



Companies Act 2006

2006 CHAPTER 46

PART 10

A COMPANY'S DIRECTORS

[^{F1}CHAPTER 4A

DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

Textual Amendments

F1 Pt. 10 Ch. 4A inserted (1.10.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 80**, 103(3); S.I. 2013/2227, art. 2(h)

Interpretation

226A Key definitions

(1) In this Chapter—

“directors' remuneration policy” means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;

“quoted company” has the same meaning as in Part 15 of this Act;

“remuneration payment” means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person—

(a) holding, agreeing to hold or having held office as director of a company, or

(b) holding, agreeing to hold or having held, during a period when the person is or was such a director—

(i) any other office or employment in connection with the management of the affairs of the company, or

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(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,

other than a payment for loss of office;

“ payment for loss of office ” has the same meaning as in Chapter 4 of this Part.

(2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—

- (a) to cease to hold office as director, or
- (b) to cease to be the holder of—
 - (i) any other office or employment in connection with the management of the affairs of the company, or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(3) If in connection with the transfer—

- (a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or
- (b) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.

(4) In subsection (2), “ relevant transfer ” means—

- (a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;
- (b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.

(5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.

(6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.

(7) References in this Chapter to a payment to a person (“B”) who is, has been or is to be a director of a company include—

- (a) a payment to a person connected with B, or
- (b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.

(8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.

(9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person's status as a shadow director.

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Restrictions relating to remuneration or loss of office payments

226B Remuneration payments

- (1) A quoted company may not make a remuneration payment to a person who is, or is to be or has been, a director of the company unless—
 - (a) the payment is consistent with the approved directors' remuneration policy, or
 - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

226C Loss of office payments

- (1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—
 - (a) the payment is consistent with the approved directors' remuneration policy, or
 - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

226D Sections 226B and 226C: supplementary

- (1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—
 - (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and
 - (b) at that meeting itself.
- (2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).
- (3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.
- (4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.
- (5) Nothing in section 226B or 226C authorises the making of a remuneration payment or (as the case may be) a payment for loss of office in contravention of the articles of the company concerned.
- (6) Nothing in section 226B or 226C applies in relation to a remuneration payment or (as the case may be) a payment for loss of office made to a person who is, or is to be or has been, a director of a quoted company before the earlier of—

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- (a) the end of the first financial year of the company to begin on or after the day on which it becomes a quoted company, and
 - (b) the date from which the company's first directors' remuneration policy to be approved under section 439A takes effect.
- (7) In this section the “company's website” is the website on which the company makes material available under section 430.

Supplementary

226E Payments made without approval: civil consequences

- (1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.
- (2) If a payment is made in contravention of section 226B or 226C—
 - (a) it is held by the recipient on trust for the company or other person making the payment, and
 - (b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.
- (3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company—
 - (a) subsection (2) does not apply, and
 - (b) the payment is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid—
 - (a) subsection (2) does not apply,
 - (b) the payment is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
 - (c) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.
- (5) If in proceedings against a director for the enforcement of a liability under subsection (2)(b)—
 - (a) the director shows that he or she has acted honestly and reasonably, and
 - (b) the court considers that, having regard to all the circumstances of the case, the director ought to be relieved of liability,

the court may relieve the director, either wholly or in part, from liability on such terms as the court thinks fit.

226F Relationship with requirements under Chapter 4

- (1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.

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- (2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b).]

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