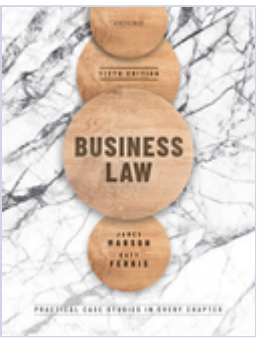

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James Marson and Katy Ferris

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15. The Administration of Corporations

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Abstract

This chapter studies the various forms of business organization that are available to those who trade. It focuses on the types of trading structures available, how they are established, and provides an overview of the implications of each form of business organization. It should be noted that there is no one model that will suit every individual or every business model. It is very much the decision of the individual—having assessed the business, what they wish to do with it, and how they see it continuing in the future—to determine the form of enterprise chosen. Being aware of the consequences for the business organization is crucial in making this decision.

Keywords: business organization, trade, trading structures, business model, form of enterprise

The members of a company, whilst delegating the day-to-day management of the business to directors and possessing no automatic rights of management themselves, can play a significant role in the company's administration. Depending on the shares held and the rights attached, shareholders may attend meetings, vote on resolutions, and even seek to remove directors or wind up the company. The members can therefore seek to protect their interests and hold the directors to account. The method of bringing a company to an end is also particularly important to the members and creditors of a company. Take, for example, Northern Rock Plc, which in 2008 had to be nationalized, adversely affecting the shareholders. Therefore, this chapter identifies the rights of members in the decision-making of the company and how the company, its members, and creditors may protect themselves from severe losses when the company may be in financial difficulties. Investing in a company involves risk, but with vigilant administration, these risks can, at least in part, be minimized.

Business Scenario 15

In March 2014, Carlos and Roman incorporated a company (Ecclesall FC Ltd) that specialized in selling football products, including technology such as player body-cameras and boots which contain microchips linked to the players' smart phones. They were the only directors of the company, and jointly own the ordinary shares in the company. Karen owns 25 preference shares in Ecclesall FC Ltd. In June 2017, having enjoyed a period of financial success, Ecclesall FC Ltd began to struggle when a new entrant to the market began to take some of the contracts Ecclesall FC Ltd had previously enjoyed exclusivity over. Carlos and Roman approached the company's bank for an overdraft facility and were granted £500,000 with the bank securing this through a floating charge over the company's assets.

At a recent general meeting, a resolution was notified to subdivide each current ordinary share into 10 shares with a nominal value of 10p. All shareholders were present at the meeting and both Carlos and Roman voted in favour of this ordinary resolution, whilst Karen voted against it.

In November 2017, following continued poor sales due to the lack of take-up of these technology-related products, Carlos and Roman were informed by the company's auditor that the company was in severe financial trouble. This would result in the company's insolvent liquidation and they were to cease trading immediately. Carlos and Roman disagreed and thought that if they had a good Christmas trading quarter, they could revive the failing company. However, the attempt failed and in March 2018 the company was wound up.

p. 380 ↵ The liquidator has identified the following facts:

- Prior to the passing of the resolution, Carlos and Roman each owned 100 £1 shares;
- The preference shares have a nominal value of £1 each;
- The company owed the bank £500,000;
- The company owed £40,000 in wages to employees;
- In January 2018, Carlos and Roman agreed for the company to repay to Carlos £15,000 which he had loaned to the company, and this loan was unsecured;
- The liquidator's fees are £6,000;
- The company had £350,000 in assets.

Learning Outcomes

- Identify when a company acquires the capacity to begin trading (**15.3**)
- Understand the rights of members to oblige the company to call a meeting and circulate details and information of the resolutions to be moved (**15.4–15.4.5**)
- Explain the various resolutions that may be moved at meetings and the procedures involved (**15.5**)

- Explain the significance of a written resolution procedure and which business may not be moved through this mechanism (**15.5–15.5.3**)
- Identify the requirements for the recording and maintenance of these records of the business at meetings, and of resolutions moved (**15.6**)
- Explain the mechanisms for a company being wound up and the procedures involved (**15.7–15.7.2.1**).

15.1 Introduction

Having outlined the various forms of business organization available and the mechanisms for establishing each, this chapter begins the process of explaining the mechanisms for the company's administration. This is due to the regulation that is placed on companies through the legislation, including the Companies Act (CA) 2006. Companies have to register with Companies House in order to obtain a trading certificate, regulation exists with regard to the activities of a company's directors, members of the company have the right to participate in meetings and vote on resolutions that are to be moved, procedures must be followed when moving resolutions, and board meetings have to be conducted in accordance with rules and procedures required by statute.

15.2 The Companies Act 2006

CA 2006 was a major reform to the laws governing companies and their relations with third parties and the members of the company. Whilst the law codified many of the existing laws (approximately one-third of the
p. 381 legislation), much of it was new and as such ↵ it may be some years before the issues are fully tested and analysed through the courts. However, this is a major piece of legislation, the largest single Act ever enacted, but it is hoped that it will make the provisions of governance of companies more accessible, less bureaucratic, and simpler to understand.

15.3 Capacity to Trade

Whilst a private company has the capacity to trade immediately upon incorporation, a public company that has been newly formed must receive a trading certificate from the Registrar of Companies before it may begin trading and other activities involved in a business (such as borrowing money—CA 2006, s. 761). This certificate is only provided where the Registrar is satisfied that the public company's nominal value of allotted share capital is not less than the authorized minimum of £50,000 (or the prescribed euro equivalent—CA 2006, s. 763, although the currency used may later be changed if required). For the purposes of this section of the Act, the company must have at least one-quarter of the nominal value of the share capital plus the whole of any premium paid up (not including shares allotted under an employees' share scheme unless one-quarter of the nominal value is paid up). The application for the certificate must include details of the costs in establishing the company and a statement of compliance with the requirements of the Act. When these

formalities are completed, the Registrar will issue the certificate, and publish the receipt of the details in the *London Gazette*. This certificate provides the company with the authority to begin trading. Where it trades without the certificate (and in breach of s. 761), the company and every officer who is in default commit an offence, and they are subject to a fine. However, a contravention of trading before the certificate is granted does not invalidate the transaction, but the directors are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by the company's failure to comply with its obligations (CA 2006, s. 767).

15.4 Company meetings

Whilst the members of the company delegate the powers of the management of the company to the directors, who themselves conduct decision-making through powers granted to them and through their own board meetings, the members themselves take responsibility for moving resolutions of the company. These resolutions are used to perform functions of the company, and some are more onerous to move than others due to the nature of what the resolution intends to achieve. These are discussed in **15.5**. However, the meetings of the members are conducted as follows.

There exist two types of meeting that a company may call: the Annual General Meeting (AGM) and general meetings. Private companies have the option of not holding AGMs but they must hold meetings where required by the members; the courts; or where, for example, directors or auditors are to be removed. Public companies are required to hold an AGM every financial year (but have the option of holding more than this minimum requirement where it is deemed appropriate). In order to move resolutions that will be considered effective, CA 2006 identifies several procedures that must be fulfilled to ensure that the business conducted at general meetings is fair to the members. Resolutions may be moved at general meetings insofar as notice of
p. 382 the meeting and the resolution is given ↵ to the members of the company. Further, the meeting must be held and conducted in accordance with CA 2006 and the company's articles (CA 2006, s. 301). The calling of these meetings is a power granted to the directors of a company (CA 2006, s. 302); however, where the director(s) does not call a meeting and the members wish one to take place these members have the power to require the directors to take this action (CA 2006, s. 303).

15.4.1 The Request for a Meeting

The directors are required to call the meeting in either of the following circumstances:

1. where they have received the request from members representing at least the required percentage of the paid-up capital of the company as carries the right of voting at general meetings; or
2. in the case of a company not having a share capital, members who represent at least the required percentage of the total voting rights of all members possessing the right to vote at general meetings. The percentages required are identified in s. 303 as 10 per cent unless, in the case of a private company, more than 12 months has elapsed since the end of the last general meeting—called in pursuance of a

requirement under this section of the Act. Or in relation to which any members of the company had rights with respect to the circulation of a resolution, no less extensive than they would have had if the meeting had been so called at their request. In these cases the required percentage is 5 per cent.

The request has to identify the general nature of the business to be dealt with and it may include the text of a resolution that is intended to be (properly) moved at the meeting. This request may be in hard copy or electronic form but it must be authenticated by the person(s) making it. 'Properly' means a resolution that may be passed at a meeting unless to do so would be ineffective (such as against the constitution of the company), is defamatory of any person, or is frivolous or vexatious.

15.4.2 The Directors' Obligation to Call the Meeting

Where a meeting has been properly requested, s. 304 requires the director(s) to call a meeting within 21 days from the date on which they became subject to the requirement, and this must be held not more than 28 days after the date of the notice convening the meeting. Further, where the request has identified a resolution intended to be moved at the meeting, details of this resolution must accompany the notice. Where such a resolution is a special resolution, the directors must follow the requirements provided in s. 283 by giving the appropriate notice and so on.

- *Where the directors fail to call the meeting:* Where the requirements of s. 303 have been complied with and the directors fail to call the meeting, the members who requested the meeting, or any of them representing more than half of the total voting rights of all of them, may themselves call a general meeting and do so at the company's expense (limited to reasonable expenses—CA 2006, s. 305). The meeting must be called for a date not more than three months after the date on which the directors became subject to the requirement to call the meeting, and it must be called in as similar a manner as possible as other meetings called by the directors.
- *Power of a court to order a meeting:* It may be the case that with smaller companies the shareholder may have disagreements with the directors to such an extent that, for example, the shareholder(s) will not attend the meetings to allow for resolutions to be moved. Where it is impractical to call a meeting in a manner which it would normally be called, or as required by the company's articles, or CA 2006, a court may through its own motion or through an application of a director of the company, or a member of the company who would be entitled to vote, order for a meeting to be called, held, and conducted in any manner the court thinks fit (and when conducted in this way, the meeting will be considered for all purposes to have been duly called, held, and conducted—CA 2006, s. 306). Such power also extends to the court giving directions as it deems expedient, such as providing that one member of a company present at the meeting be deemed to constitute a quorum. The court will not, however, give a member a voting power that the member does not possess under the company's constitution. Note that this procedure is not intended to resolve petty squabbles between the equal members of a company.

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Ross v Telford (1998)

Facts:

The case involved the two equal shareholders of a company. They had been husband and wife but had divorced acrimoniously and would not cooperate with each other regarding matters, including convening the company's meetings. The articles of the company required a quorum of two for the meetings and as this could not be practicably achieved, the husband requested a court to order a meeting with just one of the shareholders present to lawfully conclude the business required. This was initially granted but was stopped when the case was heard at the Court of Appeal, which held the provision of the Companies Act was not designed for this purpose. If the husband had been a majority shareholder and the minority shareholder had been deliberately attempting to prevent the business of the company being conducted, then the Companies Act would have been correctly used.

Authority for:

An interpretation of the relevant section of CA 1985 (s. 371) was that Parliament did not intend for it to be interpreted by the courts as a means to break a deadlock between equal shareholders. In so doing, the courts have no power to regulate the affairs of a company in this way (shifting the balance of power between shareholders where they agreed to share power equally).

15.4.3 Notice of Meetings

A general meeting of a private company must be called by giving notice of at least 14 days (notice can be given in hard copy, electronic form, through a website, or by a combination of these—CA 2006, s. 308). A general meeting of a public company must be called giving notice of at least 21 days for an AGM, or of at least 14 days' notice for other general meetings. These periods are provided for in CA 2006, s. 306, but the section allows the companies to provide for longer or shorter periods if agreed by the members. For the shorter period the agreement of members must be a majority of those members possessing the right to attend and vote, who
p. 384 together hold not less than the required percentage in ↵ nominal value of the shares giving a right to attend and vote. Where the company does not have a share capital, the members together represent not less than the required percentage of the total voting rights at that meeting of all the members (these do not apply to an AGM of a public company—CA 2006, s. 307).

This required percentage is, in private companies, 90 per cent or such higher percentage (not exceeding 95 per cent) as may be specified in the company's articles; or in the case of public companies, 95 per cent. For the members to reduce the notice period for an AGM of a public company there must be a unanimous agreement to the resolution (CA 2006, s. 377).

Where CA 2006 requires special notice to be given for a resolution, the resolution is not effective until notice of the intention to move the resolution at least 28 days before the meeting has been provided (CA 2006, s. 312). However, where this is not practicable, the company must give its members notice at least 14 days before the

meeting through an advertisement in a newspaper having an appropriate circulation, or other manner specified in the company's articles.

- *Notification details:* Notice of a general meeting must be sent to every member and director of the company (CA 2006, s. 310). This notification, for general meetings, must include the time and date of the meeting, the meeting's location, the nature of the business to be dealt with at the meeting, and any other requirements subject to the company's articles (CA 2006, s. 311). In situations of accidental failure to notify of a resolution or general meeting, any accidental failure to give notice to one or more persons is disregarded for the purpose of determining whether notice of the meeting or resolution is duly given (with the exception of the requirements under ss. 304, 305, and 339 of CA 2006). The accidental failure provisions of CA 2006 are subject to any provisions of the company's articles.

15.4.4 Procedures at Meetings

CA 2006 provides details of how the companies must conduct meetings to ensure that the resolutions moved are lawful. This section of the Act initially considers the quorum at the meeting (the minimum numbers of the company's members who need to be present to allow resolutions to be effectively moved). A company limited by shares or by guarantee and having only one member will have reached a quorum when one qualifying person is present at a meeting. In other cases, and subject to the company's articles, two qualifying persons present at the meeting are a quorum unless the qualifying persons are the representatives of the same corporation or the persons are the proxies of the same member (CA 2006, s. 318). For the purposes of the Act, a qualifying person is an individual who is a member of the company, a person authorized to act as the representative of a corporation in relation to the meeting, or a person appointed as a proxy of a member.

A member may be elected to be the chairperson (including a proxy—CA 2006, s. 328) of the general meeting by a resolution of the company, but this is subject to the company's articles as to who may or may not be chairperson (CA 2006, s. 319). In the case of voting, the company's articles must allow the right for a vote through poll at a general meeting on any question other than the election of the chairperson or the adjournment of the meeting (CA 2006, s. 321). Where a vote on a resolution is by a show of hands, once the chairperson has made a declaration that it has either passed (or passed with a majority) or not, this is conclusive evidence of the fact without proof of the numbers or proportion of votes recorded either in favour
p. 385 or against the resolution (CA 2006, s. 320). However, ↵ as a safeguard this authority does not have any effect if a poll is demanded in respect of the resolution. This demand may be made by not less than five members having the right to vote on the resolution, or by a member(s) representing not less than 10 per cent of the total voting rights, or by a member(s) holding shares conferring a right to vote with not less than 10 per cent of the paid-up capital (CA 2006, s. 321). The chairperson's role at meetings is to ensure proper conduct and to oversee the proceedings, and in doing so to act fairly between the members' rights and the company's best interests.

When a member wishes to exercise their right to vote on a poll taken at a general meeting, a member with more than one vote has the right not to use their votes in the same way (CA 2006, s. 322). This may be achieved by appointing more than one proxy to vote at the meeting. CA 2006 provides the member with the right to appoint another person (the proxy) to exercise any or all of their rights to attend, speak, and vote at a meeting of the company (CA 2006, s. 324). Where the company has a share capital, the member may appoint

more than one proxy where they are to exercise the rights attached to different share(s) held by them or to a different £10, or multiple of £10, of stock held by them. The notice provided to the member of the meeting must include information regarding their rights under s. 324, and any more extensive rights conferred by the company's articles to appoint more than one proxy (CA 2006, s. 325). However, any provision of the company's articles is void if it would have the effect of requiring any appointment of proxies or document(s) to be received by the company or another person earlier than 48 hours before the time of the meeting (or an adjourned meeting); and in the case of a poll, not more than 48 hours after it was demanded (this does not include anything other than working days—CA 2006, s. 327). These rights are the minimum required by CA 2006, but they do not prevent a company from conferring more extensive rights on the members or proxies (CA 2006, s. 331).

The Proxy Advisors (Shareholders' Rights) Regulations 2019 (S.I. 2019/926) came into effect in June 2019 and give effect to the EU Shareholder Rights Directive (Directive 2017/828). The Directive aimed to promote effective stewardship and strategic investment decision-making by institutional investors in PLCs. This was to be achieved by enhancing transparency. The Regulations apply to a proxy advisor which has its registered office/head office in the UK/Gibraltar or an EEA country, and provides its services in the UK and to investors holding shares in companies based in those territories or whose shares are traded there.

The Directive and transposing Regulations place requirements on proxy advisors who provide voting services and/or advice to shareholders in PLCs. This, primarily, is in relation to how they conduct their business and how and when they must make disclosures. For instance:

- The proxy advisor will be required to identify any actual or potential conflicts of interest (including business relationships) they may have that might influence the preparation of their research;
- The proxy advisor must disclose information on their research methods and methodologies as to how they produce the information on which their research, and thus advice/recommendations, is based; and
- If the proxy advisor operates a code of conduct (and they must explain why they do not operate a code if this is the case), they must explain why they have deviated from this (in such circumstances).

The Financial Conduct Authority has responsibility for enforcement of the requirements.

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15.4.5 General Meetings

Every public company must hold an AGM within six months of its financial year-end (CA 2006, s. 336). The company must state that the meeting is an AGM, and notice must be provided that such a meeting is to be called (CA 2006, s. 337). Whilst the company must provide 21 days' notice of an AGM and 14 days' notice of all other meetings (CA 2006, s. 307), an AGM may be called by a shorter notice period than that in CA 2006 or the company's articles if all the members entitled to attend and vote agree to the shorter notice. The members of the company may require the circulation of resolutions to be moved (or intended to be moved) at the AGM. This must comprise members representing at least 5 per cent of the total voting rights of all the members who have a right to vote on the resolution; or at least 100 members who have the right to vote on the resolution and who hold shares on which the paid-up average per member is at least £100. Such a resolution may be properly moved unless it would, if passed, be ineffective (such as being inconsistent with the company's constitution), defamatory of any person, or if it were frivolous or vexatious (CA 2006, s. 338). Such a

request may be made in hard copy or electronic form and it must identify the resolution of which notice has been given; it must be authenticated by the person(s) making it; and it must be received by the company not later than six weeks before the AGM to which the request relates or, if later, the time at which the notice is given of that meeting. Being in receipt of a valid request, the company is required to send a copy of the resolution to each member of the company entitled to receive notice of the AGM.

Additional responsibilities rest with '**quoted companies**' (defined under CA 2006, ss. 361 and 385), beyond those identified in the preceding paragraphs in relation to public companies. Quoted companies are those having a listing (through a decision of the Financial Services Authority) and its shares may be traded on a stock exchange. Where a poll is taken at a general meeting of a quoted company, the company must ensure that the following information is made available on a website: the date of the meeting; the text of the resolution or a description of the subject matter of the poll; and the numbers of votes in favour of, and against, the resolution/subject matter (CA 2006, s. 341). Where the company fails to comply with this requirement, an offence is committed by every officer of the company in default but it does not affect the validity of the poll or the business or resolution to which the poll relates. The members of the quoted company may require its directors to obtain an independent report on any poll taken, or to be taken, at a general meeting. The directors are obliged to obtain the report where the request is from members representing not less than 5 per cent of the total voting rights of all the members entitled to vote on the matter to which the poll relates (excluding those with treasury shares); or not less than 100 members who possess the right to vote on the matter and who hold shares with an average paid-up sum of not less than £100 each (CA 2006, s. 342). This request may be in hard copy or electronic form, it must identify the poll(s) to which the request relates, it must be authenticated by the person(s) making it, and it must be received by the company not later than one week after the date on which the poll is taken.

Where the directors are required under s. 342 to obtain an independent report on a poll(s), they must appoint an appropriate person (known as an independent assessor) to prepare the report. This appointment must be made within one week after the company is required to obtain the report (CA 2006, s. 343). The independent assessor cannot be appointed if they are an officer or employee of the company (or associated company), or a partner or employee of such a person, or a partnership of which such a person is a partner. The assessor in
p. 387 this role is entitled to attend the meeting at which the poll may be taken ↵ and any subsequent proceedings in connection with the poll. These rights are to be exercised to the extent that the assessor considers necessary for the preparation of the report (CA 2006, s. 348). They are also entitled to company records relating to the poll or the meeting at which the poll may be, or was, taken (CA 2006, s. 349). Where the independent assessor has been appointed in compliance with this section of CA 2006, the company must ensure that the following information is made available on a website: the fact of the appointment; the assessor's identity; the text of the resolution, or a description of the subject matter of the poll to which their appointment relates; and a copy of the report (CA 2006, s. 351). The report must be kept available for two years, beginning with the date on which it was first made available on a website (CA 2006, s. 353).

The report will contain information regarding the appropriateness of the procedures followed in relation to the poll; whether the correct notice periods were provided; the nature of the voting and whether, in the assessor's opinion, they were cast fairly and recorded correctly; and whether the votes of proxies were assessed. If the assessor is unable to provide an opinion, they must give the reasons why.

15.5 Resolutions at meetings

Resolutions are the decisions made at the company meetings. There are various categories of resolution that may be moved by a company. With reference to the resolutions that may be moved by a private company, a written resolution or one moved at a meeting of the company's members are available (CA 2006, s. 281). The benefit of moving a written resolution is that there is no necessity of a meeting of the members, they are sent the resolution and they sign this resolution if they are in agreement.

A public company must move resolutions at a meeting of the members (or a class of members) and it may not move written resolutions by a majority using the procedure in CA 2006, ss. 288–300. However, at common law, such resolutions can be passed if unanimous. Where CA 2006 requires a resolution of a company, or of the members (or a class of members), and the type of resolution required is not specified, it is assumed that an ordinary resolution is required unless the company's articles requires a higher majority or unanimity. Whilst this does provide the company with some flexibility or control over the resolutions to be moved, there are protections in CA 2006 to prevent, for example, a director being removed before the expiry of their term of office through a written resolution because CA 2006 provides for important safeguards against potential abuse.

15.5.1 Ordinary Resolutions

CA 2006, s. 282 identifies ordinary resolutions as those passed, by a private company, by the members (or a class of the members) with a simple majority (over 50 per cent of the vote). An ordinary resolution can be passed as a written resolution if it is passed by members representing a simple majority of the total voting rights of eligible members. Further, a resolution to be moved at a meeting by a show of hands is passed by a simple majority where it is agreed to be passed in this way by members in person or through duly appointed proxies. Where a resolution is to be moved through a poll taken at the meeting, it is passed through a simple majority of members representing a simple majority of the total voting rights of the members entitled to vote in person (or through proxy) on the resolution. The section concludes that anything done by an ordinary resolution can also be done through a special resolution.

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15.5.2 Special Resolutions

CA 2006, s. 283 identifies special resolutions. These are required for certain business to be taken by the company such as to alter the company's articles (CA 2006, s. 21); alter its name (CA 2006, s. 77); re-register the company from an unlimited to a private limited (CA 2006, s. 105), private to public (CA 2006, s. 90), or public to private (CA 2006, s. 97); reduce the company's share capital (CA 2006, s. 641); authorize the terms on which to make an off-market purchase of its own shares (CA 2006, s. 694); and so on. A special resolution of the members (or class of members) means a resolution passed by a majority of not less than 75 per cent. A written resolution is passed by a majority of not less than 75 per cent if it is passed by members representing not less than 75 per cent of the total voting rights of eligible members. Such a written resolution of a private company is not a special resolution unless it is stated as being moved as a special resolution and, if stated, it may only be moved as a special resolution. Where the resolution is to be moved by a show of hands, it is passed by a

majority of not less than 75 per cent where not less than 75 per cent of the members (or the duly appointed proxies) who are entitled to vote do so in favour of the resolution. A resolution moved on a poll at a meeting is passed by a majority of not less than 75 per cent if passed by members representing not less than 75 per cent of the total voting rights of eligible members voting in favour of the resolution in person or through their proxies. Where a company wishes to move a special resolution, it may only do so by following these procedures and giving notice of the meeting, the text of the resolution wishing to be moved, and by passing it in the form required of a special resolution.

Consider

Karen had 25 of 225 shares in the company. Following the subdivision she owns 25 of 2025 shares. Has this led to a varying of a class right? Shares can be subdivided, but this requires notification (which has been complied with). However, approval of the resolution needs to be achieved through agreement of the class affected (which has seemingly been breached) However, giving proportional voting rights to a class of shareholders is not a variation to the rights of the other class of shareholders—but consider a petition under CA 2006, s. 994 (see **17.4.1**). Further, CA 2006, s. 630(4) requires a special resolution to be moved to achieve the subdivision and this has not been complied with.

15.5.3 Written Resolutions

A private company may propose and move a written resolution in accordance with the requirements laid out in CA 2006 (CA 2006, s. 288). However, such a resolution may not be used to remove either a director (CA 2006, s. 168) or an auditor (CA 2006, s. 510) before the expiration of their period of office. The resolution may be proposed by the directors of the private company or its (eligible) members (carrying not less than 5 per cent of the total voting rights) and has effect where it is moved by a company in a general meeting or a resolution of a meeting of a class of members of the company. The eligible members are those who would have been entitled to vote on the resolution on the circulation date of the resolution (CA 2006, s. 289). The circulation date is the
p. 389 date on which copies of the ↵ resolution are sent or submitted to the members (or if the copies/submissions are made on different days it is the first of those days—CA 2006, s. 290).

Where the company wishes to move a written resolution proposed by the directors, the company must send/submit a copy of the resolution to every eligible member at the same time (where reasonably practicable), in hard copy, electronic form, or by means of a website. The copy of the resolution must also be accompanied by a statement informing the member how to signify their agreement, and the date by which the resolution must be moved for it not to lapse (CA 2006, s. 291). Where these procedures are not complied with, an offence is committed by every officer in default, but this does not affect the validity of the resolution moved. The members of a private company may require the company to circulate a written resolution unless it would, if moved, be ineffective, defamatory of any person, or frivolous or vexatious (CA 2006, s. 292). The members (representing not less than 5 per cent of the total voting rights of all members entitled to vote on the resolution—unless the articles enable a lower percentage to be used) may also require the company to circulate the resolution with a statement of not more than 1,000 words on the subject matter of the resolution.

Where this request is properly made, the company must circulate it (and the statement) to every eligible member within 21 days of the application of s. 292 (CA 2006, s. 293). This copy must also be accompanied by guidance as to how the recipient signifies agreement to the resolution, and the date that it will lapse if not moved. Importantly, those members that requested the circulation of the resolution must pay any expenses incurred by the company in compliance with s. 293, and the company may require a deposit to be paid in this regard (CA 2006, s. 294). It is also possible for the company (or another person claiming to be aggrieved) to apply to a court preventing the requirement of circulating a members' statement where it is claimed the right under s. 292 is being abused (CA 2006, s. 295).

A written resolution is moved when the required majority of eligible members have signified their agreement to it, and it will not be passed if the resolution lapses. This may occur when the time exceeds the period provided for in the company's articles; or in the absence of any articles to this effect, 28 days beginning with the circulation date. Any agreement signified after this date will be ineffective (CA 2006, s. 297).

15.6 Recording business at meetings and of resolutions

Every company is required to maintain records comprising copies of all resolutions of members moved otherwise than at general meetings, minutes of all proceedings of general meetings, and details provided to the company in relation to decisions of companies with a sole member (CA 2006, s. 355). These records must be kept for at least 10 years from the date of the resolution, meeting, or decision, and failure to comply will result in every officer in default being liable to a fine, and a daily fine for continued contravention. Where a resolution has been moved otherwise than at a general meeting, a record of it as well as it having been signed by a director (or the company secretary), is evidence of the resolution being passed. Where there is a record of a written resolution of a private company, the resolution will be deemed to have complied with the requirements of CA 2006 unless the contrary is proven (CA 2006, s. 356). The minutes of proceedings of a general meeting signed by the chairperson, or by the chairperson at the next general meeting will be evidence of the proceedings at the meeting. This record proves the meeting is deemed duly held and convened, all the proceedings at the meeting are deemed to have duly taken place, and all appointments at the meeting are deemed valid unless the contrary is proven.

p. 390 ↵ Where the company has only one member and the company is limited by shares or by guarantee, and that member takes any decision that may be taken by the company in a general meeting, and has effect as if agreed by the company in the meeting, they must (unless taken in the form of a written resolution) provide the company with details of that decision (CA 2006, s. 357).

15.7 Winding-up of companies

Chapter 14 identified the various forms of business enterprise and outlined the registration procedure that subscribers use to establish the corporation. This section considers how those corporations are legally brought to an end. It will be remembered that due to a corporation's perpetual succession, the company does

not ‘die’ when the person(s) running it dies (or where the sole trader/partner is made bankrupt), but rather it will only cease to exist when formally wound up. Liquidation is considered in detail but many companies are wound up due to inactivity (non-trading).

15.7.1 Liquidation

A company being wound up and being liquidated essentially refers to the company ceasing to exist. Liquidation may take effect either through a petition to a court for the compulsory liquidation of the company (under the Insolvency Act 1986, s. 124A); or the members seeking the voluntary liquidation of the business.

15.7.1.1 Liquidation by a court

Liquidation through the court can be made by any of the following petitioning the court (the Insolvency Act (IA) 1986, s. 124):

- the company, the directors, or any creditor(s) (including prospective creditors);
- a contributory (who is a person who may have to contribute upon the company’s liquidation, including a shareholder with fully paid-up shares);
- a liquidator appointed in proceedings, or a temporary **administrator**;
- the Secretary of State where a public company has not been issued with its trading certificate;
- (in the event of a company being voluntarily wound up) the **Official Receiver** where the court is satisfied that the **winding-up** cannot be continued with due regard to the interests of the creditors or contributories;
- or by all or any of those parties, together or separately.

> **Note:** a contributory is not entitled to present a winding-up petition unless either the number of members is reduced below two, or the shares in respect of which they are a contributory, or some of them, either were originally allotted to them, or have been held by them, and registered in their name, for at least six of the 18 months before the commencement of the winding-up, or have devolved on him through the death of a former holder.

The court, when faced with such a petition, has the option to make the order for winding-up, or it may refuse.
p. 391 Importantly, the court may also appoint a provisional liquidator (who ↵ may or may not be the Official Receiver) where it is considered likely that the directors may attempt to remove assets of the company. The appointment is made as an interim measure before the substantive hearing of the petition.

The Insolvency Act (IA) 1986 identifies the grounds upon which an order for compulsory liquidation of a company may be made. Under s. 122, these are listed as:

> (a) **the company has by special resolution resolved that the company be wound up by the court;**
>
> (b) **being a public company which was registered as such on its original incorporation, the company has not been issued with a trading certificate and more than a year has expired since it was so registered;**
>
> (c) **it is an old public company, within the meaning of the Consequential Provisions Act;**
>
> (d) **the company does not commence its business within a year from its incorporation or suspends its business for a whole year;**
>
> (e) **except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;**
>
> (f) **the company is unable to pay its debts;**
>
> (fa) **at the time at which a moratorium for the company under section 1A comes to an end, no voluntary arrangement approved under Part I has effect in relation to the company [added by IA 2000, Sch. 1, para. 6];**
>
> (g) **the court is of the opinion that it is just and equitable that the company should be wound up.**

Therefore, a company may move a special resolution to effect that the company be wound up by the court under (a); and it will be remembered that the moving of a special resolution requires that three-quarters of the votes are in favour of the resolution. As such, where a smaller proportion of the members (and even just one member) wishes to have the company wound up, under (g) a petition to the court can be made that it is just and equitable to have the company wound up. This procedure also allows creditors and the directors of the company to petition the court on this ground. What will constitute a 'just and equitable' ground is a matter for the court looking at the facts of each case, and it has broad discretion in this area; however, examples have been provided. Where, particularly in small businesses, the directors who manage the company have severe disagreements that make its management practically impossible, this may lead to the court ordering its winding-up.

Re Yenidje Tobacco Co. Ltd (1916)

Facts:

The company was established by two tobacco manufacturers whose relationship broke down to such an extent that they stopped communicating or allowing any business to be carried on. Despite the profitability of the business, the court was petitioned to have the company wound up.

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Authority for:

In winding-up the company, the court referred to matters such as the refusal of the directors to meet on matters of business and that the company was in such a state of animosity that all reasonable hope of cooperation between the directors was lost. This did not involve the gross misconduct of a director, nor was the situation caused by one of the individuals attempting to take advantage of the situation.

The company may have been established for a fraudulent purpose:

Re Thomas Edward Brinsmead and Sons (1897)

Facts:

Three former employees of John Brinsmead & Sons (a well-known piano maker) formed a company to manufacture pianos with the aim of passing them off as of the established business. An injunction was obtained to prevent the company from selling the pianos but during this time the company's shares had been made available to the public and many thousands of pounds had been raised through subscribers. An application for the winding-up of the company was sought.

Authority for:

The Court of Appeal held the second company to have been established to commit a fraud and as such it was just and equitable for the company to be wound up.

... or the members may have (justifiably) no faith or confidence in the company's management:

Loch v John Blackwood (1924)

Facts:

The case involved the beneficiaries of a will which granted shares in the company to the claimant. These were not allocated according to the deceased's will. The claimant petitioned the court to have the company wound up citing several reasons including the failure to hold general meetings, non-submission of balance sheet, profit and loss accounts, and non-compliance with the audit. Further, it appeared the directors were attempting to keep the shareholders in a state of ignorance of the company's finances with the aim of acquiring the shares at an under value.

Authority for:

A company may be wound up where a considerable proportion of the shareholders had a real lack of confidence in the directors and those directors had significant power. It was in the public interest to wind up the company on this just and equitable ground.

p. 393 ↵ In each situation the courts have ordered the winding-up of the company. In order for the petitioner to succeed in this application they must have some genuine interest in the company being wound up, as a winding-up petition has very serious consequences for the company, its members, and any creditors; and where the company is still trading and being successful in its undertaking, the courts will be considerably more reluctant to make the winding-up order.

A winding-up petition may also be made under (f) regarding the company's inability to pay its debts. It is important to note that even where it has been proved to the court's satisfaction that the company cannot pay its debts, this does not automatically result in the court ordering its winding-up. The court may initially convene a meeting of the company's creditors (including consideration of the debts owed to each creditor) and contributories (taking into account the number of votes conferred on each contributory from CA 2006 or the articles) to identify their submissions on the petition, and then make a decision (IA 1986, s. 195). Only the views of the creditors will be taken into account if the company is insolvent. If a decision is made to wind up the company, the court will order for the appointment of a liquidator. The court may, for example after having heard from the creditors, determine that the company that owes a creditor a sum that would allow a winding-up order should not be wound up. Other creditors may consider that allowing the company to continue to trade would be in the best interests of all the parties. Such actions are much less common, however, with the availability of the administration procedure.

15.7.1.2 The winding-up order

Where the court orders the company to be wound up, the company's liquidation is effective from the date of the petition to the court and, until another liquidator is appointed, the Official Receiver assumes this position. Once the order has been given, notice of the order (and a copy) must be provided to the Registrar, who will then publish this in the *London Gazette*.

The role of the Official Receiver, when appointed, is to identify the state of the company's affairs with regard to its assets, debts, and other liabilities. The persons listed in IA 1986, s. 131 (may if requested) have to provide the Receiver with the following information that is verified by affidavit:

> (a) **the particulars of the company's assets, debts, and liabilities;**
>
> (b) **the names and addresses of the company's creditors;**
>
> (c) **the securities held by them, respectively;**
>
> (d) **the dates when the securities were respectively given;**
>
> (e) **such further or other information as may be prescribed or as the official receiver may require.**

The persons required to provide such information are:

> (a) **those who are or have been officers of the company;**
>
> (b) **those who have taken part in the formation of the company at any time within one year before the relevant date;**
>
> (c) **those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;**
>
> (d) **those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.**

p. 394 ↵ Where the requirement for the statement is made, those persons have to do so within 21 days after the day of the notice being given to them by the Receiver. Any person who fails to comply with such a request will, upon conviction, be subject to a fine, and continued daily fines until the contravention is ended. This information may prove valuable to the Receiver as IA 1986, s. 132 requires the Receiver to investigate (if the company failed) the causes of the failure; the promotion, formation, business, dealings, and affairs of the company; and to make the report to the court if they consider appropriate (IA 1986, s. 132).

To further assist in the investigation, the Receiver may undertake a public examination of the company's officers following a successful application to the court. This includes anyone who is or has been an officer of the company; has acted as a liquidator or administrator of the company or a manager or receiver; or a person (not identified in the previous examples) who is, or has taken part, in the promotion, formation, or management of the company (IA 1986, s. 133). The Receiver must also make an application to the court to perform this investigation if requested by one-half, in value, of the company's creditors, or three-quarters in value of the company's contributors. Further to the powers and duties of the Receiver above, upon winding-up, the company's assets may not be disposed of, and shares may not be transferred or altered, unless a court authorizes such actions (IA 1986, s. 127). Any actions for recovering debts are stopped, and the responsibilities for the management of the company transfer from the directors to the Receiver/liquidator. Any floating charges that were granted over assets are deemed to crystallize (see **16.13.1**).

15.7.1.3 Voluntary liquidation

Under IA 1986, a voluntary winding-up of a company may be achieved through an action by the company's members (who must involve the company's creditors if it is insolvent). A special resolution is required to be moved. Where the members wish to have the company wound up, they would seek to have a special resolution moved, and then appoint a liquidator at a general meeting (this may be an option where the company is still solvent and the members may wish to gain something from the remaining assets of the company—although ordinary shareholders are low on the list of creditors when a company is wound up (and are at risk of getting little return on their investment in the company)).

Consider

The liquidator is engaged to gather the assets of the company and to pay its debts. Where money remains in the company after this dispersal, it is distributed according to the hierarchy identified in **Table 15.1**. This will require consideration of the repayment of the loan to Carlos; the floating charge to the bank; the employees' owed wages; and the liquidator's fees.

The liquidator (and there may be more than one appointed) is appointed for the purpose of winding-up the company's affairs and distributing its assets (IA 1986, s. 91). If the winding-up of the company takes longer than one year, the liquidator will call a general meeting in each successive year and account for their acts and dealings, and the conduct of the winding-up (IA 1986, s. 93). When the company's affairs are fully wound up, the liquidator calls a general meeting to lay before it their account, how the company's property has been
p. 395 disposed, and so on, and provide an explanation for the actions. Notice of ↵ the meeting is advertised in the *London Gazette* at least one month prior to it (IA 1986, s. 94). Within one week following the meeting, the liquidator will send a copy of the account and the details of the meeting to the Registrar.

In the event that the liquidator is of the opinion that the company will be unable to pay its debts in full (including any interest at the official rate) within the period of the directors' declaration of solvency under s. 89, the liquidator will call a meeting of the creditors within 28 days of forming this opinion (IA 1986, s. 95). The liquidator will preside at the meeting, setting out in the prescribed form the affairs of the company. Following the day of this meeting, IA 1986 holds that the winding-up becomes a creditors' voluntary winding-up (IA 1986, s. 96). In the event that a member's winding-up becomes a creditors' winding-up, ss. 98 and 99 do not apply. The procedure, as described in this paragraph and the last, is only effective where the directors have made a declaration of solvency under IA 1986, s. 89. Where they have not, the creditors' meeting procedure must be followed.

IA 1986, s. 98 provides for a meeting of the creditors to be summoned within 14 days after the day of the company meeting where a resolution for the winding-up of the company is to be proposed. Notification of the meeting must be given to the creditors by post not less than seven days before the meeting and be advertised in the *London Gazette* and in two newspapers. The directors of the company will lay a statement of affairs before the creditors, and it is the duty of the directors to choose one of them to preside over the meeting (IA

1986, s. 99). The creditors will be able to choose the liquidator and make arrangements for the remuneration to be paid (IA 1986, s. 100). The creditors are also empowered to appoint a liquidation committee of not more than five persons to exercise the functions of the liquidator (IA 1986, s. 101).

The same restrictions on the company's ability to trade and a restriction on the disposal of assets are imposed in the same way as where the winding-up is performed by the court.

15.7.1.4 The liquidator

The liquidator, who must be a qualified insolvency practitioner, is appointed to wind up the company and to dispose of its assets in the best interests of the creditors and formally remove the company's registration at Companies House. The liquidator will seek to collect any assets that are owed to the company and then dispose of these to realize any capital. Having realized these assets, the proceeds are then distributed to the creditors, and having settled its debts (where possible), any remaining proceeds are distributed to the company's members. A very significant power is provided through IA 1986, s. 178, which gives the liquidator the power to disclaim onerous property so as to cease the company from completing unprofitable contracts. The third party would then have to bring an action for breach against the company but they would be considered to be an unsecured creditor.

Where the liquidator believes that a person should make some contribution to the company's assets, they may make an application to the court (IA 1986, s. 214). If, in the course of the winding-up of a company, it appears that a person who was or is an officer of the company; a liquidator or administrative receiver of the company; or has been or is concerned in the promotion, formation, or management of the company, has misapplied or retained money or property of the company, or is guilty of any misfeasance or in breach of any other fiduciary duty, the court may, on the application of the Official Receiver, liquidator, or any creditor or contributory, examine the person's conduct. Following this investigation, the court may compel them to repay, restore, or account for the money or property or any part of it (including interest at a rate the court thinks fit—IA 1986, s. 212). ↵

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Consider

Roman and Carlos have repaid a loan from Carlos to the company. This has occurred two months before the company was wound up insolvent. Given the IA 1986, s. 239, the liquidator is entitled to apply for a restorative order to make Carlos pay back this money and for him to join the other unsecured creditors when all the assets and duties of the company have been satisfied.

Where the company has gone into liquidation, and at some time before the commencement the person knew, or ought reasonably had known, that there was no reasonable prospect of the company avoiding the liquidation, and that person was a director/shadow director at the time, they shall be guilty of wrongful trading if they did not take reasonable steps to minimize any potential loses to the creditors (IA 1986, s. 214).

Consider

The company's auditor had informed Carlos and Roman in November 2017 to cease trading, yet they continued trading until the company was wound-up in March 2018. Therefore, as directors, they 'knew, or ought to have concluded' about the lack of a reasonable prospect of the company avoiding insolvency. Their optimism of trading out of financial trouble is no excuse and they will be personally liable for the amount of the assets depleted from the company by their decision to continue to trade.

15.7.1.5 Effect of charges on winding-up

Where a fixed charge has been applied to an asset(s), when the company is wound up the charge holder may take control of the asset and dispose of it to obtain monies owed (any surplus being paid back to the company). In respect of floating charges, the priority of the charge depends upon when it was made (and this is important where the company has insufficient funds to satisfy its debts). Prior to 15 September 2003, any affected floating charge holder could appoint an administrative receiver. They received money owed following the payment of the liquidator and the debts having been paid of the preferential creditors (see **16.13.3**). Following these payments, and those made to floating charge holders, unsecured creditors were paid and then the members in accordance with the articles.

Consider

A floating charge will generally allow the holder to take possession of the assets and recover owed money on crystallization. However, an important issue has happened in the scenario which requires attention and may change your answer. The Insolvency Act 1986, s. 245 must be considered. Where such a charge is granted to a person unconnected to the company within 12 months of it becoming insolvent, the charge will be invalidated. This does not stop the company owing the money to the bank, simply that the secured status of the loan is lost and the bank is now an unsecured creditor.

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Table 15.1 identifies the priority of charges/liabilities when correctly registered.

Table 15.1 Priority of charges

Priority	Type of charge	Rank
1	Fixed charge holders	Rank higher than existing floating charges unless the existing floating charge has made provision against this (fixed charges have effect from the time they are created)

Priority	Type of charge	Rank
2	Preferential creditors	Take priority over the holders of floating charges, but not over fixed charges. Preferential creditors include employees
3	Floating charge holders	(Takes effect when it crystallizes.) Has priority when the charge was created (hence the first floating charge will have priority over the last one created over the same asset, unless this is stated to the contrary)

For those floating charges made after 15 September 2003 the payments are in the same order insofar as the liquidator makes a provision called 'top-slicing', which will establish assets that will be distributed after the preferential creditors are paid and before the floating charge holders are. Further, these charges after 2003 only entitle the holder to appoint an administrator, rather than an administrative receiver.

Top-slicing is a term that relates to the obligation on the liquidator to set aside a proportion of the assets that would otherwise have been paid straight to the holder of a floating charge and maintain this in respect of the unsecured creditors. This amount is 50 per cent of the company's property, having paid the costs and any money owed to preferential creditors, up to £10,000. If the value of the company's property is less than £10,000, the liquidator has discretion not to distribute these funds to unsecured creditors where to do so would produce unreasonable costs. Where the property is in excess of the £10,000 figure, a further 20 per cent, up to £600,000, is retained for the purpose of top-slicing.

Evidently, business with companies involves risk and where goods are being supplied to companies on credit, it may be prudent to include a reservation of title clause (known as a Romalpa clause—see **9.2.1**) in the contracts so that upon liquidation, where the supplier has not been paid, these goods do not belong to the company and may not be disposed of and added to the company's funds.

Consider

Following the winding-up of the company and the liquidator realizing its assets, the distribution will be as follows—the liquidator will be paid their expenses; preferential debts will be paid (here it is the owed wages); payment of a (valid) floating charge—but the bank's floating charge is not such; unsecured debts will then be paid. As the company does not have sufficient assets to fulfil its obligations, unsecured creditors are paid on a *pari passu* basis. There will be no money left to distribute to the members of Ecclesall FC Ltd.

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15.7.2 Administration

As opposed to appointing a liquidator to govern the winding-up of the company, IA 1986 introduced a mechanism for the appointment of an administrator to manage its affairs (this is often seen with professional football teams such as Leeds United Football Club Ltd in 2007). The powers of the administrator are contained

in IA 1986 (as amended) and in exercising these they are acting as the company's agent. The administrator must also be qualified to act as an insolvency practitioner (IA 1986, Sch. B1, para. 6). The administrator is appointed either by the administration order of the court, by the holder of a floating charge, or by the company or its directors (IA 1986, Sch. B1, para. 2). The purpose of the administrator is to perform their functions with the objective of rescuing the company as a going concern (unless the administrator does not think it is reasonably practicable to achieve this), achieving a better result for the company's creditors as a whole than would be likely if the company was wound up, or realizing property in order to make a distribution to one or more secured or preferential creditors (IA 1986, Sch. B1, para. 3). A court will make an order for administration if it is satisfied that the company is unable, or is likely to become unable, to pay its debts and the order will be likely to achieve the aims as established in Sch. B1, para. 3 (IA 1986, Sch. B1, para. 11). On administration the company is restricted from going into liquidation and being wound up, save for the provisions identified in Sch. B1, para. 42.

15.7.2.1 Administrative receivership

Those holders of floating charges made before 15 September 2003 may appoint a receiver to realize the company's property and obtain owed money. If the charges relate to a majority or all of the company's assets then this appointment will be of an administrative receiver. This position provides the administrative receiver with the authority to dispose of the assets to which the floating charge relates, and having provided for the costs in realizing these assets, and the preferential creditors being paid, the monies will be distributed to the charge holders.

Conclusion

This chapter has identified the administrative requirements of a company, from the regulation of the company's meetings, and the interaction of the members with the company, and how the various resolutions may be moved. The chapter has also considered the main mechanisms for bringing a company to an end and the procedures involved for the directors, members, and creditors. The following chapter considers the regulation of the company's finances and maintenance of capital to protect the members and creditors, and (hopefully) to ensure the company need not face financial difficulties that require its winding-up.

Summary of Main Points

Capacity to trade

- Public companies must possess a share capital of not less than £50,000.
- Having supplied the required documents to the Registrar, a public company will be issued with a trading certificate that allows a company to begin trading. Private companies have this immediate capacity.

- Procedures exist for the re-registration of companies.

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Company meetings

- Companies may, and in some cases must, hold Annual General Meetings (AGMs) and general meetings.
- Public companies must hold AGMs but private companies need not.
- Members of a private company, with the required minimum paid-up capital, can require the directors to call a meeting.
- On application, a court can also require a meeting of the company and for it to be conducted as it sees fit.
- A private company must give at least 14 days' notice of a general meeting.
- A public company must give 14 days' notice of general meetings other than an AGM, which requires 21 days' notice.
- Details of the meeting must be sent to the members and directors of the company.
- Members holding the required percentage of voting rights may oblige the company to circulate details of the meetings and the resolutions to be moved (but not exceeding 1,000 words).
- The meetings must be presided over by a chairperson, and a quorum of members must be present to lawfully move resolutions.

Resolutions

- Resolutions are decisions made at company meetings.
- There are various types of resolutions and they are used depending on the nature of the decision to be taken. Resolutions may be ordinary, special, or written.
- The company must maintain records of its decisions taken at meetings and the resolutions moved.

Winding-up of companies

- To bring a company to an end it must be legally wound up.
- Courts have the power to wind up a company on petition.
- A petition may be presented by the company, the directors, the members, or a creditor(s), and there is also provision for the Secretary of State to petition the court.
- When the company is wound up, fixed charges allow the holder to dispose of those assets (with any additional revenue being returned to the company).
- Upon winding-up, any floating charges 'crystallize' and employees are dismissed.

- Winding-up may be achieved through the members' moving a special resolution and the appointing of a liquidator. The directors must be in a position to file a declaration of solvency if they wish to avoid summoning a creditors' meeting that could overrule their choice of liquidator.
- The creditors of a company are entitled to meet and overrule the members' choice of liquidator where the directors have not made the declaration of insolvency.
- Administrators are appointed to continue to run the business, whilst a liquidator is appointed to oversee the company's winding-up.
- Following the liquidation of the company, the creditors are paid according to a hierarchy, beginning with preferential creditors and ending with the members of the company.
- Since 15 September 2003, top-slicing has been introduced, which requires the liquidator to retain a proportion of the company's property (subject to a floating charge) to pay unsecured creditors.

Summary Questions

Essay questions

1. How may the members of the company engage in the management of the company at general meetings? Explain the rights of the members and how they directly affect the decision-making through the moving of resolutions.
2. Assess the role of a liquidator appointed to oversee the winding-up of a company. Explain the powers granted to the liquidator and how they may deal with the directors and creditors of the company.

Problem questions

1. All Bright Consumables (ABC) Ltd was a successful company, operating primarily a business of developing and selling technology products. It supplied goods to customers directly, but had a particularly lucrative contract to supply its touch screen computers to a sales company (Sign'em Up Quick Plc (SUQ)).

   As the recession hit the UK, ABC Ltd found it difficult to maintain its standards and started using inferior technology in its products. It entered into an agreement with HTD to supply these products and granted a charge over its factory for LCD displays supplied by HTD and used in the manufacture of the screens. Soon after using HTD's screens, and with continued complaints regarding reliability and durability, SUQ exercised its right to bring the relationship of supply with ABC Ltd to an end.

   Due to the loss of its contract, ABC Ltd found itself in financial difficulties. It could not maintain repayments to HTD for the supply of the screens. ABC Ltd owed HTD £30,000 for the screens supplied, it had means to satisfy this debt, and asked for the advice of its accountants. The accountants suggested that the company should cease trading immediately and be wound up. However, the directors, eager to rescue the business, continued trading but just continued getting into ever more debt.

Advise HTD as to proceedings it may take to have the company wound up. Would any responsibility be placed on the directors of ABC Ltd for not taking the accountants' advice on ceasing trading?

2. Raz is a minority shareholder (he holds 5 per cent of the shares) of Happy Harry's Bottles Ltd and is concerned by the actions of the directors. The directors are also majority shareholders (holding, jointly, 62 per cent of the shares) who refuse to hold a general meeting when asked to in order to discuss their actions and the future direction of the company. Raz would also like to put a resolution to the meeting and needs information on how, if at all, this may be achieved.

   Prepare a report for Raz outlining the rules regarding a company meeting being called, and how many shareholders are needed to require a meeting called for to be held.

You can find guidance on how to answer these questions **here** *<https://oup-arc.com/access/content/marson6e-student-resources/marson6e-chapter-15-indicative-answers-to-end-of-chapter-questions?options=name>*.

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Further Reading

Books and articles

Cockerill, A. (2008) 'Floating Charges Hit the Rocks Again' *Solicitors Journal*, Vol. 152, No. 11, p. 22.

Mokal, R. J. (2005) Corporate Insolvency Law: Theory and Application Oxford University Press: Oxford.

Wheeler, S. (1994) 'Empty Rhetoric and Empty Promises: The Creditors' Meeting' *Journal of Law and Society*, Vol. 21, No. 3, p. 350.

Websites, Twitter links, and YouTube channels

http://www.theqca.com *<http://www.theqca.com>*

This is a not-for-profit organization that represents the interests, particularly, of smaller quoted companies (those outside of the FTSE 350).

http://www.fca.org.uk *<http://www.fca.org.uk>*

@TheFCA

https://www.youtube.com/user/thefcatv *<https://www.youtube.com/user/thefcatv>*

The Financial Conduct Authority regulates the financial services industry in the UK, by protecting consumers through ensuring healthy competition between financial services providers. It has rule-making, investigatory, and enforcement powers.

http://www.legislation.gov.uk/ukpga/1986/45/contents *<http://www.legislation.gov.uk/ukpga/1986/45/contents>*

The Insolvency Act 1986.

Online Resources

Visit the online resources <https://oup-arc.com/access/marson6e-student-resources#tag_chapter-15> for further resources relating to this chapter, including self-test questions, an interactive glossary, and key case flashcards.

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