

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

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Sections 215 to 222: Payments for loss of office

409. These sections require member approval for payments for loss of office. These are payments made to a director (or former director) to compensate them for ceasing to be a director, or for losing any other office or employment with the company or with a subsidiary of the company. They also include payments made in connection with retirement. In the case of loss of employment or retirement from employment, the employment must relate to the management of the affairs of the company.
410. Member approval is required under section 217 if a company wishes to make a payment for loss of office to:
- one of its directors;
 - a director of its holding company.
411. Member approval is also required if any person (including the company or anyone else) wishes to make a payment for loss of office to a director of the company in connection with the transfer of the whole or any part of the undertaking or the property of the company or of a subsidiary of the company (section 218).
412. In the case of a payment for loss of office to a director in connection with the transfer of shares in the company or in a subsidiary of the company resulting from a takeover bid, approval is required of the holders of the shares to which the bid relates and of any other holders of shares of the same class (section 219).
413. These sections replace sections 312 to 316 of the 1985 Act. The changes include:
- extending the requirements to include payments to connected persons (section 215(3));
 - extending the requirements to include payments to directors in respect of the loss of any office, or employment in connection with the management of the affairs of the company, and not merely loss of office as a director as such (section 215). This implements a recommendation of the Law Commissions;
 - extending the requirements to include payments by a company to a director of its holding company (section 217(2));
 - extending the requirements in connection with the transfer of the undertaking or property of the company to include transfers of the undertaking or property of a subsidiary (section 218(2));
 - extending the requirements in connection with share transfers so as to include all transfers of shares in the company or in a subsidiary resulting from a takeover bid (section 219(1));

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

- excluding the persons making the offer for shares in the company and any associate of them from voting on any resolution to approve a payment for loss of office in connection with a share transfer (section 219(4)). This implements a recommendation of the Law Commissions;
- setting out the exception for payments in discharge of certain legal obligations (section 220);
- creating a new exception for small payments (section 221);
- clarifying the civil consequences of breach of these sections (section 222(1) to (3)); and
- resolving conflicts between the remedies where more than one requirement of these sections is breached (section 222(4) and (5)). For example, if the payment contravenes both section 217 and section 219 because it was a payment by a company to one of its directors and it was a payment in connection with a takeover bid, and none of the required member approvals have been obtained, then the payment is held on trust for the persons who have sold their shares as a result of the offer and not on trust for the company making the payment.