



# Companies (Audit, Investigations and Community Enterprise) Act 2004

## 2004 CHAPTER 27

### PART 1

#### AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

### CHAPTER 1

#### AUDITORS

##### *Recognised supervisory bodies*

#### **1 Additional requirements for recognition of supervisory bodies**

(1) Part 2 of Schedule 11 to the Companies Act 1989 (c. 40) (requirements for recognition of supervisory bodies for purposes of provisions relating to company auditors) is amended as follows.

(2) After paragraph 7(1) (body must have rules and practices for ensuring company audit work is carried out with integrity and without conflicts of interest) insert—

“(1A) The body must participate in arrangements within paragraph 17, and the rules and practices mentioned in sub-paragraph (1) above must include provision requiring compliance with any standards for the time being determined under such arrangements.”

(3) In paragraph 8 (body must have rules and practices as to the technical standards to be applied in company audit work), the existing provisions become sub-paragraph (1), and after that sub-paragraph insert—

“(2) The body must participate in arrangements within paragraph 18, and the rules and practices mentioned in sub-paragraph (1) above must include

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provision requiring compliance with any standards for the time being determined under such arrangements.”

(4) After paragraph 10 insert—

*“Independent monitoring of audits of listed and other major companies*

10A (1) The body must—

- (a) participate in arrangements within paragraph 19(1), and
- (b) have rules designed to ensure that members of the body who perform any company audit functions in respect of major audits take such steps as may be reasonably required of them to enable their performance of any such functions to be monitored by means of inspections carried out under the arrangements.

(2) Any monitoring of such persons under the arrangements is to be regarded (so far as their performance of company audit functions in respect of major audits is concerned) as monitoring of compliance with the body’s rules for the purposes of paragraph 10(1).

(3) In this paragraph “company audit function” and “major audit” have the same meaning as in paragraph 19.”

(5) After paragraph 12 insert—

*“Independent investigation for disciplinary purposes of public interest cases*

12A (1) The body must—

- (a) participate in arrangements within paragraph 20(1), and
- (b) have rules and practices designed to ensure that, where the designated persons have decided that any particular disciplinary action should be taken against a member of the body following the conclusion of an investigation under such arrangements, that decision is to be treated as if it were a decision made by the body in disciplinary proceedings against the member.

(2) In sub-paragraph (1) “the designated persons” means the persons who, under the arrangements, have the function of deciding whether (and, if so, what) disciplinary action should be taken against a member of the body in the light of an investigation carried out under the arrangements.”

## **2 Arrangements to which additional requirements for recognition relate**

After Part 2 of Schedule 11 to the Companies Act 1989 (c. 40) (which is amended by section 1) insert—

### “PART 3

#### ARRANGEMENTS IN WHICH SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE

##### *Arrangements for setting standards relating to professional integrity and independence*

- 17 The arrangements referred to in paragraph 7(1A) are appropriate funded arrangements—
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 7(1), and
  - (b) for ensuring that the determination of those standards is done independently of the body.

##### *Arrangements for setting technical standards*

- 18 The arrangements referred to in paragraph 8(2) are appropriate funded arrangements—
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 8(1), and
  - (b) for ensuring that the determination of those standards is done independently of the body.

##### *Arrangements for independent monitoring of audits of listed and other major companies*

- 19 (1) The arrangements referred to in paragraph 10A(1) are appropriate funded arrangements—
- (a) for enabling the performance by members of the body of company audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements, and
  - (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the body.
- (2) In this paragraph—
- “company audit function” means any function performed as a company auditor;
  - “major audit” means an audit conducted in respect of—
    - (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000), or
    - (b) any other company in whose financial condition there is a major public interest.

##### *Arrangements for independent investigation for disciplinary purposes of public interest cases*

- 20 (1) The arrangements referred to in paragraph 12A(1) are appropriate funded arrangements—

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- (a) for the carrying out of investigations into public interest cases arising in connection with the performance of company audit functions by members of the body,
- (b) for the holding of disciplinary hearings relating to members of the body which appear to be desirable following the conclusion of such investigations,
- (c) for requiring such hearings to be held in public except where the interests of justice otherwise require,
- (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the members to whom the hearings related, and
- (e) for ensuring that the carrying out of those investigations, the holding of those hearings, and the taking of those decisions are done independently of the body.

(2) In this paragraph—

“company audit function” means any function performed as a company auditor;

“public interest cases” means matters which raise or appear to raise important issues affecting the public interest.

*Supplementary: arrangements to operate independently of body*

- 21 (1) This paragraph applies for the purposes of—  
 paragraph 17(b),  
 paragraph 18(b),  
 paragraph 19(1)(b), or  
 paragraph 20(1)(e).
- (2) Arrangements cannot be regarded as appropriate for the purpose of ensuring that the thing or things mentioned in that provision is or are done independently of the body unless they are designed to ensure that the body—
- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing the thing or things in question, and
  - (b) will not otherwise be involved in the doing of that thing or those things.
- (3) Sub-paragraph (2) imposes a minimum requirement and does not preclude the possibility that additional criteria may need to be satisfied in order for the arrangements to be regarded as appropriate for the purpose in question.

*Supplementary: “funded” arrangements etc.*

- 22 (1) For the purposes of any of paragraphs 17, 18, 19 and 20, arrangements are “funded” arrangements if, in the event of their providing for the payment of costs of maintaining the arrangements, such costs are to be paid by the body in accordance with the arrangements.

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- (2) Arrangements can qualify as arrangements within any of paragraphs 17, 18, 19(1) and 20(1) even though the matters for which they provide are more extensive in any respect than those mentioned in that provision.”

*Delegation of Secretary of State’s functions in relation to auditors*

**3 Delegation of functions by Secretary of State to new or existing body**

- (1) Section 46 of the Companies Act 1989 (c. 40) (delegation by Secretary of State of functions relating to auditors) is amended as follows.

- (2) For subsection (1) substitute—

“(1) The Secretary of State may make an order under this section (a “delegation order” for the purpose of enabling functions of the Secretary of State under this Part to be exercised by a body designated by the order.

- (1A) The body so designated may be either—

- (a) a body corporate which is established by the order, or
- (b) subject to section 46A, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).”

- (3) In subsection (2) (effect of delegation order on body established by it), for “established” substitute “designated”.

- (4) For subsection (6) substitute—

“(6) Where a delegation order is made, the provisions of Schedule 13 have effect with respect to—

- (a) the status of the body designated by the order in exercising functions of the Secretary of State under this Part;
- (b) the constitution and proceedings of the body where it is established by the order;
- (c) the exercise by the body of certain functions transferred to it; and
- (d) other supplementary matters.”

**4 Circumstances in which Secretary of State may delegate functions to existing body**

After section 46 of the Companies Act 1989 (which is amended by section 3) insert—

**“46A Circumstances in which Secretary of State may delegate functions to existing body**

- (1) The Secretary of State’s power to make a delegation order under section 46 which designates an existing body (see section 46(1A)(b)) is exercisable in accordance with this section.
- (2) The Secretary of State may make such an order if it appears to the Secretary of State—

- (a) that the body is willing and able to exercise the functions that would be transferred by the order; and
  - (b) that the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (3) are met.
- (3) The conditions are—
- (a) that the functions in question will be exercised effectively; and
  - (b) where the delegation order is to contain any requirements or other provisions specified under subsection (4), that those functions will be exercised in accordance with any such requirements or provisions.
- (4) The delegation order may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Secretary of State to be appropriate.
- (5) An existing body—
- (a) may be designated by a delegation order under section 46, and
  - (b) may accordingly exercise functions of the Secretary of State in pursuance of the order,
- despite any involvement of the body in the exercise of any functions under arrangements within any of paragraphs 17, 18, 19(1) or 20(1) of Schedule 11.”

## 5 Supplementary provisions about delegation orders

- (1) Schedule 13 to the Companies Act 1989 (c. 40) (supplementary provisions about delegation orders) is amended as follows.
- (2) For paragraph 1 substitute—

### *“Operation of this Schedule*

- 1 (1) This Schedule has effect in relation to a body designated by an order under section 46 as follows—
- (a) paragraphs 2 to 12 have effect in relation to the body where it is established by the order;
  - (b) paragraphs 2 and 6 to 11 have effect in relation to the body where it is an existing body (see section 46(1A)(b)); and
  - (c) paragraph 13 has effect in relation to the body where it is an existing body that is an unincorporated association.
- (2) In their operation in accordance with sub-paragraph (1)(b), paragraphs 2 and 6 apply only in relation to—
- (a) things done by or in relation to the body in or in connection with the exercise of functions transferred to it by the order, and
  - (b) functions of the body which are functions so transferred.
- (3) Any power conferred by this Schedule to make provision by order is a power to make provision by an order under section 46.”
- (3) In paragraph 10 (report and accounts)—
- (a) after sub-paragraph (2) insert—

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- “(2A) The following provisions of this paragraph apply as follows—
- (a) sub-paragraphs (3) and (4) apply only where the body is established by the order, and
  - (b) sub-paragraphs (5) and (6) apply only where the body is an existing body.”; and
- (b) after sub-paragraph (4) insert—
- “(5) Unless the body is a company to which section 226 of the Companies Act 1985 (duty to prepare individual company accounts) applies—
- (a) the Secretary of State may, with the consent of the Treasury, give directions to the body with respect to its accounts and the audit of its accounts, and
  - (b) it is the duty of the body to comply with the directions.
- (6) Whether or not the body is a company to which section 226 of the Companies Act 1985 applies—
- (a) the Secretary of State may give directions to the body providing that any provisions of that Act specified in the directions are to apply to the body, with or without any modifications so specified, and
  - (b) it is the duty of the body to comply with the directions.”
- (4) In paragraph 11 (other supplementary provisions), for “established” (in both places) substitute “designated”.
- (5) After paragraph 12 insert—
- “13 (1) This paragraph applies where the body is an unincorporated association.
- (2) Any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.
  - (3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any transferred function.
  - (4) In relation to proceedings brought as mentioned in sub-paragraph (2), any reference in paragraph 11(3)(e) or (4)(c) to the body replacing or being replaced by the Secretary of State in any legal proceedings is to be read with the appropriate modifications.”

#### *Auditors' qualifications*

## **6 Approval of overseas qualifications for auditors**

- (1) Section 33 of the Companies Act 1989 (c. 40) (approval of overseas qualifications for auditors) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) The Secretary of State may declare that the following are to be regarded for the purposes of this Part as holding an approved overseas qualification—

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- (a) persons who are qualified to audit accounts under the law of a specified country or territory outside the United Kingdom;
  - (b) persons who hold a specified professional qualification in accountancy obtained in a specified country or territory outside the United Kingdom.
- (1A) Approval of a qualification under subsection (1)(b) may be expressed to be subject to any specified requirement or requirements being satisfied.
- (2) A qualification must not be approved under subsection (1) unless the Secretary of State is satisfied that the qualification, taken with any requirement or requirements to be specified under subsection (1A), affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.”
- (3) For subsection (6) substitute—
- “(6) The Secretary of State may if he thinks fit, having regard to the considerations mentioned in subsections (2) and (3)—
- (a) withdraw his approval of an overseas qualification in relation to persons becoming qualified as mentioned in subsection (1)(a), or obtaining such a qualification as is mentioned in subsection (1)(b), after such date as he may specify; or
  - (b) vary or revoke a requirement mentioned in subsection (1A) from such date as he may specify.”

*Services provided by auditors*

**7 Disclosure of services provided by auditors and related remuneration**

- (1) For section 390B of the Companies Act 1985 (c. 6) substitute—

**“390B Disclosure of services provided by auditors or associates and related remuneration**

- (1) The Secretary of State may make provision by regulations for securing the disclosure of—
- (a) the nature of any services provided for a company by the company’s auditors (whether in their capacity as such or otherwise) or by their associates;
  - (b) the amount of any remuneration received or receivable by a company’s auditors, or their associates, in respect of any services within paragraph (a).
- (2) The regulations may provide—
- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
  - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);



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- (c) for the disclosure of separate amounts so received or receivable by the company's auditors or any of their associates, or of aggregate amounts so received or receivable by all or any of those persons.
  - (3) The regulations may—
    - (a) provide that “remuneration” includes sums paid in respect of expenses;
    - (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
    - (c) apply to services provided for associates of a company as well as to those provided for a company;
    - (d) define “associate” in relation to an auditor and a company respectively.
  - (4) The regulations may provide that any disclosure required by the regulations is to be made—
    - (a) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
    - (b) in the directors' report required by section 234, or
    - (c) in the auditors' report under section 235.
  - (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (4)(a) or (b), the regulations may—
    - (a) require the auditors to supply the directors of the company with any information necessary to enable the disclosure to be made;
    - (b) provide for any provision within subsection (6) to apply in relation to a failure to make the disclosure as it applies in relation to a failure to comply with a requirement of this Act or (as the case may be) a provision of Part 7.
  - (6) The provisions are—
    - (a) sections 233(5) and 234(5); and
    - (b) any provision of sections 245 to 245C.
  - (7) The regulations may make different provision for different cases.
  - (8) Nothing in subsections (2) to (7) affects the generality of subsection (1).
  - (9) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 390A of the Companies Act 1985 (c. 6) (remuneration of auditors)—
- (a) subsection (3) (auditors' remuneration to be disclosed in note to accounts) accordingly ceases to have effect, and
  - (b) in subsection (5) (application to benefits in kind), for the words from “payments in cash” onwards substitute “payments of money.”
- (3) In paragraph 1(1) of Schedule 4A to that Act (form and contents of group accounts), omit “section 390A(3) (amount of auditors' remuneration) and”.

## CHAPTER 2

### ACCOUNTS AND REPORTS

#### *Auditing of accounts*

## 8 Auditors' rights to information

For section 389A of the Companies Act 1985 (c. 6) substitute—

### **“389A Rights to information**

- (1) An auditor of a company—
  - (a) has a right of access at all times to the company’s books, accounts and vouchers (in whatever form they are held), and
  - (b) may require any of the persons mentioned in subsection (2) to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are—
  - (a) any officer or employee of the company;
  - (b) any person holding or accountable for any of the company’s books, accounts or vouchers;
  - (c) any subsidiary undertaking of the company which is a body corporate incorporated in Great Britain;
  - (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
  - (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.
- (3) Where a parent company has a subsidiary undertaking which is not a body corporate incorporated in Great Britain, the auditor of the parent company may require it to obtain from any of the persons mentioned in subsection (4) such information or explanations as he may reasonably require for the purposes of his duties as auditor.
- (4) Those persons are—
  - (a) the undertaking;
  - (b) any officer, employee or auditor of the undertaking;
  - (c) any person holding or accountable for any of the undertaking’s books, accounts or vouchers;
  - (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relates or relate.
- (5) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person within subsection (4) from whom the auditor has required the company to obtain the information or explanations.

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- (6) A statement made by a person in response to a requirement under subsection (1) (b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under section 389B.
- (7) Nothing in this section or section 389B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.

### **389B Offences relating to the provision of information to auditors**

- (1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—
  - (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 389A(1)(b), and
  - (b) is misleading, false or deceptive in a material particular,the person is guilty of an offence and liable to imprisonment or a fine, or both.
- (2) A person who fails to comply with a requirement under section 389A(1)(b) without delay is guilty of an offence and is liable to a fine.
- (3) However, it is a defence for a person charged with an offence under subsection (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.
- (4) If a company fails to comply with section 389A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.
- (5) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 389A.”

## **9 Statement in directors' report as to disclosure of information to auditors**

- (1) Part 7 of the Companies Act 1985 (c. 6) (accounts and audit) is amended as follows.
- (2) In section 234 (duty to prepare directors' report), after subsection (2) insert—

“(2A) If section 234ZA applies to the report, it shall contain the statement required by subsection (2) of that section.”
- (3) After section 234 insert—

### **“234ZA Statement as to disclosure of information to auditors**

- (1) This section applies to a directors' report unless the directors have taken advantage of the exemption conferred by section 249A(1) or 249AA(1).
- (2) The report must contain a statement to the effect that, in the case of each of the persons who are directors at the time when the report is approved under section 234A, the following applies—
  - (a) so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and

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- (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company’s auditors are aware of that information.
- (3) In subsection (2) “relevant audit information” means information needed by the company’s auditors in connection with preparing their report.
- (4) For the purposes of subsection (2) a director has taken all the steps that he ought to have taken as a director in order to do the things mentioned in paragraph (b) of that subsection if he has—
  - (a) made such enquiries of his fellow directors and of the company’s auditors for that purpose, and
  - (b) taken such other steps (if any) for that purpose,
 as were required by his duty as a director of the company to exercise due care, skill and diligence.
- (5) In determining for the purposes of subsection (2) the extent of that duty in the case of a particular director, the following considerations (in particular) are relevant—
  - (a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company, and
  - (b) (so far as they exceed what may reasonably be so expected) the knowledge, skill and experience that the director in fact has.
- (6) Where a directors' report containing the statement required by subsection (2) is approved under section 234A but the statement is false, every director of the company who—
  - (a) knew that the statement was false, or was reckless as to whether it was false, and
  - (b) failed to take reasonable steps to prevent the report from being approved,
 is guilty of an offence and liable to imprisonment or a fine, or both.”

#### *Defective accounts*

### **10 Persons authorised to apply to court in connection with defective accounts**

- (1) Section 245C of the Companies Act 1985 (c. 6) (other persons authorised to apply to court) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) But where the order giving authorisation (see subsection (4)) is to contain any requirements or other provisions specified under subsection (4A), the Secretary of State may not authorise a person unless, in addition, it appears to him that the person would, if authorised, exercise his functions as an authorised person in accordance with any such requirements or provisions.”
- (3) After subsection (4) insert—

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“(4A) An order under subsection (4) 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.

(4B) If the authorised person is an unincorporated association, any relevant proceedings may be brought by or against that association in the name of any body corporate whose constitution provides for the establishment of the association.

For this purpose “relevant proceedings” means proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person.”

## **11 Disclosure of tax information by Inland Revenue to facilitate application for declaration that accounts are defective**

(1) After section 245C of the Companies Act 1985 (c. 6) insert—

### **“245D Disclosure of information held by Inland Revenue to persons authorised to apply to court**

(1) Information which is held by or on behalf of the Commissioners of Inland Revenue may be disclosed to a person who is authorised under section 245C of this Act, or under Article 253C of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), if the disclosure—

- (a) is made for a permitted purpose, and
- (b) is made by the Commissioners or is authorised by them.

(2) Such information—

- (a) may be so disclosed despite any other restriction on the disclosure of information whether imposed by any statutory provision or otherwise, but
- (b) in the case of personal data (within the meaning of the Data Protection Act 1998), may not be disclosed in contravention of that Act.

(3) For the purposes of subsection (1), a disclosure is made for a permitted purpose if it is made for the purpose of facilitating—

- (a) the taking of steps by the authorised person to discover whether there are grounds for an application to the court under section 245B of this Act or Article 253B of the Companies (Northern Ireland) Order 1986; or
- (b) a determination by the authorised person as to whether or not to make such an application.

(4) The power of the Commissioners to authorise a disclosure under subsection (1)(b) may be delegated (either generally or for a specified purpose) to an officer of the Board of Inland Revenue.

**245E Restrictions on use and further disclosure of information disclosed under section 245D**

- (1) Information that is disclosed to an authorised person under section 245D may not be used except in or in connection with—
    - (a) taking steps to discover whether there are grounds for an application to the court as mentioned in section 245D(3)(a);
    - (b) determining whether or not to make such an application; or
    - (c) proceedings on any such application.
  - (2) Information that is disclosed to an authorised person under section 245D may not be further disclosed except—
    - (a) to the person to whom the information relates; or
    - (b) in or in connection with proceedings on any such application to the court.
  - (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable to imprisonment or a fine, or both.
  - (4) It is a defence for a person charged with an offence under subsection (3) to prove—
    - (a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245D; or
    - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
  - (5) Sections 732 (restriction on prosecutions), 733(2) and (3) (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.”
- (2) After Article 253C of the Companies (Northern Ireland) Order 1986 ([S.I. 1986/1032 \(N.I. 6\)](#)) insert—

**“253D Disclosure of information held by Inland Revenue to persons authorised to apply to court**

- (1) Information which is held by or on behalf of the Commissioners of Inland Revenue may be disclosed to a person who is authorised under Article 253C, or under section 245C of the Companies Act 1985, if the disclosure—
  - (a) is made for a permitted purpose, and
  - (b) is made by the Commissioners or is authorised by them.
- (2) Such information—
  - (a) may be so disclosed despite any other restriction on the disclosure of information whether imposed by any statutory provision or otherwise, but
  - (b) in the case of personal data (within the meaning of the Data Protection Act 1998), may not be disclosed in contravention of that Act.
- (3) For the purposes of paragraph (1), a disclosure is made for a permitted purpose if it is made for the purpose of facilitating—

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- (a) the taking of steps by the authorised person to discover whether there are grounds for an application to the court under Article 253B or section 245B of the Companies Act 1985; or
  - (b) a determination by the authorised person as to whether or not to make such an application.
- (4) The power of the Commissioners to authorise a disclosure under paragraph (1) (b) may be delegated (either generally or for a specified purpose) to an officer of the Board of Inland Revenue.

### **253E Restrictions on use and further disclosure of information disclosed under Article 253D**

- (1) Information that is disclosed to an authorised person under Article 253D may not be used except in or in connection with—
- (a) taking steps to discover whether there are grounds for an application to the court as mentioned in Article 253D(3)(a);
  - (b) determining whether or not to make such an application; or
  - (c) proceedings on any such application.
- (2) Information that is disclosed to an authorised person under Article 253D may not be further disclosed except—
- (a) to the person to whom the information relates; or
  - (b) in or in connection with proceedings on any such application to the court.
- (3) A person who contravenes paragraph (1) or (2) is guilty of an offence and liable to imprisonment or a fine, or both.
- (4) It is a defence for a person charged with an offence under paragraph (3) to prove—
- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under Article 253D; or
  - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to offences under this Article.”

## **12 Power of person authorised to require documents, information and explanations**

- (1) After section 245E of the Companies Act 1985 (c. 6) (as inserted by clause 11) insert—

### **“245F Power of authorised persons to require documents, information and explanations**

- (1) This section applies where it appears to a person who is authorised under section 245C of this Act that there is, or may be, a question whether the annual accounts of a company comply with the requirements of this Act.
- (2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any

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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 245B; or
- (b) determining whether or not 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 a requirement under subsection (2), the authorised person may apply to the court for an order under subsection (5).

(5) If on such an application the court decides that the person has failed to comply with the 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 in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.

(8) In this section “document” includes information recorded in any form.

#### **245G Restrictions on further disclosure of information obtained under section 245F**

(1) This section applies to information (in whatever form) which—

- (a) has been obtained in pursuance of a requirement or order under section 245F, and
- (b) 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) Subsection (2) does not apply to any disclosure of information which—

- (a) is made for the purpose of facilitating the carrying out by a person authorised under section 245C of his functions under section 245B;
- (b) is made to a person specified in Part 1 of Schedule 7B;
- (c) is of a description specified in Part 2 of that Schedule; or
- (d) is made in accordance with Part 3 of that Schedule.

(4) The Secretary of State may by order amend Schedule 7B.

(5) An order under subsection (4) must not—



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- (a) amend Part 1 of Schedule 7B by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
  - (b) amend Part 2 of Schedule 7B 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 Part 3 of Schedule 7B 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.
- (6) An order under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A person who discloses any information in contravention of this section—
- (a) is guilty of an offence, and
  - (b) is liable on conviction to imprisonment or a fine, or both.
- (8) However, it is a defence for a person charged with an offence under subsection (7) to prove—
- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245F; or
  - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (9) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.
- (10) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (11) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998.”
- (2) Schedule 1 (which inserts Schedule 7B in the Companies Act 1985 (c. 6)) has effect.

#### *Directors' reports*

### **13 Power to specify bodies who may issue reporting standards**

In section 257 of the Companies Act 1985 (power of Secretary of State to alter accounting requirements), after subsection (4) insert—

“(4A) Regulations under this section may also make provision—

- (a) for the issuing, by such body or bodies as may be specified, of standards in relation to matters to be contained in reports which are required by this Part to be prepared by the directors of a company;
- (b) for directors of a company who have complied with any such standard, or any of its provisions, in relation to any such report, to be presumed (unless the contrary is proved) to have complied with any requirements

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of this Part relating to the contents of the report to which the standard or provision relates.

- (4B) In subsection (4A) “specified” means specified in an order made by the Secretary of State; and such an order—
- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) may contain such transitional provisions as the Secretary of State thinks fit.”

### *Supervision of accounts and reports*

## **14 Supervision of periodic accounts and reports of issuers of listed securities**

- (1) The Secretary of State may make an order appointing a body (“the prescribed body”) to exercise the functions mentioned in subsection (2).
- (2) The functions are—
  - (a) keeping under review periodic accounts and reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules; and
  - (b) if the prescribed body thinks fit, informing the Financial Services Authority of any conclusions reached by the body in relation to any such accounts or report.
- (3) A body may be appointed under this section if it is a body corporate or an unincorporated association which appears to the Secretary of State—
  - (a) to have an interest in, and to have satisfactory procedures directed to, monitoring compliance by issuers of listed securities with accounting requirements imposed by listing rules in relation to periodic accounts and reports produced by such issuers; and
  - (b) otherwise to be a fit and proper body to be appointed.
- (4) But where the order is to contain any requirements or other provisions specified under subsection (8), the Secretary of State may not appoint a body unless, in addition, it appears to him that the body would, if appointed, exercise its functions as a prescribed body in accordance with any such requirements or provisions.
- (5) A body may be appointed either generally or in respect of any of the following, namely—
  - (a) any particular class or classes of issuers,
  - (b) any particular class or classes of periodic accounts or reports,
 and different bodies may be appointed in respect of different classes within either or both of paragraphs (a) and (b).
- (6) In relation to the appointment of a body in respect of any such class or classes, subsections (2) and (3) are to be read as referring to issuers, or (as the case may be) to periodic accounts or reports, of the class or classes concerned.
- (7) Where—
  - (a) a body is so appointed, but
  - (b) the Financial Services Authority requests the body to exercise its functions under subsection (2) in relation to any particular issuer of listed securities in relation to whom those functions would not otherwise be exercisable,

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the body is to exercise those functions in relation to that issuer as well.

- (8) An order under this section may contain such requirements or other provisions relating to the exercise of functions by the prescribed body as appear to the Secretary of State to be appropriate.
- (9) If the prescribed body is an unincorporated association, any relevant proceedings may be brought by or against that body in the name of any body corporate whose constitution provides for the establishment of the body.

For this purpose “relevant proceedings” means proceedings brought in or in connection with the exercise of any function by the body as a prescribed body.

- (10) Where an appointment is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (11) The power to make an order under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section—

“issuer”, “listing rules” and “security” have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);

“periodic” accounts and reports means accounts and reports which are required by listing rules to be produced periodically.

## **15 Application of provisions inserted by sections 11 and 12 to bodies appointed under section 14**

- (1) The following provisions apply, in accordance with this section, in relation to prescribed bodies and their functions under section 14 of this Act—
- (a) sections 245D and 245E of the Companies Act 1985 (c. 6) (as inserted by section 11(1) of this Act),
  - (b) Articles 253D and 253E of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (as inserted by section 11(2) of this Act), and
  - (c) sections 245F and 245G of and Schedule 7B to the Companies Act 1985 (as inserted by section 12(1) of this Act).

- (2) Sections 245D and 245E apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under section 245C of that Act and persons authorised under Article 253C of the Companies (Northern Ireland) Order 1986 and the functions of such persons mentioned in sections 245D(3) and 245E(1).

But section 245E so applies as if subsection (2)(b) of that section were omitted.

- (3) Articles 253D and 253E apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under Article 253C of that Order and persons authorised under section 245C of the Companies Act 1985 and the functions of such persons mentioned in Articles 253D(3) and 253E(1).

But Article 253E so applies as if paragraph (2)(b) of that Article were omitted.

- (4) Sections 245F and 245G and Schedule 7B apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under section 245C

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of that Act and the functions of such persons mentioned in section 245F(2), section 245G(3)(a) and paragraph 16 of Schedule 7B.

- (5) But section 245F so applies as if—
- (a) subsection (1) of that section provided that the section applies where it appears to a prescribed body that there is, or may be, a question whether any relevant accounts or reports produced by an issuer of listed securities comply with any accounting requirements imposed by listing rules;
  - (b) the references in section 245F(3)(a) and (b) to “the company” were references to that issuer; and
  - (c) the references in section 245F(4) and (5) to “the court” were to the High Court or, in Scotland, the Court of Session.
- (6) In subsection (5)—
- (a) “relevant accounts or reports” means accounts or reports in relation to which the prescribed body has functions under section 14; and
  - (b) “issuer”, “listing rules” and “security” have the same meanings as in section 14.
- (7) In this section “prescribed body” has the same meaning as in section 14.

*Bodies concerned with accounting standards etc.*

## **16 Grants to bodies concerned with accounting standards etc.**

- (1) The Secretary of State may make grants to any body carrying on activities concerned with any of the matters set out in subsection (2).
- (2) The matters are—
- (a) issuing accounting standards;
  - (b) issuing standards in respect of matters to be contained in reports required to be produced by auditors or company directors;
  - (c) investigating departures from standards within paragraph (a) or (b) or from the accounting requirements of the Companies Act 1985 (c. 6) or any requirements of directly applicable Community legislation relating to company accounts;
  - (d) taking steps to secure compliance with such standards or requirements;
  - (e) keeping under review periodic accounts and reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules;
  - (f) establishing, maintaining or carrying out arrangements within paragraph 17, 18, 19(1) or 20(1) of Schedule 11 to the Companies Act 1989 (c. 40);
  - (g) exercising functions of the Secretary of State under Part 2 of that Act;
  - (h) carrying out investigations into public interest cases arising in connection with the performance of accountancy functions by members of professional accountancy bodies;
  - (i) holding disciplinary hearings relating to members of such bodies following the conclusion of such investigations;
  - (j) deciding whether (and, if so, what) disciplinary action should be taken against members of such bodies to whom such hearings related;

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- (k) supervising the exercise by such bodies of regulatory functions in relation to their members;
  - (l) overseeing or directing any of the matters mentioned above.
- (3) A grant may be made to a body within subsection (1) in respect of any of its activities.
- (4) For the purposes of this section—
- (a) a body is to be regarded as carrying on any subsidiary activities of the body; and
  - (b) a body’s “subsidiary activities” are activities carried on by any of its subsidiaries or by any body established under its constitution or under the constitution of such a subsidiary.
- (5) In this section—
- “accountancy functions” means functions performed as an accountant, whether in the capacity of auditor or otherwise;
  - “company” means a company within the meaning of the Companies Act 1985 (c. 6);
  - “issuer”, “listing rules” and “security” have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);
  - “professional accountancy body” means—
    - (a) a supervisory body which is recognised for the purposes of Part 2 of the Companies Act 1989 (c. 40), or
    - (b) a qualifying body, as defined by section 32 of that Act, which enforces rules as to the performance of accountancy functions by its members, and references to the members of professional accountancy bodies include persons who, although not members of such bodies, are subject to their rules in performing accountancy functions;
  - “public interest cases” means matters which raise or appear to raise important issues affecting the public interest;
  - “regulatory functions”, in relation to professional accountancy bodies, means any of the following functions—
    - (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of accountancy functions,
    - (b) the setting by such bodies of standards in relation to the performance by their members of accountancy functions, and
    - (c) the determining by such bodies of requirements in relation to the education and training of their members;
  - “subsidiary” has the meaning given by section 736 of the Companies Act 1985.
- (6) In their application to Scotland—
- (a) subsection (2)(a) is to be read as referring only to accounting standards applying in relation to the accounts of companies or bodies (other than companies) established for the purpose of carrying on any kind of business, whether or not for profit;
  - (b) subsection (2)(h) to (j) are to be read as referring only to accountancy functions performed in relation to companies or such bodies, and
  - (c) subsection (2)(k) is to be read as referring only to regulatory functions exercised in relation to the performance of such accountancy functions;

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and in paragraph (a) above “business” includes the provision of benefits to members of the body concerned.

- (7) Omit section 256(3) of the Companies Act 1985 (c. 6) (grants to bodies concerned with issuing accounting standards etc.), which is superseded by this section.

## **17 Levy to pay expenses of bodies concerned with accounting standards etc.**

- (1) For the purpose of meeting any part of the expenses of a grant-aided body, the Secretary of State may by regulations provide for a levy to be payable to that body (“the specified recipient”) by bodies or persons which are specified, or are of a description specified, in the regulations.
- (2) For the purposes of this section—
- (a) “grant-aided body” means a body to whom the Secretary of State has paid, or is proposing to pay, grant under section 16; and
  - (b) any expenses of any body carrying on subsidiary activities of the grant-aided body (within the meaning of that section) are to be regarded as expenses of the grant-aided body.
- (3) The power to specify (or to specify descriptions of) bodies or persons must be exercised in such a way that the levy is only payable by—
- (a) bodies corporate to which the Secretary of State considers that any of the activities of the specified recipient, or any of its subsidiary activities, are relevant to a significant extent, or
  - (b) bodies or persons who the Secretary of State considers have a major interest in any of those activities being carried on.
- (4) Regulations under this section may in particular—
- (a) specify the rate of the levy and the period in respect of which it is payable at that rate;
  - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (5) In determining the rate of the levy payable in respect of a particular period, the Secretary of State—
- (a) must take into account the amount of any grant which is to be or has been made to the specified recipient in respect of that period under section 16;
  - (b) may take into account estimated as well as actual expenses of that body in respect of that period.
- (6) Any amount of levy payable by any body or person is a debt due from the body or person to the specified recipient, and is recoverable accordingly.
- (7) The specified recipient must—
- (a) keep proper accounts in respect of amounts of levy received, and
  - (b) prepare in relation to each levy period a statement of account relating to such amounts in such form and manner as is specified in the regulations.
- (8) Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.
- (9) The power to make regulations under this section is exercisable by statutory instrument.

- (10) Regulations to which this subsection applies may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (11) Subsection (10) applies to—
- (a) the first regulations under this section, and
  - (b) any other regulations under this section that would result in any change in the bodies or persons by whom the levy is payable.
- (12) Otherwise, any statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **18 Exemption from liability**

- (1) Where a grant has been paid by the Secretary of State to a body under section 16, this section prevents any liability in damages arising in respect of certain acts or omissions occurring during the period of 12 months beginning with the date on which the grant was paid.
- (2) In this section—
- “the exemption period” means the period of 12 months mentioned in subsection (1);
  - “a relevant body” means the body mentioned in that subsection or a body carrying on any subsidiary activities of that body (within the meaning of section 16);
  - “section 16(2) activities” means activities concerned with any of the matters set out in section 16(2).
- (3) Neither a relevant body, nor any person who is (or is acting as) a member, officer or member of staff of a relevant body, is to be liable in damages for anything done, or omitted to be done, during the exemption period for the purposes of or in connection with—
- (a) the carrying on of any section 16(2) activities of the body, or
  - (b) the purported carrying on of any such activities.
- (4) Subsection (3) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages in respect of the act or omission on the grounds that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

## **CHAPTER 3**

### **DIRECTORS' LIABILITIES**

## **19 Relaxation of prohibition on provisions protecting directors etc. from liability**

- (1) After section 309 of the Companies Act 1985 (c. 6) insert—

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### **“309A Provisions protecting directors from liability**

- (1) This section applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.
- (2) Any provision which purports to exempt (to any extent) a director of a company from any liability within subsection (1) is void.
- (3) Any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—
  - (a) the company, or
  - (b) an associated company,against any liability within subsection (1) is void  
This is subject to subsections (4) and (5).
- (4) Subsection (3) does not apply to a qualifying third party indemnity provision (see section 309B(1)).
- (5) Subsection (3) does not prevent a company from purchasing and maintaining for a director of—
  - (a) the company, or
  - (b) an associated company,insurance against any liability within subsection (1).
- (6) In this section—

“associated company”, in relation to a company (“C”), means a company which is C’s subsidiary, or C’s holding company or a subsidiary of C’s holding company;

“provision” means a provision of any nature, whether or not it is contained in a company’s articles or in any contract with a company.

### **309B Qualifying third party indemnity provisions**

- (1) For the purposes of section 309A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in section 309A(3) in relation to which conditions A to C below are satisfied.
- (2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—
  - (a) to the company, or
  - (b) to any associated company.
- (3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—
  - (a) a fine imposed in criminal proceedings, or
  - (b) 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).



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- (4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—
- (a) in defending any criminal proceedings in which he is convicted, or
  - (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
  - (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
    - (i) section 144(3) or (4) (acquisition of shares by innocent nominee), or
    - (ii) section 727 (general power to grant relief in case of honest and reasonable conduct).
- (5) In paragraph (a), (b) or (c) of subsection (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.
- (6) For the purposes of subsection (5) a conviction, judgment or refusal of relief becomes final—
- (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (7) 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.
- (8) In this section “associated company” and “provision” have the same meaning as in section 309A.

### **309C Disclosure of qualifying third party indemnity provisions**

- (1) Subsections (2) and (3) impose disclosure requirements in relation to a directors' report under section 234 in respect of a financial year.
- (2) If —
- (a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
  - (b) at any time during the financial year, 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 any such provision is or (as the case may be) was so in force.
- (3) If the company has made a qualifying third party indemnity provision and—
- (a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or

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- (b) at any time during the financial year, 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 any such provision is or (as the case may be) was so in force.
- (4) Subsection (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.
- (5) Section 318 shall apply to—
  - (a) the company, and
  - (b) if the director is a director of an associated company, the associated company,  
as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in section 318(1).
- (6) In this section—
  - “associated company” and “provision” have the same meaning as in section 309A; and
  - “qualifying third party indemnity provision” has the meaning given by section 309B(1).”
- (2) In section 310 of that Act (provisions exempting officers and auditors from liability), the following provisions cease to have effect—
  - (a) in subsection (1), the words “any officer of the company or”, and
  - (b) in subsection (3)—
    - (i) the words “officer or” (in both places), and
    - (ii) the words from “section 144(3)” to “nominee) or”;
and in the sidenote, for “exempting officers and” substitute “protecting”.

## **20 Funding of director’s expenditure on defending proceedings**

After section 337 of the Companies Act 1985 (c. 6) insert—

### **“337A Funding of director’s expenditure on defending proceedings**

- (1) A company is not prohibited by section 330 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—
  - (a) in defending any criminal or civil proceedings, or
  - (b) in connection with any application under any of the provisions mentioned in subsection (2).
- (2) The provisions are—
  - section 144(3) and (4) (acquisition of shares by innocent nominee), and
  - section 727 (general power to grant relief in case of honest and reasonable conduct).
- (3) Nor does section 330 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

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- (4) Subsections (1) and (3) only apply to a loan or other thing done as mentioned in those subsections if the terms on which it is made or done will result in the loan falling to be repaid, or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—
  - (a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,
  - (b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or
  - (c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.
- (5) For the purposes of subsection (4) a conviction, judgment or refusal of relief becomes final—
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (6) 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.”

## CHAPTER 4

### INVESTIGATIONS

#### 21 Power to require documents and information

For section 447 of the Companies Act 1985 (c. 6) substitute—

##### “447 Power to require documents and information

- (1) The Secretary of State may act under subsections (2) and (3) in relation to a company.
- (2) The Secretary of State may give directions to the company requiring it—
  - (a) to produce such documents (or documents of such description) as may be specified in the directions;
  - (b) to provide such information (or information of such description) as may be so specified.
- (3) The Secretary of State may authorise a person (an investigator) to require the company or any other person—
  - (a) to produce such documents (or documents of such description) as the investigator may specify;
  - (b) to provide such information (or information of such description) as the investigator may specify.
- (4) A person on whom a requirement under subsection (3) is imposed may require the investigator to produce evidence of his authority.

- (5) A requirement under subsection (2) or (3) must be complied with at such time and place as may be specified in the directions or by the investigator (as the case may be).
- (6) The production of a document in pursuance of this section does not affect any lien which a person has on the document.
- (7) The Secretary of State or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this section.
- (8) A “document” includes information recorded in any form.
- (9) In relation to information recorded otherwise than in legible form, the power to require production of it includes power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.”

## 22 Protection in relation to certain disclosures

After section 448 of the Companies Act 1985 (c. 6) insert—

### **“448A Protection in relation to certain disclosures: information provided to Secretary of State**

- (1) A person who makes a relevant disclosure is not liable by reason only of that disclosure in any proceedings relating to a breach of an obligation of confidence.
- (2) A relevant disclosure is a disclosure which satisfies each of the following conditions—
  - (a) it is made to the Secretary of State otherwise than in compliance with a requirement under this Part;
  - (b) it is of a kind that the person making the disclosure could be required to make in pursuance of this Part;
  - (c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Secretary of State for the purposes of the exercise of his functions under this Part;
  - (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Secretary of State for the purposes of the exercise of those functions;
  - (e) the disclosure is not one falling within subsection (3) or (4).
- (3) A disclosure falls within this subsection if the disclosure is prohibited by virtue of any enactment.
- (4) A disclosure falls within this subsection if—
  - (a) it is made by a person carrying on the business of banking or by a lawyer, and
  - (b) it involves the disclosure of information in respect of which he owes an obligation of confidence in that capacity.
- (5) An enactment includes an enactment—

- (a) comprised in, or in an instrument made under, an Act of the Scottish Parliament;
- (b) comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);
- (c) whenever passed or made.”

## **23 Power to enter and remain on premises**

After section 453 of the Companies Act 1985 (c. 6) insert—

### **“453A Power to enter and remain on premises**

- (1) An inspector or investigator may act under subsection (2) in relation to a company if—
  - (a) he is authorised to do so by the Secretary of State, and
  - (b) he thinks that to do so will materially assist him in the exercise of his functions under this Part in relation to the company.
- (2) An inspector or investigator may at all reasonable times—
  - (a) require entry to relevant premises, and
  - (b) remain there for such period as he thinks necessary for the purpose mentioned in subsection (1)(b).
- (3) Relevant premises are premises which the inspector or investigator believes are used (wholly or partly) for the purposes of the company’s business.
- (4) In exercising his powers under subsection (2), an inspector or investigator may be accompanied by such other persons as he thinks appropriate.
- (5) A person who intentionally obstructs a person lawfully acting under subsection (2) or (4)—
  - (a) is guilty of an offence, and
  - (b) is liable on conviction to a fine.
- (6) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to the offence under subsection (5).
- (7) An inspector is a person appointed under section 431, 432 or 442.
- (8) An investigator is a person authorised for the purposes of section 447.

### **453B Power to enter and remain on premises: procedural**

- (1) This section applies for the purposes of section 453A.
- (2) The requirements of subsection (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under section 453A(2)
  - (a).
- (3) The requirements are—
  - (a) the inspector or investigator must produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);

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*Status: This is the original version (as it was originally enacted).*

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- (b) any person accompanying the inspector or investigator must produce evidence of his identity.
- (4) The inspector or investigator must, as soon as practicable after obtaining entry, give to an appropriate recipient a written statement containing such information as to—
- (a) the powers of the investigator or inspector (as the case may be) under section 453A;
  - (b) the rights and obligations of the company, occupier and the persons present on the premises,
- as may be prescribed by regulations.
- (5) If during the time the inspector or investigator is on the premises there is no person present who appears to him to be an appropriate recipient for the purposes of subsection (8), the inspector or investigator must as soon as reasonably practicable send to the company—
- (a) a notice of the fact and time that the visit took place, and
  - (b) the statement mentioned in subsection (4).
- (6) As soon as reasonably practicable after exercising his powers under section 453A(2), the inspector or investigator must prepare a written record of the visit and—
- (a) if requested to do so by the company he must give it a copy of the record;
  - (b) in a case where the company is not the sole occupier of the premises, if requested to do so by an occupier he must give the occupier a copy of the record.
- (7) The written record must contain such information as may be prescribed by regulations.
- (8) If the inspector or investigator thinks that the company is the sole occupier of the premises an appropriate recipient is a person who is present on the premises and who appears to the inspector or investigator to be—
- (a) an officer of the company, or
  - (b) a person otherwise engaged in the business of the company if the inspector or investigator thinks that no officer of the company is present on the premises.
- (9) If the inspector or investigator thinks that the company is not the occupier or sole occupier of the premises an appropriate recipient is—
- (a) a person who is an appropriate recipient for the purposes of subsection (8), and (if different)
  - (b) a person who is present on the premises and who appears to the inspector or investigator to be an occupier of the premises or otherwise in charge of them.
- (10) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

## 24 Failure to comply with certain requirements

After section 453B of the Companies Act 1985 (c. 6) (inserted by section 23) insert—

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*Status: This is the original version (as it was originally enacted).*

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### **“453C Failure to comply with certain requirements**

- (1) This section applies if a person fails to comply with a requirement imposed by an inspector, the Secretary of State or an investigator in pursuance of either of the following provisions—
  - (a) section 447;
  - (b) section 453A.
- (2) The inspector, Secretary of State or investigator (as the case may be) may certify the fact in writing to the court.
- (3) If, after hearing—
  - (a) any witnesses who may be produced against or on behalf of the alleged offender;
  - (b) any statement which may be offered in defence,the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.”

## **CHAPTER 5**

### **SUPPLEMENTARY**

#### **25 Minor and consequential amendments**

- (1) Schedule 2 (minor and consequential amendments relating to Part 1) has effect.
- (2) That Schedule has effect subject to the modifications set out in subsection (3)—
  - (a) in relation to England and Wales, in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 (c. 44) comes into force, and
  - (b) in relation to Scotland.
- (3) The modifications are—
  - (a) the amendment in paragraph 10(2) has effect as if for “12 months” there were substituted “6 months”;
  - (b) the amendment in paragraph 10(3) has effect as if for “12 months”, in both places where it occurs, there were substituted “3 months”;
  - (c) the amendment in paragraph 10(4) has effect as if for “12 months” there were substituted “6 months”;
  - (d) the amendment in paragraph 26(2) has effect as if for “12 months” there were substituted “6 months”; and
  - (e) the amendment in paragraph 26(3) has effect as if for “12 months” there were substituted “6 months”.