

*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

#### *Sections 190 to 196: Substantial property transactions*

402. These sections require member approval to substantial property transactions. These are transactions where the company buys or sells a non-cash asset (as defined in section 1163) to or from:

- a director of the company;
- a director of its holding company;
- a person connected with a director of the company; or
- a person connected with a director of its holding company.

Approval is only required where the value of the asset exceeds £100,000 or 10% of the company's net assets (based on its last set of annual accounts or called-up share capital if it has not yet produced any accounts). No approval is required if the value of the asset is less than £5,000.

403. These sections replace sections 320 to 322 of the 1985 Act. The changes include:

- permitting a company to enter into a contract which is conditional on member approval (section 190(1)). This implements a recommendation of the Law Commissions. In cases where the approval of the members of the holding company is also required, the company may enter into arrangements conditional on approval being obtained from the members of the holding company (section 190(2)). The company is not to be liable under the contract if member approval is not forthcoming (section 190(3));
- providing for the aggregation of non-cash assets forming part of an arrangement or series of arrangements for the purpose of determining whether the financial thresholds have been exceeded so that member approval is required (section 190(5));
- excluding payments under directors' service contracts and payments for loss of office from the requirements of these sections (section 190(6)). This implements a recommendation of the Law Commissions;
- raising the minimum value of what may be regarded as a substantial non-cash asset from £2,000 to £5,000 (section 191);
- expanding the exception for transactions with members to include the acquisition of assets from a person in his character as a member of the company (section 192(a));
- providing an exception for transactions made by companies in administration (section 193). This implements a recommendation of the Law Commissions;

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- not requiring approval on the part of the members of a company that is in administration or is being wound up (unless it is a members' voluntary winding up) (section 193).