Voting

Unless the articles provide to the contrary, voting is by show of hands only. Articles usually allow an initial vote by show of hands, particularly for routine matters, and each member has only one vote, regardless of his shareholding. Under CA 2006, s 324 there cannot be any voting in respect of proxies held, unless the articles provide. On controversial issues it is usual to demand a poll on which members can vote according to the number of shares they hold and proxy votes can be used. *Table A* allows a poll to be demanded before a vote on a show of hands is taken. The provisions of *Table A* state that in the case of joint holders the person whose name appears first in the register of members shall be allowed to cast the vote in respect of the shares, and no member shall be entitled to vote at any general meeting unless all moneys presently payable by him in respect of the shares have been paid. *Table A* also provides that objections to the qualification of a voter can only be raised at the meeting at which the vote is tendered. Objections are to be referred to the chairman of the meeting whose decision is final and conclusive.

It should also be noted that a shareholder, even if he is a director, can vote on a matter in which he has a personal interest subject to the rules relating to prejudice of minorities (see Chapter 16 See p. 312). Furthermore, a bankrupt shareholder may vote and give proxies if his name is still on the register, though he must do so in accordance with the wishes of the trustee (***Morgan* v *Gray*** [1953] Ch 83).

If no poll is demanded, the vote on the show of hands as declared by the chairman and recorded in the minutes is the decision of the meeting and under *Table A* his declaration is *conclusive*, without proof of the number of votes cast for or against the resolution, unless there is an obvious error, as where the chairman states: 'There being a majority of 51 per cent on the show of hands, I hereby declare that the special resolution to alter the articles has been passed.' The chairman's declaration would not be conclusive either if he had improperly refused a poll.

The articles may set out the provisions governing the demand for a poll, but CA 2006, s 321 lays down that such provisions in the company's articles shall be *void* in certain circumstances:

(a) *They must not exclude* the right to demand a poll at a general meeting on any question other than the election of the chairman or the adjournment of the meeting.
(b) *They must not try* to stifle a demand for a poll if it is made by:
  (i) *not less than five members* having the right to vote at the meeting; *or*
  (ii) 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*
  (iii) a member or members holding shares in the company which confer a right to vote at the meeting and on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all such shares. For example, if the share capital of the company was 10,000 shares of £1 each with 50p per share paid, the company would have received £5,000 from the shareholders and those wishing to demand a poll under this head would have had together to have paid up £500.

Thus, the articles cannot prevent a fairly sizeable group of members from demanding a poll, and under CA 2006, s 329 the holder of a proxy can join in demanding a poll. As such, a proxy for five members could in effect demand a poll on his own. The right of a proxy to demand a poll (CA 1985, s 373(2)) is restated at CA 2006, s 329. CA 2006, s 322 has now

replaced CA 1985, s 374. A proxy will be entitled to vote on a show of hands as well as on a poll (CA 2006, s 324(1)). The current version of Reg 54 of *Table A* provides that every member present by proxy has a vote on a show of hands. Versions of *Table A* in force prior to 1 October 2007 only provided for a member present in person to be able to vote on a show of hands (and not a proxy).

Table A provides that the chairman can demand a poll, and indeed it would be his duty to do this if he felt it necessary to ascertain the sense of the meeting. It also ensures that the board can exercise its full voting rights. *Table A* also provides that two members present in person or by proxy can demand a poll, and no provision in the special articles can increase this number beyond five, as we have already seen.

Taking the poll

A poll, if demanded, is usually taken straight away, the result being announced at the end of the meeting, but the articles may allow the poll to be taken at a later date. *Table A* provides that on any issue, other than the election of a chairman or on the adjournment of the meeting, a poll may be taken at such time not being more than 30 days after the poll is demanded, as is directed by the chairman who then proceeds to the next business.

Persons not actually present at the first meeting may vote on the subsequent poll. Under *Table A* in the case of a poll taken more than 48 hours after it is demanded, the proxies must be deposited after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll. Where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, proxies must be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director and an instrument of proxy which is not deposited or delivered in a manner so permitted is invalid.

Even where a poll is taken immediately, the result may not be declared until a future date, because of the problems involved in checking the votes and the right of the members to cast them. Postal votes are not acceptable. Under CA 2006, s 322, where a proxy holder is acting for several principals, he need not use all the votes in the same way on a poll. This enables him to vote in the way each principal directs. Section 322A provides that a company's articles can provide for votes to be cast in advance of a meeting.

Chapter 5 of Part 13 of CA 2006 sets out new requirements for quoted companies if a poll is taken (quoted company is defined in CA 2006, s 385 which applies to Part 13 as a result of CA 2006, s 361). CA 2006, s 341 mandated a quoted company to disclose on a website the result of any poll taken at a general meeting. A quoted company must, as a minimum, disclose the following: the date of the meeting; the text of the resolution or a description of the subject matter of the poll; the number of votes cast in favour; and the number of votes cast against. Non-compliance does not invalidate the poll but is an offence punishable by fine.

CA 2006, s 342 allows members of a quoted company to require the directors to obtain an independent report of any poll taken, or to be taken, at a general meeting of the company. The report may be demanded by members holding not less than 5 per cent of the voting rights or by not less than 100 members who hold shares in the company on which there has been paid-up an average sum per member of not less than £100. The request must be received by the company not less than one week after the poll was taken.

If an independent report is requested, the directors must appoint an independent assessor pursuant to CA 2006, s 343. Such appointment must be made within one week of the request for a report. The assessor must be independent in accordance with CA 2006, s 344. He must

not be an officer or employee (or partner or employee of such person, or a partnership of which such person is a partner) of the company or any associated undertaking of the company and there must not be some other connection (of any description as may be specified by regulations made by the Secretary of State) between the person or his associate and the company or associated undertaking of the company. The company's auditor is considered to be independent. A person also cannot act if he has another role on any poll on which he is to report.

The independent assessor is entitled to attend the meeting at which the poll may be taken and any subsequent proceedings in connection with the poll pursuant to CA 2006, s 348. He may access the company's records relating to any poll on which he is to report or the meeting at which the poll or polls may be, or were, taken pursuant to CA 2006, s 349. CA 2006, s 351 provides that the independent assessor's identity, a description of the subject matter of the poll to which his appointment relates and a copy of his report must be made available on a website that is maintained by or on behalf of the company in question or which identifies the company in question. The minimum information the independent report must contain is set forth in CA 2006, s 347. The report must give the assessor's reasons for the opinions stated and, if he is unable to form an opinion on any of the matters, record that fact and state the reasons.

CA 2006, s 341 requires quoted companies to disclose poll results on their websites.

Chairman's casting vote

Chairmen of companies incorporated prior to 1 October 2007 (excluding traded companies) and if permitted by the articles, have a casting vote. For traded companies incorporated at any time and non-traded companies incorporated after 1 October 2007, the articles may no longer give the chairman a casting vote as CA 2006, s 282 requires an ordinary resolution to be passed by a simple majority. For non-traded companies incorporated prior to 1 October 2007, the CA 2006 provides that if the articles gave the chairman a casting vote such provision would continue to have effect notwithstanding CA 2006, ss 281(3) and 282.

The chairman is not bound to exercise his casting vote and may declare that the resolution has not been passed or exercise the casting vote for or against it. He ought normally to vote against it so that it is clearly lost because since those who want the resolution passed and those who want it to fail are equal in number it would not be fair to pass the resolution in the face of such opposition. The most common use of a casting vote is by a chairman on a show of hands, in favour of the resolution, where he knows that there are a lot of proxies in favour of the resolution.

Proxies

The right to appoint proxies is governed by CA 2006, ss 284, 285 and 324–331. It must be noted that the Government issued a Ministerial Statement on 6 November 2008 indicating that it will propose to repeal CA 2006, ss 327(2)(c) and 330(6)(c) of the CA 2006 which were not commenced with the rest of Part 13. CA 2006, s 324(1) gives members the right to appoint a proxy to attend, speak and vote at general meetings. This section, of course, countermands any provision to the contrary that may be contained in a company's articles. Under CA 2006,

s 324 *et seq* every member of a company having a share capital and entitled to vote at a meeting may appoint a proxy, and the person appointed need not be a member of the company. However, the proxy should have full legal capacity and the appointment of a minor is probably void; certainly the Insolvency Rules 1986 (SI 1986/1925) exclude minors as proxies in meetings concerned with winding-up (see Rule 8.1(3)). In addition, the notice of the meeting must make it clear that proxies can be appointed and failure to do will result in a fine on every officer of the company in default but even so the meeting is valid (CA 2006, s 325).

CA 2006, s 324(2) allows members to appoint multiple proxies provided that that a proxy must be appointed in relation to at least one share or different £10, or multiple of £10, of stock. This is a baseline standard, however, and articles are free to provide for additional rights. Accordingly if a member holds two ordinary shares, he will only be permitted by s 324(2) to appoint one or two proxies but the company's articles could permit the member to appoint more than two proxies. In public companies a member may appoint two or more proxies, but in a private company only one unless the articles provide to the contrary. *Table A* allows two or more in both public and private companies. Under CA 2006, s 327, companies may set a cut-off point by which time a member must have lodged his proxy appointment in order for it to be valid. It also provides that any provision of the company's articles which requires any appointment of a proxy to be received by the company more than 48 hours before the time of the meeting is void. In CA 2006, s 327(2) different cut-off periods for proxy appointments where a poll is taken are provided. Finally, CA 2006, s 327(3) provides that in calculating the periods pursuant to subsection (2) of CA 2006, s 327 'no account shall be taken of any part of a day that is not a working day'.

The expression 'proxy' also refers to the document by which the voting agent is appointed. The articles frequently set out the form of a proxy but a written appointment in reasonable form will suffice (***Isaacs* v *Chapman*** (1916) 32 TLR 237). Furthermore, minor errors which do not seriously mislead will not make a proxy invalid. Thus in ***Oliver* v *Dalgleish*** [1963] 3 All ER 330 a proxy form gave the correct date of the meeting but said it was the annual general meeting and not an extraordinary general meeting as it in fact was. It was held by the High Court that the proxy was nevertheless valid.

Table A and the Model Articles (Reg 45(3)) provides for two-way proxies, as distinct from appointing a person to exercise the vote, under which a member can indicate whether he wishes to vote for or against a particular resolution. The articles of association must not forbid two-way proxies if the Stock Exchange is to give a listing or the shares are to be dealt in on the AIM. It is uncertain whether the company is bound by a two-way proxy as regards the choice of vote but the better view is that it is bound so that if a proxy tried to cast his votes differently from the way in which the member had indicated the company ought not to accept the change (***Oliver* v *Dalgleish*** [1963] 3 All ER 330).

Listed companies now use three-way which provides for an option to abstain from voting. Additionally, some listed companies provide for four-way voting which allow the proxy discretion to decide whether and how to vote (or withhold their vote). In the absence of such an option, the proxy retains such discretion if no specific voting instruction has been given by the member.

Following on from the discussion above on polling, CA 1985 provided that proxies had the right to vote on a poll but there was no automatic right to vote on a show of hands. Now CA 2006, s 285(1) provides that on a vote on a resolution on a show of hands at a meeting, every proxy present who has been duly appointed by one or more members entitled to vote on the resolution has one vote. However, subsection (2) provides an exception in that a proxy has

one vote for and one vote against the resolution if he has been duly appointed by more than one member entitled to vote on the resolution; and instructed by one or more of those members to vote for the resolution and by one or more other of those members to vote against it. The fallback provision provided for in CA 2006, s 285(5) is that the articles can override the position set forth in subsections (1) and (2).

CA 2006, s 326 requires that where the company offers that a particular person (or persons), such as the chairman of the meeting, will act as a proxy (or proxies), that offer must be made to all members. CA 2006, s 328 allows that a proxy may be elected to be the chairman of a general meeting by resolution of the company passed at a meeting so long as this is not contrary to any existing provision in the company's articles.

CA 2006, s 331 authorises a company's articles to give more extensive rights regarding proxies than the minimum set out in the CA 2006, ss 324 to 330 (proxies).

The board may circulate proxy forms in favour of the board to members and meet the expense from the company's funds (***Peel* v *L & NW Railway*** [1907] 1 Ch 5). However, these forms must be sent to all members entitled to attend and vote. This provision prevents the directors merely soliciting the votes of those who are likely to vote in favour of the board's proposals. In addition, the directors may also send circulars with the notice of the meeting putting forward their views on various resolutions and pay for the circularisation out of the company's funds (***Peel* v *L & NW Railway*** [1907] 1 Ch 5). However, the circular must be issued in good faith to inform the members of the issues involved and must not be unduly biased in favour of the directors' views.

The right to appoint a proxy would be useless if it had to be made many weeks before the meeting. So, whatever the articles may provide, a proxy is valid if lodged not later than 48 hours before the meeting. If the articles do have an earlier requirement, it is void and it appears that the company cannot then require any period of lodgement at all so that if the proxy turns up at the meeting with his form and votes his vote must be accepted.

The law relating to faxed proxies is unclear. The court may not regard a fax as 'executed' (signed) by the member as *Table A*, Reg 60 requires, and perhaps also as not 'deposited with the company' as Reg 62 requires. Also the proxy remains with the member and the company does not get 'deposit' of it but only a 'copy' of it (but see ***PNC Telecom plc* v *Thomas*** [2003] BCC 202 that seems to support the view that a fax will be 'deposited' as the law requires). However, in the last analysis it is up to the chairman of the meeting to decide whether or not to accept a proxy, and he would be wise to accept a faxed proxy rather than risk a challenge in the courts as to the validity of the meeting brought by the shareholder whose faxed proxy was rejected.

It is worth noting that the acceptance of a faxed proxy is reinforced by the decision of the High Court in ***Re a Debtor (No 2021 of 1995), ex parte IRC* v *Debtor*** [1996] 2 All ER 345 where Laddie J held that a faxed proxy form was signed for the purposes of a creditors' meeting in a proposed voluntary arrangement and under Rule 8.2(3) of the Insolvency Rules of 1986 if it bore upon it some distinctive or personal marking which had been placed there by or with the authority of the creditor. When a creditor faxed a proxy form to the chairman of a creditors' meeting he transmitted the contents of the form and the signature applied to it. The receiving fax was instructed by the transmitting creditor to reproduce his signature on the proxy form which was itself being created at the receiving station. It followed that the received fax was a proxy form signed by the principal. The judge did, however, make clear that his decision was on the Insolvency Rules and that different considerations may apply to faxed documents in relation to other legislation. To avoid any doubt, special articles could be

drafted so as to specifically allow faxed proxy forms to be accepted. Obviously, faxed proxies are acceptable where the company has set up electronic communication systems with the consent of the relevant member(s).

The Model Articles for both private companies limited by shares and public companies each contain just two articles relating to proxies (Articles 31 and 32 in the case of the Model Articles for private companies and Articles 45 and 46 in the case of the model articles for public companies). These articles cover the content of proxy notices as well the delivery of proxy notices. The Model Articles require certain information to be included in proxy forms and permit the company to require use of a particular form instead of indicating precise wording. However, it must be noted that many matters concerning proxies are to be found in the CA 2006 as opposed to the Model Articles.

Electronic communications

These are governed by CA 2006, ss 308, 309, 333 and 1143 to 1148 and Schedules 4 and 5 to the CA 2006. Moreover, CA 2006, ss 1144(2) and (3), requires that documents or information sent or supplied by a company (including notices) must be sent or supplied in accordance with Schedule 5. CA 2006, s 333(1) provides that where a company has given an electronic address in a notice of general meeting it is deemed to have agreed that any document or information relating to proceedings at the meeting (this appears to cover proxy forms) may be sent by electronic means to that address subject to any conditions or limitations specified in the notice. Additionally, CA 2006, s 333 also contains similar deemed acceptance provisions specifically relating to proxy forms.

CA 2006, s 309 provides for publication of notices of meeting on website. In these circumstances, where a member has agreed, or is deemed to have agreed, to website publication of documents, the notice of meeting does not have to be sent to that person in hard copy but the member must be notified of the presence of the notice on the company's website. Notification by hard-copy (always good) or by electronic communications (such as by e-mail) when the member has specifically agreed to accept this type of communication will suffice.

CA 2006, s 333A requires an electronic address to be provided for receipt of 'any document or information relating to proxies for a general meeting'. CA 2006, s 333A(4) states that documents relating to proxies include a proxy appointment, any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy including a copy of a power of attorney showing authority to appoint a proxy on behalf of the member and notice of the termination of the authority of a proxy. Under s 333A, 'electronic address' has the meaning given by s 333(4) of the CA 2006: any address or number used for the purposes of sending or receiving documents or information by electronic means.

Euroclear UK (formerly known as CRESTCo) provides a system enabling registered holders of securities in CREST to appoint and instruct a proxy by electronic means through the CREST system. CREST is the UK's real-time electronic settlement system for UK and international shares, and UK government bonds (Gilts). Allowing proxy appointments to be made through CREST constitutes an electronic appointment. Typically a service offering members the ability to appoint and terminate a proxy electronically will be provided by the company's registrars. Section 333A does not require electronic appointment to be available to all members.

CA 2006, s 324A mandates that a proxy must vote in accordance with any instructions given by the member by whom the proxy is appointed. As regards revocation of a proxy, since the proxy is merely an agent of the member this can be done expressly by telling the proxy not

to vote or by the member exercising his right to vote in person, in which case his personal vote will override that of the proxy if the latter votes (***Cousins* v *International Brick Co Ltd*** [1931] 2 Ch 90). No statutory provision to the contrary exists in CA 2006. There is also automatic revocation of a proxy if the member who made the appointment dies or becomes bankrupt or of unsound mind. It should be noted that revocation is impossible if the proxy has an interest. Thus where L lends money to B and takes B's share certificates in X Ltd as security but is not registered it may be part of the agreement that L should always be appointed B's proxy at meetings of X Ltd. If so, the appointment of L as proxy is irrevocable until the loan is repaid.

All that is said in the above paragraph is subject to the articles of the company concerned (***Spiller* v *Mayo (Rhodesia) Development Co (1908) Ltd*** [1926] WN 78). *Table A* provides that a vote given or poll demanded by a proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll. Thus, under *Table A* the acts and votes of a proxy are valid *unless the company knows* of any revocation.

Corporate representatives

Where a company is a member of another company, the member company is entitled under CA 2006, s 323 to appoint by resolution of its directors a representative to attend meetings. If the member company is in liquidation, the liquidator may also make the appointment (***Hillman* v *Crystal Bowl Amusements*** [1973] 1 All ER 379). The representative is not a proxy and has the full rights of a member; thus he always counts towards the quorum, can move resolutions and amendments, can speak, even if the company is a public one, and can always vote on a show of hands. It is of some advantage to a company to appoint a representative, though if the meeting is not controversial a proxy will do just as well. CA 2006, s 323 provides that a corporate representative is entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual shareholder.

A corporate representative is entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual shareholder (CA 2006, s 323(2)). If the corporation authorises more than one person, this same section sets for the law to be followed with respect to such representative in the case of a show of hands or on a poll.

Adjournment of the meeting

A meeting may be adjourned for various reasons, e.g. where the business cannot be completed on that day, or where there is no quorum. The adjourned meeting is deemed to be a resumption of the original meeting and the articles may provide as to the amount of notice required for it, but no business may be transacted at an adjourned meeting except that which was left unfinished at the original meeting.

Where a resolution is passed at an adjourned meeting of the company, or at a class meeting or a meeting of the directors, the resolution shall be deemed for all purposes to have been

passed on the date when it was in fact passed and not at the date of the earlier meeting. The section is thus important in deciding on what date to file a resolution which has to be filed within so many days of its being passed.

The articles usually determine who shall decide to adjourn, whether the members or the chairman. A chairman must not adjourn frivolously, and if he does so the members may elect a new chairman and proceed with the meeting. *Table A* provides that the chairman may (and *shall* if so directed by the meeting), with the consent of the meeting, adjourn the meeting from time to time and from place to place. Model Articles 41(5) (private companies) and 33(5) (public companies) also cover adjournment.

The chairman can, of course, adjourn under the common law without any resolution of the members where there is disorder at the meeting. However, he must exercise the power properly. Thus, if he adjourns the meeting immediately upon the outbreak of disorder without waiting to see whether it will subside, the adjournment will be invalid and the meeting may continue (***John* v *Rees*** [1969] 2 All ER 274).

Another example of an invalid adjournment is to be found in ***Byng* v *London Life Association Ltd*** (1988) *The Times*, 22 December. A meeting of London Life was called to be held at the Barbican Centre in London. The main meeting place was not large enough to hold all those who wished to attend and the audio-visual linking system in the overflow rooms had broken down. The chairman adjourned the meeting without the consent of the meeting as London Life's articles required. His adjournment was challenged by Mr Byng, a shareholder, because the members had not consented. However, the Court of Appeal held that even so the chairman could use his common law right to adjourn in the difficult circumstances of the case. However, he had not exercised it reasonably. He had adjourned the meeting only until the afternoon of the same day at the Café Royal. He must have known that many people who had tried to attend the meeting at the Barbican would be unable to attend at the Café Royal in the afternoon at such short notice. Accordingly resolutions passed at the Café Royal by the much diminished number of people who did attend were invalid. Incidentally the court also held that a meeting may be validly held even though not everyone is in the same room, as where some are using audio-visual equipment in overflow rooms.

Minutes

Under CA 2006, s 248 every company must keep minutes of all proceedings of directors' meetings, whether they be meetings of the full board or a committee of the board, and enter these into a minute book. If a minute is signed by the chairman of the meeting or of the next succeeding meeting, the minutes are prima facie evidence of the proceedings. This means that although there is a presumption that all the proceedings were in order and that all appointments of directors, managers or liquidators are deemed to be valid, evidence can be brought to contradict the minutes. Thus, in ***Re Fireproof Doors*** [1916] 2 Ch 142 a contract to indemnify directors was held binding though not recorded in the minutes. On the other hand, if the articles provide that minutes duly signed by the chairman are *conclusive* evidence, they cannot be contradicted. Thus, in ***Kerr* v *Mottram*** [1940] Ch 657 the claimant said that a contract to sell him preference and ordinary shares had been agreed at a meeting. There was no record in the minutes and since the articles of the company said that the minutes were conclusive evidence the court would not admit evidence as to the existence of the contract.

Under CA 2006, s 358 the minute books are to be kept at the registered office of the company, and the minutes of general meetings are open to the inspection of members free of charge. Copies or extracts from the minutes must be supplied and a charge may be made. The copy must be given within seven days of the request. The auditor of the company has a right of inspection at all times. Minute books may be kept on a loose-leaf system so long as there are adequate precautions to prevent fraud. However, it seems that some sort of visual record is required and the Companies Acts would not appear to envisage tapes being used.

Many companies keep their statutory registers on computer using one of the software packages available and this is permitted by CA 2006, s 1135.

CA 2008, s 355 requires every company to keep records comprising copies of all resolutions of members passed otherwise than at general meetings, minutes of all proceedings of general meetings and details provided to the company in accordance with s 357 (decisions of sole members). These records must be kept for at least 10 years from the date of the resolution, meeting or decision (as appropriate). These records relating to the previous 10 years must be kept available for inspection at the company's registered office in the UK or at a place designated under regulations issued by the Secretary of State pursuant to CA 2006, s 1136.

We have already referred in Chapter 1 to the need in one-member companies for the member to supply the company with a written record of decisions made at general meetings unless they are by written resolution.

Class meetings

The provisions of CA 2006, Chapter 3 of Part 13 (Resolutions at meetings) are applicable to meetings of the holders of a class of shares and, for companies without a share capital, for meetings of a class of members as they do to general meetings (ss 334(1) and 335(1)) subject to the following certain exceptions:

- Shareholders and members may require directors to call a general meeting of the company (CA 2006, ss 303–305) but these provisions do not apply to the calling of class meetings (CA 2006, s 334(2)(a)).
- The court has the power to call a meeting of the company (CA 2006, s 306) but this power does not apply to the calling of a class meeting (CA 2006, s 334(2)(b)).

In connection with a variation of class rights meeting, the following differences must be noted:

- A poll may be demanded by any holder of shares of the class or, for companies without a share capital, any member of the class present (CA 2006, ss 334(6) and 335(5)).
- The quorum (other than an adjourned meeting) is two persons present holding at least one-third in nominal value of the issued shares of the class (excluding any shares held as treasury shares) or, for companies without a share capital, two members of the class present (in person or by proxy) who together represent at least one-third of the voting rights of the class.
- The quorum for an adjourned meeting is one person present holding shares of the class or, for companies without a share capital, one member of the class present (in person or by proxy) (CA 2006, ss 334(4) and 335(4)).

Company meetings and the disabled

The Disability Discrimination Act 1995 places a duty on those who provide goods, facilities and services not to discriminate against disabled people. The Act applies to any person, organisation or entity which is concerned with the provision in the UK of goods, facilities or services *to the public or a section of the public*. The Act will therefore apply, it would seem, if a company meeting can be described as a meeting involving the public. In the case of a plc which is also listed, the annual general meeting would seem to be a public meeting and consideration would have to be given, for example, to access for the disabled and the provision of reports and accounts in Braille, together with systems designed to enable the deaf to participate in the meeting. However, since in this connection private companies provide the overwhelming majority of corporate structures in the UK (many with five or fewer members), it is unlikely that the Act would apply in this context. Of course, it does a company no harm to give proper consideration to its disabled members, if any.

Board meetings

CA 2006, s 248 provides in relevant part that every company must cause minutes of all proceedings at meetings of its directors to be recorded and kept for at least 10 years from the date of the meeting. If a company fails to comply with these requirements an offence is committed by every officer of the company who is in default (a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale). CA 2006, s 249 provides that minutes recorded in accordance with CA 2006, s 248, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence of the proceedings at the meeting. Where minutes have been made in accordance with the proceedings of a board of directors, CA 2006, s 249(2) provides that until the contrary is proved the meeting is deemed duly held and convened, all proceedings at the meeting are deemed to have duly taken place and all appointments at the meeting are deemed valid.

The provisions of the Model Articles for private companies limited by shares contain several articles of note with respect to Directors' Meetings. These articles of note are also found in the provision of the Model Articles for private companies limited by guarantee as well. **Article 7** requires that decision-making by directors must be either a majority decision at a meeting or by unanimous decision when taken in accordance with **Article 8.** If the company only has one director, and no provision of the articles requires it to have more than one director, the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making. **Article 8** requires that a decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter. It also requires that a decision may not be taken in accordance with **Article 8** if the eligible directors would not have formed a quorum at such a meeting.

Article 9 provides for the specifics of calling a directors' meeting which is done by any director or directors giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice. The notice of the meeting must indicate: (a) its

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

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

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

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

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

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

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

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