



Companies Act 1985

1985 CHAPTER 6

PART XI

COMPANY ADMINISTRATION AND PROCEDURE

CHAPTER V

AUDITORS

384 Annual appointment of auditors

- (1) Every company shall, at each general meeting of the company at which accounts are laid in accordance with section 241, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which the requirements of section 241 are complied with.

This is subject to section 252 (exemption for dormant companies).

- (2) The first auditors of a company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid ; and auditors so appointed shall hold office until the conclusion of that meeting.
- (3) If the directors fail to exercise their powers under subsection (2), those powers may be exercised by the company in general meeting.
- (4) The directors, or the company in general meeting, may fill any casual vacancy in the office of auditor; but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.
- (5) If at any general meeting of a company at which accounts are laid as required by section 241 no auditors are appointed or reappointed, the Secretary of State may appoint a person to fill the vacancy; and the company shall, within one week of that power of the Secretary of State becoming exercisable, give to him notice of that fact.

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If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

385 Remuneration of auditors

- (1) The remuneration of a company's auditors shall be fixed by the company in general meeting, or in such manner as the company in general meeting may determine.
- (2) This does not apply in the case of auditors appointed by the directors or by the Secretary of State ; and in that case their remuneration may be fixed by the directors or by the Secretary of State (as the case may be).
- (3) For the purpose of this section, " remuneration " includes any sums paid by the company in respect of the auditor's expenses.

386 Removal of auditors

- (1) A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.
- (2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar of companies.

If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

- (3) Nothing in this section is to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

387 Auditors' right to attend company meetings

- (1) A company's auditors are entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (2) An auditor of a company who has been removed is entitled to attend—
 - (a) the general meeting at which his term of office would otherwise have expired, and
 - (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

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388 Supplementary provisions as to auditors

- (1) Special notice is required for a resolution at a general meeting of a company—
 - (a) appointing as auditor a person other than a retiring auditor; or
 - (b) filling a casual vacancy in the office of auditor; or
 - (c) reappointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
 - (d) removing an auditor before the expiration of his term of office.
- (2) On receipt of notice of such an intended resolution as is mentioned above the company shall forthwith send a copy of it—
 - (a) to the person proposed to be appointed or removed, as the case may be;
 - (b) in a case within subsection (1)(a), to the retiring auditor; and
 - (c) where, in a case within subsection (1)(b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.
- (3) Where notice is given of such a resolution as is mentioned in subsection (1) (a) or (d), and the retiring auditor or (as the case may be) the auditor proposed to be removed makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—
 - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made, and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (4) If a copy of any such representations is not sent out as required by subsection (3) because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

389 Qualification for appointment as auditor

- (1) Subject to the next subsection, a person is not qualified for appointment as auditor of a company unless either—
 - (a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Secretary of State; or
 - (b) he is for the time being authorised by the Secretary of State to be so appointed, as having similar qualifications obtained outside the United Kingdom or else he retains an authorisation formerly granted by the Board of Trade or the Secretary of State under section 161(1)(b) of the Companies Act 1948 (adequate knowledge and experience, or pre-1947 practice).

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- (2) Subject to subsections (6) to (8) below, a person is qualified for appointment as auditor of an unquoted company if he retains an authorisation granted by the Board of Trade or the Secretary of State under section 13(1) of the Companies Act 1967.

In this subsection—

- (a) " unquoted company" means a company in the case of which, at the time of the person's appointment, the following condition is satisfied, namely, that no shares or debentures of the company, or of a body corporate of which it is the subsidiary, have been quoted on a stock exchange (whether in Great Britain or elsewhere) to the public for subscription or purchase, and
 - (b) " company " does not include a company that carries on business as the promoter of a trading stamp scheme within the meaning of the Trading Stamps Act 1964.
- (3) Subject to the next subsection, the bodies of accountants recognised for the purposes of subsection (1)(a) are—
- (a) the Institute of Chartered Accountants in England and Wales,
 - (b) the Institute of Chartered Accountants of Scotland,
 - (c) the Chartered Association of Certified Accountants, and
 - (d) the Institute of Chartered Accountants in Ireland.
- (4) The Secretary of State may by regulations in a statutory instrument amend subsection (3) by adding or deleting any body, but shall not make regulations—
- (a) adding any body, or
 - (b) deleting any body which has not considered in writing to its deletion,
- unless he has published notice of his intention to do so in the London and Edinburgh Gazettes at least 4 months before making the regulations.
- (5) The Secretary of State may refuse an authorisation under subsection (1)(b) to a person as having qualifications obtained outside the United Kingdom if it appears to him that the country in which the qualifications were obtained does not confer on persons qualified in the United Kingdom privileges corresponding to those conferred by that subsection.
- (6) None of the following persons is qualified for appointment as auditor of a company—
- (a) an officer or servant of the company;
 - (b) a person who is a partner of or in the employment of an officer or servant of the company;
 - (c) a body corporate;
- and for this purpose an auditor of a company is not to be regarded as either officer or servant of it.
- (7) A person is also not qualified for appointment as auditor of a company if he is, under subsection (6), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.
- (8) Notwithstanding subsections (1), (6) and (7), a Scottish firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it

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- (9) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.
- (10) A person who acts as auditor in contravention of subsection (9), or fails without reasonable excuse to give notice of vacating his office as required by that subsection, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

390 Resignation of auditors

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and any such notice operates to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.
- (2) An auditor's notice of resignation is not effective unless it contains either—
- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
 - (b) a statement of any such circumstances as are mentioned above.
- (3) Where a notice under this section is deposited at a company's registered office, the company shall within 14 days send a copy of the notice—
- (a) to the registrar of companies; and
 - (b) if the notice contained a statement under subsection (2)(b), to every person who under section 240 is entitled to be sent copies of the accounts.
- (4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under subsection (2)(b), apply to the court for an order under the next subsection.
- (5) If on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may by order direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (6) The company shall, within 14 days of the court's decision, send to the persons mentioned in subsection (3)—
- (a) if the court makes an order under subsection (5), a statement setting out the effect of the order;
 - (b) if not, a copy of the notice containing the statement under subsection (2)(b).
- (7) If default is made in complying with subsection (3) or (6), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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391 Right of resigning auditor to requisition company meeting

- (1) Where an auditor's notice of resignation contains a statement under section 390(2) (b) there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members—
 - (a) before the general meeting at which his term of office would otherwise have expired; or
 - (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition,
 a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (3) The company shall in that case (unless the statement is received by it too late for it to comply)—
 - (a) in any notice of the meeting given to members of the company state the fact of the statement having been made, and
 - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent
- (4) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.
- (5) If a copy of the statement mentioned in subsection (2) is not sent out as required by subsection (3) because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.
- (6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (7) An auditor who has resigned his office is entitled to attend any such meeting as is mentioned in subsection (2)(a) or (b) and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

392 Powers of auditors in relation to subsidiaries

- (1) Where a company (" the holding company ") has a subsidiary, then—
 - (a) if the subsidiary is a body corporate incorporated in Great Britain, it is the duty of the subsidiary and its auditors to give to the auditors of the holding

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company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;

- (b) in any other case, it is the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned above.

- (2) If a subsidiary or holding company fails to comply with subsection (1), the subsidiary or holding company 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 paragraph (a) of the subsection, he is guilty of an offence and so liable.

393 False statements to auditors

An officer of a company commits an offence if he knowingly or recklessly makes to a company's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanation 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 section is liable to imprisonment or a fine, or both.

394 Auditors of trade unions

- (1) Subject as follows, this section applies to every body which is both a company and a trade union or an employers' association to which section 11 of the Trade Union and Labour Relations Act 1974 applies.
- (2) Section 11(3) of the Act of 1974 and paragraphs 6 to 15 of Schedule 2 to that Act (qualifications, appointment and removal of auditors) do not have effect in relation to bodies to which this section applies.
- (3) The rights and powers conferred, and the duties imposed, by paragraphs 16 to 21 of that Schedule on the auditors of a body to which this section applies belong to the auditors from time to time appointed by or on behalf of that body under section 384 of this Act.