

COMPANIES ACT 2006

EXPLANATORY NOTES

EXISTING LAW

Supplementary

Section 352: Application of provisions to class meetings

600. This section applies the provisions of this Chapter to meetings of holders of a class of shares of a quoted company.

Section 353: Requirements as to website availability

601. This section sets out the minimum requirements that should apply to information to be published on a quoted company's website under section 341 and section 351. The website on which the information is made available must be maintained by or on behalf of the quoted company and must identify the company in question. This provides flexibility as to whether a website is the company's own or one operated by a website service provider. Information published on a website must be kept available for a minimum of two years. *Subsection (5)* provides a let-out when a company's failure to make the information available on a website for part of the period is wholly attributable to circumstances beyond the company's control.

Section 354: Power to limit or extend the types of company to which provisions of this Chapter apply

602. At present the provisions of this Chapter apply to quoted companies as defined in section 385, which replaces the definition of "quoted company" in section 262 of the 1985 Act. This section confers on the Secretary of State a power to make regulations to limit or extend the types of company to which the provisions of this Chapter apply. The Parliamentary procedure that will apply to such regulations depends on whether they extend or limit the application of the Chapter.

Chapter 6: Records of Resolutions and Meetings

603. The following provisions replace sections 382, 382A, 382B and 383 of the 1985 Act relating to the records of company proceedings. They should be read in conjunction with the provisions on company records in Part 31. The main changes are the ten year minimum period for keeping records (the 1985 Act envisaged that records would be retained forever); that meetings of directors are dealt with elsewhere (in Part 10 of the Act); and that the new provisions apply to class meetings.

Section 355: Records of resolutions and meetings etc

604. This section requires all companies to maintain records comprising: copies of all resolutions passed otherwise than at general meetings (which would include all written resolutions), minutes of all proceedings of general meetings, and details of decisions of a sole member taken in accordance with section 357. All records must be kept for

a minimum of 10 years. *Subsections (3) and (4)* impose a penalty on every officer in default for non-compliance.

Section 356: Records as evidence of resolutions etc

605. This section ensures that all records of resolutions or written resolutions and minutes of meetings, where signed off by a director or a company secretary or by the chairman in the case of a general meeting, are evidence of the passing of a resolution or the proceedings at the meeting. In legal proceedings, a litigant will have to accept that the records are accurate unless he can prove that they are not.

Section 357: Records of decisions by sole member

606. This section makes provision for the recording of decisions of a company with only one member.

Section 358: Inspection of records of resolutions and meetings

607. This section requires every company to keep its records available for inspection by members for 10 years. *Subsection (5)* enables a member to seek a court order to compel the company to make the records available for inspection or to provide copies of the records.

Section 359: Records of resolutions and meetings of class of members

608. This section applies the provisions of this Chapter to resolutions and meetings of holders of a class of shares in the case of a company with share capital or to classes of members in the case of a company without a share capital.

Chapter 7: Supplementary Provisions

Section 360: Computation of periods of notice etc: clear day rule

609. This is a new provision to ensure clarity and consistency in the calculation of time periods in relation to meetings and resolutions under Part 13. The section provides that in calculating periods of notice, or periods before a meeting by which a request must be received or sum deposited or tendered, the following are to be excluded –
- the day of the meeting,
 - the day on which notice is given,
 - the day on which the request is received or the sum is deposited or tendered.

Section 361: Meaning of “quoted company”

610. This section provides that the definition for “quoted company” is as stated in Part 15 (Accounts and reports) of the Act.

Part 14: Control of Political Donations and Expenditure

Background and summary

611. In October 1998 the Committee on Standards in Public Life presented to the Prime Minister its report on the funding of political parties in the UK. The Report recommended that any company intending to make a donation (whether in cash or in kind, and including any sponsorship, or loans or transactions at a favourable rate) to a political party or organisation should be required to have the prior authority of its shareholders. The Government accepted this recommendation, and implemented it through the Political Parties, Elections and Referendums Act 2000 (“the PPERA”). The

new regime for control of political donations and expenditure is in Part 10A of the 1985 Act, as inserted by section 139 of and Schedule 19 to the PPERA.

612. [Part 14](#) of the Act restates the existing provisions in a style consistent with the other sections, but most of the key elements of the framework established by the PPERA remain. In particular:

- companies will continue to be prohibited from making a donation to a political party or other political organisation or from incurring political expenditure unless the donation or the expenditure has been authorised, in a typical case by the members of the company;
- a “political donation” will continue to be defined by reference to sections 50 to 52 of the PPERA, and for this purpose amendments made to the PPERA by the Electoral Administration Act 2006 (which remove from the definition of “donations” loans made otherwise than on commercial terms) will be disregarded;
- an approval resolution may authorise the making of donations and incurring of expenditure for a period of not more than four years commencing with the date of the passing of the resolution up to a value specified in the resolution;
- donations or expenditure by a subsidiary must, in general, be authorised by resolutions of the members of the subsidiary and of the holding company; and the directors of such a holding company will continue to be liable for unauthorised donations by the subsidiary company;
- a company need not seek prior shareholder consent for a donation to a political party or organisation unless the aggregate amount of the donation together with any other relevant donations made by the company and other companies in the group of which it is a member in the previous 12 months exceeds £5,000;
- there are no criminal sanctions in relation to the making of unauthorised donations or the incurring of unauthorised political expenditure;
- civil remedies are available to a company in the event of breach of the prohibitions and may be pursued in the normal manner by the company. There will continue to be available an action under which shareholders may enforce on behalf of the company any of the remedies available to a company.

613. The main changes from Part 10A of the 1985 Act are that:

- in line with the general approach in the Act, references to the general meeting are removed to make it clearer that private companies can authorise donations and/or expenditure by written resolution;
- a holding company must authorise a donation or expenditure by a subsidiary company only if it is a “relevant holding company” (that is, the ultimate holding company or, where such a company is not a “UK-registered company”, the holding company highest up the chain which is a “UK-registered company”);
- a holding company is permitted to seek authorisation of donations and expenditure in respect of both the holding company itself and one or more subsidiaries (including wholly-owned subsidiaries) through a single approval resolution (section 367(1));
- companies are permitted to table separate approval resolutions in respect of donations to political parties and donations to other political organisations (section 367(3));
- companies are required to seek authorisation for donations to independent candidates at any election to public office held in the UK or other EU member state and for expenditure by the company relating to independent election candidates;

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

- the sections provide greater clarity for companies about the provision of facilities (for example, meeting rooms) for trade union officials by introducing a specific exemption for donations to trade unions (section 374). The Act does not introduce a specific exemption in relation to paid leave for local councillors because this does not constitute a political donation or political expenditure under Part 10A of the 1985 Act or this Act;
- there are important changes to the rules on ratification and liability in cases of unauthorised donations or expenditure;
- the special rules in respect of the parent company of a non-GB subsidiary undertaking (sections 347E and 347G of the 1985 Act) are not reproduced;
- The new provisions apply to Northern Ireland.