



# Companies Act 2006

## 2006 CHAPTER 46

### PART 10

#### A COMPANY'S DIRECTORS

### CHAPTER 1

#### APPOINTMENT AND REMOVAL OF DIRECTORS

##### *Requirement to have directors*

#### **154 Companies required to have directors**

- (1) A private company must have at least one director.
- (2) A public company must have at least two directors.

#### **155 Companies required to have at least one director who is a natural person**

- (1) A company must have at least one director who is a natural person.
- (2) This requirement is met if the office of director is held by a natural person as a corporation sole or otherwise by virtue of an office.

#### **156 Direction requiring company to make appointment**

- (1) If it appears to the Secretary of State that a company is in breach of—
  - section 154 (requirements as to number of directors), or
  - section 155 (requirement to have at least one director who is a natural person),the Secretary of State may give the company a direction under this section.
- (2) The direction must specify—

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- (a) the statutory requirement the company appears to be in breach of,
- (b) what the company must do in order to comply with the direction, and
- (c) the period within which it must do so.

That period must be not less than one month or more than three months after the date on which the direction is given.

- (3) The direction must also inform the company of the consequences of failing to comply.
- (4) Where the company is in breach of section 154 or 155 it must comply with the direction by—
  - (a) making the necessary appointment or appointments, and
  - (b) giving notice of them under section 167,
 before the end of the period specified in the direction.
- (5) If the company has already made the necessary appointment or appointments (or so far as it has done so), it must comply with the direction by giving notice of them under section 167 before the end of the period specified in the direction.
- (6) If a company fails to comply with a direction under this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

### *Appointment*

## **157 Minimum age for appointment as director**

- (1) A person may not be appointed a director of a company unless he has attained the age of 16 years.
- (2) This does not affect the validity of an appointment that is not to take effect until the person appointed attains that age.
- (3) Where the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, the appointment to that other office of a person who has not attained the age of 16 years is not effective also to make him a director of the company until he attains the age of 16 years.
- (4) An appointment made in contravention of this section is void.
- (5) Nothing in this section affects any liability of a person under any provision of the Companies Acts if he—
  - (a) purports to act as director, or
  - (b) acts as a shadow director,
 although he could not, by virtue of this section, be validly appointed as a director.

- (6) This section has effect subject to section 158 (power to provide for exceptions from minimum age requirement).

### **158 Power to provide for exceptions from minimum age requirement**

- (1) The Secretary of State may make provision by regulations for cases in which a person who has not attained the age of 16 years may be appointed a director of a company.
- (2) The regulations must specify the circumstances in which, and any conditions subject to which, the appointment may be made.
- (3) If the specified circumstances cease to obtain, or any specified conditions cease to be met, a person who was appointed by virtue of the regulations and who has not since attained the age of 16 years ceases to hold office.
- (4) The regulations may make different provision for different parts of the United Kingdom.

This is without prejudice to the general power to make different provision for different cases.

- (5) Regulations under this section are subject to negative resolution procedure.

### **159 Existing under-age directors**

- (1) This section applies where—
  - (a) a person appointed a director of a company before section 157 (minimum age for appointment as director) comes into force has not attained the age of 16 when that section comes into force, or
  - (b) the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, and the person appointed to that other office has not attained the age of 16 years when that section comes into force,and the case is not one excepted from that section by regulations under section 158.
- (2) That person ceases to be a director on section 157 coming into force.
- (3) The company must make the necessary consequential alteration in its register of directors but need not give notice to the registrar of the change.
- (4) If it appears to the registrar (from other information) that a person has ceased by virtue of this section to be a director of a company, the registrar shall note that fact on the register.

### **160 Appointment of directors of public company to be voted on individually**

- (1) At a general meeting of a public company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.
- (2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time.

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But where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.

- (3) For the purposes of this section a motion for approving a person's appointment, or for nominating a person for appointment, is treated as a motion for his appointment.
- (4) Nothing in this section applies to a resolution amending the company's articles.

## **161 Validity of acts of directors**

- (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered—
  - (a) that there was a defect in his appointment;
  - (b) that he was disqualified from holding office;
  - (c) that he had ceased to hold office;
  - (d) that he was not entitled to vote on the matter in question.
- (2) This applies even if the resolution for his appointment is void under section 160 (appointment of directors of public company to be voted on individually).

### *Register of directors, etc*

## **162 Register of directors**

- (1) Every company must keep a register of its directors.
- (2) The register must contain the required particulars (see sections 163, 164 and 166) of each person who is a director of the company.
- (3) The register must be kept available for inspection—
  - (a) at the company's registered office, or
  - (b) at a place specified in regulations under section 1136.
- (4) The company must give notice to the registrar—
  - (a) of the place at which the register is kept available for inspection, and
  - (b) of any change in that place,
 unless it has at all times been kept at the company's registered office.
- (5) The register must be open to the inspection—
  - (a) of any member of the company without charge, and
  - (b) of any other person on payment of such fee as may be prescribed.
- (6) If default is made in complying with subsection (1), (2) or (3) or if default is made for 14 days in complying with subsection (4), or if an inspection required under subsection (5) is refused, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (8) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

### **163 Particulars of directors to be registered: individuals**

- (1) A company's register of directors must contain the following particulars in the case of an individual—
  - (a) name and any former name;
  - (b) a service address;
  - (c) the country or state (or part of the United Kingdom) in which he is usually resident;
  - (d) nationality;
  - (e) business occupation (if any);
  - (f) date of birth.
- (2) For the purposes of this section “name” means a person's Christian name (or other forename) and surname, except that in the case of—
  - (a) a peer, or
  - (b) an individual usually known by a title,the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes.

Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases—
  - (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
  - (b) in the case of any person, where the former name—
    - (i) was changed or disused before the person attained the age of 16 years, or
    - (ii) has been changed or disused for 20 years or more.
- (5) A person's service address may be stated to be “The company's registered office”.

### **164 Particulars of directors to be registered: corporate directors and firms**

- A company's register of directors must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—
- (a) corporate or firm name;
  - (b) registered or principal office;

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- (c) in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of—
  - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
  - (ii) the registration number in that register;
- (d) in any other case, particulars of—
  - (i) the legal form of the company or firm and the law by which it is governed, and
  - (ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

#### **165 Register of directors' residential addresses**

- (1) Every company must keep a register of directors' residential addresses.
- (2) The register must state the usual residential address of each of the company's directors.
- (3) If a director's usual residential address is the same as his service address (as stated in the company's register of directors), the register of directors' residential addresses need only contain an entry to that effect.

This does not apply if his service address is stated to be "The company's registered office".

- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (6) This section applies only to directors who are individuals, not where the director is a body corporate or a firm that is a legal person under the law by which it is governed.

#### **166 Particulars of directors to be registered: power to make regulations**

- (1) The Secretary of State may make provision by regulations amending—
  - section 163 (particulars of directors to be registered: individuals),
  - section 164 (particulars of directors to be registered: corporate directors and firms), or
  - section 165 (register of directors' residential addresses),
 so as to add to or remove items from the particulars required to be contained in a company's register of directors or register of directors' residential addresses.
- (2) Regulations under this section are subject to affirmative resolution procedure.

#### **167 Duty to notify registrar of changes**

- (1) A company must, within the period of 14 days from—
  - (a) a person becoming or ceasing to be a director, or

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- (b) the occurrence of any change in the particulars contained in its register of directors or its register of directors' residential addresses,  
give notice to the registrar of the change and of the date on which it occurred.
- (2) Notice of a person having become a director of the company must—
  - (a) contain a statement of the particulars of the new director that are required to be included in the company's register of directors and its register of directors' residential addresses, and
  - (b) be accompanied by a consent, by that person, to act in that capacity.
- (3) Where—
  - (a) a company gives notice of a change of a director's service address as stated in the company's register of directors, and
  - (b) the notice is not accompanied by notice of any resulting change in the particulars contained in the company's register of directors' residential addresses,  
the notice must be accompanied by a statement that no such change is required.
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

### *Removal*

## **168 Resolution to remove director**

- (1) A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.
- (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.
- (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (5) This section is not to be taken—
  - (a) as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or

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- (b) as derogating from any power to remove a director that may exist apart from this section.

## **169 Director's right to protest against removal**

- (1) On receipt of notice of an intended resolution to remove a director under section 168, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.
- (3) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—
  - (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).
- (4) If a copy of the representations is not sent as required by subsection (3) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the company's costs (in Scotland, expenses) on an application under subsection (5) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

## **CHAPTER 2**

### **GENERAL DUTIES OF DIRECTORS**

#### *Introductory*

## **170 Scope and nature of general duties**

- (1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.
- (2) A person who ceases to be a director continues to be subject—
  - (a) to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and



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- (b) to the duty in section 176 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

- (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
- (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.
- (5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

### *The general duties*

#### **171 Duty to act within powers**

A director of a company must—

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred.

#### **172 Duty to promote the success of the company**

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
  - (a) the likely consequences of any decision in the long term,
  - (b) the interests of the company's employees,
  - (c) the need to foster the company's business relationships with suppliers, customers and others,
  - (d) the impact of the company's operations on the community and the environment,
  - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
  - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

#### **173 Duty to exercise independent judgment**

- (1) A director of a company must exercise independent judgment.

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- (2) This duty is not infringed by his acting—
  - (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or
  - (b) in a way authorised by the company's constitution.

#### **174 Duty to exercise reasonable care, skill and diligence**

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—
  - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
  - (b) the general knowledge, skill and experience that the director has.

#### **175 Duty to avoid conflicts of interest**

- (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).
- (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.
- (4) This duty is not infringed—
  - (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (b) if the matter has been authorised by the directors.
- (5) Authorisation may be given by the directors—
  - (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
  - (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.
- (6) The authorisation is effective only if—
  - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
  - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

## **176 Duty not to accept benefits from third parties**

- (1) A director of a company must not accept a benefit from a third party conferred by reason of—
  - (a) his being a director, or
  - (b) his doing (or not doing) anything as director.
- (2) A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.
- (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.
- (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

## **177 Duty to declare interest in proposed transaction or arrangement**

- (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.
- (2) The declaration may (but need not) be made—
  - (a) at a meeting of the directors, or
  - (b) by notice to the directors in accordance with—
    - (i) section 184 (notice in writing), or
    - (ii) section 185 (general notice).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

- (6) A director need not declare an interest—
  - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—
    - (i) by a meeting of the directors, or
    - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

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### *Supplementary provisions*

#### **178 Civil consequences of breach of general duties**

- (1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.
- (2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

#### **179 Cases within more than one of the general duties**

Except as otherwise provided, more than one of the general duties may apply in any given case.

#### **180 Consent, approval or authorisation by members**

- (1) In a case where—
  - (a) section 175 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or
  - (b) section 177 (duty to declare interest in proposed transaction or arrangement) is complied with,
 the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company.  
  
 This is without prejudice to any enactment, or provision of the company's constitution, requiring such consent or approval.
- (2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 (transactions requiring approval of members), except that where that Chapter applies and—
  - (a) approval is given under that Chapter, or
  - (b) the matter is one as to which it is provided that approval is not needed,
 it is not necessary also to comply with section 175 (duty to avoid conflicts of interest) or section 176 (duty not to accept benefits from third parties).
- (3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 (transactions requiring approval of members).
- (4) The general duties—
  - (a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and
  - (b) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions.
- (5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.

## **181 Modification of provisions in relation to charitable companies**

- (1) In their application to a company that is a charity, the provisions of this Chapter have effect subject to this section.
- (2) Section 175 (duty to avoid conflicts of interest) has effect as if—
  - (a) for subsection (3) (which disapplies the duty to avoid conflicts of interest in the case of a transaction or arrangement with the company) there were substituted—

“(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company’s articles allow that duty to be so disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company’s articles.”;
  - (b) for subsection (5) (which specifies how directors of a company may give authority under that section for a transaction or arrangement) there were substituted—

“(5) Authorisation may be given by the directors where the company’s constitution includes provision enabling them to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.”.
- (3) Section 180(2)(b) (which disapplies certain duties under this Chapter in relation to cases excepted from requirement to obtain approval by members under Chapter 4) applies only if or to the extent that the company’s articles allow those duties to be so disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company’s articles.
- (4) After section 26(5) of the Charities Act 1993 (c. 10) (power of Charity Commission to authorise dealings with charity property etc) insert—

“(5A) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).”.
- (5) This section does not extend to Scotland.

## **CHAPTER 3**

### **DECLARATION OF INTEREST IN EXISTING TRANSACTION OR ARRANGEMENT**

## **182 Declaration of interest in existing transaction or arrangement**

- (1) Where a director of a company is in any way, directly or indirectly, interested in a transaction or arrangement that has been entered into by the company, he must declare the nature and extent of the interest to the other directors in accordance with this section.

This section does not apply if or to the extent that the interest has been declared under section 177 (duty to declare interest in proposed transaction or arrangement).
- (2) The declaration must be made—

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- (a) at a meeting of the directors, or
  - (b) by notice in writing (see section 184), or
  - (c) by general notice (see section 185).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made as soon as is reasonably practicable.  
  
 Failure to comply with this requirement does not affect the underlying duty to make the declaration.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.  
  
 For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.
- (6) A director need not declare an interest under this section—
  - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—
    - (i) by a meeting of the directors, or
    - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

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

- (1) A director who fails to comply with the requirements of section 182 (declaration of interest in existing transaction or arrangement) commits an offence.
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

- (1) This section applies to a declaration of interest made by notice in writing.
- (2) The director must send the notice to the other directors.
- (3) The notice may be sent in hard copy form or, if the recipient has agreed to receive it in electronic form, in an agreed electronic form.
- (4) The notice may be sent—
  - (a) by hand or by post, or
  - (b) if the recipient has agreed to receive it by electronic means, by agreed electronic means.

- (5) Where a director declares an interest by notice in writing in accordance with this section—
- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
  - (b) the provisions of section 248 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.

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

- (1) General notice in accordance with this section is a sufficient declaration of interest in relation to the matters to which it relates.
- (2) General notice is notice given to the directors of a company to the effect that the director—
- (a) has an interest (as member, officer, employee or otherwise) in a specified body corporate or firm and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that body corporate or firm, or
  - (b) is connected with a specified person (other than a body corporate or firm) and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person.
- (3) The notice must state the nature and extent of the director's interest in the body corporate or firm or, as the case may be, the nature of his connection with the person.
- (4) General notice is not effective unless—
- (a) it is given at a meeting of the directors, or
  - (b) the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

### **186 Declaration of interest in case of company with sole director**

- (1) Where a declaration of interest under section 182 (duty to declare interest in existing transaction or arrangement) is required of a sole director of a company that is required to have more than one director—
- (a) the declaration must be recorded in writing,
  - (b) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
  - (c) the provisions of section 248 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.
- (2) Nothing in this section affects the operation of section 231 (contract with sole member who is also a director: terms to be set out in writing or recorded in minutes).

### **187 Declaration of interest in existing transaction by shadow director**

- (1) The provisions of this Chapter relating to the duty under section 182 (duty to declare interest in existing transaction or arrangement) apply to a shadow director as to a director, but with the following adaptations.
- (2) Subsection (2)(a) of that section (declaration at meeting of directors) does not apply.

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- (3) In section 185 (general notice treated as sufficient declaration), subsection (4) (notice to be given at or brought up and read at meeting of directors) does not apply.
- (4) General notice by a shadow director is not effective unless given by notice in writing in accordance with section 184.

## CHAPTER 4

### TRANSACTIONS WITH DIRECTORS REQUIRING APPROVAL OF MEMBERS

#### *Service contracts*

#### **188 Directors' long-term service contracts: requirement of members' approval**

- (1) This section applies to provision under which the guaranteed term of a director's employment—
  - (a) with the company of which he is a director, or
  - (b) where he is the director of a holding company, within the group consisting of that company and its subsidiaries,
 is, or may be, longer than two years.
- (2) A company may not agree to such provision unless it has been approved—
  - (a) by resolution of the members of the company, and
  - (b) in the case of a director of a holding company, by resolution of the members of that company.
- (3) The guaranteed term of a director's employment is—
  - (a) the period (if any) during which the director's employment—
    - (i) is to continue, or may be continued otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), and
    - (ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances, or
  - (b) in the case of employment terminable by the company by notice, the period of notice required to be given,
 or, in the case of employment having a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods.
- (4) If more than six months before the end of the guaranteed term of a director's employment the company enters into a further service contract (otherwise than in pursuance of a right conferred, by or under the original contract, on the other party to it), this section applies as if there were added to the guaranteed term of the new contract the unexpired period of the guaranteed term of the original contract.
- (5) A resolution approving provision to which this section applies must not be passed unless a memorandum setting out the proposed contract incorporating the provision is made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;



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- (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (6) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.
- (7) In this section “employment” means any employment under a director's service contract.

### **189 Directors' long-term service contracts: civil consequences of contravention**

If a company agrees to provision in contravention of section 188 (directors' long-term service contracts: requirement of members' approval)—

- (a) the provision is void, to the extent of the contravention, and
- (b) the contract is deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

### *Substantial property transactions*

### **190 Substantial property transactions: requirement of members' approval**

- (1) A company may not enter into an arrangement under which—
  - (a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or
  - (b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected,unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.

For the meaning of “substantial non-cash asset” see section 191.

- (2) If the director or connected person is a director of the company's holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company or be conditional on such approval being obtained.
- (3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section.
- (4) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.
- (5) For the purposes of this section—
  - (a) an arrangement involving more than one non-cash asset, or

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(b) an arrangement that is one of a series involving non-cash assets, shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series.

- (6) This section does not apply to a transaction so far as it relates—
- (a) to anything to which a director of a company is entitled under his service contract, or
  - (b) to payment for loss of office as defined in section 215 (payments requiring members' approval).

### **191 Meaning of “substantial”**

- (1) This section explains what is meant in section 190 (requirement of approval for substantial property transactions) by a “substantial” non-cash asset.
- (2) An asset is a substantial asset in relation to a company if its value—
  - (a) exceeds 10% of the company's asset value and is more than £5,000, or
  - (b) exceeds £100,000.
- (3) For this purpose a company's “asset value” at any time is—
  - (a) the value of the company's net assets determined by reference to its most recent statutory accounts, or
  - (b) if no statutory accounts have been prepared, the amount of the company's called-up share capital.
- (4) A company's “statutory accounts” means its annual accounts prepared in accordance with Part 15, and its “most recent” statutory accounts means those in relation to which the time for sending them out to members (see section 424) is most recent.
- (5) Whether an asset is a substantial asset shall be determined as at the time the arrangement is entered into.

### **192 Exception for transactions with members or other group companies**

Approval is not required under section 190 (requirement of members' approval for substantial property transactions)—

- (a) for a transaction between a company and a person in his character as a member of that company, or
- (b) for a transaction between—
  - (i) a holding company and its wholly-owned subsidiary, or
  - (ii) two wholly-owned subsidiaries of the same holding company.

### **193 Exception in case of company in winding up or administration**

- (1) This section applies to a company—
  - (a) that is being wound up (unless the winding up is a members' voluntary winding up), or
  - (b) that is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

- (2) Approval is not required under section 190 (requirement of members' approval for substantial property transactions)—
  - (a) on the part of the members of a company to which this section applies, or
  - (b) for an arrangement entered into by a company to which this section applies.

#### **194 Exception for transactions on recognised investment exchange**

- (1) Approval is not required under section 190 (requirement of members' approval for substantial property transactions) for a transaction on a recognised investment exchange effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker.
- (2) For this purpose—
  - (a) “independent broker” means a person who, independently of the director or any person connected with him, selects the person with whom the transaction is to be effected; and
  - (b) “recognised investment exchange” has the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

#### **195 Property transactions: civil consequences of contravention**

- (1) This section applies where a company enters into an arrangement in contravention of section 190 (requirement of members' approval for substantial property transactions).
- (2) The arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the instance of the company, unless—
  - (a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible,
  - (b) the company has been indemnified in pursuance of this section by any other persons for the loss or damage suffered by it, or
  - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance.
- (3) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (4) is liable—
  - (a) to account to the company for any gain that he has made directly or indirectly by the arrangement or transaction, and
  - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) The persons so liable are—
  - (a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of section 190,
  - (b) any person with whom the company entered into the arrangement in contravention of that section who is connected with a director of the company or of its holding company,
  - (c) the director of the company or of its holding company with whom any such person is connected, and

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- (d) any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of an arrangement entered into by a company in contravention of section 190 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company's compliance with that section.
- (7) In any case—
  - (a) a person so connected is not liable by virtue of subsection (4)(b), and
  - (b) a director is not liable by virtue of subsection (4)(d),
 if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.
- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise.

## **196 Property transactions: effect of subsequent affirmation**

Where a transaction or arrangement is entered into by a company in contravention of section 190 (requirement of members' approval) but, within a reasonable period, it is affirmed—

- (a) in the case of a contravention of subsection (1) of that section, by resolution of the members of the company, and
  - (b) in the case of a contravention of subsection (2) of that section, by resolution of the members of the holding company,
- the transaction or arrangement may no longer be avoided under section 195.

### *Loans, quasi-loans and credit transactions*

## **197 Loans to directors: requirement of members' approval**

- (1) A company may not—
  - (a) make a loan to a director of the company or of its holding company, or
  - (b) give a guarantee or provide security in connection with a loan made by any person to such a director,
 unless the transaction has been approved by a resolution of the members of the company.
- (2) If the director is a director of the company's holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

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- (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (4) The matters to be disclosed are—
  - (a) the nature of the transaction,
  - (b) the amount of the loan and the purpose for which it is required, and
  - (c) the extent of the company's liability under any transaction connected with the loan.
- (5) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.

## **198 Quasi-loans to directors: requirement of members' approval**

- (1) This section applies to a company if it is—
  - (a) a public company, or
  - (b) a company associated with a public company.
- (2) A company to which this section applies may not—
  - (a) make a quasi-loan to a director of the company or of its holding company, or
  - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director,unless the transaction has been approved by a resolution of the members of the company.
- (3) If the director is a director of the company's holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (5) The matters to be disclosed are—
  - (a) the nature of the transaction,
  - (b) the amount of the quasi-loan and the purpose for which it is required, and
  - (c) the extent of the company's liability under any transaction connected with the quasi-loan.

- (6) No approval is required under this section on the part of the members of a body corporate that—
- (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.

## **199 Meaning of “quasi-loan” and related expressions**

- (1) A “quasi-loan” is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)—
- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
  - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (2) Any reference to the person to whom a quasi-loan is made is a reference to the borrower.
- (3) The liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

## **200 Loans or quasi-loans to persons connected with directors: requirement of members' approval**

- (1) This section applies to a company if it is—
- (a) a public company, or
  - (b) a company associated with a public company.
- (2) A company to which this section applies may not—
- (a) make a loan or quasi-loan to a person connected with a director of the company or of its holding company, or
  - (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to a person connected with such a director,
- unless the transaction has been approved by a resolution of the members of the company.
- (3) If the connected person is a person connected with a director of the company's holding company, the transaction must also have been approved by a resolution of the members of the holding company.
- (4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members—
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

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(ii) at the meeting itself.

(5) The matters to be disclosed are—

- (a) the nature of the transaction,
- (b) the amount of the loan or quasi-loan and the purpose for which it is required, and
- (c) the extent of the company's liability under any transaction connected with the loan or quasi-loan.

(6) No approval is required under this section on the part of the members of a body corporate that—

- (a) is not a UK-registered company, or
- (b) is a wholly-owned subsidiary of another body corporate.

## **201 Credit transactions: requirement of members' approval**

(1) This section applies to a company if it is—

- (a) a public company, or
- (b) a company associated with a public company.

(2) A company to which this section applies may not—

- (a) enter into a credit transaction as creditor for the benefit of a director of the company or of its holding company, or a person connected with such a director, or
- (b) give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of such a director, or a person connected with such a director,

unless the transaction (that is, the credit transaction, the giving of the guarantee or the provision of security, as the case may be) has been approved by a resolution of the members of the company.

(3) If the director or connected person is a director of its holding company or a person connected with such a director, the transaction must also have been approved by a resolution of the members of the holding company.

(4) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (5) is made available to members—

- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
- (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
  - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
  - (ii) at the meeting itself.

(5) The matters to be disclosed are—

- (a) the nature of the transaction,
- (b) the value of the credit transaction and the purpose for which the land, goods or services sold or otherwise disposed of, leased, hired or supplied under the credit transaction are required, and

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- (c) the extent of the company's liability under any transaction connected with the credit transaction.
- (6) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.

## **202 Meaning of “credit transaction”**

- (1) A “credit transaction” is a transaction under which one party (“the creditor”)—
  - (a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement,
  - (b) leases or hires any land or goods in return for periodical payments, or
  - (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.
- (2) Any reference to the person for whose benefit a credit transaction is entered into is to the person to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the transaction.
- (3) In this section—
  - “conditional sale agreement” has the same meaning as in the Consumer Credit Act 1974 (c. 39); and
  - “services” means anything other than goods or land.

## **203 Related arrangements: requirement of members' approval**

- (1) A company may not—
  - (a) take part in an arrangement under which—
    - (i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under section 197, 198, 200 or 201, and
    - (ii) that person, in pursuance of the arrangement, obtains a benefit from the company or a body corporate associated with it, or
  - (b) arrange for the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval,
 unless the arrangement in question has been approved by a resolution of the members of the company.
- (2) If the director or connected person for whom the transaction is entered into is a director of its holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving an arrangement to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;



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- (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
  - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
  - (ii) at the meeting itself.
- (4) The matters to be disclosed are—
  - (a) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates,
  - (b) the nature of the arrangement, and
  - (c) the extent of the company's liability under the arrangement or any transaction connected with it.
- (5) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.
- (6) In determining for the purposes of this section whether a transaction is one that would have required approval under section 197, 198, 200 or 201 if it had been entered into by the company, the transaction shall be treated as having been entered into on the date of the arrangement.

#### **204 Exception for expenditure on company business**

- (1) Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company—
  - (a) to provide a director of the company or of its holding company, or a person connected with any such director, with funds to meet expenditure incurred or to be incurred by him—
    - (i) for the purposes of the company, or
    - (ii) for the purpose of enabling him properly to perform his duties as an officer of the company, or
  - (b) to enable any such person to avoid incurring such expenditure.
- (2) This section does not authorise a company to enter into a transaction if the aggregate of—
  - (a) the value of the transaction in question, and
  - (b) the value of any other relevant transactions or arrangements,exceeds £50,000.

#### **205 Exception for expenditure on defending proceedings etc**

- (1) Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company—
  - (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him—
    - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company, or
    - (ii) in connection with an application for relief (see subsection (5)), or

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(b) to enable any such director to avoid incurring such expenditure, if it is done on the following terms.

(2) The terms are—

- (a) that the loan is to be repaid, or (as the case may be) any liability of the company incurred under any transaction connected with the thing done is to be discharged, in the event of—
  - (i) the director being convicted in the proceedings,
  - (ii) judgment being given against him in the proceedings, or
  - (iii) the court refusing to grant him relief on the application; and
- (b) that it is to be so repaid or discharged not later than—
  - (i) the date when the conviction becomes final,
  - (ii) the date when the judgment becomes final, or
  - (iii) the date when the refusal of relief becomes final.

(3) For this purpose a conviction, judgment or refusal of relief becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal;
- (b) if appealed against, when the appeal (or any further appeal) is disposed of.

(4) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.

(5) The reference in subsection (1)(a)(ii) to an application for relief is to an application for relief under—

section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or  
 section 1157 (general power of court to grant relief in case of honest and reasonable conduct).

## **206 Exception for expenditure in connection with regulatory action or investigation**

Approval is not required under section 197, 198, 200 or 201 (requirement of members' approval for loans etc) for anything done by a company—

- (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him in defending himself—
  - (i) in an investigation by a regulatory authority, or
  - (ii) against action proposed to be taken by a regulatory authority, in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or an associated company, or
- (b) to enable any such director to avoid incurring such expenditure.

## **207 Exceptions for minor and business transactions**

(1) Approval is not required under section 197, 198 or 200 for a company to make a loan or quasi-loan, or to give a guarantee or provide security in connection with a loan or quasi-loan, if the aggregate of—

- (a) the value of the transaction, and
  - (b) the value of any other relevant transactions or arrangements,
- does not exceed £10,000.

- (2) Approval is not required under section 201 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if the aggregate of—
  - (a) the value of the transaction (that is, of the credit transaction, guarantee or security), and
  - (b) the value of any other relevant transactions or arrangements,does not exceed £15,000.
- (3) Approval is not required under section 201 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if—
  - (a) the transaction is entered into by the company in the ordinary course of the company's business, and
  - (b) the value of the transaction is not greater, and the terms on which it is entered into are not more favourable, than it is reasonable to expect the company would have offered to, or in respect of, a person of the same financial standing but unconnected with the company.

## **208 Exceptions for intra-group transactions**

- (1) Approval is not required under section 197, 198 or 200 for—
  - (a) the making of a loan or quasi-loan to an associated body corporate, or
  - (b) the giving of a guarantee or provision of security in connection with a loan or quasi-loan made to an associated body corporate.
- (2) Approval is not required under section 201—
  - (a) to enter into a credit transaction as creditor for the benefit of an associated body corporate, or
  - (b) to give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of an associated body corporate.

## **209 Exceptions for money-lending companies**

- (1) Approval is not required under section 197, 198 or 200 for the making of a loan or quasi-loan, or the giving of a guarantee or provision of security in connection with a loan or quasi-loan, by a money-lending company if—
  - (a) the transaction (that is, the loan, quasi-loan, guarantee or security) is entered into by the company in the ordinary course of the company's business, and
  - (b) the value of the transaction is not greater, and its terms are not more favourable, than it is reasonable to expect the company would have offered to a person of the same financial standing but unconnected with the company.
- (2) A “money-lending company” means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of security in connection with loans or quasi-loans.
- (3) The condition specified in subsection (1)(b) does not of itself prevent a company from making a home loan—
  - (a) to a director of the company or of its holding company, or
  - (b) to an employee of the company,

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if loans of that description are ordinarily made by the company to its employees and the terms of the loan in question are no more favourable than those on which such loans are ordinarily made.

- (4) For the purposes of subsection (3) a “home loan” means a loan—
- (a) for the purpose of facilitating the purchase, for use as the only or main residence of the person to whom the loan is made, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it,
  - (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it, or
  - (c) in substitution for any loan made by any person and falling within paragraph (a) or (b).

## **210 Other relevant transactions or arrangements**

- (1) This section has effect for determining what are “other relevant transactions or arrangements” for the purposes of any exception to section 197, 198, 200 or 201.

In the following provisions “the relevant exception” means the exception for the purposes of which that falls to be determined.

- (2) Other relevant transactions or arrangements are those previously entered into, or entered into at the same time as the transaction or arrangement in question in relation to which the following conditions are met.
- (3) Where the transaction or arrangement in question is entered into—
- (a) for a director of the company entering into it, or
  - (b) for a person connected with such a director,
- the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by that company or by any of its subsidiaries.
- (4) Where the transaction or arrangement in question is entered into—
- (a) for a director of the holding company of the company entering into it, or
  - (b) for a person connected with such a director,
- the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by the holding company or by any of its subsidiaries.
- (5) A transaction or arrangement entered into by a company that at the time it was entered into—
- (a) was a subsidiary of the company entering into the transaction or arrangement in question, or
  - (b) was a subsidiary of that company's holding company,
- is not a relevant transaction or arrangement if, at the time the question arises whether the transaction or arrangement in question falls within a relevant exception, it is no longer such a subsidiary.

## **211 The value of transactions and arrangements**

- (1) For the purposes of sections 197 to 214 (loans etc)—
- (a) the value of a transaction or arrangement is determined as follows, and

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- (b) the value of any other relevant transaction or arrangement is taken to be the value so determined reduced by any amount by which the liabilities of the person for whom the transaction or arrangement was made have been reduced.
- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a credit transaction is the price that it is reasonable to expect could be obtained for the goods, services or land to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction in question.
- (5) The value of a guarantee or security is the amount guaranteed or secured.
- (6) The value of an arrangement to which section 203 (related arrangements) applies is the value of the transaction to which the arrangement relates.
- (7) If the value of a transaction or arrangement is not capable of being expressed as a specific sum of money—
  - (a) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason, and
  - (b) whether or not any liability under the transaction or arrangement has been reduced,its value is deemed to exceed £50,000.

## **212 The person for whom a transaction or arrangement is entered into**

For the purposes of sections 197 to 214 (loans etc) the person for whom a transaction or arrangement is entered into is—

- (a) in the case of a loan or quasi-loan, the person to whom it is made;
- (b) in the case of a credit transaction, the person to whom goods, land or services are supplied, sold, hired, leased or otherwise disposed of under the transaction;
- (c) in the case of a guarantee or security, the person for whom the transaction is made in connection with which the guarantee or security is entered into;
- (d) in the case of an arrangement within section 203 (related arrangements), the person for whom the transaction is made to which the arrangement relates.

## **213 Loans etc: civil consequences of contravention**

- (1) This section applies where a company enters into a transaction or arrangement in contravention of section 197, 198, 200, 201 or 203 (requirement of members' approval for loans etc).
- (2) The transaction or arrangement is voidable at the instance of the company, unless—
  - (a) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible,
  - (b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement, or

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- (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the transaction or arrangement would be affected by the avoidance.
- (3) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (4) is liable—
  - (a) to account to the company for any gain that he has made directly or indirectly by the transaction or arrangement, and
  - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the transaction or arrangement.
- (4) The persons so liable are—
  - (a) any director of the company or of its holding company with whom the company entered into the transaction or arrangement in contravention of section 197, 198, 201 or 203,
  - (b) any person with whom the company entered into the transaction or arrangement in contravention of any of those sections who is connected with a director of the company or of its holding company,
  - (c) the director of the company or of its holding company with whom any such person is connected, and
  - (d) any other director of the company who authorised the transaction or arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of a transaction or arrangement entered into by a company in contravention of section 200, 201 or 203 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company's compliance with the section concerned.
- (7) In any case—
  - (a) a person so connected is not liable by virtue of subsection (4)(b), and
  - (b) a director is not liable by virtue of subsection (4)(d),
 if he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances constituting the contravention.
- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction or arrangement may be called in question or any liability to the company may arise.

## **214 Loans etc: effect of subsequent affirmation**

Where a transaction or arrangement is entered into by a company in contravention of section 197, 198, 200, 201 or 203 (requirement of members' approval for loans etc) but, within a reasonable period, it is affirmed—

- (a) in the case of a contravention of the requirement for a resolution of the members of the company, by a resolution of the members of the company, and
- (b) in the case of a contravention of the requirement for a resolution of the members of the company's holding company, by a resolution of the members of the holding company,

the transaction or arrangement may no longer be avoided under section 213.

*Payments for loss of office*

**215 Payments for loss of office**

- (1) In this Chapter a “payment for loss of office” means a payment made to a director or past director of a company—
  - (a) by way of compensation for loss of office as director of the company,
  - (b) by way of compensation for loss, while director of the company or in connection with his ceasing to be a director of it, 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,
  - (c) as consideration for or in connection with his retirement from his office as director of the company, or
  - (d) as consideration for or in connection with his retirement, while director of the company or in connection with his ceasing to be a director of it, from—
    - (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.
- (2) The references to compensation and consideration include benefits otherwise than in cash and references in this Chapter to payment have a corresponding meaning.
- (3) For the purposes of sections 217 to 221 (payments requiring members' approval)—
  - (a) payment to a person connected with a director, or
  - (b) payment to any person at the direction of, or for the benefit of, a director or a person connected with him,is treated as payment to the director.
- (4) References in those sections to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to.

**216 Amounts taken to be payments for loss of office**

- (1) This section applies where in connection with any such transfer as is mentioned in section 218 or 219 (payment in connection with transfer of undertaking, property or shares) a director of the company—
  - (a) is to cease to hold office, or
  - (b) is 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.

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- (2) If in connection with any such transfer—
- (a) the price to be paid to the director for any shares in the company held by him 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 those sections to have been a payment for loss of office.

#### **217 Payment by company: requirement of members' approval**

- (1) A company may not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the members of the company.
- (2) A company may not make a payment for loss of office to a director of its holding company unless the payment has been approved by a resolution of the members of each of those companies.
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (4) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.

#### **218 Payment in connection with transfer of undertaking etc: requirement of members' approval**

- (1) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the members of the company.
- (2) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company unless the payment has been approved by a resolution of the members of each of the companies.
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought—



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- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (4) No approval is required under this section on the part of the members of a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.
- (5) A payment made in pursuance of an arrangement—
  - (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and
  - (b) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made, is privy,is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

## **219 Payment in connection with share transfer: requirement of members' approval**

- (1) No payment for loss of office may be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid unless the payment has been approved by a resolution of the relevant shareholders.
- (2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought—
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both—
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (4) Neither the person making the offer, nor any associate of his (as defined in section 988), is entitled to vote on the resolution, but—
  - (a) where the resolution is proposed as a written resolution, they are entitled (if they would otherwise be so entitled) to be sent a copy of it, and
  - (b) at any meeting to consider the resolution they are entitled (if they would otherwise be so entitled) to be given notice of the meeting, to attend and speak and if present (in person or by proxy) to count towards the quorum.

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- (5) If at a meeting to consider the resolution a quorum is not present, and after the meeting has been adjourned to a later date a quorum is again not present, the payment is (for the purposes of this section) deemed to have been approved.
- (6) No approval is required under this section on the part of shareholders in a body corporate that—
  - (a) is not a UK-registered company, or
  - (b) is a wholly-owned subsidiary of another body corporate.
- (7) A payment made in pursuance of an arrangement—
  - (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and
  - (b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy,
 is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

## **220 Exception for payments in discharge of legal obligations etc**

- (1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) for a payment made in good faith—
  - (a) in discharge of an existing legal obligation (as defined below),
  - (b) by way of damages for breach of such an obligation,
  - (c) by way of settlement or compromise of any claim arising in connection with the termination of a person's office or employment, or
  - (d) by way of pension in respect of past services.
- (2) In relation to a payment within section 217 (payment by company) an existing legal obligation means an obligation of the company, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office.
- (3) In relation to a payment within section 218 or 219 (payment in connection with transfer of undertaking, property or shares) an existing legal obligation means an obligation of the person making the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.
- (4) In the case of a payment within both section 217 and section 218, or within both section 217 and section 219, subsection (2) above applies and not subsection (3).
- (5) A payment part of which falls within subsection (1) above and part of which does not is treated as if the parts were separate payments.

## **221 Exception for small payments**

- (1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) if—
  - (a) the payment in question is made by the company or any of its subsidiaries, and
  - (b) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed £200.

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- (2) For this purpose “other relevant payments” are payments for loss of office in relation to which the following conditions are met.
- (3) Where the payment in question is one to which section 217 (payment by company) applies, the conditions are that the other payment was or is paid—
  - (a) by the company making the payment in question or any of its subsidiaries,
  - (b) to the director to whom that payment is made, and
  - (c) in connection with the same event.
- (4) Where the payment in question is one to which section 218 or 219 applies (payment in connection with transfer of undertaking, property or shares), the conditions are that the other payment was (or is) paid in connection with the same transfer—
  - (a) to the director to whom the payment in question was made, and
  - (b) by the company making the payment or any of its subsidiaries.

## **222 Payments made without approval: civil consequences**

- (1) If a payment is made in contravention of section 217 (payment by company)—
  - (a) it is held by the recipient on trust for the company making the payment, and
  - (b) 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.
- (2) If a payment is made in contravention of section 218 (payment in connection with transfer of undertaking etc), it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (3) If a payment is made in contravention of section 219 (payment in connection with share transfer)—
  - (a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
  - (b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.
- (4) If a payment is in contravention of section 217 and section 218, subsection (2) of this section applies rather than subsection (1).
- (5) If a payment is in contravention of section 217 and section 219, subsection (3) of this section applies rather than subsection (1), unless the court directs otherwise.

### *Supplementary*

## **223 Transactions requiring members' approval: application of provisions to shadow directors**

- (1) For the purposes of—
  - (a) sections 188 and 189 (directors' service contracts),
  - (b) sections 190 to 196 (property transactions),
  - (c) sections 197 to 214 (loans etc), and
  - (d) sections 215 to 222 (payments for loss of office),a shadow director is treated as a director.

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- (2) Any reference in those provisions to loss of office as a director does not apply in relation to loss of a person's status as a shadow director.

**224 Approval by written resolution: accidental failure to send memorandum**

- (1) Where—
- (a) approval under this Chapter is sought by written resolution, and
  - (b) a memorandum is required under this Chapter to be sent or submitted to every eligible member before the resolution is passed,
- any accidental failure to send or submit the memorandum to one or more members shall be disregarded for the purpose of determining whether the requirement has been met.
- (2) Subsection (1) has effect subject to any provision of the company's articles.

**225 Cases where approval is required under more than one provision**

- (1) Approval may be required under more than one provision of this Chapter.
- (2) If so, the requirements of each applicable provision must be met.
- (3) This does not require a separate resolution for the purposes of each provision.

**226 Requirement of consent of Charity Commission: companies that are charities**

For section 66 of the Charities Act 1993 (c. 10) substitute—

**“66 Consent of Commission required for approval etc by members of charitable companies**

- (1) Where a company is a charity—
- (a) any approval given by the members of the company under any provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors requiring approval by members) listed in subsection (2) below, and
  - (b) any affirmation given by members of the company under section 196 or 214 of that Act (affirmation of unapproved property transactions and loans),
- is ineffective without the prior written consent of the Commission.
- (2) The provisions are—
- (a) section 188 (directors' long-term service contracts);
  - (b) section 190 (substantial property transactions with directors etc);
  - (c) section 197, 198 or 200 (loans and quasi-loans to directors etc);
  - (d) section 201 (credit transactions for benefit of directors etc);
  - (e) section 203 (related arrangements);
  - (f) section 217 (payments to directors for loss of office);
  - (g) section 218 (payments to directors for loss of office: transfer of undertaking etc).

### **66A Consent of Commission required for certain acts of charitable company**

- (1) A company that is a charity may not do an act to which this section applies without the prior written consent of the Commission.
- (2) This section applies to an act that—
  - (a) does not require approval under a listed provision of Chapter 4 of Part 10 of the Companies Act 2006 (transactions with directors) by the members of the company, but
  - (b) would require such approval but for an exemption in the provision in question that disappplies the need for approval on the part of the members of a body corporate which is a wholly-owned subsidiary of another body corporate.
- (3) The reference to a listed provision is a reference to a provision listed in section 66(2) above.
- (4) If a company acts in contravention of this section, the exemption referred to in subsection (2)(b) shall be treated as of no effect in relation to the act.”.

## **CHAPTER 5**

### **DIRECTORS' SERVICE CONTRACTS**

#### **227 Directors' service contracts**

- (1) For the purposes of this Part a director's “service contract”, in relation to a company, means a contract under which—
  - (a) a director of the company undertakes personally to perform services (as director or otherwise) for the company, or for a subsidiary of the company, or
  - (b) services (as director or otherwise) that a director of the company undertakes personally to perform are made available by a third party to the company, or to a subsidiary of the company.
- (2) The provisions of this Part relating to directors' service contracts apply to the terms of a person's appointment as a director of a company.

They are not restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

#### **228 Copy of contract or memorandum of terms to be available for inspection**

- (1) A company must keep available for inspection—
  - (a) a copy of every director's service contract with the company or with a subsidiary of the company, or
  - (b) if the contract is not in writing, a written memorandum setting out the terms of the contract.
- (2) All the copies and memoranda must be kept available for inspection at—
  - (a) the company's registered office, or

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- (b) a place specified in regulations under section 1136.
- (3) The copies and memoranda must be retained by the company for at least one year from the date of termination or expiry of the contract and must be kept available for inspection during that time.
- (4) The company must give notice to the registrar—
  - (a) of the place at which the copies and memoranda are kept available for inspection, and
  - (b) of any change in that place,
 unless they have at all times been kept at the company's registered office.
- (5) If default is made in complying with subsection (1), (2) or (3), or default is made for 14 days in complying with subsection (4), an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) The provisions of this section apply to a variation of a director's service contract as they apply to the original contract.

## **229 Right of member to inspect and request copy**

- (1) Every copy or memorandum required to be kept under section 228 must be open to inspection by any member of the company without charge.
- (2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.  
  
 The copy must be provided within seven days after the request is received by the company.
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

## **230 Directors' service contracts: application of provisions to shadow directors**

A shadow director is treated as a director for the purposes of the provisions of this Chapter.

## CHAPTER 6

### CONTRACTS WITH SOLE MEMBERS WHO ARE DIRECTORS

#### **231 Contract with sole member who is also a director**

- (1) This section applies where—
  - (a) a limited company having only one member enters into a contract with the sole member,
  - (b) the sole member is also a director of the company, and
  - (c) the contract is not entered into in the ordinary course of the company's business.
- (2) The company must, unless the contract is in writing, ensure that the terms of the contract are either—
  - (a) set out in a written memorandum, or
  - (b) recorded in the minutes of the first meeting of the directors of the company following the making of the contract.
- (3) If a company fails to comply with this section an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) For the purposes of this section a shadow director is treated as a director.
- (6) Failure to comply with this section in relation to a contract does not affect the validity of the contract.
- (7) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of the company.

## CHAPTER 7

### DIRECTORS' LIABILITIES

#### *Provision protecting directors from liability*

#### **232 Provisions protecting directors from liability**

- (1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.
- (2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by—
  - (a) section 233 (provision of insurance),
  - (b) section 234 (qualifying third party indemnity provision), or

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(c) section 235 (qualifying pension scheme indemnity provision).

- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.
- (4) Nothing in this section prevents a company's articles from making such provision as has previously been lawful for dealing with conflicts of interest.

### **233 Provision of insurance**

Section 232(2) (voidness of provisions for indemnifying directors) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company, insurance against any such liability as is mentioned in that subsection.

### **234 Qualifying third party indemnity provision**

- (1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying third party indemnity provision.
- (2) Third party indemnity provision means provision for indemnity against liability incurred by the director to a person other than the company or an associated company.

Such provision is qualifying third party indemnity provision if the following requirements are met.

- (3) The provision must not provide any indemnity against—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings, or
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which he is convicted, or
    - (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
    - (iii) in connection with an application for relief (see subsection (6)) in which the court refuses to grant him relief.
- (4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings.
- (5) For this purpose—
  - (a) a conviction, judgment or refusal of relief becomes final—
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
  - (b) an appeal is disposed of—
    - (i) if it is determined and the period for bringing any further appeal has ended, or
    - (ii) if it is abandoned or otherwise ceases to have effect.



- (6) The reference in subsection (3)(b)(iii) to an application for relief is to an application for relief under—
- section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or
  - section 1157 (general power of court to grant relief in case of honest and reasonable conduct).

## **235 Qualifying pension scheme indemnity provision**

- (1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying pension scheme indemnity provision.
- (2) Pension scheme indemnity provision means provision indemnifying a director of a company that is a trustee of an occupational pension scheme against liability incurred in connection with the company's activities as trustee of the scheme.

Such provision is qualifying pension scheme indemnity provision if the following requirements are met.

- (3) The provision must not provide any indemnity against—
- (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings, or
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or
  - (b) any liability incurred by the director in defending criminal proceedings in which he is convicted.
- (4) The reference in subsection (3)(b) to a conviction is to the final decision in the proceedings.
- (5) For this purpose—
- (a) a conviction becomes final—
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
  - (b) an appeal is disposed of—
    - (i) if it is determined and the period for bringing any further appeal has ended, or
    - (ii) if it is abandoned or otherwise ceases to have effect.
- (6) In this section “occupational pension scheme” means an occupational pension scheme as defined in section 150(5) of the Finance Act 2004 (c. 12) that is established under a trust.

## **236 Qualifying indemnity provision to be disclosed in directors' report**

- (1) This section requires disclosure in the directors' report of—
- (a) qualifying third party indemnity provision, and
  - (b) qualifying pension scheme indemnity provision.

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Such provision is referred to in this section as “qualifying indemnity provision”.

- (2) If when a directors' report is approved any qualifying indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that such provision is in force.
- (3) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of the company, the report must state that such provision was in force.
- (4) If when a directors' report is approved qualifying indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report must state that such provision is in force.
- (5) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of an associated company, the report must state that such provision was in force.

### **237 Copy of qualifying indemnity provision to be available for inspection**

- (1) This section has effect where qualifying indemnity provision is made for a director of a company, and applies—
  - (a) to the company of which he is a director (whether the provision is made by that company or an associated company), and
  - (b) where the provision is made by an associated company, to that company.
- (2) That company or, as the case may be, each of them must keep available for inspection—
  - (a) a copy of the qualifying indemnity provision, or
  - (b) if the provision is not in writing, a written memorandum setting out its terms.
- (3) The copy or memorandum must be kept available for inspection at—
  - (a) the company's registered office, or
  - (b) a place specified in regulations under section 1136.
- (4) The copy or memorandum must be retained by the company for at least one year from the date of termination or expiry of the provision and must be kept available for inspection during that time.
- (5) The company must give notice to the registrar—
  - (a) of the place at which the copy or memorandum is kept available for inspection, and
  - (b) of any change in that place,
 unless it has at all times been kept at the company's registered office.
- (6) If default is made in complying with subsection (2), (3) or (4), or default is made for 14 days in complying with subsection (5), an offence is committed by every officer of the company who is in default.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

- (8) The provisions of this section apply to a variation of a qualifying indemnity provision as they apply to the original provision.
- (9) In this section “qualifying indemnity provision” means—
  - (a) qualifying third party indemnity provision, and
  - (b) qualifying pension scheme indemnity provision.

### **238 Right of member to inspect and request copy**

- (1) Every copy or memorandum required to be kept by a company under section 237 must be open to inspection by any member of the company without charge.
- (2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.

The copy must be provided within seven days after the request is received by the company.
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

### *Ratification of acts giving rise to liability*

### **239 Ratification of acts of directors**

- (1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company.
- (2) The decision of the company to ratify such conduct must be made by resolution of the members of the company.
- (3) Where the resolution is proposed as a written resolution neither the director (if a member of the company) nor any member connected with him is an eligible member.
- (4) Where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director (if a member of the company) and any member connected with him.

This does not prevent the director or any such member from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered.
- (5) For the purposes of this section—
  - (a) “conduct” includes acts and omissions;

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- (b) “director” includes a former director;
  - (c) a shadow director is treated as a director; and
  - (d) in section 252 (meaning of “connected person”), subsection (3) does not apply (exclusion of person who is himself a director).
- (6) Nothing in this section affects—
- (a) the validity of a decision taken by unanimous consent of the members of the company, or
  - (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect any other enactment or rule of law imposing additional requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company.

## CHAPTER 8

### DIRECTORS' RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE

#### **240 Protected information**

- (1) This Chapter makes provision for protecting, in the case of a company director who is an individual—
- (a) information as to his usual residential address;
  - (b) the information that his service address is his usual residential address.
- (2) That information is referred to in this Chapter as “protected information”.
- (3) Information does not cease to be protected information on the individual ceasing to be a director of the company.

References in this Chapter to a director include, to that extent, a former director.

#### **241 Protected information: restriction on use or disclosure by company**

- (1) A company must not use or disclose protected information about any of its directors, except—
- (a) for communicating with the director concerned,
  - (b) in order to comply with any requirement of the Companies Acts as to particulars to be sent to the registrar, or
  - (c) in accordance with section 244 (disclosure under court order).
- (2) Subsection (1) does not prohibit any use or disclosure of protected information with the consent of the director concerned.

#### **242 Protected information: restriction on use or disclosure by registrar**

- (1) The registrar must omit protected information from the material on the register that is available for inspection where—
- (a) it is contained in a document delivered to him in which such information is required to be stated, and

- (b) in the case of a document having more than one part, it is contained in a part of the document in which such information is required to be stated.
- (2) The registrar is not obliged—
  - (a) to check other documents or (as the case may be) other parts of the document to ensure the absence of protected information, or
  - (b) to omit from the material that is available for public inspection anything registered before this Chapter comes into force.
- (3) The registrar must not use or disclose protected information except—
  - (a) as permitted by section 243 (permitted use or disclosure by registrar), or
  - (b) in accordance with section 244 (disclosure under court order).

## **243 Permitted use or disclosure by the registrar**

- (1) The registrar may use protected information for communicating with the director in question.
- (2) The registrar may disclose protected information—
  - (a) to a public authority specified for the purposes of this section by regulations made by the Secretary of State, or
  - (b) to a credit reference agency.
- (3) The Secretary of State may make provision by regulations—
  - (a) specifying conditions for the disclosure of protected information in accordance with this section, and
  - (b) providing for the charging of fees.
- (4) The Secretary of State may make provision by regulations requiring the registrar, on application, to refrain from disclosing protected information relating to a director to a credit reference agency.
- (5) Regulations under subsection (4) may make provision as to—
  - (a) who may make an application,
  - (b) the grounds on which an application may be made,
  - (c) the information to be included in and documents to accompany an application, and
  - (d) how an application is to be determined.
- (6) Provision under subsection (5)(d) may in particular—
  - (a) confer a discretion on the registrar;
  - (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application.
- (7) In this section—
  - “credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and
  - “public authority” includes any person or body having functions of a public nature.
- (8) Regulations under this section are subject to negative resolution procedure.

## **244 Disclosure under court order**

- (1) The court may make an order for the disclosure of protected information by the company or by the registrar if—
  - (a) there is evidence that service of documents at a service address other than the director's usual residential address is not effective to bring them to the notice of the director, or
  - (b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the court,and the court is otherwise satisfied that it is appropriate to make the order.
- (2) An order for disclosure by the registrar is to be made only if the company—
  - (a) does not have the director's usual residential address, or
  - (b) has been dissolved.
- (3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest.
- (4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

## **245 Circumstances in which registrar may put address on the public record**

- (1) The registrar may put a director's usual residential address on the public record if—
  - (a) communications sent by the registrar to the director and requiring a response within a specified period remain unanswered, or
  - (b) there is evidence that service of documents at a service address provided in place of the director's usual residential address is not effective to bring them to the notice of the director.
- (2) The registrar must give notice of the proposal—
  - (a) to the director, and
  - (b) to every company of which the registrar has been notified that the individual is a director.
- (3) The notice must—
  - (a) state the grounds on which it is proposed to put the director's usual residential address on the public record, and
  - (b) specify a period within which representations may be made before that is done.
- (4) It must be sent to the director at his usual residential address, unless it appears to the registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any service address provided in place of that address.
- (5) The registrar must take account of any representations received within the specified period.
- (6) What is meant by putting the address on the public record is explained in section 246.

## **246 Putting the address on the public record**

- (1) The registrar, on deciding in accordance with section 245 that a director's usual residential address is to be put on the public record, shall proceed as if notice of a change of registered particulars had been given—
  - (a) stating that address as the director's service address, and
  - (b) stating that the director's usual residential address is the same as his service address.
- (2) The registrar must give notice of having done so—
  - (a) to the director, and
  - (b) to the company.
- (3) On receipt of the notice the company must—
  - (a) enter the director's usual residential address in its register of directors as his service address, and
  - (b) state in its register of directors' residential addresses that his usual residential address is the same as his service address.
- (4) If the company has been notified by the director in question of a more recent address as his usual residential address, it must—
  - (a) enter that address in its register of directors as the director's service address, and
  - (b) give notice to the registrar as on a change of registered particulars.
- (5) If a company fails to comply with subsection (3) or (4), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (7) A director whose usual residential address has been put on the public record by the registrar under this section may not register a service address other than his usual residential address for a period of five years from the date of the registrar's decision.

## **CHAPTER 9**

### **SUPPLEMENTARY PROVISIONS**

#### *Provision for employees on cessation or transfer of business*

## **247 Power to make provision for employees on cessation or transfer of business**

- (1) The powers of the directors of a company include (if they would not otherwise do so) power to make provision for the benefit of persons employed or formerly employed by the company, or any of its subsidiaries, in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.
- (2) This power is exercisable notwithstanding the general duty imposed by section 172 (duty to promote the success of the company).

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- (3) In the case of a company that is a charity it is exercisable notwithstanding any restrictions on the directors' powers (or the company's capacity) flowing from the objects of the company.
- (4) The power may only be exercised if sanctioned—
  - (a) by a resolution of the company, or
  - (b) by a resolution of the directors,in accordance with the following provisions.
- (5) A resolution of the directors—
  - (a) must be authorised by the company's articles, and
  - (b) is not sufficient sanction for payments to or for the benefit of directors, former directors or shadow directors.
- (6) Any other requirements of the company's articles as to the exercise of the power conferred by this section must be complied with.
- (7) Any payment under this section must be made—
  - (a) before the commencement of any winding up of the company, and
  - (b) out of profits of the company that are available for dividend.

#### *Records of meetings of directors*

### **248 Minutes of directors' meetings**

- (1) Every company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) The records must be kept for at least ten years from the date of the meeting.
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **249 Minutes as evidence**

- (1) Minutes recorded in accordance with section 248, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.
- (2) Where minutes have been made in accordance with that section of the proceedings of a meeting of directors, then, until the contrary is proved—
  - (a) the meeting is deemed duly held and convened,
  - (b) all proceedings at the meeting are deemed to have duly taken place, and
  - (c) all appointments at the meeting are deemed valid.



*Meaning of “director” and “shadow director”*

**250 “Director”**

In the Companies Acts “director” includes any person occupying the position of director, by whatever name called.

**251 “Shadow director”**

- (1) In the Companies Acts “shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.
- (2) A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity.
- (3) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies for the purposes of—  
Chapter 2 (general duties of directors),  
Chapter 4 (transactions requiring members' approval), or  
Chapter 6 (contract with sole member who is also a director),  
by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

*Other definitions*

**252 Persons connected with a director**

- (1) This section defines what is meant by references in this Part to a person being “connected” with a director of a company (or a director being “connected” with a person).
- (2) The following persons (and only those persons) are connected with a director of a company—
  - (a) members of the director’s family (see section 253);
  - (b) a body corporate with which the director is connected (as defined in section 254);
  - (c) a person acting in his capacity as trustee of a trust—
    - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him, or
    - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,other than a trust for the purposes of an employees' share scheme or a pension scheme;
  - (d) a person acting in his capacity as partner—
    - (i) of the director, or
    - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
  - (e) a firm that is a legal person under the law by which it is governed and in which—

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- (i) the director is a partner,
- (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or
- (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.

(3) References in this Part to a person connected with a director of a company do not include a person who is himself a director of the company.

### **253 Members of a director’s family**

- (1) This section defines what is meant by references in this Part to members of a director’s family.
- (2) For the purposes of this Part the members of a director’s family are—
  - (a) the director’s spouse or civil partner;
  - (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship;
  - (c) the director’s children or step-children;
  - (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;
  - (e) the director’s parents.
- (3) Subsection (2)(b) does not apply if the other person is the director’s grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.

### **254 Director “connected with” a body corporate**

- (1) This section defines what is meant by references in this Part to a director being “connected with” a body corporate.
- (2) A director is connected with a body corporate if, but only if, he and the persons connected with him together—
  - (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
  - (b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 252 (meaning of “connected person”) —

- (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
- (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

## **255 Director “controlling” a body corporate**

- (1) This section defines what is meant by references in this Part to a director “controlling” a body corporate.
- (2) A director of a company is taken to control a body corporate if, but only if—
  - (a) he or any person connected with him—
    - (i) is interested in any part of the equity share capital of that body, or
    - (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and
  - (b) he, the persons connected with him and the other directors of that company, together—
    - (i) are interested in more than 50% of that share capital, or
    - (ii) are entitled to exercise or control the exercise of more than 50% of that voting power.
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 252 (meaning of “connected person”)—
  - (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
  - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

## **256 Associated bodies corporate**

For the purposes of this Part—

- (a) bodies corporate are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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## **257 References to company's constitution**

- (1) References in this Part to a company's constitution include—
  - (a) any resolution or other decision come to in accordance with the constitution, and
  - (b) any decision by the members of the company, or a class of members, that is treated by virtue of any enactment or rule of law as equivalent to a decision by the company.
- (2) This is in addition to the matters mentioned in section 17 (general provision as to matters contained in company's constitution).

### *General*

## **258 Power to increase financial limits**

- (1) The Secretary of State may by order substitute for any sum of money specified in this Part a larger sum specified in the order.
- (2) An order under this section is subject to negative resolution procedure.
- (3) An order does not have effect in relation to anything done or not done before it comes into force.

Accordingly, proceedings in respect of any liability incurred before that time may be continued or instituted as if the order had not been made.

## **259 Transactions under foreign law**

For the purposes of this Part it is immaterial whether the law that (apart from this Act) governs an arrangement or transaction is the law of the United Kingdom, or a part of it, or not.