This is a decision which the chairman must take and hope that if his decision is questioned in court the judge will agree with him. For example, in ***Re Teede and Bishop Ltd*** (1901) 70 LJ Ch 409 it was held that at a meeting to resolve that A Ltd should be sold to B Ltd and then that A Ltd should be wound up, it was not in order to accept an amendment that A Ltd be wound up without the sale to B Ltd unless notice had been given of it.

Amendments must be put to the vote before the resolution is voted upon. Improper refusal by the chairman to put an amendment renders the main resolution void (***Henderson*** **v** ***Bank of Australasia*** (1890) 45 Ch D 330).

Resolutions and the '*Duomatic* principle' of unanimous consent

Where all the shareholders of a company assent to a matter that could be brought into effect by a resolution in general meeting the unanimous consent of the shareholders without a formal meeting is enough. This is called the '*Duomatic* principle' from the case in which it was most famously canvassed, i.e. ***Re Duomatic*** [1969] 1 All ER 161. Alterations in the articles can be achieved in this way and in this connection the *Duomatic* principle has been applied to changes in shareholders' agreements that are often used in private companies to supplement the articles in confidential areas of governance (see ***Euro Brokers Holdings Ltd*** **v** ***Monecor (London) Ltd*** [2003] 1 BCLC 506).

Written resolutions for private companies (s 288, CA 2006 *et seq*.)

Written resolutions no longer have to be agreed by all members, but merely a simple majority or a three-quarters majority as appropriate depending on whether a resolution is ordinary

or special (CA 2006, ss 281(2) and 283(2)). Two types of resolution for which the written resolution is not permissible are the resolution to remove a director (CA 2006, s 168) and the resolution to remove an auditor (CA 2006, s 510). These two exceptions are in effect even for a private company and nothing in the articles of any company may preclude these provisions requiring a meeting (CA 2006, s 510). CA 2006, ss 288(4) and (5) contain saving provisions for those written resolutions entered into before Chapter 2 comes into force. CA 2006, s 296 sets forth the procedure for a member to signify his agreement to a proposed written resolution. CA 2006, s 291 governs written resolutions proposed by directors while CA 2006, s 292 governs written resolutions proposed by members. CA 2006, s 298 governs situations involving electronic communications with respect to written resolutions.

There are some cases where the written resolution procedure cannot be used, e.g. the removal of a director or auditor by ordinary resolution after special notice to the company. The ordinary resolution must be passed at a meeting of the company because the director or auditor concerned is allowed to make representations as to why he should not be removed, either in writing with the notice of the meeting, or orally at the meeting.

The company is required to keep a record of written resolutions and the signatures of those members who signed them in a record book which is, in effect, a substitute for what would, in the case of a meeting, be the minutes.

Written resolutions: special adaptations

Schedule 15A of the CA 1985 formerly contained special adaptations to the written resolution procedure in certain circumstances, e.g. where documents have to be available at the meeting at which the resolution is passed, if that method were followed instead of a written procedure where there is no meeting, as in approval of a director's service contract exceeding five years, where the contract must be supplied to members before or at the time of signing the resolution instead of being available at the meeting where a non-written resolution is passed. These can now be found in the CA 2006: ss 571(7), 573(5), 695(2), 698(2), 696(2), 699(2), 717(2), 718(2) and 188(5).

Filing of written resolutions

There is no general need to file a written resolution with the Registrar unless it takes effect, e.g. as a special or elective resolution or an ordinary resolution increasing authorised share capital. Even where a written resolution does have to be filed, there is no requirement to file the original. A copy can be filed and the signed copy kept in the minute book. In connection with the filing of written resolutions, Companies House states that it has received copies of 'written special resolutions'. There is, of course, no such thing. There are written resolutions *which take effect as special resolutions*. It would be a better approach to indicate on the filed copy and minute copy of the resolution that it took effect as a special resolution.

Involvement of auditors

CA 2006, s 502, replacing CA 1985, s 390, requires an auditor to receive much of the information that members of the company are entitled to receive including information concerning written resolutions of a private company and notices of and communications relating to a general meeting of a company.

Meetings of single-member companies

The amendments of the law relating to meetings to accommodate the single-member company have already been considered in Chapter 1 See p. 2.

Electronic communications – CA 2006

The electronic communications provisions of Companies Act 2006, namely, ss 1143–1148, Schedules 4 and 5 have now been implemented. It should be noted at first that these provisions apply to all types of companies. The earlier distinctions made between companies whose shares are traded on a stock exchange and those whose shares were not traded has been eliminated. CA 2006 allows any information or documents to be communicated in electronic form, provided that the requirements of the CA 2006 are met.

Definitions of electronic form and electronic means (CA 2006, s 1168)

A document sent in 'electronic form' means that the document or information is sent or supplied by electronic means (for example, by e-mail or fax) or by any other means while in electronic form (for example, sending a disk by post). The same section also states that a document or information is sent by 'electronic means' if it is sent initially and received at its destination by means of electronic equipment for the processing or storage of data or entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means. A document or information sent by 'electronic means' must also be sent in such a form that the sender or supplier *reasonably considers* will enable the recipient to read it and retain a copy of it. In CA 2006, s 1169 'read' means that the document or information can be read with the naked eye, or, if it consists of images, pictures, maps, plans or drawings, etc., it can be seen with the naked eye.

CA 2006 – Schedules 4 and 5

CA 2006 makes a distinction between communications by a company (Schedule 4) and communications to a company (Schedule 5). Please note however that in the situation where there are two companies communicating, e.g., a proxy fight, it is only the rules relating to communications by a company that are applicable.

Schedule 4 – Communications to a company

If the company agrees, documents may be sent to or served on it by electronic means. The address is that specified by the company and so, for example, it could be an email address or fax number. In some situations, the company is deemed to have consented to receiving documents electronically. For example if it publishes an electronic address in a notice convening a general meeting, CA 2006 provides that the company is deemed to have consented to receiving documents relating to that meeting, such as proxies, at that electronic address. If a document is sent in electronic form by hand or by post (e.g. a CD-ROM or floppy disk)