



# Companies Act 1989

## 1989 CHAPTER 40

### PART V

#### OTHER AMENDMENTS OF COMPANY LAW

##### *Appointment and removal of auditors and related matters*

#### **119 Appointment of auditors**

- (1) The following sections are inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

##### *“Appointment of auditors*

#### **384 Duty to appoint auditors**

- (1) Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to section 388A (dormant company exempt from obligation to appoint auditors).

- (2) Auditors shall be appointed in accordance with section 385 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with section 385A.
- (3) References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under section 385(2) or 385A(2), according to whichever of those sections applies.
- (4) Sections 385 and 385A have effect subject to section 386 under which a private company may elect to dispense with the obligation to appoint auditors annually.

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*Status: This is the original version (as it was originally enacted).*

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### **385 Appointment at general meeting at which accounts laid**

- (1) This section applies to every public company and to a private company which has not elected to dispense with the laying of accounts.
- (2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.
- (3) The first auditors of the 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.
- (4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

### **385A Appointment by private company which is not obliged to lay accounts**

- (1) This section applies to a private company which has elected in accordance with section 252 to dispense with the laying of accounts before the company in general meeting.
- (2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under section 238 or, if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

- (3) The first auditors of the company may be appointed by the directors at any time before—
  - (a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under section 238, or
  - (b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.
- (4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.
- (5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold

office until the conclusion of the next general meeting of the company at which accounts are laid.

### **386 Election by private company to dispense with annual appointment**

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the obligation to appoint auditors annually.
- (2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless—
  - (a) a resolution has been passed under section 250 by virtue of which the company is exempt from the obligation to appoint auditors, or
  - (b) a resolution has been passed under section 393 to the effect that their appointment should be brought to an end.
- (3) If the election ceases to be in force, the auditors then holding office shall continue to hold office—
  - (a) where section 385 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;
  - (b) where section 385A then applies, until the end of the time for appointing auditors for the next financial year under that section.
- (4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

### **387 Appointment by Secretary of State in default of appointment by company**

- (1) If in any case no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Secretary of State may appoint a person to fill the vacancy.
- (2) In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Secretary of State of his power having become exercisable.

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.

### **388 Filling of casual vacancies**

- (1) The directors, or the company in general meeting, may fill a casual vacancy in the office of auditor.
- (2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.
  - (3) Special notice is required for a resolution at a general meeting of a company—
    - (a) filling a casual vacancy in the office of auditor, or

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- (b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.
- (4) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it—
- (a) to the person proposed to be appointed, and
  - (b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

### **388A Dormant company exempt from obligation to appoint auditors**

- (1) A company which by virtue of section 250 (dormant companies: exemption from provisions as to audit of accounts) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.
  - (2) The following provisions apply if the exemption ceases.
  - (3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.
  - (4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—
    - (a) the end of the period of 28 days beginning with the day on which copies of the company’s annual accounts are next sent to members under section 238, or
    - (b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;
 and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.
  - (5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.”.
- (2) In Schedule 24 to the Companies Act 1985 (punishment of offences), at the appropriate place insert—

“387(2)	Company failing to give Secretary of State notice of non-appointment of auditors.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”.
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- (3) In section 46(2) of the Banking Act 1987 (duty of auditor of authorised institution to give notice to Bank of England of certain matters) for “appointed under section 384” substitute “appointed under Chapter V of Part XI”; and in section 46(4) (adaptation of references in relation to Northern Ireland) for “sections 384,” substitute “Chapter V of Part XI and sections”.