



# Companies Act 1985

## 1985 CHAPTER 6

### PART XIV

#### INVESTIGATION OF COMPANIES AND THEIR AFFAIRS ; REQUISITION OF DOCUMENTS

##### *Appointment and functions of inspectors*

#### **431 Investigation of a company on its own application or that of its members**

- (1) The Secretary of State may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.
- (2) The appointment may be made—
  - (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued,
  - (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
  - (c) in any case, on application of the company.
- (3) The application shall be supported by such evidence as the Secretary of State may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.
- (4) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **432 Other company investigations**

- (1) The Secretary of State shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs ought to be so investigated.
- (2) The Secretary of State may make such an appointment if it appears to him that there are circumstances suggesting—
  - (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
  - (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
  - (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
  - (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.
- (3) Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431 ; and the power conferred by subsection (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.
- (4) The reference in subsection (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

### **433 Inspectors' powers during investigation**

- (1) If inspectors appointed under section 431 or 432 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so ; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.
- (2) Inspectors appointed under either section may at any time in the course of their investigation, without the necessity of making an interim report, inform the Secretary of State of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

### **434 Production of documents and evidence to inspectors**

- (1) When inspectors are appointed under section 431 or 432, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 433(1)—

---

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

---

- (a) to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
  - (b) to attend before the inspectors when required to do so, and
  - (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.
- (3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subsection (2), in relation to the affairs of the company or other body, and may administer an oath accordingly.
- (4) In this section a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and " agents ", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.
- (5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 431 to 433, or as applied by any other section in this Part) may be used in evidence against him.

#### **435 Power of inspector to call for directors' bank accounts**

- (1) If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Great Britain or elsewhere), into or out of which there has been paid—
  - (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed in the accounts of the company or other body corporate for any financial year, contrary to paragraphs 24 to 26 of Schedule 5, or
  - (b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement, or
  - (c) any money which has been in any way connected with an act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.
- (2) For purposes of subsection (1)(b), an " undisclosed " transaction, arrangement or agreement is one—
  - (a) particulars of which have not been disclosed in the notes to the accounts of any company for any financial year, contrary to section 232 and Part I of

---

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

---

Schedule 6 (disclosure of contracts between companies and their directors, etc.), or

- (b) in respect of which an amount outstanding was not included in the aggregate amounts required to be disclosed in the notes to the accounts of any company for any financial year by section 234 and Part III of Schedule 6, contrary to that section (transactions between banks and their directors), or
- (c) particulars of which were not included in the register of transactions, arrangements and agreements required to be maintained by section 343, contrary to that section.

#### **436 Obstruction of inspectors treated as contempt of court**

- (1) When inspectors are appointed under section 431 or 432 to investigate the affairs of a company, the following applies in the case of—
- (a) any officer or agent of the company.
  - (b) any officer or agent of another body corporate whose affairs are investigated under section 433, and
  - (c) any such person as is mentioned in section 434(2).

Section 434(4) applies with regard to references in this subsection to an officer or agent.

- (2) If that person—
- (a) refuses to produce any book or document which it is his duty under section 434 or 435 to produce, or
  - (b) refuses to attend before the inspectors when required to do so, or
  - (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other body corporate (as the case may be),
- the inspectors may certify the refusal in writing to the court.
- (3) The court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

#### **437 Inspectors' reports**

- (1) The inspectors may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State, and on the conclusion of their investigation shall make a final report to him.

Any such report shall be written or printed, as the Secretary of State directs.

- (2) If the inspectors were appointed under section 432 in pursuance of an order of the court, the Secretary of State shall furnish a copy of any report of theirs to the court.
- (3) In any case the Secretary of State may, if he thinks fit—
- (a) forward a copy of any report made by the inspectors to the company's registered office,
  - (b) furnish a copy on request and on payment of the prescribed fee to—
    - (i) any member of the company or other body corporate which is the subject of the report,

---

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

---

- (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Secretary of State to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
- (c) cause any such report to be printed and published.

#### **438 Power to bring civil proceedings on company's behalf**

- (1) If, from any report made under section 437 or from information or documents obtained under section 447 or 448 below, it appears to the Secretary of State that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.
- (2) The Secretary of State shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section.

#### **439 Expenses of investigating a company's affairs**

- (1) The expenses of and incidental to an investigation by inspectors appointed by the Secretary of State shall be defrayed in the first instance by him; but the persons mentioned in the following 4 subsections are, to the extent there specified, liable to make repayment to the Secretary of State.
- (2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.
- (3) A body corporate in whose name proceedings are brought under that section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this subsection is a first charge on the sums or property recovered.
- (4) A body corporate dealt with by the inspectors' report, where the inspectors were appointed otherwise than of the Secretary of State's own motion, is liable except where it was the applicant for the investigation, and except so far as the Secretary of State otherwise directs.
- (5) The applicant or applicants for the investigation, where the inspectors were appointed under section 431, is or are liable to such extent (if any) as the Secretary of State may direct
- (6) The report of inspectors appointed otherwise than of the Secretary of State's own motion may, if they think fit, and shall if the Secretary of State so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subsection (4) or (5) of this section.
- (7) For purposes of this section, any costs or expenses incurred by the Secretary of State in or in connection with proceedings brought under section 438 (including expenses incurred under subsection (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

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

---

- (8) Any liability to repay the Secretary of State imposed by subsections (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subsections (4) and (5); and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3).
- (9) A person liable under any one of those subsections is entitled to contribution from any other person liable under the same subsection, according to the amount of their respective liabilities under it
- (10) Expenses to be defrayed by the Secretary of State under this section shall, so far as not recovered under it, be paid out of money provided by Parliament.

#### **440 Power of Secretary of State to present winding-up petition**

If in the case of a body corporate liable to be wound up under this Act it appears to the Secretary of State from a report made by inspectors under section 437, or from information or documents obtained under section 447 or 448 below, that it is expedient in the public interest that the body should be wound up, he may (unless the body is already being wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable for it to be so.

#### **441 Inspectors' report to be evidence**

- (1) A copy of any report of inspectors appointed under section 431 or 432, certified by the Secretary of State to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.
- (2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.