

Status: Point in time view as at 28/11/2017.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, SCHEDULE 1B. (See end of Document for details)

SCHEDULES

[^{F1} SCHEDULE 1B

Section 790I

ENFORCEMENT OF DISCLOSURE REQUIREMENTS

Textual Amendments

- F1** Schs. 1A, 1B inserted (26.5.2015 for specified purposes, 6.4.2016 in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 3 para. 2**; S.I. 2015/1329, reg. 3(a); S.I. 2015/2029, reg. 4(a)

Modifications etc. (not altering text)

- C1** Sch. 1B applied (with modifications) by S.I. 2009/1804, **reg. 31N** (as inserted (6.4.2016) by The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 (S.I. 2016/340), regs. 1(3), 3, **Sch. 1**)
- C2** Sch. 1B applied (with modifications) by S.I. 2009/2436, **Sch. 1 para. 20B** (as inserted (26.6.2017) by The Information about People with Significant Control (Amendment) Regulations 2017 (S.I. 2017/693), regs. 2, 36 (with **Sch. Pt. 3**))

Right to issue restrictions notice

- 1 (1) This paragraph applies if—
- (a) a notice under section 790D or 790E is served by a company on a person who has a relevant interest in the company, and
 - (b) the person fails to comply with that notice within the time specified in it.
- (2) The company may give the person a notice under this paragraph (a “warning notice”) informing the person that it is proposing to issue the person with a notice (a “restrictions notice”) with respect to the relevant interest.
- (3) The company may issue the restrictions notice if, by the end of the period of one month beginning with the date on which the warning notice was given—
- (a) the person has not complied with the notice served under section 790D or 790E, and
 - (b) the company has not been provided with a valid reason sufficient to justify the person's failure to comply with the notice served under that section.
- (4) A restrictions notice is issued on a person by sending the notice to the person.
- (5) The effect of a restrictions notice is set out in paragraph 3.
- (6) In deciding whether to issue a restrictions notice, the company must have regard to the effect of the notice on the rights of third parties in respect of the relevant interest.

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Relevant interests

- 2 (1) For the purposes of this Schedule, a person has a relevant interest in a company if the person—
- (a) holds any shares in the company,
 - (b) holds any voting rights in the company, or
 - (c) holds the right to appoint or remove any member of the board of directors of the company.
- (2) References to “the relevant interest” are to the shares or right in question.
- (3) Part 3 of Schedule 1A applies for the interpretation of sub-paragraph (1) save that, where the relevant interest is by virtue of paragraph 19 or 20 of that Schedule treated for the purposes of that Schedule as held by a person other than the person who in fact holds the interest, both the holder and the other person are to be regarded for the purposes of this Schedule as having the relevant interest.

Effect of restrictions notice

- 3 (1) The effect of a restrictions notice issued under paragraph 1 with respect to a relevant interest is as follows—
- (a) any transfer of the interest is void,
 - (b) no rights are exercisable in respect of the interest,
 - (c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest-holder,
 - (d) except in a liquidation, no payment may be made of sums due from the company in respect of the interest, whether in respect of capital or otherwise.
- (2) An agreement to transfer an interest that is subject to the restriction in sub-paragraph (1)(a) is void.
- (3) Sub-paragraph (2) does not apply to an agreement to transfer the interest on the making of an order under paragraph 8 made by virtue of sub-paragraph (3)(b) of that paragraph (removal of restrictions in case of court-approved transfer).
- (4) An agreement to transfer any associated right (otherwise than in a liquidation) is void.
- (5) Sub-paragraph (4) does not apply to an agreement to transfer any such right on the making of an order under paragraph 8 made by virtue of sub-paragraph (3)(b) of that paragraph (removal of restrictions in case of court-approved transfer).
- (6) An “ associated right ”, in relation to a relevant interest, is—
- (a) a right to be issued with any shares issued in right of the relevant interest, or
 - (b) a right to receive payment of any sums due from the company in respect of the relevant interest.
- (7) The provisions of this section are subject to any directions given under paragraph 4.

Protection of third party rights

- 4 (1) The court may give a direction under this paragraph if, on application by any person aggrieved, the court is satisfied that a restrictions notice issued by the company under paragraph 1 unfairly affects the rights of third parties in respect of the relevant interest.

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- (2) The direction is given for the purpose of protecting those third party rights.
- (3) The direction is a direction that certain acts will not constitute a breach of the restrictions placed on the relevant interest by the restrictions notice.
- (4) An order containing a direction under this paragraph—
 - (a) must specify the acts that will not constitute a breach of the restrictions, and
 - (b) may confine the direction to cases where those acts are done by persons, or for purposes, described in the order.
- (5) The direction may be given subject to such terms as the court thinks fit.

Breach of restrictions

- 5 (1) A person commits an offence if the person does anything listed in sub-paragraph (2) knowing that the interest is subject to restrictions.
 - (2) The things are—
 - (a) exercising or purporting to exercise any right to dispose of a relevant interest,
 - (b) exercising or purporting to exercise any right to dispose of any right to be issued with a relevant interest, or
 - (c) voting in respect of a relevant interest (whether as holder of the interest or as proxy) or appointing a proxy to vote in respect of a relevant interest.
 - (3) A person who has a relevant interest that the person knows to be subject to restrictions commits an offence if the person—
 - (a) knows a person to be entitled (apart from the restrictions) to vote in respect of the interest, whether as holder or as proxy,
 - (b) does not know the person to be aware of the fact that the interest is subject to restrictions, and
 - (c) fails to notify the person of that fact.
 - (4) A person commits an offence if the person—
 - (a) either has a relevant interest that the person knows to be subject to restrictions or is entitled to an associated right, and
 - (b) enters in that capacity into an agreement that is void by virtue of paragraph 3(2) or (4).
 - (5) References in this Schedule to an interest being “subject to restrictions” are to an interest being subject to restrictions by virtue of a restrictions notice under paragraph 1.
- 6 If shares in a company are issued in contravention of a restriction imposed by virtue of a restrictions notice under paragraph 1, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- 7 (1) A person guilty of an offence under paragraph 5 or 6 is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction—
 - (i) in England and Wales, to a fine,
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

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- (2) The provisions of those paragraphs are subject to any direction given under paragraph 4 or 8.

Relaxation of restrictions

- 8 (1) An application may be made to the court for an order directing that the relevant interest cease to be subject to restrictions.
- (2) An application for an order under this paragraph may be made by the company in question or by any person aggrieved.
- (3) The court must not make an order under this paragraph unless—
- (a) it is satisfied that the information required by the notice served under section 790D or 790E has been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
 - (b) the relevant interest is to be transferred for valuable consideration and the court approves the transfer.
- (4) An order under this paragraph made by virtue of sub-paragraph (3)(b) may continue, in whole or in part, the restrictions mentioned in paragraph 3(1)(c) and (d) so far as they relate to a right acquired or offer made before the transfer.
- (5) Where any restrictions continue in force under sub-paragraph (4)—
- (a) an application may be made under this paragraph for an order directing that the relevant interest cease to be subject to those restrictions, and
 - (b) sub-paragraph (3) does not apply in relation to the making of such an order.

Orders for sale

- 9 (1) The court may order that the relevant interest subject to restrictions be sold subject to the court's approval as to the sale.
- (2) An application for an order under sub-paragraph (1) may only be made by the company in question.
- (3) If the court makes an order under this paragraph, it may make such further order relating to the sale or transfer of the interest as it thinks fit.
- (4) An application for an order under sub-paragraph (3) may be made—
- (a) by the company in question,
 - (b) by the person appointed by or in pursuance of the order to effect the sale, or
 - (c) by any person with an interest in the relevant interest.
- (5) On making an order under sub-paragraph (1) or (3), the court may order that the applicant's costs (in Scotland, expenses) be paid out of the proceeds of sale.
- 10 (1) If a relevant interest is sold in pursuance of an order under paragraph 9, the proceeds of the sale, less the costs of the sale, must be paid into court for the benefit of those who are beneficially interested in the relevant interest.
- (2) A person who is beneficially interested in the relevant interest may apply to the court for the whole or part of those proceeds to be paid to that person.
- (3) On such an application, the court must order the payment to the applicant of—

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- (a) the whole of the proceeds of sale together with any interest on the proceeds, or
 - (b) if another person was also beneficially interested in the relevant interest at the time of the sale, such proportion of the proceeds (and any interest) as the value of the applicant's interest bears to the total value of the relevant interest.
- (4) If the court has ordered under paragraph 9 that the costs (in Scotland, expenses) of an applicant under that paragraph are to be paid out of the proceeds of sale, the applicant is entitled to payment of those costs (or expenses) out of the proceeds before any person receives any part of the proceeds under this paragraph.

Company's power to withdraw restrictions notice

- 11 A company that issues a person with a restrictions notice under paragraph 1 must by notice withdraw the restrictions notice if—
- (a) it is satisfied that there is a valid reason sufficient to justify the person's failure to comply with the notice served under section 790D or 790E,
 - (b) the notice served under section 790D or 790E is complied with, or
 - (c) it discovers that the rights of a third party in respect of the relevant interest are being unfairly affected by the restrictions notice.

Supplementary provision

- 12 (1) The Secretary of State may by regulations make provision about the procedure to be followed by companies in issuing and withdrawing restrictions notices.
- (2) The regulations may in particular make provision about—
- (a) the form and content of warning notices and restrictions notices, and the manner in which they must be given,
 - (b) the factors to be taken into account in deciding what counts as a “valid reason” sufficient to justify a person's failure to comply with a notice under section 790D or 790E, and
 - (c) the effect of withdrawing a restrictions notice on matters that are pending with respect to the relevant interest when the notice is withdrawn.
- (3) Regulations under this paragraph are subject to negative resolution procedure.

Offences for failing to comply with notices

- 13 (1) A person to whom a notice under section 790D or 790E is addressed commits an offence if the person—
- (a) fails to comply with the notice, or
 - (b) in purported compliance with the notice—
 - (i) makes a statement that the person knows to be false in a material particular, or
 - (ii) recklessly makes a statement that is false in a material particular.
- (2) Where the person is a legal entity, an offence is also committed by every officer of the entity who is in default.

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- (3) A person does not commit an offence under sub-paragraph (1)(a) (or sub-paragraph (2) as it applies in relation to that sub-paragraph) if the person proves that the requirement to give information was frivolous or vexatious.
- (4) A person guilty of an offence under this paragraph 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 (or both);
 - (ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

Offences for failing to provide information

- 14 (1) A person commits an offence if the person—
- (a) fails to comply with a duty under section 790G or 790H, or
 - (b) in purported compliance with such a duty—
 - (i) makes a statement that the person knows to be false in a material particular, or
 - (ii) recklessly makes a statement that is false in a material particular.
- (2) Where the person is a legal entity, an offence is also committed by every officer of the entity who is in default.
- (3) A person guilty of an offence under this paragraph 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 (or both);
 - (ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).]

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