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Good Company

September 2008

Newsletter



Despite the credit crunch the Corporate Commercial department has been busy doing amongst other things the following

- A business sale of up to \$2 million to a large American company of a niche electronics company
- A buy out for up to £1.4 million of one shareholder by another
- Terms and conditions for an online jokes company
- Shareholder agreements for family engineering company
- Instructions to act for a bank on new facilities of in excess of £2 million

We are doing a follow up seminar on further developments in the new Companies Act with particular emphasis on the new model articles. The date is in November, further details to follow, please contact one of us for details.

TO ALL YOU COMPANY DIRECTORS, WHEN DID YOU LAST LOOK AT YOUR ARTICLES OF ASSOCIATION!

Kate

Accepting and Processing Card Payments

From 1st July 2008, it becomes a requirement of the Payment Card Industry Security Standards Council, a group made up of American Express, Discover Financial Services, MasterCard Worldwide, Visa Inc., and JCB International, that all online retailers use a new firewall to protect the processing of card payments or have their card payment processing software reviewed to ensure it is safe from hacks and fraud. Companies may not rely on vendor-set defaults for any firewall systems and they must restrict access to card data only to those who absolutely need access to it.

Compliance is enforced by the individual card payment brands and those retailers who do not comply with the above data security standards (DSS) risk being fined or losing their ability to process card payments.

Companies are required to submit to audits of their compliance by approved consultancies, though small businesses with fewer than 80,000 transactions a year can self-assess.

The Core requirements are as follows:

Build and Maintain a Secure Network

Requirement 1: Install and maintain a firewall configuration to protect cardholder data

Requirement 2: Do not use vendor-supplied defaults for system passwords and other security parameters

Protect Cardholder Data

Requirement 3: Protect stored cardholder data

Requirement 4: Encrypt transmission of cardholder data across open, public networks

Maintain a Vulnerability Management Program

Requirement 5: Use and regularly update anti-virus software

Requirement 6: Develop and maintain secure systems and applications

Implement Strong Access Control Measures

Requirement 7: Restrict access to cardholder data by business need-to-know

Requirement 8: Assign a unique ID to each person with computer access

Requirement 9: Restrict physical access to cardholder data

Regularly Monitor and Test Networks

Requirement 10: Track and monitor all access to network resources and cardholder data

Requirement 11: Regularly test security systems and processes

Maintain an Information Security Policy

Requirement 12: Maintain a policy that addresses information security

Loans To Directors, Shadow Directors & Connected Persons (Companies Act 2006)

In Force: 1 October 2007

New Status: no longer generally prohibited

However: still subject to member approval (and sometimes, approval of members of its holding company).

* "Connected Persons" =

- spouse, child, stepchild,
- business partner &
- any company associated with the director (ie. company in which the director has $\geq 20\%$ shareholding)

Loans NOT requiring shareholder approval (All companies)

1.	s. 208, CA 2006	CA	Intra-group loans (eg. loan by subsidiary to a director/holding company).
2.	s. 204(1), CA 2006	CA	Funding of directors' expenditure \leq £50,000, incurred or to be incurred: <ul style="list-style-type: none">▪ for the purposes of the company; or▪ to enable him to properly perform his duties as an officer of the company; or▪ to enable him to avoid incurring such expenditure.

3. s. 209, CA 2006	For money-lending companies (ie. loan-makers or guarantee-givers), any loan or guarantee to a director or director of its holding company if: <ul style="list-style-type: none"> loan/guarantee = made in the ordinary course of the company's business; and terms are not more favourable than that which would reasonably have been offered to a person of a similar financial standing unconnected with the company; and purpose of loan = to facilitate the purchase of the whole/part of any dwelling to be used as the director's only or main residence.
4. s. 207, CA 2006	Loans of small amounts ≤ £10,000.

Loans Requiring Shareholder Approval (All companies)	
1. s.197, CA 2006	Loan to director of a company or of its holding company.
2. s.197(1)(b), CA 2006	The giving of a guarantee, indemnity, or any security: <ul style="list-style-type: none"> by a company in connection with any loan made by any person to a director or a director of its holding company.
3. s.203(1), CA 2006	Any transaction entered into by a third party <ul style="list-style-type: none"> which would have required prior shareholder approval if entered into by the company; and under which the 3rd party has obtained or is to obtain some benefit from: <ol style="list-style-type: none"> the company; its holding company or subsidiary; or its fellow subsidiary.
NB.	If any transaction (which would have required prior approval) had been entered into initially by the company, the company <i>may</i> : <ul style="list-style-type: none"> assign to it, or assume any rights, obligations or liabilities under the transaction (s.203(1), CA 2006).

Public Companies & Companies Associated With Public Companies

Public companies or companies associated with public companies require member approval to enter into certain other types of credit arrangements for the benefit of its directors or connected persons (s. 201, CA 2006).

Loans Requiring Shareholder Approval (Public Companies & Companies Associated With Public Companies)	
1. s. 198, CA 2006	Quasi-loans ¹ to director or director of its holding company. (eg. <ul style="list-style-type: none"> director provided with company credit card under which liability falls on the company and company agrees to purchase goods or services for director's personal use on the understanding that he will subsequently reimburse the monies.)
2. s. 198, CA 2006	any guarantee entered into, or any security provided by, the company in connection with

	any loan or quasi-loan made by any other person for director or connected person.
3. s. 201, CA 2006	any proposed guarantee or security in connection with a credit transaction made by any other person for a director or connected person

¹ s.199(3): Quasi-loan = transaction under which the creditor agrees:

- to pay, or pay otherwise than in pursuance of an agreement, a sum for the borrower; on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
- to reimburse, or reimburse otherwise than in pursuance of an agreement, expenditure incurred by the borrower for another, in circumstances giving rise to a liability on the borrower to reimburse the creditor.

Remedies & Liabilities (s.213, CA 2006)

Remedies

- Loan, transaction, or arrangement is voidable at option of company.
- Company will be able to recover property from third party UNLESS:
 - restitution no longer possible;
 - company has an indemnity for any loss or damage suffered; or
 - third party has acquired bona fide rights for value & without notice of the contravention.

Liabilities

- Defaulting director, connected person, director who authorises the transaction, loan or arrangement, and/or shadow director (s. 223(1)(c)) may be liable to:
 - account to company for any gain that may have been made in/directly from the transaction; and
 - indemnify the company for any loss or damage suffered.
- Company which enters into a proscribed transaction or arrangement for a director or holding company director may be guilty of an offence.

Defence

Guilty Party	Defence
1. Director connected with a person who is party to such transaction or arrangement	Took all reasonable steps to comply with the provisions of s.213, CA 2006.
2. Defaulting director, connected person or shadow director	Did not know the relevant circumstances constituting the contravention at the time of the transaction or arrangement.
3. Company which entered into a proscribed transaction or arrangement	

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