

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Part 9: Exercise of Members' Rights

256. The CLR considered the rights of persons other than the registered shareholders, presenting their recommendations in Chapter 7 of the 'Final Report'. The new provisions in Part 9 have been developed with these recommendations in mind and are designed to make it easier for investors to exercise their governance rights fully and responsibly. Nowadays when investors, whether major institutional investors or retail investors, buy shares in a listed company they are increasingly likely to hold their shares through an intermediary or a chain of intermediaries. This means that it is an intermediary's name that appears on the company's register of members. As a result investors typically have to rely on contractual arrangements with the intermediaries both to obtain information from the company and also to give any instructions they wish about how shares should be voted.
257. This Part of the Act introduces new provisions dealing with the ability of indirect investors to exercise governance rights. The first section in the Part removes any doubts as to the ability of companies to make provision in their articles for others to enjoy and exercise membership rights and enables indirect investors to enjoy information rights via the registered member. The next group of sections provides that indirect investors in traded companies can be nominated by the registered member to receive company documents and information. It is up to the registered member, typically a broker, to decide whether to nominate or not. The last two sections in the Part make it easier for registered members to exercise rights in different ways to reflect the underlying holdings and allow indirect investors to participate in, for example, requests for resolutions at the AGM. The provisions of this Part should be looked at together with sections 324 to 331 on proxies in Part 13, which enable the registered member to appoint indirect investors as proxies to exercise voting rights.
258. An important principle to note is that the information rights and exercise of other rights where shares are held on behalf of others can be initiated and enforced with the company only by the registered member. This Part does not compel the registered member to confer such rights on third parties. It will be for indirect investors, such as shareholders holding through a nominee, to choose a nominee operator who offers such rights as part of their service.

Effect of provisions in company's articles

259. [Section 145](#) protects arrangements through company articles to enfranchise indirect investors and provides that where a company makes provision, through its articles, to extend rights to those holding shares through intermediaries, the provision is legally effective in relation to various statutory requirements.

Section 145: Effect of provisions of articles as to enjoyment of exercise of members' rights

260. This section (*subsection (1)*) allows a company's articles to enable a member to identify another person or persons as entitled to enjoy or exercise all or any specified rights of a member. The articles may specify that this entitlement can apply only to certain rights or to all rights, except the right to transfer the shares. As *subsection (4)(b)* makes clear, the right to transfer shares must remain, as under the 1985 Act, with the member whose name is on the register.
261. *Subsection (2)* provides that where a company makes relevant provision in its articles, all the relevant references in the Companies Acts to 'member' should be read as if the reference to member was a reference to the person or persons nominated by the member. *Subsection (3)* provides a non-exhaustive list of the provisions in question.
262. *Subsection (4)(a)* makes clear that non-members do not have direct enforceable rights against the company. They should enforce their rights through the member whose name is on the register and who has the right to enforce the articles.

Information rights

263. **Sections 146 to 150** introduce new provisions enabling indirect investors to be appointed by the registered member to receive information that is sent to members by the company. These provisions apply only to companies traded on a regulated market. The Secretary of State may extend or limit the classes of companies to which these provisions apply through the power provided under section 151.

Section 146: Traded companies: nomination of persons to enjoy information rights

264. *Subsections (1) and (2)* provide new rights for members of companies whose shares are traded on regulated markets to nominate those on whose behalf they hold shares to receive information that is sent to members direct from the company and to exercise certain rights.
265. *Subsection (3)* sets out what is meant by 'information rights', namely the right to receive all communications that the company sends to members, the right to require copies of accounts and reports (as in section 431 or 432), and the right to require hard copy versions of documents (section 1145).
266. *Subsection (4)* refers to section 426, which allows under certain circumstances for summary financial statements rather than full accounts to be sent out as part of the general information. These must also be sent to nominated persons.
267. *Subsection (5)* provides that the company does not need to respond to a nomination that specifies only certain information rights.

Section 147: Information rights: form in which copies to be provided

268. This section deals with the way in which information is to be provided to a nominated person. *Subsection (2)* explains that if a nominated person wants communications to be in hard copy, they must ask the member, providing a postal address, before the nomination is made. If the member then passes this on to the company, under *subsection (3)* the nominated person will have the right to receive hard copy communications.

Section 148: Termination or suspension of nomination

269. This section provides that a nomination will stop having effect on the request of the nominated person or the member (*subsection (2)*), or on the death, bankruptcy or winding up of the nominated person or the member (*subsection (3)*).

270. *Subsection (5)* explains that all nominations made by member will be suspended if there are more nominations than the total number of shares, and *subsection (6)* makes similar provision where there are different classes of shares.

Section 149: Information as to possible rights in relation to voting

271. This section requires the company, when sending a meeting notice to nominated persons, to include a statement that the nominated person may have voting rights that he can exercise through the person who nominated him.

Section 150: Information rights: status of rights

272. This section deals with the rights arising from a nomination under section 146, and in particular provides that it is the member, rather than the nominated person, who can enforce the rights against the company.

Section 151: Information rights: power to amend

273. This section gives a power for the Secretary of State to amend the provisions of sections 146 to 150. The power allows for changes in the companies covered, the circumstances in which nominations can be made and the rights conferred by nomination.

Effect of rights where shares held on behalf of others

274. **Sections 152** and **153** enable indirect investors, via the registered member, to exercise voting and requisition rights by making it easier for registered members to exercise rights in different ways to reflect underlying holdings and by allowing those on whose behalf they hold shares to participate in requisitions. These two sections apply to all companies.

Section 152: Exercise of rights where shares held on behalf of others: exercise in different ways

275. This section provides that a member can choose to split his holding and exercise rights attached to shares in different ways. This is to accommodate members who hold shares on behalf of more than one person, each of whom may want to exercise rights attaching to their shares in different ways. So, for example, it enables votes to be cast in different ways. *Subsection (4)* provides that if the member does not make it clear to the company in what way he is exercising his rights the company can assume that all rights are being dealt with in the same way.

Section 153: Exercise of rights where shares held on behalf of others: members' requests

276. This section deals with four situations where the shareholder threshold required to trigger a right is 100 shareholders holding £100 each on average of paid-up capital. Indirect investors are able to count towards the total subject to certain conditions, intended to ensure that only genuine indirect investors are allowed to count towards the total, that the same shares cannot be used twice and that the indirect investor's contractual arrangements with the member allow the former to give voting instructions.