



# Companies Act 1985

## 1985 CHAPTER 6

### PART X

#### ENFORCEMENT OF FAIR DEALING BY DIRECTORS

##### *Restrictions on directors taking financial advantage*

#### **311 Prohibition on tax-free payments to directors**

- (1) It is not lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.
- (2) Any provision contained in a company's articles, or in any contract, or in any resolution of a company or a company's directors, for payment to a director of remuneration as above mentioned has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

#### **312 Payment to director for loss of office, etc.**

It is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company.

#### **313 Company approval for property transfer**

- (1) It is not lawful, in connection with the transfer of the whole or any part of the undertaking or property of a company, for any payment to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars of the proposed payment (including its amount) have been disclosed to members of the company and the proposal approved by the company.

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- (2) Where a payment unlawful under this section is made to a director, the amount received is deemed to be received by him in trust for the company.

### **314 Director's duty of disclosure on takeover, etc.**

- (1) This section applies where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—
- (a) an offer made to the general body of shareholders; or
  - (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
  - (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
  - (d) any other offer which is conditional on acceptance to a given extent,
- a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.
- (2) It is in those circumstances the director's duty to take all reasonable steps to secure that particulars of the proposed payment (including its amount) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.
- (3) If—
- (a) the director fails to take those steps, or
  - (b) any person who has been properly required by the director to include those particulars in or send them with the notice required by subsection (2) fails to do so,
- he is liable to a fine.

### **315 Consequences of non-compliance with s. 314**

- (1) If in the case of any such payment to a director as is mentioned in section 314(1)—
- (a) his duty under that section is not complied with, or
  - (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting (summoned for the purpose) of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,
- any sum received by the director on account of the payment is deemed to have been received by him in trust for persons who have sold their shares as a result of the offer made; and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.
- (2) Where—
- (a) the shareholders referred to in subsection (1)(b) are not all the members of the company, and
  - (b) no provision is made by the articles for summoning or regulating the meeting referred to in that paragraph,
- the provisions of this Act and of the company's articles relating to general meetings of the company apply (for that purpose) to the meeting either without modification or with such modifications as the Secretary of State on the application of any person

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concerned may direct for the purpose of adapting them to the circumstances of the meeting.

- (3) If at a meeting summoned for the purpose of approving any payment as required by subsection (1)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment is deemed for the purposes of that subsection to have been approved.

### **316 Provisions supplementing ss. 312-315**

- (1) Where in proceedings for the recovery of any payment as having, by virtue of section 313(2) or 315(1), been received by any person in trust, it is shown that—

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading to it; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment is deemed, except in so far as the contrary is shown, to be one to which the provisions mentioned above in this subsection apply.

- (2) If in connection with any such transfer as is mentioned in any of sections 313 to 315—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or
- (b) any valuable consideration is given to any such director,

the excess or the money value of the consideration (as the case may be) is deemed for the purposes of that section to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

- (3) References in sections 312 to 315 to payments made to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services.

" Pension" here includes any superannuation allowance, superannuation gratuity or similar payment.

- (4) Nothing in sections 313 to 315 prejudices the operation of any rule of law requiring disclosure to be made with respect to such payments as are there mentioned, or with respect to any other like payments made or to be made to a company's directors.

### **317 Directors to disclose interest in contracts**

- (1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

- (2) In the case of a proposed contract, the declaration shall be made—

- (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration ; or

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- (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested ;
- and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.
- (3) For purposes of this section, a general notice given to the directors of a company by a director to the effect that—
- (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or
- (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of section 346 below),
- is deemed a sufficient declaration of interest in relation to any such contract.
- (4) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- (5) A reference in this section to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 22nd December 1980.
- (6) For purposes of this section, a transaction or arrangement of a kind described in section 330 (prohibition of loans, quasi-loans etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.
- (7) A director who fails to comply with this section is liable to a fine.
- (8) This section applies to a shadow director as it applies to a director, except that a shadow director shall declare his interest, not at a meeting of the directors, but by a notice in writing to the directors which is either—
- (a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by subsection (2) to be made ; or
- (b) a notice which under subsection (3) falls to be treated as a sufficient declaration of that interest (or would fall to be so treated apart from subsection (4)).
- (9) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

### **318 Directors' service contracts to be open to inspection**

- (1) Subject to the following provisions, every company shall keep at an appropriate place—
- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract ;
- (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and

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- (c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.
- (2) All copies and memoranda kept by a company in pursuance of subsection (1) shall be kept at the same place.
- (3) The following are appropriate places for the purposes of subsection (1)—
  - (a) the company's registered office;
  - (b) the place where its register of members is kept (if other than its registered office);
  - (c) its principal place of business, provided that is situated in that part of Great Britain in which the company is registered.
- (4) Every company shall send notice in the prescribed form to the registrar of companies of the place where copies and memoranda are kept in compliance with subsection (1), and of any change in that place, save in a case in which they have at all times been kept at the company's registered office.
- (5) Subsection (1) does not apply to a director's contract of service with the company or with a subsidiary of it if that contract required him to work wholly or mainly outside the United Kingdom; but the company shall keep a memorandum—
  - (a) in the case of a contract of service with the company, giving the director's name and setting out the provisions of the contract relating to its duration ;
  - (b) in the case of a contract of service with a subsidiary, giving the director's name and the name and place of incorporation of the subsidiary, and setting out the provisions of the contract relating to its duration,at the same place as copies and memoranda are kept by the company in pursuance of subsection (1).
- (6) A shadow director is treated for purposes of this section as a director.
- (7) Every copy and memorandum required by subsection (1) or (5) to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day be allowed for inspection), be open to inspection of any member of the company without charge.
- (8) If—
  - (a) default is made in complying with subsection (1) or (5), or
  - (b) an inspection required under subsection (7) is refused, or
  - (c) default is made for 14 days in complying with subsection (4),the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (9) In the case of a refusal of an inspection required under subsection (7) of a copy or memorandum, the court may by order compel an immediate inspection of it.
- (10) Subsections (1) and (5) apply to a variation of a director's contract of service as they apply to the contract.
- (11) This section does not require that there be kept a copy of, or memorandum setting out the terms of, a contract (or its variation) at a time when the unexpired portion of the term for which the contract is to be in force is less than 12 months, or at a time

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at which the contract can, within the next ensuing 12 months, be terminated by the company without payment of compensation.

### **319 Director's contract of employment for more than 5 years**

- (1) This section applies in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), for a period of more than 5 years during which the employment—
  - (a) cannot be terminated by the company by notice; or
  - (b) can be so terminated only in specified circumstances.
- (2) In any case where—
  - (a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and
  - (b) more than 6 months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it) under which he is to be employed with the company or, where he is a director of a holding company, within the group,this section applies as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.
- (3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1), unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.
- (4) No approval is required to be given under this section by any body corporate unless it is a company within the meaning of this Act, or is registered under section 680, or if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.
- (5) A resolution of a company approving such a term as is mentioned in subsection (1) shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—
  - (a) at the company's registered office for not less than 15 days ending with the date of the meeting; and
  - (b) at the meeting itself.
- (6) A term incorporated in an agreement in contravention of this section is, to the extent that it contravenes the section, void; and that agreement and, in a case where subsection (2) applies, the original agreement are deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.
- (7) In this section—
  - (a) "employment" includes employment under a contract for services; and
  - (b) "group", in relation to a director of a holding company, means the group which consists of that company and its subsidiaries;

and for purposes of this section a shadow director is treated as a director.

### **320 Substantial property transactions involving directors, etc.**

- (1) With the exceptions provided by the section next following, a company shall not enter into an arrangement—
  - (a) whereby a director of the company or its holding company, or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or
  - (b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected,unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.
- (2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than £1,000 but (subject to that) exceeds £50,000 or 10 per cent, of the company's asset value, that is—
  - (a) except in a case falling within paragraph (b) below, the value of the company's net assets determined by reference to the accounts prepared and laid under Part VII in respect of the last preceding financial year in respect of which such accounts were so laid ; and
  - (b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.
- (3) For purposes of this section and sections 321 and 322, a shadow director is treated as a director.

### **321 Exceptions from s. 320**

- (1) No approval is required to be given under section 320 by any body corporate unless it is a company within the meaning of this Act or registered under section 680 or, if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.
- (2) Section 320(1) does not apply to an arrangement for the acquisition of a non-cash asset—
  - (a) if the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiaries, or by one wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company, or
  - (b) if the arrangement is entered into by a company which is being wound up, unless the winding up is a members' voluntary winding up.
- (3) Section 320(1)(a) does not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

### **322 Liabilities arising from contravention of s. 320**

- (1) An arrangement entered into by a company in contravention of section 320, and any transaction entered into in pursuance of the arrangement (whether by the company or

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any other person) is voidable at the instance of the company unless one or more of the conditions specified in the next subsection is satisfied.

- (2) Those conditions are that—
- (a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or
  - (b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or
  - (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.
- (3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 320, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction, and
  - (b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) Subsection (3) is without prejudice to any liability imposed otherwise than by that subsection, and is subject to the following two subsections; and the liability under subsection (3) arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1).
- (5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 320, that director is not liable under subsection (3) if he shows that he took all reasonable steps to secure the company's compliance with that section.
- (6) In any case, a person so connected and any such other director as is mentioned in subsection (3) is not so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.