



# Companies Act 2006

## 2006 CHAPTER 46

### PART 13

#### RESOLUTIONS AND MEETINGS

### CHAPTER 2

#### WRITTEN RESOLUTIONS

##### *General provisions about written resolutions*

#### **288 Written resolutions of private companies**

- (1) In the Companies Acts a “written resolution” means a resolution of a private company proposed and passed in accordance with this Chapter.
- (2) The following may not be passed as a written resolution—
  - (a) a resolution under section 168 removing a director before the expiration of his period of office;
  - (b) a resolution under section 510 removing an auditor before the expiration of his term of office.
- (3) A resolution may be proposed as a written resolution—
  - (a) by the directors of a private company (see section 291), or
  - (b) by the members of a private company (see sections 292 to 295).
- (4) References in enactments passed or made before this Chapter comes into force to—
  - (a) a resolution of a company in general meeting, or
  - (b) a resolution of a meeting of a class of members of the company,have effect as if they included references to a written resolution of the members, or of a class of members, of a private company (as appropriate).
- (5) A written resolution of a private company has effect as if passed (as the case may be)—

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(a) by the company in general meeting, or  
(b) by a meeting of a class of members of the company,  
and references in enactments passed or made before this section comes into force to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

## **289 Eligible members**

- (1) In relation to a resolution proposed as a written resolution of a private company, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution (see section 290).
- (2) If the persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement.

### *Circulation of written resolutions*

## **290 Circulation date**

References in this Part to the circulation date of a written resolution are to the date on which copies of it are sent or submitted to members in accordance with this Chapter (or if copies are sent or submitted to members on different days, to the first of those days).

## **291 Circulation of written resolutions proposed by directors**

- (1) This section applies to a resolution proposed as a written resolution by the directors of the company.
- (2) The company must send or submit a copy of the resolution to every eligible member.
- (3) The company must do so—
  - (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or
  - (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),  
or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).
- (4) The copy of the resolution must be accompanied by a statement informing the member—
  - (a) how to signify agreement to the resolution (see section 296), and
  - (b) as to the date by which the resolution must be passed if it is not to lapse (see section 297).
- (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable—

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- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

## **292 Members' power to require circulation of written resolution**

- (1) The members of a private company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.
- (2) Any resolution may properly be moved as a written resolution unless—
- (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
  - (b) it is defamatory of any person, or
  - (c) it is frivolous or vexatious.
- (3) Where the members require a company to circulate a resolution they may require the company to circulate with it a statement of not more than 1,000 words on the subject matter of the resolution.
- (4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.
- (5) The "requisite percentage" is 5% or such lower percentage as is specified for this purpose in the company's articles.
- (6) A request—
- (a) may be in hard copy form or in electronic form,
  - (b) must identify the resolution and any accompanying statement, and
  - (c) must be authenticated by the person or persons making it.

## **293 Circulation of written resolution proposed by members**

- (1) A company that is required under section 292 to circulate a resolution must send or submit to every eligible member—
- (a) a copy of the resolution, and
  - (b) a copy of any accompanying statement.

This is subject to section 294(2) (deposit or tender of sum in respect of expenses of circulation) and section 295 (application not to circulate members' statement).

- (2) The company must do so—
- (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or
  - (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),
- or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).

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- (3) The company must send or submit the copies (or, if copies are sent or submitted to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under section 292 to circulate the resolution.
- (4) The copy of the resolution must be accompanied by guidance as to—
  - (a) how to signify agreement to the resolution (see section 296), and
  - (b) the date by which the resolution must be passed if it is not to lapse (see section 297).
- (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

#### **294 Expenses of circulation**

- (1) The expenses of the company in complying with section 293 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.
- (2) Unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

#### **295 Application not to circulate members' statement**

- (1) A company is not required to circulate a members' statement under section 293 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 292 and that section are being abused.
- (2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

#### *Agreeing to written resolutions*

#### **296 Procedure for signifying agreement to written resolution**

- (1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document—
  - (a) identifying the resolution to which it relates, and
  - (b) indicating his agreement to the resolution.
- (2) The document must be sent to the company in hard copy form or in electronic form.
- (3) A member's agreement to a written resolution, once signified, may not be revoked.

- (4) A written resolution is passed when the required majority of eligible members have signified their agreement to it.

### **297 Period for agreeing to written resolution**

- (1) A proposed written resolution lapses if it is not passed before the end of—
- (a) the period specified for this purpose in the company’s articles, or
  - (b) if none is specified, the period of 28 days beginning with the circulation date.
- (2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period.

### *Supplementary*

### **298 Sending documents relating to written resolutions by electronic means**

- (1) Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).
- (2) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means.

### **299 Publication of written resolution on website**

- (1) This section applies where a company sends—
- (a) a written resolution, or
  - (b) a statement relating to a written resolution,
- to a person by means of a website.
- (2) The resolution or statement is not validly sent for the purposes of this Chapter unless the resolution is available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 297.

### **300 Relationship between this Chapter and provisions of company’s articles**

A provision of the articles of a private company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.