

2008 No. 489

COMPANIES

**The Companies (Disclosure of Auditor Remuneration and
Liability Limitation Agreements) Regulations 2008**

<i>Made</i>	- - - -	<i>23rd February 2008</i>
<i>Laid before Parliament</i>		<i>27th February 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to auditors and the audit of accounts.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2)(a) of the European Communities Act 1972 and sections 494, 538 and 1292(1)(a) of the Companies Act 2006(c).

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 and come into force on 6th April 2008.

Application and revocation

2.—(1) Regulations 3 to 7 do not apply to the accounts of a company for any financial year beginning before 6th April 2008.

(2) The Companies (Disclosure of Auditor Remuneration) Regulations 2005(d) continue to apply to the accounts of a company for any financial year beginning before 6th April 2008.

(3) Subject to paragraph (2), the Companies (Disclosure of Auditor Remuneration) Regulations 2005 are revoked.

Interpretation

3.—(1) In these Regulations—

(a) S.I. 2007/1679.
(b) 1972 c.68.
(c) 2006 c.46.
(d) S.I. 2005/2417.

“the Act” means the Companies Act 2006;

“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;

“parent” means a parent undertaking (as defined in section 1162 of the Act) which is a body corporate, and “parent company” is a parent which is a company;

“principal terms” has the meaning in section 536(4) of the Act;

“remuneration” includes payments in respect of expenses and benefits in kind;

“subsidiary” means a subsidiary undertaking (as defined in section 1162 of the Act) which is a body corporate, and “subsidiary company” is a subsidiary which is a company.

(2) For the purposes of these Regulations—

- (a) a company is small in relation to a financial year if the small companies regime as defined in section 381 of the Act applies to it for that year;
- (b) a company is medium-sized in relation to a financial year if—
 - (i) it qualifies as medium-sized in relation to that year under section 465 of the Act; and
 - (ii) it is not excluded from being medium-sized under section 467(1) of the Act;
- (c) 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 that subsidiary; and
 - (ii) any scheme which is an associated pension scheme in relation to that company; and
- (d) a person is an associate, or a distant associate, of a company’s auditor if that person is specified as such by Schedule 1 to these Regulations.

PART 2

DISCLOSURE OF REMUNERATION

Disclosure of remuneration: small and medium-sized companies

4.—(1) A note to the annual accounts of a small or medium-sized company must disclose the amount of any remuneration receivable by the company’s auditor for the auditing of those accounts.

(2) Where the remuneration includes benefits in kind, the nature and estimated money-value of those benefits must also be disclosed in a note.

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

(4) For the purposes of section 1224 of the Act, the functions of the Secretary of State under Part 42 of the Act include (without prejudice to the generality of that section) consideration of the total remuneration receivable by the auditor of a medium-sized company for the supply by the auditor

to the company of each of the following types of service where that remuneration is not disclosed in a note to the company's annual accounts—

- (a) assurance services other than the auditing of the company's accounts;
- (b) tax advisory services;
- (c) other services.

Disclosure of remuneration: other companies

5.—(1) A note to the annual accounts of a company which is not a small or medium-sized company must disclose the amount of—

- (a) any remuneration receivable by the company's auditor for the auditing of those accounts; and
- (b) subject to paragraph (6) and regulation 6(2), any remuneration receivable in respect of the period to which the accounts relate by—
 - (i) the company's auditor; or
 - (ii) any person who was, at any time during the period to which the accounts relate, an associate of the company's auditor,

for the supply of other services to the company or any associate of the company.

(2) Where the remuneration includes benefits in kind, the nature and estimated money-value of those benefits must also be disclosed in a note.

(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 in respect of the period to which the accounts relate, separate disclosure is required in respect of the remuneration of each such person and his associates.

(6) Disclosure is not required of remuneration receivable for the supply of services falling within paragraph 10 of Schedule 2 supplied by a distant associate of the company's auditor where the total remuneration receivable for all of those services supplied by that associate does not exceed either—

- (a) £10,000, or
- (b) 1% of the total audit remuneration received by the company's auditor in the most recent financial year of the auditor which ended no later than the end of the financial year of the company to which the accounts relate.

(7) In paragraph (6)(b)—

- (a) "financial year of the auditor" means—
 - (i) the period of not more than 18 months in respect of which the auditor's profit and loss account is required to be made up (whether by law or by or in accordance with the auditor's constitution (if any)), or
 - (ii) failing any such requirement, the period of 12 months beginning with 1st April;
- (b) "total audit remuneration received" means the total remuneration received for the auditing pursuant to legislation (including that of countries and territories outside the United Kingdom) of any accounts of any person.

Group Accounts

6.—(1) Group accounts must comply with regulation 5(1)(b) as if the undertakings included in the consolidation were a single company except where the group—

- (a) qualifies as small or medium-sized under section 383 or 466 of the Act; and
 - (b) is not an ineligible group under section 384(2) or 467(2) of the Act.
- (2) A note to the individual accounts of—
- (a) a parent company which is required to prepare and does prepare group accounts in accordance with the Act; and
 - (b) a subsidiary company where its parent is required to prepare and does prepare group accounts in accordance with the Act and the company is included in the consolidation;
- does not have to disclose the information required by regulation 5(1)(b) if the conditions in paragraph (3) are satisfied.
- (3) Those conditions are that—
- (a) the group accounts are required to comply with paragraph (1); and
 - (b) the individual accounts state that the group accounts are so required.

Duty of auditor to supply information

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

PART 3
LIABILITY LIMITATION AGREEMENTS

Disclosure of liability limitation agreements

- 8.—(1) A company which has entered into a liability limitation agreement must disclose—
- (a) its principal terms; and
 - (b) the date of the resolution approving the agreement or the agreement’s principal terms or, in the case of a private company, the date of the resolution waiving the need for such approval,

in a note to the company’s annual accounts.

(2) The annual accounts in which the disclosure required by paragraph (1) must be made shall be those for the financial year to which the agreement relates unless the agreement was entered into too late for it to be reasonably practicable for the disclosure to be made in those accounts.

(3) If the agreement was entered into too late for it to be reasonably practicable for the disclosure required by paragraph (1) to be made in the accounts for the financial year to which the agreement relates, the disclosure shall be made in a note to the company’s next following annual accounts.

Gareth Thomas
Parliamentary Under Secretary of State for Trade and Consumer Affairs,
Department for Business, Enterprise and Regulatory Reform

23rd February 2008

Associates of a company's auditor

1. Each of the following shall be regarded as an associate of a company's auditor—
 - (a) any person controlled by the company's auditor or by any associate of the company's auditor (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 auditor or any associate of the company's auditor 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 auditor;
 - (c) any person using a trading name which is the same as or similar to a trading name used by the company's auditor, but only if the company's auditor uses that trading name with the intention of creating the impression of a connection between the auditor and that other person;
 - (d) any person who is a party to an arrangement with the company's auditor, 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 auditor is a partnership, each of the following shall also be regarded as an associate of the auditor—
 - (a) any other partnership which has a partner in common with the company's auditor;
 - (b) any partner in the company's auditor;
 - (c) any body corporate which is in the same group as a body corporate which is a partner in the company's auditor;
 - (d) any body corporate which is in the same group as a body corporate which is a partner in a partnership which has a partner in common with the company's auditor;
 - (e) any body corporate of which a partner in the company's auditor is a director.
3. Where a company's auditor is a body corporate (other than one which is also a partnership as defined in paragraph 5(c)), each of the following shall also be regarded as an associate of the auditor—
 - (a) any other body corporate which has a director in common with the company's auditor;
 - (b) any director of the company's auditor;
 - (c) any body corporate which is in the same group as a body corporate which is a director of the company's auditor;
 - (d) any body corporate which is in the same group as a body corporate which has a director in common with the company's auditor;
 - (e) any partnership in which a director of the company's auditor is a partner;
 - (f) any body corporate which is in the same group as the company's auditor;
 - (g) any partnership in which any body corporate which is in the same group as the company's auditor is a partner.
4. A distant associate of a company's auditor is a person who is an associate of that auditor by reason only that that person is an associate within one or more of—

- (a) paragraph 1(a) where the person in question is controlled by a distant associate of the company's auditor but not by the auditor or by an associate who is not a distant associate;
- (b) paragraph 2(a), (d) or (e);
- (c) paragraph 3(a), (d) or (e).

5. In this Schedule—

- (a) “acting as an insolvency practitioner” shall be construed in accordance with section 388 of the Insolvency Act 1986(a) or Article 3 of the Insolvency (Northern Ireland) Order 1989(b);
- (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 the United Kingdom;
- (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 section 4(2)(a) to (c) 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, 2002/1240 and 2002/2708.

(b) S.I. 1989/2405 (N.I. 19); Article 3 has been amended by Article 6(1)(a) to (c) of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6)); and by S.R. 1995/225, 2002/334 and 2003/550.

SCHEDULE 2

Regulation 5(3)

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

1. The auditing of accounts of associates of the company pursuant to legislation (including that of countries and territories outside the United Kingdom).
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 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' and also to disclose liability limitation agreements that they make with their auditors. Disclosure must be in a note to the company's annual accounts.

Small and medium-sized companies (defined in regulation 3(2)(a) and (b) in the same way as in the Companies Act 2006) must disclose the fee paid to their auditors for the audit itself (regulation 4). The Secretary of State (or, if a delegation order is made under section 1252 of the Companies Act 2006, the body to whom the Secretary of State's functions are delegated) may require the auditors of a medium-sized company to give him limited information about other fees paid to them if the company does not voluntarily disclose that information itself (regulation 4(4)); this provision implements Article 49.1(c) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (O.J. L157, 9.6.2006, p. 87).

Every other company must disclose both the audit fee and all other fees receivable by the auditors for services supplied 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 5(1)). Auditors' associates are defined in Schedule 1; associated pension schemes are defined in regulation 3(1). Each type of service specified in Schedule 2 and the fee paid for it must be separately disclosed (regulation 5(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 5(4)). No disclosure is required of fees for non-accountancy services supplied by a distant associate of the company's auditors where the total fees for those services are not more than £10,000 or 1% of all the audit fees received by the auditors in the auditors' financial year ending not later than the company's financial year to which the accounts relate (regulation 5(6) and (7)).

Consolidated group accounts (except those of small or medium-sized groups which are not ineligibile) 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 6).

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 7).

A company which has made a liability limitation agreement with its auditors must disclose its principal terms and the date of the approval resolution (or resolution waiving the need for approval in the case of a private company) passed by the company's members (regulation 8). The disclosure must be in a note to the accounts for the year in question or (if the agreement was entered into too late to be included in those accounts) in a note to the next year's accounts.

An Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities and voluntary bodies.

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