
STATUTORY INSTRUMENTS

1990 No. 1504

The Companies (No. 2) (Northern Ireland) Order 1990

PART IV

OTHER AMENDMENTS OF COMPANY LAW

De-regulation of private companies

Written resolutions of private companies

48.—(1) Chapter IV of Part XII of the Companies Order (meetings and resolutions) is amended as follows.

(2) After Article 389 insert—

“Written resolutions of private companies

Written resolutions of private companies

389A.—(1) Anything which in the case of a private company may be done—

- (a) by resolution of the company in general meeting, or
- (b) by resolution of a meeting of any class of members of the company,

may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.

(2) The signatures need not be on a single document provided each is on a document which accurately states the terms of the resolution.

(3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.

(4) A resolution agreed to in accordance with this Article has effect as if passed—

- (a) by the company in general meeting, or
- (b) by a meeting of the relevant class of members of the company,

as the case may be; and any reference in any statutory provision to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(5) Any reference in any statutory provision to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this Article, a reference to the date of the resolution, unless Article 389B(4) applies in which case it shall be construed as a reference to the date from which the resolution has effect.

(6) A resolution may be agreed to in accordance with this Article which would otherwise be required to be passed as a special, extraordinary or elective resolution; and any reference in any statutory provision to a special, extraordinary or elective resolution includes such a resolution.

(7) This Article has effect subject to the exceptions specified in Part I of Schedule 15A; and in relation to certain descriptions of resolution under this Article the procedural requirements of this Order have effect with the adaptations specified in Part II of that Schedule.

Rights of auditors in relation to written resolution

389B.—(1) A copy of any written resolution proposed to be agreed to in accordance with Article 389A shall be sent to the company's auditors.

(2) If the resolution concerns the auditors as auditors, they may within seven days from the day on which they receive the copy give notice to the company stating their opinion that the resolution should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company.

(3) A written resolution shall not have effect unless—

(a) the auditors notify the company that in their opinion the resolution—

(i) does not concern them as auditors, or

(ii) does so concern them but need not be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company, or

(b) the period for giving a notice under paragraph (2) expires without any notice having been given in accordance with that paragraph.

(4) A written resolution previously agreed to in accordance with Article 389A shall not have effect until that notification is given or, as the case may be, that period expires.

Written resolutions: supplementary provisions

389C.—(1) Articles 389A and 389B have effect notwithstanding any provision of the company's memorandum or articles.

(2) Nothing in those Articles affects any statutory provision or rule of law as to—

(a) things done otherwise than by passing a resolution, or

(b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.”.

(3) After Article 390 insert—

“Recording of written resolutions

390A.—(1) Where a written resolution is agreed to in accordance with Article 389A which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this Article, then, until the contrary is proved, the requirements of this Order with respect to those proceedings shall be deemed to be complied with.

(3) Article 390(5) (penalties) applies in relation to a failure to comply with paragraph (1) as it applies in relation to a failure to comply with paragraph (1) of that Article and Article

391 (inspection of minute books) applies in relation to a record made in accordance with this Article as it applies in relation to the minutes of a general meeting.”.

Written resolutions: supplementary provisions

49.—(1) In the Companies Order the following Schedule is inserted after Schedule 15—

“SCHEDULE 15A

WRITTEN RESOLUTIONS OF PRIVATE COMPANIES

PART I

EXCEPTIONS

1. Article 389A does not apply to—
 - (a) a resolution under Article 311 removing a director before the expiration of his period of office, or
 - (b) a resolution under Article 339 removing an auditor before the expiration of his term of office.

PART II

ADAPTATION OF PROCEDURAL REQUIREMENTS

Introductory

2.—(1) In this Part (which adapts certain requirements of this Order in relation to proceedings under Article 389A)—

- (a) a “written resolution” means a resolution agreed to, or proposed to be agreed to, in accordance with that Article, and
 - (b) a “relevant member” means a member by whom, or on whose behalf, the resolution is required to be signed in accordance with that Article.
- (2) A written resolution is not effective if any of the requirements of this Part is not complied with.

Article 105 (disapplication of pre-emption rights)

3.—(1) The following adaptations have effect in relation to a written resolution under Article 105(2) (disapplication of pre-emption rights), or renewing a resolution under that provision.

(2) So much of Article 105(5) as requires the circulation of a written statement by the directors with a notice of meeting does not apply, but such a statement must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

(3) Article 105(6) (offences) applies in relation to the inclusion in any such statement of matter which is misleading, false or deceptive in a material particular.

Article 165 (financial assistance for purchase of company's own shares or those of holding company)

4. In relation to a written resolution giving approval under Article 165(4) or (5) (financial assistance for purchase of company's own shares or those of holding company), Article 167(4)(a) (documents to be available at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Articles 174, 175 and 177 (authority for off-market purchase or contingent purchase contract of company's own shares)

5.—(1) The following adaptations have effect in relation to a written resolution—

- (a) conferring authority to make an off-market purchase of the company's own shares under Article 174(2),
- (b) conferring authority to vary a contract for an off-market purchase of the company's own shares under Article 174(7), or
- (c) varying, revoking or renewing any such authority under Article 174(3).

(2) Article 174(5) (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply; but for the purposes of Article 389A(1) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote.

(3) Article 174(6) (documents to be available at company's registered office and at meeting) does not apply, but the documents referred to in that provision and, where that provision applies by virtue of Article 174(7), the further documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

(4) The above adaptations also have effect in relation to a written resolution in relation to which the provisions of Article 174(3) to (7) apply by virtue of—

- (a) Article 175(2) (authority for contingent purchase contract), or
- (b) Article 177(2) (approval of release of rights under contract approved under Article 174 or 175).

Article 183 (approval for payment out of capital)

6.—(1) The following adaptations have effect in relation to a written resolution giving approval under Article 183(2) (redemption or purchase of company's own shares out of capital).

(2) Article 184(2) (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply; but for the purposes of Article 389A(1) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote.

(3) Article 184(4) (documents to be available at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Article 327 (approval of director's service contract)

7. In relation to a written resolution approving any such term as is mentioned in Article 327(1) (director's contract of employment for more than five years), Article 327(5) (documents to be available at company's registered office and at meeting) does not apply, but the documents referred

to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Article 345 (funding of director's expenditure in performing his duties)

8. In relation to a written resolution giving approval under Article 345(3)(a) (funding a director's expenditure in performing his duties), the requirement of that provision that certain matters be disclosed at the meeting at which the resolution is passed does not apply, but those matters must be disclosed to each relevant member at or before the time at which the resolution is supplied to him for signature.”.

(2) The Schedule inserted after Schedule 15 to the Companies Order by the Companies (Mergers and Divisions) Regulations(Northern Ireland) 1987(1) is renumbered “15B”; and accordingly, in Articles 420A(1) and (8) and 660(1)(s) of that Order (also inserted by those regulations), for “15A” substitute “15B”.

Election by private company to dispense with certain requirements

50.—(1) In Part V of the Companies Order (allotment of shares and debentures), in Article 90(1) (authority of company required for certain allotments) after “this Article” insert “or Article 90A”; and after that Article insert—

“Election by private company as to duration of authority

90A.—(1) A private company may elect (by elective resolution in accordance with Article 387A) that the provisions of this Article shall apply, instead of the provisions of Article 90(4) and (5), in relation to the giving or renewal, after the election, of an authority under that Article.

(2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—

- (a) for an indefinite period, or
- (b) for a fixed period, in which case it must state the date on which it will expire.

(3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.

(4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.

(5) A resolution renewing an authority—

- (a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
- (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.

(6) The references in this Article to the maximum amount of relevant securities that may be allotted shall be construed in accordance with Article 90(6).

(7) If an election under this Article ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—

- (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
- (b) otherwise, shall have effect as if it had been given for a fixed period of five years.”.

(2) In Chapter IV of Part XII of the Companies Order (meetings and resolutions), after Article 374 (annual general meeting) insert—

“Election by private company to dispense with annual general meetings

374A.—(1) A private company may elect (by elective resolution in accordance with Article 387A) to dispense with the holding of annual general meetings.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(4) If such a notice is given, the provisions of Article 374(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

(5) If the election ceases to have effect, the company is not obliged under Article 374 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under paragraph (3).”

(3) In the same Chapter, in Articles 377(4) and 386(3) (majority required to sanction short notice of meeting) insert—

“A private company may elect (by elective resolution in accordance with Article 387A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent., as may be specified in the resolution or subsequently determined by the company in general meeting.”

Elective resolution of private company

51. In Chapter IV of Part XII of the Companies Order (meetings and resolutions) for Article 387A substitute—

“Elective resolution of private company

387A.—(1) An election by a private company for the purposes of—

- (a) Article 90A (election as to duration of authority to allot shares),
- (b) Article 260 (election to dispense with laying of accounts and reports before general meeting),
- (c) Article 374A (election to dispense with holding of annual general meeting),
- (d) Article 377(4) or 386(3) (election as to majority required to authorise short notice of meeting), or
- (e) Article 394 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this Article.

Such a resolution is referred to in this Order as an “elective resolution”.

(2) An elective resolution is not effective unless—

- (a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
 - (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.
- (3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.
- (4) An elective resolution shall cease to have effect if the company is re-registered as a public company.
- (5) An elective resolution may be passed or revoked in accordance with this Article, and the provisions referred to in paragraph (1) have effect, notwithstanding any contrary provision in the company's articles of association.”.

Power to make further provision by regulations

52.—(1) The Department may by regulations make provision enabling private companies to elect, by elective resolution in accordance with Article 387A of the Companies Order, to dispense with compliance with such requirements of that Order as may be specified in the regulations, being requirements which appear to the Department to relate primarily to the internal administration and procedure of companies.

(2) The regulations may add to, amend or repeal provisions of that Order and may provide for any such provision to have effect, where an election is made, subject to such adaptations and modifications as appear to the Department to be appropriate.

(3) The regulations may contain such transitional provisions as appear to the Department to be appropriate.

(4) No regulations under this Article shall be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.