



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 6

#### MISCELLANEOUS AND GENERAL

##### *Payments to directors of quoted companies*

#### **79 Members' approval of directors' remuneration policy**

- (1) In section 421 of the Companies Act 2006 (contents of directors' remuneration report) after subsection (2) insert—

“(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report.”

- (2) After section 422 of that Act (approval and signing of directors' remuneration report) insert—

#### **“422A Revisions to directors' remuneration policy**

- (1) The directors' remuneration policy contained in a company's directors' remuneration report may be revised.
- (2) Any such revision must be approved by the board of directors.
- (3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.
- (4) Regulations under section 421(1) may make provision as to—

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- (a) the information that must be contained in a document setting out a revised directors' remuneration policy, and
  - (b) how information is to be set out in the document.
- (5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors' remuneration report.
- (6) In this section, "directors' remuneration policy" means the policy of a company with respect to the matters mentioned in section 421(2A)."
- (3) In section 439 of that Act (quoted companies: members' approval of directors' remuneration report), in subsection (1), at the end insert "other than the part containing the directors' remuneration policy (as to which see section 439A)."
- (4) After that section insert—

**"439A Quoted companies: members' approval of directors' remuneration policy**

- (1) A quoted company must give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy—
- (a) at the accounts meeting held in the first financial year which begins on or after the day on which the company becomes a quoted company, and
  - (b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.
- (2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy if—
- (a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and
  - (b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.
- (3) Subsection (2) does not apply in relation to a quoted company before the first meeting in relation to which it gives notice under subsection (1).
- (4) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.
- (5) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.
- (6) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for "accounts meeting" there were substituted "general meeting".

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- (7) For the purposes of this section, the relevant directors' remuneration policy is—
- (a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors' remuneration report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;
  - (b) in a case where notice is given in relation to a general meeting other than an accounts meeting—
    - (i) the remuneration policy contained in the directors' remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or
    - (ii) where that policy has been revised in accordance with section 422A, the policy as so revised.
- (8) In this section—
- (a) “accounts meeting” means a general meeting of the company before which the company's annual accounts for a financial year are to be laid;
  - (b) “directors' remuneration policy” means the policy of the company with respect to the matters mentioned in section 421(2A).”

## 80 Restrictions on payments to directors

After section 226 of the Companies Act 2006 insert—

### “CHAPTER 4A

#### DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

##### *Interpretation*

### **226A Key definitions**

- (1) In this Chapter—
- “directors' remuneration policy” means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;
  - “quoted company” has the same meaning as in Part 15 of this Act;
  - “remuneration payment” means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person—
    - (a) holding, agreeing to hold or having held office as director of a company, or
    - (b) holding, agreeing to hold or having held, during a period when the person is or was such a director—
      - (i) any other office or employment in connection with the management of the affairs of the company, or

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- (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,  
other than a payment for loss of office;  
“payment for loss of office” has the same meaning as in Chapter 4 of this Part.
- (2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—
  - (a) to cease to hold office as director, or
  - (b) to cease to be the holder of—
    - (i) any other office or employment in connection with the management of the affairs of the company, or
    - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (3) If in connection with the transfer—
  - (a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or
  - (b) any valuable consideration is given to the director by a person other than the company,  
the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.
- (4) In subsection (2), “relevant transfer” means—
  - (a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;
  - (b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.
- (5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.
- (6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.
- (7) References in this Chapter to a payment to a person (“B”) who is, has been or is to be a director of a company include—
  - (a) a payment to a person connected with B, or
  - (b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.
- (8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.
- (9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person’s status as a shadow director.

### *Restrictions relating to remuneration or loss of office payments*

#### **226B Remuneration payments**

- (1) A quoted company may not make a remuneration payment to a person who is, or is to be or has been, a director of the company unless—
  - (a) the payment is consistent with the approved directors' remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

#### **226C Loss of office payments**

- (1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—
  - (a) the payment is consistent with the approved directors' remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

#### **226D Sections 226B and 226C: supplementary**

- (1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—
  - (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and
  - (b) at that meeting itself.
- (2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).
- (3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.
- (4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.
- (5) Nothing in section 226B or 226C authorises the making of a remuneration payment or (as the case may be) a payment for loss of office in contravention of the articles of the company concerned.

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- (6) Nothing in section 226B or 226C applies in relation to a remuneration payment or (as the case may be) a payment for loss of office made to a person who is, or is to be or has been, a director of a quoted company before the earlier of—
- (a) the end of the first financial year of the company to begin on or after the day on which it becomes a quoted company, and
  - (b) the date from which the company's first directors' remuneration policy to be approved under section 439A takes effect.
- (7) In this section the "company's website" is the website on which the company makes material available under section 430.

### *Supplementary*

#### **226E Payments made without approval: civil consequences**

- (1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.
- (2) If a payment is made in contravention of section 226B or 226C—
  - (a) it is held by the recipient on trust for the company or other person making the payment, and
  - (b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.
- (3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company—
  - (a) subsection (2) does not apply, and
  - (b) the payment is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid—
  - (a) subsection (2) does not apply,
  - (b) the payment is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
  - (c) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.
- (5) If in proceedings against a director for the enforcement of a liability under subsection (2)(b)—
  - (a) the director shows that he or she has acted honestly and reasonably, and
  - (b) the court considers that, having regard to all the circumstances of the case, the director ought to be relieved of liability,

the court may relieve the director, either wholly or in part, from liability on such terms as the court thinks fit.

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#### **226F Relationship with requirements under Chapter 4**

- (1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.
- (2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b)."

#### **81 Payments to directors: minor and consequential amendments**

- (1) The Companies Act 2006 is amended as follows.
- (2) In section 180 (consent, approval or authorisation by members)—
  - (a) in subsection (2), in the words before paragraph (a)—
    - (i) after “Chapter 4” insert “or 4A”, and
    - (ii) for “that Chapter” substitute “either of those Chapters”,
  - (b) in that subsection, in paragraph (a), for “that Chapter” substitute “the Chapter concerned”, and
  - (c) in subsection (3), after “Chapter 4” insert “or 4A”.
- (3) In section 190 (substantial property transactions: requirement of members’ approval), in subsection (6)(b), for the words in brackets substitute “(payments to which the requirements of Chapter 4 or 4A apply)”.
- (4) In section 215 (payments for loss of office), after subsection (4) insert—

“(5) Nothing in this section or sections 216 to 222 applies in relation to a payment for loss of office to a director of a quoted company other than a payment to which section 226C does not apply by virtue of section 226D(6).”
- (5) Section 430 (quoted companies: annual accounts and reports to be made available on website) is amended as follows.
- (6) After subsection (2) insert—

“(2A) If the directors’ remuneration policy of a quoted company is revised in accordance with section 422A, the company must ensure that the revised policy is made available on the website on which its annual accounts and reports are made available.

(2B) If a person ceases to be a director of a quoted company, the company must ensure that the following information is made available on the website on which its annual accounts and reports are made available—

  - (a) the name of the person concerned,
  - (b) particulars of any remuneration payment (within the meaning of Chapter 4A of Part 10) made or to be made to the person after ceasing to be a director, including its amount and how it was calculated, and

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- (c) particulars of any payment for loss of office (within the meaning of that Chapter) made or to be made to the person, including its amount and how it was calculated.”
- (7) In subsection (3) —
- (a) for “the annual accounts and reports on the website” substitute “the material made available on the website under subsections (1) to (2B)”, and
- (b) for “the annual accounts and reports from” substitute “such material from”.
- (8) After subsection (4) insert—
- “(4A) Where subsection (2A) or (2B) applies, the material in question—
- (a) must be made available as soon as reasonably practicable, and
- (b) must be kept available until the next directors’ remuneration report of the company is made available on the website.”
- (9) In subsection (5)—
- (a) in the words before paragraph (a), for the words from “the annual accounts and reports” to “that period” substitute “material available on a website throughout the period mentioned in subsection (4) or (as the case may be) (4A)”, and
- (b) in paragraph (a) for “the annual accounts and reports are” substitute “the material is”.
- (10) In section 440 (quoted companies: offences in connection with procedure for approval)
- (a) in subsection (1) —
- (i) after “section 439(1)” insert “or 439A(1) or (2)”, and
- (ii) in the words in brackets, after “report” insert “or policy”,
- (b) in subsection (2), for “the accounts meeting” substitute “the meeting to which it relates”, and
- (c) in subsection (5), omit the definition of “the accounts meeting”.
- (11) In Schedule 8 (in the index of defined expressions), at the appropriate places insert—
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|--|--|-------------------|
| “directors’ remuneration policy (in Chapter 4A of Part 10) |  | section 226A(1)”  |
| “payment for loss of office (in Chapter 4A of Part 10)     |  | section 226A(1)”  |
| “remuneration payment (in Chapter 4A of Part 10)           |  | section 226A(1)”. |
- (12) In that Schedule, after “quoted company”, insert—
- “in Chapter 4A of Part 10 | section 226A(1)”.



## **82 Payments to directors: transitional provision**

- (1) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 439A(1)(a) of the Companies Act 2006 (as inserted by section 79(4) of this Act) applies as if—
  - (a) the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force, and
  - (b) at the end of the paragraph (but before the “, and”) there were inserted “or at an earlier general meeting”.
- (2) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 226D(6)(a) of the Companies Act 2006 (as inserted by section 80 of this Act) applies as if the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force.
- (3) Chapter 4A of Part 10 of the Companies Act 2006 does not apply in relation to remuneration payments or payments for loss of office that are required to be made under an agreement entered into before 27 June 2012 or in consequence of any other obligation arising before that date.
- (4) An agreement entered into, or any other obligation arising, before 27 June 2012 that is modified or renewed on or after that date is to be treated for the purposes of subsection (3) as having been entered into or (as the case may be) as having arisen on the date on which it was modified or renewed.
- (5) The amendment made by section 81(4) does not apply in relation to a payment for loss of office to which subsection (3) of this section applies.