

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON INDIVIDUAL DUTIES

#### *Chapter 3: Declaration of Interest in Existing Transaction Or Arrangement*

##### **How should the declaration be made?**

369. The declaration of interest must be made to the other directors using one of the following three methods:-
- at a meeting of the directors; or
  - by notice in writing (in accordance with the requirements of section 184); or
  - by general notice (in accordance with the requirements of section 185).

#### *Section 183: Offence of failure to declare interest*

370. This section restates section 317(7) of the 1985 Act. A director who fails to comply with the requirements of section 182 commits an offence. On conviction on indictment the maximum liability is an unlimited fine. On summary conviction the fine must not exceed the statutory maximum (currently £5,000). This section does not affect the validity of the transaction or impose any other civil consequences for a failure to make the declarations of interest required by section 182.

#### *Section 184: Declaration made by notice in writing*

371. This section provides a new written procedure for the declarations of interest required by section 182. A written notice declaring the nature and extent of the director's interest must be sent to all the other directors. It may be sent in hard copy form or, if the recipient agrees, in electronic form. It may be posted, delivered by hand or, if the recipient agrees, by electronic means. When this is done, the notice is treated as forming part of the proceedings of the next meeting of the directors, and so should form part of the minutes of that meeting (*subsection (5)*).

#### *Section 185: General notice treated as sufficient declaration*

372. This section replaces section 317(3) and (4) of the 1985 Act. It enables a director to give a general notice of his interests. A general notice is a declaration that the director is interested in another body corporate or firm, or that the director is connected with another person. If the company enters into a contract with the body corporate, firm or other person named in the general notice, the director does not need to declare any direct or indirect interest that he has in that contract arising as a result of his interest in the body corporate or firm named in the general notice or arising as a result of his connection to the person named in the general notice.
373. In order to be effective, the general notice must state the nature and extent of the director's interest in the body corporate or firm (for example, sole shareholder of the company) or the nature of his connection with the person (for example, spouse or other

connected person as defined in section 253). The requirement to disclose the extent of the interest implements a recommendation of the Law Commissions.

***Section 186: Declaration of interest in case of company with sole director***

374. This is a new provision. Where a company has only one director, it is not possible for the director to declare his interests to the other directors, because there are no other directors. Therefore, a sole director does not need to comply with section 182 (declaration of interest in existing transaction or arrangement).
375. The section makes special provision where the company has only one director, when it should in fact have more than one director (for example, because it is a public company). In such a case, the sole director must record in writing the nature and extent of his interest in any transaction or arrangement that has been entered into by the company.

***Section 187: Declaration of interest in existing transaction by shadow director***

376. This section replaces section 317(8) of the 1985 Act. It extends this Chapter to shadow directors, so that a shadow director must also declare the nature and extent of his interest in any transaction or arrangement that has been entered into by the company, in accordance with section 182. The declaration must be made by notice in writing (section 184) or by general notice (section 185).
377. The declaration is not made at a meeting of the directors, as this is not appropriate in the case of a shadow director. If the shadow director makes the declaration by general notice, that notice must be given in accordance with the notice in writing procedure set out in section 184. This means that a general notice given by a shadow director must comply with both section 184 and the first three subsections of section 185.
378. Otherwise, apart from section 186 (declaration of interest in case of company with sole director), which is not relevant to a shadow director, all the other provisions of this chapter apply to a shadow director, including the exemptions in section 182.