

COMPANIES ACT 2006

EXPLANATORY NOTES

EXISTING LAW

Procedure at meetings

Section 318: Quorum at meetings

564. This section replaces sections 370(4) and 370A of the 1985 Act. It sets a quorum for a meeting of one “qualifying person” in the case of a single member company and – as a default – two “qualifying persons” in any other case. *Subsections (2) and (3)* ensure that a member, corporate representative or proxy present at the meeting may all be “qualifying persons”, but excludes the possibility of two or more corporate representatives or proxies of the same member comprising a quorum. Under these provisions, proxies and corporate representatives do not count towards a quorum in companies with more than one member.

Section 319: Chairman of meeting

565. This section reproduces the effect of section 370(5) of the 1985 Act and provides a default provision where the company’s articles are silent, allowing any member to be elected as chairman of a general meeting by a resolution of the company passed at the meeting.

Section 320: Declaration by chairman on a show of hands

566. This section replaces section 378(4) of the 1985 Act and part of article 47 of Table A. This provision ensures that the chairman’s declaration of a vote taken on a show of hands is conclusive evidence of the resolution being passed or lost without further proof being provided, unless a poll is demanded on the resolution. There are two main differences from section 378(4), both of which are drawn from Table A. First, if the demand for a poll is withdrawn, then the chairman’s declaration will stand. Second, the minutes of the meeting also provide conclusive evidence of the chairman’s declaration. This section is intended to provide certainty by preventing members from challenging a declaration of the chairman as to the votes cast on a resolution at a meeting otherwise than by calling a poll.

Section 321: Right to demand a poll

567. This section replaces section 373 of the 1985 Act. It restricts companies’ ability, through their articles, to exclude members’ rights to call a poll. However, it allows articles to exclude the right to a poll on the election of the chairman of the meeting and the adjournment of the meeting. The section provides for three effective types of demands for a poll, including a demand made by at least 5 members with a right to vote on the resolution.

Section 322: Voting on a poll

568. This section replaces section 374 of the 1985 Act. This provision recognises that a member may hold shares on behalf of third parties and allows the member to cast votes in different ways according to instructions from his clients. The reference to class meetings in section 374 is dealt with by section 334.

Section 323: Representation of corporations at meetings

569. This section replaces section 375 of the 1985 Act. The section expressly provides for the appointment of multiple corporate representatives. This is possible under section 375 of the 1985 Act, although the effect of appointing multiple representatives under the existing law is in some cases unclear. The new section spells out the position. Any one of the corporate representatives will be entitled to vote and exercise other powers on behalf of the member at meetings, but in the event that representatives' votes or other powers conflict, the corporation is deemed to have abstained from exercising its vote or power. If a corporation wishes to appoint people with different voting intentions or with authority to vote different blocks of shares, they should appoint proxies.