



Shareholder Resolutions and Meetings:
A Guide for Private Companies
October 2007

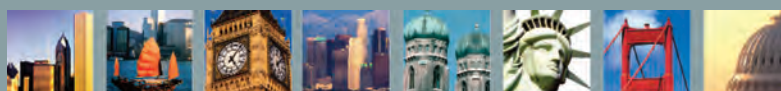


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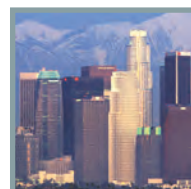
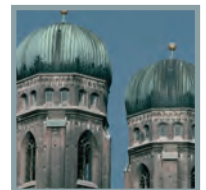
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INTRODUCTION

The Companies Act 2006 (the “2006 Act”) aims to make the administration of private companies more straightforward. To that end, the regime for shareholder resolutions and meetings has been clarified and simplified. The new regime is contained in Part 13 of the 2006 Act, and it came into force on 1 October 2007.

Part 13 of the 2006 Act is intended to be comprehensive. It incorporates provisions that were formerly rules of common law, as well as provisions that were commonly found in many companies’ articles of association.

The most fundamental change made by Part 13 of the 2006 Act is the simplification of the procedure for passing written resolutions. The revised written resolution procedure will become the primary means of shareholder decision-making for almost all private companies, with meetings being held only in exceptional circumstances.

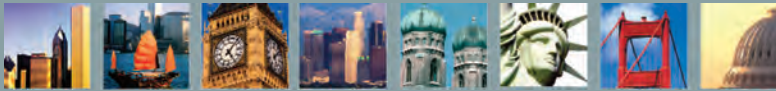
Part 13 of the 2006 Act also makes a number of other key changes, including that:

- private companies are no longer required to hold annual general meetings;
- the elective resolution regime has been abolished; the elective regime has become the default position; and
- the notice period for all general meetings is now 14 days (even where a special resolution is proposed).

The purpose of this Guide is to explain the new regime as it applies to private companies. It should be noted that:

- there are additional requirements for public companies and quoted companies, which are beyond the scope of this Guide;
- Part 13 of the 2006 Act relates only to shareholder resolutions and meetings; the proceedings of directors continue to be regulated by a company’s articles of association; and
- between 1 October 2007 and 1 October 2008 (when the 2006 Act comes fully into force), transitional provisions govern the interaction between the 2006 Act and the continuing provisions of the Companies Act 1985 (the “1985 Act”). The most important of these are highlighted in this Guide, but the transitional provisions are extensive, and the Companies Act 2006 Commencement Orders (at the time of writing, SI 2006/3428, SI 2007/1093 and SI 2007/2194) should be consulted for full details. These are available on the OPSI website (www.opsi.gov.uk/).

References to section numbers are to sections of the 2006 Act, unless otherwise specified.



RESOLUTIONS

1 TYPES OF RESOLUTIONS

The 2006 Act provides for only two types of resolutions. These are:

- (a) ordinary resolutions; and
- (b) special resolutions.

Extraordinary resolutions and elective resolutions have been abolished.

1.2 Ordinary resolutions

1.2.1 The 2006 Act expressly states that an ordinary resolution means a resolution that is passed by a simple majority (that is, 50% plus one vote). **Section 282(1)** 1.2.2. The 2006 Act also provides that anything that can be done by ordinary resolution may also be done by special resolution. However, once a resolution has been proposed as a special resolution, it must be duly passed as a special resolution, even if it could have been proposed as an ordinary resolution. **Sections 282(5) and 283**

1.2.3 If the 2006 Act requires a resolution but does not specify what kind, an ordinary resolution is required unless the company's articles of association require a higher majority or unanimity. **Section 281(3)**

1.3 Special resolutions

1.3.1 The 2006 Act expressly states that a special resolution means a resolution passed by a majority of not less than 75%, as under the 1985 Act. **Section 283(1) replaces section 378(2) of the 1985 Act**

1.3.2 A written resolution that is to be a special resolution must state that it is proposed as a special resolution. **Section 283(3)(a)**

1.3.3 A resolution passed at a meeting is a special resolution only if the notice of the meeting:

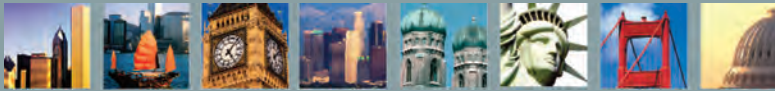
- (a) specifies the intention to propose the resolution as a special resolution; and
- (b) includes the full text of the resolution. **Section 283(6)**

1.4 Extraordinary resolutions

1.4.1 The concept of an "extraordinary resolution" does not exist under the 2006 Act.

1.4.2 There is only section of the 1985 Act that expressly requires an extraordinary resolution, which is section 125(2) (variation of class rights). The transitional provisions amend this section to refer instead to a special resolution. **SI 2007/2194, Schedule 4, Paragraph 2**

1.4.3 If, unusually, there is an express reference to an extraordinary resolution in a company's memorandum, articles of association or contracts, this continues to have effect, and continues to be construed in accordance with section 378 of the 1985 Act. **SI 2007/2194, Schedule 3, Paragraph 23**



1.5 Elective resolutions

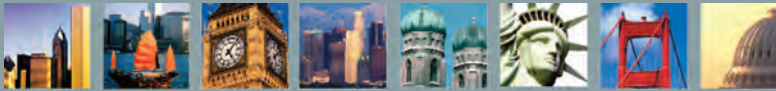
1.5.1 The 1985 Act allows private companies to pass five possible elective resolutions. These are:

- (a) to amend the duration of authority to allot shares granted under section 80 of the 1985 Act; **Section 80A of the 1985 Act**
- (b) to dispense with the need to lay accounts and reports before members in general meeting; **Section 252 of the 1985 Act**
- (c) to dispense with the requirement to hold an annual general meeting; **Section 366A of the 1985 Act**
- (d) to permit the appointment of the company’s auditor for indefinite period; **Section 386 of the 1985 Act**
- (e) to reduce the majority required to consent to short notice of a general meeting from 95% to 90%. **Sections 369(4) and 378(3) of the 1985 Act**

1.5.2 The 2006 Act dispenses with the need for elective resolutions, as the elective regime becomes the default regime for private companies, as set out in the table below:

Resolution	1985 Act	2006 Act	Date of Change	Transitional Provisions (SI 2007/2194, Schedule 3)
Power to allot shares	s80A	s550	1 Oct 2008	Use s80A elective resolution until 1 Oct 2008
Lay accounts/reports before AGM/EGM	s252	ss437/438	1 Oct 2007 (ss437/438 of the 2008 Act in force on 6 Apr 2008)	Section 241 of the 1985 Act is repealed in relation to private companies from 1 Oct 2007
Requirement to hold AGM	s366A	s336 (doesn't apply)	1 Oct 2007	Still need to hold AGM if expressly required by articles
Reappointment of auditors	s386	s487	1 Oct 2007	If an elective resolution is already in force, the auditors are deemed to be reappointed
Consent to short notice	ss369(4)/378(3)	ss307(5)/307(6)	1 Oct 2007	None, but check whether articles require more than 90%

1.5.3 In relation to the power to allot shares, section 550 of the 2006 Act provides that the directors may exercise any power to allot shares, except to the extent that they are prohibited from doing so by the company’s articles of association. However, it should be noted that this provision applies only in relation to a private company



with only one class of shares. If a private company has more than one class of shares, then authorisation to allot shares may be granted for a maximum of five years, with no opt-out. **Sections 549, 550 and 551**

1.6 The transitional period

1.6.1 The 2006 Act is being brought into force in stages. Part 13 of the 2006 Act came into force on 1 October 2007, so all resolutions must now be passed in accordance with the procedures set out in Part 13.

1.6.2 However, until 1 October 2008, much of the 1985 Act remains in force. This means that, during the transitional period, the type of resolution may still be specified by the 1985 Act, even though the method for passing that resolution is specified by Part 13 of the 2006 Act.

1.6.3 For example, if a company wishes to change its articles of association, it will need to pass a special resolution under section 9 of the 1985 Act. To pass the resolution, it will need to follow the procedures for passing a special resolution that are laid down in Part 13 of the 2006 Act (most likely, by using the new written resolution procedure).

2. WRITTEN RESOLUTION PROCEDURE

2.1 Written resolutions

2.1.1 Under the 1985 Act, anything that could be done by resolution of the company in general meeting could instead be done by a written resolution of all those shareholders who would be entitled to attend and vote at the meeting. **Section 381A(1) of the 1985 Act**

2.1.2 The requirement for unanimity meant that obtaining a written resolution under the 1985 Act could often be inconvenient, especially for a company with a large number of minority shareholders.

2.1.3 Under the 2006 Act, the requirement for unanimity has been abolished. The requirements for voting on a written resolution now mirror those for voting on a poll taken at a general meeting:

- (a) subject to the company's articles of association, each member has one vote in respect of each share held; **Sections 284(1)(a) and 284(4)**
- (b) a written ordinary resolution can be passed by members representing a simple majority of the total voting rights of eligible members; **Section 282(2)**
- (c) a written special resolution can be passed by members representing a majority of not less than 75% of the total voting rights of eligible members. **Section 283(2)**

2.1.4 In consequence, written resolutions are likely to become the standard way of passing resolutions for all private companies. Sample resolutions are provided in the appendices to this Guide.

2.1.5 The only circumstance in which a written resolution may not be used is in relation to a resolution removing a director or an auditor before the expiration of his or her term of office. **Section 288(2)**



2.2 Proposing a written resolution

2.2.1 A written resolution can be proposed either by the directors or by the members; in practice, written resolutions will generally be proposed by a company's directors. **Section 288(3)**

2.2.2 A special resolution to be passed as a written resolution must expressly state that it is proposed as a special resolution. **Section 283(3)**

2.3 Circulation of written resolutions proposed by directors

2.3.1 If the directors propose a written resolution, the company must send or submit a copy of the resolution to every eligible member. **Section 291(2)**

2.3.2 So far as possible, copies the resolution must be sent to all members at the same time (or, if it does not cause undue delay, the same copy may be submitted to each member in turn). Copies may be circulated:

- (a) in hard copy;
- (b) in electronic form; or
- (c) by means of a website. **Section 291(3)**

2.3.3 The resolution must be accompanied by a statement informing the member:

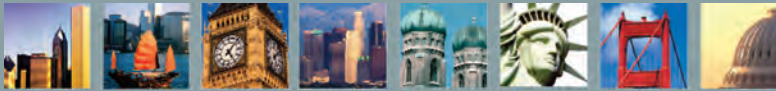
- (a) how to signify agreement to the resolution (see "Passing a written resolution" below); and
- (b) as to the date by which the resolution must be passed if it is not to lapse (see "Time limits" below) **Section 291(4)**

2.3.4 A default in complying with section 291 is a criminal offence, but failure to comply does not affect the validity of the resolution, if passed. **Sections 291(5) and (7)**

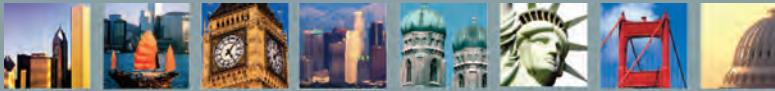
2.4 Circulation of written resolutions proposed by members

2.4.1 In the same way that members have the right to requisition a general meeting of the company if the directors will not call one, under the new regime, members holding 5% of the voting rights of all members entitled to vote on the resolution (or any lower percentage specified in the company's articles) can require the company to circulate a written resolution unless:

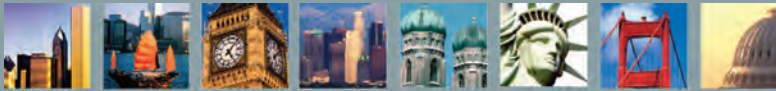
- (a) it would, if passed, be ineffective (whether by reason of inconsistency with the company's articles or otherwise);
- (b) it is defamatory of any person; or
- (c) it is frivolous or vexatious. **Sections 292(1), (2) and (5)**



- 2.4.2 The company must circulate the resolution within 21 days of becoming required to do so under section 292 of the Act, and it is a criminal offence not to comply. **Sections 293(3) and (5)**
- 2.4.3 The members may also require the company to circulate an accompanying statement of up to 1000 words on the subject matter of the resolution. However, if the company believes that the requesting members are abusing their rights, it may apply to court to be exempted from this obligation. **Sections 292(3), 293(1) and 295**
- 2.4.4 Unless the company resolves otherwise, the expenses of circulating the written resolution (and the accompanying statement, if any) must be met by the members who made the request, and the company does not have to circulate the resolution until the members have deposited reasonably sufficient funds to cover these expenses. **Section 294**
- 2.4.5 The procedures for circulating the written resolution are then essentially the same as those for circulating a written resolution proposed by the directors (described above). **Section 293**
- 2.5 Rights of auditors
- 2.5.1 Under the 2006 Act, the company's auditors (if any) are entitled to receive the same communications in relation to written resolutions as the company's members. **Section 502(1)**
- 2.5.2 However, the duty imposed by the 1985 Act on the directors and secretary of a company to send a copy of any written resolution to the company's auditors, which carried a criminal penalty for breach, has been abolished. **Section 502(1) will come into force on 6 April 2006. Section 381B of the 1985 Act was repealed on 1 October 2007. Until section 502(1) comes into force, section 390 of the 1985 Act is modified by transitional provisions to mirror the provisions of section 502(1) (SI 2007/2194, Schedule 4, Paragraph 4)**
- 2.6 Passing a written resolution
- 2.6.1 A written resolution is passed when the required majority of eligible members have signified their agreement to it. **Section 296(4)**
- 2.6.2 This is of practical importance. It means that it is no longer necessary for the company to receive a response from all members in order to pass a written resolution. As soon as signed resolutions have been received from members holding the required percentage of votes (50% plus one vote for an ordinary resolution, 75% for a special resolution), the resolution is passed, regardless of whether the remaining members respond.
- 2.6.3 A member signifies agreement to a proposed resolution when the company receives from the member an authenticated document:
- (a) identifying the resolution to which it relates; and



- (b) indicating the member's agreement. **Section 296(1)**
- 2.6.4 The document by which the member signifies assent may be in hard copy form or electronic form (see "Company communications" below for more information on electronic communications). **Section 296(2)**
- 2.6.5 A document in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it. **Section 1146(2)**
- 2.6.6 A document in electronic form is sufficiently authenticated:
 - (a) if the identity of the sender is confirmed in a manner specified by the company; or
 - (b) if none is specified, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement. **Section 1146(3)**
- 2.6.7 For companies with a small number of shareholders who operate on an informal basis, this opens up the possibility of circulating a written resolution by email, and members agreeing to the resolution by reply. Companies who are not comfortable with this degree of informality have the option of specifying, for example, that a scanned copy of a signed document is required, and not merely an email confirmation. Further information about electronic communications is given below.
- 2.6.8 Once a member has signified agreement to a written resolution, that agreement may not be revoked. **Section 296(3)**
- 2.7 Who are the eligible members?
- 2.7.1 The "eligible members", being the members who are entitled to receive and vote on a written resolution, are those members who, on the circulation date of the resolution, would have been entitled to vote on the resolution. Consequently, the relevant members for the purposes of a written resolution are those whose names are entered in the register of members at the circulation date, and any transfers of shares between circulation of the resolution and the resolution being passed are not taken into account. **Section 289(1)**
- 2.7.2 If there is a transfer of shares on the circulation date itself, the eligible members are the persons entitled to vote at the time that the first copy of the resolution is sent to members. **Section 289(2)**
- 2.8 Time limits
- 2.8.1 A proposed written resolution lapses if it is not passed before the end of:
 - (a) the period specified in the company's articles; or
 - (b) if none is specified, the period of 28 days beginning with the circulation date. **Section 297(1)**



- 2.8.2 If a member's agreement is signified after the expiry of this period, it is ineffective. **Section 297(2)**
- 2.8.3 A member's agreement takes effect only when the company actually receives the authenticated document, so it is important that members allow sufficient time for the signed resolutions to reach the company. **Section 296(1)**
- 2.9 Transitional provisions
- 2.9.1 The key transitional provisions in relation to the new written resolution procedure are found in the Third Commencement Order (SI 2007/2194), in Paragraph 13 of Schedule 1. These provisions amend the 2006 Act procedure in respect of those parts of the 1985 Act that will not be repealed until 1 October 2008.
- 2.9.2 **Authority to allot shares:** a written resolution may not be used to pass a resolution under section 80A of the 1985 Act revoking, varying or renewing the authority of the directors to allot securities.
- 2.9.3 **Disapplication of pre-emption rights:** a written resolution may be used to disapply pre-emption rights under section 95(2) of the 1985 Act, or to renew such disapplication, only if the statement required by section 95(5) of the 1985 Act (a statement by the directors setting out their reasons for recommending that pre-emption rights be disapplied, the amount to be paid to the company in respect of the equity securities to be allotted, and the directors' justification of that amount) is circulated to members at or before the time at which the resolution is circulated.
- 2.9.4 **Financial assistance:** a written resolution may be used to pass a special resolution approving a financial assistance whitewash under section 155(4) or (5) of the 1985 Act only if the documents required by section 157(4)(a) of the 1985 Act (directors' statutory declaration and auditors' report) are circulated to members at or before the time at which the resolution is circulated.
- 2.9.5 **Off-market or contingent purchase of own shares:** in relation to a resolution:
- (a) conferring authority to make an off-market purchase of the company's own shares under section 164(2) of the 1985 Act;
 - (b) conferring authority to vary a contract for an off-market purchase of the company's own shares under section 164(7) of the 1985 Act;
 - (c) varying, revoking or renewing any such authority under section 164(3) of the 1985 Act;
 - (d) conferring authority for a contingent purchase contract under section 165(2) of the 1985 Act;
or
 - (e) approving the release of a company's rights under a contract approved under the above provisions pursuant to section 167(2) of the 1985 Act,
- the definition of "eligible members" is amended to exclude a member holding shares to which the



resolution relates, and the documents referred to in sections 164(6) and, if applicable, section 164(7) of the 1985 Act (a copy of the contract or, if it is not in writing, a written memorandum of its terms, together with any previous variations) must be circulated to members at or before the time at which the resolution is circulated.

- 2.9.6 **Approval for payment out of capital:** in relation to a resolution giving approval under section 173(2) of the 1985 Act for the redemption or purchase of a company's own shares out of capital, the definition of "eligible members" is amended to exclude a member holding shares to which the resolution relates, and the documents referred to in section 174(4) of the 1985 Act (directors' statutory declaration and auditors' report) must be circulated to members at or before the time at which the resolution is circulated.

MEETINGS

3 WHEN IS A GENERAL MEETING REQUIRED?

For most private companies, the need for general meetings is now very limited:

- (a) the requirement for private companies to hold an annual general meeting has been abolished; **Section 366 of the 1985 Act is repealed, and section 336 of the 2006 Act applies only to public companies**
- (b) in almost all cases, the new written resolution procedure will be procedurally more straightforward.

The only case in which a meeting is absolutely required is where it is proposed to remove a director or an auditor before the expiry of his or her term of office. **Section 288(2)**

4 POWER TO CALL MEETINGS

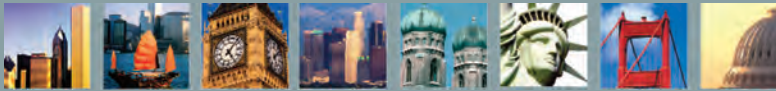
4.1 Directors

The 2006 Act expressly states that the directors of a company may call a general meeting. **Section 302**

4.2 Auditors

- 4.2.1 If the company's auditor resigns or is removed, he is required to deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office (or, alternatively, a statement that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of the members or creditors of the company). **Section 519 restates section 394 of the 1985 Act with effect from 6 April 2008**

- 4.2.2 In this event, the auditor is entitled to requisition a meeting so that the members can receive and consider his explanation of the circumstances connected with his resignation. **Section 518 restates**



section 392A of the 1985 Act with effect from 6 April 2008

4.3 Members

4.3.1 As under the 1985 Act, the members have the power under the 2006 Act to require a company's directors to call a general meeting, and to convene a meeting themselves if the members fail to comply. The procedure under the 2006 Act is broadly the same as under the 1985 Act, with some minor revisions and clarifications.

4.3.2 Under the 2006 Act, the directors of a private company are required to call a general meeting once the company has received requests to do so from:

- (a) members representing at least 10% of the paid-up share capital of the company that carries voting rights at general meetings; or
- (b) if it has been at least 12 months since the last general meeting:
 - (i) requisitioned by members; or
 - (ii) in relation to which members had rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been requisitioned, members representing 5% of the paid-up share capital of the company that carries voting rights at general meetings. **Sections 303(2) and (3)**

4.3.3 The members' request:

- (a) must state the general nature of the business to be dealt with at the meeting; and
- (b) may include the text of a resolution to be moved at the meeting. **Section 303(4)**

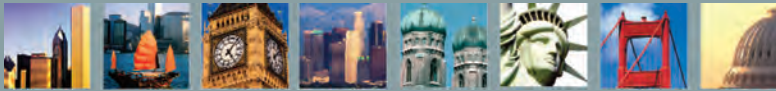
4.3.4 However, the members may not propose a resolution:

- (a) that would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise);
- (b) that is defamatory of any person; or
- (c) that is frivolous or vexatious. **Section 303(5)**

4.3.5 The request may be in hard copy or electronic form, and must be authenticated by the person or persons making it. **Section 303(6)**

4.3.6 Once the company has received a members' requisition, the directors must call a general meeting within 21 days (including, if appropriate, notice of any special resolution), and the meeting must be held not more than 28 days after the date of the notice convening the meeting. **Sections 304(1), (2) and (4)**

4.3.7 If directors fail to call a meeting, the members who requested the meeting (or any of them representing more than half the total voting rights of all of them) may call a meeting themselves at the company's



expense. In this case, the meeting must be called:

- (a) in as nearly as possible the same manner as if called by the directors; and
- (b) for a date not more than three months after the date of the requisition. **Section 305**

5 PROCEDURE FOR CALLING A MEETING

5.1 Length of notice

5.1.1 Subject to the company's articles, which may provide for a longer period of notice, all general meeting must be called on at least 14 days' notice. **Sections 307(1) and (3)**

5.1.2 This is in contrast to the 1985 Act, under which a meeting for the passing of a special resolution required at least 21 days' notice. **Section 369(1) of the 1985 Act was repealed on 1 October 2007**

5.2 Giving notice

5.2.1 Subject to the company's articles, notice of a general meeting must state:

- (a) the time, date and place of the meeting; and
- (b) the general nature of the business to be dealt with at the meeting. **Section 311**

5.2.2 The notice must also include a statement of the member's right to appoint a proxy (being his rights under the 2006 Act and any more extensive rights that may exist under the company's articles of association). **Section 325**

5.2.3 Notice must be given to every member and every director of the company. The company's auditor is also entitled to receive notice of a general meeting as if he were a member. **Sections 310 and 502(2)**

5.2.4 Notice must be given:

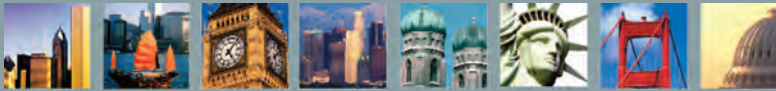
- (a) in hard copy form;
- (b) in electronic form;
- (c) by means of a website; or
- (d) a combination of the above. **Section 308**

5.2.5 If notice is given by means of a website, the notice must be available on the website from the day on which notice is given until the day of the meeting. **Section 309(3)**

5.3 Consent to short notice

5.3.1 A general meeting of a private company may be held on shorter notice than would otherwise be required, if this is agreed to by:

- (a) a majority in number of the members having a right to attend and vote at the meeting;



- (b) who together hold not less than 90% (or such higher percentage, up to 95%, as is specified in the company's articles) in nominal value of the shares giving a right to attend and vote at the meeting. **Sections 307(5) and (6)**

5.4 Special notice

5.4.1 Under the 2006 Act, special notice is required for:

- (a) a resolution to remove a director under section 168; **Section 168(2) (section 168 has replaced section 303 of the 1985 Act)**
- (b) a resolution to remove an auditor under section 510 (or, until 6 April 2008, under section 391 of the 1985 Act); **Section 511(1) will replace section 391A(1)(a) of the 1985 Act from 6 April 2008**
- (c) a resolution to appoint new auditors where existing auditors are not reappointed under section 514. **Section 515(2) or, until 6 April 2008, section 391A(1)(b) of the 1985 Act (section 514 regarding the failure to reappoint an auditor is new, and comes into force on 6 April 2008)**

5.4.2 Special notice means that notice of intention to move the resolution must be given to the company at least 28 days before the meeting at which it is moved. **Section 312(1)**

5.4.3 The company must, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting. Where that is not practicable, it must give notice at least 14 days before the meeting by advertisement in a newspaper or in a manner allowed by the company's articles. **Sections 312(2) and (3)**

5.4.4 If, after special notice has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed to have been properly given. **Section 312(4)**

5.5 Calculating notice periods

The "clear days" rule is expressly provided for by the 2006 Act, and applies when calculating periods of time under the following sections:

- (a) sections 307(1) and (2) - notice of general meeting;
- (b) section 312(1) and (3) – resolution requiring special notice;
- (c) section 314(4)(d) - request to circulate members' statement
- (d) section 316(2)(b) – expenses of circulating statement to be deposited or tendered before meeting, then the period is calculated excluding the day of the meeting and the day on which notice is given, the request is received or the sum is deposited or tendered. **Section 360**



5.6 Members' statements

5.6.1 A company must circulate a members' statement of up to 1000 words with respect to business to be dealt with at a meeting, if a request is received from:

- (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote; or
- (b) at least 100 members who have a relevant right to vote and hold shares on which there has been paid up an average sum, per member, of £100. **Section 314**

5.6.2 The company must circulate the statement to the members at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting. **Section 315(1)**

5.6.3 Unless the company resolves otherwise, the expenses of circulating the statement must be met by the members who requested it, and the company need not circulate the statement until the members have deposited reasonably sufficient funds to cover these expenses. **Section 316**

6 **PROCEDURE AT MEETINGS**

6.1 Quorum

6.1.1 For single member companies, the quorum is one member present at the meeting. **Section 318(1)**

6.1.2 For all other companies, the quorum is two members present at the meeting, unless the articles specify otherwise. **Section 318(2)**

6.1.3 For these purposes, a member may be present by way of a proxy or a corporate representative. However, if a member has appointed more than one proxy, two proxies of the same member cannot form a quorum. The same is true for corporate representatives. **Section 318(2)**

6.2 Chairman

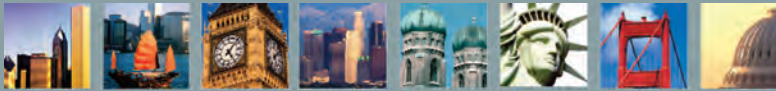
6.2.1 Subject to the company's articles of association, a member may be elected to be the chairman of a general meeting by an ordinary resolution passed at the meeting. **Section 319**

6.2.2 In practice, the articles of association of private companies will typically provide for the chairman of the board of directors to act as chairman of a general meeting.

6.3 Polls

6.3.1 The 2006 Act provisions relating to polls are essentially the same as those in the 1985 Act.

6.3.2 A company's articles of association may not exclude the right to demand a poll on any question other than the election of the chairman or the adjournment of the meeting. **Section 321(1) restates section 373(1)(a) of the 1985 Act**



- 6.3.3 A company's articles may set out who has the right to demand a poll, but must, as a minimum, allow a poll to be demanded by:
- (a) not less than 5 members having the right to vote on the resolution;
 - (b) a member or members representing not less than 10% of the total voting rights of all members having the right to vote on the resolution;
 - (c) a member or members holding shares conferring a right to vote on the resolution, on which the amount paid up is at least 10% of the amount paid up on all the shares conferring that voting right. **Section 321(2) replaces section 373(1)(b) of the 1985 Act**
- 6.3.4 As under the 1985 Act, a proxy can demand a poll as if he were the member for whom he is acting as proxy. **Section 329 replaces, and expands, section 373(2) of the 1985 Act**
- 6.3.5 On a poll, each member has one vote in respect of each share held. **Section 284(3) replaces section 370(6) of the 1985 Act**
- 6.4 Proxies
- 6.4.1 A member has the right to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a general meeting. **Section 324(1) replaces section 372(1) of the 1985 Act**
- 6.4.2 The 2006 Act slightly changes the rights of a proxy, so that those rights now mirror exactly the right of the member. In particular, under the 1985 Act, a proxy was not entitled to vote on a show of hands, unless the company's articles expressly provided for this. This provision has not been replicated in the 2006 Act. **Section 372(2)(c) of the 1985 Act has not been re-enacted**
- 6.4.3 Under the 1985 Act, a member was precluded from appointing more than one proxy to attend a single meeting. The 2006 Act instead provides that a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise rights attaching to different shares. **Section 324(2) replaces section 372(2)(b) of the 1985 Act**
- 6.4.4 If a proxy is appointed, or a proxy's appointment is terminated, notice must be given to the company. The company's articles of association may provide how and when this is to be done, but may not require the notice to be received earlier than:
- (a) in relation to a meeting, 48 hours before the time of the meeting;
 - (b) in relation to a poll taken more than 48 hours after it is demanded, 24 hours before the time for taking the poll. **Sections 327(2) and 330(6)**
- (Note that sections 327(2)(c) and 330(6)(c) have not been, and are not expected to be, brought into force, as they are considered to be confusing.)



6.5 Corporate Representatives

6.5.1 As under the 1985 Act, the 2006 Act provides that a corporate shareholder may appoint a person to act as its corporate representative by resolution of its directors. **Section 323(1) restates section 375(1)(a) of the 1985 Act**

6.5.2 The 2006 Act clarifies that a corporate shareholder may appoint more than one corporate representative, and that each can act on behalf of the corporation. However, where a corporate shareholder appoints more than one corporate representative, if the corporate representatives exercise their powers in different ways, the power is treated as not exercised. **Sections 323(3) and (4)**

6.6 Joint shareholders

6.6.1 In relation to joint shareholders, the 2006 Act provides that, subject to the company's articles of association, only the vote of the shareholder named first in the register of members may be counted. **Section 286**

6.6.2 This provision was commonly found in companies' articles of association, but is now statutory.

6.7 Decisions of sole members

In the case of a single member company, if the sole member takes any decision that:

- (a) may be taken by the company in general meeting; and
- (b) has effect as if agreed by the company in general meeting,

unless the member passes a formal written resolution, the member is required to provide details of the decision to the company. **Section 357 essentially restates section 382B of the 1985 Act**

COMPANY COMMUNICATIONS

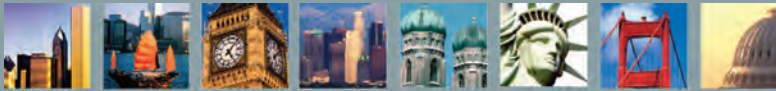
7. COMPANY COMMUNICATIONS

7.1 Forms of communication

7.1.1 The company communications provisions are found in sections 1143 to 1148, Schedule 4 and Schedule 5 of the 2006 Act.

7.1.2 As part of the drive to simplify companies' administrative procedures, the 2006 Act provides for companies and their shareholders to communicate electronically instead of by way of hard copies, provided that this is agreed between them.

7.1.3 The electronic communications provisions apply, among other things, to the circulation and approval of written resolutions, and to the circulation of notices of general meetings.



7.2 Meaning of “hard copy form” and “electronic form”

7.2.1 A document is in “hard copy form” if it is sent or supplied in a paper copy or similar form capable of being read. **Section 1168(2)**

7.2.2 A document is in “electronic form” if it is sent or supplied:

- (a) by electronic means (for example, by e-mail or fax); or
- (b) by any other means while in an electronic form (for example, sending a disk by post). **Section 1168(3)**

7.2.3 A document that is sent in electronic form must be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient:

- (a) to read it (with the naked eye); and
- (b) to retain a copy of it. **Sections 1168(5) and (6)**

7.3 Sending documents in hard copy form

7.3.1 A document in hard copy form may be sent by hand or by prepaid post. **Schedule 4, Part 2, Paragraph 3 and Schedule 5, Part 2, Paragraph 3**

7.3.2 Where a hard copy document is being sent to a company by a member, it may be sent:

- (a) to an address specified by the company for the purpose;
- (b) to the company’s registered office;
- (c) to an address authorised by a specific provision of the 2006 Act or the 1985 Act. **Schedule 4, Part 2, Paragraph 4**

7.3.3 Where a hard copy document is being sent to a member by the company, it may be sent:

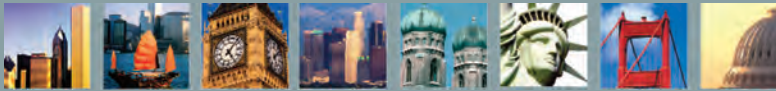
- (a) to an address specified for the purpose by the member;
- (b) if the member is a company, to the member’s registered office;
- (c) to the address shown in the register of members;
- (d) to an address authorised by a specific provision of the 2006 Act or the 1985 Act. **Schedule 5, Part 2, Paragraph 4**

7.4 When can electronic communications be used?

7.4.1 In general, electronic communications may be used only if the recipient has agreed, either generally or specifically, that a document or information may be supplied in electronic form. **Schedule 4, Part 3, Paragraph 6(a) and Schedule 5, Part 3, Paragraph 6(a)**



- 7.4.2 If it has been agreed that electronic communications may be used, documents and information may be sent only to an address specified, either generally or specifically, for the purpose. **Schedule 4, Part 3, Paragraph 7 and Schedule 5, Part 3, Paragraph 7**
- 7.4.3 If the recipient is a company (which includes a corporate shareholder subject to the Companies Acts), the Companies Acts will, in some cases, deem the company to have agreed to receive information in electronic form, and to have specified a particular address. **Schedule 4, Part 3, Paragraphs 6(b) and 7(b) and Schedule 5, Part 3, Paragraphs 6(b) and 7(b)**
- 7.4.4 For example, 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). **Section 298(1)**
- 7.4.5 If a document or information is sent to a member in electronic form, the member is entitled to a hard copy on request, which must be sent by the company, free of charge, within 21 days. **Section 1145**
- 7.5 Communication by website
- 7.5.1 If agreed by the members, a company may communicate with its members by means of a website. This applies, among other things, to circulation of written resolutions, notices of general meetings and members' statements. **Schedule 5, Part 4, Paragraph 9**
- 7.5.2 A member is deemed to have agreed to the company disseminating information by means of a website if either:
- (a) the members have passed a resolution to that effect; or
 - (b) communication by website is provided for in the company's articles of association,
- AND
- (c) the company has asked the member individually to consent to a website being used (either generally, or in relation to a specific matter); and
 - (d) the company has not received a negative response within 28 days of making the request.
- However, a member will not be taken to have agreed to website communication if the individual request for consent did not state clearly what the effect of a failure to respond would be, or (to prevent companies from bombarding their members with requests) if it was sent less than twelve months after a previous request. **Schedule 5, Part 4, Paragraph 10**
- 7.5.3 If a website is to be used, the information must be made available in a form, and by a means, that the company reasonably considers will enable the recipient:
- (a) to read it (with the naked eye); and



(b) to retain a copy of it. **Schedule 5, Part 4, Paragraph 12**

7.5.4 The company must notify the members that the document or information is on the website, giving the address of the website, the place on the website where it may be accessed and details of how to access it. **Schedule 5, Part 4, Paragraph 13**

7.5.5 In general, a document or information provided by means of a website must (except in unforeseeable circumstances) be continuously available on the website for a period of 28 days, unless a different period is specified in the Companies Acts. **Schedule 5, Part 4, Paragraph 14**

7.5.6 Where a written resolution (or accompanying statement) is circulated by means of a website, it is expressly provided that the resolution must be available on the website from the circulation date to the lapse date (see “Time limits” above). **Section 299**

RECORD KEEPING AND FILING OBLIGATIONS

8. RECORDS OF RESOLUTIONS

8.1 Requirement to keep records

8.1.2 A company must keep records comprising:

- (a) copies of all resolutions passed other than at a general meeting;
- (b) minutes of general meetings; and
- (c) details of decisions provided to the company by a sole member. **Section 355(1)**

8.1.3 These records must be kept for at least 10 years. **Section 355(2)**

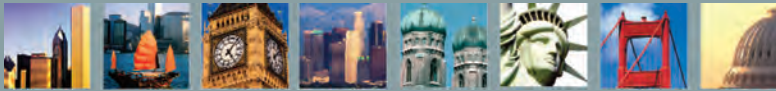
8.1.4 The records must be open to inspection by any member without charge (usually at the company’s registered office), and members are now entitled to copies of the records on payment of a fee. **Sections 358(1), (3) and (4)**

8.1.5 It is a criminal offence not to comply with these record-keeping provisions. **Section 355(3) and 358(5)**

8.2 Records as evidence of proceedings

8.2.1 The record of a resolution passed otherwise than at a general meeting, if purporting to be signed by a director, is evidence of the passing of the resolution. **Section 356(2)**

8.2.2 This means that the formal record of a written resolution passed by the company should be a copy of the resolution duly signed by a director, rather than the collected documents returned by the members when signifying agreement to the resolution.



- 8.2.3 In relation to the minutes of a general meeting, if the minutes are signed by the chairman of the meeting, or by the chairman of the next general meeting, they are evidence of the proceedings at the meeting. **Section 356(4)**
- 8.2.4 Where there is a record of proceedings, there is a rebuttable presumption that:
- (a) the meeting was duly held and convened;
 - (b) all proceedings at the meeting have duly taken place; and
 - (c) all appointments at the meeting are valid. **Section 356(5)**
- 8.3 Requirement to file resolutions
- 8.3.1 A company must file copies of the following resolutions and agreements with Companies House:
- (a) any special resolution;
 - (b) any unanimous resolution or agreement that would otherwise only be effective if passed as a special resolution;
 - (c) any unanimous resolution or agreement of a class of shareholders that would otherwise only be effective if passed by some particular majority or otherwise in some particular manner;
 - (d) any resolution or agreement that effectively binds all members of a class of shareholders though not agreed to by all those members; and
 - (e) any other resolution or agreement to which Part 3, Chapter 3 of the 2006 Act applies by virtue of any enactment. **Sections 29 and 30**
- 8.3.2 The filing must be made within 15 days of the resolution being passed or the agreement made. **Section 30(1)**
- 8.3.3 Once passed, these resolutions form part of the company's constitution, and must thereafter be incorporated into or accompany the company's articles of association. **Sections 17 and 36 (or until 1 October 2008, section 380(2) of the 1985 Act)**

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APPENDIX 1

Form of Written Resolution (Single Resolution)

Company number [•]

WRITTEN RESOLUTION

of

[INSERT FULL NAME OF COMPANY] (the “Company”)

A PRIVATE COMPANY LIMITED BY SHARES

CIRCULATION DATE: [•]

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolution is passed as [an ordinary resolution][a special resolution] (the “Resolution”).

[ORDINARY][SPECIAL] RESOLUTION:

[Insert full text of resolution]

AGREEMENT:

[I/We], being an eligible member of the Company (as defined in section 289 of the Companies Act 2006) in respect of this written resolution, agree that the Resolution be so passed.

Signed by:

[Insert appropriate signature block(s)]

IMPORTANT:

To signify your agreement to the Resolution, you must:

- **sign this document where indicated above;**
- **return the signed document to the Company using one of the following methods:**
 - **deliver it by hand or send it by post to [insert name and address];**
 - **fax a copy of the signed document to [insert fax number] marked “For the attention of [insert name]”; or**

- attach a scanned copy of the signed document to an email, enter “Written Resolution” in the subject line and send it to [insert email address]; and
- ensure that the signed document is received by the Company no later than [*insert lapse date*]. If the Resolution is not passed by this date, it will lapse.

Note: Once given, your agreement may not be revoked.

APPENDIX 2

Form of Written Resolution (Multiple Resolutions)

Company number [•]

WRITTEN RESOLUTIONS

of

[INSERT FULL NAME OF COMPANY] (the “Company”)

A PRIVATE COMPANY LIMITED BY SHARES

CIRCULATION DATE: [•]

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that:

- resolution[s] [1] [and 2] below [is/are] passed as [an] ordinary resolution[s]; and
- resolution[s] [3] [and 4] below [is/are] passed as [a] special resolution[s] (together, the “Resolutions”).

[ORDINARY RESOLUTION[S]:]

No.	Resolution	Agree
[1]	<i>[Insert full text of resolution]</i>	
[2]	<i>[Insert full text of resolution]</i>	

[SPECIAL RESOLUTION[S]:]

No.	Resolution	Agree
[3]	<i>[Insert full text of resolution]</i>	
[4]	<i>[Insert full text of resolution]</i>	

AGREEMENT:

[I/We], being an eligible member of the Company (as defined in section 289 of the Companies Act 2006) in respect of this written resolution, agree that those (and only those) Resolutions next to which we have marked “X” in the column headed “Agree” be so passed.

Signed by:

[Insert appropriate signature block(s)]

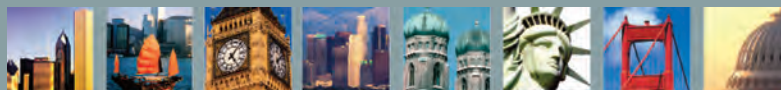
IMPORTANT:

To signify your agreement to some or all of the Resolutions, you must:

- put an “X” in the column headed “Agree” next to the relevant Resolution(s);
- sign this document where indicated above;
- return the signed document to the Company using one of the following methods:
 - deliver it by hand or send it by post to [insert name and address];
 - fax a copy of the signed document to [insert fax number] marked “For the attention of [insert name]”; or
 - attach a scanned copy of the signed document to an email, enter “Written Resolution” in the subject line and send it to [insert email address]; and
- ensure that the signed document is received by the Company no later than [*insert lapse date*]. If any of the Resolutions are not passed by the date specified above, those resolutions will lapse.

Note: Once given, your agreement may not be revoked.

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