



# Companies Act 2006

## 2006 CHAPTER 46

### PART 37

#### COMPANIES: SUPPLEMENTARY PROVISIONS

##### *Company records*

#### **1134 Meaning of “company records”**

In this Part “company records” means—

- (a) any register, index, accounting records, agreement, memorandum, minutes or other document required by the Companies Acts to be kept by a company, and
- (b) any register kept by a company of its debenture holders.

#### **1135 Form of company records**

- (1) Company records—
  - (a) may be kept in hard copy or electronic form, and
  - (b) may be arranged in such manner as the directors of the company think fit, provided the information in question is adequately recorded for future reference.
- (2) Where the records are kept in electronic form, they must be capable of being reproduced in hard copy form.
- (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.
- (5) Any provision of an instrument made by a company before 12th February 1979 that requires a register of holders of the company’s debentures to be kept in hard copy form is to be read as requiring it to be kept in hard copy or electronic form.

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### **1136 Regulations about where certain company records to be kept available for inspection**

- (1) The Secretary of State may make provision by regulations specifying places other than a company's registered office at which company records required to be kept available for inspection under a relevant provision may be so kept in compliance with that provision.
- (2) The "relevant provisions" are—
  - section 114 (register of members);
  - section 162 (register of directors);
  - section 228 (directors' service contracts);
  - section 237 (directors' indemnities);
  - section 275 (register of secretaries);
  - section 358 (records of resolutions etc);
  - section 702 (contracts relating to purchase of own shares);
  - section 720 (documents relating to redemption or purchase of own shares out of capital by private company);
  - section 743 (register of debenture holders);
  - section 805 (report to members of outcome of investigation by public company into interests in its shares);
  - section 809 (register of interests in shares disclosed to public company);
  - section 877 (instruments creating charges and register of charges: England and Wales);
  - section 892 (instruments creating charges and register of charges: Scotland).
- (3) The regulations may specify a place by reference to the company's principal place of business, the part of the United Kingdom in which the company is registered, the place at which the company keeps any other records available for inspection or in any other way.
- (4) The regulations may provide that a company does not comply with a relevant provision by keeping company records available for inspection at a place specified in the regulations unless conditions specified in the regulations are met.
- (5) The regulations—
  - (a) need not specify a place in relation to each relevant provision;
  - (b) may specify more than one place in relation to a relevant provision.
- (6) A requirement under a relevant provision to keep company records available for inspection is not complied with by keeping them available for inspection at a place specified in the regulations unless all the company's records subject to the requirement are kept there.
- (7) Regulations under this section are subject to negative resolution procedure.

### **1137 Regulations about inspection of records and provision of copies**

- (1) The Secretary of State may make provision by regulations as to the obligations of a company that is required by any provision of the Companies Acts—
  - (a) to keep available for inspection any company records, or
  - (b) to provide copies of any company records.

- (2) A company that fails to comply with the regulations is treated as having refused inspection or, as the case may be, having failed to provide a copy.
- (3) The regulations may—
  - (a) make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection, and
  - (b) define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
- (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
- (5) Nothing in any provision of this Act or in the regulations shall be read as preventing a company—
  - (a) from affording more extensive facilities than are required by the regulations, or
  - (b) where a fee may be charged, from charging a lesser fee than that prescribed or none at all.
- (6) Regulations under this section are subject to negative resolution procedure.

### **1138 Duty to take precautions against falsification**

- (1) Where company records are kept otherwise than in bound books, adequate precautions must be taken—
  - (a) to guard against falsification, and
  - (b) to facilitate the discovery of falsification.
- (2) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (3) 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.
- (4) This section does not apply to the documents required to be kept under—
  - (a) section 228 (copy of director's service contract or memorandum of its terms); or
  - (b) section 237 (qualifying indemnity provision).

### *Service addresses*

### **1139 Service of documents on company**

- (1) A document may be served on a company registered under this Act by leaving it at, or sending it by post to, the company's registered office.
- (2) A document may be served on an overseas company whose particulars are registered under section 1046—

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- (a) by leaving it at, or sending it by post to, the registered address of any person resident in the United Kingdom who is authorised to accept service of documents on the company's behalf, or
  - (b) if there is no such person, or if any such person refuses service or service cannot for any other reason be effected, by leaving it at or sending by post to any place of business of the company in the United Kingdom.
- (3) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
- (4) Where a company registered in Scotland or Northern Ireland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.

Where process is served on a company under this subsection, the person issuing out the process must send a copy of it by post to the company's registered office.

- (5) Further provision as to service and other matters is made in the company communications provisions (see section 1143).

#### **1140 Service of documents on directors, secretaries and others**

- (1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address.
- (2) This section applies to—
- (a) a director or secretary of a company;
  - (b) in the case of an overseas company whose particulars are registered under section 1046, a person holding any such position as may be specified for the purposes of this section by regulations under that section;
  - (c) a person appointed in relation to a company as—
    - (i) a judicial factor (in Scotland),
    - (ii) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or
    - (iii) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (3) This section applies whatever the purpose of the document in question.
- It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.
- (4) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
- (5) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered.
- (6) Service may not be effected by virtue of this section at an address—

- (a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;
  - (b) in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046.
- (7) Further provision as to service and other matters is made in the company communications provisions (see section 1143).
- (8) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction.

#### **1141 Service addresses**

- (1) In the Companies Acts a “service address”, in relation to a person, means an address at which documents may be effectively served on that person.
- (2) The Secretary of State may by regulations specify conditions with which a service address must comply.
- (3) Regulations under this section are subject to negative resolution procedure.

#### **1142 Requirement to give service address**

Any obligation under the Companies Acts to give a person’s address is, unless otherwise expressly provided, to give a service address for that person.

#### *Sending or supplying documents or information*

#### **1143 The company communications provisions**

- (1) The provisions of sections 1144 to 1148 and Schedules 4 and 5 (“the company communications provisions”) have effect for the purposes of any provision of the Companies Acts that authorises or requires documents or information to be sent or supplied by or to a company.
- (2) The company communications provisions have effect subject to any requirements imposed, or contrary provision made, by or under any enactment.
- (3) In particular, in their application in relation to documents or information to be sent or supplied to the registrar, they have effect subject to the provisions of Part 35.
- (4) For the purposes of subsection (2), provision is not to be regarded as contrary to the company communications provisions by reason only of the fact that it expressly authorises a document or information to be sent or supplied in hard copy form, in electronic form or by means of a website.

#### **1144 Sending or supplying documents or information**

- (1) Documents or information to be sent or supplied to a company must be sent or supplied in accordance with the provisions of Schedule 4.

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- (2) Documents or information to be sent or supplied by a company must be sent or supplied in accordance with the provisions of Schedule 5.
- (3) The provisions referred to in subsection (2) apply (and those referred to in subsection (1) do not apply) in relation to documents or information that are to be sent or supplied by one company to another.

#### **1145 Right to hard copy version**

- (1) Where a member of a company or a holder of a company's debentures has received a document or information from the company otherwise than in hard copy form, he is entitled to require the company to send him a version of the document or information in hard copy form.
- (2) The company must send the document or information in hard copy form within 21 days of receipt of the request from the member or debenture holder.
- (3) The company may not make a charge for providing the document or information in that form.
- (4) If a company fails to comply with this section, an offence is committed by the company and every officer of it who is in default.
- (5) 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.

#### **1146 Requirement of authentication**

- (1) This section applies in relation to the authentication of a document or information sent or supplied by a person to a company.
- (2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.
- (3) A document or information sent or supplied in electronic form is sufficiently authenticated—
  - (a) if the identity of the sender is confirmed in a manner specified by the company, or
  - (b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement.
- (4) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company's articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter.

#### **1147 Deemed delivery of documents and information**

- (1) This section applies in relation to documents and information sent or supplied by a company.
- (2) Where—

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- (a) the document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom, and
  - (b) the company is able to show that it was properly addressed, prepaid and posted,it is deemed to have been received by the intended recipient 48 hours after it was posted.
- (3) Where—
  - (a) the document or information is sent or supplied by electronic means, and
  - (b) the company is able to show that it was properly addressed,it is deemed to have been received by the intended recipient 48 hours after it was sent.
- (4) Where the document or information is sent or supplied by means of a website, it is deemed to have been received by the intended recipient—
  - (a) when the material was first made available on the website, or
  - (b) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- (5) In calculating a period of hours for the purposes of this section, no account shall be taken of any part of a day that is not a working day.
- (6) This section has effect subject to—
  - (a) in its application to documents or information sent or supplied by a company to its members, any contrary provision of the company's articles;
  - (b) in its application to documents or information sent or supplied by a company to its debentures holders, any contrary provision in the instrument constituting the debentures;
  - (c) in its application to documents or information sent or supplied by a company to a person otherwise than in his capacity as a member or debenture holder, any contrary provision in an agreement between the company and that person.

#### **1148 Interpretation of company communications provisions**

- (1) In the company communications provisions—
  - “address” includes a number or address used for the purposes of sending or receiving documents or information by electronic means;
  - “company” includes any body corporate;
  - “document” includes summons, notice, order or other legal process and registers.
- (2) References in the company communications provisions to provisions of the Companies Acts authorising or requiring a document or information to be sent or supplied include all such provisions, whatever expression is used, and references to documents or information being sent or supplied shall be construed accordingly.
- (3) References in the company communications provisions to documents or information being sent or supplied by or to a company include references to documents or information being sent or supplied by or to the directors of a company acting on behalf of the company.

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### *Requirements as to independent valuation*

#### **1149 Application of valuation requirements**

The provisions of sections 1150 to 1153 apply to the valuation and report required by—

- section 93 (re-registration as public company: recent allotment of shares for non-cash consideration);
- section 593 (allotment of shares of public company in consideration of non-cash asset);
- section 599 (transfer of non-cash asset to public company).

#### **1150 Valuation by qualified independent person**

- (1) The valuation and report must be made by a person (“the valuer”) who—
  - (a) is eligible for appointment as a statutory auditor (see section 1212), and
  - (b) meets the independence requirement in section 1151.
- (2) However, where it appears to the valuer to be reasonable for the valuation of the consideration, or part of it, to be made by (or for him to accept a valuation made by) another person who—
  - (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it, and
  - (b) is not an officer or employee of—
    - (i) the company, or
    - (ii) any other body corporate that is that company’s subsidiary or holding company or a subsidiary of that company’s holding company,or a partner of or employed by any such officer or employee,  
he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this section.
- (3) The references in subsection (2)(b) to an officer or employee do not include an auditor.
- (4) Where the consideration or part of it is valued by a person other than the valuer himself, the latter’s report must state that fact and shall also—
  - (a) state the former’s name and what knowledge and experience he has to carry out the valuation, and
  - (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of that valuation.

#### **1151 The independence requirement**

- (1) A person meets the independence requirement for the purposes of section 1150 only if—
  - (a) he is not—
    - (i) an officer or employee of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
  - (b) he is not—



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- (i) an officer or employee of an associated undertaking of the company, or
  - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and
- (c) there does not exist between—
  - (i) the person or an associate of his, and
  - (ii) the company or an associated undertaking of the company,a connection of any such description as may be specified by regulations made by the Secretary of State.
- (2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.
- (3) In this section—
  - “associated undertaking” means—
    - (a) a parent undertaking or subsidiary undertaking of the company, or
    - (b) a subsidiary undertaking of a parent undertaking of the company; and
  - “associate” has the meaning given by section 1152.
- (4) Regulations under this section are subject to negative resolution procedure.

## **1152 Meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 1151 (valuation: independence requirement).
- (2) In relation to an individual, “associate” means—
  - (a) that individual’s spouse or civil partner or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means—
  - (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means—
  - (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

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### **1153 Valuer entitled to full disclosure**

- (1) A person carrying out a valuation or making a report with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to—
  - (a) carry out the valuation or make the report, and
  - (b) provide any note required by section 596(3) or 600(3) (note required where valuation carried out by another person).
- (2) A person who knowingly or recklessly makes a statement to which this subsection applies that is misleading, false or deceptive in a material particular commits an offence.
- (3) Subsection (2) applies to a statement—
  - (a) made (whether orally or in writing) to a person carrying out a valuation or making a report, and
  - (b) conveying or purporting to convey any information or explanation which that person requires, or is entitled to require, under subsection (1).
- (4) A person guilty of an offence under subsection (2) 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).

#### *Notice of appointment of certain officers*

### **1154 Duty to notify registrar of certain appointments etc**

- (1) Notice must be given to the registrar of the appointment in relation to a company of—
  - (a) a judicial factor (in Scotland),
  - (b) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or
  - (c) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (2) The notice must be given—
  - (a) in the case of appointment of a judicial factor, by the judicial factor;
  - (b) in the case of appointment of a receiver and manager under section 18 of the Charities Act 1993 (c. 10), by the Charity Commission;
  - (c) in the case of appointment of a manager under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, by the Regulator of Community Interest Companies.
- (3) The notice must specify an address at which service of documents (including legal process) may be effected on the person appointed.

Notice of a change in the address for service may be given to the registrar by the person appointed.

- (4) Where notice has been given under this section of the appointment of a person, notice must also be given to the registrar of the termination of the appointment.

This notice must be given by the person specified in subsection (2).

### **1155 Offence of failure to give notice**

- (1) If a judicial factor fails to give notice of his appointment in accordance with section 1154 within the period of 14 days after the appointment he commits an offence.
- (2) 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.

### *Courts and legal proceedings*

### **1156 Meaning of “the court”**

- (1) Except as otherwise provided, in the Companies Acts “the court” means—
- (a) in England and Wales, the High Court or (subject to subsection (3)) a county court;
  - (b) in Scotland, the Court of Session or the sheriff court;
  - (c) in Northern Ireland, the High Court.
- (2) The provisions of the Companies Acts conferring jurisdiction on “the court” as defined above have effect subject to any enactment or rule of law relating to the allocation of jurisdiction or distribution of business between courts in any part of the United Kingdom.
- (3) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order—
- (a) exclude a county court from having jurisdiction under the Companies Acts, and
  - (b) for the purposes of that jurisdiction attach that court’s district, or any part of it, to another county court.
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his functions under subsection (3).

### **1157 Power of court to grant relief in certain cases**

- (1) If in proceedings for negligence, default, breach of duty or breach of trust against—
- (a) an officer of a company, or
  - (b) a person employed by a company as auditor (whether he is or is not an officer of the company),
- it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be

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excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.

- (2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust—
  - (a) he may apply to the court for relief, and
  - (b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper.