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Companies Act 1985

1985 CHAPTER 6

PART IX

A COMPANY'S MANAGEMENT; DIRECTORS AND SECRETARIES; THEIR QUALIFICATIONS, DUTIES AND RESPONSIBILITIES

Other provisions about directors and officers

305 Directors' names on company correspondence, etc.

- (1) A company to which this section applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter on which the company's name appears unless it states on the letter in legible characters [^{F1}the name of every director of the company].
- (2) This section applies to—
 - (a) every company registered under this Act or under the former Companies Acts (except a company registered before 23rd November 1916); and
 - (b) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before that date.
- (3) If a company makes default in complying with this section, every officer of the company who is in default is liable for each offence to a fine; and for this purpose, where a corporation is an officer of the company, any officer of the corporation is deemed an officer of the company.
- [^{F2}(4) For the purposes of the obligation under section (1) to state the name of every director of the company, a person's "name" means—
 - (a) in the case of an individual, his Christian name (or other forename) and surname; and
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name.

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- (5) The initial or a recognised abbreviation of a person’s Christian name or other forename may be stated instead of the full Christian name or other forename.
- (6) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (7) In this section “director” includes a shadow director and the reference in subsection (3) to an “officer” shall be construed accordingly.]

Textual Amendments

- F1** Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 4(2)**
- F2** S. 305(4)–(7) substituted for s. 305(4) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 4(3)**

Modifications etc. (not altering text)

- C1** S. 305 modified (1.2.2001) by 2000 c. 38, s. 56(4)(5)(b)(8); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provisions and saving in **Sch. 2 Pt. II**)
- C2** S. 305 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), arts. 1(2), 17(1), **Sch. para. 1(b)**

306 Limited company may have directors with unlimited liability.

- (1) In the case of a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.
- (2) In the case of a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes any person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited.
- (3) Before the person accepts the office or acts in it, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely—
 - (a) the promoters of the company,
 - (b) the directors of the company,
 - (c) any managers of the company,
 - (d) the company secretary.
- (4) If a director, manager or proposer makes default in adding such a statement, or if a promoter, director, manager or secretary makes default in giving the notice required by subsection (3), then—
 - (a) he is liable to a fine, and
 - (b) he is also liable for any damage which the person so elected or appointed may sustain from the default;
 but the liability of the person elected or appointed is not affected by the default.

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307 Special resolution making liability of directors unlimited.

- (1) A limited company, if so authorised by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.
- (2) When such a special resolution is passed, its provisions are as valid as if they had been originally contained in the memorandum.

308 Assignment of office by directors.

- (1) If provision is made by a company's articles, or by any agreement entered into between any person and the company, for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision is (notwithstanding anything to the contrary contained in the provision) of no effect unless and until it is approved by a special resolution of the company.

309 Directors to have regard to interests of employees.

- (1) The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members.
- (2) Accordingly, the duty imposed by this section on the directors is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.
- (3) This section applies to shadow directors as it does to directors.

VALID FROM 06/04/2005

309A Provisions protecting directors from liability

- (1) This section applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.
- (2) Any provision which purports to exempt (to any extent) a director of a company from any liability within subsection (1) is void.
- (3) Any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—
 - (a) the company, or
 - (b) an associated company,against any liability within subsection (1) is void
This is subject to subsections (4) and (5).
- (4) Subsection (3) does not apply to a qualifying third party indemnity provision (see section 309B(1)).
- (5) Subsection (3) does not prevent a company from purchasing and maintaining for a director of—

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- (a) the company, or
 - (b) an associated company,
- insurance against any liability within subsection (1).

(6) In this section—

“associated company”, in relation to a company (“C”), means a company which is C’s subsidiary, or C’s holding company or a subsidiary of C’s holding company;

“provision” means a provision of any nature, whether or not it is contained in a company’s articles or in any contract with a company.

VALID FROM 06/04/2005

309B Qualifying third party indemnity provisions

- (1) For the purposes of section 309A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in section 309A(3) in relation to which conditions A to C below are satisfied.
- (2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—
 - (a) to the company, or
 - (b) to any associated company.
- (3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—
 - (a) a fine imposed in criminal proceedings, or
 - (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).
- (4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—
 - (a) in defending any criminal proceedings in which he is convicted, or
 - (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
 - (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
 - (i) section 144(3) or (4) (acquisition of shares by innocent nominee), or
 - (ii) section 727 (general power to grant relief in case of honest and reasonable conduct).
- (5) In paragraph (a), (b) or (c) of subsection (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.
- (6) For the purposes of subsection (5) a conviction, judgment or refusal of relief becomes final—
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (7) An appeal is disposed of—

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- (a) if it is determined and the period for bringing any further appeal has ended, or
 - (b) if it is abandoned or otherwise ceases to have effect.
- (8) In this section “associated company” and “provision” have the same meaning as in section 309A.

VALID FROM 06/04/2005

309C Disclosure of qualifying third party indemnity provisions

- (1) Subsections (2) and (3) impose disclosure requirements in relation to a directors' report under section 234 in respect of a financial year.
- (2) If —
 - (a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
 - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,the report must state that any such provision is or (as the case may be) was so in force.
- (3) If the company has made a qualifying third party indemnity provision and—
 - (a) at the time when the report is approved under section 234A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
 - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,the report must state that any such provision is or (as the case may be) was so in force.
- (4) Subsection (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.
- (5) Section 318 shall apply to—
 - (a) the company, and
 - (b) if the director is a director of an associated company, the associated company, as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in section 318(1).
- (6) In this section—
 - “associated company” and “provision” have the same meaning as in section 309A; and
 - “qualifying third party indemnity provision” has the meaning given by section 309B(1).

310 Provisions exempting officers and auditors from liability.

- (1) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting any officer of the company or any person (whether an officer or not) employed by the company as auditor from,

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or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(2) Except as provided by the following subsection, any such provision is void.

[^{F3}(3) This section does not prevent a company—

- (a) from purchasing and maintaining for any such officer or auditor insurance against any such liability, or
- (b) from indemnifying any such officer or auditor against any liability incurred by him—
 - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or
 - (ii) in connection with any application under section 144(3) or (4) (acquisition of shares by innocent nominee) or section 727 (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.]

Textual Amendments

F3 S. 310(3) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. [137\(1\)](#), [213\(2\)](#)

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