

2005 No. 2417

COMPANIES

**The Companies (Disclosure of Auditor Remuneration)
Regulations 2005**

<i>Made</i>	<i>25th August 2005</i>
<i>Laid before Parliament</i>	<i>31st August 2005</i>
<i>Coming into force</i>	<i>1st October 2005</i>

The Secretary of State, in exercise of powers conferred on him by section 390B of the Companies Act 1985(a), hereby makes the following Regulations:

Citation, commencement and transitional provision

1.—(1) These Regulations may be cited as the Companies (Disclosure of Auditor Remuneration) Regulations 2005 and shall come into force on 1st October 2005.

(2) These Regulations shall not apply to the accounts of a company for any financial year beginning before 1st October 2005; and the Companies Act 1985 (Disclosure of Remuneration for Non-Audit Work) Regulations 1991(b) shall not apply to the accounts of a company for any financial year beginning on or after that date.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Companies Act 1985;

“associated pension scheme” means, in relation to a company, a scheme for the provision of benefits for or in respect of directors or employees (or former directors or employees) of the company or any subsidiary of the company where—

- (a) the benefits consist of or include any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death, and
- (b) either—
 - (i) a majority of the trustees are appointed by (or by a person acting on behalf of) the company or a subsidiary of the company, or
 - (ii) the company, or a subsidiary of the company, exercises a dominant influence over the appointment of the auditor (if any) of the scheme;

(a) 1985 c. 6; section 390B was substituted by section 7 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

(b) S.I. 1991/2128, amended by S.I. 1995/1520.

“director” has the meaning given in section 53(1) of the Companies Act 1989(a);
“parent” and “subsidiary” mean respectively a parent undertaking and a subsidiary undertaking as defined in section 258 of the 1985 Act(b) which is a body corporate; and a “parent company” and a “subsidiary company” are respectively a parent and a subsidiary which is a company;
“remuneration” includes payments in respect of expenses and benefits in kind.

(2) For the purposes of these Regulations—

- (a) a company is small or medium-sized in relation to a financial year if it qualifies as small or medium-sized in relation to that year by virtue of section 247 of the 1985 Act(c) and is entitled to the exemptions mentioned in section 246 or 246A (as the case may be) of that Act(d) in its accounts for that year;
- (b) references to an associate of a company are references to—
 - (i) any subsidiary of that company, other than a subsidiary in respect of which severe long-term restrictions substantially hinder the exercise of the rights of the company over the assets or management of the subsidiary; and
 - (ii) any scheme which is an associated pension scheme in relation to that company.
- (c) a person is to be regarded as an associate of a company’s auditors if he is a person specified as such by Schedule 1 to these Regulations.

Disclosure of remuneration: small and medium-sized companies

3.—(1) In the notes to the annual accounts of a small or medium-sized company, there shall be disclosed the amount of any remuneration receivable by the company’s auditors for the auditing of the accounts.

(2) Where remuneration includes benefits in kind, its nature and estimated money-value shall also be disclosed in the notes.

(3) Where more than one person has been appointed as a company’s auditor during the period to which the accounts relate, separate disclosure is required in respect of remuneration of each such person.

Disclosure of remuneration: other companies

4.—(1) In the notes to the annual accounts of a company which is not a small or medium-sized company, there shall be disclosed the amount of—

- (a) any remuneration receivable by the company’s auditors for the auditing of the accounts and
- (b) subject to regulation 5(2), any remuneration receivable by—
 - (i) the company’s auditors or
 - (ii) any person who was, at any time during the period to which the accounts relate, an associate of the company’s auditors

for the supply of other services to the company or its associates.

(2) Where remuneration includes benefits in kind, its nature and estimated money-value shall also be disclosed in the notes.

(a) 1989 c. 40.

(b) Section 258 was substituted by section 21(1) of the Companies Act 1989, and amended by regulation 12 of S.I. 2004/2947.

(c) Section 247 was substituted by section 13(1) of the Companies Act 1989, and amended by regulation 5 of S.I. 1992/2452, by regulation 8 of S.I. 1996/189, by regulation 7 of S.I. 1997/220 and by regulation 3 of, and paragraph 14 of Schedule 1 to, S.I. 2004/2947.

(d) Section 246 was substituted by regulation 2(1) of S.I. 1997/220, and amended by regulation 6(1) of S.I. 1997/570, by regulation 8(1) of S.I. 2000/1430, by regulations 3 and 13(2) of, and paragraph 12 of Schedule 1 to, S.I. 2004/2947, by regulation 4 of S.I. 2005/1011 and by regulation 12 of S.I. 2005/2280. Section 246A was inserted by regulation 3 of S.I. 1997/220, and amended by regulation 3 of, and paragraph 13 of Schedule 1 to, S.I. 2004/2947 and by regulation 5 of S.I. 2005/1011.

(3) Separate disclosure is required in respect of the auditing of the accounts in question and of each type of service specified in Schedule 2, but not in respect of each service falling within a type of service.

(4) Separate disclosure is required in respect of services supplied to the company and its subsidiaries on the one hand and to associated pension schemes on the other.

(5) Where more than one person has been appointed as a company's auditor during the period to which the accounts relate, separate disclosure is required in respect of the remuneration of each such person and his associates.

Group accounts

5.—(1) Group accounts shall comply with regulation 4(1)(b) as if the undertakings included in the consolidation were a single company, except where the group qualifies as small or medium-sized under section 249 of the 1985 Act(a) and is not an ineligible group under section 248(2) of that Act(b).

(2) The notes to the individual accounts of—

- (a) a parent company which is required to prepare and does prepare group accounts in accordance with the 1985 Act; and
- (b) a subsidiary company where its parent is required to prepare and does prepare group accounts in accordance with the 1985 Act and the company is included in the consolidation,

need not disclose the information required by regulation 4(1)(b) if the group accounts are required to comply with paragraph (1) of this regulation and the individual accounts state that the group accounts are so required.

Duty of auditors to supply information

6. The auditors of a company shall supply the directors of the company with such information as is necessary to enable the disclosure required by regulation 4(1)(b) or 5(1) to be made.

Failure to make the required disclosure

7. Sections 233(5) and 245 to 245C of the 1985 Act(c) shall apply in relation to a failure to make the disclosure required by regulations 3 and 4 as they apply in relation to a failure to comply with a requirement of the 1985 Act.

Barry Gardiner

Parliamentary Under-Secretary of State for Competitiveness

Department of Trade and Industry

25th August 2005

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- (a) Section 249 was substituted by section 13(3) of the Companies Act 1989, and amended by regulation 6 of S.I. 1992/2452 and by regulation 3 of S.I. 2004/16.
 - (b) Section 248 was substituted by section 13(3) of the Companies Act 1989, and amended by regulation 9 of S.I. 1996/189 and by article 12 of S.I. 2001/3649.
 - (c) Section 233 was substituted by section 7 of the Companies Act 1989, and amended by regulation 3 of, and paragraph 10 of Schedule 1 to, S.I. 2004/2947. Section 245 was substituted, and sections 245A to 245C inserted, by section 12 of the Companies Act 1989. Section 245 has been amended by regulation 4 of, and paragraph 2 in Part 1 of Schedule 1 to, S.I. 1994/1935, by regulation 10(9) of S.I. 2002/1986, by regulations 3 and 10 of, and paragraph 11 of Schedule 1 to, S.I. 2004/2947 and by regulation 14 of S.I. 2005/1011. Section 245A has been amended by regulation 3 of, and paragraph 11 of Schedule 1 to, S.I. 2004/2947 and by regulation 15 of S.I. 2005/1011. Section 245B has been amended by regulation 10 of S.I. 2002/1986, by regulation 3 of, and paragraph 11 of Schedule 1 to, S.I. 2004/2947 and by regulation 16 of S.I. 2005/1011. Section 245C has been amended by sections 10 and 64 of, and Schedule 8 to, the Companies (Audit, Investigations and Community Enterprise) Act 2004, by regulation 3 of, and paragraph 11 of Schedule 1 to, S.I. 2004/2947 and by regulation 17 of S.I. 2005/1011.

SCHEDULE 1

Regulation 2(2)(c)

Associates of a company's auditors

1. Each of the following shall be regarded as an associate of a company's auditors—
 - (a) any person controlled by the company's auditors or by any associate of the company's auditors (whether alone or through two or more persons acting together to secure or exercise control), but only if that control does not arise solely by virtue of the company's auditors or any associate of the company's auditors acting—
 - (i) as an insolvency practitioner in relation to any person,
 - (ii) in the capacity of a receiver, or a receiver or manager, of the property of a company or other body corporate, or
 - (iii) as a judicial factor on the estate of any person;
 - (b) any person who, or group of persons acting together which, has control of the company's auditors;
 - (c) any person using a trading name which is the same as or similar to a trading name used by the company's auditors, but only if the company's auditors use that trading name with the intention of creating the impression of a connection between them and that other person
 - (d) any person who is party to an arrangement with the company's auditors, with or without any other person, under which costs, profits, quality control, business strategy or significant professional resources are shared.
2. Where a company's auditors are a partnership, each of the following shall also be regarded as an associate of theirs—
 - (a) any other partnership which has a partner in common with the company's auditors;
 - (b) any partner in the company's auditors;
 - (c) any body corporate which is in the same group as a body corporate which is a partner in the company's auditors or in a partnership which has a partner in common with the company's auditors;
 - (d) any body corporate of which a partner in the company's auditors is a director.
3. Where a company's auditors are a body corporate (other than one which is also a partnership as defined in paragraph 4(c) below), each of the following shall also be regarded as an associate of theirs—
 - (a) any other body corporate which has a director in common with the company's auditors;
 - (b) any director of the company's auditors;
 - (c) any body corporate which is in the same group as a body corporate which is a director of, or has a director in common with, the company's auditors;
 - (d) any partnership in which a director of the company's auditors is a partner;
 - (e) any body corporate which is in the same group as the company's auditors;
 - (f) any partnership in which any such body corporate which is in the same group as the company's auditors is a partner.
4. For the purposes of this Schedule—

- (a) “acting as an insolvency practitioner” shall be construed in accordance with section 388 of the Insolvency Act 1986^(a);
- (b) “partner” includes a member of a limited liability partnership;
- (c) “partnership” includes a limited liability partnership and a partnership constituted under the law of a country or a territory outside Great Britain;
- (d) a reference to “a receiver, or a receiver or manager, of the property of a company or other body corporate” includes a receiver, or (as the case may be) a receiver or manager, of part only of that property;
- (e) a person able, directly or indirectly, to control or materially to influence the operating and financial policy of another person shall be treated as having control of that other person; and
- (f) a body corporate is in the same group as another body corporate if it is a parent or subsidiary of that body corporate, or a subsidiary of a parent of that body corporate.

^(a) 1986 c. 45; section 388 has been amended by sections 2(a) to (c) and 4(1) of the Insolvency Act 2000 (c. 39), by section 11(1) of the Bankruptcy (Scotland) Act 1993 (c.6) and by S.I. 1994/2421, S.I. 2002/1240 and S.I. 2002/2708.

SCHEDULE 2

Regulation 4(3)

Types of service in respect of which disclosure is to be made

(Where a service could fall within more than one type, it shall be treated as falling within the first-mentioned.)

1. The auditing of accounts of associates of the company pursuant to legislation (including that of countries and territories outside Great Britain).
2. Other services supplied pursuant to such legislation.
3. Other services relating to taxation.
4. Services relating to information technology.
5. Internal audit services.
6. Valuation and actuarial services.
7. Services relating to litigation.
8. Services relating to recruitment and remuneration.
9. Services relating to corporate finance transactions entered into or proposed to be entered into by or on behalf of the company or any of its associates.
10. All other services.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for companies to disclose fees receivable by their auditors and their auditors' associates.

Small and medium-sized companies (defined in regulation 2(2)(a) in the same way as in the Companies Act 1985) must disclose the fee paid to their auditors for the audit itself (regulation 3).

Every other company must disclose both the audit fee and all other fees paid to the auditors for services provided by them and their associates to the company, its subsidiaries (except where its control over a subsidiary is subject to severe long-term restrictions) and associated pension schemes (regulation 4(1)). Auditors' associates are defined in Schedule 1; associated pension schemes are defined in regulation 2(1). Each type of service specified in Schedule 2 and the fee paid for it must be separately disclosed (regulation 4(3)); and services to the company and its subsidiaries on the one hand and to associated pension schemes on the other must be separately disclosed (regulation 4(4)).

Consolidated group accounts (except those of small or medium-sized groups which are not ineligious) must disclose the types of services specified in Schedule 2 and the fees paid for them as if the group were a single company: but if that is done, the individual companies do not need to disclose them (regulation 5).

Auditors must supply their company's directors with the information needed to enable the company to disclose the types of services specified in Schedule 2 and the fees paid for them (regulation 6).

Sections 233(5) and 245 to 245C of the 1985 Act are applied for the enforcement of the Regulations: directors who fail to comply commit an offence; they may voluntarily revise non-compliant accounts; and the Secretary of State and persons authorised by him may apply to court for an order requiring the preparation of revised accounts (regulation 7).

A Regulatory Impact Assessment has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Regulatory Impact Assessment can be obtained from the Department of Trade and Industry Corporate law and Governance Directorate, Bay 562, 1 Victoria Street, London SW1H 0ET (they are also available electronically at www.dti.gov.uk/cld).

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1294 9/2005 151294T 19585

ISBN 0-11-073304-5



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