



# Companies Act 1989

## 1989 CHAPTER 40

### PART I

#### COMPANY ACCOUNTS

##### *Exemptions and special provisions*

### 13 Small and medium-sized companies and groups

- (1) The following sections are inserted in Part VII of the Companies Act 1985, as the beginning of a Chapter II—

#### “CHAPTER II

##### EXEMPTIONS, EXCEPTIONS AND SPECIAL PROVISIONS

##### *Small and medium-sized companies and groups*

#### **246 Exemptions for small and medium-sized companies**

- (1) A company which qualifies as a small or medium-sized company in relation to a financial year—
- (a) is exempt from the requirements of paragraph 36A of Schedule 4 (disclosure with respect to compliance with accounting standards), and
  - (b) is entitled to the exemptions provided by Schedule 8 with respect to the delivery to the registrar under section 242 of individual accounts and other documents for that financial year.
- (2) In that Schedule—
- Part I relates to small companies,
  - Part II relates to medium-sized companies, and

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Part III contains supplementary provisions.

- (3) A company is not entitled to the exemptions mentioned in subsection (1) if it is, or was at any time within the financial year to which the accounts relate—
- (a) a public company,
  - (b) a banking or insurance company, or
  - (c) an authorised person under the Financial Services Act 1986,
- or if it is or was at any time during that year a member of an ineligible group.
- (4) A group is ineligible if any of its members is—
- (a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,
  - (b) an authorised institution under the Banking Act 1987,
  - (c) an insurance company to which Part II of the Insurance Companies Act 1982 applies, or
  - (d) an authorised person under the Financial Services Act 1986.
- (5) A parent company shall not be treated as qualifying as a small company in relation to a financial year unless the group headed by it qualifies as a small group, and shall not be treated as qualifying as a medium-sized company in relation to a financial year unless that group qualifies as a medium-sized group (see section 249).

#### **247 Qualification of company as small or medium-sized**

- (1) A company qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—
- (a) in the case of the company's first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (2) A company shall be treated as qualifying as small or medium-sized in relation to a financial year—
- (a) if it so qualified in relation to the previous financial year under subsection (1); or
  - (b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

#### *SMALL COMPANY*

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1. Turnover	Not more than £2 million
2. Balance sheet total	Not more than £975,000
3. Number of employees	Not more than 50

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### MEDIUM-SIZED COMPANY

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1. Turnover	Not more than £8 million
2. Balance sheet total	Not more than £3.9 million
3. Number of employees	Not more than 250.

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(4) For a period which is a company's financial year but not in fact a year the maximum figures for turnover shall be proportionately adjusted.

(5) The balance sheet total means—

(a) where in the company's accounts Format 1 of the balance sheet formats set out in Part I of Schedule 4 is adopted, the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D in that Format, and

(b) where Format 2 is adopted, the aggregate of the amounts shown under the general heading "Assets".

(6) The number of employees means the average number of persons employed by the company in the year (determined on a weekly basis).

That number shall be determined by applying the method of calculation prescribed by paragraph 56(2) and (3) of Schedule 4 for determining the corresponding number required to be stated in a note to the company's accounts."

(2) Schedule 6 to this Act is substituted for Schedule 8 to the Companies Act 1985.

(3) The following sections are inserted in Part VII of the Companies Act 1985—

#### **"248 Exemption for small and medium-sized groups**

(1) A parent company need not prepare group accounts for a financial year in relation to which the group headed by that company qualifies as a small or medium-sized group and is not an ineligible group.

(2) A group is ineligible if any of its members is—

(a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,

(b) an authorised institution under the Banking Act 1987,

(c) an insurance company to which Part II of the Insurance Companies Act 1982 applies, or

(d) an authorised person under the Financial Services Act 1986.

(3) If the directors of a company propose to take advantage of the exemption conferred by this section, it is the auditors' duty to provide them with a report stating whether in their opinion the company is entitled to the exemption.

(4) The exemption does not apply unless—

(a) the auditors' report states that in their opinion the company is so entitled, and

(b) that report is attached to the individual accounts of the company.

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### **249 Qualification of group as small or medium-sized**

- (1) A group qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—
  - (a) in the case of the parent company’s first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (2) A group shall be treated as qualifying as small or medium-sized in relation to a financial year—
  - (a) if it so qualified in relation to the previous financial year under subsection (1); or
  - (b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.
- (3) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements—

#### *SMALL GROUP*

1. Aggregate turnover	Not more than £2 million net (or £2.4 million gross)
2. Aggregate balance sheet total	Not more than £1 million net (or £1.2 million gross)
3. Aggregate number of employees	Not more than 50

#### *MEDIUM-SIZED GROUP*

1. Aggregate turnover	Not more than £8 million net (or £9.6 million gross)
2. Aggregate balance sheet total	Not more than £3.9 million net (or £4.7 million gross)
3. Aggregate number of employees	Not more than 250.

- ( The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with section 247 for each member of the group.

In relation to the aggregate figures for turnover and balance sheet total, “net” means with the set-offs and other adjustments required by Schedule 4A in the case of group accounts and “gross” means without those set-offs and other adjustments; and a company may satisfy the relevant requirement on the basis of either the net or the gross figure.

- (5) The figures for each subsidiary undertaking shall be those included in its accounts for the relevant financial year, that is—
  - (a) if its financial year ends with that of the parent company, that financial year, and

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- (b) if not, its financial year ending last before the end of the financial year of the parent company.
- (6) If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.”.

## 14 Dormant companies

The following section is inserted in Part VII of the Companies Act 1985—

### *“Dormant companies*

#### **250 Resolution not to appoint auditors**

- (1) A company may by special resolution make itself exempt from the provisions of this Part relating to the audit of accounts in the following cases—
- (a) if the company has been dormant from the time of its formation, by a special resolution passed before the first general meeting of the company at which annual accounts are laid;
  - (b) if the company has been dormant since the end of the previous financial year and—
    - (i) is entitled in respect of its individual accounts for that year to the exemptions conferred by section 246 on a small company, or would be so entitled but for being a member of an ineligible group, and
    - (ii) is not required to prepare group accounts for that year,by a special resolution passed at a general meeting of the company at which the annual accounts for that year are laid.
- (2) A company may not pass such a resolution if it is—
- (a) a public company,
  - (b) a banking or insurance company, or
  - (c) an authorised person under the Financial Services Act 1986.
- (3) A company is “dormant” during a period in which no significant accounting transaction occurs, that is, no transaction which is required by section 221 to be entered in the company’s accounting records; and a company ceases to be dormant on the occurrence of such a transaction.

For this purpose there shall be disregarded any transaction arising from the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum.

- (4) Where a company is, at the end of a financial year, exempt by virtue of this section from the provisions of this Part relating to the audit of accounts—
- (a) sections 238 and 239 (right to receive or demand copies of accounts and reports) have effect with the omission of references to the auditors' report;
  - (b) no copies of an auditors' report need be laid before the company in general meeting;
  - (c) no copy of an auditors' report need be delivered to the registrar, and if none is delivered, the copy of the balance sheet so delivered shall

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- contain a statement by the directors, in a position immediately above the signature required by section 233(4), that the company was dormant throughout the financial year; and
- (d) the company shall be treated as entitled in respect of its individual accounts for that year to the exemptions conferred by section 246 on a small company notwithstanding that it is a member of an ineligible group.
- (5) Where a company which is exempt by virtue of this section from the provisions of this Part relating to the audit of accounts—
- (a) ceases to be dormant, or
- (b) would no longer qualify (for any other reason) to make itself exempt by passing a resolution under this section,
- it shall thereupon cease to be so exempt.”.

## **15 Public listed companies: provision of summary financial statement**

The following section is inserted in Part VII of the Companies Act 1985—

### *“Listed public companies*

#### **251 Provision of summary financial statement to shareholders**

- (1) A public company whose shares, or any class of whose shares, are listed need not, in such cases as may be specified by regulations made by the Secretary of State, and provided any conditions so specified are complied with, send copies of the documents referred to in section 238(1) to members of the company, but may instead send them a summary financial statement.
- In this subsection “listed” means admitted to the Official List of The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.
- (2) Copies of the documents referred to in section 238(1) shall, however, be sent to any member of the company who wishes to receive them; and the Secretary of State may by regulations make provision as to the manner in which it is to be ascertained whether a member of the company wishes to receive them.
- (3) The summary financial statement shall be derived from the company’s annual accounts and the directors’ report and shall be in such form and contain such information as may be specified by regulations made by the Secretary of State.
- (4) Every summary financial statement shall—
- (a) state that it is only a summary of information in the company’s annual accounts and the directors’ report;
- (b) contain a statement by the company’s auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and regulations made under it;
- (c) state whether the auditors’ report on the annual accounts was unqualified or qualified, and if it was qualified set out the report

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- in full together with any further material needed to understand the qualification;
- (d) state whether the auditors' report on the annual accounts contained a statement under—
- (i) section 237(2) (accounting records or returns inadequate or accounts not agreeing with records and returns), or
  - (ii) section 237(3) (failure to obtain necessary information and explanations),
- and if so, set out the statement in full.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If default is made in complying with this section or regulations made under it, the company and every officer of it who is in default is guilty of an offence and liable to a fine.
- (7) Section 240 (requirements in connection with publication of accounts) does not apply in relation to the provision to members of a company of a summary financial statement in accordance with this section.”.

## **16 Private companies: election to dispense with laying of accounts and reports before general meeting**

The following sections are inserted in Part VII of the Companies Act 1985—

### *“Private companies*

#### **252 Election to dispense with laying of accounts and reports before general meeting**

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the laying of accounts and reports before the company in general meeting.
- (2) An election has effect in relation to the accounts and reports in respect of the financial year in which the election is made and subsequent financial years.
- (3) Whilst an election is in force, the references in the following provisions of this Act to the laying of accounts before the company in general meeting shall be read as references to the sending of copies of the accounts to members and others under section 238(1)—
- (a) section 235(1) (accounts on which auditors are to report),
  - (b) section 270(3) and (4) (accounts by reference to which distributions are justified), and
  - (c) section 320(2) (accounts relevant for determining company’s net assets for purposes of ascertaining whether approval required for certain transactions);

and the requirement in section 271(4) that the auditors' statement under that provision be laid before the company in general meeting shall be read as a

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requirement that it be sent to members and others along with the copies of the accounts sent to them under section 238(1).

- (4) If an election under this section ceases to have effect, section 241 applies in relation to the accounts and reports in respect of the financial year in which the election ceases to have effect and subsequent financial years.

### **253 Right of shareholder to require laying of accounts**

- (1) Where an election under section 252 is in force, the copies of the accounts and reports sent out in accordance with section 238(1)—
- (a) shall be sent not less than 28 days before the end of the period allowed for laying and delivering accounts and reports, and
  - (b) shall be accompanied, in the case of a member of the company, by a notice informing him of his right to require the laying of the accounts and reports before a general meeting;
- and section 238(5) (penalty for default) applies in relation to the above requirements as to the requirements contained in that section.
- (2) Before the end of the period of 28 days beginning with the day on which the accounts and reports are sent out in accordance with section 238(1), any member or auditor of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.
- (3) If the directors do not within 21 days from the date of the deposit of such a notice proceed duly to convene a meeting, the person who deposited the notice may do so himself.
- (4) A meeting so convened shall not be held more than three months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (5) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who deposited the notice shall be made good to him by the company, and shall be recouped by the company out of any fees, or other remuneration in respect of their services, due or to become due to such of the directors as were in default.
- (6) The directors shall be deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening it.”.

## **17 Unlimited companies: exemption from requirement to deliver accounts and reports**

The following section is inserted in Part VII of the Companies Act 1985—



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*“Unlimited companies*

**254 Exemption from requirement to deliver accounts and reports**

- (1) The directors of an unlimited company are not required to deliver accounts and reports to the registrar in respect of a financial year if the following conditions are met.
- (2) The conditions are that at no time during the relevant accounting reference period—
  - (a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited, or
  - (b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it, or
  - (c) has the company been a parent company of an undertaking which was then limited.

The references above to an undertaking being limited at a particular time are to an undertaking (under whatever law established) the liability of whose members is at that time limited.

- (3) The exemption conferred by this section does not apply if at any time during the relevant accounting period the company carried on business as the promoter of a trading stamp scheme within the Trading Stamps Act 1964.
- (4) Where a company is exempt by virtue of this section from the obligation to deliver accounts, section 240 (requirements in connection with publication of accounts) has effect with the following modifications—
  - (a) in subsection (3)(b) for the words from “whether statutory accounts” to “have been delivered to the registrar” substitute “that the company is exempt from the requirement to deliver statutory accounts”, and
  - (b) in subsection (5) for “as required to be delivered to the registrar under section 242” substitute “as prepared in accordance with this Part and approved by the board of directors”.

**18 Banking and insurance companies and groups: special provisions**

- (1) The following sections are inserted in Part VII of the Companies Act 1985—

*“Banking and insurance companies and groups*

**255 Special provisions for banking and insurance companies**

- (1) A banking or insurance company may prepare its individual accounts in accordance with Part I of Schedule 9 rather than Schedule 4.
- (2) Accounts so prepared shall contain a statement that they are prepared in accordance with the special provisions of this Part relating to banking companies or insurance companies, as the case may be.

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- (3) In relation to the preparation of individual accounts in accordance with the special provisions of this Part relating to banking or insurance companies, the references to the provisions of Schedule 4 in section 226(4) and (5) (relationship between specific requirements and duty to give true and fair view) shall be read as references to the provisions of Part I of Schedule 9.
- (4) The Secretary of State may, on the application or with the consent of the directors of a company which prepares individual accounts in accordance with the special provisions of this Part relating to banking or insurance companies, modify in relation to the company any of the requirements of this Part for the purpose of adapting them to the circumstances of the company.

This does not affect the duty to give a true and fair view.

### **255A Special provisions for banking and insurance groups**

- (1) The parent company of a banking or insurance group may prepare group accounts in accordance with the provisions of this Part as modified by Part II of Schedule 9.
- (2) Accounts so prepared shall contain a statement that they are prepared in accordance with the special provisions of this Part relating to banking groups or insurance groups, as the case may be.
- (3) References in this Part to a banking group are to a group where—
  - (a) the parent company is a banking company, or
  - (b) at least one of the undertakings in the group is an authorised institution under the Banking Act 1987 and the predominant activities of the group are such as to make it inappropriate to prepare group accounts in accordance with the formats in Part I of Schedule 4.
- (4) References in this Part to an insurance group are to a group where—
  - (a) the parent company is an insurance company, or
  - (b) the predominant activity of the group is insurance business and activities which are a direct extension of or ancillary to insurance business.
- (5) In relation to the preparation of group accounts in accordance with the special provisions of this Part relating to banking or insurance groups, the references to the provisions of Schedule 4A in section 227(5) and (6) (relationship between specific requirements and duty to give true and fair view) shall be read as references to those provisions as modified by Part II of Schedule 9.
- (6) The Secretary of State may, on the application or with the consent of the directors of a company which prepares group accounts in accordance with the special provisions of this Part relating to banking or insurance groups, modify in relation to the company any of the requirements of this Part for the purpose of adapting them to the circumstances of the company.

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### **255B Modification of disclosure requirements in relation to banking company or group**

- (1) In relation to a company which prepares accounts in accordance with the special provisions of this Part relating to banking companies or groups, the provisions of Schedule 5 (additional disclosure: related undertakings) have effect subject to Part III of Schedule 9.
- (2) In relation to a banking company, or the parent company of a banking company, the provisions of Schedule 6 (disclosure: emoluments and other benefits of directors and others) have effect subject to Part IV of Schedule 9.

### **255C Directors' report where accounts prepared in accordance with special provisions**

- (1) The following provisions apply in relation to the directors' report of a company for a financial year in respect of which it prepares accounts in accordance with the special provisions of this Part relating to banking or insurance companies or groups.
- (2) The information required to be given by paragraph 6, 8 or 13 of Part I of Schedule 9 (which is allowed to be given in a statement or report annexed to the accounts), may be given in the directors' report instead.

Information so given shall be treated for the purposes of audit as forming part of the accounts.

- (3) The reference in section 234(1)(b) to the amount proposed to be carried to reserves shall be construed as a reference to the amount proposed to be carried to reserves within the meaning of Part I of Schedule 9.
- (4) If the company takes advantage, in relation to its individual or group accounts, of the exemptions conferred by paragraph 27 or 28 of Part I of Schedule 9, paragraph 1 of Schedule 7 (disclosure of asset values) does not apply.
- (5) The directors' report shall, in addition to complying with Schedule 7, also comply with Schedule 10 (which specifies additional matters to be disclosed).”.

- (2) The following section is inserted in Part VII of the Companies Act 1985—

### **“255D Power to apply provisions to banking partnerships**

- (1) The Secretary of State may by regulations apply to banking partnerships, subject to such exceptions, adaptations and modifications as he considers appropriate, the provisions of this Part applying to banking companies.
- (2) A “banking partnership” means a partnership which is an authorised institution under the Banking Act 1987.
- (3) Regulations under this section shall be made by statutory instrument.
- (4) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.”.

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- (3) Schedule 9 to the Companies Act 1985 (form and content of special category accounts) is amended in accordance with Schedule 7 to this Act.
- (4) In that Schedule—
- Part I contains amendments relating to the form and content of accounts of banking and insurance companies and groups,
  - Part II contains provisions with respect to the group accounts of banking and insurance groups,
  - Part III contains provisions adapting the requirements of Schedule 5 to the Companies Act 1985 (additional disclosure: related undertakings), and
  - Part IV contains provisions relating to the requirements of Schedule 6 to that Act (additional disclosure: emoluments and other benefits of directors and others).
- (5) Schedule 8 to this Act (directors' report where accounts prepared in accordance with special provisions for banking and insurance companies and groups) is substituted for Schedule 10 to the Companies Act 1985.