These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006

COMPANIES ACT 2006

EXPLANATORY NOTES

GENERAL INTRODUCTION TO CHAPTERS 4 AND 5

Chapter 4: Transactions With Directors Requiring Approval of Members

Structure

384. This Chapter sets out requirements for member approval in relation to four different types of transaction by a company:

- long-term service contracts;
- substantial property transactions;
- loans, quasi-loans and credit transactions;
- payments for loss of office.

385. The rules relating to each type of transaction tend to adopt the following structure: they begin with the rule requiring member approval, followed by exceptions to that rule and finally the consequences of breaching that rule.

Alignment of provisions

386. The provisions of this Chapter have been aligned wherever appropriate so as to achieve greater consistency of approach. Particular examples of alignment are mentioned below.

Criminal penalties

387. This Chapter no longer imposes any criminal penalties for a failure to comply with its requirements.

Civil remedies

388. The civil consequences of a failure to comply with the requirements for member approval of substantial property transactions and loans, quasi-loans and credit transactions have been aligned.

Approval by holding company

389. This Chapter applies to long-term service contracts, substantial property transactions, loans etc and payments for loss of office entered into by a company and involving either a director of the company or a director of the company's holding company. In the latter case, the transaction must be approved by both the company and the holding company (unless an exception applies).

Transactions between a company and the director of a fellow subsidiary

390. This Chapter does not normally apply to transactions entered into by a company that is neither the company of which the person is a director nor a subsidiary of the company of which the person is a director. The two exceptions are section 218 (payment for loss of office in connection with transfer of undertaking) and section 219 (payment for loss of office in connection with share transfer), where member approval is required for such a payment by any person to a director.

Exception for wholly-owned subsidiary

391. Approval is never required under this Chapter on the part of the member of a wholly-owned subsidiary or on the part of the members of an overseas company.

Shadow directors

392. Section 223 applies all the requirements of this Chapter to shadow directors (with a small modification in the case of payments for loss of office).

Approval required

393. Section 281(3) applies so that the member approval required is an ordinary resolution, but the company's articles may require a higher majority or even unanimity

394. Where approval for a transaction or arrangement is required under more than one set of rules in Chapter 4, all relevant sets of rules should apply, unless otherwise provided (section 225). For example, if the matter involves both a substantial property transaction and a loan, approval should be required under section 190 and under section 197 unless in each case a relevant exemption applies. Approval may be given for both purposes by a single resolution.

Memorandum with details of the transaction

395. In the case of long-term service contracts, loans etc and payments for loss of office, a memorandum setting out certain particulars about the transaction requiring approval of the members must be made available to the members.

396. If the approval is to be given by way of written resolution, the memorandum must be sent to the members able to vote on the written resolution no later than when the written resolution is sent to them. Section 224 provides that any accidental failure to send the memorandum to one or more members will not invalidate the approval given by the members, unless the company's articles state otherwise.

Requirement for Charity Commission consent for charitable companies

397. Section 66 of the Charities Act 1993 renders prior authorisation by the members for certain transactions invalid unless the Charity Commissioners have given their prior written consent. This reflects concern that, in some cases, the members of a charitable company are not independent of the directors, and that requiring their approval would not provide sufficient protection for the charity. Section 226 inserts two new sections into the Charities Act 1993 in place of section 66 of that Act to reflect the changes made by this Chapter.