



# Companies Act 2006

## 2006 CHAPTER 46

### PART 15

#### ACCOUNTS AND REPORTS

### CHAPTER 11

#### REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

##### *Voluntary revision*

#### **454 Voluntary revision of accounts etc**

- (1) If it appears to the directors of a company that—
  - (a) the company's annual accounts,
  - (b) the directors' remuneration report or the directors' report, or
  - (c) a summary financial statement of the company,did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised report or statement.
- (2) Where copies of the previous accounts or report have been sent out to members, delivered to the registrar or (in the case of a public company) laid before the company in general meeting, the revisions must be confined to—
  - (a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and
  - (b) the making of any necessary consequential alterations.
- (3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to—
  - (a) revised annual accounts,

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- (b) a revised directors' remuneration report or directors' report, or
  - (c) a revised summary financial statement.
- (4) The regulations may, in particular—
- (a) make different provision according to whether the previous accounts, report or statement are replaced or are supplemented by a document indicating the corrections to be made;
  - (b) make provision with respect to the functions of the company's auditor in relation to the revised accounts, report or statement;
  - (c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been—
    - (i) sent out to members and others under section 423,
    - (ii) laid before the company in general meeting, or
    - (iii) delivered to the registrar,
 or where a summary financial statement containing information derived from the previous accounts or report has been sent to members under section 426;
  - (d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.
- (5) Regulations under this section are subject to negative resolution procedure.

*Secretary of State's notice*

**455 Secretary of State's notice in respect of accounts or reports**

- (1) This section applies where—
- (a) copies of a company's annual accounts or directors' report have been sent out under section 423, or
  - (b) a copy of a company's annual accounts or directors' report has been delivered to the registrar or (in the case of a public company) laid before the company in general meeting,
- and it appears to the Secretary of State that there is, or may be, a question whether the accounts or report comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The Secretary of State may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise.
- (3) The notice must specify a period of not less than one month for the directors to give an explanation of the accounts or report or prepare revised accounts or a revised report.
- (4) If at the end of the specified period, or such longer period as the Secretary of State may allow, it appears to the Secretary of State that the directors have not—
- (a) given a satisfactory explanation of the accounts or report, or
  - (b) revised the accounts or report so as to comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation),
- the Secretary of State may apply to the court.

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- (5) The provisions of this section apply equally to revised annual accounts and revised directors' reports, in which case they have effect as if the references to revised accounts or reports were references to further revised accounts or reports.

### *Application to court*

#### **456 Application to court in respect of defective accounts or reports**

- (1) An application may be made to the court—
- (a) by the Secretary of State, after having complied with section 455, or
  - (b) by a person authorised by the Secretary of State for the purposes of this section,
- for a declaration (in Scotland, a declarator) that the annual accounts of a company do not comply, or a directors' report does not comply, with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report.
- (2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.
- (3) If the court orders the preparation of revised accounts, it may give directions as to—
- (a) the auditing of the accounts,
  - (b) the revision of any directors' remuneration report, directors' report or summary financial statement, and
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,
- and such other matters as the court thinks fit.
- (4) If the court orders the preparation of a revised directors' report it may give directions as to—
- (a) the review of the report by the auditors,
  - (b) the revision of any summary financial statement,
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report, and
  - (d) such other matters as the court thinks fit.
- (5) If the court finds that the accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) it may order that all or part of—
- (a) the costs (in Scotland, expenses) of and incidental to the application, and
  - (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts or a revised report,
- are to be borne by such of the directors as were party to the approval of the defective accounts or report.
- For this purpose every director of the company at the time of the approval of the accounts or report shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.
- (6) Where the court makes an order under subsection (5) it shall have regard to whether the directors party to the approval of the defective accounts or report knew or ought

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to have known that the accounts or report did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and it may exclude one or more directors from the order or order the payment of different amounts by different directors.

- (7) On the conclusion of proceedings on an application under this section, the applicant must send to the registrar for registration a copy of the court order or, as the case may be, give notice to the registrar that the application has failed or been withdrawn.
- (8) The provisions of this section apply equally to revised annual accounts and revised directors' reports, in which case they have effect as if the references to revised accounts or reports were references to further revised accounts or reports.

#### **457 Other persons authorised to apply to the court**

- (1) The Secretary of State may by order (an “authorisation order”) authorise for the purposes of section 456 any person appearing to him—
  - (a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) relating to accounts and directors' reports,
  - (b) to have satisfactory procedures for receiving and investigating complaints about companies' annual accounts and directors' reports, and
  - (c) otherwise to be a fit and proper person to be authorised.
- (2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.
- (3) The Secretary of State may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.
- (4) If the authorised person is an unincorporated association, proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person may be brought by or against the association in the name of a body corporate whose constitution provides for the establishment of the association.
- (5) An authorisation order may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Secretary of State to be appropriate.

No such order is to be made unless it appears to the Secretary of State that the person would, if authorised, exercise his functions as an authorised person in accordance with the provisions proposed.

- (6) Where authorisation is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (7) An order under this section is subject to negative resolution procedure.

#### **458 Disclosure of information by tax authorities**

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose information to a person authorised under section 457 for the purpose of facilitating—

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- (a) the taking of steps by that person to discover whether there are grounds for an application to the court under section 456 (application in respect of defective accounts etc), or
  - (b) a decision by the authorised person whether to make such an application.
- (2) This section applies despite any statutory or other restriction on the disclosure of information.

Provided that, in the case of personal data within the meaning of the Data Protection Act 1998 (c. 29), information is not to be disclosed in contravention of that Act.

- (3) Information disclosed to an authorised person under this section—
- (a) may not be used except in or in connection with—
    - (i) taking steps to discover whether there are grounds for an application to the court under section 456, or
    - (ii) deciding whether or not to make such an application, or in, or in connection with, proceedings on such an application; and
  - (b) must not be further disclosed except—
    - (i) to the person to whom the information relates, or
    - (ii) in, or in connection with, proceedings on any such application to the court.
- (4) A person who contravenes subsection (3) commits an offence unless—
- (a) he did not know, and had no reason to suspect, that the information had been disclosed under this section, 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 subsection (4) 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).

*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—

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- (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.
- (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);

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- (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 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;

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- (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 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.