

KEY FACTS COMPANY LAW



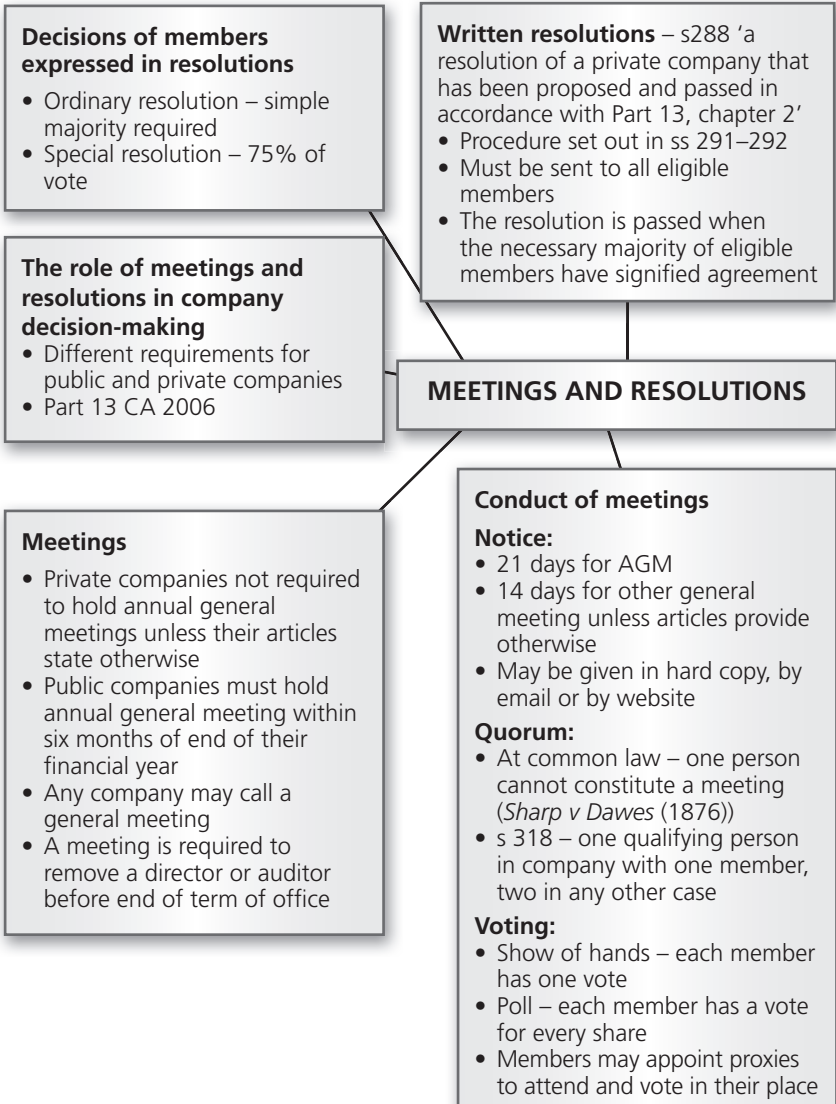
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 **HODDER**
EDUCATION

6

Meetings and resolutions



6.1 Introduction

6.1.1 The role of meetings and resolutions

1. A company, as an artificial person, is able to act only through its agents. By appointing the board of directors the shareholders in general meeting appoint agents to act for the company. The articles of association generally provide that the business of the company shall be conducted by the board of directors.
2. Usually, the role of shareholders in general meeting is a residual one, but note:
 - the shareholders can give directions to the board by special resolution;
 - certain statutory provisions, and sometimes the articles themselves, require the authority of shareholders before action can be taken by the board;
 - shareholders in general meeting may appoint the directors, in accordance with the company's articles, and under s 168 Companies Act 2006 they have power to remove directors by ordinary resolution.
3. Shareholder meetings and written resolutions are the mechanisms by which shareholders exercise those decision-making rights that are reserved to the company by the Companies Act 2006 (CA 2006).
4. A formal mechanism for exchanging information and making certain important decisions is needed and, in the case of public companies, the meeting is the focus of corporate decision-making by the shareholders and accountability on the part of the directors.

6.1.2 Public and private companies

1. The annual general meeting (AGM) has long been recognised as an unsatisfactory forum for the exchange of views and decision-making in modern companies, although the reasons for this differ between public companies on the one hand and private companies on the other.
2. Public companies often have very large numbers of shareholders, some of whom are small private investors, while others are institutional shareholders.
 - Annual general meetings tend to be poorly attended and private investors tend to have little influence on decisions taken.

- Institutional shareholders with large holdings of shares often exercise their influence outside the annual general meetings.
3. Shareholders in private companies tend to be fewer in number and less widely dispersed. In the case of small private companies (quasi-partnerships) the shareholders may all themselves be directors and work closely together in running the company, so the need for a formal AGM has been questioned.
 4. Part 13 of the CA 2006 replaces Part 11, Chapter 4 of the CA 1985 and contains the provisions relating to meetings and resolutions. There are a number of amendments, many of which were designed to enhance the involvement of shareholders in public companies and to reduce the administrative burden on private companies.
 5. Under CA 1985 a private company was able to dispense with annual general meetings, but was required to pass a resolution if it wished to do so. CA 2006 reverses the situation and there is now no requirement for a private company to hold annual general meetings, unless it includes a provision in its articles requiring such meetings.
 6. Decisions in private companies, which under CA 1985 were assumed to be taken by resolution in general meeting, will under the CA 2006 be taken by written resolution without the need for a meeting.
 7. A private company is still required to hold a general meeting in order to remove a director or to dismiss an auditor before the end of his term of office. Also, a general meeting can be called by the directors at any time or by members representing 10% of the voting shares, or 5% if it is more than 12 months since the last shareholder meeting.

6.2 Resolutions

Decisions of the company made by members are expressed in resolutions, either passed at a general meeting in the case of a public company, or by the written resolution procedure in the case of a private company with no constitutional requirement to hold AGMs.

6.2.1 Ordinary resolutions

1. An ordinary resolution is defined by s 282(1) CA 2006 as one that is passed with a simple majority.
 - (a) In the case of a written resolution this requires a simple majority of

the total voting rights of eligible members (s 282(2)). The written resolution procedure is available only to private companies.

- (b) A resolution passed at a meeting on a show of hands requires a simple majority of members who, being entitled to do so, vote in person on the resolution, and persons who vote as duly appointed proxies (s 282(3)).
 - (c) On a poll a resolution is passed by a simple majority of the total voting rights of members who vote in person or by proxy (s 282(4)).
2. Unless otherwise stipulated in the Companies Act or in the company's constitution, company decisions can be taken by ordinary resolution.
 3. Note in particular that an ordinary resolution is required to remove directors (s 168).

6.2.2 Special resolutions

1. A special resolution is defined by s 283(1) as one that is passed by not less than 75%.
 - (a) s 283(2) provides that in the case of a written resolution this means not less than 75% of the total voting rights of eligible members.
 - (b) Under s 283(3) a resolution is not a special resolution unless it is stated that it is proposed as a special resolution and it is one that can only be passed as a special resolution.
 - (c) s 283(4) provides that a special resolution passed at a meeting on a show of hands requires 75% of members who, being entitled to do so, vote in person on the resolution and those who vote as duly appointed proxies.
 - (d) s 283(5) provides that on a poll taken at a meeting a special resolution is passed by a majority of not less than 75% of the total voting rights of members who, being entitled to do so, vote on the resolution.
2. Under CA 2006 a special resolution is required for a large number of purposes, including:
 - to alter the articles of association (s 21));
 - to change a company's name, unless the company's articles provide for another method (s 77);
 - to approve a reduction of capital (s 641(1)).
3. The Insolvency Act 1986 requires a special resolution, for example:
 - to resolve that the company should be wound up voluntarily (s 84(1)(b));

- in a members' voluntary liquidation, to approve the transfer of shares to another company (s 110(3));
- to resolve to petition for a compulsory winding up (s 122(1)(a)).

6.2.3 Unanimous assent of all members

1. It is well established that the unanimous agreement of all members is effective, even if a meeting is not held: *Cane v Jones* (1981); *Re Duomatic* (1969). Such agreement must be notified to the register under s 30 CA 2006.
2. It should be noted, however, that unanimous assent will not be effective where a statutory provision requires more than just a resolution, for example where a particular procedure is required as for the removal of a director or auditor.

6.3 Written resolutions

1. A written resolution is defined in s 288 CA 2006 as 'a resolution of a private company that has been proposed and passed in accordance with Chapter 2, Part 13'. A written resolution may be proposed by the directors or by members.
2. Under CA 1985 a written resolution required the unanimous support of all members. This is no longer the case – see sections 6.2.1 and 6.2.2 above.
3. The procedure for written resolutions proposed by the directors is set out in some detail in s 291 CA 2006:
 - (a) The resolution must be sent to every eligible member by one or a combination of the following:
 - in hard copy;
 - by email;
 - by the website.
 - (b) A company using email or the website must have the consent of shareholders to use these forms of communication (s 1144(2) and Schedule 5).
 - (c) The resolution must be accompanied by a statement setting out how a shareholder must signify agreement and by notification of the date by which the resolution must be passed if it is not to lapse. Section 297 provides that the period in which agreement must be signified is as specified in the articles, or if no period is specified, 28 days beginning with the circulation date.

- (d) A resolution is passed as soon as the necessary majority of eligible members have signified agreement. It will lapse if it is not passed before the end of the period specified in the articles or, if none is specified, 28 days.
4. Sections 292–295 deal with the procedure for written resolutions proposed by members.
 - (a) Shareholders who hold 5% of the voting rights can require the directors to circulate a proposed resolution. Directors are not required to circulate a resolution if it would be ineffective even if passed, if it is defamatory or if it is frivolous or vexatious.
 - (b) Members may require a statement of not more than 1,000 words to be sent with the proposed resolution.
 - (c) The members requiring circulation are liable to pay the expenses.

6.4 Meetings

6.4.1 Meetings under CA 2006

1. Public companies are required under s 336(1) to hold an annual general meeting within six months of the end of their financial year. The main purpose of an AGM is to consider the accounts and reports of the auditors and directors; to declare any dividend and to elect directors and auditors. Section 337 provides that the notice calling an AGM must state that it is an annual general meeting.
2. Private companies are not required by the Act to hold an AGM, but must do so if their articles so provide.
3. A general meeting can be called by all companies and is required in order to remove a director or dismiss an auditor before the end of his term of office.
4. Directors have the power to call a general meeting under s 302. The concept of the extraordinary general meeting has been abolished by the CA 2006.
5. Under s 303 directors must call a general meeting if requested:
 - (a) in the case of a public company, by members holding 10% of the voting rights;
 - (b) in the case of a private company, by members holding 10% of the voting rights, or 5% if a general meeting has not been held for more than 12 months.

6. Class meetings must be held in certain circumstances. This is a meeting open to members of a particular class of shareholders or creditors (see chapters 7 and 16).

6.4.2 Conduct of meetings

1. Notice

- (a) Members must be given 21 days notice for an AGM of a public company unless all members entitled to attend and vote agree to a shorter period: ss 307(2) and 337(2).
- (b) 14 days notice is required for any other general meeting, unless the articles specify a longer period: s 307(1)–(3).
- (c) Special notice of 28 days is required for a resolution at an AGM to remove an auditor from office, or providing that a retiring auditor will not be re-appointed (ss 511, 514, 515), or to remove a director under s 168.
- (d) No business may be brought to a meeting unless notice has been given.
- (e) Notice may be given in hard copy, electronic form or by a website, or by a combination. Electronic form and the website may be used if a member has agreed that notice may be given in that way. If the website is used, members who have agreed to receive notice in that way must be notified that notice has been posted.

2. Quorum

- (a) At common law, one person cannot constitute a meeting: *Sharp v Dawes* (1876); *Re London Flats Ltd* (1969). However, this has been varied by the Companies Act, for example:
 - class meetings where there is only one member of the class;
 - under s 306 CA 2006 the court may order a meeting to be held and fix the quorum at one (*Re El Sombrero Ltd* (1958); *Re Sticky Fingers Restaurant Ltd* (1992)).
- (b) Section 318 CA 2006 provides that the quorum for a valid meeting is one ‘qualifying person’ in a company with only one member and two in any other case, unless the articles provide otherwise. A qualifying person is a member, the representative of a corporate member or a proxy.
- (c) No business can be done unless a quorum is present.

3. Voting

- (a) Generally voting at general meetings is by show of hands with each member having one vote.

- (b) A poll may be demanded in accordance with the statute and the articles, in which case a written record is kept and each member has a vote for every share held: s 284.
- (c) Section 321 lays down minimum requirements as to who may demand a poll at general meetings.
- (d) Section 322 provides that on a poll at a general meeting a member who is entitled to more than one vote need not cast all his votes in the same way.
- (e) If a poll is held at a general meeting of a quoted company the results must be published on the company's website in accordance with s 341.
- (f) Members of a quoted company may also require directors to provide an independent report on any poll taken at an AGM.
- (g) These measures are designed to enhance transparency.

4. Proxies

- (a) A member can appoint a proxy to attend, speak and vote at a meeting. A proxy may vote on both a show of hands and a poll.
 - (b) Section 323 allows a corporate member to appoint a human representative with the same powers as an individual member.
5. Under s 355(2) records of meetings and resolutions must be kept for 10 years from the date of the resolution, meeting or decision. Under previous legislation there was no statutory requirement.
6. A meeting can be held by telephone (*Re Associated Colour Laboratories Ltd* (1970)).
7. A meeting can be held in different rooms with audio-visual links between them (*Byng v London Life Association Ltd* (1990)).