



Companies Act 1989

1989 CHAPTER 40

PART V

OTHER AMENDMENTS OF COMPANY LAW

De-regulation of private companies

113 Written resolutions of private companies

- (1) Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions) is amended as follows.
- (2) After section 381 insert—

“Written resolutions of private companies

381A Written resolutions of private companies

- (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 section has effect as if passed—

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- (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 enactment 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 enactment to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution, unless section 381B(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 section which would otherwise be required to be passed as a special, extraordinary or elective resolution; and any reference in any enactment to a special, extraordinary or elective resolution includes such a resolution.
 - (7) This section has effect subject to the exceptions specified in Part I of Schedule 15A; and in relation to certain descriptions of resolution under this section the procedural requirements of this Act have effect with the adaptations specified in Part II of that Schedule.

381B Rights of auditors in relation to written resolution

- (1) A copy of any written resolution proposed to be agreed to in accordance with section 381A 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 subsection (2) expires without any notice having been given in accordance with that subsection.
- (4) A written resolution previously agreed to in accordance with section 381A shall not have effect until that notification is given or, as the case may be, that period expires.

381C Written resolutions: supplementary provisions

- (1) Sections 381A and 381B have effect notwithstanding any provision of the company's memorandum or articles.
- (2) Nothing in those sections affects any enactment 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 section 382 insert—

“382A Recording of written resolutions

- (1) Where a written resolution is agreed to in accordance with section 381A 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 section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to be complied with.
- (3) Section 382(5) (penalties) applies in relation to a failure to comply with subsection (1) above as it applies in relation to a failure to comply with subsection (1) of that section; and section 383 (inspection of minute books) applies in relation to a record made in accordance with this section as it applies in relation to the minutes of a general meeting.”.

114 Written resolutions: supplementary provisions

(1) In the Companies Act 1985 the following Schedule is inserted after Schedule 15—

“SCHEDULE 15A

WRITTEN RESOLUTIONS OF PRIVATE COMPANIES

PART I

EXCEPTIONS

- 1 Section 381A does not apply to—
 - (a) a resolution under section 303 removing a director before the expiration of his period of office, or
 - (b) a resolution under section 391 removing an auditor before the expiration of his term of office.

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PART II

ADAPTATION OF PROCEDURAL REQUIREMENTS

Introductory

- 2 (1) In this Part of this Schedule (which adapts certain requirements of this Act in relation to proceedings under section 381A)—
- (a) a “written resolution” means a resolution agreed to, or proposed to be agreed to, in accordance with that section, 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 section.
- (2) A written resolution is not effective if any of the requirements of this Part of this Schedule is not complied with.

Section 95 (disapplication of pre-emption rights)

- 3 (1) The following adaptations have effect in relation to a written resolution under section 95(2) (disapplication of pre-emption rights), or renewing a resolution under that provision.
- (2) So much of section 95(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) Section 95(6) (offences) applies in relation to the inclusion in any such statement of matter which is misleading, false or deceptive in a material particular.

Section 155 (financial assistance for purchase of company's own shares or those of holding company)

- 4 In relation to a written resolution giving approval under section 155(4) or (5) (financial assistance for purchase of company's own shares or those of holding company), section 157(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.

Sections 164, 165 and 167 (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 section 164(2),
 - (b) conferring authority to vary a contract for an off-market purchase of the company's own shares under section 164(7), or

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- (c) varying, revoking or renewing any such authority under section 164(3).
- (2) Section 164(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 section 381A(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) Section 164(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 section 164(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 section 164(3) to (7) apply by virtue of—
 - (a) section 165(2) (authority for contingent purchase contract), or
 - (b) section 167(2) (approval of release of rights under contract approved under section 164 or 165).

Section 173 (approval for payment out of capital)

- 6 (1) The following adaptations have effect in relation to a written resolution giving approval under section 173(2) (redemption or purchase of company's own shares out of capital).
- (2) Section 174(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 section 381A(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) Section 174(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.

Section 319 (approval of director's service contract)

- 7 In relation to a written resolution approving any such term as is mentioned in section 319(1) (director's contract of employment for more than five years), section 319(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.

Section 337 (funding of director's expenditure in performing his duties)

- 8 In relation to a written resolution giving approval under section 337(3) (a) (funding a director's expenditure in performing his duties), the requirement of that provision that certain matters be disclosed at the

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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 Act 1985 by the Companies (Mergers and Divisions) Regulations 1987 is renumbered “15B”; and accordingly, in section 427A of that Act (also inserted by those regulations), in subsections (1) and (8) for “15A” substitute “15B”.

115 Election by private company to dispense with certain requirements

- (1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), in section 80(1) (authority of company required for certain allotments) after “this section” insert “or section 80A”; and after that section insert—

“80A Election by private company as to duration of authority

- (1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.
- (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 section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).
- (7) If an election under this section 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 XI of the Companies Act 1985 (meetings and resolutions), after section 366 (annual general meeting) insert—

“366A Election by private company to dispense with annual general meetings

- (1) A private company may elect (by elective resolution in accordance with section 379A) 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 section 366(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 section 366 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 subsection (3).”.

- (3) In the same Chapter, in sections 369(4) and 378(3) (majority required to sanction short notice of meeting) insert—

“A private company may elect (by elective resolution in accordance with section 379A) 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.”.

116 Elective resolution of private company

- (1) Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions) is amended as follows.
- (2) After section 379 insert—

“379A Elective resolution of private company

- (1) An election by a private company for the purposes of—
 - (a) section 80A (election as to duration of authority to allot shares),
 - (b) section 252 (election to dispense with laying of accounts and reports before general meeting),
 - (c) section 366A (election to dispense with holding of annual general meeting),

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- (d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or
- (e) section 386 (election to dispense with appointment of auditors annually),

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

Such a resolution is referred to in this Act 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 section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company's articles of association.”.
- (3) In section 380 (registration of resolutions), in subsection (4) (resolutions to which the section applies), after paragraph (b) insert—
- “(bb) an elective resolution or a resolution revoking such a resolution;”.

117 Power to make further provision by regulations

- (1) The Secretary of State may by regulations make provision enabling private companies to elect, by elective resolution in accordance with section 379A of the Companies Act 1985, to dispense with compliance with such requirements of that Act as may be specified in the regulations, being requirements which appear to the Secretary of State to relate primarily to the internal administration and procedure of companies.
- (2) The regulations may add to, amend or repeal provisions of that Act; 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 Secretary of State to be appropriate.
- (3) The regulations may make different provision for different cases and may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.
- (4) Regulations under this section shall be made by statutory instrument.
- (5) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.