



Companies (Audit, Investigations and Community Enterprise) Act 2004

2004 CHAPTER 27

PART 1

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER 2

ACCOUNTS AND REPORTS

Defective accounts

12 Power of person authorised to require documents, information and explanations

(1) After section 245E of the Companies Act 1985 (c. 6) (as inserted by clause 11) insert—

“245F Power of authorised persons to require documents, information and explanations

- (1) This section applies where it appears to a person who is authorised under section 245C of this Act that there is, or may be, a question whether the annual accounts of a company comply with the requirements of this Act.
- (2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—
 - (a) discovering whether there are grounds for an application to the court under section 245B; or
 - (b) determining whether or not to make such an application.

Status: This is the original version (as it was originally enacted).

- (3) Those persons are—
 - (a) the company;
 - (b) any officer, employee, or auditor of the company;
 - (c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.
- (4) If a person fails to comply with a requirement under subsection (2), the authorised person may apply to the court for an order under subsection (5).
- (5) If on such an application the court decides that the person has failed to comply with the requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.
- (6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.
- (7) Nothing in this section compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.
- (8) In this section “document” includes information recorded in any form.

245G Restrictions on further disclosure of information obtained under section 245F

- (1) This section applies to information (in whatever form) which—
 - (a) has been obtained in pursuance of a requirement or order under section 245F, and
 - (b) relates to the private affairs of an individual or to any particular business.
- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (3) Subsection (2) does not apply to any disclosure of information which—
 - (a) is made for the purpose of facilitating the carrying out by a person authorised under section 245C of his functions under section 245B;
 - (b) is made to a person specified in Part 1 of Schedule 7B;
 - (c) is of a description specified in Part 2 of that Schedule; or
 - (d) is made in accordance with Part 3 of that Schedule.
- (4) The Secretary of State may by order amend Schedule 7B.
- (5) An order under subsection (4) must not—
 - (a) amend Part 1 of Schedule 7B by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);

- (b) amend Part 2 of Schedule 7B by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend Part 3 of Schedule 7B so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
 - (6) An order under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (7) A person who discloses any information in contravention of this section—
 - (a) is guilty of an offence, and
 - (b) is liable on conviction to imprisonment or a fine, or both.
 - (8) However, it is a defence for a person charged with an offence under subsection (7) to prove—
 - (a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245F; or
 - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
 - (9) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.
 - (10) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
 - (11) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998.”
- (2) Schedule 1 (which inserts Schedule 7B in the Companies Act 1985 (c. 6)) has effect.