



# Companies Act 2006

## 2006 CHAPTER 46

### PART 37

#### COMPANIES: SUPPLEMENTARY PROVISIONS

##### *Requirements as to independent valuation*

#### **1149 Application of valuation requirements**

The provisions of sections 1150 to 1153 apply to the valuation and report required by—

- section 93 (re-registration as public company: recent allotment of shares for non-cash consideration);
- section 593 (allotment of shares of public company in consideration of non-cash asset);
- section 599 (transfer of non-cash asset to public company).

#### **1150 Valuation by qualified independent person**

- (1) The valuation and report must be made by a person (“the valuer”) who—
  - (a) is eligible for appointment as a statutory auditor (see section 1212), and
  - (b) meets the independence requirement in section 1151.
- (2) However, where it appears to the valuer to be reasonable for the valuation of the consideration, or part of it, to be made by (or for him to accept a valuation made by) another person who—
  - (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it, and
  - (b) is not an officer or employee of—
    - (i) the company, or
    - (ii) any other body corporate that is that company’s subsidiary or holding company or a subsidiary of that company’s holding company,

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*Status: This is the original version (as it was originally enacted).*

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or a partner of or employed by any such officer or employee,  
he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this section.

- (3) The references in subsection (2)(b) to an officer or employee do not include an auditor.
- (4) Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report must state that fact and shall also—
- (a) state the former's name and what knowledge and experience he has to carry out the valuation, and
  - (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of that valuation.

### **1151 The independence requirement**

- (1) A person meets the independence requirement for the purposes of section 1150 only if—
- (a) he is not—
    - (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) he is not—
    - (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; and
  - (c) there does not exist 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.
- (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 1152.
- (4) Regulations under this section are subject to negative resolution procedure.

### **1152 Meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 1151 (valuation: 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”.

### **1153 Valuer entitled to full disclosure**

- (1) A person carrying out a valuation or making a report with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to—
- (a) carry out the valuation or make the report, and
  - (b) provide any note required by section 596(3) or 600(3) (note required where valuation carried out by another person).
- (2) A person who knowingly or recklessly makes a statement to which this subsection applies that is misleading, false or deceptive in a material particular commits an offence.
- (3) Subsection (2) applies to a statement—
- (a) made (whether orally or in writing) to a person carrying out a valuation or making a report, and
  - (b) conveying or purporting to convey any information or explanation which that person requires, or is entitled to require, under subsection (1).
- (4) A person guilty of an offence under subsection (2) is liable—
- (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).