STATUTORY INSTRUMENTS

2008 No. 1911

The Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

PART 13

REMOVAL, RESIGNATION, ETC OF AUDITORS

Removal, resignation, etc of auditors

43.—(1) Sections 510 to 512 apply to LLPs, modified so that they read as follows—

"**Removal of auditor**

510.—(1) The members of an LLP may remove an auditor from office at any time.

(2) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination—

(a) of his appointment as auditor, or

(b) of any appointment terminating with that as auditor.

(3) An auditor may not be removed from office before the expiration of his term of office except under this section.

Notice of removal of auditor

511.—(1) No determination to remove an auditor before the expiration of his term of office may be made under section 510 unless the LLP has given 7 days' prior notice to any auditor whom it is proposed to remove

(2) The auditor proposed to be removed may make with respect to the proposal representations in writing to the LLP (not exceeding a reasonable length) and request their notification to members of the LLP.

(3) The LLP must upon receipt send a copy of the representations to every member.

(4) Copies of the representations need not be sent out if, on the application either of the LLP or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the LLP's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

Notice to registrar of determination removing auditor from office

512.—(1) Where the members of an LLP have removed an auditor from office under section 510, the LLP must give notice of that fact to the registrar within 14 days.

(2) If the LLP fails to give the notice required by this section, an offence is committed by the LLP and every designated member who is in default.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale."

(2) Until section 1068(1) comes into force, the notice referred to in section 512(1) as applied to LLPs by paragraph (1) must be in the form prescribed for the purposes of section 391(2) of the 1985 Act or Article 399(2) of the 1986 Order as applied to LLPs.

Rights of auditor removed from office

44.—(1) Section 513 applies to LLPs, modified so that it reads as follows—

"**Rights of auditor who has been removed from office**

513.—(1) An auditor who has been removed has, notwithstanding his removal, the rights conferred by section 502(1) in relation to any meeting of the LLP—

(a) at which his term of office would otherwise have expired, or

(b) at which it is proposed to fill the vacancy caused by his removal.

(2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor."

(2) In section 513 (applied to LLPs by paragraph (1)) as it applies in relation to an auditor appointed before 1st October 2008, the reference to rights under section 502(1) shall be read as a reference to rights under section 390(1) of the 1985 Act or Article 398(1) of the 1986 Order as applied to LLPs.

Rights of auditor not re-appointed

45.—(1) Sections 515 to 518 apply to LLPs, modified so that they read as follows—

"**Failure to re-appoint auditor: rights of auditor who is not re-appointed**

515.—(1) No person may be appointed as auditor in place of a person (the "outgoing auditor") whose term of office has ended or is to end at the end of the period for appointing auditors unless the LLP has given 7 days' prior notice to the outgoing auditor.

(2) The outgoing auditor may make with respect to the proposal representations in writing to the LLP (not exceeding a reasonable length) and request their notification to members of the LLP.

(3) The LLP must upon receipt send a copy of the representations to every member.

(4) Copies of the representations need not be sent out if, on the application either of the LLP or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the LLP's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

Resignation of auditor

516.—(1) An auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office.

(2) The notice is not effective unless it is accompanied by the statement required by section 519.

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

Notice to registrar of resignation of auditor

517.—(1) Where an auditor resigns the LLP must within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.

(2) If default is made in complying with this section, an offence is committed by—

(a) the LLP, and

(b) every designated member of the LLP who is in default.

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.

Rights of resigning auditor

518.—(1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation (see section 519).

(2) He may deposit with the notice a signed requisition calling on the designated members of the LLP forthwith duly to convene a meeting of the members of the LLP 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.

(3) He may request the LLP to circulate to its members before the meeting convened on his requisition, a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The LLP must (unless the statement is received too late for it to comply)—

(a) in any notice of the meeting given to members of the LLP, state the fact of the statement having been made, and

(b) send a copy of the statement to every member of the LLP to whom notice of the meeting is or has been sent.

(5) The designated members must within 21 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 28 days after the date on which the notice convening the meeting is given.

(6) If default is made in complying with subsection (5), every designated member who failed to take all reasonable steps to secure that a meeting was convened commits an offence.

(7) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction to a fine not exceeding the statutory maximum.

(8) If a copy of the statement mentioned above is not sent out as required because received too late or because of the LLP's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(9) 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 LLP or of any other person who claims to be

aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

The court may order the LLP's costs (in Scotland, expenses) on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 502(1) in relation to any such meeting of the LLP as is mentioned in subsection (3).

In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor."

(2) In section 518 (applied to LLPs by paragraph (1)) as it applies in relation to an auditor appointed before 1st October 2008, the reference to rights under section 502(1) shall be read as a reference to rights under section 390(1) of the 1985 Act or Article 398(1) of the 1986 Order as applied to LLPs.

Auditor statements

46. Sections 519 to 526(**1**) apply to LLPs, modified so that they read as follows—

"**Statement by auditor to be deposited with LLP**

519.—(1) Where an auditor of an LLP ceases for any reason to hold office, he must deposit at the LLP's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the LLP.

(2) If he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the LLP, he must deposit at the LLP's registered office a statement to that effect.

(3) The statement required by this section must be deposited—

(a) in the case of resignation, along with the notice of resignation;

(b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor;

(c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(4) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.

(5) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(6) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) Where an offence under this section is committed by a body corporate, every officer of the body who is in default also commits the offence.

For this purpose—

(a) any person who acts as director, manager or secretary of the body is treated as an officer of the body, and

(**1**) Sections 519 and 521 were amended by paragraphs 247 and 248 of Schedule 1 to S.I. 2008/948.

(b) if the body is a company, any shadow director is treated as an officer of the company.

LLP's duties in relation to statement

520.—(1) This section applies where the statement deposited under section 519 states the circumstances connected with the auditor's ceasing to hold office.

(2) The LLP must within 14 days of the deposit of the statement either—

(a) send a copy of it to every person who under section 423 is entitled to be sent copies of the accounts, or

(b) apply to the court.

(3) If it applies to the court, the LLP must notify the auditor of the application.

(4) If the court is satisfied that the auditor is using the provisions of section 519 to secure needless publicity for defamatory matter—

(a) it shall direct that copies of the statement need not be sent out, and

(b) it may further order the LLP's costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, even if he is not a party to the application.

The LLP must within 14 days of the court's decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order.

(5) If no such direction is made the LLP must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days of the court's decision or, as the case may be, of the discontinuance of the proceedings.

(6) In the event of default in complying with this section an offence is committed by every designated member of the LLP who is in default.

(7) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(8) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

Copy of statement to be sent to registrar

521.—(1) Unless within 21 days beginning with the day on which he deposited the statement under section 519 the auditor receives notice of an application to the court under section 520, he must within a further seven days send a copy of the statement to the registrar.

(2) If an application to the court is made under section 520 and the auditor subsequently receives notice under subsection (5) of that section, he must within seven days of receiving the notice send a copy of the statement to the registrar.

(3) An auditor who fails to comply with subsection (1) or (2) commits an offence.

(4) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) Where an offence under this section is committed by a body corporate, every officer of the body who is in default also commits the offence.

For this purpose—

(a) any person who acts as director, manager or secretary of the body is treated as an officer of the body, and

(b) if the body is a company, any shadow director is treated as an officer of the company.

Duty of auditor to notify appropriate audit authority

522.—(1) Where—

(a) in the case of a major audit, an auditor ceases for any reason to hold office, or

(b) in the case of an audit that is not a major audit, an auditor ceases to hold office before the end of his term of office,

the auditor ceasing to hold office must notify the appropriate audit authority.

(2) The notice must—

(a) inform the appropriate audit authority that he has ceased to hold office, and

(b) be accompanied by a copy of the statement deposited by him at the LLP's registered office in accordance with section 519.

(3) If the statement so deposited is to the effect that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the LLP, the notice must also be accompanied by a statement of the reasons for his ceasing to hold office.

(4) The auditor must comply with this section—

(a) in the case of a major audit, at the same time as he deposits a statement at the LLP's registered office in accordance with section 519;

(b) in the case of an audit that is not a major audit, at such time (not being earlier than the time mentioned in paragraph (a)) as the appropriate audit authority may require.

(5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.

(6) If that person is a firm an offence is committed by—

(a) the firm, and

(b) every officer of the firm who is in default.

(7) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(8) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

Duty of LLP to notify appropriate audit authority

523.—(1) Where an auditor ceases to hold office before the end of his term of office, the LLP must notify the appropriate audit authority.

(2) The notice must—

(a) inform the appropriate audit authority that the auditor has ceased to hold office, and

(b) be accompanied by—

(i) a statement by the LLP of the reasons for his ceasing to hold office, or

(ii) if the copy of the statement deposited by the auditor at the LLP's registered office in accordance with section 519 contains a statement of circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the LLP, a copy of that statement.

(3) The LLP must give notice under this section not later than 14 days after the date on which the auditor's statement is deposited at the LLP's registered office in accordance with section 519.

(4) If an LLP fails to comply with this section, an offence is committed by—

(a) the LLP, and

(b) every designated member of the LLP who is in default.

(5) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(6) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

Information to be given to accounting authorities

524.—(1) The appropriate audit authority on receiving notice under section 522 or 523 of an auditor's ceasing to hold office—

(a) must inform the accounting authorities, and

(b) may if it thinks fit forward to those authorities a copy of the statement or statements accompanying the notice.

(2) The accounting authorities are—

(a) the Secretary of State, and

(b) the body known as the Financial Reporting Review Panel established under the articles of association of the Financial Reporting Council Limited (registered number 02486368).

(3) If either of the accounting authorities is also the appropriate audit authority it is only necessary to comply with this section as regards any other accounting authority.

(4) If the court has made an order under section 520(4) directing that copies of the statement need not be sent out by the LLP, sections 460 and 461 (restriction on further disclosure) apply in relation to the copies sent to the accounting authorities as they apply to information obtained under section 459 (power to require documents etc).

Meaning of "appropriate audit authority" and "major audit"

525.—(1) In sections 522, 523 and 524 "appropriate audit authority" means—

(a) in the case of a major audit (other than one conducted by an Auditor General), the body known as the Professional Oversight Board established under the articles of association of the Financial Reporting Council Limited (registered number 02486368);

(b) in the case of an audit (other than one conducted by an Auditor General) that is not a major audit, the relevant supervisory body;

(c) in the case of an audit conducted by an Auditor General, the Independent Supervisor.

"Supervisory body" and "Independent Supervisor" have the same meaning as in Part 42 (statutory auditors) (see sections 1217 and 1228).

(2) In section 522 and this section "major audit" means a statutory audit conducted in respect of—

(a) an LLP any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c.8)), or

(b) any other person in whose financial condition there is a major public interest.

(3) In determining whether an audit is a major audit within subsection (2)(b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (1).

Effect of casual vacancies

526. If an auditor ceases to hold office for any reason, any surviving or continuing auditor or auditors may continue to act."