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STATUTORY INSTRUMENTS

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**2008 No. 565**

**The Insurance Accounts Directive (Miscellaneous  
Insurance Undertakings) Regulations 2008**

**PART 1**

INTRODUCTION

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.

(2) These Regulations come into force on 6th April 2008 and apply in relation to—

- (a) insurance undertakings' financial years beginning on or after that date, and
- (b) auditors appointed in respect of those financial years.

**Interpretation**

2.—(1) In these Regulations—

“the Companies Accounts Regulations” means the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 <sup>M1</sup>;

“the appropriate audit authority” means—

- (a) the Secretary of State, or
- (b) if the Secretary of State has delegated functions under section 1252 of the Companies Act 2006 <sup>M2</sup> to a body whose functions include receiving the equivalent notice under section 522 or 523 of that Act, that body;

“the Authority” means the Financial Services Authority <sup>M3</sup>;

“director” includes, in the case of an undertaking which is not a company, any corresponding officer of that body;

“enactment” includes—

- (a) an enactment contained in subordinate legislation, other than these Regulations,
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“friendly society” has the same meaning as in the Financial Services and Markets Act 2000 <sup>M4</sup>;

*Status: Point in time view as at 06/04/2008.*

*Changes to legislation: There are currently no known outstanding effects for the The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008. (See end of Document for details)*

“industrial and provident society” means a registered society within the meaning of either section 74 of the Industrial and Provident Societies Act 1965<sup>M5</sup> or section 101 of the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>M6</sup>;

“insurance undertaking” shall be construed in accordance with paragraphs (2) and (3).

(2) Subject to paragraph (3), a body incorporated in or formed under the law of any part of the United Kingdom is an insurance undertaking for the purposes of these Regulations if it—

- (a) is incorporated by or registered under any public general Act of Parliament,
- (b) requires permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance without contravening the prohibition imposed by section 19 of that Act, and
- (c) is not required by any enactment to prepare accounts under Part 15 of the Companies Act 2006 (accounts and reports).

(3) Paragraph (2)(b) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>M7</sup>,
- (c) Schedule 2 to that Act.

(4) A body is not an insurance undertaking for the purposes of these Regulations if it—

- (a) is excluded from the scope of Council Directive [73/239/EEC](#)<sup>M8</sup> by Article 3 of that Directive,
- (b) is referred to in Article 3(2) to (6) of Directive [2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance<sup>M9</sup>, or
- (c) is a friendly society.

(5) Any reference in these Regulations to the accounts required by or prepared under regulation 3 are references to the annual accounts, the directors' report and the auditor's report required by or prepared under paragraph (1) of that regulation.

(6) Any reference in these Regulations to “financial year” in relation to an insurance undertaking means—

- (a) any period in respect of which a profit and loss account, or in the case of an industrial and provident society, an annual return, of that undertaking is required to be made up by or in accordance with its constitution or by any enactment (whether that period is a year or not), or
- (b) failing any such requirement, each period of 12 months beginning with 1st April.

(7) Except as otherwise provided in these Regulations, words and expressions used in the Companies Act 2006 have the same meaning in these Regulations as they have in that Act.

#### Marginal Citations

- M1** [S.I. 2008/410](#).
- M2** [2006 c.46](#).
- M3** [See the Financial Services and Markets Act 2000 \(c.8\), section 1](#).
- M4** [2000 c.8](#).
- M5** [1965 c.12](#).
- M6** [1969 c.24 \(N.I.\)](#).
- M7** [S.I. 2001/544](#) as amended by [S.I. 2001/3544](#), [S.I. 2002/682](#), [S.I. 2002/1310](#), [S.I. 2002/1776](#), [S.I. 2002/1777](#), [S.I. 2003/1475](#), [S.I. 2003/1476](#), [S.I. 2003/2822](#), [S.I. 2004/1610](#), [S.I. 2004/2737](#), [S.I. 2004/3379](#), [S.I. 2005/593](#), [S.I. 2005/1518](#), [S.I. 2005/2114](#) and [S.I. 2006/1969](#).

- M8** O.J. L228, 16.8.1973, p.3.  
**M9** O.J. L345, 19.12.2002, p.1.

## PART 2

### ACCOUNTS

#### Preparation of accounts by insurance undertakings

3.—(1) The directors of an insurance undertaking must in respect of each financial year of the undertaking—

- (a) prepare the like annual accounts and directors' report, and
- (b) cause to be prepared such an auditor's report,

as would be required under the provisions mentioned in paragraph (3) if the undertaking were a company which is an insurance company or the parent company of an insurance group.

(2) The accounts required by this regulation must—

- (a) be prepared within the period of 6 months beginning immediately after the end of the undertaking's financial year,
- (b) state that they are prepared under this regulation, and
- (c) comply with such of the requirements of the provisions mentioned in paragraph (3) as relate to the contents of accounts or reports subject, where the insurance undertaking is unincorporated, to any necessary modifications to take account of that fact.

(3) The provisions referred to in paragraphs (1) and (2) are the following provisions of the Companies Act 2006 and the Companies Accounts Regulations—

- (a) Chapters 4 and 5 of Part 15 of the Companies Act 2006 (accounts and reports),
- (b) sections 433 (name of signatory to be stated in published copies of accounts and reports) and 436 (meaning of “publication” in relation to accounts and reports) of that Act as far as the latter section has effect for the purposes of section 433,
- (c) section 469 of that Act (preparation and filing of accounts in euros),
- (d) sections 475(1) (requirement for audited accounts), 495 (auditor's report on annual accounts), 496 (auditor's report on directors' report), 498 (duties of auditor), 503 (signature of auditor's report) and 505 (names to be stated in published copies of auditor's report) of that Act,
- (e) where Companies Act individual accounts are prepared, Schedule 3 to the Companies Accounts Regulations (insurance companies: Companies Act individual accounts) other than paragraphs 11, 62, 68, 70, 71, 72, 82(2), 83 and 84 and, in paragraph 2(2), the words from “save that none of the following” to the end,
- (f) Schedule 4 to those Regulations (information on related undertakings required whether preparing Companies Act or IAS accounts) other than paragraphs 9 and 12,
- (g) Schedule 5 to those Regulations (information about benefits of directors) other than paragraphs 2, 4 and 5,
- (h) where Companies Act group accounts are prepared, Part 1 of Schedule 6 to the Companies Accounts Regulations (Companies Act group accounts: general rules) (as modified by Part 3 of that Schedule (modifications for insurance groups)) other than paragraphs 13(3) and (4), 14 and 15,

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(i) paragraphs 6 and 7 of Schedule 7 to those Regulations (directors' report).

(4) For the purposes of those provisions as applied to accounts prepared under this regulation, these Regulations are to be regarded as part of the requirements of the Companies Act 2006 and the Companies Accounts Regulations.

(5) Regulations 5 and 6 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008<sup>M10</sup> apply in relation to the accounts required by this regulation as they apply in relation to the annual accounts of a company or group which is not a small or medium-sized company or group.

#### **Marginal Citations**

**M10** S.I. 2008/489.

#### **Publication of accounts**

4.—(1) An insurance undertaking must—

- (a) make available the latest accounts and reports prepared under regulation 3 for inspection by any person, without charge and during business hours, at the undertaking's head office in the United Kingdom, and
- (b) supply to any person upon request a copy of those accounts (or such part of those accounts as may be requested) at a price not exceeding the administrative cost of making the copy.

(2) In the case of industrial and provident societies which are insurance undertakings, the obligation in paragraph (1) (b) is subject to the provisions of section 39(5) of the Industrial and Provident Societies Act 1965 or section 48(6) of the Industrial and Provident Societies Act (Northern Ireland) 1969, as the case may be.

#### **Penalties for non-compliance (accounts)**

5.—(1) If the directors of an insurance undertaking fail to comply with paragraph (1) of regulation 3 within the period referred to in paragraph (2) of that regulation, an offence is committed by every person who, immediately before the end of that period, was a director of the undertaking.

(2) If accounts and reports which are made available for inspection under regulation 4(1) do not comply with the requirements of regulation 3, an offence is committed by every person who, at the time when the accounts and reports were or the account was first made available for inspection, was a director of the insurance undertaking.

(3) If an insurance undertaking fails to comply with regulation 4(1) an offence is committed by—

- (a) the insurance undertaking, and
- (b) every director of the insurance undertaking who is in default.

(4) Where the affairs of an insurance undertaking are managed by its members, any reference in this regulation to a director of the insurance undertaking shall be read as referring to a member of the undertaking.

(5) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Section 1130 of the Companies Act 2006 (proceedings against unincorporated bodies) applies to an offence under paragraph (3) as it does to an offence under section 519 of that Act (statement by auditor to be deposited with company).

## PART 3

### AUDITORS

#### Appointment of auditors

6.—(1) Sections 485 (appointment of auditors of private company: general), 486 (appointment of auditors of private company: default power of Secretary of State), 487 (term of office of auditors of private company) and 488 (prevention by members of deemed re-appointment of auditor) of the Companies Act 2006 apply in relation to the appointment of auditors of an insurance undertaking subject—

- (a) where the undertaking concerned is unincorporated, to any necessary modifications to take account of that fact,
- (b) to the modifications made by paragraph (2), and
- (c) to paragraph (3).

(2) The modifications are—

- (a) in section 485(2)(a), the reference to “the time allowed for sending out copies of the company's annual accounts and reports” is to be construed as a reference to the time allowed under regulation 3(2)(a) of these Regulations for preparing the accounts required by regulation 3;
- (b) in section 485(2)(b), the reference to “the day on which copies of the company's annual accounts and reports for the previous financial year are sent out under section 423” is to be construed as a reference to the day on which the accounts required by regulation 3 are prepared;
- (c) in section 487(3), the reference to “the provisions of this Part as to removal and resignation of auditors” is to be construed as a reference to provisions in these Regulations, and to any public general Act governing an insurance undertaking, as to removal and resignation of auditors;
- (d) in section 488(3)(c), the reference to “the accounting reference period” is to be construed as a reference to the financial year.

(3) Sections 1121 (liability of officer in default), 1122 (liability of company as officer in default), 1123 (application to bodies other than companies) and 1130 (proceedings against unincorporated bodies) of the Companies Act 2006 apply in relation to an offence committed under section 486(3) of that Act as applied by this regulation.

(4) This regulation does not apply in relation to industrial and provident societies which prepare accounts under the provisions of these Regulations.

#### Functions of auditor

7.—(1) The following provisions of the Companies Act 2006 apply to the auditor of an insurance undertaking as they apply to an auditor of a company—

- (a) section 495 (auditor's report on company's annual accounts);
- (b) section 498 (duties of auditor);
- (c) section 499 (auditor's general right to information).

*Status: Point in time view as at 06/04/2008.*

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(2) The auditor of an insurance undertaking must supply the directors of that undertaking with such information as is necessary to enable the disclosure required by regulation 3(5) to be made.

(3) This regulation does not apply in relation to industrial and provident societies which prepare accounts under the provisions of these Regulations.

### **Signature of auditor's report**

**8.—**(1) Sections 503 to 506 of the Companies Act 2006 (signature of auditor's report) apply in relation to the auditor's report required by regulation 3(1)(b), subject to—

- (a) any necessary modifications to take account of the fact that the insurance undertaking is unincorporated, and
- (b) the modifications made by paragraph (2).

(2) The modifications are—

- (a) in section 505(1)(b) and section 506(2)(b), the references to the Secretary of State are to be construed as references to the Authority, and
- (b) in section 506(1)(b), the reference to the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports) is to be construed as a reference to any copy of the report made available for inspection by, or supplied to, the Authority.

(3) The reference to section 505 of the Companies Act 2006 in regulation 3(3)(d) is to be construed in accordance with this regulation.

### **Removal of auditors on improper grounds**

**9.—**(1) Where the auditor of an insurance undertaking is removed from office an application may be made to the High Court under this regulation.

(2) The persons who may make such an application are—

- (a) any member of the insurance undertaking who was also a member at the time of the removal, and
- (b) the Authority.

(3) If the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures, or
- (b) on any other improper grounds,

it may make such order as it thinks fit for giving relief in respect of the removal.

(4) The court may, in particular—

- (a) declare that any resolution of the insurance undertaking removing an auditor, or appointing a new auditor in his place, is void;
- (b) require the directors of the insurance undertaking to re-appoint the dismissed auditor until the next general meeting of the insurance undertaking;
- (c) give directions as to the conduct of the insurance undertaking's affairs in the future.

(5) In the application of this regulation to an insurance undertaking whose principal place of business is in Scotland or Northern Ireland, references to the High Court are to be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

### **Duty of auditor to notify appropriate audit authority**

**10.—**(1) Where an auditor of an insurance undertaking ceases for any reason to hold office, he must notify the appropriate audit authority.

- (2) The notice must—
  - (a) inform the appropriate audit authority that he has ceased to hold office, and
  - (b) if the auditor resigns, be accompanied by a copy of any notice of resignation and a statement of the reasons for his resignation.
- (3) The auditor must comply with this regulation—
  - (a) if he resigns, at the same time as he deposits his notice of resignation at the head office of the insurance undertaking or otherwise informs it of his resignation;
  - (b) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

#### **Duty of insurance undertaking to notify appropriate audit authority**

11.—(1) Where an auditor of an insurance undertaking ceases to hold office before the end of his term of office, the undertaking must notify the appropriate audit authority.

- (2) The notice must—
  - (a) inform the appropriate audit authority that the auditor has ceased to hold office, and
  - (b) be accompanied by—
    - (i) a statement by the undertaking of the reasons for his ceasing to hold office, or
    - (ii) if the auditor has resigned and he has given the insurance undertaking a statement of the reasons for his resignation, a copy of that statement.
- (3) The insurance undertaking must give notice under this paragraph—
  - (a) if the auditor resigns, not later than the end of the period of 14 days beginning with the date on which the auditor first informs the insurance undertaking of his resignation (whether by notice deposited at its head office or otherwise);
  - (b) in any other case, not later than the end of the period of 14 days beginning with the date on which the auditor ceases to hold office.

#### **Penalties for non-compliance (notification of appropriate audit authority)**

- 12.—(1) If an auditor fails to comply with regulation 10, an offence is committed by—
- (a) the auditor, and
  - (b) if the auditor is a firm, every officer of the firm who is in default.
- (2) If an insurance undertaking fails to comply with regulation 11, an offence is committed by—
- (a) the insurance undertaking, and
  - (b) every director of the insurance undertaking who is in default.
- (3) Where the affairs of an insurance undertaking are managed by its members, any reference in this regulation to a director of the insurance undertaking shall be read as referring to a member of the undertaking.
- (4) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) Sections 1121 (liability of officer in default), 1122 (liability of company as officer in default), 1123 (application to bodies other than companies) and 1130 (proceedings against unincorporated bodies) of the Companies Act 2006 apply to an offence under paragraphs (1) and (2) as they apply to an offence under section 519 of that Act (statement by auditor to be deposited with company).

## PART 4

### FINAL PROVISIONS

#### Summary proceedings: venue and time limit

13. Sections 1127 (summary proceedings: venue) and 1128 (summary proceedings: time limit for proceedings) of the Companies Act 2006 apply in relation to summary proceedings for any offence under these Regulations as they apply in relation to such proceedings for any offence under that Act.

#### Industrial and provident societies

14.—(1) Schedule 1 to these Regulations makes provision for the modification of the Friendly and Industrial and Provident Societies Act 1968<sup>M11</sup> in its application to industrial and provident societies that are insurance undertakings for the purposes of these Regulations.

(2) Schedule 2 makes provision for the modification of the Industrial and Provident Societies (Northern Ireland) Act 1969 in its application to industrial and provident societies that are insurance undertakings for the purposes of these Regulations.

(3) The Industrial and Provident Societies (Group Accounts) Regulations 1969<sup>M12</sup> and the Industrial and Provident Societies Act (Group Accounts) Regulations (Northern Ireland) 1969<sup>M13</sup> do not apply to industrial and provident societies that are insurance undertakings for the purposes of these Regulations.

(4) Notwithstanding anything in the rules of the society, the committee of an industrial and provident society that is an insurance undertaking for the purposes of these Regulations may by resolution passed before 1st April 2009 make such amendments of the rules of the society as may be consequential on the provisions of these Regulations.

(5) The Authority is not required to register any amendment of the rules of such a society unless such consequential amendments of the rules of the society as are mentioned in paragraph (4) either have been made before the application for registration of that amendment or are to be effected by that amendment.

#### Marginal Citations

M11 1968 c.55.

M12 S.I. 1969/1037.

M13 S.R. 1969/359.

#### Consequential amendments

15.—(1) In section 1210 of the Companies Act 2006<sup>M14</sup> (meaning of “statutory auditor” etc)—

(a) for subsection (1)(f) substitute—

“(f) a person appointed as auditor of an insurance undertaking for the purposes of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008,”; and



(b) omit—

(i) subsection (1)(d), and

(ii) in subsection (3), omit the definition of “industrial and provident society”.

(2) In section 4A(3) of the Friendly and Industrial and Provident Societies Act 1968 (power to disapply obligation to appoint auditor: excluded cases)<sup>M15</sup>, omit paragraph (d) (but not the word “or” following it).

(3) In section 38A of the Industrial and Provident Societies (Northern Ireland) Act 1969 (power to disapply obligation to appoint auditor: excluded cases)<sup>M16</sup>, omit paragraph (c) (but not the word “or” following it).

#### Marginal Citations

**M14** 2006 c.46.

**M15** Section 4A was inserted by article 8(1) of S.I. 1996/1738.

**M16** 1969 c.24 (N.I.). Section 38A was inserted by paragraph 6 of Schedule 2 to S.I. 1997/2984 (N.I. 22).

#### Revocation

**16.**—(1) The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993<sup>M17</sup> and the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations (Northern Ireland) 1994<sup>M18</sup> are revoked.

(2) The regulations specified in paragraph (1) continue to apply to any financial year of an insurance undertaking beginning before 6th April 2008.

#### Marginal Citations

**M17** S.I. 1993/3245, as amended by article 450 of S.I. 2001/3649, by regulation 8 of S.I. 2004/3379, by regulation 18 of S.I. 2004/3219 and by regulations 2 to 4 of S.I. 2005/1985.

**M18** S.R. 1994/429, as amended by S.R. 2006/353.

Department for Business, Enterprise and  
Regulatory Reform  
26th February 2008

*Gareth Thomas*  
Parliamentary Under Secretary of State for Trade  
and Consumer Affairs,

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.