



# Companies Act 1985

## 1985 CHAPTER 6

### PART XI

#### COMPANY ADMINISTRATION AND PROCEDURE

#### CHAPTER IV

##### MEETINGS AND RESOLUTIONS

##### *Removal, resignation, &c. of auditors*

#### **391 Removal of auditors.**

- (1) A company may by ordinary resolution at any time remove an auditor from 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.

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 shall 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.
- (4) An auditor of a company who has been removed has, notwithstanding his removal, the rights conferred by section 390 in relation to any general meeting of the company—
  - (a) at which his term of office would otherwise have expired, or
  - (b) at which it is proposed to fill the vacancy caused by his removal.

*Status: Point in time view as at 08/11/2006.*

*Changes to legislation: Companies Act 1985, Cross Heading: Removal, resignation, &c. of auditors is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

**Modifications etc. (not altering text)**

- C1** Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**  
**C2** S. 391 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**[<sup>F1</sup>391A Rights of auditors who are removed or not re-appointed.**

- (1) Special notice is required for a resolution at a general meeting of a company—
  - (a) removing an auditor before the expiration of his term of office, or
  - (b) appointing as auditor a person other than a retiring auditor.
- (2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.
- (3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.
- (4) 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.
- (5) If a copy of any such representations is not sent out as required 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 be read out at the meeting.
- (6) Copies of the representations need not be sent out and the representations need not be read 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.]

**Textual Amendments**

- F1** New ss. 391–393 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, 122** as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

**Modifications etc. (not altering text)**

- C3** Ss. 391–393 applied with modifications by S.I. 1985/680, regs. 4–6, **Sch.**  
**C4** S. 391A applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

*Status: Point in time view as at 08/11/2006.*

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### [<sup>F2</sup>392 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.

The notice is not effective unless it is accompanied by the statement required by section 394.

- (2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.
- (3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

If default is made in complying with 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, a daily default fine.]

#### Textual Amendments

- F2** New ss. 391–393 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, 122** as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

#### Modifications etc. (not altering text)

- C5** [Ss. 391–393](#) applied with modifications by [S.I. 1985/680, regs. 4–6, Sch.](#)  
**C6** [S. 392](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

### [<sup>F3</sup>392A Rights of resigning auditors.

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.
- (2) He may deposit with the notice a signed requisition 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.
- (3) He may request the company to circulate to its members—
  - (a) before the meeting convened on his requisition, or
  - (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company shall (unless the statement is received 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.

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- (5) 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.
- (6) If a copy of the statement mentioned above is not sent out as required 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 be read out at the meeting.
- (7) 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.
- (8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 390 in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b).

In such a case the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.]

#### Textual Amendments

**F3** New ss. 391–393 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, 122](#) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

#### Modifications etc. (not altering text)

**C7** [Ss. 391–393](#) applied with modifications by [S.I. 1985/680, regs. 4–6, Sch.](#)

**C8** [S. 392A](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

### [<sup>F4</sup>393] Termination of appointment of auditors not appointed annually.

- (1) When an election is in force under section 386 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

- (2) If such a notice is deposited it is the duty of the directors—
  - (a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and
  - (b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

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- (3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed reappointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under section 238 and ending 14 days after that day.

- (4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.
- (5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.
- (7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section.]

#### Textual Amendments

- F4** New ss. 391–393 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, 122** as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

#### Modifications etc. (not altering text)

- C9** [Ss. 391–393](#) applied with modifications by [S.I. 1985/680, regs. 4–6, Sch.](#)

### [<sup>F5</sup>394 Statement by person ceasing to hold office as auditor.

- (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.
- (2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

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- (3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—
- (a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or
  - (b) apply to the court.
- (4) The company shall if it applies to the court notify the auditor of the application.
- (5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.
- (6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—
- (a) it shall direct that copies of the statement need not be sent out, and
  - (b) it 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;
- and the company shall within 14 days of the court's decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.
- (7) If the court is not so satisfied, the company shall within 14 days of the court's decision—
- (a) send copies of the statement to the persons mentioned in subsection (3)(a), and
  - (b) notify the auditor of the court's decision;
- and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.]

#### Textual Amendments

**F5** New ss. 394, 394A inserted (subject to the saving and transitional provisions in [S.I. 1990/355, arts. 4, 10, Sch. 4](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 118, 123\(1\), 213\(2\)](#) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

#### Modifications etc. (not altering text)

**C10** [S. 394](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

#### [<sup>F6</sup>394A Offences of failing to comply with s. 394.

- (1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.
- (2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).

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- (4) If a company makes default in complying with section 394, 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.]

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**Textual Amendments**

- F6** New ss. 394, 394A inserted (subject to the saving and transitional provisions in [S.I. 1990/355, arts. 4, 10, Sch. 4](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 118, 123\(1\), 213\(2\)](#) as part of the text inserted to replace Chapter V of Part XI (as mentioned in s. 118 of the 1989 Act)

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**Modifications etc. (not altering text)**

- C11** [S. 394A](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

**Status:**

Point in time view as at 08/11/2006.

**Changes to legislation:**

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