



# Companies Act 2006

## 2006 CHAPTER 46

### PART 10

#### A COMPANY'S DIRECTORS

### CHAPTER 9

#### SUPPLEMENTARY PROVISIONS

*Provision for employees on cessation or transfer of business*

**247 Power to make provision for employees on cessation or transfer of business**

- (1) The powers of the directors of a company include (if they would not otherwise do so) power to make provision for the benefit of persons employed or formerly employed by the company, or any of its subsidiaries, in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.
- (2) This power is exercisable notwithstanding the general duty imposed by section 172 (duty to promote the success of the company).
- (3) In the case of a company that is a charity it is exercisable notwithstanding any restrictions on the directors' powers (or the company's capacity) flowing from the objects of the company.
- (4) The power may only be exercised if sanctioned—
  - (a) by a resolution of the company, or
  - (b) by a resolution of the directors,in accordance with the following provisions.
- (5) A resolution of the directors—
  - (a) must be authorised by the company's articles, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) is not sufficient sanction for payments to or for the benefit of directors, former directors or shadow directors.
- (6) Any other requirements of the company's articles as to the exercise of the power conferred by this section must be complied with.
- (7) Any payment under this section must be made—
  - (a) before the commencement of any winding up of the company, and
  - (b) out of profits of the company that are available for dividend.

#### *Records of meetings of directors*

### **248 Minutes of directors' meetings**

- (1) Every company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) The records must be kept for at least ten years from the date of the meeting.
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **249 Minutes as evidence**

- (1) Minutes recorded in accordance with section 248, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.
- (2) Where minutes have been made in accordance with that section of the proceedings of a meeting of directors, then, until the contrary is proved—
  - (a) the meeting is deemed duly held and convened,
  - (b) all proceedings at the meeting are deemed to have duly taken place, and
  - (c) all appointments at the meeting are deemed valid.

#### *Meaning of "director" and "shadow director"*

### **250 "Director"**

In the Companies Acts "director" includes any person occupying the position of director, by whatever name called.

### **251 "Shadow director"**

- (1) In the Companies Acts "shadow director", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

---

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

---

- (2) A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity.
- (3) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies for the purposes of—
  - Chapter 2 (general duties of directors),
  - Chapter 4 (transactions requiring members' approval), or
  - Chapter 6 (contract with sole member who is also a director),by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

#### *Other definitions*

### **252 Persons connected with a director**

- (1) This section defines what is meant by references in this Part to a person being “connected” with a director of a company (or a director being “connected” with a person).
- (2) The following persons (and only those persons) are connected with a director of a company—
  - (a) members of the director’s family (see section 253);
  - (b) a body corporate with which the director is connected (as defined in section 254);
  - (c) a person acting in his capacity as trustee of a trust—
    - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him, or
    - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,other than a trust for the purposes of an employees' share scheme or a pension scheme;
  - (d) a person acting in his capacity as partner—
    - (i) of the director, or
    - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
  - (e) a firm that is a legal person under the law by which it is governed and in which—
    - (i) the director is a partner,
    - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or
    - (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.
- (3) References in this Part to a person connected with a director of a company do not include a person who is himself a director of the company.

---

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

---

### **253 Members of a director's family**

- (1) This section defines what is meant by references in this Part to members of a director's family.
- (2) For the purposes of this Part the members of a director's family are—
  - (a) the director's spouse or civil partner;
  - (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship;
  - (c) the director's children or step-children;
  - (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;
  - (e) the director's parents.
- (3) Subsection (2)(b) does not apply if the other person is the director's grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.

### **254 Director "connected with" a body corporate**

- (1) This section defines what is meant by references in this Part to a director being "connected with" a body corporate.
- (2) A director is connected with a body corporate if, but only if, he and the persons connected with him together—
  - (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
  - (b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 252 (meaning of "connected person") —
  - (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
  - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

### **255 Director "controlling" a body corporate**

- (1) This section defines what is meant by references in this Part to a director "controlling" a body corporate.

- (2) A director of a company is taken to control a body corporate if, but only if—
  - (a) he or any person connected with him—
    - (i) is interested in any part of the equity share capital of that body, or
    - (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and
  - (b) he, the persons connected with him and the other directors of that company, together—
    - (i) are interested in more than 50% of that share capital, or
    - (ii) are entitled to exercise or control the exercise of more than 50% of that voting power.
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 252 (meaning of “connected person”)—
  - (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
  - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

## **256 Associated bodies corporate**

For the purposes of this Part—

- (a) bodies corporate are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## **257 References to company's constitution**

- (1) References in this Part to a company's constitution include—
  - (a) any resolution or other decision come to in accordance with the constitution, and
  - (b) any decision by the members of the company, or a class of members, that is treated by virtue of any enactment or rule of law as equivalent to a decision by the company.
- (2) This is in addition to the matters mentioned in section 17 (general provision as to matters contained in company's constitution).

---

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

---

*General*

**258 Power to increase financial limits**

- (1) The Secretary of State may by order substitute for any sum of money specified in this Part a larger sum specified in the order.
- (2) An order under this section is subject to negative resolution procedure.
- (3) An order does not have effect in relation to anything done or not done before it comes into force.

Accordingly, proceedings in respect of any liability incurred before that time may be continued or instituted as if the order had not been made.

**259 Transactions under foreign law**

For the purposes of this Part it is immaterial whether the law that (apart from this Act) governs an arrangement or transaction is the law of the United Kingdom, or a part of it, or not.