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CHAPTER 4

Simplification: Corporate Governance

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4.1 Introduction

The existing statute law

4.1.1 The present statute law concerning internal administration, commonly called corporate governance, is found mainly in Part V of the 1963 Act. Rather than dealing with the broad sweep of what is now called corporate governance, the existing statute law deals with rudiments of internal administration. Corporate governance encompasses areas of company administration such as the protection of shareholders, employees, creditors and other members of the public. The recommendations made in this Chapter are concerned primarily with simplifying and enhancing the procedures of corporate governance, as opposed to the protective objectives or results of those procedures.

Table A Regulations

4.1.2 In addition to the body of the statute, the provisions of Table A need to be considered.[1] This model set of articles of association applies in all companies limited by shares, save to the extent to which it is disapplied or varied by specifically adopted articles of association.[2] Table A contains a significant body of standard principles and practices of corporate governance, even if a number of its provisions are modified slightly in the case of each company by specifically adopted articles of association. What started off as a default model has, to a great extent, become the standard for most companies.

4.1.3 A number of comments can be made regarding Table A. In the first place, some of the provisions in Table A cannot be amended, or only to a certain extent.[3] Secondly, some of the provisions are merely repetitions of the statute.[4] Thirdly, some of the provisions which are variable have a present default, which is not the normal practice,[5] and, as a consequence, there are now fairly standard amendments made to Table A. The bilocation[6] of the rules of law which relate to internal administration renders it very difficult for non-experts, and perhaps most importantly, company directors, to navigate the law.

Technology

4.1.4 Corporate governance has incorporated new technology and, in the case of some old technology such as telephones, more reliable technology. Board meetings by telephone and faxed shareholders' resolutions are not uncommon, subject to the articles so providing. Most significantly, the ECA 2000 recognises the exponential increase in use of e-mail and the Internet and, subject to its provisions, that Act facilitates certain transactions which otherwise would require to be transacted in person or in writing. The existing Companies Acts and Table A are largely silent on these technologies.

4.2 Approach of the Review Group

4.2.1 The Review Group decided, in the absence of any submissions or controversy on the subject, that corporate governance be examined on the assumption of the present single-tier board, rather than considering the possibility of a split between a management board and a supervisory board as is found in a number of European civil law jurisdictions.[7]

1 Likewise, Table C is relevant for the companies limited by guarantee not having a share capital incorporated since 1982, which automatically adopt Table C on incorporation, subject to amendments and exclusions in specifically adopted articles. For convenience, reference is made in this Chapter only to Table A provisions rather than also to the corresponding Table C provisions. The analysis of and recommendations with respect to Table A apply equally to Table C.

2 1963 Act, ss 13, 13A.

3 See s 133 of the 1963 Act as to minimum periods of notice for meetings; s 137 as to right to a poll.

4 See s 139 of the 1963 Act, Table A Regulation 74.

5 Regulation 79 which limits the powers of directors to exercise the company's borrowing powers to an amount referable to share capital.

6 And sometimes trilocation – see s 134 of the 1963 Act, Table A Regulations 51 and 133 regarding notices of meetings.

7 See also 11.8.13.

4.2.2 The Review Group analysed the existing law and regulation that concern corporate governance on a section by section basis as follows:

Companies Act 1963

Sections 113 to 114	Registered office and name
Sections 116 to 124	Register of members
Sections 131 to 146	Meetings and proceedings
Section 195	Register of directors and secretaries
Sections 378 to 379	Registers, notices

Table A

Regulations 47 to 74	General Meetings
Regulations 75 to 114	Directors
Regulation 115	Seal
Regulations 133 to 136	Notices

European Communities (Single Member Private Limited Companies) Regulations 1994

Regulations 4 to 14	Consequences of being a single member private limited company

4.3 Registered office, name and company seal

Registered office and name

4.3.1 The Review Group recommends no change to the requirement that every company must have a registered office, and recommends against any amendments to the general requirement to publicise the name of a company.

Requirement for a company seal

4.3.2 One of the principal and recognised consequences of incorporation is that a company has a common seal.[8] In addition, there are statutory requirements incidental to incorporation, such as that in s 114 of the 1963 Act, which requires that a company must, inter alia, "(b) … have its name engraven in legible characters on its seal". Most companies adopt Regulation 115 of Table A which provides:

> The seal shall be used only by the authority of the directors or of a committee of directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

4.3.3 The key points in this model regulation are: (i) the authority of the directors; and (ii) the fact of two signatures. There is, however, no legal minimum or maximum on the number of countersignatories to a company seal. Companies incorporated under the Companies Consolidation Act 1908 adopted (subject to amendment by specifically adopted articles) a 1908 Table A provision requiring the signatures of two directors and of the secretary. Some companies adopt an article requiring only one countersignatory.[9] All variations are permissible.

4.3.4 There are relatively few legal documents that are *required* to be executed under seal. The principal ones are:

(i) conveyances and transfers of freehold land;
(ii) mortgages and certain fixed charges over land;
(iii) documents agreeing transactions with a "voluntary" or gratuitous element;

8 1963 Act, s 18(2).

9 The securities seal (the "official seal") provided for public companies under s 3 of the 1977 Act is routinely applied by registrars of companies without countersignature of the directors or other officers.

(iv) deeds poll – documents executed by one party only – to a greater or lesser degree purporting to bind the party, such as a power of attorney;
(v) share certificates;
(vi) transfers of securities in the form of stock transfer forms specified under the Stock Transfer Act 1963;
(vii) certain court documents required to be under seal.[10]

4.3.5 Many other documents are, *as a matter of practice*, executed under seal, such as:

(i) transactions in leasehold property;[11]
(ii) contracts with financial institutions, especially guarantees and security documents;
(iii) building agreements;
(iv) establishment of trusts, including those for pension funds.

4.3.6 In addition, significant commercial agreements – for example long-term supply or distribution agreements will often be executed under seal. What distinguishes all of the above documents from other contracts is their relative importance to the parties executing them.

4.3.7 The Law Reform Commission recently considered this issue in depth in the context of execution of property transaction documents.[12] The Commission concluded:

> "The Commission accepts that for a small number of large companies, notwithstanding the provisions of section 38(1)(b) of the Companies Act 1963, it is inconvenient to have to execute large numbers of documents under the companies' seal. On the other hand, for the vast majority of companies, the number of times that such companies are required to execute documents under seal is very limited. When such execution is required it is normally in respect of very significant documents such as those dealing with the transfer of interests in land or the establishment or variation of pension schemes. It is the Commission's view that the completion of such instruments, in the case of the majority of companies, is a matter of such importance to those companies that it should be marked with appropriate formality. Accordingly it recommends the retention of the requirement of sealing for those documents which are required to be deeds."[13]

4.3.8 In Chapter 10,[14] the Review Group recommends that in the interests of settling the authority of the person who affixes and signs instruments to which the seal is affixed, greater use could be made of the mechanism in Regulation 6(2) of SI 163 of 1973 whereby a person can be registered to act on a company's behalf.

4.3.9 The Review Group considered whether a company ought to be required to have a company seal. In principle, the Group sees no inherent merit in the fact of there being a seal, but considers there is merit in the corporate procedures which are routinely required in connection with the affixing of the company seal. The Group therefore agrees with the Law Reform Commission on this subject and, accordingly, recommends the retention of the company seal. The Group also recommends that a person registered under Regulation 6(2) of SI No 163 of 1973 should be deemed to be a person appointed by the directors to affix the seal and sign the instrument under seal and that in such a case, no countersignature is required.

10 e.g. a bankruptcy petition. The Rules of Court (Order 76 Rule 20(1) provides: "A creditor's petition by a limited company or body corporate shall be sealed with the seal of the company or body corporate and signed by two directors or by one director and secretary. Such seal and signature shall in all cases be attested."
11 Notwithstanding ss 4, 7 and 9 of the Landlord and Tenant Law Amendment Act, Ireland 1860 ("Deasy's Act"), which permit leases, surrenders of leases and assignments/transfers of leasehold property to be effected by, inter alia, "note in writing".
12 The Law Reform Commission *Report on Land Law and Conveyancing Law: (6) Further General Proposals including the Execution of Deeds* (LRC - 56 – 1998) May 1998.
13 *ibid*. para 2.76.
14 See 10.10.6.

Mitigating formalities by appointing attorneys

4.3.10 There are, however, a number of legal alternatives to the use of a seal by a company which companies desirous of mitigating formalities can invoke. A company may, subject to its memorandum and articles of association,[15] appoint an attorney to execute deeds. In that event the attorney would execute the document as attorney of the company. If the attorney is an individual, that individual will sign, seal and deliver the document. If the attorney is a company it will execute the document as it would for a document it executes in its own right.

4.3.11 Section 40 of the 1963 Act explicitly provides that a company may appoint an attorney to execute deeds in any place outside the State. This section might suggest that for want of a similar section for deeds within Ireland it is not possible to do so in Ireland.[16] The section does not, however, qualify a company's power to do this by reference to its memorandum and articles of association and effectively adds an extra express power to all registered companies, regardless of what is in their memorandum or articles of association.

4.3.12 This is reinforced by s 41 of the 1963 Act which enables "a company whose objects require or comprise the transaction of business outside the State ... *if authorised by its articles*" [of association] to have an official seal for use abroad. Such official seal is a facsimile of the common seal with the addition of the name of every "territory, district or place where it is to be so used". In the case of limited companies, Regulation 6 of the 1973 Regulations is helpful. This provides:

> (1) In favour of a person dealing with a company in good faith, any transaction entered into by any organ of the company, being its board of directors *or any person registered under these regulations as a person authorised to bind the company*, shall be deemed to be within the capacity of the company and any limitation of the powers of that board or person, whether imposed by the memorandum or articles of association or otherwise, may not be relied upon as against any person so dealing with the company.
> (2) Any such person shall be presumed to have acted in good faith unless the contrary is proved.
> (3) For the purpose of this Regulation, the registration of a person authorised to bind the company shall be effected by delivering to the registrar of companies a notice giving the name and description of the person concerned.

4.3.13 This is the implementation into Irish law of Article 1(d)(i) and Articles 7 to 9 of the First EU Company Law Directive.[17] It is particularly useful as it enables the registration of individuals other than directors as representatives of a company. It may be noted, however, that there is some hesitation to rely on this provision of law, perhaps because of the requirement of "good faith".[18]

4.3.14 The Review Group recommends that s 40 of the 1963 Act should be declaratory of the fact that the power to appoint an attorney: (i) is regardless of any provision in the memorandum and articles of association; and (ii) extends to acts done within the State.

4.4 Register of members and other registers

Register of members

4.4.1 The Review Group does not recommend any change to the substantive law regarding registers of members, notwithstanding considerable changes in the mode of keeping registers during the lifetime of the provisions of the 1963 Act. The amendments made by the 1977 Act further facilitated the holding of records in electronic form and along with the 1990 Act (and Uncertificated Securities Regulations 1996) have ensured that the law is up to date and conformable with common practice. The ECA 2000 further facilitates the easy implementation of the law. For example, s 12 of that Act operates to recognise the legality of the delivery in electronic format of information on the register of members in lieu of the written form where the parties agree.

15 Subject to whether it may as a matter of law delegate its authority, e.g. a trustee cannot delegate in certain circumstances and an attorney cannot sub-delegate.

16 In *Industrial Development Authority v. Moran* [1978] IR 161 it was held by the Supreme Court that a company had the power to grant powers of attorney within Ireland, reversing a High Court decision which had erroneously picked up on this suggestion.

17 68/151/EEC of 9 March 1968.

18 See 10.10.2.

Registers generally

4.4.2 The Review Group considered that there was room for improvement in the rules that apply to maintenance and inspection of the various company registers and records. Issues which arise here include: (i) the varied nature of the obligation to maintain registers and documents, to provide access and to furnish extracts; (ii) the interaction between the ECA 2000 and the provisions of the Companies Acts, including those provisions which anticipate the use of electronic registers; and (iii) the desirability of using the Internet and other technologies to facilitate compliance with the law regarding registers.

Obligations in relation to registers and documents

4.4.3 The Companies Acts require that a company keep various registers and other documents, to allow access and to furnish copies and extracts from various registers and documents, as set out in the following table.

Register or other document	To be kept at	Inspection/cost	Copies
ACCOUNTS Accounts (1990 s 202)	Registered office or somewhere else in the State	Directors – free	Annual accounts to be furnished each year to members and debenture holders
CONSTITUTIONAL DOCUMENTS Copies of memorandum and articles (1963 s 29)	To be provided to members on request		A fee of not more than IR£0.25 (€0.32) for each copy
DEBENTURES AND CHARGES Register of debenture holders (1963 s 91)	Registered office or anywhere in the State	Members and debenture holders – free Others IR£0.05 (€0.06)	Must be furnished by company to any person at IR£0.02½ (€0.03) per 100 words, but there is no time limit
Debenture trust deeds (1963 s 92(3))			Must be furnished by company to any debenture holder at IR£0.02½ (€0.03) per 100 words, but there is no time limit
Copies of instruments creating charges (1963 s 110(1))	Registered office	Members and debenture holders – free	
DIRECTORS Register of directors and secretaries (1963 s 195)	Registered office	Members - free Others - IR£1(€1.27)	
Book containing particulars of directors' interests in company contracts (1963 s 194(5))	Registered office	Auditors, directors, members and Secretary - free	
Register of directors' and secretaries' interests in group/ company securities (1990 ss 59, 60)	With register of members	Members - free Others - IR£0.30 (€0.38)	Must be furnished by company to any person within 10 days at IR£0.15 (€0.19) per 100 words
Copies of certain service agreements of directors or secretary (1990 s 50)	Registered office or with register of members or at principal place of business	Members - free	Must be furnished by company to any member within 7 days at IR£0.05 (€0.06) per 100 words
MEETINGS Minute book of proceedings of meetings of board and board committees (1963 s 145)	Anywhere	Directors only - free	
Minute book for proceedings at general meetings (1963 s 145)	Registered office (and at AGM on day of AGM)	Members - free	Must be furnished by company to anyone within 10 days at IR£0.02½ (€0.03) per 100 words

Register or other document	To be kept at	Inspection/cost	Copies
MEMBERS Register of members (1963 ss 116, 119)	Registered office or anywhere in the State	Members - free Others - IR£0.05 (€0.06)	Must be furnished by company to any person within 10 days at IR£0.15 (€0.19) per 100 words
Index of members (for companies with more than 50 members) (1963 ss 117, 119) Contracts to purchase own shares (1990 s 213(5))	With register of members Registered office (and at A/EGM on day of A/EGM)	Members - free Others - IR£0.05 (€0.06) Members and others - free	Must be furnished by company to anyone within 10 days at IR£0.02 ½ (€0.03) per 100 words
PLCs – EXTRA REQUIREMENTS Register of interests in plc shares (1990 s 80)	With the register of Directors' interests in company securities	Members and others – free	
Copies of plc's investigations of own shareholdings (1990 ss 82, 84)	Registered office	Members – free	

4.4.4 The present law on the obligation to maintain, provide access to and furnish extracts of registers and documents contains a number of anomalies: (i) *As to location* – in some cases a register's location can be migrated elsewhere in the State (e.g. the register of members), whereas others cannot (e.g. the register of directors). (ii) *As to cost of inspection and copies* - s 105 of the 1990 Act does provide for the Minister by order to alter the basis of charges referred to in the sections of the Companies Acts regulating various matters.[19] No such order has been made. (iii) *As to what must be available for inspection and what must be furnished* – service agreements and contracts to purchase own shares must be available for inspection, but need not be copied to members, whereas the memorandum and articles of association need not be available for inspection but must be furnished. (iv) *As to class of disclosees of registers or documents* - members can see some registers and documents while creditors and members of the public can see others.

4.4.5 Subject to the comments below, with regard to electronic inspection of documents, the Review Group recommends:

(i) That documents required to be made available for inspection should be made available for inspection either at the registered office or another place in the State, subject to notification to the Registrar of that location (as is at present the case with regard to the register of members).

(ii) That the Minister should make an order to standardise inspection fees and copying fees commensurate with the actual cost of provision of copies.

(iii) That no change be made to those documents that must be made available for inspection and those documents that must be furnished, notwithstanding the apparent anomalies. Specifically, the Group notes a distinction between registers (members, directors, directors' and secretaries' interests, debenture holders) relating to company structure on the one hand and transactional documents such as service agreements of directors and contracts of purchase of the company's own shares on the other. Extracts from the registers must be furnished whereas copies of agreements need not.

(iv) That a company, as at present, need not have for inspection a copy of its memorandum and articles of association. This is the one document which must be furnished on demand to members which is not required to be available for inspection. The Group's reason for this is convenience to the company – far better that a document be furnished by post or by e-mail than unnecessary inconvenience be caused to a company.

19 e.g. the register of interests of directors and secretary in shares and debentures of a company (or other group companies); the register of debenture holders; the register of members; the register of directors and secretary; minute books of a company.

(v) That there be no change to the classes of disclosee of registers and documents. It should be provided that auditors, in the fulfilment of their duties, are in all cases made specific disclosees of registers, documents and minutes.

4.4.6 The Review Group notes that the law as to registers is complex and considered a number of methods of rationalising it. The Group observes, however, that the law does not provide any constraint on the development of simplified methods of retention and inspection of records. The Group is particularly optimistic that the simplification of information to be disclosed in relation to the interests of directors and secretaries in company shares and debentures[20] will reduce the practical complexity for the majority of companies.

Maintenance of records by companies in electronic format

4.4.7 The ECA 2000 creates legal equivalence for the keeping of records in electronic format with records kept in writing. There is an important distinction between the ECA 2000 and the company law code, however, in that the ECA 2000 is elective in its approach whereas the Companies Acts are prescriptive. The ECA 2000, apart from its provisions for public bodies,[21] assumes agreement between the parties on the use and form of electronic communications. Section 18(2)(e) of the ECA 2000 would appear to give to any person entitled to view records retained by a company a veto over the form in which those records are to be retained or produced. That is unreasonable, and indeed inoperable, in the case of company records which are retained for access by a wide range of possible users.

Compatibility between the ECA 2000 and the Companies Acts

4.4.8 It is important to eliminate the potential for confusion, real or perceived, between the ECA 2000 and the Companies Acts with regard to the maintenance of electronic records by companies. The current situation is that the ECA 2000 provides at s 18(1):

> If...a person...is required...or permitted...to retain for a particular period or produce a document in written form, then, subject to subsection (2), the person...may retain...or, as the case may be, produce, the document in electronic form, whether as an electronic communication or otherwise.

4.4.9 Section 18(2) of the ECA 2000 qualifies s 18(1) by providing savers for the integrity of information in the document, the need to display it in intelligible form and the need for reasonable access.

4.4.10 Potential confusion, or at least duplication, can be inferred from s 18(3) which provides that:

> Subsections (1) and (2) are without prejudice to any other law requiring or permitting documents in the form of paper or other material to be retained or produced—
> (a) in accordance with particular information technology and procedural requirements,
> (b) on a particular kind of data storage device, or
> (c) by means of a particular kind of electronic communication.

4.4.11 Section 378 of the 1963 Act provides for record keeping by a company or the Registrar in bound books or any other manner. This has been further amplified by s 4 of the 1977 Act which specifically provides for recording the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form. The Companies Act 1990 (Uncertificated Securities) Regulations 1996,[22] made pursuant to s 239 of the 1990 Act also makes extensive provisions in regard to registers of securities.

4.4.12 Section 18(3)(a) of the ECA 2000 preserves existing statutory provisions on "procedural requirements". The Review Group recognises that that provision was intended to ensure that any specific rules, laid down for example under s 4(4) of the 1977 Act, would not be prejudiced. However, the consequence of this is that

20 See 11.10.8.
21 ECA 2000, s 12(2)(b).

provisions regarding company records are now covered by both areas of law, as illustrated above. From the point of view both of simplification and of legal certainty it seems clear that only one legal basis should apply to the maintenance of company records in electronic form.

4.4.13 Section 4 of the 1977 Act provides that: a register kept in non-legible form shall be capable of being reproduced in legible form. Section 18(2)(b) of the ECA 2000 takes the more generalised approach that information must be "capable of being displayed in intelligible form to the person or public body to whom it is to be produced". While in due course it will be possible to assume that direct computer access will be reasonable for all persons, there are circumstances where written copies are still required.

4.4.14 The Review Group makes the following recommendations:

(i) That the ECA 2000 should be taken as the principal legislation on the keeping of electronic records by companies under the Companies Acts.
(ii) The provisions of the Companies Acts, other than s 239 of the 1990 Act,[23] regarding companies and their ability to keep records in electronic form should be repealed.
(iii) That the Minister be enabled to make regulations to give better effect to those provisions of the ECA 2000 as they apply to the maintenance of records of companies.

Mode of display and copies of electronic information

4.4.15 Section 18(2)(e) of the ECA 2000 would appear to give any person entitled to view the records a veto over the form in which the records are to be retained or produced. That may be unreasonable in the case of company records where a wide range of people might be involved.

4.4.16 The Review Group makes the following recommendations:

(i) In the case of records retained or produced under the Companies Acts which may be accessed by a class of persons (e.g. shareholders or the public), any reasonable form of retention or production may be used by the company provided that it complies with regulations (if any) made by the Minister.
(ii) In the case of the production of extracts or copies of records or documents, hard copies may be retained as the standard mode of delivery, with s 12 of the ECA 2000 being available as a non-mandatory method to facilitate electronic delivery.
(iii) The powers of the Minister to make regulations should explicitly provide that such regulations may delete the requirement for the production of written extracts from registers. For example, it would be reasonable at present to provide that a register of members of a PLC with perhaps 50,000 or more shareholders may be delivered in electronic form.

Website disclosure

4.4.17 The Companies Acts set out requirements as to the locations at which particular records are to be kept by a company. It would appear to be necessary to clarify what is meant by "keeping a record" at a particular location, as electronic records may be stored elsewhere than the location where access to those records is made available. The purpose of requiring the records to be kept at a particular location is to facilitate the right of inspection which the Acts accord in respect of those records. The ECA 2000 permits records such as registers to be kept on a website and this is clearly a convenient and generally accessible means of keeping records. Similar considerations may arise in respect of s 90 of the 2001 Act which requires the location of the exact address of a company's books and records to be disclosed in the directors' report.

22 SI No 123 of 1996.

23 Section 239 of the 1990 Act provides as follows: The Minister may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.

4.4.18 The Review Group recommends that where records are retained by a company on a generally accessible website, the Registrar should be notified on the existing statutory form (B3) of the relevant address of the website.

4.5 Notices, meetings and proceedings

The annual general meeting and written resolutions

4.5.1 At present, the standard forum for decisions of company members is the general meeting, whether annual or extraordinary. Every year there must be an annual general meeting and there may be extraordinary general meetings. Single-member private limited companies can dispense with the annual general meeting. Section 141(8) of the 1963 Act provides for the use of members' written resolutions in lieu of passing ordinary or special resolutions, subject to the articles of association of a company permitting them. Regulation 6 of Table A Part II provides such an enabling article as a norm for private companies. A frequent amendment to the articles of association of private companies limited by shares at present is that such a written resolution may consist of several separate pieces of paper. Although it is technically possible for the resolutions ordinarily passed at an annual general meeting being passed by using the written resolution procedure, it would be pointless as the law does not provide for dispensing with the actual annual general meeting itself (save in the case of the single-member company).

4.5.2 The usual business of an annual general meeting is: (i) the laying of the accounts before the members, which accounts must be sent to the members at least 21 days before the meeting; (ii) the declaration of a dividend; (iii) the re-election of directors appointed since the last annual general meeting and those retiring by rotation; and (iv) the reappointment of auditors (which takes place automatically in the absence of a resolution to remove or replace them). In addition, the annual general meeting is the usual forum for: (i) fixing the remuneration of the directors; and (ii) approving the remuneration of the auditors. This is frequently dealt with by delegating to the directors the authority to fix the auditors' remuneration until the conclusion of the next annual general meeting. In public companies, the agenda usually includes resolutions to approve the issue and repurchase of shares.

4.5.3 The Review Group noted that in many private companies the business of an annual general meeting is a foregone conclusion, particularly where the members in their capacity as directors will already have approved the accounts, the level of dividend, the re-election of themselves as directors (in the unlikely event of rotation of directors applying) and the continuance in office of auditors. The Review Group believes that for many private companies, the holding of an annual general meeting is an empty gesture. In many cases no meeting may actually have been held, but rather the paperwork attendant upon the convening and holding of an annual general meeting will be generated, signed and filed. The Group acknowledges that this may happen in practice and whilst such cannot be condoned, the Group strongly believes that it is not desirable that the law should be so out of tune with practice as to bring the law into disrepute.

4.5.4 The Review Group considered whether it was either desirable or necessary to retain the requirement that all companies must hold an annual general meeting. The choices open to the Group in making its recommendations were threefold. In the first place, the law could continue to retain an unbending requirement for an annual general meeting. Secondly, the law could be changed to enable companies to establish paper procedures for arriving at decisions ordinarily dealt with at annual general meetings, including enabling resolutions to be passed by majority written resolution. Thirdly, a variation on this might be to provide that private companies limited by shares, i.e. the proposed CLS, would not be required to hold annual general meetings unless by a particular point in time each year any one member applied to the company for an annual general meeting be held. The Group considered whether a majority of members, including a qualified majority, could dispense with the need to convene and hold an annual general meeting in the face of minority opposition. The Group was not prepared to allow such a decision to be taken by a majority and believes that any relaxation must be conditional upon unanimous

shareholder approval, including the approval of shareholders whose rights extend only to attending general meetings.

4.5.5 Whilst the Group considers that a majority of private companies will survive without a requirement for annual general meetings, there will be a substantial minority for whom a meeting is unquestionably the best procedure to follow. Apart from the practical difficulties in seeking unanimous shareholder consent in large companies, it is considered to be undesirable that PLCs should be permitted to dispense with the holding of the annual general meeting.

4.5.6 For other companies – particularly the private company limited by shares – the Group recommends that it should be permissible in law for such companies' members to dispense with the need to hold an annual general meeting. The following are the Review Group's recommendations:

(i) In all companies, except PLCs, the law of meetings should be aligned with practice by permitting all of the members entitled to attend the annual general meeting to sign a unanimous written resolution, dispensing with the need to convene and hold a meeting and agreeing to accept, in lieu thereof, copies of all documents they would otherwise receive and to take such decisions as require to be taken by unanimous written resolution.

(ii) Any resolution required to be passed at any general meeting in any company, including the annual general meeting, may be achieved by unanimous written resolution, consisting of any number of pieces of paper, regardless of what is in the company's articles of association.

(iii) Companies that are permitted to dispense with the annual general meeting should be able to initiate a procedure in advance of the time they would be required to convene the annual general meeting so that, if unanimous consent is not forthcoming, a meeting can be convened and held in accordance with the Companies Acts.

(iv) In the event that a written resolution is not contemporaneously signed (with separate documents being circulated to shareholders) the company should confirm the passing of the resolution to the members within one month of its passing.

(v) Companies' auditors should be entitled to demand that the directors convene an annual general meeting where there is a proposed resolution for any change in the audit appointment. The consent of the auditors should not, however, be required for the transaction of the business of the annual general meeting (other than matters affecting the auditors *per se*).

(vi) As with all matters to be attended to in writing, the foregoing would by reason of the ECA 2000 be able to be achieved electronically.[24]

Length of notice for meetings

4.5.7 The 1963 Act lays down minimum notice periods for holding meetings. This is done indirectly rather than directly, by providing that any provision in the articles of association is void to the extent that it permits convening of meetings by shorter notices. The different minimum notice periods are

(i) 21 days for an annual general meeting and meetings to pass a special resolution;

(ii) 14 days for an extraordinary general meeting in a public limited company and company limited by guarantee not having a share capital;

(iii) 7 days for an extraordinary general meeting in a private company or unlimited company (public or private); and

(iv) unspecified, in the case of meetings convened under s 201 of the 1963 Act.

24 See 6.5 on the subject of electronic communications to and from members.

4.5.8 The 1963 Act again indirectly seeks to deal with how these periods of time are to be construed. Section 134 of the 1963 Act provides that notice of a meeting of a company must be served in the manner in which notices are required to be served by Table A, save where the articles of association provide otherwise. Regulation 51 of Table A provides that a notice of general meeting shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. Regulation 133 of Table A provides that where a notice is sent by post, service of a notice of a meeting is deemed to have been given at the expiration of 24 hours after the letter containing the same is posted, but then providing that any other notice (e.g. a notice making a pre-emptive offer of shares under s 23 of the 1983 Act) is deemed received at the time at which the letter would be delivered in the ordinary course of post.

4.5.9 Just to complicate matters further, s 11(h) of the Interpretation Act 1937 provides:

> 11.—The following provisions shall apply and have effect in relation to the construction of every Act of the Oireachtas and of every instrument made wholly or partly under any such Act, that is to say:—
> Periods of time. Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period, and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period.

4.5.10 The Review Group recommends:

(i) That the Companies Acts should specify precisely what are to be the periods of notice for meetings, rather than delegating it to provisions in articles of association. The periods of notice should be 21 days for an annual general meeting, meetings to pass a special resolution and meetings convened under s 201 of the 1963 Act. The period of notice for an extraordinary general meeting should be 7 days, except in the case of a public limited company where it should be kept at 14 days. Companies would be entitled to increase these periods of notice.

(ii) That a notice, whether of a meeting or of any other matter and any other document, once posted to the registered address of a member should be deemed received 24 hours following posting.

(iii) That the period of notice for any matter under the Companies Acts should exclude the day of receipt or, when posted, the deemed date of receipt, as well as the date of the meeting.

(iv) As with all matters to be attended to in writing, the foregoing would by reason of the ECA 2000 be able to be achieved electronically.

Place of service of notice

4.5.11 Under the standard Table A[25] provisions as to service of notices, a notice "may be given by the company to any member either personally or by sending it *by post* to him to his registered postal address." It is not possible to serve notice on a member by delivery other than by post to the registered address of the member.

4.5.12 The Review Group recommends that any notice may be served and any other document delivered by hand at a member's registered postal address (as well as by post to that address and personally to the member).

4.6 Register of directors and secretaries

4.6.1 The Review Group does not propose any material change to the provisions as to this register, apart from the comments made with respect to registers generally at 4.4.

25 Regulation 133.

Former directorships

4.6.2 The Group noted the burden on certain company directors to identify all companies worldwide, along with their registered numbers, of which they have been directors during the 10 years prior to appointment. This requirement was introduced by the 1990 Act. The Bill as initiated proposed to copy the UK example of 5 years but the period was increased to 10 years when the Bill was proceeding through the Oireachtas.

4.6.3 Having regard to the experience of its operation since enactment the Review Group recommends that the 10-year period be reduced to 5 years.

Changes of name

4.6.4 The Group noted anachronistic anomalies which exempt directors who change their name from being required either to notify the Registrar of this change or from disclosing this change at any stage in the future. These are found in s 195(15)(b) of the 1963 Act, as inserted by s 51 of the 1990 Act which provides:

> [R]eferences to a "former forename" or "surname" do not include—
> (i) in the case of a person usually known by a title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or
> (ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years; or
> (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

4.6.5 The Review Group recommends that all changes of name, no matter how occasioned, ought to be notified to the Registrar when they occur and disclosed as a previous name in subsequent filings.

4.7 Table A

Table A generally

4.7.1 The Review Group examined three possibilities as to how to deal with the situation whereby there is parallel law concerning company administration in Table A and the main body of the statute. The options are: (a) to leave things as they are; (b) to bring all the Table A provisions back into the main body of the statute; (c) where there is nothing at present in the main body of the statute relating to the practice adopted in Table A, either add that practice to the statute, or cross-refer to Table A.

4.7.2 The Group considered that the common modes of internal governance of companies ought to be readable immediately from the main body of the statute, even if certain variations from those common modes of governance are chosen by particular companies. It is thought that notwithstanding existing familiarity with Table A, there is no disadvantage to placing the Table A language in the main body of the statute. Finally, although it is thought that there is some advantage in the removal of Table A in its entirety, it is not possible to consider this in the absence of a consideration of all, rather than part only, of Table A, especially with respect to share capital matters.[26]

4.7.3 Having considered the matter carefully, the Review Group recommends that Table A (with the amendments proposed) should remain, but that its provisions as to internal corporate governance should also be set out in the main body of the statute, with the same provisions as to opt-outs as exist under articles of association.[27]

4.8 Specific amendments to Table A

Regulation 75

4.8.1 Regulation 75 of Table A states that the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them. Section 3 of

26 One of the matters proposed to be reviewed by the Review Group in its second two-year Report.

the 1982 Act, provides that there shall be delivered to the Registrar together with every memorandum of a company delivered to him pursuant to s 17 of the 1963 Act a statement in the prescribed form containing the…particulars specified in relation to the persons who are to be the first directors of the company.

4.8.2 The Review Group recommends that Regulation 75 be merged with s 3 of the 1982 Act to provide that the first directors and their number are as specified on the Form A1.

Regulation 77

4.8.3 Regulation 77 provides that the shareholding qualifications for directors may be fixed by the company in general meeting and unless and until so fixed, no qualification shall be required. The Group noted that this provision appears to be obsolete. If companies wish to impose shareholding conditions, that can be done in the articles of association or in the contract under which the director is appointed.

4.8.4 The Review Group recommends that Regulation 77 be repealed on grounds of obsolescence.

Regulation 79

4.8.5 Regulation 79 of Table A which empowers the directors to exercise the power of a company to borrow money also limits the directors power to do so to an amount equivalent to the nominal value of the issued share capital of the company. This is almost always deleted from the articles of association of private companies. Regulation 80 of Table A provides that the directors are to have the power to manage the company and exercise the powers of the company. The Group recommends that Regulation 79 of Temple A should be repealed, and reliance be placed on Regulation 80 instead.

Regulation 80

4.8.6 Regulation 80 of Table A is perhaps the most important regulation to bring into the main body of the statute. It provides as follows:

> The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such directions, being not inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting; but no direction given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

4.8.7 A debate has arisen about the meaning of members' entitlement under Regulation 80 to give "such directions…not inconsistent with the aforesaid regulations" to the directors. The question which arises is whether the members by simple majority vote in general meeting are able to direct directors to do something in a particular way where the directors already have a power under the articles of association to do that thing.[28]

4.8.8 In the UK the words "such directions" are not used, the expression in their comparable regulation being "such regulations". Current English judicial interpretation of that formulation of words has established that the exclusive management of the company is vested in the directors and that the members cannot interfere in the exercise of the directors' powers.[29] Indeed, the Irish courts gave the same interpretation to the predecessor of Regulation 80. In *Clark v. Workman*[30] Ross J said: "…the powers given to directors are powers delegated to the directors by the company, and when once given the company cannot interfere in the subject matter of the delegation unless by special resolution."

27 The methodology to be adopted would be the restatement of the Regulations considered. Ultimately, after all of Table A has been reviewed (including those provisions relating to share capital, dividends and reserves to be addressed in the Review Group's second programme of work) the entire text of Table A will be placed in the main body of the statute and Table A will then become redundant as a separate text.

28 See Temple Lang "Shareholder Control in Irish Companies", (1973) *Gazette* ILSI 241 and Ussher "Directing the Directors," (1975) *Gazette* ILSI 303.

29 *John Shaw & Sons (Salford) Ltd v. Shaw* [1935] 2 KB 113; *Salmon v. Quin & Axtens Ltd* [1909] AC 442, *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cunningham* [1906] 2 Chapter 34; *Alexander Ward and Co Ltd v. Samyang Navigation Co Ltd* [1975] 2 All ER 424; *Scott v. Scott* [1943] 1 All ER 582; and *Breckland Group Holdings Ltd v. London and Suffolk Properties Ltd et al* [1989] BCLC 100.

30 [1920] IR 107.

4.8.9 The Review Group is of the view that uncertainty, howsoever small, is not a good thing from the perspective of corporate administration and governance. It would engender considerable confusion and uncertainty were it to be the case that an outsider could not rely upon the directors' powers to manage the company's business. There ought to be no uncertainty as to the authority of a company's management.

4.8.10 Regulation 80 has, however, served us well and whilst it has engendered academic debate,[31] it has not given rise to difficulties in practice. As the effect of the implementation of the Review Group's recommendations will mean that Regulation 80 will be relied on more specifically, the Group recommends that it be emphasised that the power of members to give directions is subject to the primary rights of the directors to manage. It is recommended that in migrating Regulation 80 from the articles of association to primary legislation the word "directions" should be replaced with the word "regulations". The effect of this recommendation will be to restore the status quo ante, which prevailed at the time of the decision in *Clark v. Workman*.

Regulation 81

4.8.11 Regulation 81 of Table A provides that "the directors may by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these Regulations) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him."

4.8.12 This is a curious provision. It can be interpreted to mean any one of three things. First, it can mean that the directors have a power distinct from that of the company – the words used are "the directors may" rather than in Regulation 79 which states "the directors may exercise all the powers of the company". Secondly, it can mean that directors have an ability by resolution to delegate power to an attorney. This is the case certainly under Regulation 80. Thirdly, it can mean that directors, as delegates, can delegate their powers by attorney.

4.8.13 The Review Group recommends that Regulation 81 be repealed, on the basis that it is most probably redundant, and that the power of the directors to appoint an attorney is encompassed by Regulation 80. To the extent that Regulation 81 is not redundant and purports to enable a power of attorney to be created by resolution, the Group considers it preferable that companies, if creating a power of attorney ought do so with due solemnity,[32] ideally under seal. Whilst a power of attorney need not be executed under seal, in practice few third parties dealing with a company will accept a power of attorney other than under seal.

Regulation 88

4.8.14 Regulation 88 of Table A provides that all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the directors shall from time to time by resolution determine. This is effectively a subset of Regulation 80 which gives management and control to the directors.

4.8.15 The Review Group recommends that Regulation 88 be repealed, on the basis that it is redundant and encompassed in Regulation 80.

Regulations 92, 93, 94 and 95

4.8.16 Regulations 92, 93, 94, 95 of Table A are concerned with rotation of directors. Insofar as any companies have rotation of directors, the majority of such companies adopt specific articles which follow norms set down by

31 See Temple Lang and Ussher, above, n 28.

32 Section 15 of the Powers of Attorney Act 1996 provides that: [a] power of attorney is not required to be made under seal. It then states that the section: is without prejudice to any requirement in or under any other enactment as the execution of instruments by bodies corporate.

guidelines of bodies such as the Irish Association of Investment Managers and the Combined Code.[33] In particular schemes of retirement by rotation now tend to provide for compulsory retirement every three years, which does not always necessarily occur if one were to apply the Table A scheme of retirement by rotation.

4.8.17 The Review Group recommends that Regulations 92 to 95 be repealed for private companies limited by shares and replaced for PLCs by a rotation scheme in line with current best practice in corporate governance.

Regulation 101

4.8.18 Regulation 101 of Table A provides that the directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. It does not provide for board meetings by teleconferencing or by telephone.

4.8.19 The Review Group recommends that the Companies Acts should provide that meetings of directors of all companies may be held by telephone or by other suitable electronic means whereby all directors can hear and be heard unless the articles of association of the company specifically provide otherwise.

Regulation 109

4.8.20 Regulation 109 of Table A provides for written resolutions of directors. The Review Group recommends that written resolutions of directors ought to be possible by separate pieces of paper signed separately.

4.9 European Communities (Single Member Private Limited Company) Regulations 1994

4.9.1 These Regulations were enacted by statutory instrument to give effect to the Twelfth Directive on company law. In so doing they establish extra procedures to be followed and create extra offences in the event of non-compliance. It appears to the Review Group that the number of members in a company will generally be a matter of indifference to the public and badging the companies in a particular way is of no inherent merit.

4.9.2 The Review Group recommends that the European Communities (Single Member Private Limited Company) Regulations 1994 be repealed, with a provision that private companies can be formed with one member or more, and that any public company can be formed with two members or more.[34] All other provisions in these Regulations can be provided for in statute, as may be considered necessary. It is thought that this will remove the requirement for registration and deregistration, and has the welcome effect of: (i) reducing the law; (ii) reducing the number of documents filed in the CRO; and (iii) reducing the number of offences.

Consequential amendments

4.9.3 It will be necessary to amend specific provisions of the Companies Acts. Section 36 of the 1963 Act, which provides for unlimited liability of members where the number of members falls below the statutory minimum would now need to apply only to public limited companies. The Review Group however recommends that s 36 be repealed altogether. It has been described as an "ancient and obsolete rule" which "serve[s] no purpose in protecting the public or anyone else".[35] In addition, Regulation 7 of the Single Member Regulations which deals with the dispensing of the requirement for an annual general meeting can be addressed in the same way as the proposal to permit companies generally to dispense with meetings of members where the subject matter of the meeting is dealt with in writing. The sections of the 1963 Act referred to in the Regulations will each need to be amended. Finally, the requirement in Regulations 9(2) and 13 that decisions of a single member and contracts between a single member and the company be recorded in writing will need to be brought into the main Act.

33 Now embedded in the Listing Rules of the Stock Exchange at Rule 12.43A.

34 Under Part XIII of the 1990 Act investment companies can now be formed with two members only; see s 54 of the 1999 (No 2) Act. See also 6.13.1 on the point of minimum membership of public companies.

35 Hoffmann J in *Nisbet v. Shepherd* [1994] 1 BCLC 300 at 305.

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4.10 Summary of Recommendations

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- There should be no change to the requirement that every company must have a registered office, and recommends against any amendments to the general requirement to publicise the name of a company. **(4.3.1)**

- The company seal should be retained; however, a person registered under Regulation 6(2) of SI No 163 of 1973 should be deemed to be a person appointed by the directors to affix the seal and sign the instrument under seal and that in such a case, no countersignature is required. **(4.3.9)**

- Section 40 of the 1963 Act should be amended to be made explicitly declaratory of the fact that the power to appoint an attorney: (i) is regardless of any provision in the memorandum and articles of association; and (ii) extends to acts done within the State. **(4.3.14)**

- Documents required to be made available for inspection should be made available for inspection either at the registered office or another place in the State, subject to notification to the Registrar of that location (as is at present the case with regard to the register of members). **(4.4.5(i))**

- The Minister should make an order to standardise register inspection and copying fees commensurate with the actual cost of provision of copies. **(4.4.5(ii))**

- No change should be made to those documents that must be made available by companies for inspection and those documents that must be furnished, notwithstanding the apparent anomalies. **(4.4.5(iii))**

- There should be no change to the law whereby a company need not have for inspection a copy of its memorandum and articles of association. **(4.4.5(iv))**

- There should be no change to the classes of disclosee of registers and documents. It should be provided that auditors, in fulfilment of their duties, are in all cases made specific disclosees of registers, documents and minutes. **(4.4.5(v))**

- The ECA 2000 should be taken as the principal legislation on the keeping of electronic records by companies under the Companies Acts. **(4.4.14(i))**

- The provisions of the Companies Acts regarding companies and their ability to keep records in electronic form should, with the exception of s 239 of the 1990 Act, be repealed. **(4.4.14(ii))**

- The Minister should be enabled to make regulations to give better effect to the provisions of ECA 2000 as they apply to companies. **(4.4.14(iii))**

- In the case of records retained or produced under the Companies Acts which may be accessed by a class of persons (e.g. shareholders or the public), any reasonable form of retention or production may be used by the company provided that it complies with regulations (if any) made by the Minister. **(4.4.16(i))**

- In the case of the production of extracts or copies of records or documents, hard copies should be retained as the standard mode of delivery, with s 12 of the ECA 2000 being available as a non-mandatory method to facilitate electronic delivery. **(4.4.16(ii))**

- The powers of the Minister to make regulations should explicitly provide that such regulations may delete the requirement for the production of written extracts from registers. **(4.4.16(iii))**

- Where records are retained by a company on a generally accessible website, the Registrar should be notified on the existing statutory form (B3) of the relevant address of the website. **(4.4.18)**

- For companies other than PLCs it should be permissible in law for such companies' members to dispense with the need to hold an annual general meeting. **(4.5.6)**

- In all companies, except PLCs, the members entitled to attend the annual general meeting should be able to sign a unanimous written resolution, dispensing with the need to convene and hold a meeting and agreeing to accept, in lieu thereof, copies of all documents they would otherwise receive and to take such decisions as require to be taken by unanimous written resolution. **(4.5.6(i))**

- Any resolution required to be passed at any general meeting in any company, including the annual general meeting, should be able to be achieved by unanimous written resolution, consisting of any number of pieces of paper, regardless of what is in the company's articles of association. **(4.5.6(ii))**

- Companies that are permitted to dispense with the annual general meeting should be able to initiate a procedure in advance of the time they would be required to convene the annual general meeting so that, if unanimous consent is not forthcoming, a meeting can be convened and held in accordance with the Companies Acts. **(4.5.6(iii))**

- In the event that a written resolution is not contemporaneously signed (with separate documents being circulated to shareholders) the company should confirm the passing of the resolution to the members within one month of its passing. **(4.5.6(iv))**

- Companies' auditors should continue to be entitled to demand that the directors convene an annual general meeting where there is a proposed resolution for any change in the audit appointment. The consent of the auditors should not, however, be required for the transaction of the business of the annual general meeting (other than matters affecting the auditors *per se*). **(4.5.6(v))**

- As with all matters to be attended to in writing, the paperwork which could replace an annual general meeting should by reason of the ECA 2000 be able to be achieved electronically. **(4.5.6(vi))**

- The Companies Acts should specify precisely what are to be the periods of notice for meetings, rather than delegating it to provisions in articles of association. The periods of notice should be 21 days for an annual general meeting, meetings to pass a special resolution and meetings convened under s 201 of the 1963 Act. The period of notice for an extraordinary general meeting should be 7 days, except in the case of a public limited company where it should be kept at 14 days. Companies would be entitled to increase these periods of notice. **(4.5.10(i))**

- A notice, whether of a meeting or of any other matter and any other document, once posted to the registered address of a member should be deemed received 24 hours following posting.**(4.5.10(ii))**

- The period of notice for any matter under the Companies Acts should exclude the day of receipt or, when posted, the deemed date of receipt, as well as the date of the meeting. **(4.5.10(iii))**

- As with all matters to be attended to in writing, the giving of notice of company meetings should by reason of the ECA 2000 be able to be achieved electronically. **(4.5.10(iv))**

- Any notice may be served and any other document may be delivered by hand at a member's registered postal address (as well as by post to that address and personally to the member). **(4.5.12)**

- The requirement of directors to disclose directorships during the previous 10-year period should be reduced to 5 years. **(4.6.3)**

- All changes of name of a director or secretary, no matter how occasioned, ought to be notified to the Registrar when they occur and disclosed as a previous name in subsequent filings. **(4.6.5)**

- Table A should be retained for the present, but its provisions as to internal corporate governance should also be set out in the main body of the statute, with the same provisions as to opt-outs as exist under articles of association. **(4.7.3)**

- Regulation 75 of Table A should be merged with s 3 of the 1982 Act to provide that the first directors and their number are as specified on the Form A1. **(4.8.2)**

- Regulation 77 of Table A should be repealed on grounds of obsolescence. **(4.8.4)**

- Regulation 79 of Table A should be repealed, and reliance be placed on Regulation 80 instead. **(4.8.5)**

- Regulation 80 should be migrated from the articles of association to primary legislation and the words "such directions" should be replaced with "such regulations". **(4.8.10)**

- Regulation 81 of Table A should be repealed on grounds of obsolescence. **(4.8.13)**

- Regulation 88 of Table A should be repealed on grounds of obsolescence. **(4.8.15)**

- Regulations 92 to 95 of Table A should be repealed for private companies limited by shares and replaced for PLCs by a rotation scheme in line with current best practice in corporate governance. **(4.8.17)**

- Meetings of directors of all companies ought, by statute, to be capable of being held by telephone or by other suitable electronic means whereby all directors can hear and be heard unless the articles of association of the company specifically provide otherwise. **(4.8.19)**

- Written resolutions of directors under Regulation 109 of Table A ought to be possible by separate pieces of paper signed separately. **(4.8.20)**

- The European Communities (Single Member Private Limited Company) Regulations 1994 should be repealed, with a provision that private companies can be formed with one member or more, and that any public company can be formed with two members or more. All other provisions considered in the Regulations should be provided for in statute as may be necessary. **(4.9.2)**

- Section 36 of the 1963 Act should be repealed. **(4.9.3)**