
STATUTORY INSTRUMENTS

2008 No. 1911

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

PART 8

REVISION OF DEFECTIVE ACCOUNTS

Revision of defective accounts

23. Sections 454 to 456 apply to LLPs, modified so that they read as follows—

“**454.**—(1) If it appears to the members of an LLP that the LLP’s annual accounts did not comply with the requirements of this Act, they may prepare revised accounts.

(2) Where copies of the previous accounts have been sent out to members or delivered to the registrar, the revisions must be confined to—

- (a) the correction of those respects in which the previous accounts did not comply with the requirements of this Act, and
- (b) the making of any necessary consequential alterations.

(3) The Companies (Revision of Defective Accounts and Reports) Regulations 2008 (S.I. 2008/373) apply for the purposes of this section with the following modifications—

- (a) references to a company include references to an LLP; and
- (b) references to a director or to an officer of a company include references to a member of an LLP.

Secretary of State’s notice in respect of accounts

455.—(1) This section applies where copies of an LLP’s annual accounts have been delivered to the registrar, and it appears to the Secretary of State that there is, or may be, a question whether the accounts comply with the requirements of this Act.

(2) The Secretary of State may give notice to the members of the LLP indicating the respects in which it appears that such a question arises or may arise.

(3) The notice must specify a period of not less than one month for the members to give an explanation of the accounts or prepare revised accounts.

(4) If at the end of the specified period, or such longer period as the Secretary of State may allow, it appears to the Secretary of State that the members have not—

- (a) given a satisfactory explanation of the accounts, or
- (b) revised the accounts so as to comply with the requirements of this Act,

the Secretary of State may apply to the court.

(5) The provisions of this section apply equally to revised annual accounts, in which case they have effect as if the references to revised accounts were references to further revised accounts.

Application to court in respect of defective accounts

456.—(1) An application may be made to the court—

- (a) by the Secretary of State, after having complied with section 455, or
- (b) by the Financial Reporting Review Panel,

for a declaration (in Scotland, a declarator) that the annual accounts of an LLP do not comply with the requirements of this Act and for an order requiring the members of the LLP to prepare revised accounts.

(2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.

(3) If the court orders the preparation of revised accounts, it may give directions as to—

- (a) the auditing of the accounts, and
- (b) the taking of steps by the members to bring the making of the order to the notice of persons likely to rely on the previous accounts,

and such other matters as the court thinks fit.

(4) If the court finds that the accounts did not comply with the requirements of this Act it may order that all or part of—

- (a) the costs (in Scotland, expenses) of and incidental to the application, and
- (b) any reasonable expenses incurred by the LLP in connection with or in consequence of the preparation of revised accounts,

are to be borne by such of the members as were party to the approval of the defective accounts.

For this purpose every member of the LLP at the time of the approval of the accounts shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.

(5) Where the court makes an order under subsection (4) it shall have regard to whether the members party to the approval of the defective accounts knew or ought to have known that the accounts did not comply with the requirements of this Act, and it may exclude one or more members from the order or order the payment of different amounts by different members.

(6) On the conclusion of proceedings on an application under this section, the applicant must send to the registrar for registration a copy of the court order or, as the case may be, give notice to the registrar that the application has failed or been withdrawn.

(7) The provisions of this section apply equally to revised annual accounts, in which case they have effect as if the references to revised accounts were references to further revised accounts.”

Disclosure of information

24. Sections 458 to 461(1) apply to LLPs, modified so that they read as follows—

(1) Sections 458, 460 and 461 were amended by paragraphs 244 to 246 of Schedule 1 to [S.I. 2008/948](#).

“Disclosure of information by tax authorities

458.—(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose information to the Financial Reporting Review Panel for the purpose of facilitating—

- (a) the taking of steps by the Financial Reporting Review Panel to discover whether there are grounds for an application to the court under section 456 (application in respect of defective accounts etc), or
- (b) a decision by the Financial Reporting Review Panel whether to make such an application.

(2) This section applies despite any statutory or other restriction on the disclosure of information.

Provided that, in the case of personal data within the meaning of the Data Protection Act 1998 (c.29), information is not to be disclosed in contravention of that Act.

(3) Information disclosed to the Financial Reporting Review Panel under this section—

- (a) may not be used except in or in connection with—
 - (i) taking steps to discover whether there are grounds for an application to the court under section 456, or
 - (ii) deciding whether or not to make such an application, or in, or in connection with, proceedings on such an application; and
- (b) must not be further disclosed except—
 - (i) to the person to whom the information relates, or
 - (ii) in, or in connection with, proceedings on any such application to the court.

(4) A person who contravenes subsection (3) commits an offence unless—

- (a) he did not know, and had no reason to suspect, that the information had been disclosed under this section, or
- (b) 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 subsection (4) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

(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 purports to act 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.

Power of the Financial Reporting Review Panel to require documents, information and explanations

459.—(1) This section applies where it appears to the Financial Reporting Review Panel that there is, or may be, a question whether an LLP’s annual accounts comply with the requirements of this Act.

(2) The Financial Reporting Review Panel may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—

- (a) discovering whether there are grounds for an application to the court under section 456, or
- (b) deciding whether to make such an application.

(3) Those persons are—

- (a) the LLP;
- (b) any member, employee, or auditor of the LLP;
- (c) any persons who fell within paragraph (b) at a time to which the document or information required by the Financial Reporting Review Panel relates.

(4) If a person fails to comply with such a requirement, the Financial Reporting Review Panel may apply to the court.

(5) If it appears to the court that the person has failed to comply with a requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this section compels any person to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

(8) In this section “document” includes information recorded in any form.

Restrictions on disclosure of information obtained under compulsory powers

460.—(1) This section applies to information (in whatever form) obtained in pursuance of a requirement or order under section 459 (power of Financial Reporting Review Panel to require documents etc) that relates to the private affairs of an individual or to any particular business.

(2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(3) This does not apply—

- (a) to disclosure permitted by section 461 (permitted disclosure of information obtained under compulsory powers), or
- (b) to the disclosure of information that is or has been available to the public from another source.

(4) A person who discloses information in contravention of this section commits an offence, unless—

- (a) he did not know, and had no reason to suspect, that the information had been disclosed under section 459, or
 - (b) 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 imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (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 purports to act 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.

Permitted disclosure of information obtained under compulsory powers

461.—(1) The prohibition in section 460 of the disclosure of information obtained in pursuance of a requirement or order under section 459 (power of Financial Reporting Review Panel to require documents etc) that relates to the private affairs of an individual or to any particular business has effect subject to the following exceptions.

(2) It does not apply to the disclosure of information for the purpose of facilitating the carrying out by the Financial Reporting Review Panel of its functions under section 456.

(3) It does not apply to disclosure to—

- (a) the Secretary of State,
- (b) the Department of Enterprise, Trade and Investment for Northern Ireland,
- (c) the Treasury,
- (d) the Bank of England,
- (e) the Financial Services Authority, or
- (f) the Commissioners for Her Majesty's Revenue and Customs.

(4) It does not apply to disclosure—

- (a) for the purpose of assisting the body known as the Professional Oversight Board established under the articles of association of the Financial Reporting Council Limited (registered number 02486368) to exercise its functions under Part 42 of this Act;
- (b) with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties;
- (c) for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following—

- (i) the Companies Acts,
 - (ii) Part 5 of the Criminal Justice Act 1993 (c.36) (insider dealing),
 - (iii) the Insolvency Act 1986 (c.45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
 - (iv) the Company Directors Disqualification Act 1986 (c.46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
 - (v) the Financial Services and Markets Act 2000 (c.8);
- (d) for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies, directors' disqualification or insolvency;
 - (e) for the purpose of enabling or assisting the Bank of England to exercise its functions;
 - (f) for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions;
 - (g) for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—
 - (i) the legislation relating to friendly societies or to industrial and provident societies,
 - (ii) the Building Societies Act 1986 (c.53),
 - (iii) Part 7 of the Companies Act 1989 (c.40),
 - (iv) the Financial Services and Markets Act 2000; or
 - (h) in pursuance of any Community obligation.
- (5) It does not apply to disclosure to a body exercising functions of a public nature under legislation in any country or territory outside the United Kingdom that appear to the Financial Reporting Review Panel to be similar to its functions under section 456 for the purpose of enabling or assisting that body to exercise those functions.
- (6) In determining whether to disclose information to a body in accordance with subsection (5), the Financial Reporting Review Panel must have regard to the following considerations—
- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure;
 - (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than—
 - (i) for the purposes of carrying out the functions mentioned in that subsection, or
 - (ii) for other purposes substantially similar to those for which information disclosed to the Financial Reporting Review Panel could be used or further disclosed.
- (7) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c.29).”