The Work-Rate Association

Nomination of Candidate for Election to the Committee

5-19

Name of Candidate:
Sponsoring Company/Body:
Address:

Telephone:
Fax:

Proposer:
(signature)
Name:
Address:

Seconder:
(signature)
Name:
Address:

I confirm that I am willing to serve on the Committee if elected.
.....
(Signature of Candidate)

Return to

by not later than

CHAPTER 6

Constitution and Adjournment of the Meeting

A meeting will be properly constituted when, at an adequate venue, sufficient members are present to form a quorum and someone to control the meeting (i.e. a chairman) has been duly appointed. A meeting may be face-to-face or increasingly in today's digital age, it may take place "virtually" using technology, e.g. by way of a conference call, or an internet webex or chat meeting. A meeting may be adjourned; in law, the adjourned meeting will form part of the originally convened meeting. **6-01**

1. VENUE

The fact that a venue is cold, gloomy and uncomfortable will not prevent a valid meeting being held there. The minimum requirements are that it is of adequate size for the number attending (the practical effects of which are discussed in more detail in the section on companies),[1] and that it enables all those present to hear and be heard, and to see and be seen.[2]

2. QUORUM

Definition

The word quorum denotes the number of members of any body of persons whose presence at a meeting is requisite in order that business may be validly transacted. (Conversely, the mere fact that a number of members, sufficient to form a quorum, may meet casually, does not constitute a meeting where the other requisites, such as due notice are absent.) **6-02**

Quorum is the Latin word for "of whom" and derives from the wording of commissions by which persons were, from at least the fifteenth century, designated as members of a body by the words "quorum vos … unum esse volumus," i.e. "of whom it is our wish that you… shall be one."

In this chapter the word is taken to refer to both: (1) the concept that a "meeting" must usually consist of more than one person; and (2) the necessity, imposed by the regulations of the body concerned, that a minimum number of members must be present. The latter is a matter for the rules of that body. It is quite possible, for

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1 See paras 19-03 and 19-20 below.
2 *Byng v London Life Assoc* [1989] 2 W.L.R. 738.

example, to have a quorum consisting of, say, "any three members of whom one shall be the secretary"—or, as may be required.

Minimum number

6-03 In general, two persons is the minimum number for a meeting to be properly constituted, since the term "meeting" prima facie means a coming together of more than one person. This rule was applied in the following cases:

> "Only one shareholder was present at a general meeting of a mining company. Although the secretary was in attendance. This shareholder took the chair, approved a resolution making a call, approved the accounts and changed the bank mandate; then he passed a vote of thanks to himself as chairman. The secretary, in the name of the company, instituted an action to enforce the call, but it was held that as there was only one person present at the meeting, he could not constitute a meeting, and the call was therefore invalid.[3]
>
> This principle was followed in a similar case where a shareholder, present by himself but holding proxies for the other shareholders, approved of a resolution to wind up the company voluntarily. The resolution was set aside."[4]

With the passing of time, there has been an increase in the number of circumstances where the rule will not apply, as where one person holds all of a class of shares;[5] where one creditor attends a creditors' meeting in an insolvency;[6] where there is a committee of one;[7] or where the articles of a company provide for a quorum of one director at board meetings;[8] or where under the Companies Act 2006 s.306 a meeting is called by the court.[9] Single-member companies (and, therefore, single-member meetings) are permitted.[10] (This type of exception, however, is generally unknown in local government practice.)

Counting and maintaining the quorum

6-04 The number of persons necessary for a quorum must be present in person; unless the regulations provide for proxies to be counted in determining the required number.

A representative of a corporation which is a shareholder may be counted in ascertaining whether or not there is a quorum.[11]

Where, at a meeting of directors for which the quorum fixed was two directors and two of the three directors were disqualified from voting under the company's articles; it was held that there was no quorum present; to form part of a quorum the participants must be competent to transact and vote on the business before the meeting.[12]

A quorum is as necessary at an adjourned meeting as at the original meeting.

It is important to remember that a quorum must be present *throughout* the meeting, and not just at the start of the meeting. A meeting could become inquorate—if an attendee left the meeting to take a phone call, for example, and any resolutions passed at the inquorate meeting would therefore be invalid.

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3 *Sharp v Dawes* (1876) 2 QBD 26.
4 *Sanitary Carbon Co, Re* [1877] W.N. 223. See also paras 13-32 and 13-33.
5 *East v Bennett Bros Ltd* [1911] 1 Ch. 163. See also para.17-04.
6 See para.25-24.
7 See para.9-01.
8 See para.22-06.
9 See paras 12-04 and 12-15.
10 See para.11-05.
11 See *Kelantan Coconut Estates Ltd and Reduced, Re* (1920) 64 S.J. 700.
12 *Greymouth Point Elizabeth Railway and Coal Co Ltd, Re* [1904] 1 Ch. 32.

The question of the fixing and maintenance of a quorum at company meetings is considered later.[13]

Where no quorum prescribed

6-05 In the unlikely event of no quorum being prescribed in the regulations, the number in the case of a non-trading corporation would be the major part of the corporators:

> "The acts of a corporation are those of the major part of the corporators corporately assembled … in the absence of special custom, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution."[14] The same rule appears to apply to an informal association such as a club."[15]

Where the articles of association of a company do not prescribe the number of directors required to constitute a quorum (an unlikely event in modern circumstances), the number who usually act in conducting the business of the company will constitute a quorum.[16]

In another old case, however, the articles stated that "the board shall mean the directors for the time being or, as the case may be, a quorum of such directors assembled at a meeting thereof". A quorum was never in fact appointed by the directors, and in the circumstances the quorum was declared to be the majority of the directors present at the meeting.[17]

Where a board of directors delegates its powers to a committee, without any provision as to the committee acting by a quorum, all acts of the committee must be done in the presence of all the members of the committee.[18]

Effect where a quorum is not present

6-06 It is a generally accepted principle that business transacted at a meeting at which a quorum is not present is invalid. This principle, however, will not apply to a contract entered into with third parties who are not acquainted with any defect in the constitution of the authority creating the instrument:

> "The directors of a joint stock company had power under their articles to fix the number of the directors which should form a quorum, and by resolution they fixed three. A meeting of directors at which only two were present authorised the secretary to affix the company's seal to a mortgage which was accordingly done by the secretary in the presence of the same two directors. It was held that as between the company and the mortgagees, who had no notice of the irregularity, the execution of the deed was valid; outsiders are not expected to search the company's minutes as to the internal regulations and they are to presume that the document is, on the face of it, in order."[19]

This rule would not apply where the company had never had the minimum

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13 See paras 13-31 to 13-33.
14 *Mayor, Constables and Company of Merchants of the Staple of England v Governor and Company of the Bank of England* (1887) 21 Q.B.D. 160, 165.
15 *McColl v Horne and Young* (1888) 6 N.Z.L.R. 590; but see para.7-29, in relation to changes in the rules of a club.
16 *Tavistock Iron Works Co Lyster's Case, Re* (1867) L.R. 4 Eq. 233.
17 *York Tramways Co v Willows* (1882) 8 Q.B.D. 685.
18 *Liverpool Household Stores Association Ltd, Re* (1890) 59 L.J. Ch. 616.
19 *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co Ltd* [1895] 1 Ch. 629.

number of directors prescribed by the articles, since this would not be just a matter of internal regulation.[20]

Where during the course of the meeting the number of members present falls below that required for a quorum, the meeting is "inquorate" and should be adjourned, since it can no longer validly conduct business:

> "One of two shareholders called a meeting to appoint a liquidator. One of the shareholders proposed himself as liquidator but the other left the room before a vote, thus reducing the meeting to one, although a quorum of two was prescribed in the articles. The remaining shareholder then appointed himself as liquidator by the convincing margin of one vote to nil. The appointment was a nullity."[21]

It should be noted, however, that the regulations may provide that the meeting, merely has to be quorate at the start of the meeting.[22]

If an inquorate meeting decides to have an informal discussion about the topics for which it has been convened, the chairman should make it clear at the outset that no decision can be made by those present. The minutes should simply record that as no quorum was present no business had been transacted.

Lapse of time

6-07 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 seek to invalidate the proceedings because of the lack of a quorum:

> "In 1894 the court made an order confirming the reduction of the nominal value of the ordinary shares of a company, part of a scheme under which the dividend on the preference shares was reduced. In 1966 it was noticed that the resolutions of each class of shareholder, required by the company's articles before the scheme could be implemented, had in fact been passed without the necessary quorum. It was held that no contention based on that fact could be sustained since the scheme had been acted on for 70 years."[23]

3. THE CHAIRMAN

Qualities required

6-08 The qualifications required in a chairman are hard to define. A pleasing presence, a good voice, while desirable, are not essential, but self-confidence, fairmindedness, and the ability to arrive at correct decisions-on the spur of the moment-are absolutely necessary. While he should possess the power to express with facility and discretion the mind of the meeting on the particular question under discussion, he must avoid both garrulousness and secretiveness. As the representative of the meeting itself, chosen or appointed to preside, while he must be ready to guide it into decisions that will make for a successful result, he must at the same time be careful to subordinate his own views to those of the meeting, both of the majority and the minority.

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20 *Sly Spink and Co, Re* [1911] 2 Ch. 430.
21 *London Flats, Re* [1969] 1 W.L.R. 711; [1969] 2 All E.R. 744.
22 See, for example, art.53 of Table A, Pt 1 of the Companies Act 1948 (the corresponding provision in the 1985 and 2006 Table A, arts 40 and 41 are differently worded; see paras 13-31, below).
23 *Plymouth Breweries v Penwill, Re* (1967) 111 S.J. 715.

Careful preparation for each meeting and a full understanding of the relevant procedural rules are essential requirements. As Sir Walter Citrine has written:

> "You wouldn't want to get into a mess and find yourself being put right by some of the deadheads who have firmly declined to be pressed into service."[24]

Appointment

6-09 In general, where there is no chairman and there are no regulations providing for his appointment, he is appointed by those present at the meeting. This might arise where people meet as a group for the first time. It is then usual for the person responsible for convening the meeting to call for nominations. If there is more than one, the matter should be put to the vote. The motion to elect a chairman need not be in writing. Alternatively, the meeting may—usually on an informal basis and without opposition—appoint a temporary chairman to run the meeting, until the chairman proper is elected

The above rules will not operate where the rules of the body concerned determine who is to be the chairman at meetings of that body or its committees, or provide a method for his election or re-election. For example, under the regulations governing meetings of the National Trust, the chairman or the deputy chairman of the National Trust will, if present, take the chair at a general meeting. Only if neither were present would the members attending the meeting elect a chairman.[25] This rule is typical of many.

The regulations of many bodies provide for the appointment of a deputy chairman to act in cases where the chairman is absent through illness or other causes. Should the chairman be late at a meeting, his deputy, if already in the chair, would probably vacate it in favour of the chairman, but there is no obligation on him to do so.

Any objection to the appointment of a chairman should be made immediately as any irregularity in the nomination may be cured by acquiescence.[26]

The appointment of a chairman at company meetings is dealt with in late Ch.13.[27]

At public meetings the chairman is usually a person invited by the conveners to preside.

Basic duties: summary

6-10 In an old case, Jervis CJ remarked that where a number of persons assemble and put a man in the chair, they devolve upon him by agreement the conduct of that body:

> "They attorn to him, as it were, and give him the whole power of regulating themselves individually. The chairman collects his authority from the meeting."[28]

This authority comprises the following elements:

1. to preserve order;
2. to ensure that the proceedings are properly conducted according to law and according to the standing orders or rules of the body concerned;

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24 *ABC of Chairmanship* (1982), p.5. established as a classic reference for Labour Party and union delegates, committee members and officials. It contains a full analysis of the rules of debate (see Ch.7, below).
25 National Trust Act 1971 Sch.2.
26 *Cornwall v Woods* (1846) 4 Not. Cas. 555.
27 At para.13-30.
28 *Taylor v Nesfield* (1855), Wills on Parish Vestries 29n.

3. to ensure that all shades of opinion are given a fair hearing so far as practicable; and,
4. to ensure that the sense of the meeting is accurately ascertained and recorded.

Preservation of order

6-11 By "order", in this context, is meant the absence of disruption. The chairman's powers in relation, for example, to adjourning the meeting in the event of disorder have been discussed in Pt 1;[29] the same powers apply to the serious disruption which can equally occur at private meetings, for instance, meetings of shareholders.

In relation to a private meeting, a person who has no right to be present is an intruder and is committing the tort of trespass, and the chairman can order him to be removed by force, though using only the minimum force necessary.[30]

The proper conduct of the meeting

6-12 The chairman has a number of specific duties:

1. *Time-keeping.* The chairman should ensure that the meeting starts and finishes on time. To do this he will have to keep an eye on the clock at each stage of the agenda.
2. *Regulation of speakers.* The standing orders or rules will often provide for the period allowed for speakers. The chairman must see that the rules are followed. He should ensure that all speeches are addressed to the chair and receive a fair hearing. If the speaker wanders into material irrelevant to the motion before the meeting, or is offensive, the chairman should stop him. Everyone who wishes to speak should be given a chance to do so, subject to the rules of debate.[31]
3. *Points of order.* The chairman will rule on questions relating to procedure.[32] If his decision is challenged the proceedings must be regulated by the majority of those present.[33] The chairman must disallow "points of order" which attempt to bring up points of substance in disguise.
4. *Impartiality.* The chairman has a duty to remain impartial. If, in a formal debate, he wishes to address the meeting himself, he should leave the chair for the purpose. An exception to this rule is made where the chairman is not merely the chairman of the meeting but also head of the organisation concerned. Here he is, by convention, allowed considerable latitude, at least to the extent of replying on behalf of the organisation to questions from the members.
5. *Adjournment.* It has recently been stated that the chairman has a residual common law power to adjourn a meeting so as to give all persons entitled a reasonable opportunity of voting and speaking at the meeting.[34]

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29 In Ch.3.
30 See para.3-02.
31 See Ch.7.
32 *Indian Zoedone Co, Re* (1884) 26 Ch.D. 70. See para.9-05 below.
33 *Wandsworth and Putney Gas Light Co v Wright* (1870) 22 L.T. 404.
34 See para.6-17.

Sense of the meeting

6-13 A chairman must exercise his powers and discretions in good faith and carry out the purpose for which the meeting is convened (*Second Consolidated Trust Ltd v Ceylon Amalgamated Tea and Rubber Estates Ltd* [1943] 2 All E.R. 567). A meeting should reach a conclusion on each of the matters before it, which should be clear to those present. This end is achieved by adhering to the agenda (except where variations are agreed by the meeting), and ensuring that the meeting always has a motion, amendment, or other specific subject-matter before it. The chairman should sum up clearly: if his interpretation of the result is challenged, he should confirm, or amend it. In more formal matters there will be a motion before the meeting which will be voted on: it is helpful if the chairman at the conclusion of the debate asks the secretary to read out the motion on which members are about to vote. It is the responsibility of the chairman to see that resolutions are correctly embodied in the minutes before he signs them, usually at the next meeting.

A declaration by the chairman that a motion has been carried or lost is sufficient evidence without his having to state the number of votes for or against the motion. In other words, the chairman has a duty to obtain the sense of the meeting and his declaration of the result is good prima facie evidence which will be valid in the absence of fraud, an intention to mislead, or error. Instances of the latter arise where the chairman has improperly closed the meeting:

> "An ordinary general meeting of a society was called for the purpose of passing the accounts, considering reports, and electing auditors. The chairman moved the formal motion: "That the report and accounts be received." This was seconded by another member, but several members wished to move an amendment that a committee of investigation be appointed. The chairman mistakenly refused to admit this amendment. He thereupon put the former motion to the vote, and on this being lost declared the result and closed the meeting. The members remaining elected another chairman to transact the business left unfinished, and at an adjourned meeting the appointment of a committee of investigation was approved. *Held*, that the chairman in leaving the meeting at his own will and pleasure was not acting within his power, and the meeting by itself could resolve to go on with the business for which it had been convened and appoint a chairman to conduct the business which the other chairman had tried to stop.[35]A general meeting of a company was called for the transaction of ordinary business, but owing to considerable opposition among the members present, the meeting was adjourned, the only item of business transacted being the appointment of a committee of five shareholders to investigate the affairs of the company. At the adjourned meeting there was much hostility towards the chairman who purported to declare the meeting closed and who then left when important business remained to be transacted. Those remaining, thereupon, continued the business of the meeting, and elected two directors in the place of two who should have retired. It was held that the appointment of the two new directors was valid."[36]

Removal of chairman

6-14 It is clear that a chairman who has been elected by the meeting can be removed by the meeting.[37] The usual procedure would be for a member to propose a vote of no confidence in the chair, and for this to be seconded. In such event, the chairman would normally have a right of reply; if he loses the vote he should relinquish the chair. If the chairman holds his place as chairman by reason of a wider appointment in the organisation, it may be that he cannot be removed in the absence of bad faith.

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35 *National Dwellings Society v Sykes* [1894] 3 Ch. 159.
36 *Catesby v Burnett* [1916] 2 Ch. 325.
37 *Booth v Arnold* [1895] 1 Q.B. 571.

Regulations of the body concerned may govern the point and may also provide for a challenge to be made to a ruling of the chairman, short of an attempt to force him from office.[38]

4. ADJOURNMENT

Definition

6-15 Adjournment is the act of postponing a meeting of any private or public body, or any business until another time, or indefinitely, in which case it is an adjournment sine die. The word applies also to the period during which the meeting or business stands adjourned. It is often necessary to adjourn a meeting, e.g. because a quorum was not present, or because of insufficient time to complete proposed business. An adjournment may be:

1. For an interval expiring on the day of the adjournment.
2. For an interval expiring on some later date.
3. For an indefinite time (i.e. sine die).
4. Until a fixed time and date.
5. To another place.

It may be brought about by:

1. Resolution of the meeting.
2. Action of the chairman.

Adjournment by resolution of the meeting

6-16 A right to adjourn is, at common law, vested in the meeting itself.[39] In the following case the assembly chose not to adjourn, contrary to the chairman's wishes:

> "A vestry meeting was held for the election of churchwardens, at which the vicar presided. Before the election was completed the vicar adjourned the meeting against the wish of many present. The latter remained behind and completed the poll, which resulted in the plaintiff's favour. The next day, the vicar and his supporters met and continued the poll with a different result. *Held*, that the right of adjournment was in the parish at large and the power arose from "the common right, which is in the whole assembly, where all are upon an equal foot", and the plaintiff was therefore duly elected."[40]

The rights exercised by the remaining members in circumstances similar to those referred to in the above case will apply where the chairman, neglectful of his duties, has taken a course contrary to the interests of the general assembly. These cases should be contrasted with the following:

> "A meeting was regularly convened for the purpose of nominating and electing a new mayor, and the existing mayor presided over the meeting. He declared that the voting for the persons nominated was equal and he thereupon dissolved the meeting. Nobody objected at the time, but after allowing the mayor and many freemen to depart the rest

[38] See also para.7-07.
[39] *Kerr v Wilkie* (1860) 1 L.T. 501.
[40] *Stoughton v Reynolds* (1736) 2 Strange 1044.

> remained and proceeded to complete the election. *Held*, that such election was void under statute as a surprise and fraud on the other electors."[41]

In relation to the power of adjournment vested in the meeting, the vote of the majority will decide whether or not that power is to be exercised.

Adjournment by the chairman

6-17 It does seem clear that a chairman cannot capriciously adjourn meetings—if he does so, a new chairman may be appointed to continue the meeting (*National Dwellings Society Ltd v Sykes* [1894] 3 Ch. 159; and *John v Rees* [1969] 2W.L.R. 1294).

However, instances where the chairman has the right to adjourn the meeting are as follows:

1. A power of adjournment is often vested in the chairman by the regulations of the body under whose auspices the meeting is held. This power is usually discretionary: it has been held that where articles provide that the chairman may adjourn a meeting "with the consent of the members present", he is not bound to effect any adjournment, even though a majority of those present desire one.[42]
2. The chairman may adjourn on his own authority, in order to facilitate the business of the meeting, e.g. to take a poll.[43]
3. In the case of persistent disorder, the chairman is empowered to adjourn the meeting; sometimes a short adjournment—for, say, 15 minutes—has the desired effect.[44]
4. Where a quorum is not present, the chairman may adjourn the meeting to another date (or as may be prescribed by the rules of the body concerned).

As an extension to the above principles the Court of Appeal has indicated that the chairman has a common law power to adjourn so as to give all persons entitled a reasonable opportunity of speaking and voting at the meeting:

> "An extraordinary general meeting was convened at Cinema 1, the Barbican, London on October 19, 1988. Cinema 1 proved too small to accommodate all members wishing to be present. Members were diverted to overflow rooms and the foyer but the audio-visual link with the overflow rooms was deficient. The chairman adjourned the "meeting" and directed that it be resumed in the afternoon at the Café Royal. After a vote at the Café Royal and a poll, the resolution was passed. It was held that the power in the Company's articles for the chairman to adjourn with the consent of a quorate meeting could not be exercised where it was not possible properly to ascertain the views of the majority of those present. In such circumstances, however, the chairman had a residual power at common law to adjourn so as to give all persons entitled a reasonable opportunity to vote and speak. The impact of the proposed adjournment on those seeking to attend the original meeting and the other members must be a central factor in considering the validity of the chairman's decision to adjourn. His decision, in that case, had failed to take account of the fact that the matter was not of such urgency as to require a decision on the same day, or that those who could not be at the Café Royal would not only be unable to speak but would, under the company's articles, be unable to vote by proxy. It was not enough that

[41] *R. v Gaborian* (1809) 11 East 90.
[42] *Salisbury Gold Mining Co v Hathorn* [1897] A.C. 268; see para.14-29.
[43] *R. v D'Oyly* (1840) 12 A. & E. 139.
[44] See para.3-04.

he had acted in good faith. The proceedings conducted at the meeting at the Café Royal were therefore invalid and of no effect."[45]

Procedure in relation to adjournment

6-18 In a situation where (as is usual) a meeting has the power under the rules of the body concerned to determine its own procedure and to adjourn, the chairman must put before the meeting a motion for the adjournment which is properly proposed and seconded. If he does not, any subsequent business transacted by the meeting will be of no effect.[46]

A motion for adjournment of the meeting may be moved or seconded by any person who has not hitherto spoken in the debate; this is to prevent those who have had their say from attempting to stifle discussion. If seconded, it supersedes the motion or amendment before the meeting and constitutes a new question upon which any person may speak. If, however, its purpose is to terminate discussion on the main question, it should be put to the meeting with the minimum of debate. A motion for adjournment may be amended, but only as to the time, date, and place of the adjourned meeting, or debate. The motion cannot be moved during the election of a chairman.

An adjourned meeting is deemed to be a continuation of the former meeting and no new notice is necessary:

> "Where at a vestry meeting a rate was proposed and the meeting was adjourned four times the notice on the church door for the assembly of the first meeting was deemed to be notice of all the adjourned meetings as all such meetings were, in effect, a continuation of the first meeting."[47]

Exceptions to this rule are:

1. where the regulations of the body concerned provide that notice of an adjourned meeting should be given; and
2. where the meeting has been adjourned sine die—here, clearly, the date and place of the reconvened meeting will need to be advised to members.

At an adjourned meeting only the adjourned business should be taken. This usually takes the form of the original motion again being moved and debate taking place on it.

A quorum must (subject to any provision in the regulations of the body concerned) be present at the adjourned meeting.

Companies

6-19 Adjournment of meetings of companies is discussed in detail below.[48]

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45 *Byng v London Life Association Ltd* [1990] Ch. 170; [1989] 1 All E.R. 560 CA.
46 *Mulholland v St Peter, Roydon, Parochial Church Council* [1969] 1W.L.R. 1842; [1969] 2 All E.R. 1233.
47 *Scadding v Lorant* 10 E.R. 164; (1851) 3 H.L. Cas. 418; *Kerr v Wilkie* (1860) 1 L.T. 501.
48 At paras 14-24 and 14-29.

CHAPTER 7

The Conduct of the Meeting

7-01 The conduct of a meeting is largely in the hands of the chairman who chairs the meeting in line with the regulations of the body which is meeting, but as was stated in the previous chapter he also derives his authority from the meeting. The point is amplified in *Carruth v ICI*:

> "There are many matters relating to the conduct of a meeting which lie entirely in the hands of those persons who are present and constitute the meeting. Thus it rests with the meeting to decide whether notices, resolutions, minutes, accounts and such-like shall be read to the meeting or be taken as read; whether representatives of the Press, or any other persons not qualified to be summoned to the meeting, shall be permitted to be present, or if present shall be permitted to remain; whether and when discussion shall be terminated and a vote taken; whether the meeting shall be adjourned. In all these matters, and they are only instances, the meeting decides, and, if necessary, a vote must be taken to ascertain the wishes of the majority. If no objection is taken by any constituent of the meeting, the meeting must be taken to be assenting to the course adopted."[1]

1. RULES OF DEBATE

7-02 The rules of debate are the rules which have been proved by experience to be conducive to the efficient transaction of business and exchange of views. They are based on custom and practice. It is highly desirable for any assembly in which debate is likely to take place to have its own standing orders, and the larger the assembly the more important it is for such standing orders to be observed. In a small meeting it is often convenient for proceedings to be informal, but this ought always to be recognised as being at the discretion of the chairman who has the right to call members to order and to insist upon observance of proper procedural rules. Subject to this comment, an attempt is made below to outline what may be regarded as normal procedure.

Motions

7-03 The term "motion" is here used in the sense of a proposition submitted for debate as opposed to the term "resolution" used in the Companies Acts. Strictly speaking, a motion does not become a resolution until it has been adopted by the meeting as such.

A motion should propose definite action, and not be framed in the negative (although the motion "that no action be taken" is, in practice, often accepted). If possible, "notice of motion" should be given to the secretary so that the motion can be included in the agenda sent out to members; such prior notice is obligatory in

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1 *Carruth v ICI* [1937] A.C. 707 at 761; [1937] 2 All E.R. 422.

the case of Local Authority meetings, except for certain procedural motions. After such notice of motion has been given it should not be amended except in minor details, or with the consent of the meeting.

It often happens that a motion arises spontaneously out of discussion. If such a procedure is permitted by standing orders, the motion should be reduced to writing by the person proposing it so that there can be no doubt as to what precisely is being moved. Motions are often accepted on an oral basis by the chairman, but the secretary should record it, read it out so that it can be approved and then signed by the mover (and seconder if appropriate). In practice, the chairman of the meeting should, if he feels an inconsequential discussion is taking place, call for a motion to be put before the meeting, which can then be voted on.

It is customary for a motion or amendment to be accepted for discussion only after it has been moved and seconded, and if no seconder is found the motion or amendment will fail, although this rule is not adhered to strictly in small committee meetings. There is, in fact, no common law rule to require a motion to be seconded, and if a chairman does allow discussion on, and put to the vote, a motion which is not seconded, there is no way of challenging his action in the courts unless it is in violation of the standing orders of the body concerned.

> "There is no law of the land which says that a motion cannot be put without a seconder, and the objection that the motion was not seconded cannot prevail."[2]

It is commonly accepted that a motion put from the chair does not need a seconder. It is, however, the general practice at Local Authority meetings which follow model standing orders to require a seconder for a motion or amendment. Conversely, as absence of a seconder usually indicates lack of support, the chairman has it within his discretion to refuse to put a motion that is not seconded.

A motion can be withdrawn by the mover only with the unanimous consent of the members present and before the question has been put to the meeting for decision; if an amendment has been proposed to the motion, the consent of the proposer and seconder of the amendment to the withdrawal of the motion will first be required.

No motion may be moved which in effect is the same as a motion already passed or negatived.

If the motion is not of a contentious nature and there appears to be unanimity in the meeting, the chairman will put it to the vote and, if approved, will declare the motion carried. It then becomes the resolution of the meeting.

If there is not immediate unanimous agreement on the motion, debate will take place on it.

It is here that the role of the chairman is crucial. If the motion is one which has been placed on the agenda and is known to be contentious, it is good practice for the chairman to try to find out, before the beginning of the debate, who wishes to speak; he will try to call upon all the speakers, alternating various points of view so far as is practicable.

All speakers should address the chair and preferably be asked by the chairman to stand. Everyone else should remain quiet. Everything said should be relevant to the issue. Observance of these rules is fundamental to the proper and prompt despatch of the business before the meeting. No member should be allowed to speak more than once on any motion, until every other member has had an opportunity

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[2] *Horbury Bridge Coal Co, Re* (1879) 11 Ch.D. 109. The same applies to an amendment to a motion, but it is customary for the chairman to call for a seconder (see para.7-04).

of speaking, and then only with the permission of the chair. On occasion the chairman will take note of informal signals by persons present that they wish to speak and will inform the meeting of the names of the next few speakers; the chairman may also indicate, if he feels the debate has run its course, and other business presses, that he will limit the number of further speakers. If two or more speakers rise simultaneously the chairman may name the one to speak (being the one first noticed by him).

The mover and seconder of any motion are regarded as having spoken, unless in the seconder's case, he clearly reserves the right to speak later in the debate, when seconding.

The mover (but not usually the seconder) will have a right of reply at the end of the debate; it is intended to give the mover the opportunity of rebutting matters raised in debate and in this he should, therefore, not introduce any new matter. If amendments have been moved, the mover of the original motion should be allowed his right of reply either at the close of the debate on the first amendment or after all the amendments have been moved. No person is permitted to address the meeting after the question has finally been put to the vote. The vote will then be taken.

After a motion has been passed by the requisite majority it becomes the resolution of the meeting, and the persons present can then take no step which has the effect of rescinding, negating or destroying it.[3]

Amendments

7-04 An amendment is a proposed alteration in the terms of a motion (or of an amendment already before the meeting) by those whose views would not be met by either the acceptance or rejection of the motion or amendment as moved. An amendment is a rewording of a motion so that its line of approach, but not its objective, is altered. An example might be the following motion: "That the secretary be instructed to write to the management demanding that canteen facilities be provided for the workers in this factory" amended to read: "That the management be requested to receive a deputation in order to discuss the provision of canteen facilities for the workers in this factory". An amendment should take the form of omitting, substituting or inserting certain words in the original motion (or amendment). The alteration should not be such as to constitute a direct negative of the motion, for the same result could be achieved by an adverse vote; neither should it be beyond the scope of the original motion.[4]

It should not be irrelevant or obstructive, neither should it attempt to re-open previously settled business.

If a motion is so mutilated by a proposed amendment that only the initial word "That" and a few skeletal remains of the original motion are retained it, becomes necessary for the chairman to decide whether the motion as amended is so far from the intention of the original motion that it should be disallowed as a direct negative, or as not being within the scope of the original motion. An amendment which rejects the proposal contained in the original motion but which proposes an alternative is acceptable.

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[3] See para.7-34 below.

[4] *Clinch v Financial Corp* (1868) L.R.5 Eq.481. For a discussion of amendments to ordinary resolutions proposed at company meetings, see paras 15-09 and 19-24.

If in doubt, the chairman should accept the amendment, because if he improperly fails to do so the unamended resolution may be set aside by the court.[5]

When an amendment is moved it takes priority over the original motion and must be voted upon before the original motion can be put. No notice is necessary unless standing orders so provide. Amendments should be handed in writing (signed by the mover and seconder) to the chairman, if possible. The chairman, having put the amendment to the meeting in the form proposed, will, if a seconder is forthcoming, invite discussion on it. Procedure in relation to the amendment is the same as on the original motion. The discussion must be strictly relevant to the amendment. Should there be several amendments, they must be considered in the order in which they affect the original motion, and each must be disposed of separately. If the amendment be lost, the original motion is revived, and this is subject to further amendment until such time as all the amendments have been disposed of.

An amendment may not be proposed to any motion already accepted by the meeting, i.e. after the "question has been put".

A person may move only one amendment unless the regulations otherwise provide, but there is nothing to prevent his speaking on an amendment to the same question moved by another person. If he has previously spoken on the motion he may not move or second an amendment to it, although he can speak on any amendment which may be moved by another person.

The mover of the original motion has a right of reply to the debate on an amendment, but the mover of an amendment has no such right.

An amendment cannot be withdrawn without the unanimous consent of the meeting.

An amendment to an amendment may be proposed (but it is not good practice, as it can cause confusion) and the meeting will then have to vote on whether the first amendment should be so amended. If accepted, the first amendment as so amended is then debated.

Should there be an equality of voting on an amendment, and the chairman does not exercise his casting vote, the amendment is lost.

Putting the main question

7-05 When amendments have been disposed of they are, if passed, incorporated in the original motion in the form of a substantive motion (or motion as amended) and this must be put to the vote. It may happen that an amendment has been approved, but when the motion is put to the meeting in the form of a substantive motion it is lost. Similarly, if the amendment has been lost, the original motion, as it stood before the proposed amendment, must be put to the meeting and voted upon. The effect of such procedure is to dispose of the whole question under discussion.

The above general rules may be relaxed in the case of small bodies or committees. Further, they would not apply to shareholders' or similar meetings where it is usual to allow a fair amount of latitude to members in the raising of questions, but where freedom to make amendments to resolutions is very limited because of the statutory requirement of notice.

Motion with amendment: example

7-06 The following is offered as an illustration of the handling of a motion to which a number of amendments have been tabled:

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[5] *Henderson v Bank of Australasia* (1890) 45 Ch.D. 330.

Moved by Mr ..... and seconded by Mr .....

"That tenders be invited for the provision of a new swimming bath on the site of the existing bath at the Rectory Field, Muddleham."

Notice has been received of the following amendments:

1. To insert the words "from local builders" after the word "invited".
2. To add before the word "swimming" in line two, the word "heated".
3. To insert the following words after "Muddleham": "and that such tenders be referred to the surveyor for approval".
4. To insert after the word "That" the following words: "the matter of the proposed new swimming bath at Muddleham be remitted to the General Purposes Committee for further consideration".
5. To insert the word "no", after the word "That".

The amendments will not be put in the order submitted, but in the order in which they affect the original motion. (An important and sometimes controversial point arises here. Strictly, when an amendment to the latter part of a motion has been put to the vote and carried, nobody is allowed to move an amendment to any earlier part of the motion. Vigilance may, therefore, be required to see that: (a) notice of a proposed amendment is given early enough for it to be debated; and (b) the chairman takes the amendments in the correct order.)

First, the chairman should ensure that no further amendments are proposed; considerable confusion can result if fresh amendments are added in the course of debate on the first-proposed amendments. (A good idea, derived from Local Authority practice, is for standing orders to provide (or for the chairman simply to rule) that no further amendments will be allowed after a vote has been taken on the first amendment to be considered by the meeting. This prevents interest-groups from waiting to see how things go and then introducing a fresh proposal.)

The chairman rejects amendment 5 as being a direct negative of the resolution. He then informs the meeting of the order in which the other amendments will be debated. Number 4 has been selected to be debated first. This is proposed, seconded, debated and put to the meeting; it is lost. (If amendment number 4 had been carried, the chairman would have been correct in not putting any of the other amendments to the meeting because they would be inconsistent with what had then become a new substantive motion (i.e. "That the matter of the proposed new swimming bath at Muddleham be remitted to the General Purposes Committee for further consideration.") The chairman then calls amendment number 1. This is carried. He then calls amendment number 2, which is lost. Finally, amendment number 3 is carried. The chairman then puts the substantive motion to the meeting in the following form:

> "That tenders be invited from local builders for the provision of a new swimming bath on the site of the existing bath at the Rectory Field, Muddleham, and that such tenders be referred to the surveyor for approval."

The substantive motion is then voted upon. This is an important step, as it allows those who are opposed root-and-branch to the whole swimming bath idea to vote against it in principle.

Rules on the amendments of motions will be included in the standing orders of the body which is meeting.

Chairman's ruling

The chairman should give any required ruling fairly and promptly and with authority. If he does this, he will be surprised at the degree of acceptance by the **7-07**

meeting. A fatal step would be to get too bogged down in the niceties described in the previous pages: these should be mastered (at any rate in principle) before the meeting starts.

Speakers, and indeed everyone else present at a meeting, should observe the ruling of the chairman on any matter. Standing orders or rules of the body often prescribe that his ruling shall be final, particularly in relation to points of order; in respect of other matters, the rules might provide that a ruling from the chair can be challenged by a minimum number of persons present, and that if this be done a vote shall then be taken. The chairman should vacate the chair while the vote is taken; it is not a matter on which there should be speeches.

There have been cases where resolutions properly proposed to a meeting were not accepted by the Chairman, who tried to close the meeting without letting all those who wished to speak do so. In these cases it was held quite valid for the members to continue the meeting and proceed with business (*National Dwellings Society v Sykes* [1894] 3 Ch.159). The normal sanction where a Chairman has invalidly refused an amendment or resolution is for a court to declare that part of the meeting invalid.

Termination of debate

7-08 A debate may be terminated by the introduction of one of a number of formal devices which have become recognised practice. The standing orders or rules may define, regulate and determine the admissibility of these devices, but in general terms they are as follows:

1. The closure.
2. The previous question.
3. Proceed to the next business.
4. That a matter lie on the table.
5. Reference back.
6. Adjournment of the debate.
7. Adjournment of the meeting.
8. Chairman vacate the chair.

The closure

7-09 To move the closure means to move "that the question be now put", i.e. that discussion shall end and the vote on the matter being considered be taken without delay ("to apply the gag"). If moved, seconded and approved (and assuming that the procedure is permitted under standing orders), it has the effect of ending discussion and promptly receiving a decision. It can be moved only by a person who has, until then, not spoken in the debate. No discussion should be allowed on the motion for the closure: the original motion under debate should be put to the meeting, but the mover is first allowed the chance to reply to the debate. A closure motion can in the same way be applied to discussion on an amendment. If carried, the motion before the meeting must be put immediately. Discussion on the motion may continue as before.

The chairman should not allow a closure motion to be put if he feels its objective is to stifle proper discussion.

If a motion for closure is lost, the chairman should not permit it to be raised again for a reasonable period.

The previous question

7-10 This means to move "that the question be now not put", i.e. to avoid a vote being taken on a motion before the meeting. This can only be moved on a motion. Discussion on the motion is allowed but the mover has no right of reply. If carried, the motion cannot be brought forward again at that meeting. If lost, the original motion should be put to the meeting immediately without further discussion or amendment, after allowing the mover of the original motion his right of reply.

Proceed to the next business

7-11 To move that "the meeting proceed to the next business" is the usual way in which a subject is shelved, often indefinitely. If moved and passed, it has the effect that discussion is abandoned, and any motions before the meeting in connection with it are never put to the meeting; in this respect it differs from a closure motion. If moved and carried when an amendment is under discussion, it will, under most standing orders, cause the meeting to abandon discussion of the amendment, and to return to discussion of the motion in its original form.

The motion is put in the form "that the meeting now proceeds to the next business," and, although in this it is subject to standing orders which usually provide that there shall be no debate on a procedural motion of this type, there is a convention that it should be proposed and seconded by persons who have not previously spoken in the debate. If the motion is passed, the meeting will immediately proceed as directed. If it is not passed, it is customary to allow a reasonable lapse of time (which may be specified in standing orders) before a similar motion is accepted again.

Standing orders often provide that a "next business" motion should not be taken until the mover and the seconder of a motion have been heard. If carried, discussion ends and the meeting proceeds to next business. If lost, discussion resumes. If carried in relation to an amendment, discussion returns to the main motion.

That a matter lie on the table

7-12 The effect of this formal motion is in practice the same as a motion to proceed to the next business. Its use is usually limited to occasions when a document is before the meeting which either calls for no discussion or with which those present do not care to deal. It may indicate that a subject is thought to be irrelevant or unimportant. No amendment is permitted and the mover has no right of reply.

The meeting may later vote to take the matter from the table, but this is unlikely: if there is any proposal that it should be raised at a later date a more meaningful motion will usually be passed—for example, to defer discussion until a fixed date, or until the matter be raised again by the officers of the body concerned.

Reference back

7-13 Another means by which discussion can be suspended is by referring a matter back to a committee. A variety of causes may give rise to a motion of this sort. It may happen that new circumstances have arisen that require a further examination by the committee, or it may be that the parent body disagrees with the recommendation of the committee, in which case it would have the same effect as negating the motion. In a sense, this is a substantive rather than a procedural motion.

Adjournment of the debate

7-14 Another method of deferring discussion is by moving an adjournment of the debate; it may be either for a fixed-time, or for an indefinite-time. An adjournment of the debate, unlike an adjournment of the meeting, does not interfere with the continuance of the meeting for the transaction of business other than that for which the debate was adjourned. The motion to adjourn the debate should not be moved until the conclusion of a speech. The mover of the original motion is allowed to speak against the motion to adjourn. The person who moves the motion for the adjournment usually has the right of reply if there is debate on the motion, and of reopening the debate when it is resumed. If carried, the matter before the meeting is adjourned to a fixed date or indefinitely, and the meeting proceeds to the next item. If lost, discussion continues to a fixed-time or indefinitely.

Adjournment of the meeting

7-15 A more radical alternative is a motion that the meeting be adjourned. The motion should be put immediately to the vote, and, if carried, disposes of the question under discussion at the meeting. When the meeting reconvenes, it would be open for any motion which was under discussion at the time of the adjournment to be again moved and debated. If the motion for the adjournment of the meeting fails, the chairman should not permit a similar motion to be heard until the debate has proceeded for some time. If carried, the meeting is adjourned to a specified date or indefinitely. If lost, the meeting continues. (See also Ch.6 in relation to adjournment generally.)

Chairman vacate the chair

7-16 The motion is put in the form: "That the chairman leave the chair", with the intention that the meeting is adjourned until the next ordinary meeting. This does not involve the election of a new chairman, nor is it the proper motion if a new chairman is desired. The motion cannot be amended and may be moved at any time. If successful, the meeting is adjourned to the next ordinary meeting.

Points of order

7-17 A "point of order" is raised when, in the opinion of a member, the rules or regulations governing a meeting are being broken, or when a member has a genuine doubt as to the correctness of the procedure being followed. This might include any non-observance of standing orders, any defect in the procedure of the meeting, e.g. the absence of a quorum, the use of offensive or abusive language, the fact that the motion under discussion is not within the scope of the notice, or any other informality or irregularity. Contradiction of and requests for explanation from the person speaking in the debate are not points of order, and it is an abuse to try to interpose them as such.

The person raising a point of order should do so by putting a briefly-worded question to the chairman stating that he wishes to speak on a point of order. He may raise the point of order when a person is speaking, but, as this is an obvious way of spoiling the speaker's train of thought, bogus points of order should be suppressed. The person speaking at the time should sit down; once the person taking the point of order has finished he too should sit down. The chairman's ruling on the point of order is final, but others present should be given an opportunity of speaking upon it if they so desire.

Points of order must be raised immediately the alleged breach of order has occurred.

2. VOTING—METHODS

The common law method of determining votes is by show of hands, and this method applies where there are no regulations or enactments to the contrary. Other methods of voting are provided for by statute, or by the regulations of the organisation concerned. **7-18**

The following are recognised forms of voting:

1. Acclamation or voices.
2. Ballot.
3. Division.
4. Show of hands.
5. Poll.

Acclamation or voices

The term is derived from a Latin word meaning "a shouting," and it is used to signify a spontaneous shout of approval or praise; "acclamation" is therefore usually used to adopt a resolution or pass a vote of confidence by loud approval in contrast to a ballot or division. The chairman may ask all those in favour to say "aye", and all those against to say "no". **7-19**

It would be unlikely for this method to be used where any formal business is to be transacted:

> "In a New Zealand case, it was held that "voting by voice" was an inappropriate method of deciding whether a majority present at a meeting of borough electors had voted in favour of a resolution as to whether or not a street should be closed."[6]

Whenever there is the smallest chance of uncertainty, the chairman should ask for a show of hands (see (4) below).

Ballot

The word "ballot" derives from the Italian word "*ballotta*", a round bullet, and originally described the small ball placed in a box on a secret vote; then it was applied to a ticket or voting slip. The expression is applied here to an election of candidates to an office. **7-20**

In this country the system was not known until the time of Charles II, and it was not until the passing of the Ballot Act in 1872 that the system was generally adopted for parliamentary elections. Under it a paper is used on which the names of the candidates are printed in alphabetical order, the voter putting an X against the candidate of his choice.

The use of a ballot assists secrecy, and is clear and easy to operate. It is useful for all types of election where the voter has to choose from a number of candidates, or has more than one vote.

The following is an example of the voting procedure to be followed in the election of a candidate to an office:

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[6] *Stratford Borough v Wilkinson* [1951] 9 N.Z.L.R. 814 CA.

1. A check is made of those present at the meeting who are entitled to vote.
2. A check is made that the candidates' nomination papers are in order.
3. The chairman introduces the candidates.
4. A draw is made for the order in which the candidates are to address the meeting.
5. The candidates withdraw.
6. The candidates are each then invited to address the meeting, in the order of the draw (the other candidates remaining outside the meeting).
7. Motion from the chair: "That the meeting proceeds to ballot".
8. If the motion is defeated, the meeting closes. If it is passed, scrutineers are appointed.
9. The ballot proceeds. If the rules provide that the winning candidate must have an overall majority of the votes cast, the candidate with the smallest number of votes will be eliminated and the ballot repeated—and so on, until the requisite majority is achieved.
10. The chairman declares the result of the ballot.
11. The chairman goes to the waiting room and informs the candidates of the result.
12. The successful candidate is offered the opportunity to address the meeting.

Division

7-21 Another method by which a vote may be taken is that known as the division, i.e. by the separation of members into separate groups, those in favour of the motion passing into one lobby or room, and those against passing into another lobby or room.

This method of voting is hallowed practice in the Houses of Parliament.

Show of hands

7-22 On a show of hands, each member present has one vote without regard to other factors, such as the number of shares held by him in the organisation[7] or the fact that he may be attending both in his own right and as a proxy holder.[8]

The chairman asks those present to indicate their vote by holding up their hands. The formula is: "All those in favour of the motion please show." The chairman counts these votes. The chairman then says "All those against the motion please show." He counts these votes. He should order a second vote if there is any doubt about the result. He then says: "I declare the motion carried" or "I declare the motion lost." If the chairman's declaration is challenged, this must be done promptly and it usually takes the form of an immediate demand for a poll. In fact, a show of hands had been described as "only a rude and imperfect declaration of the sentiments of the electors".[9] However, a declaration by the chairman that a resolution has, on a show of hands, been carried unanimously or by a particular majority (or lost) in the absence of fraud or obvious mistake, together with an entry in the minute book, is conclusive evidence of the fact. No proof of numbers or of proportion of the votes recorded for and against is required in those circumstances. A show of hands will be sufficient where a poll might have been, but was not, demanded:

> "At a meeting of parishioners at which a rate was fixed, objections were made that the rate was invalid because the chairman had declared the resolution carried when, from evidence submitted, a majority was against the resolution. An objection was made to the chairman's declaration at the time, but it was not followed through by a demand for a division or a poll. In the absence of this, the validity of the rate was upheld."[10]

There is no objection to the chairman ordering a second vote should he be uncertain of the result of voting at the first count:

> "Under the articles of a company it was necessary to have 12 voting in favour to 4 against before a resolution could be carried, and 11 voted in favour and 4 against; in this situation the chairman was justified in ordering a recount, and on the recount 14 voted in favour and 4 against. The resolution was held to be valid. If the chairman had said that the motion was carried but was in doubt as to whether he was right or wrong, he was entitled immediately to have the votes counted again."[11]

In a meeting at which a large number of people are present it is sometimes difficult to assess whether a motion has been carried or lost, and even when it may be clear to the chairman and others on the platform it may be doubtful to those on the floor. In such a case, it is wise for the chairman to call in the aid of scrutineers to count the votes. Ideally, scrutineers should be drawn equally from those known to support and those known to oppose the motion; and should work in pairs, checking each other's count. In very contentious situations, the scrutineers should be appointed by the meeting.

Poll

7-23 The original meaning of the word "poll" was "the head". The most familiar derivative uses are those connected with parliamentary or other elections; thus, "to poll" is to secure a number of "heads", and "the poll" is the voting, the number of votes cast, or the time during which voting takes place.

In relation to meetings, the purpose of a poll is to ensure that the votes cast are recorded in writing and counted in an accurate way, for example, by the filling in of voting papers or the recording of the names of those voting on voting lists—or perhaps simply by a roll being called, and the vote marked against the member's name by the secretary.

The significance of a poll is:

- to correct the imperfections of a vote on a show of hands; or
- to extend the poll to a wider franchise (for example, to allow the introduction of proxy votes, or to permit voting by parishioners who had not attended the parish meeting); or
- to allow for weighted voting, in relation, for example, to the number of shares held by a member in the body concerned.

The right for any member entitled to vote to demand a poll exists by the common law and electors cannot be deprived of this right unless by express provision[12]:

> "At a parish meeting two churchwardens were elected on a vote by show of hands but, on a poll being demanded by a ratepayer, two other churchwardens were elected in their places. No poll had ever been held in the parish in the past and the question arose as to whether the election was effectual. *Held*, that the right to demand a poll is a necessary incident to the mode of election by show of hands unless it is by special custom excluded;

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7 *Horbury Bridge Coal, Iron Waggon Co, Re* (1879) 11 Ch.D. 109.
8 *Ernest v Loma Gold Mines Ltd* [1897] 1 Ch.1.
9 *Anthony v Seger* (1789) 1 Hagg. Con. 9.
10 *Cornwall v Woods* (1846) 4 Not. of Cas. 555.
11 *Hickman v Kent and Romney Marsh Sheepbreeders' Association* (1920) 37 T.L.R. 163 CA.
12 *R. v Wimbledon Local Board* (1882) 8 Q.B.D. 459.

where the body of electors is large in number, recourse to a poll is the only effective method of ascertaining the number of those who vote on each side, and one person may demand a poll.[13]

At a meeting to elect churchwardens a poll was duly demanded after voting by show of hands, and those qualified to vote recorded their votes, but it was contended that several qualified inhabitants who were not present at the meeting had been locked out of the poll. *Held*, that even though such persons were not present at the voting by show of hands, they had a right to be admitted to record their vote. In the words of Denman, C.J., "if a poll be demanded it should be kept open for all qualified persons."[14]

In addition to this common law right, the regulations of the body concerned may enable a given minimum number of members to demand a poll, or accord the same right to the chairman.

Once a demand has been validly made, the result of the voting by show of hands ceases to have any effect:

"A candidate was elected on a show of hands. Then a poll was demanded. Next, the candidate withdrew his consent to nomination, so that the poll was not proceeded with. Later, the chairman said that in circumstances the candidate, in spite of his unwillingness, had been elected on the show of hands vote. *Held*, there had been no such appointment in view of the demand for a poll."[15]

It is no objection to the proceedings that the chairman directed a poll without first taking a show of hands, even though a poll was not demanded but was opposed.[16]

As a general principle, the demand for a poll should be made immediately after the declaration by the chairman of the result of a show of hands. If it is not so made, the chairman's declaration will stand:

"In the case of elections relating to 11 townships, the elections were made in each case by a show of hands. After all the elections had been made, an elector demanded a poll in relation to the elections for the third and fourth townships. It was held that such demand should have been made immediately after the declaration of the show of hands, and the elections on the show of hands were therefore valid."[17]

It is doubtful if a demand for a poll can be withdrawn (unless the regulations or articles permit it):

"At an election a member demanded a poll, and this was seconded by another person. The town clerk said that the demand was sufficient without a seconder, but after a lapse of six days the original proposer withdrew his demand. The question arose as to whether the proposed seconder who wished to be associated with the poll still had a right to demand it. Judgment was given in his favour as there was in substance a demand for a poll within the meaning of the relevant statute."[18]

Arrangements for the poll

7-24 The responsibility for declaring that a poll will take place rests with the chairman of the meeting. It is also his task to determine the arrangements for the poll, acting within the standing orders, and he should announce the details to the meeting.

In the absence of other business, the poll should be taken immediately; if time

[13] *Campbell v Maund* (1836) 5 A. & E. 865.
[14] *R. v St Mary, Lambeth, Rector of* (1838) 8 A. & E. 356.
[15] *R. v Cooper* (1870) L.R. 5 Q.B. 457.
[16] *R. v Birmingham, Rector of* (1837) 7 A. & E. 254.
[17] *R. v Vicar of St Asaph* (1883) 52 L.J.Q.B. 671.
[18] *R. v Mayor of Dover* [1903] 1 K.B. 668.

does not permit that, there should be an adjournment.[19] It is the task of the chairman to give everyone a chance to vote, and the detailed arrangements should be directed to that end.

A simple method is for each voter to record his vote on voting lists. There will be a list for those in favour and a list for those against: the voter will record his name, the number of votes he is casting, and add his signature.

If voting papers are used, there must be a system to ensure that each voter is issued the papers, and only the papers, to which he is entitled. A system which has been used is for voting papers to be prepared for each item on the agenda (preferably each in a different colour), and for these to be issued to members arriving at the meeting upon production of a membership card or other evidence of identity.

An example of a simple voting paper is as follows:

THE WORK-RATE ASSOCIATION

ANNUAL GENERAL MEETING

.....[year]

VOTING PAPER for the adoption of the Report and Accounts—Agenda item no.3

FOR/AGAINST

Delete which is not preferred

There is no common law requirement that polls should be confidential; those who organise a poll vote are entitled to know how people voted so that the validity of the votes can be scrutinised.[20]

Proxy voting on a poll

7-25 The word proxy is used variously to describe:

1. a document authorising a person to vote instead of another at a meeting; and
2. a person appointed to act instead of another.

Accordingly, the term "proxy" refers either to the instrument of appointment, or to the person appointed by it. There is no common law right to vote by proxy.[21] Attending and voting have to be in person, but it has become normal practice that the duties of attendance and voting at a meeting can be undertaken by an agent or proxy. Such a right is frequently conferred by the regulations of the body concerned; and by s.324 of the Companies Act 2006 any member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him on a poll.

A person who has voted by proxy may attend and vote in person, but his proxy vote must then be taken out of the records. Arrangements should also be made to ensure that members present who have been named as proxies on behalf of other voters (the proxy forms having usually been delivered to the office, under the

[19] *R. v D'Oyly* (1840) 12 A. & E. 139.
[20] *Haarhaus & Co v Law Debenture Trust Corp* [1988] BCLC 640; [1988] 1 F.T.L.R. 431; but see para.14-13.
[21] *Harben v Phillips* (1883) 23 Ch.D. 14.

Act and fix a quorum which will get round the problem—perhaps that one member present in person or by proxy shall be sufficient.[113]

[113] *Re H. R. Paul Son Ltd* (1973) 118 S.J. 166; *The Times*, 17 November 1973 and *Re Opera Photographic* [1989] 1 W.L.R. 634; [1989] 5 B.C.C. 601.

CHAPTER 14

Member's Meetings: Attendance and Voting

1. CORPORATE REPRESENTATIVES

This chapter looks at the members' attendance at the meeting, how voting is carried out and the use of proxies. There are two main ways in which votes are cast at a general meeting, either by a show of hands or by a poll. These methods are considered in more detail in this chapter.

14-01 A corporate entity can be a member of a limited company. This can happen where a corporate entity invests in a limited company and takes a seat on the board, or where the limited company is part of a group. Investment companies often have their shares held by nominee companies to keep pools of shares together. A corporation must appoint an individual to act on its behalf at the general meeting.

If it is a member of another corporation being a company within the meaning of the companies legislation, then it may by resolution of its directors or other governing body,[1] authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company.[2] That person is entitled to exercise all the power of being a member as if they were an individual member and can exercise any of the rights granted to members by the legislation. More than one person can be appointed for different blocks of shares.[3] However, the persons cannot vote differently with the blocks of shares, otherwise their powers will be considered as having not been exercised.[4]

Section 323 of the Companies Act 2006 (the 2006 Act) refers to 'a corporation whether or not a company within the meaning of this Act'. It will be noted as a consequence of this wording that the corporation having the power to appoint a representative under either provision need not be a company within the meaning of the UK companies' legislation.[5] Thus a foreign company, for example, could take advantage of the section.

A person so appointed can exercise the same powers on behalf of the corporation he is representing, as that corporation could exercise if it were an individual shareholder of that other company.[6] This includes the power to speak at the meeting and to vote on a show of hands[7] and on a poll. He is entitled to only one vote

[1] "Other governing body" can include a liquidator: *Hillman v Crystal Bowl Amusements and Others* [1973] 1 W.L.R. 162; [1973] 1 All E.R. 379, C.A.
[2] 2006 Act s.323(1).
[3] 2006 Act s.323(1):'...authorise a person or persons to act ...'.
[4] 2006 Act s.323(4).
[5] 2006 Act s.323(1).
[6] 2006 Act s.323(2).
[7] *Re Kelantan Coconut Estates Ltd and Reduced* (1920) 64 Sol.J. 700.

on a show of hands even if he acts in the dual capacity of member and corporation representative.[8] He is to be counted in the quorum.

There is no need to notify the company of the appointment of a corporate representative before the meeting. However, at the meeting the corporate representative may have to show evidence of their authority to act for the corporate shareholder. A certified copy of the resolution in which the appointment is authorised will generally be sufficient. An original letter on the company's headed paper is also acceptable but the letter should be signed by an authorised signatory, with evidence of the power of the authorised signatory to hand.

Companies Act 1985 (the 1985 Act) did not allow a company to appoint more than one representative for a particular meeting (although an alternative person in the absence of the first-named representative was permitted). However, the 2006 Act expressly provides for the appointment of multiple corporate representatives.[9] So multiple corporate representatives may be appointed, which was the intention in drafting the section. However, if corporations want to vote differently on different blocks of shares they should appoint proxies as appointing more than one representative cannot achieve that aim.

14-02 A specimen form of resolution is appended:

XYZ LIMITED

CERTIFIED COPY OF RESOLUTION OF THE BOARD OF DIRECTORS

RESOLVED: THAT [NAME] ....., and [NAME] or, failing him/her/them [NAME], be and is hereby appointed to act as the representative of the company, pursuant to section 323 of the Companies Act 2006, at the [annual] general meeting of ABC plc to be held on ..... and at any adjournment thereof.

I hereby certify that the above is a true copy of a resolution of the board of directors of XYZ Limited

passed on.....
Secretary

XYZ Limited

[Address] [Date]

The certified copy is usually retained by the company of which the corporation is a member, as evidence of the representative's right to be present and vote at the meeting. The representative may himself carry the original to the meeting in case of dispute over his right to attend and exercise the rights of the corporation which he is representing.

The resolution sometimes refers to the appointee as the holder of an office such

8 2006 Act s.284(2)—although the provisions of this section are subject to any provision of the articles s.284(3).

9 2006 Act s.323.

as director, secretary or assistant secretary. In such cases, it is usual for the person attending the proposed meeting to have, in addition to a copy of the resolution, a certificate from the appointing corporation that he is the holder of that particular office; furthermore, where a shareholding company appoints several persons as alternative representatives, care should be taken by the company at whose meeting representatives are present; to ensure that only one of the alternates attends the meeting or, if by courtesy of the chairman more than one is allowed to be present, only one votes. This is to ensure that the provisions of s.323 of the 2006 Act are complied with.

In practice, the representative is sometimes not asked to produce the authority under which he acts, and the validity of a resolution passed at such a meeting could not be questioned merely for the reason that the chairman did not ask for the production of the authority. The representative may well be known to the company of a substantial block of shares are held by the corporation. In fact, it would be difficult to turn away a corporate representative, where the evidence of his appointment presented was less than satisfactory, or where no evidence at all has been produced. It would be difficult to prove that he had not been validly appointed by the company which he represents. The company may be unwise to debar the representative from attending and voting unless it has, after careful enquiry, formed the view that no resolution had been passed. This can be difficult to confirm.[10]

One advantage to a shareholder which is a company of appointing a representative or representatives under s.323, rather than submitting a proxy in favour of the chairman of the meeting, is that the member may, by using s.323, wait until the meeting before deciding which way to vote. However, if it is the intention of the corporation as shareholder to vote blocks of its shares in different ways, then proxies must be appointed.

2. VOTING

In general

14-03 The law in respect of voting procedures at general meetings is set out in Pt 13 of the 2006 Act. However the rights of a shareholder to vote is usually governed by the provisions of the articles of association or the constitution of the company. Every member has one vote in respect of each share or each £10 of stock held.[11]

A company has little or no influence over how its members use their right to vote and members may exercise their vote as they wish. It is, broadly speaking, not entitled to look behind the bare fact of legal ownership, as recorded in its register or on the central register, where no notice of any trust, expressed, implied or constructive shall be entered.[12] Members of the company, or aggrieved persons who believe they should have been on the register or the company themselves can apply to the court to rectify the register. But even the court has no power to invalidate a vote on the ground that the member did not exercise it, in the best interests of the company or because he was tainted by a conflict of interest.[13]

10 In a New Zealand case, the court held that a corporate representative was not required to produce evidence at the meeting that a valid board resolution had been passed: *Maori Development Corporation Ltd v Power Boat International Ltd* (1995) 2 N.Z.L.R. 568.

11 2006 Act s.284(1).

12 2006 Act s.125.

13 *East Pant Du United Lead Mining Co v Merryweather* (1864) 2 H. M. 254; *Northern Counties*

One exception to the above is where a majority attempt, by a vote at a general meeting, to perpetrate a fraud on the minority—for example, by sanctioning the sale to themselves, at an undervalue, of company property. Such action will be disallowed.[14] Issuing shares to themselves to dilute or reduce the voting power of a minority is also prohibited.[15]

The court, too, will restrain a shareholder, by injunction, from voting against a resolution where a failure to pass the resolution would bring about the immediate insolvency of the company.[16]

There may be a conflict of interest where an individual is a director and a shareholder. Acting in his own best interest as a shareholder could conflict with his duty as a director under s.175 of the 2006 Act. As the following cases illustrate, the freedom of a shareholder to vote in his own interest extends even to a shareholder who is also a director, except where the director is in breach of his fiduciary duty:

> "A director was held to be entitled to vote as a shareholder even though his interest in the subject matter was opposed to the interests of the company.[17]
>
> Where, however, votes were cast in respect of shares issued by the directors themselves or their friends for the purpose of securing the passing of certain resolutions, this was held to be in conflict with the principle that the powers entrusted to the board must be exercised bona fide and in the interest of the company.[18]
>
> Where three directors of a company obtained a contract in their own names and at a general meeting, by their votes as holders of three-quarters of the issued shares, passed a resolution declaring that the company had no interest in the contract, the resolution was declared invalid as the contract belonged in equity to the company, and the action of the directors amounted to a breach of trust."[19]

14-04 While, as between the company and the member, the company has little influence (with the exceptions discussed) over the way a member votes, the member can freely bind himself by contract to a third party to vote, or not to vote, in a particular way.

If the contracting party fails to vote in accordance with his agreement, There is nothing that the company need do, and it must still accept the vote. This leaves the aggrieved party to sue the other party to the contract.

Qualification to vote

14-05 The register of members constitutes evidence of the right of a member to vote. Section 127 of the 2006 Act provides that the register of members is prima facie evidence of any matters which are directed or authorised to be inserted into it by the 2006 Act. The register of members must contain the names and addresses of members, the dates on which they were registered as and ceased to be members, a statement of the shares held by each member with their distinguishing numbers (if any), and details of the class of share and the amount paid or agreed to be considered as paid on each.[20] Where the member nominates another person to represent them, then the company must behave towards the nominee as if they were

Securities v Jackson & Steeple Ltd [1974] 1 W.L.R. 1133; [1974] 2 All E.R. 625.

14 *Menier v Hooper's Telegraph Works* (1874) L.R. 9 Ch.350.

15 *Clemens v Clemens Bros Ltd* [1976] 2 All E.R. 268.

16 *Standard Chartered Bank v Walker* [1992] B.C.L.C. 603.

17 *North-West Transportation Co v Beatty* (1887) 12 App. Cas. 589.

18 *Punt v Symons Co Ltd* [1903] 2 Ch 506. See also *Fraser v Whalley* (1864) 2 H. M. 10.

19 *Cook v Deeks* [1916] 1 A.C. 554. See also *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638; [2006] F.S.R. 17.

20 2006 Act s.113.

the member.[21] This can have the effect of assisting a member in increasing his voting power.[22]

Chapter 2A of Part 8 of the 2006 Act allows private limited companies to keep the information from their register of members on a central register. This central register is kept by the registrar of companies. There is then no need to keep the company register at the registered office.

The register or central register, however, is only prima facie evidence of matters recorded in it, and s.125 and s.128G of the 2006 Act permits an application to the court for rectification if the name of any person is entered into or omitted from a company's register of members without sufficient cause.[23]

There is apparently nothing to prevent a person who becomes a member, between the dates of an original and adjourned meeting, attending and voting at the adjourned meeting. Further, a vendor of shares who remains the holder of them after the contract for sale retains the right to vote in respect of those shares; he should, however, exercise his vote in accordance with directions given by the purchaser, except where he remains unpaid, in which event his position is analogous to that of a mortgagee and he may disregard the purchaser's instructions to the extent that his right to recover the purchase price is thereby prejudiced.[24]

Under the Uncertificated Securities Regulations 2001[25] the company may close the register and decide that those persons entitled to receive notice are those who are on the register on the day he determines, as discussed below.[26]

In private companies, directors may sometimes refuse to register transfers.[27] In such a case, there is nothing to stop the transferor and transferee entering into a separate agreement that the transferor, while he remains on the register, will vote in accordance with the directions of the transferee; this can be supplemented by the transferor agreeing to appoint the transferee as his proxy at general meetings, and to forward notice and other documents to the transferee as soon as they are received.

Joint holders can have their holdings split into two or more joint holdings with their names in different orders.[28] This can ensure that the joint holders all received notice of a meeting, as the notice is most likely to be sent to the person first named in the register.

14-06 Regulation 41(1) of the Uncertificated Securities Regulations 2001 (SI 2001/3755) (the 2001 Regulations) provides that for the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer (company) may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting. Changes to entries on the relevant register of securities after the time specified by virtue of Regulation 41(1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary. These regulations were introduced to facilitate the

21 2006 Act s.145.

22 *Re Stranton Iron Etc Co* (1873) L.R. 16 EQ 559.

23 See also *POW Services v Clare* [1995] 2 B.C.L.C. 435, 449.

24 *Musselwhite v C.H. Musselwhite Son Ltd* [1962] Ch. 964; [1962] 2 W.L.R. 374.

25 Regulation 41 of SI 2001/3755.

26 Unregulated Securities Regulations 2001, Regulation 41(3). This could prevent someone getting their name on the register between the date of the meeting and the adjourned meeting.

27 As permitted by art.26 of the Model Articles, which are the default articles for all companies incorporated since 1 October 2009; also art.54 of Table A if companies are using articles modelled on the Table.

28 *Burns v Siemens Brothers Dynamo Works Ltd* [1919] 1 Ch.225.

introduction of CREST, but this is no longer the only way in which uncertificated securities can be held.

The purpose of the Regulations is to fix a moment in time at which, on a constantly changing register, voting rights are determined.

Members do not need to be physically present in order to attend, speak and vote at a meeting.[29] This right was established in the case of *Byng v London Life Association Ltd*[30] but given statutory effect by the insertion into of s.360A into the 2006 Act.[31] This change was made in response to the Directive on the exercise of shareholders rights.[32] Companies have the power to require evidence of entitlement to participate in a meeting from persons who are not members themselves. The issue of virtual meetings is discussed elsewhere in this work.

Show of hands

14-07 There are two common ways of holding a vote at a general meeting, a show of hands and a poll. The first one to be discussed is voting on a show of hands. As a method of voting, a show of hands is quick, easy to administer and without cost. On the other hand, a show of hands does not reflect the relative numbers of shares held by individual shareholders, and therefore those with fewer shares have the same say as those with greater numbers of shares. However where shareholders are unhappy they can demand a poll.

s.284(2) of the 2006 Act provides that on a show of hands every member present shall have one vote irrespective of how many shares they hold. This provision was contained in art.54 of Table A, the standard form in company articles, and it followed the natural, basic way in which, at common law, the sense of a meeting is obtained. The new model articles, however, make no such provision and rely on the statutory provision of s.284. However the provisions of section 284 are subject to any provision in the company's articles.[33]

A proxy shall have one vote for each shareholder that has appointed them. It can happen that a proxy is appointed by more than one shareholder and has been instructed to vote in different ways by each shareholder.

A corporate shareholder can appoint different representatives for different tranches of shares. The corporate representatives can vote in different ways as long as they are voting on the basis of different shares.

For a vote on a show of hands, the chairman asks those present, who support the resolution, to raise their hands. Then he asks those opposing the motion to raise their hands. The duty of the chairman is to count the hands held up very carefully; he can ask for assistance.[34] He pays no regard to the number of shares held by each member present and he endeavours to ensure that those present solely as proxy-holders do not vote. Then he declares the result and his declaration is final[35] unless a poll is demanded.

14-08 Section 320(1) of the 2006 Act provides that unless a poll is duly demanded, a

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29 2006 Act s.360A.

30 *Byng v London Life Association Ltd* [1990] 1 Ch.170.

31 Inserted by the Companies (Shareholders Rights) Regulations 2009 (SI 2009/1632).

32 Directive 2007/36/EC made by the Companies (Shareholders Rights) Regulations 2009 (SI 2009/1632).

33 2006 Act s.284(4).

34 The chairman should go through the formality of asking for a show of hands, even if there appears to be no opposition: *The Citizens Theatre Ltd* [1946] S.C. 14; 1946 S.L.T. 29. See also *Fraserburgh Commercial Company Ltd* [1946] S.C. 444; 1946 S.L.T. 370.

35 2006 Act s.320(1) and 320(3). The particular articles may, exceptionally, allow proxy holders to vote on a show of hands.

declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against the resolution. However, a poll may be demanded.

Poll

A poll is the type of vote where each member of the company has one vote for every share held. **14-09**

The value of a poll lies in the fact that the weighted voting strengths may be more accurately assessed and it is more precise. It is a more lengthy procedure, and can be costly where there are a large number of shareholders. However it does avoid the problems that can arise with voting on a show of hands. Section 322 of the 2006 Act provides too that on a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way. This facilitates voting by nominee shareholders. Institutional investors often hold tranches of shares that they may be exercising for different pension schemes, investment schemes or individual investors.

The common law right to demand a poll was given statutory effect in the 1985 Act and subsequently in the 2006 Act. Section 321 of the 2006 Act provides that the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting cannot be excluded by the company's articles. The section also provides that the articles may not make ineffective a demand for a poll by not less than five members having the right to vote at the meeting, or members representing not less than one-tenth of the total voting rights or one-tenth of the total sum paid up on all the shares conferring the right to vote.[36]

The articles or constitution of the company will set out the rules relating to a poll. Articles 44 of the model articles for private companies incorporated since October 2009, permit a poll to be demanded by the chairman and by two shareholders. The model articles also allow directors to demand a poll. A proxy holder has the right to demand or join in demanding a poll.[37]

> **44.**—(1) A poll on a resolution may be demanded—
> (a) in advance of the general meeting where it is to be put to the vote, or
> (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
> (2) A poll may be demanded by—
> (a) the chairman of the meeting;
> (b) the directors;
> (c) two or more persons having the right to vote on the resolution; or
> (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
> (3) A demand for a poll may be withdrawn if—
> (a) the poll has not yet been taken, and
> (b) the chairman of the meeting consents to the withdrawal.
> (4) Polls must be taken immediately and in such manner as the chairman of the meeting directs."

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36 2006 Act s.321(2).

37 2006 Act s.329.

There are some circumstances set out in the 2006 Act in which any shareholder can demand a poll. Under s.698 any member of the company may demand a poll on a resolution authorising the variation of a contract for the off-market purchase of the company's own shares. Under s.717 any member may demand a poll on a resolution to redeem or purchase the company's own shares with a payment from the capital of the company.

Votes on a resolution on a poll taken at a meeting may include votes cast in advance.[38] The documents casting a vote in advance cannot be required to be received by the company more than 24 hours before the time appointed for the taking of a poll, if the poll is taken more than 48 hours after it is demanded. In the case of any other poll, documents casting a vote in advance cannot be required to be delivered more than 48 hours before the time the meeting is to be held. No provision in the articles can override this provision.[39]

These provisions apply to all general meetings, and to resolutions.

The provisions of Table A (which were more liberal than the limits prescribed by s.321) are as follows:

> **46.** A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded—
>
> (a) by the chairman; or
>
> (b) by at least two members having the right to vote at the meeting; or
>
> (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
>
> (d) by a member or members holding shares conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right;
>
> and a demand by a person as proxy for a member shall be the same as a demand by the member."

A chairman of a meeting is under no obligation to inform shareholders of their rights, under the articles or otherwise, to demand a poll.[40]

14-10 The articles of the company often dictate when a poll may be demanded. By article 44 of the model articles, the default articles for companies incorporated since 1 October 2009, the demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman. The article provides that a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.[41]

Subject to the articles, a poll can be validly demanded without going through the formality of a show of hands. Article 44 of the Model Articles allow for a poll to be demanded on a resolution in advance of the general meeting where it is to be put to the vote.[42]

Where the chairman has the right to demand a poll, he must exercise it in the interests of the whole body over whom he presides, including those who have chosen to vote by proxy:

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38 2006 Act s.322A.

39 2006 Act s.322A(3).

40 *Re Hockerill Athletic Club Ltd* [1990] B.C.L.C. 921.

41 This reverses what would otherwise be the position: see *R. v Cooper* (1870) L.R. 5 Q.B. 457.

42 *Holmes v Lord Keyes* [1959] Ch.199; [1958] 2 W.L.R. 772. (This is sometimes used as a tactic in difficult meetings.)

> "At a meeting of debenture stockholders, a resolution had to be passed by a three-quarters majority. The state of the proxies was such that if a poll were demanded and the proxies used for the purpose of the vote, the necessary three-quarters majority could not be obtained. The chairman therefore decided not to demand a poll after a show of hands had passed the resolution with the necessary majority. It was held that the chairman should have demanded a poll and then voted the proxies in accordance with the instructions they contained, so as to ascertain the true sense of the meeting.[43]"

Another occasion when the chairman should ask for a poll is where new material has been added to the agenda for the meeting, after the notices have been sent out; by demanding a poll (to be held at a later date) the chairman may enable members to take the new factors into account by lodging proxies prior to the poll.

14-11 A poll must be conducted in the manner laid down by the articles. Article 44 of the model articles provides that the poll must be taken immediately and in such manner as the chairman of the meeting provides.

14-12 Many difficulties that arise on a poll at company meetings relate to the interpretation of the articles. The following are examples:

> "The articles of a company provided that if a poll should be demanded, it should be taken "in such manner as the chairman shall direct". A poll having been demanded at a meeting summoned to consider a resolution for a voluntary winding up, the chairman directed the poll to be taken then and there, and it was held that the poll was rightly taken and the resolution was accordingly carried."[44]

If the articles provide for a poll to be taken "immediately", this means as soon as practicable.[45]

If a group of associated resolutions is to be voted on, and a poll is demanded, it is proper for each resolution to be submitted to a vote separately. In one such case,[46] the resolutions having been passed on a show of hands were submitted to a poll vote en bloc; it was ruled that the resolutions were not properly carried. In a later case, however, where this procedure was adopted and no objection was registered at the time, the earlier precedent was not followed and the resolutions were confirmed as having been carried.[47] It appears, therefore, that in such circumstances a group of resolutions may be taken en bloc for voting on a poll, but only if the meeting so agrees.

14-13 On a poll, votes will be counted in accordance with s.284 of the 2006 Act or the provision of the articles if such exist. A common provision is one vote for each share

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43 *Second Consolidated Trust Ltd v Ceylon Amalgamated Tea Rubber Estates Ltd* [1943] 2 All E.R. 567.

44 *Re Chillington Iron Co* (1885) 29 Ch. D. 159. In a case, however, where the articles of a company provided that the poll was to be taken at a time and place to be agreed by the directors within seven days of the date of the meeting, and the chairman declared the poll to be taken "then and there", this was held to be invalid as it was not in accordance with the strict interpretation of the articles *Re British Flax Producers Co Ltd* (1889) 60 L.T. 215. The articles of a company provided that if a poll were demanded it should be taken "in such manner and at such time and place as the chairman of the meeting directs." At a general meeting of the company, a resolution was lost upon show of hands and the chairman demanded a poll and directed that it should be taken by means of polling papers signed by the members and delivered at the offices of the company on or before a fixed day and hour. The direction of the chairman was held to be irregular as under the articles the personal attendance of the voter or the person appointed was necessary, and the chairman had no right to enlarge the power of voting by issuing voting papers.*McMillan v Le Roi Mining Co* [1906] 1 Ch. 331."

45 *Jackson v Hamlyn* [1953] Ch.577; [1953] 2 W.L.R. 709.

46 *Patent Wood Keg Syndicate v Pearse* [1906] W.N. 164.

47 *Re R.E. Jones Ltd* (1933) 50 T.L.R. 31. See also 1985 Act s.292.

held[48] but in cases where the share capital of the company is split into different classes of shares the voting powers will be determined according to the rights given under the regulations to particular classes of shareholders. Section 284 allows for one vote in respect of each share or of each £10 of stock held by him.

A member holding a proxy for another member may, on a poll, wish to vote in respect of his own holding in a manner contrary to that of the person whom he represents by proxy. In such a case, he would demand two ballot papers, one for recording the vote of his own interest and the other for recording the vote of his principal's interest.

Sometimes scrutineers are appointed, but this procedure is not obligatory unless the regulations so provide. If there is no provision in the regulations, the meeting itself can make the appointment. For a large meeting or where the subject is controversial, it is desirable to appoint scrutineers to be responsible for arranging the best way of collecting the voting papers and expediting the checking of the votes against the register.

There is no requirement that polls should be confidential; although if the articles or other rules (for example, a debenture trust deed) under which the poll is taken give the chairman the right to control the procedure he may, it appears, introduce an obligation of confidentiality.[49]

The results of the poll should be notified to the shareholders as soon as is practicable. There is no prescribed method of notifying the shareholders of private companies of the result of a poll. Traded companies are requires under s.341 of CA 2006 to publish the results of a poll on a website and the information should be made available on the website for two years following the meeting.

Casting vote

14-14 The model articles[50] provide as follows:

> **13.**—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
>
> (2) But 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."

Table A provided that:

> **50.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to any other vote he may have."

However this article of Table A was deleted on 1 October 2007 although some companies will have this article embedded in their articles of association.

In the absence of such a provision in the articles of association of the company, the chairman has no second or casting vote.

Restriction on voting rights

14-15 Under s.445 of the 1985 Act, the Secretary of State for Business, Energy and Industrial Strategy (BEIS) has power to impose restrictions on shares and

48 2006 Act s.284.
49 *Haarhaus Co GmbH v Law Debenture Trust Corp* [1988] B.C.L.C. 640; [1988] 1 F.T.L.R. 431.
50 Companies (Model Articles) Regulations (2008) (SI 2008/3229).

debentures if, in connection with an investigation under either s.442 or s.444, it appears to him that there is difficulty in finding out the relevant facts about any shares.

Sections 442 and 444 of the 1985 Act relate to investigations about the ownership of shares in the company. The restrictions which can be imposed include a provision that no voting rights are to be exercisable in respect of those shares.[51] A public company itself has power under s.793 of the 2006 Act to obtain information from its members about the identity of the owner of shares, and under s.794 may, if it fails to get the information, apply to the court for the imposition of the restrictions.

Articles of public companies sometimes provide that a member shall not be entitled to be present or to vote, in person or by proxy, if he or any person appearing to be interested in shares held by him, has been served with a notice under s.793 of the 2006 Act and has failed to supply to the company the required information within a specified period.

3. PROXIES

The authority

14-16 There is no common law right to vote by proxy, and such power must therefore be conferred by statute or by the regulations of the body concerned.[52]

Section 324 of the 2006 Act provides that any member of a company entitled to attend, speak and vote at a meeting of it may appoint another person (whether a member or not) as his proxy to attend, speak and vote instead of him. This right cannot be overridden by any provision in the articles of the company. However the articles will set out how a proxy is to be appointed. Unless the articles provide otherwise, a member of a private company may appoint more than one proxy to attend on the same occasion as long as the proxies are exercising the right attached to different shares.[53] The legislation does not refer to companies without a share capital specifically but s.324(1) of the 2006 Act says that a member can appoint a proxy, and makes no reference to whether the company has to have a share capital or not. Any notice of a general meeting of the company should make it clear to the member of the company that he may appoint a proxy.[54]

A proxy has long held the right to demand or join in demanding a poll.[55] But it was the case that a proxy-holder had no right to propose resolutions and amendments.[56] Following the Company Law Review all restrictions on the rights of a proxy were eliminated in the 2006 Act. A proxy continues to be able to demand a poll[57] and may also be elected chairman of the meeting[58] unless the articles or constitution of the company prohibits it.

However, a restriction on the proxy was introduced by Companies (Sharehold-

51 1985 Act s.454(1)(b).
52 *Harben v Phillips* (1883) 23 Ch. D. 14; 2006 Act ss.284, 285 and 324 to 331.
53 2006 Act s.324.
54 2006 Act s.325. If the articles permit the appointment of more than one proxy, then this should also be made clear. The failure to provide the statement of rights will not invalidate the meeting but may result in the officers being fined.
55 2006 Act s.329.
56 See Pennington, *Company Law*, 1990 p.637; conveners of meetings should bear in mind the difficulties this may cause if a meeting is attended only by proxy-holders.
57 2006 Act s.329.
58 2006 Act s.328.