



# Companies Act 2006

## 2006 CHAPTER 46

### PART 43

#### TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

##### *Other matters*

#### **1269 Corporate governance rules**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections inserted by section 1268 above insert—

##### *“Corporate governance*

#### **890 Corporate governance rules**

- (1) The competent authority may make rules (“corporate governance rules”)—
  - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any [<sup>F1</sup>EU] obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any [<sup>F1</sup>EU] obligation.
- (2) “Corporate governance”, in relation to an issuer, includes—
  - (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between the different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer's securities.

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- (3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by—
- (a) rules under this section, and
  - (b) listing rules.
- (4) For this purpose—
- “foreign-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating outside the United Kingdom;
- “UK-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating in the United Kingdom.
- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.”.

#### Textual Amendments

- F1** S. 1269: term substituted (22.4.2011 with application in accordance with art. 3(3) of the amending S.I.) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), art. {6(1)}

## 1270 Liability for false or misleading statements in certain publications

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 90 insert—

### “90A Compensation for statements in certain publications

- (1) The publications to which this section applies are—
- (a) any reports and statements published in response to a requirement imposed by a provision implementing Article 4, 5 or 6 of the transparency obligations directive, and
  - (b) any preliminary statement made in advance of a report or statement to be published in response to a requirement imposed by a provision implementing Article 4 of that directive, to the extent that it contains information that it is intended—
    - (i) will appear in the report or statement, and
    - (ii) will be presented in the report or statement in substantially the same form as that in which it is presented in the preliminary statement.
- (2) The securities to which this section applies are—
- (a) securities that are traded on a regulated market situated or operating in the United Kingdom, and
  - (b) securities that—
    - (i) are traded on a regulated market situated or operating outside the United Kingdom, and
    - (ii) are issued by an issuer for which the United Kingdom is the home Member State within the meaning of Article 2.1(i) of the transparency obligations directive.

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- (3) The issuer of securities to which this section applies is liable to pay compensation to a person who has—
- (a) acquired such securities issued by it, and
  - (b) suffered loss in respect of them as a result of—
    - (i) any untrue or misleading statement in a publication to which this section applies, or
    - (ii) the omission from any such publication of any matter required to be included in it.
- (4) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication—
- (a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
  - (b) knew the omission to be dishonest concealment of a material fact.
- (5) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities—
- (a) in reliance on the information in the publication, and
  - (b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information.
- (6) Except as mentioned in subsection (8)—
- (a) the issuer is not subject to any other liability than that provided for by this section in respect of loss suffered as a result of reliance by any person on—
    - (i) an untrue or misleading statement in a publication to which this section applies, or
    - (ii) the omission from any such publication of any matter required to be included in it, and
  - (b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.
- (7) Any reference in subsection (6) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.
- (8) This section does not affect—
- (a) the powers conferred by section 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution);
  - (b) liability for a civil penalty;
  - (c) liability for a criminal offence.
- (9) For the purposes of this section—
- (a) the following are persons “discharging managerial responsibilities” in relation to a publication—
    - (i) any director of the issuer (or person occupying the position of director, by whatever name called),
    - (ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,

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- (iii) in the case of an issuer that has no persons within subparagraph (i) or (ii), any senior executive of the issuer having responsibilities in relation to the publication;
- (b) references to the acquisition by a person of securities include his contracting to acquire them or any interest in them.

### **90B Power to make further provision about liability for published information**

- (1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.
- (2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.”.

### **1271 Exercise of powers where UK is host member State**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 100 insert—

#### **“100A Exercise of powers where UK is host member state**

- (1) This section applies to the exercise by the competent authority of any power under this Part exercisable in case of infringement of—
  - (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
  - (b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,
 in relation to an issuer whose home State is a member State other than the United Kingdom.
- (2) The competent authority may act in such a case only in respect of the infringement of a provision required by the relevant directive.  
 Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.
- (3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person's home State requesting it—
  - (a) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
  - (b) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (4) The authority may not act further unless satisfied—
  - (a) that the competent authority of the person's home State has failed or refused to take measures for the purpose mentioned in subsection (3) (a), or

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- (b) that the measures taken by that authority have proved inadequate for that purpose.

This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).

- (5) If the authority is so satisfied, it must, after informing the competent authority of the person's home State, take all appropriate measures to protect investors.
- (6) In such a case the authority must inform the Commission of the measures at the earliest opportunity.”.

### **1272 Transparency obligations and related matters: minor and consequential amendments**

- (1) Schedule 15 to this Act makes minor and consequential amendments in connection with the provision made by this Part.
- (2) In that Schedule—
  - Part 1 contains amendments of the Financial Services and Markets Act 2000 (c. 8);
  - Part 2 contains amendments of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

### **1273 Corporate governance regulations**

- (1) The Secretary of State may make regulations—
  - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any [F<sup>2</sup>EU] obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any [F<sup>2</sup>EU] obligation.
- (2) “Corporate governance”, in relation to an issuer, includes—
  - (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer's securities.
- (3) The regulations may—
  - (a) make provision by reference to any specified code on corporate governance that may be issued from time to time by a specified body;
  - (b) create new criminal offences (subject to subsection (4));
  - (c) make provision excluding liability in damages in respect of things done or omitted for the purposes of, or in connection with, the carrying on, or purported carrying on, of any specified activities.

“Specified” here means specified in the regulations.

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- (4) The regulations may not create a criminal offence punishable by a greater penalty than—
- (a) on indictment, a fine;
  - (b) on summary conviction, a fine not exceeding the statutory maximum or (if calculated on a daily basis) £100 a day.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “issuer”, “securities” and “regulated market” have the same meaning as in Part 6 of the Financial Services and Markets Act 2000 (c. 8).

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**Textual Amendments**

- F2** [S. 1273\(2\)](#): term substituted (22.4.2011 with application in accordance with art. 3(3) of the amending S.I.) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), art. {6(1)}

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