



Companies Act 2006

2006 CHAPTER 46

PART 14

CONTROL OF POLITICAL DONATIONS AND EXPENDITURE

Introductory

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This Part has effect for controlling—

- (a) political donations made by companies to political parties, to other political organisations and to independent election candidates, and
- (b) political expenditure incurred by companies.

Donations and expenditure to which this Part applies

363 Political parties, organisations etc to which this Part applies

(1) This Part applies to a political party if—

- (a) it is registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41), or
- (b) it carries on, or proposes to carry on, activities for the purposes of or in connection with the participation of the party in any election or elections to public office held in a member State other than the United Kingdom.

(2) This Part applies to an organisation (a “political organisation”) if it carries on, or proposes to carry on, activities that are capable of being reasonably regarded as intended—

- (a) to affect public support for a political party to which, or an independent election candidate to whom, this Part applies, or
- (b) to influence voters in relation to any national or regional referendum held under the law of the United Kingdom or another member State.

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- (3) This Part applies to an independent election candidate at any election to public office held in the United Kingdom or another member State.
- (4) Any reference in the following provisions of this Part to a political party, political organisation or independent election candidate, or to political expenditure, is to a party, organisation, independent candidate or expenditure to which this Part applies.

364 Meaning of “political donation”

- (1) The following provisions have effect for the purposes of this Part as regards the meaning of “political donation”.
- (2) In relation to a political party or other political organisation—
 - (a) “political donation” means anything that in accordance with sections 50 to 52 of the Political Parties, Elections and Referendums Act 2000—
 - (i) constitutes a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties), or
 - (ii) would constitute such a donation reading references in those sections to a registered party as references to any political party or other political organisation,
 - and
 - (b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.
- (3) In relation to an independent election candidate—
 - (a) “political donation” means anything that, in accordance with sections 50 to 52 of that Act, would constitute a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties) reading references in those sections to a registered party as references to the independent election candidate,
 - and
 - (b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.
- (4) For the purposes of this section, sections 50 and 53 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (definition of “donation” and value of donations) shall be treated as if the amendments to those sections made by the Electoral Administration Act 2006 (which remove from the definition of “donation” loans made otherwise than on commercial terms) had not been made.

365 Meaning of “political expenditure”

- (1) In this Part “political expenditure”, in relation to a company, means expenditure incurred by the company on—
 - (a) the preparation, publication or dissemination of advertising or other promotional or publicity material—
 - (i) of whatever nature, and
 - (ii) however published or otherwise disseminated,
- that, at the time of publication or dissemination, is capable of being reasonably regarded as intended to affect public support for a political party or other political organisation, or an independent election candidate, or

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- (b) activities on the part of the company that are capable of being reasonably regarded as intended—
 - (i) to affect public support for a political party or other political organisation, or an independent election candidate, or
 - (ii) to influence voters in relation to any national or regional referendum held under the law of a member State.
- (2) For the purposes of this Part a political donation does not count as political expenditure.

Authorisation required for donations or expenditure

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- (1) A company must not—
 - (a) make a political donation to a political party or other political organisation, or to an independent election candidate, or
 - (b) incur any political expenditure,unless the donation or expenditure is authorised in accordance with the following provisions.
- (2) The donation or expenditure must be authorised—
 - (a) in the case of a company that is not a subsidiary of another company, by a resolution of the members of the company;
 - (b) in the case of a company that is a subsidiary of another company by—
 - (i) a resolution of the members of the company, and
 - (ii) a resolution of the members of any relevant holding company.
- (3) No resolution is required on the part of a company that is a wholly-owned subsidiary of a UK-registered company.
- (4) For the purposes of subsection (2)(b)(ii) a “relevant holding company” means a company that, at the time the donation was made or the expenditure was incurred—
 - (a) was a holding company of the company by which the donation was made or the expenditure was incurred,
 - (b) was a UK-registered company, and
 - (c) was not a subsidiary of another UK-registered company.
- (5) The resolution or resolutions required by this section—
 - (a) must comply with section 367 (form of authorising resolution), and
 - (b) must be passed before the donation is made or the expenditure incurred.
- (6) Nothing in this section enables a company to be authorised to do anything that it could not lawfully do apart from this section.

367 Form of authorising resolution

- (1) A resolution conferring authorisation for the purposes of this Part may relate to—
 - (a) the company passing the resolution,
 - (b) one or more subsidiaries of that company, or

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- (c) the company passing the resolution and one or more subsidiaries of that company.
- (2) A resolution may be expressed to relate to all companies that are subsidiaries of the company passing the resolution—
 - (a) at the time the resolution is passed, or
 - (b) at any time during the period for which the resolution has effect, without identifying them individually.
- (3) The resolution may authorise donations or expenditure under one or more of the following heads—
 - (a) donations to political parties or independent election candidates;
 - (b) donations to political organisations other than political parties;
 - (c) political expenditure.
- (4) The resolution must specify a head or heads—
 - (a) in the case of a resolution under subsection (2), for all of the companies to which it relates taken together;
 - (b) in the case of any other resolution, for each company to which it relates.
- (5) The resolution must be expressed in general terms conforming with subsection (2) and must not purport to authorise particular donations or expenditure.
- (6) For each of the specified heads the resolution must authorise donations or, as the case may be, expenditure up to a specified amount in the period for which the resolution has effect (see section 368).
- (7) The resolution must specify such amounts—
 - (a) in the case of a resolution under subsection (2), for all of the companies to which it relates taken together;
 - (b) in the case of any other resolution, for each company to which it relates.

368 Period for which resolution has effect

- (1) A resolution conferring authorisation for the purposes of this Part has effect for a period of four years beginning with the date on which it is passed unless the directors determine, or the articles require, that it is to have effect for a shorter period beginning with that date.
- (2) The power of the directors to make a determination under this section is subject to any provision of the articles that operates to prevent them from doing so.

Remedies in case of unauthorised donations or expenditure

369 Liability of directors in case of unauthorised donation or expenditure

- (1) This section applies where a company has made a political donation or incurred political expenditure without the authorisation required by this Part.
- (2) The directors in default are jointly and severally liable—
 - (a) to make good to the company the amount of the unauthorised donation or expenditure, with interest, and

- (b) to compensate the company for any loss or damage sustained by it as a result of the unauthorised donation or expenditure having been made.
 - (3) The directors in default are—
 - (a) those who, at the time the unauthorised donation was made or the unauthorised expenditure was incurred, were directors of the company by which the donation was made or the expenditure was incurred, and
 - (b) where—
 - (i) that company was a subsidiary of a relevant holding company, and
 - (ii) the directors of the relevant holding company failed to take all reasonable steps to prevent the donation being made or the expenditure being incurred,the directors of the relevant holding company.
 - (4) For the purposes of subsection (3)(b) a “relevant holding company” means a company that, at the time the donation was made or the expenditure was incurred—
 - (a) was a holding company of the company by which the donation was made or the expenditure was incurred,
 - (b) was a UK-registered company, and
 - (c) was not a subsidiary of another UK-registered company.
 - (5) The interest referred to in subsection (2)(a) is interest on the amount of the unauthorised donation or expenditure, so far as not made good to the company—
 - (a) in respect of the period beginning with the date when the donation was made or the expenditure was incurred, and
 - (b) at such rate as the Secretary of State may prescribe by regulations.
- Section 379(2) (construction of references to date when donation made or expenditure incurred) does not apply for the purposes of this subsection.
- (6) Where only part of a donation or expenditure was unauthorised, this section applies only to so much of it as was unauthorised.

370 Enforcement of directors' liabilities by shareholder action

- (1) Any liability of a director under section 369 is enforceable—
 - (a) in the case of a liability of a director of a company to that company, by proceedings brought under this section in the name of the company by an authorised group of its members;
 - (b) in the case of a liability of a director of a holding company to a subsidiary, by proceedings brought under this section in the name of the subsidiary by—
 - (i) an authorised group of members of the subsidiary, or
 - (ii) an authorised group of members of the holding company.
- (2) This is in addition to the right of the company to which the liability is owed to bring proceedings itself to enforce the liability.
- (3) An “authorised group” of members of a company means—
 - (a) the holders of not less than 5% in nominal value of the company’s issued share capital,
 - (b) if the company is not limited by shares, not less than 5% of its members, or
 - (c) not less than 50 of the company’s members.

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- (4) The right to bring proceedings under this section is subject to the provisions of section 371.
- (5) Nothing in this section affects any right of a member of a company to bring or continue proceedings under Part 11 (derivative claims or proceedings).

371 Enforcement of directors' liabilities by shareholder action: supplementary

- (1) A group of members may not bring proceedings under section 370 in the name of a company unless—
 - (a) the group has given written notice to the company stating—
 - (i) the cause of action and a summary of the facts on which the proceedings are to be based,
 - (ii) the names and addresses of the members comprising the group, and
 - (iii) the grounds on which it is alleged that those members constitute an authorised group; and
 - (b) not less than 28 days have elapsed between the date of the giving of the notice to the company and the bringing of the proceedings.
- (2) Where such a notice is given to a company, any director of the company may apply to the court within the period of 28 days beginning with the date of the giving of the notice for an order directing that the proposed proceedings shall not be brought, on one or more of the following grounds—
 - (a) that the unauthorised amount has been made good to the company;
 - (b) that proceedings to enforce the liability have been brought, and are being pursued with due diligence, by the company;
 - (c) that the members proposing to bring proceedings under this section do not constitute an authorised group.
- (3) Where an application is made on the ground mentioned in subsection (2)(b), the court may as an alternative to directing that the proposed proceedings under section 370 are not to be brought, direct—
 - (a) that such proceedings may be brought on such terms and conditions as the court thinks fit, and
 - (b) that the proceedings brought by the company—
 - (i) shall be discontinued, or
 - (ii) may be continued on such terms and conditions as the court thinks fit.
- (4) The members by whom proceedings are brought under section 370 owe to the company in whose name they are brought the same duties in relation to the proceedings as would be owed by the company's directors if the proceedings were being brought by the company.

 But proceedings to enforce any such duty may be brought by the company only with the permission of the court.
- (5) Proceedings brought under section 370 may not be discontinued or settled by the group except with the permission of the court, which may be given on such terms as the court thinks fit.

372 Costs of shareholder action

- (1) This section applies in relation to proceedings brought under section 370 in the name of a company (“the company”) by an authorised group (“the group”).
- (2) The group may apply to the court for an order directing the company to indemnify the group in respect of costs incurred or to be incurred by the group in connection with the proceedings.

The court may make such an order on such terms as it thinks fit.

- (3) The group is not entitled to be paid any such costs out of the assets of the company except by virtue of such an order.
- (4) If no such order has been made with respect to the proceedings, then—
 - (a) if the company is awarded costs in connection with the proceedings, or it is agreed that costs incurred by the company in connection with the proceedings should be paid by any defendant, the costs shall be paid to the group; and
 - (b) if any defendant is awarded costs in connection with the proceedings, or it is agreed that any defendant should be paid costs incurred by him in connection with the proceedings, the costs shall be paid by the group.
- (5) In the application of this section to Scotland for “costs” read “expenses” and for “defendant” read “defender”.

373 Information for purposes of shareholder action

- (1) Where proceedings have been brought under section 370 in the name of a company by an authorised group, the group is entitled to require the company to provide it with all information relating to the subject matter of the proceedings that is in the company’s possession or under its control or which is reasonably obtainable by it.
- (2) If the company, having been required by the group to do so, refuses to provide the group with all or any of that information, the court may, on an application made by the group, make an order directing—
 - (a) the company, and
 - (b) any of its officers or employees specified in the application,to provide the group with the information in question in such form and by such means as the court may direct.

Exemptions

374 Trade unions

- (1) A donation to a trade union, other than a contribution to the union’s political fund, is not a political donation for the purposes of this Part.
- (2) A trade union is not a political organisation for the purposes of section 365 (meaning of “political expenditure”).
- (3) In this section—

“trade union” has the meaning given by section 1 of Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5));

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“political fund” means the fund from which payments by a trade union in the furtherance of political objects are required to be made by virtue of section 82(1)(a) of that Act or Article 57(2)(a) of that Order.

375 Subscription for membership of trade association

- (1) A subscription paid to a trade association for membership of the association is not a political donation for the purposes of this Part.
- (2) For this purpose—
 - “trade association” means an organisation formed for the purpose of furthering the trade interests of its members, or of persons represented by its members, and
 - “subscription” does not include a payment to the association to the extent that it is made for the purpose of financing any particular activity of the association.

376 All-party parliamentary groups

- (1) An all-party parliamentary group is not a political organisation for the purposes of this Part.
- (2) An “all-party parliamentary group” means an all-party group composed of members of one or both of the Houses of Parliament (or of such members and other persons).

377 Political expenditure exempted by order

- (1) Authorisation under this Part is not needed for political expenditure that is exempt by virtue of an order of the Secretary of State under this section.
- (2) An order may confer an exemption in relation to—
 - (a) companies of any description or category specified in the order, or
 - (b) expenditure of any description or category so specified (whether framed by reference to goods, services or other matters in respect of which such expenditure is incurred or otherwise),or both.
- (3) If or to the extent that expenditure is exempt from the requirement of authorisation under this Part by virtue of an order under this section, it shall be disregarded in determining what donations are authorised by any resolution of the company passed for the purposes of this Part.
- (4) An order under this section is subject to affirmative resolution procedure.

378 Donations not amounting to more than £5,000 in any twelve month period

- (1) Authorisation under this Part is not needed for a donation except to the extent that the total amount of—
 - (a) that donation, and
 - (b) other relevant donations made in the period of 12 months ending with the date on which that donation is made,exceeds £5,000.

(2) In this section—

“donation” means a donation to a political party or other political organisation or to an independent election candidate; and

“other relevant donations” means—

- (a) in relation to a donation made by a company that is not a subsidiary, any other donations made by that company or by any of its subsidiaries;
- (b) in relation to a donation made by a company that is a subsidiary, any other donations made by that company, by any holding company of that company or by any other subsidiary of any such holding company.

(3) If or to the extent that a donation is exempt by virtue of this section from the requirement of authorisation under this Part, it shall be disregarded in determining what donations are authorised by any resolution passed for the purposes of this Part.

Supplementary provisions

379 Minor definitions

(1) In this Part—

“director” includes shadow director; and

“organisation” includes any body corporate or unincorporated association and any combination of persons.

(2) Except as otherwise provided, any reference in this Part to the time at which a donation is made or expenditure is incurred is, in a case where the donation is made or expenditure incurred in pursuance of a contract, any earlier time at which that contract is entered into by the company.