



# Companies Act 2006

## 2006 CHAPTER 46

### PART 13

#### RESOLUTIONS AND MEETINGS

#### CHAPTER 5

#### ADDITIONAL REQUIREMENTS FOR QUOTED COMPANIES [F1] AND TRADED COMPANIES]

##### *Independent report on poll*

#### **342 Members' power to require independent report on poll**

- (1) The members of a quoted company may require the directors to obtain an independent report on any poll taken, or to be taken, at a general meeting of the company.
- (2) The directors are required to obtain an independent report if they receive requests to do so from—
  - (a) members representing not less than 5% of the total voting rights of all the members who have a right to vote on the matter to which the poll relates (excluding any voting rights attached to any shares in the company held as treasury shares), or
  - (b) not less than 100 members who have a right to vote on the matter to which the poll relates and hold shares in the company on which there has been paid up an average sum, per member, of not less than £100.

See also section 153 (exercise of rights where shares held on behalf of others).

- (3) Where the requests relate to more than one poll, subsection (2) must be satisfied in relation to each of them.
- (4) A request—
  - (a) may be in hard copy form or in electronic form,

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- (b) must identify the poll or polls to which it relates,
- (c) must be authenticated by the person or persons making it, and
- (d) must be received by the company not later than one week after the date on which the poll is taken.

### **343 Appointment of independent assessor**

- (1) Directors who are required under section 342 to obtain an independent report on a poll or polls must appoint a person they consider to be appropriate (an “independent assessor”) to prepare a report for the company on it or them.
- (2) The appointment must be made within one week after the company being required to obtain the report.
- (3) The directors must not appoint a person who—
  - (a) does not meet the independence requirement in section 344, or
  - (b) has another role in relation to any poll on which he is to report (including, in particular, a role in connection with collecting or counting votes or with the appointment of proxies).
- (4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) If at the meeting no poll on which a report is required is taken—
  - (a) the directors are not required to obtain a report from the independent assessor, and
  - (b) his appointment ceases (but without prejudice to any right to be paid for work done before the appointment ceased).

### **344 Independence requirement**

- (1) A person may not be appointed as an independent assessor—
  - (a) if he is—
    - (i) an officer or employee of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
  - (b) if he is—
    - (i) an officer or employee of an associated undertaking of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
  - (c) if there exists between—
    - (i) the person or an associate of his, and
    - (ii) the company or an associated undertaking of the company,
 a connection of any such description as may be specified by regulations made by the Secretary of State.
- (2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.

*Status: Point in time view as at 30/12/2016.*

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- (3) In this section—
- “associated undertaking” means—
- (a) a parent undertaking or subsidiary undertaking of the company, or
  - (b) a subsidiary undertaking of a parent undertaking of the company; and
- “associate” has the meaning given by section 345.
- (4) Regulations under this section are subject to negative resolution procedure.

#### **Commencement Information**

- II** S. 344 wholly in force at 1.10.2007; s. 344 not in force at Royal Assent, see s. 1300; s. 344 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 344 in force at 1.10.2007 by S.I. 2007/2194, **art. 2(1)(f)** (with saving in **art. 12** and subject to transitional adaptations specified in **Sch. 1**)

#### **345 Meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 344 (independence requirement).
- (2) In relation to an individual, “associate” means—
- (a) that individual's spouse or civil partner or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means—
- (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means—
- (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

#### **346 Effect of appointment of a partnership**

- (1) This section applies where a partnership that is not a legal person under the law by which it is governed is appointed as an independent assessor.
- (2) Unless a contrary intention appears, the appointment is of the partnership as such and not of the partners.

*Status: Point in time view as at 30/12/2016.*

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- (3) Where the partnership ceases, the appointment is to be treated as extending to—
  - (a) any partnership that succeeds to the practice of that partnership, or
  - (b) any other person who succeeds to that practice having previously carried it on in partnership.
- (4) For the purposes of subsection (3)—
  - (a) a partnership is regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership, and
  - (b) a partnership or other person is regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) Where the partnership ceases and the appointment is not treated under subsection (3) as extending to any partnership or other person, the appointment may with the consent of the company be treated as extending to a partnership, or other person, who succeeds to—
  - (a) the business of the former partnership, or
  - (b) such part of it as is agreed by the company is to be treated as comprising the appointment.

### **347 The independent assessor's report**

- (1) The report of the independent assessor must state his opinion whether—
  - (a) the procedures adopted in connection with the poll or polls were adequate;
  - (b) the votes cast (including proxy votes) were fairly and accurately recorded and counted;
  - (c) the validity of members' appointments of proxies was fairly assessed;
  - (d) the notice of the meeting complied with section 325 (notice of meeting to contain statement of rights to appoint proxy);
  - (e) section 326 (company-sponsored invitations to appoint proxies) was complied with in relation to the meeting.
- (2) The report must give his reasons for the opinions stated.
- (3) If he is unable to form an opinion on any of those matters, the report must record that fact and state the reasons for it.
- (4) The report must state the name of the independent assessor.

### **348 Rights of independent assessor: right to attend meeting etc**

- (1) Where an independent assessor has been appointed to report on a poll, he is entitled to attend—
  - (a) the meeting at which the poll may be taken, and
  - (b) any subsequent proceedings in connection with the poll.
- (2) He is also entitled to be provided by the company with a copy of—
  - (a) the notice of the meeting, and

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- (b) any other communication provided by the company in connection with the meeting to persons who have a right to vote on the matter to which the poll relates.
- (3) The rights conferred by this section are only to be exercised to the extent that the independent assessor considers necessary for the preparation of his report.
- (4) If the independent assessor is a firm, the right under subsection (1) to attend the meeting and any subsequent proceedings in connection with the poll is exercisable by an individual authorised by the firm in writing to act as its representative for that purpose.

### **349 Rights of independent assessor: right to information**

- (1) The independent assessor is entitled to access to the company's records relating to—
  - (a) any poll on which he is to report;
  - (b) the meeting at which the poll or polls may be, or were, taken.
- (2) The independent assessor may require anyone who at any material time was—
  - (a) a director or secretary of the company,
  - (b) an employee of the company,
  - (c) a person holding or accountable for any of the company's records,
  - (d) a member of the company, or
  - (e) an agent of the company,to provide him with information or explanations for the purpose of preparing his report.
- (3) For this purpose “agent” includes the company's bankers, solicitors and auditor.
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 350 (offences relating to provision of information).
- (5) A person is not required by this section to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

### **350 Offences relating to provision of information**

- (1) A person who fails to comply with a requirement under section 349 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanation.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person commits an offence who knowingly or recklessly makes to an independent assessor a statement (oral or written) that—
  - (a) conveys or purports to convey any information or explanations which the independent assessor requires, or is entitled to require, under section 349, and
  - (b) is misleading, false or deceptive in a material particular.
- (4) A person guilty of an offence under subsection (3) is liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (5) Nothing in this section affects any right of an independent assessor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 348 or 349.

### **351 Information to be made available on website**

- (1) Where an independent assessor has been appointed to report on a poll, the company must ensure that the following information is made available on a website—
  - (a) the fact of his appointment,
  - (b) his identity,
  - (c) the text of the resolution or, as the case may be, a description of the subject matter of the poll to which his appointment relates, and
  - (d) a copy of a report by him which complies with section 347.
- (2) The provisions of section 353 (requirements as to website availability) apply.
- (3) In the event of default in complying with this section (or with the requirements of section 353 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Failure to comply with this section (or the requirements of section 353) does not affect the validity of—
  - (a) the poll, or
  - (b) the resolution or other business (if passed or agreed to) to which the poll relates.

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