



Companies Act 2006

2006 CHAPTER 46

PART 16

AUDIT

CHAPTER 6

AUDITORS' LIABILITY

Liability limitation agreements

534 Liability limitation agreements

- (1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts, of which the auditor may be guilty in relation to the company.
- (2) Section 532 (general voidness of provisions protecting auditors from liability) does not affect the validity of a liability limitation agreement that—
 - (a) complies with section 535 (terms of liability limitation agreement) and of any regulations under that section, and
 - (b) is authorised by the members of the company (see section 536).
- (3) Such an agreement—
 - (a) is effective to the extent provided by section 537, and
 - (b) is not subject—
 - (i) in England and Wales or Northern Ireland, to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977 (c. 50);
 - (ii) in Scotland, to section 16(1)(b) or 17(1)(a) of that Act.

Status: Point in time view as at 07/04/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 2006, Cross Heading: Liability limitation agreements is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

- C1** Ss. 484-539 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 11** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

535 Terms of liability limitation agreement

- (1) A liability limitation agreement—
- (a) must not apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year, and
 - (b) must specify the financial year in relation to which it applies.
- (2) The Secretary of State may by regulations—
- (a) require liability limitation agreements to contain specified provisions or provisions of a specified description;
 - (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description.

“Specified” here means specified in the regulations.

- (3) Without prejudice to the generality of the power conferred by subsection (2), that power may be exercised with a view to preventing adverse effects on competition.
- (4) Subject to the preceding provisions of this section, it is immaterial how a liability limitation agreement is framed.

In particular, the limit on the amount of the auditor's liability need not be a sum of money, or a formula, specified in the agreement.

- (5) Regulations under this section are subject to negative resolution procedure.

Modifications etc. (not altering text)

- C2** Ss. 484-539 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 11** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Commencement Information

- II** S. 535 wholly in force at 6.4.2008; s. 535 not in force at Royal Assent, see s. 1300; s. 535 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); s. 535 in force at 6.4.2008 by [S.I. 2007/3495](#), **art. 3(1)(d)** (with [arts. 7, 12](#), [Sch. 4 paras. 9-19](#))

536 Authorisation of agreement by members of the company

- (1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.
- (2) A liability limitation agreement between a private company and its auditor may be authorised—

Status: Point in time view as at 07/04/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 2006, Cross Heading: Liability limitation agreements is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval,
 - (b) by the company passing a resolution, before it enters into the agreement, approving the agreement's principal terms, or
 - (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.
- (3) A liability limitation agreement between a public company and its auditor may be authorised—
- (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement's principal terms, or
 - (b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.
- (4) The “principal terms” of an agreement are terms specifying, or relevant to the determination of—
- (a) the kind (or kinds) of acts or omissions covered,
 - (b) the financial year to which the agreement relates, or
 - (c) the limit to which the auditor's liability is subject.
- (5) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect—
- (a) at any time before the company enters into the agreement, or
 - (b) if the company has already entered into the agreement, before the beginning of the financial year to which the agreement relates.

Paragraph (b) has effect notwithstanding anything in the agreement.

Modifications etc. (not altering text)

- C3** Ss. 484-539 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 11** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

537 Effect of liability limitation agreement

- (1) A liability limitation agreement is not effective to limit the auditor's liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard (in particular) to—
 - (a) the auditor's responsibilities under this Part,
 - (b) the nature and purpose of the auditor's contractual obligations to the company, and
 - (c) the professional standards expected of him.
- (2) A liability limitation agreement that purports to limit the auditor's liability to less than the amount mentioned in subsection (1) shall have effect as if it limited his liability to that amount.
- (3) In determining what is fair and reasonable in all the circumstances of the case no account is to be taken of—
 - (a) matters arising after the loss or damage in question has been incurred, or

Status: Point in time view as at 07/04/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 2006, Cross Heading: Liability limitation agreements is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) matters (whenever arising) affecting the possibility of recovering compensation from other persons liable in respect of the same loss or damage.

Modifications etc. (not altering text)

- C4** Ss. 484-539 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 11** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

538 Disclosure of agreement by company

- (1) A company which has entered into a liability limitation agreement must make such disclosure in connection with the agreement as the Secretary of State may require by regulations.
- (2) The regulations may provide, in particular, that any disclosure required by the regulations shall be made—
- (a) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), or
- (b) in the directors' report.
- (3) Regulations under this section are subject to negative resolution procedure.

Modifications etc. (not altering text)

- C5** Ss. 484-539 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), regs. 3-5, **Sch. 1 para. 11** (with transitional provisions and savings in [regs. 7, 9, Sch. 2](#))

Commencement Information

- I2** S. 538 wholly in force at 6.4.2008; s. 538 not in force at Royal Assent, see s. 1300; s. 538 in force for specified purposes at 20.1.2007 by [S.I. 2006/3428](#), **art. 3(3)** (subject to [art. 5, Sch. 1](#) and with [arts. 6, 8, Sch. 5](#)); s. 538 in force at 6.4.2008 by [S.I. 2007/3495](#), **art. 3(1)(d)** (with [arts. 7, 12, Sch. 4 paras. 9-19](#))

VALID FROM 27/06/2009

[^{F1}538A Meaning of “corporate governance statement” etc

- (1) In this Part “corporate governance statement” means the statement required by rules 7.2.1 to 7.2.11 in the Disclosure Rules and Transparency Rules sourcebook issued by the Financial Services Authority.
- (2) Those rules were inserted by Annex C of the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 made by the Authority on 26th June 2008 (FSA 2008/32).
- (3) A “separate” corporate governance statement means one that is not included in the directors' report.]

Status: Point in time view as at 07/04/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 2006, Cross Heading: Liability limitation agreements is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F1 S. 538A inserted (27.6.2009) by [The Companies Act 2006 \(Accounts, Reports and Audit\) Regulations 2009 \(S.I. 2009/1581\)](#), **reg. 8** (with application as stated in **reg. 1(3)**)

Modifications etc. (not altering text)

C6 Ss. 484-539 applied (with modifications) (1.10.2009) by [The Unregistered Companies Regulations 2009 \(S.I. 2009/2436\)](#), **regs. 3-5**, **Sch. 1 para. 11** (with transitional provisions and savings in **regs. 7, 9**, **Sch. 2**)

Status:

Point in time view as at 07/04/2008. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:

Companies Act 2006, Cross Heading: Liability limitation agreements is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.