



Companies Act 2006

2006 CHAPTER 46

PART 15

ACCOUNTS AND REPORTS

CHAPTER 11

REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

Power of authorised person to require documents etc

459 Power of authorised person to require documents, information and explanations

- (1) This section applies where it appears to a person who is authorised under section 457 that there is, or may be, a question whether a company's annual accounts or directors' report comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—
 - (a) discovering whether there are grounds for an application to the court under section 456, or
 - (b) deciding whether to make such an application.
- (3) Those persons are—
 - (a) the company;
 - (b) any officer, employee, or auditor of the company;
 - (c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.
- (4) If a person fails to comply with such a requirement, the authorised person may apply to the court.

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- (5) If it appears to the court that the person has failed to comply with a requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.
- (6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.
- (7) Nothing in this section compels any person to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (8) In this section “document” includes information recorded in any form.

460 Restrictions on disclosure of information obtained under compulsory powers

- (1) This section applies to information (in whatever form) obtained in pursuance of a requirement or order under section 459 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business.
- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (3) This does not apply—
 - (a) to disclosure permitted by section 461 (permitted disclosure of information obtained under compulsory powers), or
 - (b) to the disclosure of information that is or has been available to the public from another source.
- (4) A person who discloses information in contravention of this section commits an offence, unless—
 - (a) he did not know, and had no reason to suspect, that the information had been disclosed under section 459, or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

461 Permitted disclosure of information obtained under compulsory powers

- (1) The prohibition in section 460 of the disclosure of information obtained in pursuance of a requirement or order under section 459 (power of authorised person to require

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documents etc) that relates to the private affairs of an individual or to any particular business has effect subject to the following exceptions.

- (2) It does not apply to the disclosure of information for the purpose of facilitating the carrying out by the authorised person of his functions under section 456.
- (3) It does not apply to disclosure to—
 - (a) the Secretary of State,
 - (b) the Department of Enterprise, Trade and Investment for Northern Ireland,
 - (c) the Treasury,
 - (d) the Bank of England,
 - (e) the Financial Services Authority, or
 - (f) the Commissioners for Her Majesty's Revenue and Customs.
- (4) It does not apply to disclosure—
 - (a) for the purpose of assisting a body designated by an order under section 46 of the Companies Act 1989 (c. 40) (delegation of functions of the Secretary of State) to exercise its functions under Part 2 of that Act;
 - (b) with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties;
 - (c) for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following—
 - (i) the Companies Acts,
 - (ii) Part 5 of the Criminal Justice Act 1993 (c. 36) (insider dealing),
 - (iii) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
 - (iv) the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
 - (v) the Financial Services and Markets Act 2000 (c. 8);
 - (d) for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies, directors' disqualification or insolvency;
 - (e) for the purpose of enabling or assisting the Bank of England to exercise its functions;
 - (f) for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions;
 - (g) for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—
 - (i) the legislation relating to friendly societies or to industrial and provident societies,
 - (ii) the Building Societies Act 1986 (c. 53),
 - (iii) Part 7 of the Companies Act 1989 (c. 40),
 - (iv) the Financial Services and Markets Act 2000; or
 - (h) in pursuance of any Community obligation.
- (5) It does not apply to disclosure to a body exercising functions of a public nature under legislation in any country or territory outside the United Kingdom that appear to the

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authorised person to be similar to his functions under section 456 for the purpose of enabling or assisting that body to exercise those functions.

- (6) In determining whether to disclose information to a body in accordance with subsection (5), the authorised person must have regard to the following considerations—
- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure;
 - (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than—
 - (i) for the purposes of carrying out the functions mentioned in that subsection, or
 - (ii) for other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed.
- (7) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).

462 Power to amend categories of permitted disclosure

- (1) The Secretary of State may by order amend section 461(3), (4) and (5).
- (2) An order under this section must not—
 - (a) amend subsection (3) of that section (UK public authorities) by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend subsection (4) of that section (purposes for which disclosure permitted) by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend subsection (5) of that section (overseas regulatory authorities) so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (3) An order under this section is subject to negative resolution procedure.