



Companies Act 2006

2006 CHAPTER 46

PART 43

TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

Introductory

1265 The transparency obligations directive

In Part 6 of the Financial Services and Markets Act 2000 ([c. 8](#)) (which makes provision about official listing, prospectus requirements for transferable securities, etc), in section 103(1) (interpretation), at the appropriate place insert—

““the transparency obligations directive” means Directive [2004/109/EC](#) of the European Parliament and of the Council relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;”.

Transparency obligations

1266 Transparency rules

(1) After section 89 of the Financial Services and Markets Act 2000 insert—

“Transparency obligations

89A Transparency rules

- (1) The competent authority may make rules for the purposes of the transparency obligations directive.
- (2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.

Status: This is the original version (as it was originally enacted).

- (3) The competent authority may also make rules—
 - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the competent authority;
 - (b) providing for persons who hold comparable instruments (see section 89F(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares.
- (4) Rules under this section may, in particular, make provision—
 - (a) specifying how the proportion of—
 - (i) the total voting rights in respect of shares in an issuer, or
 - (ii) the total voting rights in respect of a particular class of shares in an issuer,
 held by a person is to be determined;
 - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held, or treated by virtue of subsection (3)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P;
 - (c) specifying the nature of the information which must be included in any notification;
 - (d) about the form of any notification;
 - (e) requiring any notification to be given within a specified period;
 - (f) specifying the manner in which any information is to be made public and the period within which it must be made public;
 - (g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.
- (5) Rules under this section are referred to in this Part as “transparency rules”.
- (6) Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

89B Provision of voteholder information

- (1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules—
 - (a) to the issuer, or
 - (b) to the public,
 or to both.
- (2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the competent authority.
- (3) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.
- (4) Transparency rules may require notification of voteholder information relating to a person—

- (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and
 - (b) subsequently, in accordance with the following provisions.
- (5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of—
 - (a) the total voting rights in respect of shares in the issuer, or
 - (b) the total voting rights in respect of a particular class of share in the issuer,held by the person.
- (6) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
 - (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
 - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
 - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (7) In subsection (6) “designated” means designated by the rules.

89C Provision of information by issuers of transferable securities

- (1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules—
 - (a) to make public information to which this section applies, or
 - (b) to notify to the competent authority information to which this section applies,or to do both.
- (2) In the case of every issuer, this section applies to—
 - (a) information required by Article 4 of the transparency obligations directive;
 - (b) information relating to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; and
 - (c) information about new loan issues and about any guarantee or security in connection with any such issue.
- (3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.
- (4) In the case of an issuer of shares, this section also applies to—
 - (a) information required by Article 5 of the transparency obligations directive;
 - (b) information required by Article 6 of that directive;
 - (c) voteholder information—
 - (i) notified to the issuer, or

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

- (ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;
- (d) information relating to the issuer’s capital; and
- (e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

89D Notification of voting rights held by issuer

- (1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer—
 - (a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and
 - (b) subsequently, in accordance with the following provisions.
- (2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of—
 - (a) the total voting rights in respect of shares in the issuer, or
 - (b) the total voting rights in respect of a particular class of share in the issuer,
 held by the issuer.
- (3) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
 - (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
 - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
 - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (4) In subsection (3) “designated” means designated by the rules.

89E Notification of proposed amendment of issuer’s constitution

Transparency rules may make provision requiring an issuer of transferable securities that are admitted to trading on a regulated market to notify a proposed amendment to its constitution—

- (a) to the competent authority, and
 - (b) to the market on which the issuer’s securities are admitted,
- at times and in circumstances specified in the rules.

89F Transparency rules: interpretation etc

- (1) For the purposes of sections 89A to 89G—
 - (a) the voting rights in respect of any voting shares are the voting rights attached to those shares,

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

- (b) a person is to be regarded as holding the voting rights in respect of the shares—
 - (i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;
 - (ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;
 - (iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and
 - (c) a person holds a “comparable instrument” in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares).
- (2) Transparency rules under section 89A(3)(b) may make different provision for different descriptions of comparable instrument.
 - (3) For the purposes of sections 89A to 89G two or more persons may, at the same time, each be regarded as holding the same voting rights.
 - (4) In those sections—
 - “Article 13 instrument” means a financial instrument of a type determined by the European Commission under Article 13.2 of the transparency obligations directive;
 - “UK market” means a market that is situated or operating in the United Kingdom;
 - “voting shares” means shares of an issuer to which voting rights are attached.

89G Transparency rules: other supplementary provisions

- (1) Transparency rules may impose the same obligations on a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer’s consent as they impose on an issuer of transferable securities.
- (2) Transparency rules that require a person to make information public may include provision authorising the competent authority to make the information public in the event that the person fails to do so.
- (3) The competent authority may make public any information notified to the authority in accordance with transparency rules.
- (4) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 28 of the Companies Act 2006.
- (5) Sections 89A to 89F and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.”.

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

- (2) The effectiveness for the purposes of section 155 of the Financial Services and Markets Act 2000 (c. 8) (consultation on proposed rules) of things done by the Financial Services Authority before this section comes into force with a view to making transparency rules (as defined in the provisions to be inserted in that Act by subsection (1) above) is not affected by the fact that those provisions were not then in force.

1267 Competent authority’s power to call for information

In Part 6 of the Financial Services and Markets Act 2000 after the sections inserted by section 1266 above insert—

“Power of competent authority to call for information

89H Competent authority’s power to call for information

- (1) The competent authority may by notice in writing given to a person to whom this section applies require him—
 - (a) to provide specified information or information of a specified description, or
 - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—
 - (a) an issuer in respect of whom transparency rules have effect;
 - (b) a voteholder;
 - (c) an auditor of—
 - (i) an issuer to whom this section applies, or
 - (ii) a voteholder;
 - (d) a person who controls a voteholder;
 - (e) a person controlled by a voteholder;
 - (f) a director or other similar officer of an issuer to whom this section applies;
 - (g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.
- (3) This section applies only to information and documents reasonably required in connection with the exercise by the competent authority of functions conferred on it by or under sections 89A to 89G (transparency rules).
- (4) Information or documents required under this section must be provided or produced—
 - (a) before the end of such reasonable period as may be specified, and
 - (b) at such place as may be specified.
- (5) If a person claims a lien on a document, its production under this section does not affect the lien.

89I Requirements in connection with call for information

- (1) The competent authority may require any information provided under section 89H to be provided in such form as it may reasonably require.
- (2) The competent authority may require—
 - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;
 - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (3) If a document is produced in response to a requirement imposed under section 89H, the competent authority may—
 - (a) take copies of or extracts from the document; or
 - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (4) In subsection (3)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
 - (a) has been or is a director or controller of that person;
 - (b) has been or is an auditor of that person;
 - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
 - (d) has been or is an employee of that person.
- (5) If a person who is required under section 89H to produce a document fails to do so, the competent authority may require him to state, to the best of his knowledge and belief, where the document is.

89J Power to call for information: supplementary provisions

- (1) The competent authority may require an issuer to make public any information provided to the authority under section 89H.
- (2) If the issuer fails to comply with a requirement under subsection (1), the competent authority may, after seeking representations from the issuer, make the information public.
- (3) In sections 89H and 89I (power of competent authority to call for information)
—
 - “control” and “controlled” have the meaning given by subsection (4) below;
 - “specified” means specified in the notice;
 - “voteholder” means a person who—
 - (a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89G (transparency rules), or
 - (b) is treated as holding such rights by virtue of rules under section 89A(3)(b).
- (4) For the purposes of those sections a person (“A”) controls another person (“B”) if—

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

- (a) A holds a majority of the voting rights in B,
 - (b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,
 - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
 - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (5) For the purposes of subsection (4)(b)—
- (a) any rights of a person controlled by A, and
 - (b) any rights of a person acting on behalf of A or a person controlled by A, are treated as held by A.”.

1268 Powers exercisable in case of infringement of transparency obligation

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections inserted by section 1267 above insert—

“Powers exercisable in case of infringement of transparency obligation

89K Public censure of issuer

- (1) If the competent authority finds that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect.
- (2) If the competent authority proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the issuer a decision notice setting out the terms of the statement.
- (4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (5) In this section “transparency obligation” means an obligation under—
 - (a) a provision of transparency rules, or
 - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

89L Power to suspend or prohibit trading of securities

- (1) This section applies to securities admitted to trading on a regulated market.
- (2) If the competent authority has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by an issuer, it may—

- (a) suspend trading in the securities for a period not exceeding 10 days,
 - (b) prohibit trading in the securities, or
 - (c) make a request to the operator of the market on which the issuer's securities are traded—
 - (i) to suspend trading in the securities for a period not exceeding 10 days, or
 - (ii) to prohibit trading in the securities.
- (3) If the competent authority has reasonable grounds for suspecting that a provision required by the transparency obligations directive has been infringed by a voteholder of an issuer, it may—
 - (a) prohibit trading in the securities, or
 - (b) make a request to the operator of the market on which the issuer's securities are traded to prohibit trading in the securities.
- (4) If the competent authority finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.
- (5) In this section “transparency obligation” means an obligation under—
 - (a) a provision contained in transparency rules, or
 - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

89M Procedure under section 89L

- (1) A requirement under section 89L takes effect—
 - (a) immediately, if the notice under subsection (2) states that that is the case;
 - (b) in any other case, on such date as may be specified in the notice.
- (2) If the competent authority—
 - (a) proposes to exercise the powers in section 89L in relation to a person, or
 - (b) exercises any of those powers in relation to a person with immediate effect,it must give that person written notice.
- (3) The notice must—
 - (a) give details of the competent authority's action or proposed action;
 - (b) state the competent authority's reasons for taking the action in question and choosing the date on which it took effect or takes effect;
 - (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal);
 - (d) inform him of the date on which the action took effect or takes effect;

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

- (e) inform him of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (4) The competent authority may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

89N Right to refer matters to the Tribunal

A person—

- (a) to whom a decision notice is given under section 89K (public censure), or
 - (b) to whom a notice is given under section 89M (procedure in connection with suspension or prohibition of trading),
- may refer the matter to the Tribunal.”.

Other matters

1269 Corporate governance rules

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections inserted by section 1268 above insert—

“Corporate governance

89O Corporate governance rules

- (1) The competent authority may make rules (“corporate governance rules”)—
 - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
 - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.
- (2) “Corporate governance”, in relation to an issuer, includes—
 - (a) the nature, constitution or functions of the organs of the issuer;
 - (b) the manner in which organs of the issuer conduct themselves;
 - (c) the requirements imposed on organs of the issuer;
 - (d) the relationship between the different organs of the issuer;
 - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer’s securities.

- (3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by—
 - (a) rules under this section, and
 - (b) listing rules.
- (4) For this purpose—
 - “foreign-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating outside the United Kingdom;
 - “UK-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating in the United Kingdom.
- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.”.

1270 Liability for false or misleading statements in certain publications

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 90 insert—

“90A Compensation for statements in certain publications

- (1) The publications to which this section applies are—
 - (a) any reports and statements published in response to a requirement imposed by a provision implementing Article 4, 5 or 6 of the transparency obligations directive, and
 - (b) any preliminary statement made in advance of a report or statement to be published in response to a requirement imposed by a provision implementing Article 4 of that directive, to the extent that it contains information that it is intended—
 - (i) will appear in the report or statement, and
 - (ii) will be presented in the report or statement in substantially the same form as that in which it is presented in the preliminary statement.
- (2) The securities to which this section applies are—
 - (a) securities that are traded on a regulated market situated or operating in the United Kingdom, and
 - (b) securities that—
 - (i) are traded on a regulated market situated or operating outside the United Kingdom, and
 - (ii) are issued by an issuer for which the United Kingdom is the home Member State within the meaning of Article 2.1(i) of the transparency obligations directive.
- (3) The issuer of securities to which this section applies is liable to pay compensation to a person who has—
 - (a) acquired such securities issued by it, and
 - (b) suffered loss in respect of them as a result of—

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

- (i) any untrue or misleading statement in a publication to which this section applies, or
 - (ii) the omission from any such publication of any matter required to be included in it.
- (4) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication—
 - (a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
 - (b) knew the omission to be dishonest concealment of a material fact.
- (5) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities—
 - (a) in reliance on the information in the publication, and
 - (b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information.
- (6) Except as mentioned in subsection (8)—
 - (a) the issuer is not subject to any other liability than that provided for by this section in respect of loss suffered as a result of reliance by any person on—
 - (i) an untrue or misleading statement in a publication to which this section applies, or
 - (ii) the omission from any such publication of any matter required to be included in it, and
 - (b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.
- (7) Any reference in subsection (6) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.
- (8) This section does not affect—
 - (a) the powers conferred by section 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution);
 - (b) liability for a civil penalty;
 - (c) liability for a criminal offence.
- (9) For the purposes of this section—
 - (a) the following are persons “discharging managerial responsibilities” in relation to a publication—
 - (i) any director of the issuer (or person occupying the position of director, by whatever name called),
 - (ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,
 - (iii) in the case of an issuer that has no persons within subparagraph (i) or (ii), any senior executive of the issuer having responsibilities in relation to the publication;
 - (b) references to the acquisition by a person of securities include his contracting to acquire them or any interest in them.

90B Power to make further provision about liability for published information

- (1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.
- (2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.”.

1271 Exercise of powers where UK is host member State

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 100 insert—

“100A Exercise of powers where UK is host member state

- (1) This section applies to the exercise by the competent authority of any power under this Part exercisable in case of infringement of—
 - (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
 - (b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,in relation to an issuer whose home State is a member State other than the United Kingdom.
- (2) The competent authority may act in such a case only in respect of the infringement of a provision required by the relevant directive.

Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.
- (3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person’s home State requesting it—
 - (a) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
 - (b) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (4) The authority may not act further unless satisfied—
 - (a) that the competent authority of the person’s home State has failed or refused to take measures for the purpose mentioned in subsection (3) (a), or
 - (b) that the measures taken by that authority have proved inadequate for that purpose.

This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).

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

- (5) If the authority is so satisfied, it must, after informing the competent authority of the person's home State, take all appropriate measures to protect investors.
- (6) In such a case the authority must inform the Commission of the measures at the earliest opportunity.”.

1272 Transparency obligations and related matters: minor and consequential amendments

- (1) Schedule 15 to this Act makes minor and consequential amendments in connection with the provision made by this Part.
- (2) In that Schedule—
 - Part 1 contains amendments of the Financial Services and Markets Act 2000 (c. 8);
 - Part 2 contains amendments of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

1273 Corporate governance regulations

- (1) The Secretary of State may make regulations—
 - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
 - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.
- (2) “Corporate governance”, in relation to an issuer, includes—
 - (a) the nature, constitution or functions of the organs of the issuer;
 - (b) the manner in which organs of the issuer conduct themselves;
 - (c) the requirements imposed on organs of the issuer;
 - (d) the relationship between different organs of the issuer;
 - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer's securities.
- (3) The regulations may—
 - (a) make provision by reference to any specified code on corporate governance that may be issued from time to time by a specified body;
 - (b) create new criminal offences (subject to subsection (4));
 - (c) make provision excluding liability in damages in respect of things done or omitted for the purposes of, or in connection with, the carrying on, or purported carrying on, of any specified activities.

“Specified” here means specified in the regulations.
- (4) The regulations may not create a criminal offence punishable by a greater penalty than—
 - (a) on indictment, a fine;
 - (b) on summary conviction, a fine not exceeding the statutory maximum or (if calculated on a daily basis) £100 a day.

- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “issuer”, “securities” and “regulated market” have the same meaning as in Part 6 of the Financial Services and Markets Act [2000 \(c. 8\)](#).