



# Companies Act 1976

## 1976 CHAPTER 69

### PART I

#### ACCOUNTS, ACCOUNTING RECORDS AND AUDITORS

##### *Auditors*

### 13 Qualifications of auditors

- (1) Subject to subsection (2) below, the bodies of accountants recognised by the Secretary of State for the purposes of paragraph (a) of subsection (1) of section 161 of the Act of 1948 (bodies whose members are qualified for appointment as auditors of company) shall be—
- the Institute of Chartered Accountants in England and Wales;
  - the Institute of Chartered Accountants of Scotland ;
  - the Association of Certified Accountants ;
  - the Institute of Chartered Accountants in Ireland.
- (2) The Secretary of State may by regulations made by statutory instrument amend subsection (1) above by adding or deleting any body, but shall not make any regulations—
- (a) adding any body ; or
  - (b) deleting any body which has not consented in writing to its deletion;
- unless he has published notice of his intention to do so in the London and Edinburgh Gazettes at least four months before making the regulations.
- (3) The Secretary of State may refuse an authorisation under paragraph (b) of subsection (1) of the said section 161 to a person as having qualifications obtained outside the United Kingdom if it appears to him that the country in which the qualifications were obtained does not confer on persons qualified in the United Kingdom privileges corresponding to those conferred by that subsection.

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- (4) No authorisation shall be granted by the Secretary of State after the expiration of twelve months from the coming into operation of this section—
- (a) under paragraph (b) of subsection (1) of the said section 161 to a person as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of paragraph (a) of that subsection; or
  - (b) under section 13(1) of the Act of 1967 (transitional provision for persons who have been auditors of exempt private companies).
- (5) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of such disqualification.
- (6) Any person who acts as auditor in contravention of subsection (5) above or fails without reasonable excuse to give notice of vacating his office as required by that subsection shall be guilty of an offence and liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding £40 for every day during which the contravention continues.

#### **14 Appointment and removal of auditors**

- (1) Every company shall at each general meeting of the company at which there are complied with—
- (a) the requirements of subsection (6) of section 1 above, or
  - (b) in relation to any time before the coming into operation of that section, the requirements of section 148 of the Act of 1948 (profit and loss account and balance sheet to be laid before company in general meeting),
- appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting of the company at which those requirements are complied with.
- (2) Where at any general meeting of a company at which the requirements mentioned in subsection (1) above are complied with no auditors are appointed or reappointed, the Secretary of State may appoint a person to fill the vacancy; and the company shall, within one week of the Secretary of State's power under this subsection becoming exercisable, give the Secretary of State notice of that fact.
- (3) The first auditors of a company may be appointed by the directors at any time before the first general meeting of the company at which the requirements mentioned in subsection (1) above are complied with, and auditors so appointed shall hold office until the conclusion of that meeting.
- (4) If the directors fail to exercise their powers under subsection (3) above, those powers may be exercised by the company in general meeting.
- (5) The directors, or the company in general meeting, may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.
- (6) A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him ; and

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where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice of that fact in the prescribed form to the registrar of companies.

- (7) If a company fails to give any such notice as is mentioned in subsections (2) or (6) above, the company and every officer of the company who is in default shall be guilty of an offence and liable, on summary conviction, to a default fine.
- (8) The remuneration of the auditor of a company—
- (a) in the case of an auditor appointed by the directors or by the Secretary of State, may be fixed by the directors or by the Secretary of State, as the case may be ;
  - (b) subject to paragraph (a) above, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purpose of this subsection " remuneration " includes any sums paid by the company in respect of the auditor's expenses.

- (9) Where a company's auditor or auditors are holding office at the date of the coming into operation of this section, nothing in subsection (1) above shall be taken as terminating their appointment, or as requiring either their reappointment or the appointment of other auditors, before the conclusion of the annual general meeting of the company held next after that date ; and subsections (1) and (2) above shall apply in relation to that meeting as if it were a general meeting of the company at which the requirements mentioned in subsection (1) above were complied with (whether it is such a meeting or not).
- (10) Nothing in subsection (6) above shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.
- (11) Section 159 of the Act of 1948 (which is superseded by this section) shall cease to have effect.
- (12) The repeal by this Act of subsection (2) of the said section 159 (existing auditors of company normally to be treated as reappointed without the passing of any resolution) shall not affect its operation in relation to any meeting of a company commencing within two months of the coming into operation of this section ; and in relation to any such meeting section 15(1) below shall apply also to a resolution providing expressly that a retiring auditor shall not be reappointed.

## **15 Supplementary provisions relating to appointment and removal of auditors**

- (1) Special notice shall be required for a resolution at a general meeting of a company—
- (a) appointing as auditor a person other than a retiring auditor; or
  - (b) filling a casual vacancy in the office of auditor ; or
  - (c) reappointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy ; or
  - (d) removing an auditor before the expiration of his term of office.
- (2) On receipt of notice of such an intended resolution as aforesaid the company shall forthwith send a copy thereof—
- (a) to the person proposed to be appointed or removed, as the case may be ;
  - (b) in a case within subsection (1)(a) above, to the retiring auditor; and

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- (c) where, in a case within subsection (1)(b) or (c) above, the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.
- (3) Where notice is given of such a resolution as is mentioned in subsection (1)(a) or (d) above and the retiring auditor or, as the case may be, the auditor proposed to be removed makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—
- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made, and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (4) If a copy of any such representations as are mentioned in subsection (3) above are not sent out as required by that subsection because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter ; and the court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (6) An auditor of a company who has been removed shall be entitled to attend—
- (a) the general meeting at which his term of office would otherwise have expired, and
  - (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,
- and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.
- (7) Section 160 of the Act of 1948 (which is superseded by this section) shall cease to have effect.

## **16 Resignation of auditors**

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the registered office of the company; and any such notice shall operate to bring his term of office to an end on the date on which the notice is deposited or on such later date as may be specified therein.
- (2) An auditor's notice of resignation shall not be effective unless it contains either—
- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company ; or
  - (b) a statement of any such circumstances as aforesaid.

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- (3) Where a notice having effect under this section is deposited at a company's registered office the company shall within fourteen days send a copy of the notice—
  - (a) to the registrar of companies ; and
  - (b) if the notice contained a statement under subsection (2)(b) above, to every person who under section 158(1) of the Act of 1948 is entitled to be sent copies of the documents there mentioned.
- (4) The company or any person who claims to be aggrieved may, within fourteen days of the receipt by the company of a notice containing a statement under subsection (2)(b) above apply to the court for an order under subsection (5) below.
- (5) If the court, on an application under' subsection (4) above, is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may by order direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (6) The company shall, within fourteen days of the court's, decision, send to the persons mentioned in subsection (3) above—
  - (a) if the court makes an order under subsection (5) above, a statement setting out the effect of the order ;
  - (b) if the court does not make an order under that subsection, a copy of the notice containing the statement under subsection (2) (b) above.
- (7) If default is made in complying with subsection (3) or (6) above, the company and every officer of the company who is in default shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to a fine ;
  - (b) on summary conviction, to a default fine of £40.
- (8) Section 428 of the Act of 1948 (enforcement of duty of company to make returns to registrar) shall have effect as if subsections (3) and (6) above were provisions of that Act.

## **17 Right of auditor who resigns to requisition meeting of company, etc.**

- (1) Where an auditor's notice of resignation contains a statement under section 16(2)(b) above there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (2) Where an auditor's notice of resignation contains any such statement as aforesaid and the auditor requests the company to circulate to its members—
  - (a) before the general meeting at which his term of office would otherwise have expired ; or
  - (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition;a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation, the company shall (unless the statement is received by it too late for it to do so)—

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- (i) in any notice of the meeting given to members of the company state the fact of the statement having been made, and
  - (ii) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.
- (3) If the directors do not within twenty-one days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine ;
  - (b) on summary conviction, to a fine not exceeding £400;
- and if a copy of any such statement as is mentioned in subsection (2) above is not sent out as required by that subsection because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.
- (4) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (5) An auditor of a company who has resigned his office shall be entitled to attend any such meeting as is mentioned in subsection (2) (a) or (b) above and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

## **18 Powers of auditors in relation to subsidiaries**

- (1) Where a company (" the holding company ") has a subsidiary, then—
- (a) if the subsidiary is a body corporate incorporated in Great Britain, it shall be the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;
  - (b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as aforesaid.
- (2) If a subsidiary or holding company fails to comply with subsection (1) above the subsidiary or holding company and every officer thereof who is in default shall be guilty of an offence; and if an auditor fails without reasonable excuse to comply with paragraph (a) of that subsection he shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £200.

## **19 False statements, etc. to auditors**

- (1) An officer of a company who knowingly or recklessly makes a statement which—

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- (a) is misleading, false or deceptive in a material particular, and
  - (b) is a statement to which this section applies,
- shall be guilty of an offence.
- (2) This section applies to any statement made to the auditors of the company (whether orally or in writing) which conveys, or purports to convey, any information or explanation which they require, or are entitled to require, as auditors of the company.
- (3) Any person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding £400, or to both.

## **20 Auditors of body which is both a company and a trade union, etc.**

- (1) Subject to subsection (2) below, this section applies to every body which is both a company and a trade union or employers' association to which section 11 of the Trade Union and Labour Relations Act 1974 applies.
- (2) Where any such body as is mentioned in subsection (1) above has auditors who were appointed, before the coming into operation of this section, under subsection (3) of the said section 11 (duty to appoint auditors), this section shall not apply to that body until—
- (a) the term of office of those auditors expires, or
  - (b) auditors are next appointed by or on behalf of that body under section 14(1) or (2) above,
- whichever of those events first occurs.
- (3) Subsection (3) of the said section 11 and paragraphs 6 to 15 of Schedule 2 to the said Act of 1974 (qualifications, appointment and removal of auditors) shall cease to have effect in relation to bodies to which this section applies.
- (4) The rights and powers conferred, and the duties imposed, by paragraphs 16 to 21 of the said Schedule 2 on the auditors of a body to which this section applies shall belong to the auditors from time to time appointed by or on behalf of that body under section 14 above.