



Companies Act 2006

2006 CHAPTER 46

PART 10

A COMPANY'S DIRECTORS

CHAPTER 4

TRANSACTIONS WITH DIRECTORS REQUIRING APPROVAL OF MEMBERS

Substantial property transactions

190 Substantial property transactions: requirement of members' approval

- (1) A company may not enter into an arrangement under which—
- (a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or
 - (b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected,
- unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.

For the meaning of “substantial non-cash asset” see section 191.

- (2) If the director or connected person is a director of the company's holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company or be conditional on such approval being obtained.
- (3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section.

Status: This is the original version (as it was originally enacted).

- (4) No approval is required under this section on the part of the members of a body corporate that—
 - (a) is not a UK-registered company, or
 - (b) is a wholly-owned subsidiary of another body corporate.
- (5) For the purposes of this section—
 - (a) an arrangement involving more than one non-cash asset, or
 - (b) an arrangement that is one of a series involving non-cash assets,
 shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series.
- (6) This section does not apply to a transaction so far as it relates—
 - (a) to anything to which a director of a company is entitled under his service contract, or
 - (b) to payment for loss of office as defined in section 215 (payments requiring members' approval).

191 Meaning of “substantial”

- (1) This section explains what is meant in section 190 (requirement of approval for substantial property transactions) by a “substantial” non-cash asset.
- (2) An asset is a substantial asset in relation to a company if its value—
 - (a) exceeds 10% of the company’s asset value and is more than £5,000, or
 - (b) exceeds £100,000.
- (3) For this purpose a company’s “asset value” at any time is—
 - (a) the value of the company’s net assets determined by reference to its most recent statutory accounts, or
 - (b) if no statutory accounts have been prepared, the amount of the company’s called-up share capital.
- (4) A company’s “statutory accounts” means its annual accounts prepared in accordance with Part 15, and its “most recent” statutory accounts means those in relation to which the time for sending them out to members (see section 424) is most recent.
- (5) Whether an asset is a substantial asset shall be determined as at the time the arrangement is entered into.

192 Exception for transactions with members or other group companies

Approval is not required under section 190 (requirement of members' approval for substantial property transactions)—

- (a) for a transaction between a company and a person in his character as a member of that company, or
- (b) for a transaction between—
 - (i) a holding company and its wholly-owned subsidiary, or
 - (ii) two wholly-owned subsidiaries of the same holding company.

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

193 Exception in case of company in winding up or administration

- (1) This section applies to a company—
 - (a) that is being wound up (unless the winding up is a members' voluntary winding up), or
 - (b) that is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) Approval is not required under section 190 (requirement of members' approval for substantial property transactions)—
 - (a) on the part of the members of a company to which this section applies, or
 - (b) for an arrangement entered into by a company to which this section applies.

194 Exception for transactions on recognised investment exchange

- (1) Approval is not required under section 190 (requirement of members' approval for substantial property transactions) for a transaction on a recognised investment exchange effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker.
- (2) For this purpose—
 - (a) “independent broker” means a person who, independently of the director or any person connected with him, selects the person with whom the transaction is to be effected; and
 - (b) “recognised investment exchange” has the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

195 Property transactions: civil consequences of contravention

- (1) This section applies where a company enters into an arrangement in contravention of section 190 (requirement of members' approval for substantial property transactions).
- (2) The arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the instance of the company, unless—
 - (a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible,
 - (b) the company has been indemnified in pursuance of this section by any other persons for the loss or damage suffered by it, or
 - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance.
- (3) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (4) is liable—
 - (a) to account to the company for any gain that he has made directly or indirectly by the arrangement or transaction, and
 - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) The persons so liable are—

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

- (a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of section 190,
 - (b) any person with whom the company entered into the arrangement in contravention of that section who is connected with a director of the company or of its holding company,
 - (c) the director of the company or of its holding company with whom any such person is connected, and
 - (d) any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of an arrangement entered into by a company in contravention of section 190 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company's compliance with that section.
- (7) In any case—
- (a) a person so connected is not liable by virtue of subsection (4)(b), and
 - (b) a director is not liable by virtue of subsection (4)(d),
- if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.
- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise.

196 Property transactions: effect of subsequent affirmation

Where a transaction or arrangement is entered into by a company in contravention of section 190 (requirement of members' approval) but, within a reasonable period, it is affirmed—

- (a) in the case of a contravention of subsection (1) of that section, by resolution of the members of the company, and
- (b) in the case of a contravention of subsection (2) of that section, by resolution of the members of the holding company,

the transaction or arrangement may no longer be avoided under section 195.