

**PRIVATE COMPANIES:**

**WRITTEN RESOLUTIONS AND MEETINGS**

**New provisions of the Companies Act 2006 effective from 1 October 2007**

New provisions in the Companies Act 2006 ("the Act") relating to written resolutions and general meetings came into force on 1 October 2007. This paper looks at the impact of the changes on private limited companies.

A separate paper on resolutions and meetings has been prepared for public limited companies and is available on request. Please use the email link opposite or call us on 01372 465330.

**WRITTEN RESOLUTIONS – Sections 288 to 300 of the Act**

Only a private company may pass a shareholder resolution as a written resolution under these provisions and in keeping with the Companies Act 1985 ("the 1985 Act"), the written resolution procedure may not be used to remove a director or an auditor before the expiry of his term of office. Such removal may only be made by ordinary resolution proposed at a meeting of shareholders.

A major change is that, unlike written resolutions under the 1985 Act where all members had to sign the resolution before it could be passed, only those members comprising the requisite majority need now sign the written resolution to make it effective.

For example, a written resolution which requires only a simple majority such as an authority to issue shares, may be approved by members signing the resolution, holding more than 50% of the voting rights in order for the written resolution to be passed (s.282(2)). In the same way, the majority required to pass a special resolution is members holding not less than three-fourths of the voting rights (s.283(2)), and this percentage may now sign a written resolution for such resolution to be effective.

A written resolution may be proposed by either the directors of a company or its members. Different rules apply to the circulation of written resolutions by directors and those circulated by members (ss.291 and 292 to 295 respectively).



**For further information please contact a partner on:**

(01372) 465330

**or by email:**

[info@davidvenus.com](mailto:info@davidvenus.com)

THAMES HOUSE  
PORTSMOUTH ROAD  
ESHER  
SURREY KT10 9AD  
TELEPHONE 01372 465330  
FAX 01372 463620  
DX 36318 ESHER

**LONDON OFFICE**  
100 PALL MALL  
LONDON SW1Y 5HP  
TELEPHONE 020 7321 3818  
FAX 020 7321 3819

email: [info@davidvenus.com](mailto:info@davidvenus.com)  
web: [www.davidvenus.com](http://www.davidvenus.com)

A written resolution must have a circulation date (s.290) stated on it. If the resolution is not passed by the requisite majority within a stated number of days from the circulation date, then it lapses. The period from the circulation date during which the written resolution may be passed before it lapses may be specified in the company's articles, or if none is specified, will be the period of 28 days beginning with the circulation date (s.297). If a member agrees to the written resolution after the expiry of the period, such agreement is ineffective for calculating whether the resolution had been passed by the requisite majority. The Act also recognises that companies may wish to use electronic means to circulate written resolutions to members and to publish the results on a website. Sections 298 and 299 of the Act contain the relevant provisions regarding electronic communications in relation to written resolutions.

Finally, a provision in a company's articles that effectively prohibits the use of written resolutions is void (s.300).

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### **GENERAL MEETINGS – Sections 302 to 335 of the Act**

The statutory requirement for a private limited company to hold an annual general meeting (AGM) has been repealed. In future only public limited companies will be required to hold an AGM.

However, a private limited company must still hold an AGM if required to do so by its articles of association. It is rare for a company's articles to contain such a provision, but they should be checked.

Of course, this change will not affect private limited companies that elected to dispense with the obligation to hold an AGM under what was known as the Elective Regime (this regime has also been repealed).

The Act has dispensed with the concept of an extraordinary general meeting so that there are now only three types of meetings of members; general meetings, general meetings of public companies that are specified as AGMs and meetings of a particular class of members.

The notice period for a general meeting (not being an adjourned meeting) of a private company is now 14 days unless the business of the meeting includes the consideration of a special resolution, in which case it is 21 days. A general meeting may be held by shorter notice if it is agreed by members holding not less than 90% in nominal value of the shares giving a right to attend and vote at the meeting.

The articles of the company may specify a higher percentage, but must not be higher than 95%.

The Act also provides for notices to be given in hard copy, in electronic form or on a website or partly by one method and partly by another. Care should be taken to ensure that a company's articles permit electronic communication and that shareholder consent has been sought and given for the company to use electronic communications.

In the application of any of the new provisions introduced by the Act, care should also be taken to ensure there is no conflict between the Articles and the new provisions relating to resolutions and meetings. We will be pleased to assist clients with this work.