

*These notes refer to the Companies Act 2006 (c.46)  
which received Royal Assent on 8 November 2006*

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 36: Offences under the Companies Acts**

1433. The CLR sought to draw out the basis on which criminal liability for a breach of Companies Act requirements is allocated under existing legislation to companies and to officers of companies. It stated in its final report that a reformed Companies Act must be underpinned by effective and proportionate sanctions and enforcement.
1434. The key changes in the Act are:
- refinements to the “officer in default” provisions to make it clearer which individuals in which circumstances may be liable for a breach; and
  - removal of criminal liability from the company itself in certain circumstances.
1435. The general principle adopted as to whether a company should be liable for a breach of requirements of the Companies Acts is that where the only victims of the offence are the company or its members, the company should not be liable for the offence. On the other hand, where other persons may be victims of the offence, then the company should be potentially liable for a breach, whether or not the offence may also harm the company or its members.

#### ***Section 1121: Liability of officer in default***

1436. This section specifies which persons may be liable as an officer of a company for an offence committed by the company under the Act (or the other Companies Acts). It only applies where another provision expressly states that an offence is committed by every officer of a company who is in default.
1437. An “officer” of a company is defined as including a director, manager or (company) secretary, and any person who is to be treated as an officer of the company for the purposes of the provisions in question. An officer is liable for an offence when he is “in default”, meaning he authorises or permits, participates in, or fails to take all reasonable steps to prevent the offence being committed.

#### ***Section 1122: Liability of company as officer in default***

1438. Under this provision, where a company is an officer of another company, liability for an offence can be fixed upon the company as an officer in default only if one of its officers is in default.

#### ***Section 1123: Application to bodies other than companies***

1439. This clause provides that section 1121 applies to persons in bodies other than companies where their role is equivalent to that of an officer of a company. It makes specific provision for bodies corporate, partnerships and unincorporated bodies.

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***Section 1124: Amendments of the Companies Act 1985***