

SCHEDULES

SCHEDULE 10

AMENDMENTS CONSEQUENTIAL ON PART I

PART I

AMENDMENTS OF THE COMPANIES ACT 1985

- 1 In section 46 (meaning of “unqualified” auditors' report in section 43(3)), for subsections (2) to (6) substitute—

“(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors' report stating without material qualification the auditors' opinion that the balance sheet has been properly prepared in accordance with this Act.

- (3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors' report stating without material qualification the auditors' opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been so prepared.

For the purposes of an auditors' report under this subsection the provisions of this Act shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

- (4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves.

In this subsection “net assets” and “undistributable reserves” have the meaning given by section 264(2) and (3).”.

- 2 In section 209(5)(a)(i) for “an authorised institution” substitute “a banking company”.

- 3 In sections 211(9) and 215(4) for “paragraph 3 or 10 of Schedule 5” substitute “section 231(3)”.

- 4 In section 271(3), for “section 236” substitute “section 235”.

- 5 In section 272(3)—

- (a) for “section 228” substitute “section 226”, and
(b) for “section 238” substitute “section 233”.

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- 6 In sections 272(5) and 273(7) for “section 241(3)(b)” substitute “the second sentence of section 242(1)”.
- 7 In section 276(b) for “34(4)(b)” substitute “34(3)(a)”.
- 8 For section 279 substitute—

“279 Distributions by banking or insurance companies

Where a company’s accounts relevant for the purposes of this Part are prepared in accordance with the special provisions of Part VII relating to banking or insurance companies, sections 264 to 275 apply with the modifications shown in Schedule 11.”.

- 9 In section 289(4) for “section 252(5)” substitute “section 250(3)”.
- 10 In sections 338(4), 339(4), 343(1)(a) and 344(2) for “an authorised institution”, wherever occurring, substitute “a banking company”.
- 11 In section 343(2) and (4) for “paragraph 4 of Schedule 6, be required by section 232” substitute “paragraph 2 of Part IV of Schedule 9, be required”.
- 12 In section 699(3) for “section 241(3)” substitute “section 242(1)”.
- 13 In Part XXIII (oversea companies), for Chapter II (delivery of accounts) substitute —

“CHAPTER II

DELIVERY OF ACCOUNTS AND REPORTS

700 Preparation of accounts and reports by oversea companies

- (1) Every oversea company shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the company were formed and registered under this Act.
- (2) The Secretary of State may by order—
 - (a) modify the requirements referred to in subsection (1) for the purpose of their application to oversea companies;
 - (b) exempt an oversea company from those requirements or from such of them as may be specified in the order.
- (3) An order may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (4) An order 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.

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701 Oversea company’s financial year and accounting reference periods

- (1) Sections 223 to 225 (financial year and accounting reference periods) apply to an overseas company, subject to the following modifications.
- (2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.
- (3) Omit section 225(4) (restriction on frequency with which current accounting reference period may be extended).

702 Delivery to registrar of accounts and reports of overseas company

- (1) An overseas company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with section 700.

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

- (2) In relation to an overseas company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

- (3) If the relevant accounting reference period is the company’s first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company’s establishing a place of business in Great Britain.
- (4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or three months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to an overseas company extend that period by such further period as may be specified in the notice.
- (6) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

703 Penalty for non-compliance

- (1) If the requirements of section 702(1) are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the company and every person who immediately before the end of that period

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was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Act.”.

14 In section 711(1)(k) for “section 241 (annual accounts)” substitute “section 242(1) (accounts and reports)”.

15 For section 742 (expressions used in connection with accounts) substitute—

“742 Expressions used in connection with accounts

(1) In this Act, unless a contrary intention appears, the following expressions have the same meaning as in Part VII (accounts)—

“annual accounts”,
 “accounting reference date” and “accounting reference period”,
 “balance sheet” and “balance sheet date”,
 “current assets”,
 “financial year”, in relation to a company,
 “fixed assets”,
 “parent company” and “parent undertaking”,
 “profit and loss account”, and
 “subsidiary undertaking”.

(2) References in this Act to “realised profits” and “realised losses”, in relation to a company’s accounts, shall be construed in accordance with section 262(3).”.

16 In section 744 (interpretation), omit the definition of “authorised institution” and at the appropriate place insert—

““banking company” means a company which is authorised under the Banking Act 1987;”.

17 In Schedule 1, in paragraph 2(2)(a) for “section 252(5)” substitute “section 250(3)”.

18 (1) Schedule 2 (interpretation of references to “beneficial interest”) is amended as follows.

(2) After the heading at the beginning of the Schedule, and before the cross-heading preceding paragraph 1, insert the following heading—

“Part I

References in Sections 23, 145, 146 and 148”.

(3) In paragraph 1—

- (a) in sub-paragraph (1) omit “paragraph 60(2) of Schedule 4, or paragraph 19(3) of Schedule 9”; and
- (b) omit sub-paragraph (5).

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- (4) In paragraph 3—
- (a) in sub-paragraph (1) omit “, paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”; and
 - (b) omit sub-paragraph (3).
- (5) In paragraph 4—
- (a) in sub-paragraph (1) omit “(whether as personal representative or otherwise)”, and
 - (b) in sub-paragraph (2) omit “, paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9”;
- “(3) As respects sections 145, 146 and 148, sub-paragraph (1) above applies where a company is a personal representative as it applies where a company is a trustee.”.
- (6) In paragraph 5(1) for “this Schedule” substitute “this Part of this Schedule”.
- (7) After paragraph 5 insert the following—

“PART II

REFERENCES IN SCHEDULE 5

Residual interests under pension and employees' share schemes

- 6 (1) Where shares in an undertaking are held on trust for the purposes of a pension scheme or an employees' share scheme, there shall be disregarded any residual interest which has not vested in possession, being an interest of the undertaking or any of its subsidiary undertakings.
- (2) In this paragraph a “residual interest” means a right of the undertaking in question (the “residual beneficiary”) to receive any of the trust property in the event of—
- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
 - (b) the residual beneficiary ceasing to participate in the scheme, or
 - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In sub-paragraph (2) references to a right include a right dependent on the exercise of a discretion vested by the scheme in the trustee or any other person; and references to liabilities arising under a scheme include liabilities that have resulted or may result from the exercise of any such discretion.
- (4) For the purposes of this paragraph a residual interest vests in possession —
- (a) in a case within sub-paragraph (2)(a), on the occurrence of the event there mentioned, whether or not the amount of the property receivable pursuant to the right mentioned in that sub-paragraph is then ascertained;

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- (b) in a case within sub-paragraph (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to that beneficiary any of the property receivable pursuant to that right.

Employer's charges and other rights of recovery

- 7 (1) Where shares in an undertaking are held on trust, there shall be disregarded—
- (a) if the trust is for the purposes of a pension scheme, any such rights as are mentioned in sub-paragraph (2) below;
- (b) if the trust is for the purposes of an employees' share scheme, any such rights as are mentioned in paragraph (a) of that sub-paragraph,
- being rights of the undertaking or any of its subsidiary undertakings.
- (2) The rights referred to are—
- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member, and
- (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained under section 47 of the Social Security Pensions Act 1975 (deduction of premium from refund of pension contributions) or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under Part III of that Act.

Trustee's right to expenses, remuneration, indemnity, &c.

- 8 Where an undertaking is a trustee, there shall be disregarded any rights which the undertaking has in its capacity as trustee including, in particular, any right to recover its expenses or be remunerated out of the trust property and any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the undertaking in the performance of its duties as trustee.

Supplementary

- 9 (1) The following applies for the interpretation of this Part of this Schedule.
- (2) “Undertaking”, and “shares” in relation to an undertaking, have the same meaning as in Part VII.
- (3) This Part of this Schedule applies in relation to debentures as it applies in relation to shares.
- (4) “Pension scheme” means any scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees; and “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement

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or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

(5) In sub-paragraph (4) of this paragraph and in paragraph 7(2) “employee” and “employer” shall be read as if a director of an undertaking were employed by it.”.

19 (1) Part II of Schedule 3 (prospectuses: auditors' and accountants' reports to be set out) is amended as follows.

(2) In paragraph 16 (auditors' reports), in sub-paragraph (2) for “subsidiaries” substitute “subsidiary undertakings” and for sub-paragraph (3) substitute—

“(3) If the company has subsidiary undertakings, the report shall—

(a) deal separately with the company's profits or losses as provided by sub-paragraph (2), and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiary undertakings, so far as they concern members of the company, or

(ii) individually with the profits or losses of each of its subsidiary undertakings, so far as they concern members of the company,

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and (so far as they concern members of the company) with the combined profits and losses of its subsidiary undertakings; and

(b) deal separately with the company's assets and liabilities as provided by sub-paragraph (2), and in addition deal either—

(i) as a whole with the combined assets and liabilities of its subsidiary undertakings, with or without the company's assets and liabilities, or

(ii) individually with the assets and liabilities of each of its subsidiary undertakings,

indicating, as respects the assets and liabilities of its subsidiary undertakings, the allowance to be made for persons other than members of the company.”.

(3) For paragraph 18 (accountants' reports) substitute—

“18 (1) The following provisions apply if—

(a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking, or any part of the proceeds is to be so applied, and

(b) by reason of that acquisition or anything to be done in consequence of or in connection with it, that undertaking will become a subsidiary undertaking of the company.

(2) There shall be set out in the prospectus a report made by accountants upon—

(a) the profits or losses of the other undertaking in respect of each of the five financial years immediately preceding the issue of the prospectus, and

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- (b) the assets and liabilities of the other undertaking at the last date to which its accounts were made up.
- (3) The report shall—
 - (a) indicate how the profits or losses of the other undertaking would in respect of the shares to be acquired have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired, and
 - (b) where the other undertaking is a parent undertaking, deal with the profits or losses and the assets and liabilities of the undertaking and its subsidiary undertakings in the manner provided by paragraph 16(3) above in relation to the company and its subsidiary undertakings.
- (4) In this paragraph “undertaking” and “shares”, in relation to an undertaking, have the same meaning as in Part VII.”.
- (4) In paragraph 22 (eligibility of accountants to make reports), for sub-paragraph (2) substitute—
 - “(2) Such a report shall not be made by an accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of—
 - (a) the company or any of its subsidiary undertakings,
 - (b) a parent undertaking of the company or any subsidiary undertaking of such an undertaking.”.
- 20 In paragraph 12(b) of Schedule 4, for “section 238” substitute “section 233”.
- 21 (1) Schedule 11 is amended as follows.
 - (2) For the heading substitute “Modifications of Part VIII Where Company’s Accounts Prepared in Accordance with Special Provisions for Banking or Insurance Companies”.
 - (3) In paragraphs 1 and 2(a) for “Schedule 9” substitute “Part I of Schedule 9”.
 - (4) In paragraph 4—
 - (a) in sub-paragraph (a) for “Schedule 9” substitute “Part I of Schedule 9”, and
 - (b) omit sub-paragraphs (b) and (c).
 - (5) In paragraph 5—
 - (a) in sub-paragraph (a) for “Part III of Schedule 9” substitute “paragraph 27 or 28 of Schedule 9”, and
 - (b) omit sub-paragraph (b).
 - (6) In paragraph 6—
 - (a) in sub-paragraph (a), for “section 228” substitute “section 226” and for “section 258 and Schedule 9” substitute “section 255 and Part I of Schedule 9”, and
 - (b) in sub-paragraph (b), for “Part III of Schedule 9” substitute “paragraph 27 or 28 of Schedule 9”.
 - (7) In paragraph 7(a) for “Schedule 9” substitute “Part I of Schedule 9”.

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- 22 (1) In Schedule 15A (renumbered 15B) (provisions applicable to mergers and divisions of public companies), paragraph 6 (documents to be made available for inspection) is amended as follows.
- (2) In sub-paragraph (1)(b) (directors' report on merger or division), after “directors' report” insert “referred to in paragraph 4 above”.
- (3) For sub-paragraph (1)(d) and (e) substitute—
- “(d) the company’s annual accounts, together with the relevant directors' report and auditors' report, for the last three financial years ending on or before the relevant date; and
 - (e) if the last of those financial years ended more than six months before the relevant date, an accounting statement in the form described in the following provisions.”.
- (4) In sub-paragraph (1), after the paragraphs add—
- “In paragraphs (d) and (e) “the relevant date” means one month before the first meeting of the company summoned under section 425(1) or for the purposes of paragraph 1.”.
- (5) For sub-paragraphs (2) to (5) substitute—
- “(2) The accounting statement shall consist of—
 - (a) a balance sheet dealing with the state of the affairs of the company as at a date not more than three months before the draft terms were adopted by the directors, and
 - (b) where the company would be required to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and its subsidiary undertakings as at that date. - (3) The requirements of this Act as to balance sheets forming part of a company’s annual accounts, and the matters to be included in notes thereto, apply to any balance sheet required for the accounting statement, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.
 - (4) Any balance sheet required for the accounting statement shall be approved by the board of directors and signed on behalf of the board by a director of the company.
 - (5) In relation to a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986, the references in this paragraph to the requirements of this Act shall be construed as reference to the corresponding requirements of that Order.”.
- 23 In Schedule 22 (provisions applying to unregistered companies), in the entry relating to Part VII, in column 1, for “Schedule 10” substitute “Schedules 10 and 10A”.
- 24 (1) Schedule 24 (punishment of offences) is amended as follows.
- (2) The existing entries for provisions in Part VII are amended as follows, and shall be re-ordered according to the new order of the sections in that Part:

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<i>Provision of Part VII</i>	<i>Amendment</i>
223(1)	In column 1, for “223(1)” substitute “221(5) or 222(4)”.
223(2)	In column 1, for “223(2)” substitute “222(6)”. In column 2, for “222(4)” substitute “222(5)”.
231(3)	In column 1, for “231(3)” substitute “231(6)”.
231(4)	In column 1, for “231(4)” substitute “232(4)”. In column 2, for “Schedule 5, Part V” substitute “Schedule 6, Part I”.
235(7)	In column 1, for “235(7)” substitute “234(5)”. In column 2, for “the section” substitute “Part VII”.
238(2)	In column 1, for “238(2)” substitute “233(6)”.
240(5)	In column 1, for “240(5)” substitute “238(5)”. In column 2, for “company balance sheet” substitute “company’s annual accounts”.
243(1)	In column 1, for “243(1)” substitute “241(2) or 242(2)”. In column 2, for “company accounts” substitute “company’s annual accounts, directors’ report and auditors’ report”.
245(1)	Omit the entry.
245(2)	Omit the entry.
246(2)	In column 1, for “246(2)” substitute “239(3)”. In column 2, after “accounts” insert “and reports”.
254(6)	In column 1, for “254(6)” substitute “240(6)”. In column 2, for the present words substitute “Failure to comply with requirements in connection with publication of accounts”.
255(5)	Omit the entry.
260(3)	Omit the entry.

(3) At the appropriate places insert the following new entries—

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“233(5)	Approving defective accounts.	1. On indictment. 2. Summary.	A fine The statutory maximum.
234A(4)	Laying, circulating or delivering directors' report without required signature.	Summary.	One-fifth of the statutory maximum.
236(4)	Laying, circulating or delivering auditors' report without required signature.	Summary.	One-fifth of the statutory maximum.
251(6)	Failure to comply with requirements in relation to summary financial statements.	Summary.	One-fifth of the statutory maximum.”.

- (4) In the entry for section 703(1) (failure by oversea company to comply with requirements as to accounts and reports), in column 2 for the words from “s.700” to the end substitute “requirements as to accounts and reports”.