

## Introduction

17.1 The new model constitution for private companies will be an important element of the simplification of the law for small businesses. While the present model articles of association in Table A of the Act have served well for many years, we noted in *Developing the Framework*<sup>329</sup> that Table A no longer provides an ideal model constitution, for three reasons:

- the present version of Table A applies to both public and private companies limited by shares. There is much to be gained from a model constitution designed specifically for private companies;
- Table A does not take account of recent changes in the law, such as the introduction of single member companies; and
- Table A could be presented in a more user-friendly form, with a simpler layout and clearer language.

The illustrative draft that is included in this Chapter is intended, in particular, to demonstrate how the current Table A could be made simpler and clearer. The draft has been prepared in line with the principles and recommendations set out in paragraphs 4.13 to 4.15.

17.2 It is important to note that the draft is still very much at an early stage. Our principal aim has been to give an idea of the style, content and structure which would, we believe, provide a model constitution that is accessible to the directors and members of small companies. While we have incorporated the changes that we have recommended in this Report and in paragraphs 7.70 to 7.85 and Annex D of *Developing the Framework*, the draft is not an attempt to reach final conclusions on how those recommendations should be implemented. It will not be possible to reach such conclusions until a complete draft Bill has been prepared. The draft will require substantial amendment for two reasons:

<sup>329</sup> Paragraphs 7.70 to 7.85.

- much of the terminology of the constitution will follow the terminology of the Bill, so, until there is a full draft Bill, many of the terms used must continue to rely on those in the Act; and
- a number of the substantive provisions of the constitution cannot be finalised until the parallel provisions of the Bill have been settled. For example, the regulations on meetings will almost certainly require amendment in the light of the future draft clauses on meetings and resolutions. Although some private companies will continue to hold general meetings, and all private companies will need to be able to hold them should the occasion arise, the Bill will allow resolutions to be made by a number of methods, including written resolutions and unanimous consent – this may have significant implications for the constitution.

17.3 Extensive consultation will be necessary on the model constitution once it is closer to its final form. We would encourage the DTI to consult as widely as possible with the main users of the constitution, notably those who own and run small companies, company formation agents, the legal profession and other professional advisors to small companies.

## **Notes on Style, Content and Structure**

17.4 We have not prepared a detailed commentary on the regulations in the draft, given its status as described above. Moreover, detailed comments on the proposed content of each regulation can be found in the analysis of Table A in Annex D to *Developing the Framework*. However, the following paragraphs make some general observations on the style, content and structure of the draft.

17.5 We have attempted to improve the style currently used in Table A through a number of methods. First, we have endeavoured to replace legalistic or archaic language with plainer, more up-to-date English. This has not been possible in all cases. Some of the regulations rely on legal concepts, for example regulation 56 on the voting of a member with a mental disorder. It would not be sensible to attempt to find plainer, yet less precise and accurate alternatives in these cases. Second, we have tried to avoid the use of the long, complex sentences that occur throughout the

current Table A. That approach reflects out-of-date drafting practice which, while familiar to lawyers, is inaccessible to many of those who run small companies. Third, we have broken down the regulations into sub-paragraphs, so that each component is easily comprehended and given due weight. Fourth, the draft seeks to identify more clearly where a duty or power rests – that is, with the company, its directors or its members. Fifth, many of the provisions of Table A are introduced by the qualification that they are subject to the provisions of the Act or the constitution, or both. The consequence is that the real subject-matter of the provision is buried half-way into the text. To deal with this, we have included a general statement in regulation 1 that the constitution is subject to the provisions of the Act, thus avoiding the need to repeat the point throughout. We have also placed at the end of a regulation, rather than at the beginning, any qualification to the effect that a provision is subject to other provisions of the constitution. Finally, the regulations tend to fall into one of two categories; they either place obligations on the company, its directors or members, or they are facilitative, permitting certain actions to be taken. The headings of the regulations in the draft seek to make this distinction more apparent than it is in Table A.

17.6 The content of the draft is significantly reduced from that of Table A. It contains 65 regulations compared to Table A's 118. This reduction is largely a result of the omission of regulations that (i) will be rendered unnecessary as a result of our proposals for the new legislation, or (ii) we believe do not need to be included in any default constitution. We have included (at the end of the draft) lists of those regulations in Table A that fall into these two categories. The omission of these regulations makes the draft much more digestible than Table A.

17.7 We have attempted to achieve a more coherent order and structure for the regulations than is the case with Table A. Our general principle is to include the sections of the constitution in an order that reflects the frequency with which they will be used by those who run small companies. This has led to a draft where the main sections are ordered as follows:

- the power of directors to manage the company and their own proceedings;
- share capital, dividends and bonus issues;
- notices and indemnity; and
- the procedures for the general meeting.

## **Constitution of a Private Company Limited by Shares**

### *1 Definitions*

(1) In this constitution:

“the Act” means the Companies Act [ ] including any statutory modification or re-enactment for the time being in force;

“communication” includes a communication comprising sounds or images or both and a communication effecting a payment;

“the constitution” means the constitution of the company;

“clear days” in relation to a period of notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

“electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa):

(a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or

(b) by other means but while in an electronic form;

“executed” includes any method of execution;

“office” means the registered office of the company;

“the holder” in relation to shares means the member whose name is entered in the register of members as the holder of the shares;

“the seal” means the common seal (if any) of the company;

“secretary” means the secretary of the company if appointed or any other person appointed to perform the duties of the secretary of the company, including a joint, assistant or deputy secretary; and

“the United Kingdom” means Great Britain and Northern Ireland.

(2) Unless the context otherwise requires, words or expressions contained in these regulations have the same meaning as in the Act but excluding any statutory modification not in force when these regulations become binding on the company.

(3) The provisions of this constitution are subject to the provisions of the Act.

## **Directors**

### ***2. Powers of Directors (was R70)***

The business of the company shall be managed by the directors who may exercise all the powers of the company. This provision is subject to any limitations on those powers imposed elsewhere in the constitution or by any directions given by special resolution.

### ***3. Directors' Power to Delegate (was R72)***

(1) The directors may delegate any of their powers to any

- (a) committee consisting of one or more directors; or
- (b) director holding an executive office.

(2) The directors may impose conditions when delegating, including the condition that the relevant powers are to be exercised exclusively by the committee or person to whom they delegate.

(3) The directors may revoke or alter a delegation.

### ***4. Meetings of Directors (was R88)***

(1) The directors may regulate their meetings as they think fit, subject to the provisions of the constitution.

(2) A director may call a meeting of the directors.

(3) The secretary, if any, shall call a meeting of directors if requested to do so by a director.

- (4) It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom.
- (5) Questions arising at a meeting shall be decided by a majority of votes.
- (6) In the case of an equality of votes, the chairman shall have a second or casting vote.
- (7) The meetings of a committee of directors with two or more members shall be governed by the provisions of the constitution regulating the meetings of directors so far as they are capable of applying and subject to any conditions which the directors impose.
- (8) A director who is also an alternate director shall be entitled in the absence of the director who has appointed him as alternate (his appointor) to a separate vote on behalf of his appointor in addition to his own vote.

***5. Quorum for Meetings of Directors (was R89 and R95)***

- (1) The quorum for meetings of directors may be decided by the directors. If the directors do not decide the quorum, it shall be two.
- (2) If a company only has one director the quorum shall be one.
- (3) A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.
- (4) A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.

***6. Action of Directors where Vacancies Occur (was R90)***

- (1) The directors or a sole director may act in the case of vacancies among the directors.
- (2) If the number of directors is less than the number fixed as the quorum, the directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

**7. Chairman of the Board of Directors (was R91 and R98)**

- (1) The directors may appoint a director to be the chairman of the board of directors and may at any time remove him from that office.
- (2) The chairman shall preside at every meeting of directors at which he is present, unless he is unwilling to do so.
- (3) If there is no chairman, the chairman is unwilling to preside, or the chairman is not present within five minutes after the time appointed for the meeting, the directors present may appoint another director to be the chairman of the meeting.
- (4) If a question as to the right of a director to vote arises at a meeting of directors or of a committee of directors, the question may be referred to the chairman of the meeting. His ruling in relation to any director other than himself shall be final and conclusive.

**8. Written Resolution of Directors (was R93)**

- (1) A resolution in writing formally agreed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held.
- (2) The resolution in writing may consist of several documents containing the text of the resolution in the like form each formally agreed by one or more directors.
- (3) A resolution formally agreed by an alternate director need not also be formally agreed by his appointor and, if it is formally agreed by a director who has appointed an alternate director, it need not be formally agreed by the alternate director in that capacity.

**9. Power of Director to Vote in Case where he has an Interest (was R94)**

- (1) A director shall not vote on any resolution of the directors or of a committee of directors concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the company unless his interest or duty arises only because the case falls within one or more of the following paragraphs:

- (a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him for the benefit of, the company or any of its subsidiaries;
- (b) the resolution relates to the giving to a third party of a guarantee, security, or indemnity in respect of an obligation of the company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
- (c) his interest arises by virtue of his subscribing or agreeing to subscribe for any shares, debentures, or other securities of the company or any of its subsidiaries, or by virtue of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such shares, debentures, or other securities by the company or any of its subsidiaries for subscription, purchase or exchange;
- (d) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by the Board of Inland Revenue for taxation purposes.

This regulation is subject to the provisions of the constitution.

(2) For the purposes of this regulation, an interest of a person who is connected with a director shall be treated as an interest of the director and, in relation to an alternate director, an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

(3) In paragraph (2) “connected” means connected for any purpose of the Act (excluding any statutory modification not in force when this regulation becomes binding on the company).

***10. Power of Company to Relax Prohibition on Director Voting (was R96)***

The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the constitution prohibiting a director from voting at a meeting of directors or of a committee of directors.

***11. Directors' Power to Appoint Agents (was R71)***

The directors may appoint any person to be the agent of the company. The appointment may be for such purposes and on such conditions as they determine. Those conditions may include authority for the agent to delegate all or any of his powers.

***12. Directors' Power to Employ Directors (was R84)***

- (1) The directors may
  - (a) appoint one or more directors to any executive office of the company; and
  - (b) enter into an agreement or arrangement with any director for his employment by the company or for the provision by him of any services outside the scope of the ordinary duties of a director.
- (2) Any such appointment, agreement or arrangement may be made upon such terms as the directors decide and they may remunerate any such director for his services as they think fit.
- (3) Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the company.

***13. Company's Power to Fill Vacancies among Directors (was R78)***

- (1) The company may by ordinary resolution appoint a person who is willing to act to be a director.
- (2) The company may also determine when that director is to retire.

**14. Directors' Power to Appoint Directors (was R79)**

- (1) The directors may appoint a person who is willing to act to be a director.
- (2) A director so appointed shall hold office until the next following annual general meeting and if not re-appointed at such annual general meeting, he shall vacate office at the conclusion of that meeting.
- (3) The appointment must not cause the number of directors to exceed any number fixed by the constitution as the maximum number of directors.

**15. Removal of a Director (was R81)**

The office of a director shall be vacated if

- (a) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director; or
- (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) he is, or may be, suffering from mental disorder and either:
  - (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or
  - (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, *curator bonis* or other person to exercise powers with respect to his property or affairs; or
- (d) he resigns his office by notice to the company; or
- (e) he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated; or

- (f) in the case of a director holding office for a fixed term, on the expiration of that term or such renewed term or terms agreed between that director and the company; or
- (g) on his conviction for an indictable offence; or
- (h) if he becomes incapable by reason of illness or injury of managing and administering his property and affairs.

***16. Appointment and Removal of an Alternate (was R65 and R67)***

- (1) Any director (other than an alternate director) may appoint
  - (a) any other director; or
  - (b) any other person willing to act and approved by resolution of the directors, to be an alternate director.
- (2) A director may remove from office an alternate director appointed by him.
- (3) An alternate director shall cease to be an alternate director if his appointor ceases to be a director.

***17. Rights of Alternate in Relation to Meetings of Directors (was R66)***

- (1) An alternate director shall be entitled to
  - (a) receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member;
  - (b) attend and vote at any such meeting at which the director appointing him is not present; and
  - (c) perform all the functions of his appointor as a director in his absence.
- (2) It shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom.

**18. Director to Notify Company Concerning Alternate (was R68)**

Any appointment or removal of an alternate director shall

- (a) be by notice to the company signed by the director or to which his [electronic signature] is attached making or revoking the appointment; or
- (b) in any other manner approved by the directors.

**19. Alternate Director is Deemed to be a Director (was R69)**

An alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

This provision is subject to provisions which may occur elsewhere in the constitution.

**20. Remuneration of Directors (was R82)**

- (1) The directors shall be entitled to such remuneration as the company may by ordinary resolution determine.
- (2) Unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.
- (3) An alternate director shall not be entitled to receive any remuneration from the company for his services as an alternate director.

**21. Expenses of Directors (was R83)**

The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with the discharge of their duties.

**22. Benefits and Pensions of Former Directors (was R87)**

- (1) The directors may provide benefits for any director who has held but no longer holds any executive office or employment with

- (a) the company; or
  - (b) any body corporate which is or has been a subsidiary of the company; or
  - (c) a predecessor in business of the company or of any subsidiary of the company.
- (2) The directors may, in addition, provide benefits for any dependants or family members (including a former spouse) of the persons listed in paragraph (1).
- (3) The directors may at any time contribute to any fund and pay premiums for the purchase or provision of any such benefit.

## **Share Capital and Certificates**

### ***23. Alteration of Share Capital (was R33)***

- (1) Where a consolidation of shares would entitle members to fractions of a share, the directors may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable. The shares may be sold to any person including the company. The net proceeds of sale shall be distributed in due proportion among those members.
- (2) The directors may authorise a person to execute an instrument of transfer of the shares to the purchaser, or in accordance with his directions.
- (3) The transferee shall not be required to ensure that the purchase money is properly applied nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

### ***24. Commissions (was R4)***

The company may pay commissions to the full extent permitted by the Act.

### ***25. Shares held upon Trust (was R5)***

- (1) No person shall be recognised by the company as holding any share upon any trust.

(2) The company shall not be bound by or recognise any interest in any share except an absolute right to the entirety thereof in the holder.

(3) Provisions (1) and (2) are subject to the provisions of the general law, and provision (2) is subject to the provisions elsewhere in the constitution.

***26. Issue of Share Certificates (was R6)***

(1) Every member, upon becoming the holder of any shares, shall be entitled to

- (a) one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of such holding); or
- (b) several certificates each for one or more of his shares of any class; or
- (c) several certificates each for one or more of his shares.

(2) Each member shall be entitled to the first certificate without payment but for replacement certificates shall pay such reasonable sum as the directors may determine.

(3) Every certificate shall be duly executed by the company and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up.

(4) The company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.

***27. Replacement of Share Certificates (was R7)***

(1) If a share certificate is defaced, worn-out, lost or destroyed, it may be renewed.

(2) The directors may

- (a) impose conditions as to evidence and indemnity;

- (b) require the delivery of the old certificate where replacement is due to defacement or wearing-out; and
- (c) require the payment of expenses reasonably incurred by the company in investigating evidence, but no other charge may be imposed.

***28. Form of Instrument of Transfer of Shares (was R23)***

- (1) The instrument of transfer of a share may be in any usual form or in any other form which the directors may approve.
- (2) The instrument of transfer shall be executed by or on behalf of the transferor and, in the case of a partly paid share, by or on behalf of the transferee.

***29. Power of Directors to Refuse to Register a Transfer of Shares (was R24)***

The directors may refuse to register a transfer unless it is

- (a) lodged at the office or at such other place as the directors may appoint;
- (b) accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
- (c) in respect of only one class of shares; and
- (d) in favour of not more than four transferees.

***30. Prohibition on Fee for Registration of Transfer of Shares (was R27)***

No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.

***31. Transmission of Shares of Deceased Member (was R29)***

- (1) If a member dies the only persons recognised by the company as having any title to his interest shall be

- (a) the survivor or survivors where he was a joint holder; and
  - (b) his personal representatives where he was a sole holder or the only survivor of joint holders.
- (2) This shall not release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.

***32. The Rights of a Person Entitled in Consequence of Death or Bankruptcy (was R31)***

- (1) A person who becomes entitled to a share as a result of the death or bankruptcy of a member shall, before being registered as the holder of the share, have the rights to which he would be entitled if he were the holder of the share.
- (2) The rights referred to in paragraph (1) do not include the right to attend or vote at any meeting of the company or at any separate meeting of the holders of any class of shares in the company.

***33. Person Entitled as a Result of Death or Bankruptcy – Registration as Member (was R30)***

- (1) A person becoming entitled to a share as a result of the death or bankruptcy of a member may choose either
- (a) to become the holder of the share; or
  - (b) to nominate a person to be registered as transferee.
- (2) The person shall produce such evidence as to entitlement as the directors may properly require.
- (3) The person must
- (a) notify the company if he chooses to become the holder of the share; and
  - (b) execute an instrument of transfer of the share if he chooses to have another person registered.

- (4) All the provisions of the constitution relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and as if the death or bankruptcy of the member had not occurred.

## **Dividends**

### ***34. Power of Company in General Meeting to Declare Dividend (was R102)***

- (1) Dividends may be declared only by ordinary resolution of the company.
- (2) They must be declared in accordance with the respective rights of the members.
- (3) No dividend may exceed the amount recommended by the directors.

### ***35. Power of Directors to Declare Interim Dividend (was R103)***

- (1) The directors may pay interim dividends if it appears to them that they are justified by the profits of the company available for distribution to members.
- (2) If the share capital is divided into different classes, the directors may only pay interim dividends on shares which confer deferred or non-preferred rights with regard to the dividend if, at the time of payment, no preferential dividend is in arrear.
- (3) The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- (4) Provided the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

### ***36. Power of Company to Declare that Dividend be Satisfied by the Distribution of Assets (was R105)***

- (1) Dividends do not have to be paid solely in cash. A general meeting declaring a dividend may, if the directors recommend, direct that it may be paid wholly or partly by the distribution of assets.

- (2) The directors shall manage and direct the distribution and, in particular, they may
  - (a) issue fractional certificates;
  - (b) fix the value of any assets for distribution;
  - (c) determine that cash shall be paid to any member; and
  - (d) vest any assets in trustees.

***37. Dividend may be Paid by Cheque (was R106)***

- (1) Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled or to such address notified by that person to the company.
- (2) If two or more persons are jointly entitled to the dividend, payment shall be made to the registered address of the person who is first named in the register of members or to such person and to such address as notified by the person or persons entitled to the company.
- (3) Every cheque shall be made payable to the order of the person or persons entitled or to such other person of whom the person or persons entitled notify the company. Payment of the cheque shall be a good discharge to the company.
- (4) Any joint holder or other person jointly entitled to a share may give receipts for any dividend or other moneys payable in respect of the share.

***38. Unclaimed Dividends (was R108)***

The directors may decide that any dividend not claimed for twelve years from the date when it became due for payment shall be forfeited.

## **Capitalisation of Profits**

### ***39. Power of Directors to Issue Bonus Shares (was R110)***

- (1) The directors may, if authorised by an ordinary resolution of the company, decide to capitalise
- (i) any undivided profits of the company not required for paying any preferential dividend (whether or not they are available for distribution); or
  - (ii) any sum standing to the credit of the company's share premium account or capital redemption reserve.
- (2) The directors may, if authorised by an ordinary resolution of the company,
- (a) appropriate the sum resolved to be capitalised to the members who would have been entitled to it if it were distributed by way of dividend and in the same proportions; and
  - (b) apply such sum on their behalf either
    - (i) in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively; or
    - (ii) in paying up in full unissued shares or debentures of the company of a nominal amount equal to that sum; and
  - (c) allot the shares or debentures credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other.
- (3) The share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this regulation, only be applied in paying up unissued shares to be allotted to members credited as fully paid.
- (4) The directors may make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this regulation in fractions.

(5) The directors may authorise any person to enter on behalf of all the members concerned into an agreement with the company providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all such members.

## **Notices**

### ***40. Notices to be in Writing or by Electronic Communications (was R111)***

- (1) Any notice to be given to or by any person pursuant to the constitution
- (a) shall be in writing; or
  - (b) shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice.
- (2) In this regulation “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.

### ***41. Manner in which Notice is to be Given to a Member (was R112)***

- (1) The company may give any notice to a member; either
- (a) personally; or
  - (b) by sending it by post in a prepaid envelope addressed to the member at his registered address; or
  - (c) by leaving it at the registered address of the member; or
  - (d) by giving it using electronic communications to an address for the time being notified to the company by the member.
- (2) In the case of joint holders of a share, all notices shall be given to the joint holder whose name stands first in the register of members in respect of the joint holding. Notice given in this way shall be sufficient notice to all the joint holders.

(3) A member whose registered address is not within the United Kingdom and who gives to the company

(a) an address within the United Kingdom at which notices may be given to him; or

(b) an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the company.

(4) In this regulation, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.

***42. Deemed Receipt of Notice by Member Present at a Meeting (was R113)***

A member who is present, either in person or by proxy, at any meeting of the company or of any class of shares in the company, shall be deemed to have received notice of the meeting and of the purposes for which it was called.

***43. Person Entitled to Share Bound by Notice Given (was R114)***

A person who is entitled to a share is bound by any notice which has been duly given by the company in respect of that share in the period before his name has been entered on the register.

***44. Proof of Notice (was R115)***

(1) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

(2) Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.

(3) A notice shall be deemed to be given

(a) 48 hours after the envelope containing it was posted; or

- (b) in the case of a notice contained in an electronic communication, 48 hours after the time it was sent.

**45. Notice to Person Entitled in Consequence of Death or Bankruptcy (was R116)**

(1) The company may give notice to the persons entitled to a share as a result of the death or bankruptcy of a member by sending or delivering it (in any manner authorised by the constitution for sending notices to a member)

- (a) addressed to them by name; or
- (b) addressed to them by the title of representatives of the deceased, or trustee of the bankrupt; or
- (c) addressed to them by any like description,

at the address, if any, within the United Kingdom supplied for that purpose by the persons claiming to be so entitled.

(2) Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

**Indemnity**

**46. Company Indemnifies Directors and Auditors (was R118)**

(1) The company shall indemnify every director or other officer or auditor of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company.

(2) The company may purchase and maintain for any director, officer or auditor insurance against the liability referred to in paragraph (1).

- (3) This provision is without prejudice to any indemnity to which a director may otherwise be entitled.

## **Members of the Company and General Meetings**

### ***47. Name of General Meetings other than Annual General Meetings (was R36)***

All general meetings other than annual general meetings shall be called extraordinary general meetings.

### ***48. Power of Directors to Call General Meetings (was R37)***

- (1) The directors may call general meetings.
- (2) If sufficient directors are not in the United Kingdom to form a quorum, any director or any member of the company may call a general meeting.

### ***49. Chairman of the General Meeting (was R42 and R43)***

- (1) The chairman, if any, of the board of directors shall preside as chairman of the general meeting.
- (2) If the chairman is not willing to act or is not present within fifteen minutes after the time appointed for holding the meeting, the directors present shall elect one of their number to be chairman. If there is only one director present and willing to act, he shall be chairman.
- (3) If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.

### ***50. Quorum for General Meetings (was R40 and R41)***

- (1) No business shall be transacted at any meeting unless a quorum is present.
- (2) If the quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting the quorum ceases to be present, the meeting shall be adjourned.

(3) The meeting shall be adjourned to the same day in the next week at the same time and place or to such day, time and place as the directors may determine.

(4) If there is no quorum at the adjourned meeting then that meeting shall be dissolved.

***51. Chairman's Power to Adjourn a General Meeting (was R45)***

(1) The chairman may with the consent of the meeting adjourn the meeting from time to time and from place to place.

(2) The chairman shall adjourn the meeting if directed to do so by the meeting.

(3) No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

(4) If a meeting is adjourned for less than fourteen days it is not necessary to give any notice of it.

(5) If a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.

***52. Voting by Show of Hands (was R46)***

(1) A resolution put to the vote at a meeting shall be decided on a show of hands.

(2) If a poll is demanded before or on the declaration of the result of the show of hands, the resolution shall be decided by means of a poll.

***53. Voting of Members on a Show of Hands or on a Poll (was R54)***

(1) On a show of hands

(a) every member shall have one vote;

(b) where the member is a corporation represented by a duly authorised representative, that member shall have one vote; and

(c) a proxy duly appointed by a member shall have one vote.

(2) On a poll every member shall have one vote for every share of which he is the holder and every proxy shall have one vote for every share in relation to which he has been appointed proxy.

(3) These provisions are subject to any rights or restrictions which are attached to any shares.

***54. Voting of Member Conditional upon Moneys Being Paid (was R57)***

A member may only vote at a meeting or on a resolution in person or by proxy, in respect of any share held by him if all sums of money due and payable by him in respect of that share have been paid.

***55. Voting of Members who hold Shares Jointly (was R55)***

(1) In the case of joint holders, the vote of the senior who votes, whether in person or by proxy, shall be the only vote that counts.

(2) Seniority shall be determined by the order in which the names of the holders stand in the register of members.

***56. Voting of Member with Mental Disorder (was R56)***

(1) A member suffering from a mental disorder may vote by his receiver, *curator bonis* or other person authorised and appointed by the court.

(2) The receiver, *curator bonis* or other person may vote on a show of hands or on a poll and on a poll may vote by proxy.

(3) A person is suffering from a mental disorder if an order has been made in respect of that person by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder.

(4) Any person claiming the right to vote under paragraphs (1) and (2) above shall deposit evidence supporting his claim

- (a) to the satisfaction of the directors;
  - (b) at the office, or at any other place which is specified in accordance with the constitution for the deposit of instruments of proxy;
  - (c) not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised.
- (5) If a person claiming such a right to vote does not comply with the requirements set out in paragraph (4) the right to vote shall not be exercisable.

***57. Objections to the Qualification of a Voter (was R58)***

- (1) An objection to the qualification of a voter
- (a) may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered; and
  - (b) shall be referred to the chairman whose decision shall be final and conclusive.
- (2) Any vote not disallowed at the meeting shall be valid.

***58. Chairman's Power to Declare whether a Resolution has been Carried (was R47)***

- (1) On a show of hands, a declaration by the chairman that a resolution has been carried and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (2) The declaration and entry in the minutes will also be conclusive evidence of the weight of votes, where these are recorded.

***59. When Poll is to be Taken (was R51 and R48)***

- (1) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

(2) A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs and in any event not more than thirty days after the poll is demanded.

(3) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded.

(4) If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

(5) The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

***60. When Notice of a Poll is Required (was R52)***

No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

***61. Chairman's Power to Direct the Manner of the Taking of a Poll (was R49)***

(1) A poll shall be taken as the chairman directs.

(2) The chairman may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll.

(3) The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

***62. Voting on a Poll (was R59)***

(1) On a poll votes may be given either personally or by proxy.

(2) A member may appoint more than one proxy to attend on the same occasion.

**63. Forms of Instrument Appointing a Proxy Voter (was R60 and R61)**

(1) The appointment of a proxy shall be executed by or on behalf of the appointor.

(2) The appointment shall be in the following form (or in a form as near to it as circumstances allow or in any other form which is usual or which the directors may approve):

“ .. . . . /Limited .. . . . I/We, .. . . . , of .. . . . , being a member/members of the above-named company, hereby appoint .. . . . of .. . . . , or failing him, .. . . . of .. . . . , as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the company to be held on .. . . . 20 .. . . . , and at any adjournment thereof.

Signed on .. . . . 20 .. . . . ”

(3) Where it is desired to afford members an opportunity of instructing the proxy how he shall act the appointment of a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve):

“ .. . . . /Limited .. . . . I/We, .. . . . , of .. . . . , being a member/members of the above-named company, hereby appoint .. . . . of .. . . . , or failing him .. . . . of .. . . . , as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the company, to be held on .. . . . 20 .. . . . , and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 \*for \*against

Resolution No. 2 \*for \*against.

\*Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on .. . . . 20 .. . . . ”

**64. Deposit of Proxy at Offices of the Company (was R62)**

- (1) The appointment of a proxy and any authority under which it is executed or a copy of such authority certified either by a notary or in some other way approved by the directors may
- (a) in the case of an instrument in writing, be deposited at the office or at such other places within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (b) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications
    - (i) in the notice convening the meeting; or
    - (ii) in any instrument of proxy sent out by the company in relation to the meeting; or
    - (iii) in any invitation contained in an electronic communication to appoint a proxy issued by the company in relation to the meeting,  
  
be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote; or
  - (c) in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
  - (d) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director;

and an appointment of proxy which is not deposited, delivered or received in a manner so permitted shall be invalid.

(2) In this regulation, “address” in relation to electronic communications includes any number or address used for the purposes of such communications.

***65. Vote Cast after Determination of Proxy or Authority (was R63)***

(1) A vote given or poll demanded by 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 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.

(2) The notice referred to in paragraph (1) shall be given to the company

- (a) at the office; or
- (b) at such other place at which the instrument of proxy was duly deposited; or
- (c) where the appointment of the proxy was contained in an electronic communication, at the address at which such appointment was duly received.

## **Provisions which it is Proposed to Omit from the Constitution on the Basis that Provision in the new Act will Render the Provision Unnecessary**

### ***R2 Shares may be Issued with such Rights or Restrictions as the Company may by Ordinary Resolution Determine***

It is proposed that section 80 of the Act be disapplied for private companies, giving directors the authority to allot shares. It is also proposed that the Act (rather than the constitution) should provide for shareholder authorisation where the issue would create a new class of shares or where more than one class of shares was already in existence.

### ***R3 Redeemable Shares***

It is proposed to amend section 159 for a private company so that in order to issue redeemable shares authorisation in the articles will not be necessary.

### ***R25 Refusal to Register a Transfer to be Notified within Two Months***

This regulation repeats section 183(5).

### ***R26 Power to Suspend Registration of Transfers of Shares***

Section 358 provides the company with power to close the register; the ambit of section 358 is being re-examined.

### ***R28 Power to Retain an Instrument of Transfer***

It is suggested that Regulation 28 be deleted and that section 183(5) be amended to require the company to return to the person lodging it an instrument of transfer which the directors refuse to register.

### ***R32 Power to Increase, Consolidate, Subdivide Share Capital and Cancel Shares***

It is suggested that section 121 be amended so that the reference to “if so authorised by its articles” is omitted.

***R34 Power to Reduce Share Capital***

It is suggested that section 135 be amended so that reference to “if so authorised by its articles” is removed.

***R35 Power to Purchase Own Shares***

It is suggested that section 162 be amended to remove the reference to “if so authorised by its articles”.

***R38 Notice of General Meetings***

It is proposed that the Act will contain provisions concerning notice requiring at least fourteen clear days’ notice for a general meeting, although the required proportion of members will have the power to agree to shorter notice.

A company may impose more onerous requirements by way of the provisions of the constitution and by way of restrictions imposed on shares.

***R39 Accidental Omission to Give Notice of a Meeting***

In the absence of Regulation 39 failure to give notice of a meeting to all those entitled to it will invalidate the business of the meeting. It is suggested that the content of Regulation 39 is suitable for inclusion in the Act on the basis that it is a provision of general application.

***R40 Requirement for a Quorum for General Meetings***

It is suggested that the Act contain the requirement that “A quorum shall be two persons entitled to vote upon the business to be transacted at the meeting, each being a member or a proxy for a member or a duly authorised representative of a corporation”. It should continue to the effect that “If the company only has a single member then the one member present at the meeting in person or by proxy shall be the quorum”.

***R42/43 Chairman of General Meeting***

It is suggested that section 370(5) should be amended to provide that should a company's articles contain no provision on the matter then the default provision in the model constitution applies.

***R44 Director Entitled to Attend and Speak at General Meeting***

It is suggested that a provision along the lines of Regulation 44 should be included in the Act.

***R46 Persons who may Demand a Poll***

It is suggested that section 373(1)(b)(i) be amended so that in private companies one member may demand a poll.

***R85 and R86 Director Exempted from Requirement to Account as a Result of Conflicted Transactions or Offices***

Regulations 85 and 86 should be unnecessary if the new scheme of directors' duties is adopted so that the statement of principles on the law of directors' duties will replace the whole of the existing law in the field which they cover.

***R92 Defect in Appointment of Director***

It is proposed that Regulation 92 be deleted and that section 285 should be amended to bring it into line with Regulation 92.

***R100 Requirement that Directors Shall Cause Minutes to be Kept***

It is proposed that this should be deleted on the basis that Regulation 100 in part duplicates section 382 and that section 382 be amended to apply to class meetings and committees of directors.

***R101 Company Seal***

The detail of the provisions for the constitution concerning the company seal can be reconsidered in the light of amendments which are made to the Act.

## **Provisions which it is Proposed to Omit from the Constitution on the Ground that they are Unnecessary as a Default Provision**

*R8 The company to have a lien over shares in respect of sums unpaid*

*R9 Company's power to sell shares over which it has a lien to recover sums due and unpaid*

*R10 Title of transferee*

*R11 Application of proceeds of sale*

*R12 Power to make calls on shares in respect of sums unpaid*

*R13 Time when call is deemed to be made*

*R14 Joint and several liability of joint holders of a share*

*R15 Interest payable in respect of calls due but unpaid*

*R16 Amount payable in respect of a share on allotment or at any fixed date deemed to be a call*

*R17 On allotment the directors may impose different requirements in respect of amount and time of payment of calls*

*R18 Notice requiring payment of sums unpaid*

*R19 Forfeiture of shares*

*R20 Dealing by company with forfeited shares*

*R21 Surrender of certificates in respect of forfeited shares*

*R22 Statutory declaration by a director that shares have been forfeited*

*R50 Chairman to have a casting vote*

*R53 Written resolutions*

*R64 Minimum number of directors*

*R73 to R77 Rotation of directors*

*R80 Reappointment of a director who retires at AGM*

*R97 Proposal to appoint two or more directors to offices or employments with the company*

*R99 Company secretary*

*R104 Dividends to be declared and paid according to the amounts paid up on the shares*

*R107 Dividend shall not, in general, bear interest*

*R109 Member to have no right to inspect records or books*

*R117 Power of liquidator, on a winding up, to divide the assets of a company in specie among the members*

