



Companies Act 1985

1985 CHAPTER 6

PART XI

COMPANY ADMINISTRATION AND PROCEDURE

CHAPTER IV

MEETINGS AND RESOLUTIONS

[^{F1} Rights of auditors]

Textual Amendments

- F1** New ss. 389A–390 inserted (subject to the savings and transitional provisions in [S.I. 1990/355](#), arts. 4, 10, [Sch. 4](#)) by [Companies Act 1989](#) (c. 40, SIF 27), [ss. 118, 120\(1\)](#) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

389A Rights to information.

- (1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers, and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.
- (2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—
 - (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company, and
 - (b) is misleading, false or deceptive in a material particular.

A person guilty of an offence under this subsection is liable to imprisonment or a fine, or both.

Status: Point in time view as at 21/06/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Cross Heading: Rights of auditors. (See end of Document for details)

- (3) A subsidiary undertaking which is a body corporate incorporated in Great Britain, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a subsidiary undertaking fails to comply with this subsection, the undertaking and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with this subsection he is guilty of an offence and liable to a fine.

- (4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Great Britain shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a parent company fails to comply with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

- (5) Section 734 (criminal proceedings against unincorporated bodies) applies to an offence under subsection (3).

Modifications etc. (not altering text)

- C1** S. 389A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I
C2 S. 389A(1) applied (with modifications) (23.12.1996) by S.I. 1996/943, reg. 29(2)(a)
C3 S.389A(3)(4) applied (with modifications) (23.12.1996) by S.I. 1996/943, reg. 29(2)(b)

VALID FROM 06/04/2005

389B Offences relating to the provision of information to auditors

- (1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—
- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 389A(1)(b), and
 - (b) is misleading, false or deceptive in a material particular,
- the person is guilty of an offence and liable to imprisonment or a fine, or both.
- (2) A person who fails to comply with a requirement under section 389A(1)(b) without delay is guilty of an offence and is liable to a fine.
- (3) However, it is a defence for a person charged with an offence under subsection (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.
- (4) If a company fails to comply with section 389A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.
- (5) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 389A.

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Modifications etc. (not altering text)

- C4** Ss. 389A, 389B applied (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 43(3), 65**; S.I. 2004/3322, **art. 2(3)**, Sch. 3 (subject to arts. 3-13)

[^{F2}**390** **Right to attend company meetings, &c.**

- (1) A company's auditors are entitled—
- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
 - (b) to attend any general meeting of the company; and
 - (c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

[Subsections (4A) to (4G) of section 369 (electronic communication of notices of ^{F3}(1A) meetings) apply for the purpose of determining whether notice of a meeting is received by the company's auditors as they apply in determining whether such a notice is given to any person.]

- (2) In relation to a written resolution proposed to be agreed to by a private company in accordance with section 381A, the company's auditors are entitled—
- (a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,
 - ^{F4}(b)
 - (c)
 - (d)
- (3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.]

Textual Amendments

- F2** New ss. 389A–390 inserted (subject to the savings and transitional provisions in [S.I. 1990/355](#), arts. 4, 10, **Sch. 4**) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 118, 120(1)** as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)
- F3** [S. 390\(1A\)](#) inserted (22.12.2000) by [S.I. 2000/3373](#), **art. 31(3)**
- F4** [S. 390\(2\)\(b\)-\(d\)](#) repealed (19.6.1996 with effect as mentioned in art. 3(3) of the amending S.I.) by [S.I. 1996/1471](#), **art. 3(2)(b)(3)**

Modifications etc. (not altering text)

- C5** [S. 390](#) applied with modifications by [S.I. 1985/680](#), regs. 4–6, **Sch.**
- C6** [S. 390](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

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