

## ONLINE RESOURCES CHAPTER A

### TRANSPARENCY

#### SUMMARY OF POINTS COVERED

- What is in this chapter
- Information at Companies House
- Public notice of receipt of documents
- Company registers and documents
- Trading disclosures
- What can be learnt from this chapter
- Further reading

#### A.1 WHAT IS IN THIS CHAPTER

##### A.1.1 CHAPTER OVERVIEW

The requirements for provision of information about a company are a significant price that must be paid for the benefits of corporate separate personality and, especially, limited liability. Information about a company's constitution, membership, officers and finances must be provided to Companies House (see **A.2** and **A.3**), which makes the information available for inspection by anyone at <https://www.gov.uk/get-information-about-a-company>. The requirements for filing accounts at Companies House are considered in detail in **Online resources, chapter B**. Much of the information about a company which has to be supplied to Companies House must also be made available for inspection at the company's registered office or

an alternative inspection place (A.4). Some other information, including directors' service contracts, must be kept available for inspection by the company's members at its registered office or inspection place (A.4.3 and A.4.4). Any company must identify itself by its registered name at its registered office, inspection place, and places of business. Further identifying information, including its registered number, must be given on business letters, order forms and websites (see A.5).

This chapter gives general information about the transparency requirements. Details of what must be disclosed about particular events and transactions are given where those matters are discussed in this book. See, in particular, 3.2 on the information to be provided on registration, 4.5.2 on disclosure of amendments to articles, 6.2.2 and 6.3.6 on disclosures about shares, **Online resources, chapter B** on accounts, 11.7 on registration of charges, 14.3 on the register of members, 15.6 on the register of directors and 17.3.2 on the register of secretaries.

### A.1.2 KEY LEGISLATION

Key legislation which you should be able to consult when reading this chapter:

- CA 2006, ss 82–85, 113–120, 128A–128J, 279A–279E, 790M–790S, 790W–790ZD, 853A–853L, 859P, 859Q, 1064, 1071–1087, 1093–1098, 1103–1105, 1112, 1113. All this legislation is in *Blackstone's Statutes on Company Law*.
- The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 (SI 2015/17), which is at the Online Resource Centre for *Blackstone's Statutes on Company Law*: [www.oxfordtextbooks.co.uk/orc/statutes](http://www.oxfordtextbooks.co.uk/orc/statutes).

Your particular course of study may require you to read other source materials.

## A.2 INFORMATION AT COMPANIES HOUSE

### A.2.1 PROVISION OF INFORMATION TO THE REGISTRAR

#### A.2.1.1 Requirements

The Companies Act 2006 (CA 2006), the Insolvency Act 1986 (IA 1986), the Insolvency (England and Wales) Rules 2016 (SI 2016/1024) and associated statutory instruments require a vast quantity of information to be provided by companies to the registrar of companies at Companies House. CA 2006 usually refers to information being ‘delivered’ to the registrar, sometimes to notice being ‘given’ or documents ‘sent’. A document is not delivered until it is received and the registrar may prescribe what amounts to receipt (s 1071). CA 2006 often requires the registrar to ‘register’ a document which has been delivered. The records of information contained in documents delivered to Companies House are referred to collectively in CA 2006 as ‘the register’ (s 1080).

Some of the requirements in CA 2006 to deliver information are derived from what is now Directive 2009/101/EC, arts 2 and 3(3). Article 2 contains a minimum list of documents which must be filed in companies registries throughout the EEA. In CA 2006 these are referred to as documents subject to the Directive disclosure requirements and they are listed in s 1078.

Requirements to provide information to Companies House are noted in this book when the events giving rise to the requirements are discussed. Two of the most important documents that have to be delivered to Companies House are the annual confirmation statement (see **A.2.5**) and the annual accounts (see **Online resources, chapter B.5**).

Delivery and registration of a document are two separate events. Registration of a document that has been delivered does not occur until Companies House has checked that the document is acceptable and has completed the administrative process of registering it. On average, this takes three working days. The day on

which the process is completed is recorded by Companies House as the date of registration and it is the first day on which the document will be seen by a person who searches the register. Where legislation provides that legal consequences take effect from the date of registration, they do so from the actual date on which Companies House registers the document, not the date on which it is delivered (*Re Globespan Airways Ltd* [2012] EWCA Civ 1159, [2013] 1 WLR 1122). This means that the person who delivers such a document cannot control when it becomes effective.

#### **A.2.1.2 Form**

The information that has to be provided to the registrar is recorded and kept at Companies House for inspection by the public. CA 2006, s 1068, therefore entitles the registrar to insist that information is delivered in a form that is convenient for processing. The registrar's current requirement is that documents must be capable of being scanned to produce a digital electronic record (Directive 2009/101/EC, art 3(3)). The registrar must allow electronic submission of documents which are subject to the Directive disclosure requirements (Directive 2009/101/EC, art 3(3); CA 2006, s 1068(5)), but the registrar cannot insist that documents be sent electronically (s 1068(6)). The Secretary of State is empowered to impose that requirement (s 1069), but it is not intended to use the power until electronic communication has become so commonplace that the requirement would be no real burden on companies (Lord McKenzie of Luton, *Hansard HL*, 28 March 2006, cols GC 348–9). It is not possible to submit documents by fax.

Requirements for proper delivery of documents are listed in s 1072(1). A document which is received by the registrar but does not meet these requirements is to be treated as not delivered (s 1072(2)), unless the registrar decides to accept and register it (s 1073). If Companies House receives a document which appears to be inconsistent with information already registered, it may give notice to the company (s 1093). The notice will require the delivery of such replacement or additional documents as may be required to resolve the inconsistency, and failure to supply those documents is an offence.

### **A.2.1.3 Language**

Documents which are required to be delivered to the registrar must be drawn up and delivered in English (CA 2006, s 1103). An exception is made by s 1105 and the Registrar of Companies and Applications for Striking Off Regulations 2009 (SI 2009/1803), reg 7, where documents such as articles of association, contracts or foreign companies' accounts must be delivered. These can be in the original language provided they are accompanied by a certified translation. A Welsh company (see **3.6.2**) may draw up and file documents in Welsh, and may file a certified translation into Welsh of any document that it files in English (s 1104). A document delivered in Welsh must generally be accompanied by a certified translation into English (s 1104(2)), but this translation will be supplied by Companies House for the documents listed in SI 2009/1803, reg 6 (CA 2006, s 1104(3)). Any company may deliver a certified translation into any EU official language of any document that is subject to the Directive disclosure requirements (s 1106; Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006/3429), reg 5; Directive 2009/101/EC, art 4(2)).

### **A.2.1.4 Sanctions**

A legislative provision imposing an obligation to deliver information to Companies House is usually backed up by a criminal sanction for failure to deliver.

If a company is in default of any of the provisions requiring information to be delivered to Companies House and fails to comply with a notice requiring the failure to be made good within 14 days, the registrar or any member or creditor of the company may apply to the court for an order requiring the company and any of its officers to make good the default (CA 2006, s 1113). This remedy is in addition to any criminal sanction (s 1113(5)). A similar power is contained in s 452, relating to the presentation of accounts. In addition, a failure to provide information to Companies House may give the registrar reasonable cause to believe that a company is not carrying on business or is not in operation, which may lead to the company being struck off

the register under s 1000 (see **20.16.2.4**). A director disqualification order may be made against a person who is persistently in default in delivering information to Companies House (Company Directors Disqualification Act 1986 (CDDA 1986), ss 3 and 5; see **20.13.2.2** and **20.13.2.4**). See also CA 2006, s 27 (notice to comply with obligation to file an amendment to articles), discussed in **4.5.2.1**.

Every director of a company has a duty to ensure that it complies with its obligations to provide information to Companies House and cannot opt out of that responsibility by delegating it or refusing to deal with the matter (*Secretary of State for Trade and Industry v Hall* [2006] EWHC 1995 (Ch), [2009] BCC 190, at [17]).

It is an offence for a person, knowingly or recklessly, to deliver or cause to be delivered, to Companies House a document that is misleading, false or deceptive in a material particular (s 1112).

## **A.2.2 INSPECTION OF INFORMATION AT COMPANIES HOUSE**

### **A.2.2.1 Rights to inspect and copy**

The information that is provided about companies, in accordance with the legislation, to Companies House is recorded and kept for inspection by the public. Any person may inspect the register (CA 2006, s 1085(1)) and require a copy of any material on the register (s 1086(1)). Any person may obtain from Companies House a copy of any company's certificate of incorporation (s 1065). There is no right to inspect an original document unless the record that the registrar has of the contents of the document is illegible or unavailable (s 1085(2)) and Companies House is not required to keep original documents for more than three years (s 1083(2)). Records relating to dissolved companies may be sent to the Public Record Office (part of the National Archives) two years after the dissolution (s 1084(3)). Fees are payable to Companies House for inspection and copies (s 1063; Registrar of Companies (Fees) (Companies, Overseas Companies and Limited Liability Partnerships) Regulations 2012 (SI 2012/1907)).

### **A.2.2.2 Material not available for inspection**

CA 2006, s 1087(1), lists classes of information which Companies House must not make available for public inspection. The most significant class is protected information about residential addresses of directors (see **15.6.3.2**). In addition to the classes listed in s 1087(1), if a company is in administration or administrative receivership, it is possible to obtain a court order of limited disclosure of the company's statement of affairs (see **20.10.2**).

### **A.2.3 LIABILITY FOR ERRORS IN THE REGISTER**

Companies House is required to register the information that is provided to it by companies, but is not required to check that it is accurate, except when registering a new director, and then only the director's consent to act is verified, not his or her identity. The person providing the information is responsible for its accuracy and it is an offence for a person, knowingly or recklessly, to deliver or cause to be delivered, to Companies House a document that is misleading, false or deceptive in a material particular (CA 2006, s 1112). The registrar cannot have any liability to persons inspecting the register for errors and inaccuracies in the information that has been supplied for registration.

Different considerations arise when an inaccuracy is caused by an error in the registration process. In the disturbing case of *Sebry v Companies House* [2015] EWHC 115 (QB), [2016] 1 WLR 2499, a court order for the compulsory winding up of a company called Taylor and Son Ltd was carelessly registered against a long-established company called Taylor and Sons Ltd. The information that Taylor and Sons Ltd was being wound up was picked up immediately by credit reference agencies and suppliers of company information. As a result, Taylor and Sons Ltd's bank ended its overdraft facilities and the company's suppliers refused to deal with it on usual credit terms, insisting on immediate payment of all outstanding debts. The company was forced into administration. At first instance it was held (at [118]) that:

the Registrar owes a duty of care when entering a winding up order on the Register to take reasonable care to ensure that the order is not registered against the wrong company. That duty is owed to any Company which is not in liquidation but which is wrongly recorded on the Register as having been wound up by order of the court. The duty extends to taking reasonable care to enter the order on the record of the Company named in the order, and not any other company.

It was emphasised that liability is owed only to the company, not to persons who have found inaccurate information by inspecting the register (at [92], [96] and [106]). It was also emphasised that there is no duty to check information supplied by other persons for registration by Companies House (at [118]).

The simple fact that Companies House registers, but does not check the veracity of, filed information is illustrated by *Bank of Beirut SAL v HRH Prince Adel El-Hashemite* [2015] EWHC 1451 (Ch), [2016] Ch 1. A man resident in Germany, HRH Prince Adel El-Hashemite, used forged powers of attorney purportedly given by Lebanese banks, to register limited partnerships at Companies House. In each partnership, a bank was registered as the general partner (with unlimited liability for the firm's debts) and he was the limited partner (with no liability). It was alleged that he used the registration of these limited partnerships to back up his claims to represent the banks and did so for fraudulent purposes. The Limited Partnerships Act 1908, s 8C, provides that a certificate of registration of a limited partnership is conclusive evidence that it came into existence on the date of registration. Nugee J held this means that the court cannot order a certified registration to be cancelled, even if procured by fraud (though this can be done on an application by the Attorney General, see **3.2.7.3**). Unlike the position with companies, there is currently no provision at all for removing a limited partnership from the register. Nugee J made a declaration that the limited partnerships in this case were registered fraudulently and this is now recorded on the register. The Treasury have proposed amending the law so that dormant limited partnerships can be removed from the register (HM Treasury, *Proposal on using Legislative Reform Order to change partnership legislation for private equity investments*. Consulta-



*tion on draft legislation* (July 2015)).

#### **A.2.4 REMOVAL OF INACCURATE OR SUPERFLUOUS INFORMATION**

Companies House may object to the inclusion of unnecessary material in a document when the document is submitted for filing (CA 2006, s 1074). ‘Unnecessary material’ means material that is not needed to comply with any statutory obligation and for which there is no specific authorisation for its delivery to Companies House (s 1074(2)). Companies House can either reject the document or, if it can be done readily, separate the unnecessary material and register the document without it (s 1074(5)).

Companies House may remove from the register anything that there was power, but no duty, to include (s 1094). Unless removal is requested by the company, notice must be given to a company of intention to remove anything relating to it, and notice will also have to be given to the person who filed the material (s 1094(4) and (5)).

It seems that some users do think it important to include extra information on the register and the Secretary of State has now been given power to make regulations for the recording of ‘optional information’, meaning information that a company is neither obliged nor authorised under any enactment to deliver to Companies House (s 1084A). No regulations have yet been made.

Under s 1095 a procedure has been prescribed in SI 2009/1803, regs 4 and 5, for applying to Companies House to remove from the register material:

- (a) that derives from anything invalid or ineffective or that was done without the authority of the company to which it relates; or
- (b) that is factually inaccurate, or is derived from something that is factually inaccurate or forged.

If there is a dispute about whether material qualifies for removal under these regulations, the court has a power (CA 2006, s 1096) to direct removal from the register of any material:

- (a) that derives from anything which the court has declared to be invalid or ineffective, or to have been done without the authority of the company to which it relates; or
- (b) that the court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged.

The court has statutory powers to correct errors in the registration of company charges (ss 859M and 859N; see **11.7.9**).

Anything that appears on the register as the result of a mistake made by Companies House staff will be removed (Adjudicator for Companies House, Annual Report 2007, para 8(b), *Register*, No 68).

### **A.2.5 CONFIRMATION STATEMENTS**

Every company must deliver an annual confirmation statement to Companies House (CA 2006, s 853A(1)).

This replaces the previous requirement to deliver much the same information in an annual return.

A confirmation statement confirms that all information required to be delivered by the company to Companies House in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement (s 853A(1)(b)).

Each confirmation statement must specify a confirmation date. The confirmation period is the period from the day after the previous statement's confirmation date to the present statement's confirmation date (or from the day of the company's incorporation if this is the first confirmation statement) (s 853A(3)). A confirmation date must be no later than the last day of the review period concerned (s 853A(4)). A company's review periods are the successive periods of 12 months from its date of incorporation unless, in a confirmation statement, it gives a confirmation date earlier than the end of a review period. If that happens, the next review period is 12 months starting with the day after that confirmation date (s 853A(5) and (6)).

Information required to be delivered is listed in ss 853B to 853H. Section 853B lists provisions of CA

2006 that require notification of particular events when they occur, for example, the requirement in s 87 to give notice of a change in the address of the company's registered office. The confirmation statement will confirm that any of those events that did occur during the confirmation period were properly notified at the time. Sections 853C to 853H list requirements to notify or state certain features of the company as they are at the date of the confirmation statement. The company must state:

- (a) its principal business activities, unless there has been no change in the confirmation period (s 853C);
- (b) its capital as set out in a statement of capital, unless there has been no change since the last statement of capital was delivered to Companies House (s 853D);
- (c) whether any of the company's shares are publicly traded anywhere and, if so, whether they were admitted to trading on a 'relevant market' and the company was a DTR5 issuer (s 835E);
- (d) depending on which category the company is in, information about the company's members (ss 853F and 853G); and
- (e) if the company is exempt from keeping a PSC register (of persons with significant control; see **A.4.2.2** and **9.5**), there must be a statement of that fact, unless a previous statement is equally applicable (s 853H).

Section 853E(6) defines a 'relevant market' as a recognised investment exchange (see **7.3.4.2**) and any other market which is a regulated market (see **7.3.4.3**) anywhere in the EEA, but not an overseas investment exchange (see **7.3.4.2**). A 'DTR5 issuer' is a company subject to the disclosure requirements of DTR 5 in the FCA Handbook (see **9.4**) (CA 2006, s 853E(6): the Handbook puts a space in DTR 5 but CA 2006 does not). The information required about a company's members depends on which of the following categories the company is in:

- (a) If none of the company's shares were, at any time during the confirmation period, shares admitted to

trading on a relevant market or on any other market which is outside the United Kingdom, full details must be given (s 853F), see later. Companies in this category are called ‘non-traded companies’.

- (b) If any of the company’s shares were, at any time during the confirmation period, shares admitted to trading on a relevant market or on any other market which is outside the United Kingdom, and the company is not in category (c), information (which is less detailed than is required for non-traded companies) is required only for members who held 5 per cent or more of the issued shares of any class (whether that class is admitted to trading or not) at any time during the confirmation period (s 853G).
- (c) If throughout the confirmation period there were shares of the company which were shares admitted to trading on a relevant market, and the company was a DTR5 issuer, no information about members is required. Such companies already make information about major shareholders public as required by DTR 5 in the FCA Handbook (see **9.4**).

A company in category (a) must deliver with its confirmation statement a list of the names of all persons who were members of the company at any time during the confirmation period, stating the number of shares of each class that they held at the end of the confirmation date (s 853F(5)(a) and (b)). For each person who was a member at any time during the confirmation period, the numbers of each class of shares transferred by or to the member during the confirmation period must be stated and the dates of registration of the transfers (s 853F(5)(c) and (d)).

A company in category (b) is required to state only the name and address of each member who held at least 5 per cent of the issued shares of any class of the company at the end of the confirmation date and the number of shares of each class held by the person at that time (s 853G(6)).

Information about members is not required if and to the extent that it is the same as the information most recently delivered with a confirmation statement (ss 853F(4) and 853G(5)).

There are criminal sanctions for failure to deliver a confirmation statement within 14 days after the end of

a review period (s 853L).

Companies House must give public notice of receipt of a company's confirmation statement (ss 1077 and 1078(2); see **A.3**).

In the early nineteenth century, any company which was under a statutory duty to supply a list of its members to a public office was regarded as being a 'public company' (see *Macintyre v Connell* (1851) 1 Sim NS 225). Accordingly, any non-traded registered company with a share capital is a 'public company' for the purposes of legislation in which that term is used without further definition, for example the Apportionment Act 1870, s 5 (*Re Lysaght* [1898] 1 Ch 115). This is so even if the company is a 'private company' for the purposes of the companies legislation (*Re White* [1913] 1 Ch 231).

The original reason for requiring companies to reveal the names of their members was that a company's members usually had only partly paid shares and their ability to pay any calls which might be made was an important element of the company's creditworthiness. Now that partly paid shares are no longer in use this reason has disappeared.

It is not correct to try to resolve a dispute with a company about the accuracy of information in a confirmation statement by bringing a claim requiring Companies House to correct the information: the claim should be brought against the company and those asserting that the information is correct (*Archer v Registrar General* [2004] UKPC 31, 64 WIR 308).

### **A.3 PUBLIC NOTICE OF RECEIPT OF DOCUMENTS**

Directive 2009/101/EC, art 3(5), requires disclosure of the documents listed in art 2 by publication in the national gazette, or by equally effective electronic means, of either the text of the document or a reference to its entry in the register. The UK forms of the documents required to be disclosed in this way are the documents subject to Directive disclosure requirements listed in CA 2006, s 1078. Companies House must cause

to be published notice of receipt of any document which is subject to the Directive disclosure requirements (s 1077(1)). The notice must state the name and registered number of the company, the description of the document, and the date of receipt (s 1077(2)).

At present, for companies registered in England and Wales, these notices are published in weekly supplements to the *London Gazette*. Section 1116 gives the Secretary of State power to provide for publication by electronic means.

Companies House notifies in the same way the issue of a certificate of incorporation when a company is registered or re-registered, or changes its name, or becomes or ceases to be a Welsh company (s 1064). This notification is not required by the Directive.

Certain events affecting companies have profound effects on how other persons deal with them. Persons who deal with companies are given some protection by s 1079. This provides that a company cannot rely, against another person, on the happening of any event listed in s 1079(2) if, at the material time, the event had not been officially notified, unless the company can prove that the other person knew of the event. The events are:

- (a) an amendment of the company's articles;
- (b) a change among the company's directors;
- (c) (as regards service of any document on the company) a change of the company's registered office;
- (d) the making of a winding-up order in respect of the company; and
- (e) the appointment of a liquidator in a voluntary winding up of the company.

In relation to events (a) to (d), 'official notification' means publication of notice of the receipt of the relevant document by Companies House as required by s 1077 (ss 1079(4)(a) and (b)). In the case of an amendment of the company's articles, receipt of both the amendment and the amended articles

must have been notified (s 1079(4)(a)). For event (e), ‘official notification’ means publication of a notice in the *London Gazette*, as required by the Insolvency Act 1986, s 109.

In addition, if the material time was on or before the fifteenth day after official notification (or the next business day if the fifteenth day is not a business day), the company will not be able to rely on an event if it is shown that the other person was unavoidably prevented from knowing of it at that time (CA 2006, s 1079(3)).

Section 1079 is primarily intended to protect persons dealing with companies rather than to protect companies themselves, and so a company cannot rely on official notification of any event specified in s 1079(2) as being constructive notice to other persons that the event has occurred (*Official Custodian for Charities v Parway Estates Developments Ltd* [1985] Ch 151).

In addition, people are not deemed to have constructive notice of any information published in the *Gazette* but not covered by s 1079 (*Ewart v Fryer* [1901] 1 Ch 499—reported on this point only in 82 LT 415 at pp 416–17; see also the same case in the House of Lords [1902] AC 187 per Lord Macnaghten at p 193 and Lord Lindley at p 194). In *Re Mawcon Ltd* [1969] 1 WLR 78, Pennycuik J said that the notice in the *Gazette* that a provisional liquidator had been appointed (required at that time by SI 1949/330, regs 42(1)(a) and (c)) was notice to all of the appointment; but *Ewart v Fryer* was not cited to his lordship and it is submitted that his decision on this point is wrong.

## **A.4 COMPANY REGISTERS AND DOCUMENTS**

### **A.4.1 GENERAL REQUIREMENTS**

A company is required to maintain registers and certain documents relating to its affairs for inspection by various people. Some of this information may duplicate information recorded and available for inspection at

Companies House (see **A.2**). Apart from the statutory provisions discussed here, the members of a company have no legal right to inspect or take copies of its documents (*Lonrho Ltd v Shell Petroleum Co Ltd* [1980] 1 WLR 627 per Lord Diplock at p 634).

The legislation makes provision for:

- (a) Who may inspect. Some registers and documents may be inspected by any person (**A.4.2**), some by members and creditors only (**A.4.3**), some by members only (**A.4.4**) and some only by company officers (**A.4.5**).
- (b) Where inspection may be made. Each provision requiring a company to keep something available for inspection provides that it may be kept at the company's registered office or at some other inspection place permitted by regulations made under CA 2006, s 1136. Those regulations are in the Companies (Company Records) Regulations 2008 (SI 2008/3006) and they provide that, apart from its registered office, a company can have only one other inspection place (reg 3). This is called the single alternative inspection location (SAIL). It must be in the part of the United Kingdom in which the company is registered and it must be notified to Companies House. Any person with whom a company deals in the course of business may require it to disclose, within five working days, the addresses of its registered office and inspection place and identify the records it keeps for inspection at each place (SI 2015/17, reg 27). Private companies may opt to keep some registers for inspection only at Companies House (see **A.4.2.9**).
- (c) Whether a fee may be charged for inspection. The fees that may be charged are specified in the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 (SI 2007/2612), the Companies (Fees for Inspection and Copying of Company Records) (No 2) Regulations 2007 (SI 2007/3535 and the Companies (Fees for Inspection of Company Records) Regulations 2008 (SI 2008/3007).



- (d) Whether a person making an inspection may, on payment of a fee, require the company to supply a copy of the register or document. The fees that may be charged are specified in SI 2007/2612, SI 2007/3535 and SI 2008/3007. Whether or not there is a right to ask the company to supply a copy, a person with a right to inspect a register or document has a right to make a copy personally (*Mutter v Eastern and Midlands Railway Co* (1888) 38 ChD 92; *Nelson v Anglo-American Land Mortgage Agency Co* [1897] 1 Ch 130).
- (e) The court to order immediate inspection or direct that a copy be supplied, if inspection is refused or a copy is not provided.
- (f) A criminal sanction for not keeping the register or document available.
- (g) A criminal sanction for not informing Companies House where the register is kept.
- (h) A criminal sanction for refusing inspection by someone entitled to inspect or refusing to supply copies to a person entitled to ask for them.

## **A.4.2 REGISTERS AND DOCUMENTS THAT MAY BE INSPECTED BY ANY PERSON**

### **A.4.2.1 Register of members**

Every company must keep a register of its members (CA 2006, s 113), which must be kept available for inspection (s 114) by any person (s 116(1)). If there are more than 50 members, there must be an index of their names, unless the register of members is itself arranged in name order (s 115) and the index must be kept available for inspection with the register (s 115(4)). Private companies may opt to keep this register at Companies House (see **A.4.2.9**).

If the register of members of a British company was created before 1 July 1948 (when CA 1948 came into force), exemption from the obligation to give Companies House notice of the place where the register is available for inspection is available if it has been kept at the company's registered office since 1 July 1948

(for Northern Ireland companies the date is 1 April 1961) (s 114(3) and (4)).

Any member of a company may inspect its register of members free of charge; any other person may be charged a fee (s 116(1)). Any person may require a copy of the register on payment of a fee (s 116(2)).

Anyone seeking to inspect or copy a register of members must make a request to the company (s 116(3)) giving his or her name and address (an individual must be named when an application is made by an organisation), specifying the purpose for which the information is to be used, and stating whether the information will be disclosed to any other person (s 116(4)). If the information is to be disclosed to another person, that person's name and address must be given and the purpose for which that other person will use the information must be stated (s 116(4)(d)). It is an offence, triable either way, to make knowingly or recklessly a statement in such a request that is misleading, false or deceptive in a material particular (s 119). By s 117, the company has five working days either to comply with the request or apply to the court for a direction under s 117(3) that it need not comply because the inspection or copy is not sought for a proper purpose. Identifying persons as targets for violence, harassment or intimidation would obviously not be a proper purpose. The court has a power, on finding that a company need not comply with an inspection request, to direct the company not to comply with similar requests, whether from the same person or other persons (s 117(4)).

The onus is on the company to satisfy the court on a balance of probabilities that the purpose for which access is sought is not a proper one (*Re Burry and Knight Ltd* [2014] EWCA Civ 604, [2014] 1 WLR 4046, at [22]). The court may conclude that the true purpose is not that stated in the request for access (*Re Burry and Knight Ltd* at [21]). Communicating to members something that has no value or utility to them as members is not a proper purpose (*Re Burry and Knight Ltd* in which the request was from a member who had become obsessed with unsubstantiated allegations of wrongdoing long ago and wanted to communicate them to other members). Exploitation of a list of members for commercial gain is not a proper purpose unless it advances

their interests in some way (*Burberry Group plc v Fox-Davies* [2015] EWHC 222 (Ch), [2015] 2 BCLC 66).

When a company allows inspection, or supplies a copy, of its register of members, it must state the date to which the register has been made up (s 120).

If a company has uncertificated shares, the rules on inspection of the register of members apply instead to the company's issuer register of members and its record of uncertificated shares (Uncertificated Securities Regulations 2001 (SI 2001/3755), sch 4, para 9) (see **14.3.2**). The Operator register of members is not open to public inspection.

#### **A.4.2.2 PSC register**

CA 2006, s 790M, requires every company which is not a DTR 5 issuer to keep a register of people with significant control over the company, known as a PSC register (see **9.5**). This must be kept available for inspection (s 790N) by any person without charge (s 790O(1)). Sections 790O to 790R make the same provision for inspections to be for a proper purpose as is made in relation to the register of members (see **A.4.2.1**). Private companies may keep this register at Companies House (see **A.4.2.9**). When a company allows inspection, or supplies a copy, of its PSC register, it must state the most recent date (if any) on which alterations were made to the register and whether there are further alterations to be made (s 790S).

#### **A.4.2.3 Register of directors**

Every company must keep a register of its directors (see **15.6.1**) available for inspection (CA 2006, s 162). Any member of a company may inspect its register of directors free of charge; any other person may be charged a fee (s 162(5)). A company's register of directors does not include their residential addresses. Those are in a separate register (s 165), which is not open to inspection (see **15.6.3**). Private companies may opt to keep these registers at Companies House (see **A.4.2.9**).

#### **A.4.2.4 Register of secretaries**

Every public company, and every private company which has a secretary, must keep a register of secretaries available for inspection (CA 2006, s 275). Any member of a company may inspect its register of secretaries free of charge; any other person may be charged a fee (s 275(5)). Private companies may opt to keep this register at Companies House (see **A.4.2.9**).

#### **A.4.2.5 Public company's contract to purchase its own shares**

Any person may inspect a copy of every contract (or memorandum of the terms of an unwritten contract) made by a public company to purchase its own shares (CA 2006, s 702(6)). A copy or memorandum of a contract must be kept available for inspection from the time it is concluded until ten years after the date on which the purchase under the contract was completed or the contract otherwise determined (s 702). No fee may be charged for inspection (s 702(6)).

#### **A.4.2.6 Register of debentures**

It is not compulsory to keep a register of debentures (see **Online resources, chapter C.4**), but if one is kept, it must be open to inspection by any person (CA 2006, s 744). As with registers of members (see **A.4.2.1**), there are provisions to ensure that inspection and copying are for a proper purpose (ss 744 to 747).

#### **A.4.2.7 Investigation into interests in public company's shares**

A public company must keep a register of interests disclosed in response to notices under CA 2006, s 793, requiring information about interests in its shares (s 808). The register must be kept available for inspection (s 809) by any person without charge (s 811(1)). Any person may require a copy of the register on payment of a fee (s 811(2)). As with the register of members (see **A.4.2.1**), there are provisions to ensure that inspection and copying are for a proper purpose (ss 811, 812 and 814).

If the members of a public company requisition an investigation into interests in shares, the company's re-

port of the information received must be kept available for at least six years for inspection (s 805) by any person without charge (s 807(1)). Any person may require a copy of the report on payment of a fee (s 807(2)).

#### **A.4.2.8 Charges**

By CA 2006, s 859P, every company must keep available for inspection a copy of every instrument creating a charge capable of registration under part 25, ch A1 (ss 859A to 859Q; see **11.7.15**), but there is no criminal sanction for not doing so. Any creditor or member of a company may inspect the copy instruments free of charge; any other person may be charged a fee (s 859Q(4)).

#### **A.4.2.9 Central registration**

Private companies may opt to keep any (or all) of the following registers at Companies House, on what is called the ‘central register’: register of members (CA 2006, ss 128A to 128J), of directors and/or directors’ residential addresses (ss 167A to 167E), of secretaries (ss 279A to 279E), and a PSC register (of people with significant control) (ss 790W to 790ZD). A company’s registers of directors, directors’ residential addresses and secretaries simply duplicate records that are held at Companies House anyway. The Secretary of State has power to permit public companies or a particular class of public companies, to keep PSC registers at Companies House (s 790ZE).

An election to keep a register centrally is made by giving notice to Companies House (ss 128B(3), 167A(3), 279A(2) and 790X(4)). The election may be made by the subscribers when they form a private company or by the company itself after it has been registered (ss 128B(1), 167A(2), 279A(1) and 790X(1)). An election to keep the register of members centrally can be made after a company is registered only if all members of the company assent (s 128B(2)). An election at any time to keep the PSC register centrally can only be made if persons who are to be, or are, on the register have not objected (s 790X(2) and (3)). An elec-

tion may be withdrawn by giving notice to Companies House (ss 128J, 167E, 279E and 790ZD).

While an election for central registration is in force, the company has a duty to notify Companies House of any changes that it would otherwise have to record in its own register (ss 128E, 167D, 279D and 790ZA). Anyone inspecting a register of members on the central register is entitled to ask the company to confirm that it has complied with this requirement and failure to respond to such a request is an offence (s 128F).

An election in respect of a register of members made by a company after it has been registered only transfers to Companies House entries in the register in respect of matters that are current when the election takes effect (ss 128B(5) and (6)). The company must still keep a 'historic' register containing all the information that was required to be stated in the register of members immediately before the election took effect. However, the company does not have to update that register to reflect any changes that occur after that time (s 128D(3)). The same applies to a PSC register (ss 790X(6)(b) and (7) and 790Z(3)).

#### **A.4.3 DOCUMENTS THAT MAY BE INSPECTED BY MEMBERS AND CREDITORS ONLY**

Any member or creditor of a company may inspect the directors' statement and auditor's report required in connection with a payment out of capital by a company for the redemption or purchase of its own shares (CA 2006, s 720). These documents must be kept available for inspection for a period of five weeks after adopting the resolution to make the payment (s 720(1)), but there is no criminal sanction for not doing so. No fee may be charged for inspection (s 720(4)).

Any member and any debenture holder of a company is entitled, on request, to be sent a copy of its last annual accounts and reports (ss 431 and 432; see **Online resources, chapter B.6.1.2**).

## **A.4.4 DOCUMENTS AND RECORDS THAT MAY BE INSPECTED BY MEMBERS ONLY**

### **A.4.4.1 Directors' service contracts**

Every company must keep a copy of every director's service contract with the company or any of its subsidiaries (CA 2006, s 228) available for inspection by its members free of charge (s 229(1)). If a service contract is not in writing, a written memorandum setting out its terms must be available for inspection (s 228(1)(b)). Availability for inspection must continue for at least one year from the date of termination or expiry of the contract (s 228(3)). This provision applies to shadow directors (s 230). Any member may require a copy of a contract or memorandum on payment of a fee (s 229(2)).

### **A.4.4.2 Qualifying indemnity provision**

Every company must keep a copy of any qualifying indemnity provision made for any of its directors or a director of an associated company (CA 2006, s 237) available for inspection by its members free of charge (s 229(1)). If the provision is not in writing, a written memorandum setting out its terms must be available for inspection (s 237(2)(b)). Availability for inspection must continue for at least one year from the date of termination or expiry of the provision (s 237(4)). Any member may require a copy of a provision or memorandum on payment of a fee (s 238(2)).

### **A.4.4.3 Records of resolutions and meetings**

The records of resolutions and meetings which a company must keep for ten years (CA 2006, s 355) must be kept available for inspection by any member of the company (s 358(1)). Any member may require a copy of the records on payment of a fee (s 116(2)).

### **A.4.4.4 Private company's contract to purchase its own shares**

The provisions concerning inspection of contracts made by a company to purchase its own shares (CA 2006, ss 702 and 703; see **A.4.2.5**) also apply to private companies, except that only a member of a private compa-

ny has a right of inspection (s 702(6)).

#### **A.4.4.5 Documents in connection with resolutions**

There are provisions of CA 2006 under which resolutions on certain matters will be ineffective unless documents relating to those matters are available for inspection by members when they consider the resolution. See s 188(5) (approval of director's service contract, discussed in **15.8.4**), s 696 (resolutions relating to off-market purchases of the company's own shares, discussed in **10.6.4**), and s 718 (approval of payment out of capital for redemption or purchase of company's own shares, discussed in **10.5.3**).

#### **A.4.4.6 Right to copies of constitutional documents**

A member of a company is entitled, on request, to be sent a copy of the company's constitutional documents (CA 2006, s 32; see **4.2.1**).

### **A.4.5 RECORDS THAT MAY BE INSPECTED BY OFFICERS ONLY**

A company must keep accounting records at its registered office or at such other place as the directors may determine, and these records must be open to inspection at all times by the officers of the company (CA 2006, s 388(1); see further **Online resources, chapter B.3.3**).

## **A.5 TRADING DISCLOSURES**

### **A.5.1 IDENTIFICATION OF A COMPANY**

Every company must disclose the following information about itself on its business letters, its order forms and its websites:

- (a) its registered name;
- (b) the part of the United Kingdom in which it is registered;



(c) its registered number; and

(d) the address of its registered office.

These requirements are imposed by SI 2015/17 regs 24 and 25. Those regulations have been made under CA 2006, s 82, implementing Directive 2009/101/EC, art 5.

If a company with a share capital mentions its capital in any of these places, the reference must be to the paid-up capital (see **6.4.5**) (Directive 2009/101/EC, art 5; SI 2015/17, reg 25(3)).

A company's registered name must be displayed at its registered office, at any inspection place (see **A.4.1**) (SI 2015/17, reg 21(1)), and at any other location where it carries on business, except one primarily used for living accommodation (reg 22). Regulation 21(1) does not apply to dormant companies (reg 21(2)). For other exemptions see **A.5.3** and **15.6.3.2**.

SI 2015/17, reg 24(1), requires a company's registered name to be disclosed on all its business correspondence and documentation (reg 24(1)(g)) and provides a long list of particular types of document on which the name must be disclosed. These include cheques purporting to be signed by or on behalf of the company (reg 24(1)(c)), invoices and other demands for payment (reg 24(1)(e)), and applications for licences to carry on a trade or activity (reg 24(1)(f)).

Display or disclosure required by SI 2015/17 must be in characters that can be read with the naked eye (reg 20). A display at an office or other location must be positioned so that it may easily be seen by any visitor (reg 23). There can be a rolling or scrolling display if the office or location is shared by six or more companies (reg 23(3)).

CA 2006, s 45(2), requires a company to have its name engraved in legible characters on its common seal (see **19.2.2**).

Failure to comply with any of these requirements is a summary offence (SI 2015/17, reg 28; CA 2006, s 45(3) to (5)).

Contravention of these rules has been specified in the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003 (SI 2003/1593), sch, part 1, as a domestic infringement for the purposes of the Enterprise Act 2002, part 8 (ss 210 to 236). This means that the Competition and Markets Authority, or any local weights and measures authority (trading standards), can take action under part 8 if an infringement harms the collective interests of consumers in the United Kingdom. The court may make an enforcement order requiring the infringer not to continue or repeat the infringing conduct (s 217) or the enforcing authority may accept an undertaking not to do so (s 219).

### **A.5.2 DIRECTORS**

Under a law introduced in the middle of the First World War, and intended to force businesses to reveal whether they were controlled by foreigners, every company registered on or after 23 November 1916 was required to list the names and nationalities of all its directors on all its business letters. This was usually done by listing them on pre-printed stationery, but in practice companies found it difficult to comply with the law and ensure that stationery was changed every time board membership changed. So CA 1981 made a statement of directors' names on stationery optional. It introduced a rule that if directors are named on stationery (other than in the body of the letter or as signatory), all directors, including shadow directors (see **15.2.3**), must be named. The rule continued to apply only to companies registered on or after 23 November 1916, but the requirement to state directors' nationalities was dropped. The rule introduced by CA 1981 is continued by SI 2015/17, reg 26, but no longer requires shadow directors to be named.

### **A.5.3 INSOLVENCY**

If a company is the subject of various insolvency and liquidation procedures, that fact must be stated on all invoices, orders for goods and services and business letters, if they are issued by or on behalf of the company or its receiver, manager, liquidator or administrator, and on all its websites. The facts which, if they exist,

must be mentioned are:

- (a) that a receiver or manager of the company's property (including an administrative receiver) has been appointed (IA 1986, s 39);
- (b) that the company is being wound up (s 188);
- (c) that a moratorium to enable preparation of a voluntary arrangement is in force, in which case the nominee's name must be given (sch A1, para 16); and
- (d) that the company is in administration, in which case the administrator's name must be given (sch B1, para 45).

Failure to state the appropriate facts is a summary offence (IA 1986, sch 10).

If a company's registered office, inspection place or place at which it carries on business is at a place of business of its liquidator, administrator or administrative receiver, its registered name need not be displayed there (SI 2015/17, regs 21(3) and 22(4)).

### **A.5.5 CHARITABLE COMPANIES**

By the Charities Act 2011, ss 193 and 194(1), if a company is a charity and its name does not include the word 'charity' or the word 'charitable', the fact that the company is a charity must be stated in legible characters:

- (a) in every location, and in every document or communication, where it is required by SI 2015/17 to state its name (see **A.5.1**); and
- (b) in all conveyances purporting to be executed by the company.

In this provision, 'conveyance' means any instrument creating, transferring, varying or extinguishing an interest in land (s 194(4)). The statement must be in English, or in Welsh in a document that is wholly in

Welsh (s 194(2) and (3)).

It is important for persons dealing with a charitable company to appreciate that it is a charitable company because, unlike other companies, a charitable company's contractual capacity is limited by s 42 (see **19.4.3** and **19.5.10**).

## **A.6 WHAT CAN BE LEARNT FROM THIS CHAPTER**

### **A.6.1 SUMMARY**

**Chapter A** has provided general coverage of the requirements for provision of information about a company to Companies House. The records of information contained in documents delivered to Companies House are referred to collectively in CA 2006 as 'the register'. Every company must deliver an annual confirmation statement to Companies House confirming that all information required to be delivered by the company to Companies House in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement, including information about members. Companies House must give public notice of receipt of significant documents. Companies must also keep registers of members, persons with significant control, directors and secretaries available for public inspection together with some documents such as contracts to purchase own shares. Further documents and records must be kept available for inspection by members (and creditors for some of them). A company must disclose its registered name and registration details on business letter, order forms and websites, and its name must be displayed at its registered office and anywhere else it carries on business.

### **A.6.2 LEGAL CONCEPTS**

- Confirmation statement
- Official notification

- Single alternative inspection location (SAIL)

### **A.6.3 POINTS OF LAW**

- Where legislation provides that legal consequences take effect from the date of registration of a document delivered to Companies House, the consequences take effect from the actual date on which Companies House registers the document, not the date on which it is delivered (*Re Globespan Airways Ltd* [2012] EWCA Civ 1159, [2013] 1 WLR 1122).
- It is an offence for a person, knowingly or recklessly, to deliver or cause to be delivered, to Companies House a document that is misleading, false or deceptive in a material particular (CA 2006, s 1112).
- Every company must deliver an annual confirmation statement to Companies House (s 853A(1)).
- Every company must disclose on its business letters, its order forms and its websites: its registered name, the part of the United Kingdom in which it is registered, its registered number; and the address of its registered office (SI 2015/17 regs 24 and 25).
- A company's registered name must be displayed at its registered office, at any inspection place, and at any other location where it carries on business, except one primarily used for living accommodation (SI 2015/17, regs 21(1) and 22). (There are some exemptions.)

### **A.7 FURTHER READING**

**A.2.3** J Hartshorne, 'A most expensive letter' (2016) 32 PN 164 (commentary on *Sebry v Companies House* [2015] EWHC 115 (QB), [2016] 1 WLR 2499).