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STATUTORY INSTRUMENTS

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**1994 No. 1935**

**The Companies Act 1985 (Audit Exemption) Regulations 1994**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Companies Act 1985 (Audit Exemption) Regulations 1994 and shall come into force on 11th August 1994.

(2) In these Regulations “the 1985 Act” means the Companies Act 1985.

**Audit exemption for certain categories of small companies**

2. After section 249 of the 1985 Act<sup>(1)</sup> there shall be inserted the following sections—

*“Exemptions from audit for certain categories of small company*

**Exemptions from audit for certain categories of small company**

**249A.**—(1) Subject to section 249B, a company which meets the total exemption conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year.

(2) Subject to section 249B, a company which meets the report conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year if the directors cause a report in respect of the company's individual accounts for that year to be prepared in accordance with section 249C and made to the company's members.

(3) The total exemption conditions are met by a company in respect of a financial year if—

- (a) it qualifies as a small company in relation to that year for the purposes of section 246,
- (b) its turnover in that year is not more than £90,000, and
- (c) its balance sheet total for that year is not more than £1.4 million.

(4) The report conditions are met by a company in respect of a financial year if—

- (a) it qualifies as a small company in relation to that year for the purposes of section 246,
- (b) its turnover in that year is more than £90,000 but not more than £350,000, and
- (c) its balance sheet total for that year is not more than £1.4 million.

(5) In relation to any company which is a charity—

- (a) subsection (3)(b) shall have effect with the substitution for the reference to turnover of a reference to gross income, and
- (b) subsection (4)(b) shall have effect with the substitution—
  - (i) for the reference to turnover of a reference to gross income, and

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(1) Section 249 was substituted by section 13 of the Companies Act 1989.

(ii) for the reference to 350,00 of a reference to £250,000.

(6) For a period which is a companys financial year but not in fact a year the maximum figures for turnover or gross income shall be proportionately adjusted.

(7) In this section—

“balance sheet total” has the meaning given by section 247(5), and

“gross income” means the companys income from all sources, as shown in the companys income and expenditure account

### **Cases where exemptions not available**

**249B.**—(1) A company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A in respect of a financial year if at any time within that year—

- (a) it was a public company,
- (b) it was a banking or insurance company
- (c) it was enrolled in the list maintained by the Insurance Brokers Registration Council under section 4 of the Insurance Brokers (Registration) Act 1977,
- (d) it was an authorised person or an appointed representative under the Financial Services Act 1986,
- (e) it was a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 or an employers' association as defined in section 122 of that Act, or
- (f) it was a parent company or a subsidiary undertaking.

(2) Any member or members holding not less in the aggregate than 10 per cent in nominal value of the companys issued share capital or any class of it or, if the company does not have a share capital, not less than 10 per cent in number of the members of the company, may, by notice in writing deposited at the registered office of the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year

(3) Where a notice has been deposited under subsection (2), the company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A in respect of the financial year to which the notice relates

(4) A company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A unless its balance sheet contains a statement by the directors—

- (a) that for the year in question the company was entitled to exemption under subsection (1) or (2) (as the case may be) of section 249A,
- (b) that no notice has been deposited under subsection (2) of this section in relation to its accounts for the financial year, and
- (c) that the directors acknowledge their responsibilities for—
  - (i) ensuring that the company keeps accounting records which comply with section 221, and
  - (ii) preparing accounts which give a true and fair view of the state of affairs of the company as at the end of the financial year and of its profit or loss for the financial year in accordance with the requirements of section 226, and which otherwise comply with the requirements of this Act relating to accounts, so far as applicable to the company.

(5) The statement required by subsection (4) shall appear in the balance sheet immediately above the signature required by section 233 or, as the case may be, above any statement required by section 246(1A) or by paragraph 23 of Schedule 8.

**The report required for the purposes of section 249A(2).**

**249C.**—(1) The report required for the purposes of section 249A(2) shall be prepared by a person (referred to in this Part as “the reporting accountant”) who is eligible under section 249D

(2) The report shall state whether in the opinion of the reporting accountant making it—

- (a) the accounts of the company for the financial year in question are in agreement with the accounting records kept by the company under section 221, and
- (b) having regard only to, and on the basis of, the information contained in those accounting records, those accounts have been drawn up in a manner consistent with the provisions of this Act specified in subsection (6), so far as applicable to the company.

(3) The report shall also state that in the opinion of the reporting accountant, having regard only to, and on the basis of, the information contained in the accounting records kept by the company under section 221, the company satisfied the requirements of subsection (4) of section 249A (or, where the company is a charity, of that subsection as modified by subsection (5) of that section) for the financial year in question, and did not fall within section 249B(1)(a) to (f) at any time within that financial year

(4) The report shall state the name of the reporting accountant and be signed by him

(5) Where the reporting accountant is a body corporate or partnership, any reference to signature of the report, or any copy of the report, by the reporting accountant is a reference to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf

(6) The provisions referred to in subsection (2)(b) are—

- (a) section 226(3) and Schedule 4,
- (b) section 231 and paragraphs 7 to 9A and 13(1), (3) and (4) of Schedule 5, and
- (c) section 232 and Schedule 6,

where appropriate as modified by section 246(1)(a) and (1A) and Section A of Part I of Schedule 8.

**The reporting accountant**

**249D.**—(1) The reporting accountant shall be a person who is a member of a body listed in subsection (3) and who, under the rules of the body is either—

- (a) entitled to engage in public practice and not ineligible for appointment as a reporting accountant, or
- (b) eligible for appointment as a company auditor.

(2) An individual, a body corporate or a partnership may be appointed as a reporting accountant, and section 26 of the Companies Act 1989 (effect of appointment of partnership) shall apply to the appointment as reporting accountant 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

(3) The bodies referred to in subsection (1) are—

- (a) the Institute of Chartered Accountants in England and Wales,
- (b) the Institute of Chartered Accountants of Scotland,
- (c) the Institute of Chartered Accountants in Ireland,
- (d) the Chartered Association of Certified Accountants, and
- (e) the Association of Authorised Public Accountants.

(4) A person is ineligible for appointment by a company as reporting accountant if he would be ineligible for appointment as an auditor of that company under section 27 of the Companies Act 1989 (ineligibility on ground of lack of independence).

### **Effect of exemptions**

**249E.**—(1) Where the directors of a company have taken advantage of the exemption conferred by section 249A(1)—

- (a) sections 238 and 239 (right to receive or demand copies of accounts and reports) shall have effect with the omission of references to the auditors report;
- (b) no copy of an auditors report need be delivered to the registrar or laid before the company in general meeting;
- (c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply.

(2) Where the directors of a company have taken advantage of the exemption conferred by section 249A(2)—

- (a) subsections (2) to (4) of section 236 (which require copies of the auditors report to state the names of the auditors) shall have effect with the substitution for references to the auditors and the auditors' report of references to the reporting accountant and the report made for the purposes of section 249A(2) respectively;
- (b) sections 238 and 239 (right to receive or demand copies of accounts and reports), section 241 (accounts and reports to be laid before company in general meeting) and section 242 (accounts and reports to be delivered to the registrar) shall have effect with the substitution for references to the auditors report of references to the report made for the purposes of section 249A(2);
- (c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply;
- (d) section 389A(1) and (2) (rights to information) shall have effect with the substitution for references to the auditors of references to the reporting accountant.”

### **Exemption from requirement to appoint auditors**

**3.**—(1) For section 388A of the 1985 Act(2) there shall be substituted the following section—

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(2) Section 388A was inserted by section 119 of the Companies Act 1989.

### **“Certain companies exempt from obligation to appoint auditors**

**388A.**—(1) A company which by virtue of section 249A (certain categories of small company) or section 250 (dormant companies) is exempt from the provisions of Part VII relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if a company which has been exempt from those provisions ceases to be so exempt.

(3) Where section 385 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where section 385A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or

(b) if notice is given under section 253(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.”

### **Consequential amendments of enactments**

4. Schedule 1 to these Regulations (which makes consequential amendments of the 1985 Act and the Charities Act 1993) shall have effect.

### **Consequential amendments of Companies (Revision of Defective Accounts and Report) Regulations 1990**

5. The Companies (Revision of Defective Accounts and Report) Regulations 1990(3) shall be amended in accordance with Schedule 2 to these Regulations.

### **Application and transitional provisions**

6.—(1) Subject to paragraphs (2) to (4) below, the provisions of these Regulations shall apply to any annual accounts of a company which are approved by the board of directors on or after the day on which these Regulations come into force (“the commencement date”).

(2) Where—

(a) the accounts for a financial year which has ended have not been approved by the board of directors before the commencement date, or

(b) the financial year to which any accounts relate ends less than one month after the commencement date,

the provisions of these Regulations do not apply unless a copy of those accounts is delivered to the registrar before the end of the period allowed for laying and delivering them.

(3) In any case falling within paragraph (2)

above, any member or members holding not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class of it or, if the company does not have a share capital,

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not less than 10 per cent in number of the members of the company, may by notice in writing deposited at the registered office of the company before the end of the period of one month beginning with the commencement date require that the company obtains an audit of its accounts for the financial year in question.

(4) Where a notice is deposited under paragraph (3)

above, the company shall not be exempt from the provisions of Part VII of the 1985 Act relating to the audit of accounts in respect of the financial year to which the notice relates.

Department of Trade and Industry  
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