

**2006 No. 137**

**COMPANIES**

**The Companies (1986 Order) (Investment Companies and  
Accounting and Audit Amendments) Regulations (Northern  
Ireland) 2006**

*Made* - - - -

*16th March 2006*

*Coming into operation* -

*1st April 2006*

The Department of Enterprise, Trade and Investment(**a**), being a Department designated(**b**) for the purposes of section 2(2) of the European Communities Act 1972(**c**) in relation to measures relating to the acquisition by companies of their own shares, and to distributions to their shareholders, in exercise of the powers conferred upon it by section 2(2) of that Act and by Article 265 of the Companies (Northern Ireland) Order 1986(**d**), makes the following Regulations:

**PART I**

**GENERAL**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Companies (1986 Order) (Investment Companies and Accounting and Audit Amendments) Regulations (Northern Ireland) 2006.

(2) These Regulations shall come into operation on 1st April 2006, and apply to accounts copies of which are delivered to the registrar of companies on or after that date.

(3) Part III and regulation 12 in Part IV of these Regulations have effect as respects companies' financial years which begin on or after 1st July 2005 and which end on or after 1st April 2006.

(4) In these Regulations, the "1986 Order" means the Companies (Northern Ireland) Order 1986.

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(a) Formerly the Department of Economic Development: *see* S.I. 1999/283 (N.I. 1), Article 3(5)

(b) S.I. 1999/654

(c) 1972 c.68; as amended by the European Economic Area Act 1993 (c.51)

(d) S.I. 1986/1032 (N.I.6); Article 265 was inserted into the 1986 Order by Article 22 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)) in place of an existing Article of that number

## PART II

### DISTRIBUTIONS BY INVESTMENT COMPANIES

#### **Other permitted distributions by investment companies**

2.—(1) Article 273 of the 1986 Order (other distributions by investment companies)(a) is amended as follows.

- (2) In paragraph (1)(a), after “liabilities” insert “to creditors”.
- (3) In paragraph (2)—
  - (a) after “liabilities” in both places where it occurs insert “to creditors”, and
  - (b) after “and any provision” insert “for liabilities to creditors”.

## PART III

### ADJUSTMENT OF NON-COMPARABLE AMOUNTS

#### **Adjustment of prior year items in balance sheet and profit and loss account**

3. In paragraph 4(2) of Schedule 4 to the 1986 Order (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account)—

- (a) for “shall be adjusted” substitute “may be adjusted”, and
- (b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

#### **Prior year disclosures in notes to accounts**

4. Omit paragraphs 58(2) and (3) of Schedule 4 to the 1986 Order (disclosure of corresponding amounts in notes to accounts)(b).

#### **Adjustment of prior year items in small company balance sheet and profit and loss account**

5. In paragraph 4(2) of Schedule 8 to the 1986 Order (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account of small company)(c)—

- (a) for “shall be adjusted” substitute “may be adjusted”, and
- (b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

#### **Prior year disclosures in notes to small company accounts prepared for members**

6. Omit paragraph 51(2) and (3) of Schedule 8 to the 1986 Order (disclosure of corresponding amounts in notes to small company accounts prepared for members).

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(a) Article 273 was amended by section 212(2) of, and paragraph 34 of Schedule 16 to, the Financial Services Act 1986 (c. 60), article 57 of S.I. 2001/3649, regulation 2 of S.R. 2004 No. 22 and regulations 3 and 15 of, and paragraph 25 of Schedule 1 and paragraph 9 of Schedule 7 to, S.R. 2004 No. 496

(b) Paragraph 58 was amended by Article 6(2) of, and paragraph 10 of Schedule 1 to, S.I.1990/593 (N.I. 5)

(c) Schedule 8 was substituted by regulation 2(2) of, and Schedule 1 to, S.R. 1997 No. 436 and amended by article 70 of S.I. 2001/3649, regulation 3 of, and Schedule 1 to, S.R. 2004 No. 307 and regulation 14(2) of, and Schedule 3 to, S.R. 2004 No. 496

### **Prior year disclosures in notes to small company abbreviated accounts**

7. Omit paragraph 9(2) and (3) of Schedule 8A to the 1986 Order (disclosure of corresponding amounts in notes to small company abbreviated accounts delivered to registrar of companies)(a).

### **Adjustment of prior year items in balance sheet and profit and loss account of banking companies**

8. In paragraph 4(2) of Schedule 9 to the 1986 Order (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account of banking companies)(b)—

- (a) for “shall be adjusted” substitute “may be adjusted”, and
- (b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

### **Prior year disclosures in notes to accounts of banking companies**

9. Omit paragraph 47(2) and (3) of Schedule 9 to the 1986 Order (disclosure of corresponding amounts in notes to banking company accounts).

### **Adjustment of prior year items in balance sheet and profit and loss account of insurance companies**

10. In paragraph 3(2) of Schedule 9A to the 1986 Order (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account of insurance companies)(c)—

- (a) for “shall be adjusted” substitute “may be adjusted”, and
- (b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

### **Prior year disclosures in notes to accounts of insurance companies**

11. Omit paragraphs 54(2) and (3) of Schedule 9A to the 1986 Order (disclosure of corresponding amounts in notes to insurance company accounts)(d).

## **PART IV**

### **SMALL AND MEDIUM-SIZED COMPANIES**

#### **Special provisions for small companies**

12. In Article 254(3)(b) of the 1986 Order (special provisions for small companies)(e), before sub-paragraph (i) insert—

“(ai) Article 239A (disclosure required in notes to annual accounts: particulars of staff);  
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- (a) Schedule 8A was inserted by regulation 2(3) of, and Schedule 2 to, S.R. 1997 No. 436, amended by regulation 7 of S.R. 2001 No. 153 and regulation 14(3) of, and Schedule 4 to, S.R. 2004 No. 496
  - (b) Parts I to III of Schedule 9 were inserted before a re-numbered Schedule 9A by regulation 5 of S.R. 1992 No. 258. Part VI of Schedule 9 was substituted by Article 20(3) and (4) of, and Part IV of Schedule 7 to, S.I. 1990/593 (N.I. 5)
  - (c) Parts I and II of Schedule 9 to the Companies (Northern Ireland) Order 1986 were formed into a new Schedule 9A by regulation 5 of S.R. 1992 No. 258. A new Schedule 9A was substituted by regulation 4 of, and Schedule 1 to, S.R. 1994 No. 428
  - (d) Paragraph 54 was substituted by regulation 13(7) of, and Schedule 5 to, S.R. 1997 No. 314
  - (e) Article 254 was substituted by regulation 2(1) of S.R. 1997 No. 436, amended by regulation 6(1) of S.R. 1997 No. 545, regulation 8(1) of S.R. 2001 No. 153, regulations 3 and 13(2) of, and paragraph 14 of Schedule 1 to, S.R. 2004 No. 496 and regulation 4 of S.R. 2005 No. 61

### **Disapplication of special provisions for small and medium-sized companies**

13. In Article 255A(1B)(b)(a), for “one or more regulated activities” substitute “a regulated activity”.

### **Dormant companies**

14. In Article 257AA(3)(a) of the 1986 Order (dormant companies)(b), for “one or more regulated activities” substitute “a regulated activity”.

### **Cases where exemption from audit not available**

15. In Article 257B(1)(d) of the 1986 Order (cases where exemption from audit not available)(c), after “Act 2000” insert “(other than an appointed representative whose scope of appointment is limited to activities that are not regulated activities for the purposes of this Part: see Article 270)”.

### **Definition of “regulated activity”**

16.—(1) In Article 270 (minor definitions), at the appropriate place insert—

““regulated activity” has the meaning given by Article 2, except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001—

- (a) article 25A (arranging regulated mortgage contracts),
- (b) article 39A (assisting administration and performance of a contract of insurance),
- (c) article 53A (advising on regulated mortgage contracts), or
- (d) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order);”.

(2) In Article 270A (index of defined expressions), at the appropriate place insert—

““regulated activity” Articles 2 and 270.”

## **PART V**

### **CONSEQUENTIAL AMENDMENTS**

17. In Schedule 1 to the Limited Liability Partnerships Regulations (Northern Ireland) 2004(d), in the entries relating to Articles 255A and 257AA of the 1986 Order, for “one or more regulated activities” in each place where it occurs substitute “a regulated activity”.

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(a) Article 255A was inserted by regulation 4 of S.R. 1997 No. 436, amended by article 51 of S.I. 2001/3649 and regulation 6 of S.R. 2005 No. 61

(b) Article 257AA was inserted by regulation 3 of S.R. 2001 No. 153, and amended by article 53 of S.I. 2001/3649

(c) Article 257B was inserted by regulation 2 of S.R. 1995 No. 128, amended by regulation 9 of S.R. 1997 No. 314, regulation 3 of S.R. 1997 No. 500, article 54 of S.I. 2001/3649 and regulation 4 of S.R. 2001 No. 153

(d) S.R. 2004 No. 307

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 16th  
March 2006



*M Bohill*

A senior officer of the Department of Enterprise, Trade and Investment

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the accounting and audit provisions of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”), and also amend the distribution rules for investment companies.

Part II of the Regulations (regulation 2) amends Article 273 in Part IX of the 1986 Order concerning the distribution of profits of an investment company. The amendments are in further implementation of Article 15.4 of the Second Council Directive 77/91/EEC (Official Journal No. L26/1 of 31st January 1977), on the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital.

The Regulations amend Article 273 to provide that an investment company may make a distribution out of revenue profits if the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors as shown in accounts of the company (previously the references were to “liabilities”). The amendments reflect changes in accounting practice whereby certain shares are to be classified as liabilities in a company’s accounts.

Part III of the Regulations (regulations 3 to 11) replaces the requirement in paragraph 4(2) of Schedule 4 to the 1986 Order (and the equivalent requirements in Schedules 8, 8A, 9 and 9A to the 1986 Order) for corresponding amounts in company accounts to be adjusted if not comparable with a discretion to make such adjustments. The requirement derived from the exercise of a Member State option in Article 4.4 of Council Directive 78/660/EEC on the annual accounts of certain types of companies (Official Journal No. L222/11 of 14th August 1978). Part III of the Regulations also removes the requirements in Schedule 4 and the other accounting Schedules for disclosures of prior year amounts to be given in the notes to the accounts. As a result of changes in accounting practice, the issue of adjustment of non-comparable amounts and of disclosure of corresponding amounts in the notes to the accounts is to be left to accounting standards.

Part IV of the Regulations (regulations 12 to 16) makes amendments to provisions in Part VIII of the 1986 Order concerning small and medium-sized companies consequential on recent legislation. Regulation 12 amends Article 254 so that small companies are not required to make the disclosure in Article 239A concerning employees. Article 239A was inserted by regulation 3 of, and paragraph 11 of Schedule 1 to, the Companies (1986 Order) (International Accounting Standards and Other Accounting Amendments) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 496).

Regulations 13 to 16 ensure that small and medium-sized companies which carry out certain activities for which permission is required under Part 4 of the Financial Services and Markets Act 2000 do not cease to be able to take advantage of special accounting and audit exemptions by reason only of carrying on those activities. The activities are defined in regulation 16. Amendments consequential to the amendments made by regulations 13 to 16 are made to the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004 No. 307) by regulation 17.