

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON INDIVIDUAL DUTIES

Chapter 3: Declaration of Interest in Existing Transaction Or Arrangement

Section 182: Declaration of interest in existing transaction or arrangement

360. This section requires a director to declare the nature and extent of any direct or indirect interest that he has in any transaction or arrangement entered into by the company. It replaces the provision made by section 317 of the 1985 Act.
361. This chapter differs from the provisions of that section in a number of important respects. The main points are summarised below.

What should be declared?

362. Directors are required to declare any interest, direct or indirect, that they have in an existing transaction or arrangement entered into by the company. This section only applies to transactions or arrangements already entered into by the company. Section 177 (duty to declare interests) applies in the case of proposed transactions or arrangements with the company.
363. The director does not need to be a party to the transaction with the company in order for a declaration to be required under this section. For example, where the director's spouse enters into a transaction with the company that may (but need not necessarily) give rise to an indirect interest on the part of the director in that transaction.
364. The declaration must be of the nature and extent of the director's direct or indirect interest.
365. If the director has declared his interest in accordance with section 177 at the time the transaction was proposed, and before it was entered into by the company, the director does not need to repeat that declaration once the transaction becomes an existing transaction to which this section applies (*subsection (1)*).
366. Furthermore, a director need not declare any interest:
- that cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - that the other directors already know about, or ought reasonably to know about; or
 - that concerns the terms of his service contract, considered (or to be considered) by a meeting of directors or by the relevant committee of directors.
367. A director is regarded as failing to make the declarations required by this section if he fails to declare something that he ought reasonably to have known. But the director is not otherwise expected by this section to declare things he does not know (*subsection (5)*).

When should the declaration be made?

368. The declaration should be made as soon as is reasonably practicable. But even if the declaration is not made as soon as it should have been, it must still be made (*subsection (4)*). If after a declaration has been made the director's interest in the transaction or arrangement changes, or the director realises that his interests were not as originally declared, the director must make another declaration of interest, correcting or updating the earlier one (*subsection (3)*).

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.