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STATUTORY INSTRUMENTS

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**1990 No. 593**

**The Companies (Northern Ireland) Order 1990**

**PART III**

**ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR**

*Eligibility for appointment*

**Eligibility for appointment**

- 28.**—(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.

**Effect of appointment of partnership**

**29.**—(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.

(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 paragraph (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.

**Ineligibility on ground of lack of independence**

- 30.**—(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 sub-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 Department.

(3) In this Article “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.

(4) Regulations under this Article shall be subject to negative resolution.

### **Effect of ineligibility**

**31.**—(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 paragraph (1), or fails to give notice of vacating his office as required by paragraph (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 paragraph (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 Article 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.

### **Power of Department to require second audit**

**32.**—(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 Department 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; 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 Article, the Department shall send a copy of the direction to the registrar; and the company shall within 21 days of receiving any report under paragraph (1) (b) send a copy of it to the registrar.

The provisions of the 1986 Order relating to the delivery of documents to the registrar apply for the purposes of this paragraph.

(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 Article.

(5) If a company fails to comply with the requirements of this Article, 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 Article is, on the application of the Department, enforceable by injunction.

(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 Article.