

(a) Annual General Meeting

Most companies must hold an AGM.

(i) CA 1985 s.366 provides that an AGM must be held every calendar year with not more than 15 months between meetings. A newly incorporated company must hold its first AGM within 18 months of incorporation.

(ii) CA 1985 s.367 - if a company does not hold an AGM as required, any member can apply to the Secretary of State to call or to direct the calling of the meeting.

(iii) CA 1985 s.366A - members of a private company can choose to dispense with the holding of an AGM by elective resolution - but any member of such a company can require that an AGM be held in a particular year by giving notice at least 3 months before the end of the year.

(iv) CA 1985 s.371 - if it is impracticable to call a meeting or conduct a meeting in the manner prescribed by the company's articles, any member or director who would be entitled to vote can apply to the court which can order the meeting to be called or held.

Re Sticky Fingers Restaurant Ltd (Case 53)

(b) Usual Business of an AGM

(i) Directors lay before the company annual accounts and reports for the most recent financial period.

(ii) Auditor's term of office ends at AGM, so they must be re-appointed or new auditors must be appointed.

(iii) Director's recommendation for the dividend to be paid to shareholders will be voted on.

(iv) The Articles may provide that directors are to retire in rotation. Some directors will retire at the AGM and must be re-appointed or replaced.

(v) Resolutions may be required to pay directors' and auditors' fees. (Now normally fixed by contract).

(vi) Shareholders may have their own resolutions placed on the agenda.

(c) Extraordinary General Meetings

Any meeting which is not an AGM. Table A provides that only directors can call an EGM, unless there are too few directors in the UK to make up a quorum - then any member can call one.

CA 1985, s.368 - directors must call an EGM if requisitioned by holders of 10% of the paid up capital of the company.

CA 1985, s.371 - power of the court to order the holding of an AGM also applies to EGMs.

CA 1985, s.142 - public company must hold an EGM if the company's net assets have fallen to less than half of its called up capital. Meeting must be called within 28 days of the directors becoming aware of the loss of capital, and must be held within 56 days of that date.

CA 1985, s.392A - where auditor has resigned and has made a statement of circumstances he thinks should be brought to the attention of creditors and shareholders - the auditor can requisition the directors to hold an EGM so that he can explain the circumstances of his resignation.

3. Convening Meetings

(a) Notice of Meetings

(i) Authority to Call a Meeting

Authority normally rests with the directors.

If person without authority issues notice of a meeting the notice is void.

(ii) Who must be notified?

Depends on the Articles. Table A provides that notice must be given to all shareholders, directors and auditors.

Failure to notify someone entitled to notice will invalidate the meeting unless the failure was purely accidental:

Young v Ladies Imperial Club (Case 54)

Re West Canadian Collieries Ltd (Case 55)

(iii) Method of Service

Articles can provide for any method - Table A requires written notice to be delivered personally or by post.

Bradman v Trinity Estates Ltd (Case 56)

The Companies Act 1985 (Electronic Communications) Order 2000 allows notice to be given by electronic means such as via a website provided the member agrees to being given notice in this way.

(iv) Length of Notice

Articles can set any length of notice, but by s.369, notice must be at least 21 days for an AGM, or 14 days for an EGM - unless all members agree shorter notice period.

(v) Contents of Notice

Set out by articles. Table A requires notice to specify date, time and place of meeting and a general indication of business to be dealt with. Notice must state if meeting is an AGM.

If meeting is being convened to pass a special or extraordinary resolution, or a resolution for which special notice is required, these resolutions must be set out in full in the notice.

Notice will be invalid unless it contains enough detail to allow a reasonable shareholder to judge whether he needs to attend the meeting.

Baillie v Oriental Telephone & Electric Co Ltd (Case 57)

(vi) Special Notice

Some kinds of resolution require special notice to be given:

- resolution to dismiss a director
- resolution to appoint replacement director at same meeting as dismissal.
- appointment or retention of public company director aged 70 or over.
- resolutions concerning dismissal or appointment of auditors.

Special notice = at least 28 days notice to the company of the intention to move the resolution. The company must then give the members at least 21 days notice of the meeting.

4. Conduct of Meetings

(a) Quorum

"Quorum" = the minimum number of persons who must be present before the meeting will be valid.

Articles can provide for any quorum:

Table A requires two members entitled to vote, or their proxies.

If Table A has been excluded without providing an alternative, CA 1985 s.370 requires two members personally present.

Single Member Private Companies - one member will form a quorum, notwithstanding anything in the articles.

A meeting held without a quorum cannot validly transact any business:

Sharp v Dawes (Case 58)

(b) Chairman

Usual to have a chairman to preside over a meeting - Table A provides this should be the chairman of the board or another director nominated by the board.

Chairman's role is to keep order - he/she has no power to adjourn or dismiss a meeting unless this is specified in the articles.

Chairman has no casting vote unless given one by the articles. (Table A gives a casting vote.)

(c) Minutes

Companies must keep minutes of general meetings at the registered office for inspection by members.

Chairman signs the minutes - they then become prima facie evidence of what occurred at the meeting.

(d) Voting and Proxies

CA 1985 s.372 - all companies must allow a member who cannot attend a meeting to allow a proxy to vote in his place.

Appointment of proxy must be in writing and lodged with company at least 48 hours before meeting.

There are two methods of voting at company meetings:

(i) Show of Hands

Voting can be by show of hands unless articles provide otherwise.

Each member has just one vote regardless of number of shares he has - hands are counted and the result declared by the chairman. Result is conclusive once recorded in the minutes.

Proxies cannot vote on a show of hands unless the Articles allow this.

(ii) Voting by Poll

A company cannot refuse a demand for a poll made by:

- at least 5 members having the right to vote, or
- any member/members representing one-tenth or more of the total voting rights.

Members normally have one vote per share in a poll.

Members are entitled to exercise their votes according to their own interests.

Northern Counties Securities Ltd v Jackson & Steeple (Case 59)

5. Resolutions

(a) Special Resolutions

Requires vote of 75% of members present in person or by proxy, who are entitled to vote and do vote.

Meeting at which resolution is proposed must have had at least 21 days notice, unless shorter period was agreed by majority in number of members holding at least 95% of the shares.

Certain matters can only be decided by special resolution and the articles cannot provide to the contrary.

Printed copy of special resolution must be sent to Registrar within 15 days of it being passed.

(b) Extraordinary Resolutions

Same requirements as for special resolution except for notice period required, which depends on type of meeting. (21 days for AGM, 14 days for EGM - shorter notice possible by agreement).

Extraordinary resolution must be used:

- for voluntary winding up when company cannot pay its debts (IA 1986 s.84(1))
- to authorise a liquidator to make an arrangement with creditors in members' voluntary winding up (IA 1986 s.165(2))

(c) Elective Resolutions

Apply only to private companies. s.379A CA 1985 lists circumstances - e.g. election to dispense with AGM.

Requires 21 days notice of meeting - resolution must be supported by all members entitled to attend and vote.

Must be filed with Registrar within 15 days of being passed.

An elective resolution can be revoked by an ordinary resolution - which must also be filed with the Registrar within 15 days.

(d) Ordinary Resolutions

Most matters can be decided by ordinary resolution and some must be (e.g. decision to remove a director).

Ordinary resolution requires simple majority - 50% + 1 vote of members present in person or by proxy.

(e) Written Resolutions

CA 1985 s.381A - allows private company to pass resolutions without holding meetings.

Written resolution is passed by being signed by or on behalf of all members who would be entitled to attend and vote at a meeting.

Companies cannot be restricted from using s.381A procedure by anything in the articles.

Resolutions to remove a director or an auditor before his term of office has expired cannot be taken by written resolution.

VIII. DIRECTORS

1. Appointment of Directors

CA 1985 s.282 - public companies must have at least two directors, private companies at least one.

(a) First Directors

Persons named in the statement of first directors and secretary submitted on registration are deemed to be appointed as directors as soon as company is incorporated.

(b) Subsequent Directors

Appointed in manner laid down by Articles - usually ordinary resolution.

(c) Persons Who cannot be Appointed Directors

(i) Share Qualification

If the articles provide for a share qualification, director must obtain this within two months.

(ii) Over-age Persons

No upper age limit for private company unless articles so provide. Person cannot be appointed as director of a public company if he has reached the age of 70 (CA 1985 s.293)

(iii) Undischarged Bankrupts

CDDA 1986, s.11 - criminal offence unless permission given by the court.

Applications for Permission are usually refused:

Re Altim Pty Ltd (Case 60)

Acting in contravention of s.11 is a strict liability offence:

R v Brockley (Case 61)

(iv) Persons Disqualified by the Court

CDDA 1986 - it is a criminal offence to act as director of a company while under a disqualification order.

Court may make a disqualification order where:

- Where a person is convicted of an indictable offence in relation to the company (Maximum period - 15 years).

- Person has been in persistent default in filing returns or documents with the Registrar (Maximum 5 years).

- Company is being wound up and person has apparently committed fraud in relation to the company (Maximum period - 15 years.)

- DTI requests a disqualification order in the public interest after and investigation. (Maximum 15 years.)

- Person has been found liable for wrongful trading under s.214 Insolvency Act (Maximum 15 years)

The court must make a disqualification order where:

- a person is director of a company which has become insolvent and that person's conduct makes him unfit to be concerned in the management of a company.

(Minimum 2 years, Maximum 15 years)

R v Austen (Case 62)

Re Sevenoaks Stationers (Retail) Ltd (Case 63)

Re Firedart Ltd (Case 64)

(v) Auditors and Secretaries

- Auditor of a company cannot also be a director of it.

- Secretary of a company cannot also be the sole director of it.

2. Proceedings of Directors

(a) Meetings

(i) Notice

No prescribed notice period - directors are entitled to reasonable notice of board meetings.

Re Homer District Gold Mines (Case 65)

Browne v La Trinidad (Case 66)

Bentley Stephens v Jones (Case 67)

Shaw v Tati Concessions Ltd (Case 68)

(ii) Quorum for Board Meetings

Whatever the articles provide. A director with a personal interest in the matter being discussed does not count toward the quorum:

Re North Eastern Insurance Co Ltd (Case 69)

(iii) Minutes

Minutes must be recorded, but shareholders have no right to inspect them.

3. Powers of Directors

Directors have sole power to manage the business of the company, but power vests in the shareholders if the directors are unable or unwilling to act:

Barron v Potter (Case 71)

A director who exceeds his powers may be liable for any loss the company suffers, unless the shareholders ratify his actions:

Bamford v Bamford (Case 72)

Shareholders can now also ratify ultra vires transactions, unless this amounts to a fraud on the minority.

Third parties are protected by CA ss.35A and 35B - can enforce transactions even if directors exceed their powers.

4. Duties of Directors

(a) Fiduciary Duties

Director's fiduciary duties are owed only to the company, not to the individual shareholders.

Percival v Wright (Case 73)

Allan v Hyatt (Case 74)

The Fiduciary Duties are:

(i) A duty to act bona fide for the benefit of the company as a whole:
Re W & M Roith Ltd (Case 75)

(ii) A duty to use powers only for the purpose for which they were conferred:

Howard Smith v Ampol Petroleum (Case 70)

(iii) A duty to avoid a conflict between his own interests and those of the company.

Aberdeen Railway Co v Blaikie Bros (Case 76)

A director cannot vote on any matter in which he has a personal interest, and, by CA s.317 a director with any interest in a proposed contract must disclose this to the board:

Guinness plc v Saunders (Case 77)

Neptune (Vehicle Washing Equipment) Ltd v Fitzgerald (Case 78)

(iv) A duty not to make a personal profit out of his connection with the company.

If he does he must account for the profit to the company:

Boston Deep Sea Fishing Ltd v Ansell (Case 79)

Regal (Hastings) Ltd v Gulliver (Case 80)

IDC Ltd v Cooley (Case 81)

The shareholders can vote to permit the director to keep the profit
- unless there is a fraud on the minority:

Cook v Deeks (Case 82)

(b) Duty of Care and Skill