



Company Law

## CPA Ireland Skillnet

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# Corporate Law

## ○ Capital

- Discounted shares

## ○ Meetings

- Directors meetings

# Corporate Finance



# Corporate Finance

- There are a wide range of rules set down in the Companies Act 2014 regarding maintenance of company capital
- One such rule is the prohibition on a company issuing shares discounted as to their nominal value (as per Section 71 CA 2014)
- In effect, the lowest value a share can be issued by the company for is its nominal value



# Corporate Finance

## Rationale:


- The rationale for this rule is that any issue by the company of shares for less than their nominal value is likely to devalue all shares that have already been issued



# Corporate Finance

## Rationale:

- Another rationale for this rule is to safeguard the interest of the creditors of the company – as the discounted share may result in a deficiency in company capital and shortage of assets



**Asset  
Deficiency**

*[ˈɑːset di-ˈfi-shən-sē]*

A situation where a company's liabilities exceed its assets.

# Corporate Finance

- Although this rule is now prescribed by statute, it was originally recognised in *Ooregum Gold Mining Co of India v Roper* [1892] AC 125 – where the company issued £1 preference shares that were credited with £0.75 already paid (which was double the market value of the shares at the time) – however, when the company subsequently went into insolvent liquidation, the holders of the new shares were required to repay the unpaid £0.75



# Corporate Finance

- According to Lord Halsbury (at p. 133):
- *“It seems to me that the system thus created by which the shareholder's liability is to be limited by the amount unpaid upon his shares, renders it impossible for the company to depart from that requirement, and by any expedient to arrange with their shareholders that they shall not be liable for the amount unpaid on the shares ...”*

# Corporate Finance

- Similarly, Lord Watson affirmed this position when he stated (at p. 137):
- *“... if shares are issued against money, it appears to me that any payment to the company less than the nominal amount of the share must, by force of the statute, and notwithstanding any agreement to the contrary, be treated as a payment to account, the member remaining liable to contribute the balance, when duly called for.”*

# Corporate Finance



## Breach

- Breach of the rule may result in the purchaser of the discounted shares having to pay the company concerned an amount equal to the amount of the discount and any interest thereon (at the appropriate rate) – in this regard the unpaid portion can be classed as a contingent liability

# Corporate Finance

## Breach

- When the purchaser sells the shares – the new owner will not be liable to repay the balance unless they knew that they were issued in contravention of the rule regarding discounts



# Corporate Finance

## Breach

- In addition, if a company is placed into liquidation and discounted shares have been issued by the company, the liquidator can treat these shares as if they were partly-paid shares and make a call for payment of the unpaid balance



# Corporate Finance

## Breach

- Breach by the company and any officer of it is also classed as a Category 3 offence

Categories 1 to 4 offences — penalties

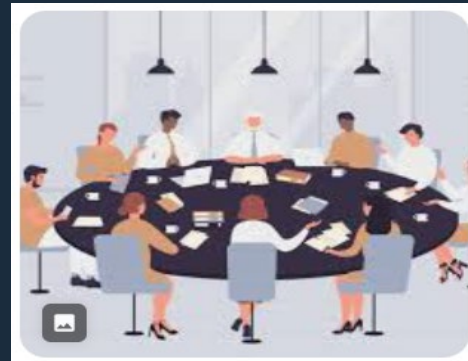
(3) A person guilty of an offence under this Act that is stated to be a category 3 offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

# Company Meetings



# Company Meetings

- The directors of a company are required to act collectively as a board in order to make decisions regarding the operation of the company (except where the company only has one director)
- To facilitate this, the directors are required to convene meetings to discuss key issues in relation to the company





# Company Meetings

- The formalities that arise in the context of general meetings (AGMs and EGMs) do not need to be adhered to in the context of directors meetings – for example requirements in relation to:

1. Notice
2. Quorums
3. Voting



- Directors meetings can be conducted on a less formal basis

# Company Meetings

- However, there are some specific rules regarding directors meetings, including the following:

## Requisition

- Such meetings will be requisitioned by the company secretary following a request by a director, and reasonable notice must be provided
- Their frequency is not prescribed – but can be determined by the company



# Company Meetings

- Regarding reasonable notice, in *Re Portuguese Consolidated Copper Mines Ltd.* (1889) 42 Ch.D. 160, where inadequate notice was provided to half of the Board of Directors, Lord Esher held (at p. 167) that there was:

*"no valid meeting, and being an invalid meeting [it] could not adjourn itself"*



# Company Meetings

## Quorums

- The quorum for such meetings may be decided by the directors – and where no such decision is made, the quorum will be two where the company has more than one director, and one, where the company has only one director



# Company Meetings

## Chairperson

- The directors can elect a person to chair their meetings, and where no chair has been appointed in advance of the meeting, or where one is not present within 15 minutes of commencement of the meeting, the directors can appoint a chair at the meeting



# Company Meetings

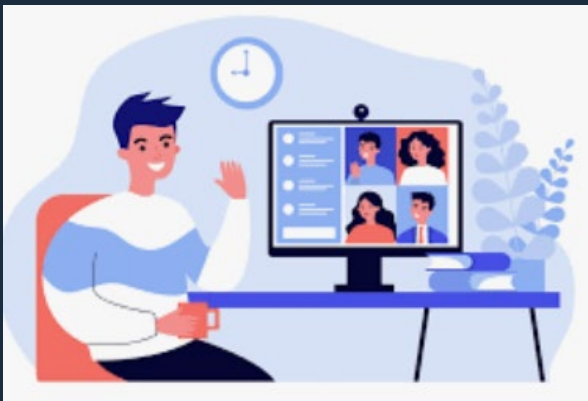
## Role of the Chairperson

- A. To ensure that the meeting is conducted properly
- B. To preserve the order of the meeting and adjourn it where necessary (such as where it becomes disorderly)
- C. To decide on matters relating to motions and amendments
- D. To oversee voting and to declare the results of voting

# Company Meetings

## Participation

- This may arise by telephone, video or other electronic means – provided each director is able to hear other directors and to speak at such a meeting



# Company Meetings

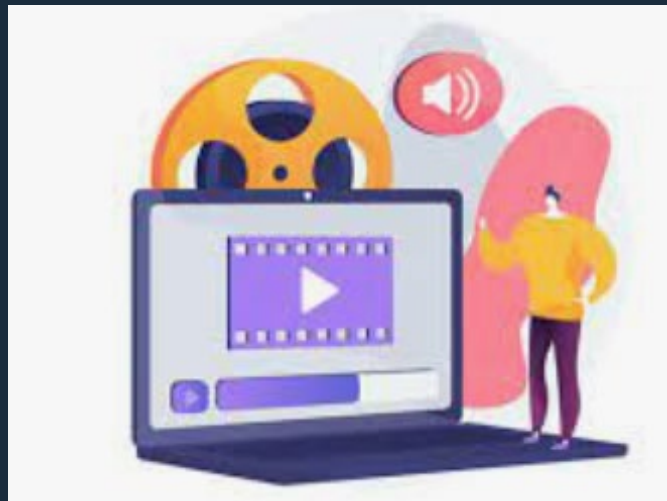
- In *Harben v Phillips* (1883) 23 Ch.D. 14 , four directors were wrongly excluded from a board meeting – according to Justice Chitty (at p. 26) this initial meeting was "*an unlawful meeting ... not properly constituted, and ... everything that was done at it is invalid.*"





# Company Meetings

- The issue of participation and the chairperson's right to adjourn a meeting arose in *Byng v London Life Assurance Ltd* [1990] CH.170 – in this case there were no audio-visual links functioning in over-flow rooms and there were difficulties in members registering to vote



# Company Meetings

- According to Justice Nicolas Browne-Wilkinson (at p. 189):
- *“[W] here there is a meeting at which the views of the majority cannot be validly ascertained, the chairman has a residual common law power to adjourn, so as to give all persons entitled a reasonable opportunity of voting and ... speaking at the meeting.”*

# Company Meetings

## Voting

- Issues arising at any such meeting will be decided by a majority of votes (where each director has one vote) and where there is an equality of votes, the chairperson will have a second or casting vote



# Company Meetings



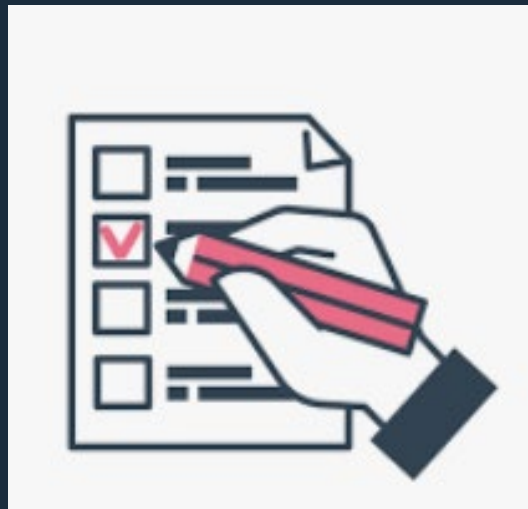
## Minutes

- The company secretary will maintain the minutes of directors meetings – and where these minutes are signed by the chairperson of the succeeding meeting, they are *prima facie* evidence of the proceedings of the meeting
- The minutes should include details of any appointments, those present, and voting on resolutions
- The Director of Corporate Enforcement has the right to inspect these minutes (breach is a Category 4 offence)

# Company Meetings

## Written Resolutions

- Directors may make decisions by passing a written resolution (which is signed by all the directors of the company), without the actual need to convene a meeting



# Company Meetings

## Conflicts of Interest

- A director may vote in respect of any contract, appointment or arrangement in which he or she is interested – provided such interest is disclosed – otherwise such non-disclosure may amount to a breach of duties



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