



# Companies Act 1989

## 1989 CHAPTER 40

### PART II

#### ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR

##### *Eligibility for appointment*

#### 25 Eligibility for appointment.

- (1) A person is eligible for appointment as a company auditor only if he—
  - (a) is a member of a recognised supervisory body, and
  - (b) is eligible for the appointment under the rules of that body.
- (2) An individual or a firm may be appointed a company auditor.
- (3) In the cases to which section 34 applies (individuals retaining only 1967 Act authorisation) a person's eligibility for appointment as a company auditor is restricted as mentioned in that section.

#### **Modifications etc. (not altering text)**

- C1** S. 25 applied (S.) (17.7.1995) by 1994 c. 39, s. 88(2) (with s. 74(4)); S.I. 1995/1898, art. 2(a), Sch. S. 25 applied (6.1.1997) by S.I. 1996/2827, reg. 63, Sch. 6 para.1

#### **Commencement Information**

- II** S. 25 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

#### 26 Effect of appointment of partnership.

- (1) The following provisions apply to the appointment as company auditor of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any other country or territory in which a partnership is not a legal person.

*Status: Point in time view as at 06/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Eligibility for appointment. (See end of Document for details)*

- (2) The appointment is (unless a contrary intention appears) an appointment of the partnership as such and not of the partners.
- (3) Where the partnership ceases, the appointment shall be treated as extending to—
  - (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment, and
  - (b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.
- (4) For this purpose a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) Where the partnership ceases and no person succeeds to the appointment under subsection (3), the appointment may with the consent of the company be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company shall be treated as comprising the appointment.

**Modifications etc. (not altering text)**

**C2** S. 26 extended (1.10.1991) by S.I. 1991/1997, reg.3

**Commencement Information**

**I2** S. 26 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

**27 Ineligibility on ground of lack of independence.**

- (1) A person is ineligible for appointment as company auditor of a company if he is—
  - (a) an officer or employee of the company, or
  - (b) a partner or employee of such a person, or a partnership of which such a person is a partner,

or if he is ineligible by virtue of paragraph (a) or (b) for appointment as company auditor of any associated undertaking of the company.

For this purpose an auditor of a company shall not be regarded as an officer or employee of the company.

- (2) A person is also ineligible for appointment as company auditor of a company if there exists between him or any associate of his and the company or any associated undertaking a connection of any such description as may be specified by regulations made by the Secretary of State.

The regulations may make different provisions for different cases.

- (3) In this section “associated undertaking”, in relation to a company, means—
  - (a) a parent undertaking or subsidiary undertaking of the company, or
  - (b) a subsidiary undertaking of any parent undertaking of the company.

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- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

- C3** S. 27 amended (6.1.1997) by S.I. 1996/2827, reg. 63, **Sch. 6 para. 2(3)**  
**C4** S. 27 applied (temp. from 15.12.2007) by **The Companies (Cross-Border Mergers) Regulations 2007** (S.I. 2007/2974), regs. 4(6), 9, **Sch. 1 para. 4(3)**

**Commencement Information**

- I3** S. 27 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, **art. 2(1)(a)**

**28 Effect of ineligibility.**

- (1) No person shall act as a company auditor if he is ineligible for appointment to the office.
- (2) If during his term of office a company auditor becomes ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.
- (3) A person who acts as company auditor in contravention of subsection (1), or fails to give notice of vacating his office as required by subsection (2), is guilty of an offence and liable—
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (4) In the case of continued contravention he is liable on a second or subsequent summary conviction (instead of the fine mentioned in subsection (3)(b)) to a fine not exceeding one-tenth of the statutory maximum in respect of each day on which the contravention is continued.
- (5) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

**Commencement Information**

- I4** S. 28 wholly in force at 1.10.1991 subject to transitional provisions see s. 215 and S.I. 1991/1996, **arts. 2(1)(a),3**

**29 Power of Secretary of State to require second audit.**

- (1) Where a person appointed company auditor was, for any part of the period during which the audit was conducted, ineligible for appointment to that office, the Secretary of State may direct the company concerned to retain a person eligible for appointment as auditor of the company—
- (a) to audit the relevant accounts again, or
  - (b) to review the first audit and to report (giving his reasons) whether a second audit is needed;

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and the company shall comply with such a direction within 21 days of its being given.

- (2) If a second audit is recommended the company shall forthwith take such steps as are necessary to comply with the recommendation.
- (3) Where a direction is given under this section, the Secretary of State shall send a copy of the direction to the registrar of companies; and the company shall within 21 days of receiving any report under subsection (1)(b) send a copy of it to the registrar of companies.

The provisions of the <sup>M1</sup>Companies Act 1985 relating to the delivery of documents to the registrar apply for the purposes of this subsection.

- (4) Any statutory or other provisions applying in relation to the first audit shall apply, so far as practicable, in relation to a second audit under this section.
- (5) If a company fails to comply with the requirements of this section, it is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum; and in the case of continued contravention it is liable on a second or subsequent summary conviction (instead of the fine mentioned above) to a fine not exceeding one-tenth of the statutory maximum in respect of each day on which the contravention is continued.
- (6) A direction under this section is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the <sup>M2</sup>Court of Session Act 1988.
- (7) If a person accepts an appointment, or continues to act, as company auditor at a time when he knows he is ineligible, the company concerned may recover from him any costs incurred by it in complying with the requirements of this section.

#### **Commencement Information**

**I5** S. 29 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

#### **Marginal Citations**

**M1** 1985 c. 6.

**M2** 1988 c. 36.

**Status:**

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