
STATUTORY INSTRUMENTS

2008 No. 567

**The Bank Accounts Directive
(Miscellaneous Banks) Regulations 2008**

PART 3

AUDITORS

Appointment of auditor

7.—(1) Sections 485 (appointment of auditors of private company: general), 486 (appointment of auditors of private company: default power of Secretary of State), 487 (term of office of auditors of private company) and 488 (prevention by members of deemed re-appointment of auditor) of the Companies Act 2006 apply in relation to the appointment of auditors of a qualifying bank subject—

- (a) where the bank concerned is unincorporated, to any necessary modifications to take account of that fact, and
- (b) to the provisions of the Schedule to these Regulations.

(2) Sections 1121 (liability of officer in default), 1123 (application to bodies other than companies) and 1130 (proceedings against unincorporated bodies) of the Companies Act 2006 apply in relation to an offence committed under section 486(3) of that Act as applied by this regulation.

Functions of auditor

8.—(1) The following provisions of the Companies Act 2006 apply to the auditor of a qualifying bank as they apply to an auditor of a company—

- (a) section 495 (auditor's report on company's annual accounts);
- (b) section 498 (duties of auditor);
- (c) section 499 (auditor's general right to information).

(2) The auditor of a qualifying bank must supply the directors of that bank with such information as is necessary to enable the disclosure required by regulation 4(2) to be made.

Signature of auditor's report

9. Sections 503 to 506 of the Companies Act 2006 (signature of auditor's report) apply in relation to the auditor's report required by regulation 4(1)(b), subject to—

- (a) any necessary modifications to take account of the fact that the qualifying bank is unincorporated, and
- (b) the provisions of the Schedule to these Regulations.

Removal of auditor on improper grounds

10.—(1) Where the auditor of a qualifying bank is removed from office an application may be made to the High Court under this regulation.

(2) The persons who may make such an application are—

- (a) any member of the qualifying bank who was also a member at the time of the removal, and
- (b) the Authority.

(3) If the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures, or
- (b) on any other improper grounds,

it may make such order as it thinks fit for giving relief in respect of the removal.

(4) The court may, in particular—

- (a) declare that any resolution of the qualifying bank removing an auditor, or appointing a new auditor in his place, is void;
- (b) require the directors of the qualifying bank to re-appoint the dismissed auditor until the next general meeting of the qualifying bank;
- (c) give directions as to the conduct of the qualifying bank's affairs in the future.

(5) In the application of this regulation to a qualifying bank whose principal place of business is in Scotland or Northern Ireland, references to the High Court are to be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

Duty of auditor to notify appropriate audit authority

11.—(1) Where an auditor of a qualifying bank ceases for any reason to hold office, he 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) if the auditor resigns, be accompanied by a copy of any notice of resignation and a statement of the reasons for his resignation.

(3) The auditor must comply with this regulation—

- (a) if he resigns, at the same time as he deposits his notice of resignation at the principal office of the qualifying bank or otherwise informs it of his resignation;
- (b) 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.

Duty of qualifying bank to notify appropriate audit authority

12.—(1) Where an auditor of a qualifying bank ceases to hold office before the end of his term of office, the bank 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 bank of the reasons for his ceasing to hold office, or
 - (ii) if the auditor has resigned and he has given the qualifying bank a statement of the reasons for his resignation, a copy of that statement.

(3) The qualifying bank must give notice under this regulation—

- (a) if the auditor resigns, not later than the end of the period of 14 days beginning with the date on which the auditor first informs the qualifying bank of his resignation (whether by notice deposited at its principal office or otherwise);
- (b) in any other case, not later than the end of the period of 14 days beginning with the date on which the auditor ceases to hold office.

Penalties for non-compliance (notification of appropriate audit authority)

13.—(1) If an auditor fails to comply with regulation 11, an offence is committed by—

- (a) the auditor, and
- (b) if the auditor is a firm, every officer of the firm who is in default.

(2) If a qualifying bank fails to comply with regulation 12, an offence is committed by—

- (a) the qualifying bank, and
- (b) every director of the qualifying bank who is in default.

(3) Where the affairs of a qualifying bank are managed by its members, any reference in this regulation to a director of the qualifying bank shall be read as referring to a member of the bank.

(4) 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.

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

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

(6) Sections 1127 and 1128 (summary proceedings: venue and time limit for proceedings) and 1130 of the Companies Act 2006 (proceedings against unincorporated bodies) shall apply to an offence under paragraph (3) as it does to an offence under section 519 of that Act (statement by auditor to be deposited with company).