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THE CONCEPT OF A MEETING AND QUORUM

Introduction

The need to hold a meeting will arise in many different and diverse situations. All meetings are subject to procedural rules and regulations of the particular institution that has convened the meeting. The reason why there are rules and regulations is so that the participants at a duly convened meeting can transact business in a lawful manner and so that they will be able to debate and discuss issues in an orderly fashion. This book is concerned with the meetings of solvent companies that are registered and incorporated under the statutory provisions regulating companies. The reason for the requirement for meetings under the Companies Act 2006 (CA 2006) is so that the members can attend either in person or by proxy in order to debate and vote on matters affecting the affairs of a company. There are a number of procedures, some that are derived from the common law and others that are the creation of statute, that have to be observed in order for a meeting of a company to transact business in a lawful and regular manner. **1.01**

However, the requirement for holding a general meeting of shareholders, which was regarded as an essential requirement for the conduct of the affairs of a properly managed company in earlier legislation, has been relaxed in recent years in many Commonwealth jurisdictions including the UK. Parliament has recognized that, especially in relation to smaller, private companies, the holding of a meeting, even the annual general meeting, can be a burdensome and unnecessary formality. Practicality indicates that decisions in such companies are usually taken informally on a regular or irregular basis and the law has been adapted to reflect this. What is nowadays generally required instead is a written record of what has been decided. In New Zealand, for example, every company can dispense with the holding of meetings, even an annual meeting provided that everything that is required to be done at that meeting (by resolution or otherwise) is done by resolution in writing in accordance with the procedure specified in s 122 of the New Zealand Companies Act 1993.¹ In the UK the legislation does not go quite as far as this, as the statutory procedure for written resolutions in lieu of a general meeting in Chapter 2 of Part 13 of the CA 2006 (ss 288 to 300) is restricted to the use of private companies only. The topic of Written Resolutions is examined in detail in Chapter 15. **1.02**

Section 301 of the CA 2006 expressly provides that a resolution of a company is validly passed at a general meeting if (a) notice of the meeting and of the resolution is given, and **1.03**

¹ See New Zealand Companies Act 1993, s 122(4).

(b) the meeting is held and conducted, in accordance with the provisions of Chapter 3 of Part 13 (ss 301 to 335) and, where relevant, with the provisions of Chapter 4 of Part 13 (the additional requirements for the annual general meetings of public companies and traded companies)² and with the company's articles. While these extensive legal requirements will be examined in the chapters which follow, the purpose of this chapter is to consider the nature of a meeting.

What is a Meeting?

1.04 As a general rule a meeting usually means a coming together of more than one person. This basic proposition is illustrated by the important decision of the Court of Appeal in *Sharp v Dawes*.³ This case concerned the legitimacy of a meeting purportedly held by a Cornish cost-book mining company called the Great Caradon Mine. The legislation governing the company was the Stannaries Act 1869, for tin mining companies were unincorporated entities and governed by special statutes. A meeting of the mining company was convened for the purpose of making a call on the shares.⁴ Only one member holding 25 shares, a Mr RH Silversides, attended the meeting and he took the chair. Also, in attendance at the meeting was the secretary of the mining company, who was not a member. Proceedings were purportedly transacted at the meeting attended only by Mr Silversides. Following the meeting a notice was sent by the secretary of the company to the members, recording that a general meeting of the shareholders had been held at 2, Gresham Building, Basinghall Street, London EC on Wednesday, 30 December 1874 and that five resolutions had been passed. It stated that among other things, a resolution had been passed that a call of four shillings and sixpence per share be made and be payable to the secretary, and that a discount of 5% be allowed if the call was paid by a certain date. The notice sent to the members recorded that at the conclusion of the meeting Mr Silversides had proposed and passed a vote of thanks to himself as chairman.

1.05 The over-confidence of Mr Silversides evidenced by the self-congratulatory resolution of thanks was short-lived. In due course one member, Mr Dawes, refused to pay the call. Proceedings were taken in the name of the secretary of the company, Mr Granville Sharp, against Mr Dawes to enforce the payment of the call. The Court of Appeal held that as the meeting had been attended by only one person, it was invalid, as the attendance of Mr Silversides alone could not constitute a meeting. Consequently, the meeting was a nullity and the call was invalid. In the course of his judgment Lord Coleridge CJ said:⁵

... the [Stannaries] Act [1869] says that a call may be made at a meeting of a company 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 sixth and seventh sections of the Act show conclusively that there must be more than one person present; and 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'

² See CA 2006, ss 336 to 340B (inclusive).

³ (1876) 2 QBD 26 (CA).

⁴ A call is a procedure for demanding payment of the unpaid proportion of share capital.

⁵ (1876) 2 QBD 26 at 28–9 (CA).

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.

The general rule that a meeting is comprised of more than one person

The important decision of the Court of Appeal in *Sharp v Dawes*⁶ establishes the conventional legal meaning of the word ‘meeting’ in the context of shareholders as an assembly or the coming together of two or more such persons. The decision in *Sharp v Dawes*⁷ was followed and applied in *Re Sanitary Carbon Co.*⁸ In this case a sole shareholder, named Mr Worswick, was the only person present at a meeting and he also held proxies for all the other three shareholders. Mr Worswick voted himself into the chair, proposed a resolution to wind up the company voluntarily, declared the resolution passed and appointed a liquidator. The purported passing of a resolution to wind up the company was set aside because on the facts there had been no meeting and a compulsory winding up order was made. **1.06**

The importance of the decision in *Sharp v Dawes*⁹ is illustrated by the fact that it has been followed and applied in many subsequent cases including *James Prain & Sons, Petitioners*,¹⁰ *Re London Flats Ltd*,¹¹ *In re MJ Shanley Contracting Ltd*,¹² *New Cedos Engineering Co Ltd*¹³ and most recently in *Re Altitude Scaffolding Ltd; Re T & N Ltd*.¹⁴ **1.07**

In *Re London Flats Ltd*¹⁵ a meeting of shareholders was called to consider a resolution to appoint a successor to a liquidator who had died. One of the only two shareholders present proposed an amendment to substitute his own name, at which point the other shareholder left the meeting which the remaining shareholder purported to continue alone. The remaining shareholder then purported to appoint himself as liquidator. When the appointment was challenged the court held that the appointment was invalid for the reason that the applicant had left the meeting and that from that moment there was only one member present and therefore no meeting. Plowman J acknowledged that there were exceptional cases prescribed in the statute which enabled one member of a company to constitute a meeting. However, those exceptional cases had no application to the facts before Plowman J. The purported appointment of the liquidator was a nullity as the meeting was invalid from the moment the quorum ceased to exist. **1.08**

The strength of the conventional position

The nineteenth-century authority of *Sharp v Dawes* on the basic concept of a meeting is a fundamental tenet of company law, and although there are exceptions¹⁶ to this principle that have become well established, a court will be reluctant, and rightly so, to condone any radical departure from the conventional position. This is illustrated by the more recent decision **1.09**

⁶ (1876) 2 QBD 26 (CA).

⁷ (1876) 2 QBD 26 (CA).

⁸ [1877] WN 223.

⁹ (1876) 2 QBD 26 (CA).

¹⁰ 1947 SC 325.

¹¹ [1969] 1 WLR 711 (Plowman J).

¹² (1980) 124 Sol Jo 239.

¹³ [1994] 1 BCLC 797 at 813–14 (Oliver J).

¹⁴ [2007] 1 BCLC 199 (David Richards J).

¹⁵ [1969] 1 WLR 711.

¹⁶ The exceptions are considered at paras 1.15 and following.

of David Richards J in *Re Altitude Scaffolding Ltd; Re T&N Ltd*,¹⁷ in the context of scheme meetings convened by the court for the purposes of considering schemes of arrangement under the Companies Act 1985 (CA 1985), s 425.¹⁸ The issue before the court in this case was whether the attendance in person or by proxy of one member of a class of creditors at the time and place fixed for a meeting convened to consider a scheme of arrangement under CA 1985, s 425 would constitute a meeting of the class for the purposes of that section.

- 1.10** In a carefully reasoned judgment containing a detailed review of the relevant authorities, David Richards J held that unless the conditions in CA 1985, s 425 were satisfied, there was no jurisdiction to sanction the scheme so as to be binding on the class in question, and CA 1985, s 425 required that a meeting be summoned and held. David Richards J held that the submissions made on behalf of the applicant companies that only one member of the class present could constitute a sufficient quorum for a meeting involved not an exception to the ordinary meaning of the term ‘meeting’, but its complete replacement. He held further that as Parliament had used the word ‘meeting’ in the statute there was no real basis for concluding that it had been intended to have any but its ordinary legal meaning, save for the exceptional case of the single member of the class or perhaps the case where it was established that it had been impossible for any other member of the class to attend in person or by proxy.
- 1.11** The court accepted that it was inevitable from the need where appropriate to divide members or creditors into different classes for the purposes of a scheme of arrangement, that a class might in some cases comprise a single person; to deny that such a situation can and often does arise would be unrealistic. In the case of a class comprised of a single member, it was not essential to convene a meeting of that class, because it was well established that a member or creditor might by his individual consent agree to be bound by a scheme of arrangement. However, on the facts of the case there was no evidence before the court that there was only one creditor in any particular class. As a result, the limited qualification to the ordinary meaning of the word ‘meeting’ that had been applied in established authorities did not apply. The ordinary meaning of the word ‘meeting’, as a coming together of two or more persons, was well established in the context of companies. The case of the single member of the class had been treated in the authorities as exceptional, resulting in what the legislature or other framers of the document in question would have intended to be an extended meaning to cover that case. The court concluded that it had no jurisdiction to sanction the scheme in the case of *Altitude Scaffolding Ltd*, and that the direction sought by the administrators of *T&N Ltd* in advance of their meetings, namely that the attendance of one creditor alone should constitute a meeting, would not be made.

Modern technology and the concept of a meeting

- 1.12** The older authorities such as *Sharp v Dawes*¹⁹ and *In Re Sanitary Carbon Co*²⁰ considered the concept of a meeting in terms of members being physically present in order to debate and vote on matters. The advances in modern technology now mean that debate and discussion can take place without the need to be physically present in the same venue. Adequate audio-visual links in order to enable all those in different locations to see and

¹⁷ [2007] 1 BCLC 199.

¹⁸ See further Ch 14.

¹⁹ (1876) 2 QBD 26 (CA).

²⁰ [1877] WN 223.

be seen, to hear and be heard in the meeting will be accepted as constituting a valid meeting.²¹ The use of modern technology in relation to meetings was not universally accepted. In the Canadian case of *Re Associated Color Laboratories Ltd*²² it was held that two persons were unable to hold a meeting by telephone. The decision failed to appreciate that the fundamental nature of a meeting is the ability of all those who are present to be able to participate in the proceedings of the meeting. The effect of the decision was reversed in respect of meetings of directors by subsequent legislation in Canada. It is now well established that a meeting can be held with participants at more than one venue where there is two-way, real time communication between the participants. But what if communications fail? If technology is used for a meeting of members it would be sensible to check throughout the course of the meeting that the ability of the members to see, be seen, hear and be heard remains active. Indeed it is an essential requirement of a meeting that all those participating can hear what is taking place and can be heard by the other persons present. If the equipment fails, the meeting must be adjourned while repair is attempted. If the problem cannot be fixed the meeting must be terminated and adjourned to another date.

Section 360A of the CA 2006²³, which is headed ‘Electronic meetings and voting’, provides that nothing in Part 13 of the Act is to be taken as precluding the holding and conducting of a meeting in such a way that persons who are not present together at the same time may by electronic means attend and speak and vote at it. The section therefore gives the green light to the holding of a general meeting through the use of modern electronic communications. However, the section goes on in subs (2) to state that in the case of a traded company²⁴ the use of electronic means for the purpose of enabling members to participate in a general meeting may be made subject only to such requirements and restrictions as are necessary to ensure the identification of those taking part and the security of the electronic communication, and are proportionate to the achievement of those objectives. The aim of this provision would appear to be to curtail limitations on participation by members in voting at meetings by electronic means and to encourage the fullest involvement by shareholders in the affairs of their company. The only caveat is to be found in s 360A(3) which states that nothing in subs (2) affects any power of a company to require reasonable evidence of the entitlement of any person who is not a member to participate in the meeting.

1.13

The CA 2006 Model Articles²⁵ recognize the modern practice by expressly providing that the directors of a company may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak and vote at it. Further, in determining attendance at a general meeting, it is immaterial whether any two or more persons attending it are in the same place as each other. Where they are not in the same place they are to be regarded as attending the meeting if their circumstances are such that if they have or were to have the rights to speak and vote at that meeting, they are or

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²¹ See *Byng v London Life Association Ltd* [1990] Ch 170 (CA).

²² (1970) 12 DLR (3d) 388.

²³ Inserted by the Companies (Shareholders' Rights) Regulations 2009, SI 2009/1632, reg 8, from 3 August 2009.

²⁴ Defined by CA 2006, s 360C as a company any shares of which carry rights to vote at general meetings, and are admitted to trading on a regulated market in an EEA state by or with the consent of the company.

²⁵ See Companies (Model Articles) Regulations 2008, SI 2008/3229, Schs 1 to 3.

would be able to exercise them.²⁶ These Model Articles are prescribed by the Secretary of State under the CA 2006, s 19(1). A company may adopt all or any of the provisions of the Model Articles,²⁷ which perform the same function for UK companies as Tables A to C in previous legislation. The Model Articles are likely to be incorporated in the regulations of the majority of new companies created in the UK under the CA 2006.

Exceptions to the general rule

- 1.15** Over the years a limited number of exceptions to the general rule that more than one person must be present in order to constitute a valid members' meeting have arisen. In certain circumstances it is possible for a valid meeting to take place that is attended by only one person. Each of these exceptions will be considered in turn.

Single member companies

- 1.16** A fundamental change to the orthodox position of companies being comprised of more than one person was introduced to the legislation in 1992. On 15 July 1992 with the advent of the Companies (Single Member Private Limited Companies) Regulations 1992²⁸ it became possible to incorporate and register a private company with a single member under CA 1985, s 1(3A). The provisions in these regulations implemented changes to CA 1985 and 1985 Table A to reflect the fact that a company could come into existence with a sole member. In particular a new section, CA 1985, s 370A, was introduced which provided:

Notwithstanding any provision to the contrary in the articles of a private company limited by shares or limited by guarantee having only one member, one person present in person or by proxy shall be a quorum.

- 1.17** Single member companies are permitted under CA 2006, s 38,²⁹ which provides that any enactment or rule of law applicable to companies formed with two or more persons or having two or more members applies with necessary modifications to a company formed by one person and having only one person as a member.

CA 2006, s 318

- 1.18** Provision for single member companies is now to be found in CA 2006, s 318, which 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 and thus a valid meeting.³⁰ In all other cases two qualifying people must be present, subject to the proviso that they must not both represent the same member.³¹
- 1.19** Where a meeting is held in relation to a company that has only one qualifying member there can be evidential problems with regard to what was done at the meeting. In order to address such issues CA 2006, s 357 imposes a requirement on a single member company to take the decision in the form of a written resolution, or for the single member to provide

²⁶ See Model Articles for private companies limited by shares art 37(3), (4) and (5); Model Articles for public companies art 29(3), (4) and (5).

²⁷ See CA 2006, s 19(3).

²⁸ SI 1992/1699.

²⁹ The European Directive permitting single member private limited companies has been revised and codified in Directive 2009/102/EC of 16 September 2009.

³⁰ A qualifying person is defined in CA 2006, s 318(3).

³¹ See the commentary on s 318 at paras 23.246–23.251 below.

the company with a written record of the decision. This requirement under CA 2006, s 357 is not a complete answer to the practical problems of a single qualifying member proving what decisions have been taken and failure to comply with s 357 does not invalidate the decision.³² However, the section performs an important function by emphasizing the distinction between a sole member deciding on a course of action and a resolution of the company that is recorded by the single member. In practice the member should sign the record and date it.

A situation can arise where a single person becomes the only enfranchised shareholder in a company, for example where in a 'two-man' company one of the members dies and no steps are taken to administer the estate of that deceased person. In such a case the register of members would record the names of two shareholders and the commonplace articles of association would reflect the usual rule of two persons being necessary for a quorum at a general meeting. The only shares capable of being voted at a general meeting would be those of the surviving member. In such a situation it is to be doubted whether a meeting attended by the single surviving shareholder would be valid and capable of transacting lawful business. In such circumstances it is plain that it would be impracticable to hold a meeting as it will be impossible to form a quorum. The remedy is provided by way of an application to the court under CA 2006, s 306.³³ **1.20**

Single member holding all the shares of a particular class

If a single member holds all the shares of a particular class, for example all of a class of preference shares, the assent of that single shareholder will be valid. The case of *East v Bennett Bros*³⁴ concerned the requirement in the memorandum and articles of association of a company for approval for an issue of new shares to be given by a resolution passed at a separate meeting of the preference shareholders. On the facts there was only one preference shareholder. Warrington J identified the relevant question as whether: **1.21**

[O]n the construction of this particular memorandum and the particular part of it, can there be such a thing as a meeting of one shareholder? It is not a question of there being several shareholders, and one shareholder only attending the so-called meeting, but where there is only one shareholder, so that a meeting in the sense of an assembly of persons is impossible. The object of the provisions in the memorandum is quite plain. It is to obtain, before the issue of new shares, the assent in a binding and formal manner of the person or persons whose rights are affected.

Warrington J went on to state, referring to *Sharp v Dawes* and *In re Sanitary Carbon Co* that, 'In an ordinary case I think it is quite clear that a meeting must consist of more than one person' but, in circumstances where there was only one member of the class, he held that 'meeting' included the case of a single shareholder. Warrington J said:³⁵ **1.22**

But now what I have to consider is whether this is not one of the cases referred to by Lord Coleridge CJ as one in which it may be possible to show that the word 'meeting' has a

³² See the commentary on s 357 at paras 23.482–23.485 below. A similar function to that of CA 2006, s 357 is performed by s 249B of the Australian Corporations Law. For an analysis of the legislation and of the problems of proving the passing of a resolution in a single member company see *Sheahan v Londish* [2010] NSWCA 270 at [181] to [214] per Lindgren AJA.

³³ See Ch 6 and the commentary at paras 23.159–23.164 for an analysis of CA 2006, s 306.

³⁴ [1911] 1 Ch 163 (Warrington J).

³⁵ [1911] 1 Ch 163 at 169–70.

meaning different from the ordinary meaning. For that purpose I think I am entitled to see what is the object of the provision in the memorandum of association. Plainly, as I have already said, that object is that before affecting the rights of the preference shareholders it shall be necessary to obtain and record in a formal manner the assent of the preference shareholders to that course. I think I may take it also that the persons who framed this document may have had, and must be taken to have had, in their minds the possibility at all events that this particular class of shares might fall into the hands of one person. There is nothing to prevent it in the constitution of the company. One must regard the memorandum as far as possible as providing for circumstances which in the ordinary course may arise. That being so, I think I may very fairly say that where one person only is the holder of all the shares of a particular class, and as that person cannot meet himself, or form a meeting with himself in the ordinary sense, the persons who framed this memorandum having such a position in contemplation must be taken to have used the word 'meeting', not in the strict sense in which it is usually used, but as including the case of one single shareholder. There is, of course, no difficulty in treating the formally expressed assent of Bennett as a resolution. The only question is the purely technical difficulty arising from the use of the word 'meeting' in the memorandum.

I think on the whole that I may give effect to obvious common sense by holding that in this particular case, where there is only one shareholder of the class, on the true construction of the memorandum, the expression 'meeting' may be held to include that case.

- 1.23** This approach has been adopted in other contexts. For example, in *Re RMCA Reinsurance Ltd*³⁶ Morritt J held, on an application under CA 1985, s 425(1) to convene meetings of creditors to consider a scheme of arrangement, that where one class comprised only one creditor, a meeting attended by that creditor would satisfy the statutory requirements for a meeting. Morritt J followed the decision of Warrington J in *East v Bennett Brothers Ltd*³⁷ and a decision of the Supreme Court of New South Wales in *Re Hastings Deering Pty Ltd*,³⁸ which had been decided on the equivalent provision in the legislation in New South Wales. In that case Kearney J referred to the 'general rule that a plurality of persons is required to constitute a meeting' and, after referring to *East v Bennett Brothers Ltd* said:³⁹

In the present case, by reason of the difference in interests between the single individual shareholders and the general body of shareholders, such individual shareholder is, in my view, properly regarded as constituting a class of the members of the company. It follows that in order to fulfil the requirements of subsection (4) a meeting of such class must be convened.

Quorum

- 1.24** In order to transact lawful business at any general meeting of the shareholders of a company it must be quorate, that is to say a quorum of members must be present.⁴⁰ A meeting that is inquorate has no jurisdiction to transact lawful business and cannot even start. A meeting that purports to transact lawful business when it is inquorate is irregular and the business

³⁶ [1994] BCC 378.

³⁷ [1911] 1 Ch 163.

³⁸ (1985) 3 ACLC 474.

³⁹ (1985) 3 ACLC 474 at 475.

⁴⁰ The quorum requirements of meetings of directors are discussed in Ch 20.

will be a nullity.⁴¹ The constitution of a company or the companies legislation will stipulate the minimum number of members who are required to constitute a quorum. Those who are involved in the conduct of a meeting of members must therefore ensure that before it proceeds to do business it is quorate, and this important fact must be noted in the minutes.⁴² This is a primary responsibility of the chairman.⁴³

Definition

The word 'quorum' is Latin for 'of whom'. It denotes the minimum number of members of a company whose presence at a meeting of the members is required in order to make the proceedings of the meeting valid. The Shorter Oxford English Dictionary⁴⁴ indicates that the origin of the word 'quorum' was that it was used in the wording of commissions for members of bodies or committees, usually justices of the peace, in which particular people were designated as members of a body and whose presence was necessary to constitute a deciding body. **1.25**

General quorum provision in a company's articles

For companies registered and incorporated under the Companies Acts the general rule is that two persons is the minimum number required to constitute a valid meeting. This rule also applies to a meeting that is adjourned. This usual requirement will be found in a company's articles of association and, by way of example, regs 40 and 41 of the 1985 Table A provide as follows: **1.26**

40. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

41. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or such time and place as the directors may determine.

Regulation 41 contemplates that there may be a period of delay of 30 minutes in starting the meeting from the time specified in the notice of the meeting. It is sensible and practical to have such an express provision in a company's articles of association in order to allow for some latitude in starting a general meeting where circumstances make this necessary, such as transport delays in inclement weather. Even if the articles were silent on the point it is suggested that the chairman of a meeting would have an inherent power to delay the start of a meeting for a few minutes in order to allow shareholders who had travelled to the venue to take their places in the meeting room.⁴⁵ **1.27**

Under the quorum formulation in the 1985 Table A cited at para 1.26 above, it is to be noted that reg 41 requires a quorum of members to be present throughout the entirety of the meeting. In practice, in the context of a large public company this presents no **1.28**

⁴¹ See *Re Romford Canal Co* (1883) 25 Ch D 85; *Glencoe Developments Limited v Sneddon* [2012] CSOH 43 at [26] (Outer House, Court of Session).

⁴² See Ch 17.

⁴³ See Ch 7.

⁴⁴ Vol 2, (5th edn, 2002) 2442.

⁴⁵ See *John v Rees* [1970] Ch 345 at 382–3 (Megarry J).

problem at all, but in relation to a small private company such a requirement can prove to be troublesome and impractical. Under reg 53 of the 1948 Table A it was sufficient that there was a quorum of members at the beginning of the meeting. In *Re Hartley Baird Ltd*⁴⁶ the articles of association of the company fixed the quorum at ten. Wynn-Parry J held that if a quorum was present at the beginning of the meeting the subsequent departure of a member reducing the number of members below the number required by the articles for the quorum did not invalidate the proceedings of the meeting after the departure of that one member.

Continuing quorum

- 1.29** Regulation 41 of the 1985 Table A requires a continuing quorum, which is obviously highly desirable if not essential as a matter of law. Private companies that wish not to adopt such a provision in order to avoid the practical difficulties that may ensue if during the meeting the departure of a member renders the meeting inquorate, should ensure that reg 41 of the 1985 Table A is disapplied. However, at all times at least two persons must be present for the meeting to continue.
- 1.30** In the absence of any provision to the contrary, presence at a meeting of members for the purposes of a quorum, means presence in person and not by proxy.⁴⁷ A Scottish case⁴⁸ concerning the provisions of CA 1985, s 370(4) has held that a member present in two capacities, for example, as a member and as a trustee, counts as two members personally present. However, this decision is to be doubted. The better rule is that where the quorum is two members present and proxies are counted, the presence of only one member who holds proxies for several others will not be sufficient to constitute a quorum. This rule was laid down in the well-known nineteenth-century case of *Re Sanitary Carbon*.⁴⁹ In Australia it has been expressly held that one member cannot turn himself into two members by appointing two proxies, each of which is deemed to be a member, and thereby constitute a quorum.⁵⁰
- 1.31** In relation to the important issue of constituting a quorum it is important to note that under the provisions of what is now CA 2006, s 323 a corporation which is a member of a company, and which has authorized a person to act as its representative at a duly convened meeting, is regarded as personally present and not present by proxy.⁵¹ This principle is illustrated by the decision of Astbury J in *In Re Kelantan Cocoa Estates Limited*. The company's articles of association provided that 'two members personally shall be a quorum'. At a meeting held to pass a special resolution for a reduction of share capital there were present one member of the company and one representative appointed to represent a corporate shareholder. In deciding that the special resolution to reduce the company's share capital had been duly passed, Astbury J held that the meeting attended by one member and one duly appointed corporate representative had been duly constituted.

⁴⁶ [1955] Ch 143. In this case Wynn-Parry J declined to follow the earlier Scottish decision of *Henderson v James Louttit & Co Ltd* (1894) 21 Rettie 674 where the Lord President expressed the view that it would be highly inconvenient to hold that all that was necessary was that a quorum should be present at the earliest stage of the meeting but that after the real business of the meeting had started the quorum might go away.

⁴⁷ See *M Harris Ltd* 1956 SC 207.

⁴⁸ See *Neil MacLeod & Sons, Petitioners* 1967 SC 16.

⁴⁹ [1877] WN 223, and see para 1.06 above.

⁵⁰ *Donrob Enterprises Pty Ltd v Queensland Petroleum Management Ltd* (1988) 14 ACLR 307 (Supreme Court of Queensland).

⁵¹ See *In Re Kelantan Cocoa Nut Estates Ltd* [1920] WN 274 (Astbury J).

Statutory default provisions under CA 2006, s 318

CA 2006, s 318, which is derived from CA 1985, ss 370(4) and 370A, now regulates the requirement of a quorum for a meeting of members where a company's articles of association do not make express provision. Section 318 sets out certain basic rules with regard to the quorum at meetings. The section introduces a new concept of a 'qualifying person'.⁵² Such a person is defined in s 318(3) as (a) an individual who is a member of the company, (b) a person authorized as a company representative under s 323, or (c) a person appointed as a proxy of a member in relation to the meeting. By s 318(1) in the case of a company limited by shares or by guarantee and having only one member, one qualifying person present at a meeting is a quorum. In any other case, the quorum must comprise two qualifying persons present. **1.32**

However, the presence of two qualifying members will not suffice for a quorum if both those persons are representatives of the same corporate member or proxies of the same member.⁵³ These provisions apply subject to the provisions of the company's articles. It should be noted that ss 323 (appointment of corporate representatives) and 324 (rights to appoint proxies) permit the appointment of more than one representative or proxy as the case may be.⁵⁴ **1.33**

Adjourned meeting

It should be noted that a company's articles sometimes contain a provision fixing the quorum at a number of persons more than two but provide that, in the event of a failure to achieve a quorum at a duly convened general meeting, the meeting stands adjourned for, say one week, and that if at the adjourned meeting a quorum is not present 'the members present shall be a quorum'. This is perfectly valid. However, in a case where the normal quorum was only two it has been suggested that the attendance of one person only at the adjourned meeting is sufficient to form a quorum under this form of article.⁵⁵ This view has been taken notwithstanding the basic requirement of two persons present being required to form a quorum at a meeting in the absence of some specific provision to the contrary and the use of the plural 'members' in the wording of the article. It is to be doubted that this decision is correct. The general principle is of course overridden if statute intervenes. Accordingly, as will be seen below,⁵⁶ in the case of a class meeting held to consider a variation of the separate class rights attached to a class of shares, for an adjourned meeting s 334(4) provides that one person holding shares of the class in question constitutes a quorum. **1.34**

Special quorum in legislation—variation of class rights

Sometimes the legislation regulating companies imposes special provisions with regard to a requisite quorum for a particular decision. CA 1985, s 125(6) stipulated that a class meeting to propose a variation of class rights required a quorum of two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question.⁵⁷ In practice this requirement could prove to be onerous and the prescribed quorum **1.35**

⁵² See CA 2006, s 318(3).

⁵³ See CA 2006, s 318(2).

⁵⁴ See Ch 8.

⁵⁵ See *Ashton v Laxey Glen Hotel and Gardens (1948) Ltd* (1952–60) Manx Law Reports 163 (Deemster Cowley).

⁵⁶ See para 1.36.

⁵⁷ Excluding any shares of that class that are held as treasury shares.

was sometimes difficult, or indeed impossible, to obtain. If the stipulated statutory requirement relating to the quorum was not obtained, the class meeting would be adjourned. It was provided in CA 1985, s 125(6)(a) that at an adjourned meeting the quorum was one person either in person or by proxy holding shares of the relevant class.

CA 2006, s 334

- 1.36** The CA 2006 largely reproduces the pre-existing law. CA 2006, s 334 contains the new provisions governing the procedure to be applied for what is now defined as a ‘variation of class rights meeting’. Section 334(3) expressly provides that the quorum requirements of s 318 do not apply to such a meeting. Equally s 321, dealing with a member’s right to demand a poll, does not apply. In place of these provisions s 334(4) provides that for a class 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 (leaving aside any shares of that class held as treasury shares) shall be a quorum. For the purposes of this subsection, where a person is present by proxy or proxies, he is treated as holding only the shares in respect of which these proxies are authorized to exercise voting rights. As regards an adjourned meeting, one person alone present and holding shares of the class constitutes a quorum. As to demanding a poll, s 334(6) states that at a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.
- 1.37** CA 2006, s 335 applies a separate set of rules to class meetings of a company without a share capital. Once again, the quorum requirements of ss 318 and 321, dealing with a member’s right to demand a poll, do not apply. Instead, s 335(4) provides that for a meeting other than an adjourned meeting two members of the class present in person and by proxy who together represent at least one-third of the total voting rights of the class constitute a quorum. For an adjourned meeting, one member of the class present in person or by proxy is sufficient for a quorum. By s 335(5) at a variation of class rights meeting, any member present in person or by proxy may demand a poll.

Special quorum provision contained in the articles of association

- 1.38** Articles of association sometimes provide a very particular requirement for a valid quorum for a general meeting. For example, where the issued share capital of a company is divided into shares of different classes, the articles may stipulate that a general meeting cannot be held unless it is attended by two members, at least one member representing each class of shares.⁵⁸ Plainly, when general meetings are held and such a provision regulates the quorum, the stipulated requirement must be observed. Thus, in such a situation the non-attendance of say, a ‘B’ shareholder renders the meeting inquorate and unable to proceed to transact lawful business. In such a situation the members not holding ‘B’ shares will not be permitted to override the class rights of the ‘B’ shareholder by the expedient of applying for, and obtaining an order under CA 2006, s 306, formerly CA 1985, s 371.⁵⁹

⁵⁸ See *Smith v Butler* [2012] EWCA Civ 314.

⁵⁹ See *Harman v BML Group Ltd* [1994] 1 BCLC 674 (CA) and Ch 6.

Meetings ordered by the court

Under the provisions of CA 2006, s 306⁶⁰ in circumstances where it is established that it is impracticable to hold a meeting the court has jurisdiction to order the holding of a meeting, and may impose conditions under which such a meeting shall be convened and conducted. This is a statutory exception to the general rule that one person cannot constitute a lawful and valid meeting of members. Where, in a two-person company, the minority shareholder refuses to attend a general meeting of members thereby rendering it inquorate and incapable of transacting business, the court may make an order under CA 2006, s 306(2) whereby a valid meeting can be held and conducted. Section 306(3) expressly authorizes the court to make a direction that one member of a company present at the meeting will be deemed to constitute a quorum.⁶¹ This deeming provision and that in s 306(5) indicate that, in the context of companies, the ordinary meaning of the word ‘meeting’ is well established as a coming together of two or more persons.⁶² It is clear from the authorities on the statutory predecessor of s 306 that a minority shareholder will not be permitted by the court to turn his non-attendance at a duly convened general meeting of a company into a power of veto, not commensurate with his shareholding, over the stipulated quorum provision in the articles of association. Under CA 2006, s 306(4) the court has express jurisdiction to make a direction that one member of the company present at the meeting can constitute a quorum. **1.39**

This principle has recently been restated by Arden LJ in the Court of Appeal in *Smith v Butler*.⁶³ In that case the articles of the company expressly stated that the quorum required for general meetings was two members, present in person or by proxy, and that one named shareholder, Mr Smith, needed to be present at all meetings for there to be a quorum. As there were only two members of the company, in practice the other shareholder, Mr Butler, also needed to be present. When Mr Smith chose to exercise his statutory right to remove Mr Butler as a director by ordinary resolution under CA 2006, s 168 the Court of Appeal held that the statutory policy in s 168 far outweighed the power which Mr Butler had to paralyse company meetings by staying away. Only Mr Smith had the benefit of a right under the articles to be part of the quorum because of the specific requirement in the articles that he had to be counted towards the quorum requirement. Mr Butler enjoyed no similar privilege. For the court not to have made an order under s 306 on Mr Smith’s application would have created a right ad hoc in favour of the minority shareholder that was not part of the bargain between the shareholders. **1.40**

This issue is discussed in detail in Chapter 6 where it will be seen that the jurisdiction of the court to order a meeting under CA 2006, s 306 is not unfettered. The Court of Appeal has restricted its use if the effect of an order would be to break an intentional deadlock of members or where the articles of association have conferred on a member class rights affecting the quorum required for general meetings.⁶⁴ **1.41**

⁶⁰ Formerly CA 1985, s 371.

⁶¹ See *Re El Sombrero Ltd* [1958] Ch 900; *Re Opera Photographic Ltd* [1989] 1 WLR and Ch 6.

⁶² See *Re Altitude Scaffolding Ltd*; *Re T & N Ltd* [2007] 1 BCLC 199 (David Richards J).

⁶³ [2012] EWCA Civ 314 at [49] to [54]

⁶⁴ See *Harman v BML Group Ltd* [1994] 1 BCLC 674 (CA).

Meetings ordered by the Secretary of State under CA 1985

- 1.42** CA 1985, s 367 conferred a power on the Secretary of State to convene a meeting where there had been default on the part of a company in complying with the provisions of CA 1985, s 366 in relation to the calling of an annual general meeting. Pursuant to CA 1985, s 367(2) the Secretary of State could give directions for the calling of an annual general meeting and such directions could include a direction that one member of the company present in person or by proxy should be deemed to constitute a valid meeting. Again, the use of the word ‘deemed’ in the legislation is not unimportant as it is both a recognition and reinforcement of the conventional and long-standing principle that usually one person cannot constitute a meeting.
- 1.43** CA 1985, s 367 has been repealed and is not replaced by any provision in CA 2006.⁶⁵ Accordingly, there is no longer any power vested in the Secretary of State to convene a general meeting or to direct the size of the quorum.

Quorum challenge

- 1.44** If a challenge is to be made to the validity of a meeting on the grounds that a quorum of members was not present, such a challenge should be brought within a reasonable time of the alleged meeting. If there is undue delay the rights of third parties may have an impact on the court’s decision, even when the case for invalidity is strong.⁶⁶ The application of such a principle is hardly surprising in the light of the volume of business and transactions of the company that may have taken place in the interim on the assumption that the business transacted at the relevant meeting was valid. In *Hong Kong Rifle Association v Hong Kong Shooting Association*⁶⁷ Saunders J in the Hong Kong Court of First Instance summarized the principle as follows:

The law is that if the validity of proceedings at a meeting is to be challenged because of the absence of a quorum, appropriate action must be taken within a reasonable time. If a meeting has reached decisions which are acted upon and treated as valid by all concerned, it is not within the competence of a person, not concerned at the time, to much later seek to invalidate the proceedings because of a lack of a quorum.

- 1.45** It is never possible to specify what is a reasonable period of time within which the legal challenge must be brought save to state that it will very much depend upon the type of company, the knowledge of the parties and the impact of what has taken place in the interests of the company, its shareholders and other interested parties. It is to be noted that in *Re London Flats*⁶⁸ Plowman J granted an application challenging the validity of the appointment of a liquidator in a members’ voluntary winding up by a general meeting some five and a half years after the summons was issued.

⁶⁵ Under CA 2006 only public companies and private companies that are traded companies remain under a duty to hold an annual general meeting—see further Ch 4.

⁶⁶ See *Re Romford Canal Co* (1883) 24 Ch D 85 (a delay of 13 years); *Re Plymouth Breweries* (1967) 111 SJ 715 (class resolutions of shareholders passed at inquorate meetings, but delay of 70 years after court approval of scheme of arrangement).

⁶⁷ [2007] 4 HKLRD 121 (Court of First Instance).

⁶⁸ [1969] 1 WLR 711.