

2008 No. 567

BANKS AND BANKING

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

<i>Made</i>	- - - -	<i>26th February 2008</i>
<i>Laid before Parliament</i>		<i>5th March 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

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SCHEDULE — MODIFICATIONS AND ADAPTATIONS OF THE
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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 the creation, operation, regulation or dissolution of companies and other forms of business organisation, and 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) of that Act.

PART 1
INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008.

(2) These Regulations come into force on 6th April 2008 and apply in relation to—

- (a) qualifying banks' financial years beginning on or after that date, and
- (b) auditors appointed in respect of those financial years.

Interpretation

2.—(1) In these Regulations—

“the Companies Accounts Regulations” means the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(c);

“accounts” means the annual accounts, the directors' report and the auditor's report required by regulation 4(1);

“the appropriate audit authority” means—

- (a) the Secretary of State, or
- (b) if the Secretary of State has delegated functions under section 1252 of the Companies Act 2006(d) to a body whose functions include receiving the equivalent notice under section 522 or 523 of that Act, that body;

“the Authority” means the Financial Services Authority(e);

“director” includes, in the case of a body which is not a company, any corresponding officer of that body;

“enactment” includes—

(a) S.I. 2007/193 and S.I. 2007/1679.
(b) 1972 c.68.
(c) S.I. 2008/410.
(d) 2006 c.46.
(e) See the Financial Services and Markets Act 2000 (c.8), section 1.

- (a) an enactment contained in subordinate legislation, other than these Regulations,
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“financial year”, in relation to a qualifying bank, means any period in respect of which a profit and loss account of that bank is required to be made up by or in accordance with its constitution or by any enactment (whether that period is a year or not) or, failing any such requirement, each period of 12 months beginning with 1st April,

“qualifying bank” shall be construed in accordance with regulation 3.

(2) Except as otherwise provided in these Regulations, words and expressions used in the Companies Act 2006 have the same meaning in these Regulations as they have in that Act.

Meaning of “qualifying bank”

3.—(1) Any body of persons, whether incorporated or unincorporated, which—

- (a) is incorporated or formed by or established under any public general Act of Parliament passed before the year 1837,
- (b) has a principal place of business within the United Kingdom,
- (c) is an authorised deposit taker, and
- (d) is not required by any enactment to prepare accounts under Part 15 of the Companies Act 2006,

is a qualifying bank for the purposes of these Regulations.

(2) In paragraph (1), “authorised deposit taker” means a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, but excludes—

- (a) a building society, within the meaning of section 119 of the Building Societies Act 1986(a),
- (b) a credit union, within the meaning of the Credit Unions Act 1979(b) or the Credit Unions (Northern Ireland) Order 1985(c),
- (c) a specially authorised friendly society, within the meaning of section 7(1)(f) of the Friendly Societies Act 1974(d), and
- (d) a person who has permission to accept deposits only in the course of effecting or carrying out contracts of insurance in accordance with that permission.

(3) References in paragraph (2) to—

- (a) accepting deposits, and
- (b) effecting and carrying out contracts of insurance,

must be read with section 22 of the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(e), and Schedule 2 to that Act.

(a) 1986 c.53.

(b) 1979 c.34.

(c) S.I. 1985/1285 (N.I. 12).

(d) 1974 c.46.

(e) S.I. 2001/544, as amended by S.I. 2001/3544, S.I. 2002/682, S.I. 2002/1310, S.I. 2002/1776, S.I. 2002/1777, S.I. 2003/1475, S.I. 2003/1476, S.I. 2003/2822, S.I. 2004/1610, S.I. 2004/2737, S.I. 2004/3379, S.I. 2005/593, S.I. 2005/1518, S.I. 2005/2114 and S.I. 2006/1969.

PART 2

ACCOUNTS

Preparation of accounts

4.—(1) The directors of a qualifying bank must in respect of each financial year of the bank—

- (a) prepare such annual accounts and directors' report, and
- (b) cause to be prepared such auditor's report,

as would be required under Part 15 (accounts and reports) and Chapter 1 of Part 16 (requirement for audited accounts) of the Companies Act 2006, and under the Companies Accounts Regulations if the bank were a company which is a banking company or the parent company of a banking group, subject to the provisions of the Schedule to these Regulations.

(2) Regulations 5 and 6 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008^(a) apply in relation to the accounts required by this regulation as they apply in relation to the annual accounts of a company or group which is not a small or medium-sized company or group.

(3) The accounts required by paragraph (1) must be prepared within a period of 6 months beginning immediately after the end of the qualifying bank's financial year.

Publication of accounts

5.—(1) A qualifying bank must make available the latest accounts prepared under regulation 4 for inspection by any person, without charge and during business hours, at the bank's principal place of business within the United Kingdom.

(2) The bank must supply to any person upon request a copy of those accounts (or such part of those accounts as may be requested) at a price not exceeding the administrative cost of making the copy.

(3) Paragraph (2) applies whether the request for a copy is made orally during inspection under paragraph (1), by post or otherwise.

Penalties for non-compliance (accounts)

6.—(1) If the directors of a qualifying bank fail to prepare, or (in the case of the auditor's report) fail to cause to be prepared, the accounts required by regulation 4(1) within the period referred to in regulation 4(3), an offence is committed by every person who, immediately before the end of that period, was a director of the bank.

(2) If any annual accounts or directors' report are made available for inspection under regulation 5 which do not comply with the requirements of regulation 4(1) as to the matters to be included in them, an offence is committed by every person who, at the time the annual accounts or report were first made available for inspection, was a director of the bank.

(3) If a qualifying bank fails to comply with regulation 5 an offence is committed by—

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

(4) 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.

(5) 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.

^(a) S.I. 2008/489.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Sections 1127 and 1128 (summary proceedings: venue and time limit for proceedings) and 1130 of the Companies Act 2006 (proceedings against unincorporated bodies) apply to an offence under this regulation.

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).

PART 4

FINAL PROVISIONS

Consequential amendment

14. In section 1210 of the Companies Act 2006 (meaning of “statutory auditor” etc), for subsection (1)(g) substitute—

“(g) a person appointed as auditor of a bank for the purposes of the Bank Accounts Directive (Miscellaneous Banks) Regulations 2008,”.

Revocation and transitional provision

15.—(1) The Bank Accounts Directive (Miscellaneous Banks) Regulations 1991(a) are revoked.

(2) The regulations specified in paragraph (1) continue to apply to any financial year of a qualifying bank beginning before 6th April 2008.

26th February 2008

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

(a) S.I. 1991/2704, as amended by article 417 of S.I. 2001/3649 and S.I. 2005/1984.

**MODIFICATIONS AND ADAPTATIONS OF THE COMPANIES ACT
2006 AND THE COMPANIES ACCOUNTS REGULATIONS**

- 1.**—(1) Where a qualifying bank is unincorporated, the accounts shall comply with—
- (a) the requirements of Part 15 (accounts and reports) and Chapter 1 of Part 16 (requirement for audited accounts) of the Companies Act 2006^(a),
 - (b) the provisions of the Companies Act 2006 applied by regulations 7 to 9 of these regulations, and
 - (c) the Companies Accounts Regulations,

subject to any necessary modifications to take account of that fact.

(2) In particular, the accounts shall comply with those provisions subject to the provisions of section 1161(2) and (3) of the Companies Act 2006 (meaning of references to shares and other expressions appropriate to companies).

2. Accounts prepared under these Regulations shall state they are so prepared.

3. Sections 390 to 392 of the Companies Act 2006 (a company's financial year) shall not apply.

4. Accounts prepared under section 396 of the Companies Act 2006 (Companies Act individual accounts) as applied by these Regulations shall comply with the provisions of Part 1 of Schedule 2 to the Companies Accounts Regulations subject to the following modifications—

- (a) in Section B of Chapter I of that Part, the profit and loss account formats there prescribed shall apply as if item 15 of format 1 and Charges item 9 and Income item 8 of format 2 were omitted; and
- (b) in Part 3 of that Schedule, paragraphs 54, 61, 63, 64, 79(2), 84(2) and 86 shall not apply.

5. Accounts prepared under these Regulations shall comply with the provisions of Schedule 4 to the Companies Accounts Regulations (information on related undertakings) (as modified by Part 4 of that Schedule) as if paragraph 12 was omitted.

6. Accounts prepared under these Regulations shall comply with the provisions of Schedule 5 to the Companies Accounts Regulations (information about benefits of directors) as if paragraphs 2, 4 and 5 were omitted.

7. Accounts prepared under section 404 of the Companies Act 2006 (Companies Act group accounts) as applied by these Regulations shall comply with the provisions of Schedule 6 to the Companies Accounts Regulations (as modified by Part 2 of that Schedule) as if paragraphs 13(3) and (4), 14 and 15 were omitted.

8.—(1) Accounts prepared under these Regulations shall comply with paragraphs 6 and 7 of Schedule 7 to the Companies Accounts Regulations (disclosures in directors' report relating to financial instruments and miscellaneous matters), but otherwise that Schedule shall not apply.

(2) Where a qualifying bank has a share capital and may lawfully acquire its own shares, the directors' report of that bank shall, in addition to the matters referred to in sub-paragraph (1), state—

- (a) the reasons for any acquisition of such shares during the financial year,
- (b) the number and nominal value of any such shares acquired during the financial year and the number and nominal value of any such shares disposed of during the financial year,

(a) 2006 c.46.

together, in each case, with the percentage of the total issued share capital of the bank that they represent,

- (c) the value and nature of any consideration given for the acquisition of such shares and the value and nature of any consideration received for the disposal of such shares during the financial year, and
- (d) the number and nominal value of all such shares held by the bank at the end of the financial year, together with the percentage they represent of the total issued share capital of the bank.

9. Sections 485 to 488 of the Companies Act 2006 apply with the following modifications—

- (a) in section 485(2)(a), the reference to “the time allowed for sending out copies of the company’s annual accounts and reports” shall be construed as a reference to the time allowed under regulation 4(3) of these Regulations for preparing the accounts;
- (b) in section 485(2)(b), the reference to “the day on which copies of the company’s annual accounts and reports for the previous financial year are sent out under section 423” shall be construed as a reference to the day on which the accounts are prepared;
- (c) in section 487(3), the reference to “the provisions of this Part as to removal and resignation of auditors” shall be construed as a reference to provisions in these Regulations, and to any public general Act governing a qualifying bank, as to removal and resignation of auditors;
- (d) in section 488(3)(c), the reference to “the accounting reference period” shall be construed as a reference to the financial year.

10. Sections 505 and 506 of the Companies Act 2006 apply with the following modifications—

- (a) in section 505(1)(b) and section 506(2)(b), the references to the Secretary of State shall be construed as references to the Authority, and
- (b) in section 506(1)(b), the reference to the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports) shall be construed as a reference to any copy of the report made available for inspection by, or supplied to, the Authority.

11. For the purposes of the relevant provisions of the Companies Act 2006 and the Companies Accounts Regulations as applied by these Regulations, these Regulations shall be regarded as part of the requirements of that Act and those Regulations.

12. Paragraphs 4 to 7 of this Schedule shall not be construed as affecting the requirement to give a true and fair view under sections 393, 396 and 404 of the Companies Act 2006, as applied by these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972. They replace the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (S.I. 1991/2704) (“the 1991 Regulations”) and continue the implementation of Council Directive 86/635/EEC of 8th December 1986 on the annual and consolidated accounts of banks and other financial institutions. They also implement, in part, Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87) (“the Audit Directive”).

The Regulations come into force on 6th April 2008, and apply to financial years beginning on or after that date, and auditors appointed in respect of those financial years (regulation 1(2)). They extend to the whole of the United Kingdom. They apply to the undertakings specified in regulation 3 (“qualifying banks”) which have their principal place of business in the United Kingdom.

Regulation 4 re-enacts the requirements of the 1991 Regulations that qualifying banks prepare accounts and a directors’ report, and cause to be prepared an auditor’s report, as if they were banking companies or parent companies of banking groups (within the meaning of the Companies Act 2006). Relevant provisions of the Companies Act 2006 and of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (“the Companies Accounts Regulations”) are applied to the accounts and reports of such banks. Some of those provisions are modified by the Schedule to the Regulations. Regulation 4(2) applies the relevant provisions of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 to qualifying banks. This implements Article 49 of the Audit Directive on the disclosure of auditor remuneration.

The requirement of the 1991 Regulations that the accounts of qualifying banks should be prepared within 7 months of the end of the relevant year is replaced by a requirement that the accounts should be prepared within 6 months of that date (regulation 4(3)), reflecting the new time limit in section 442(2)(b) of the Companies Act 2006.

Regulation 5 re-enacts the provisions of the 1991 Regulations for the publication of the accounts required by these Regulations. Regulation 6 contains penalties for non-compliance with regulations 4 and 5.

Regulation 7 implements Article 37 of the Audit Directive, which requires the auditor to be appointed by the general meeting of shareholders or members of the audited entity. It does so by applying sections 485 to 488 of the Companies Act 2006. Regulation 8 imposes equivalent functions on auditors to those imposed by the Companies Act 2006, and Regulation 9 implements Article 28.1 of the Audit Directive on signature of the auditor’s report.

Regulation 10 implements Article 38.1 of the Audit Directive, which requires Member States to ensure that auditors may be dismissed only where there are proper grounds. It creates a new right to apply to the High Court, which may be exercised by a member of the qualifying bank or by the Financial Services Authority.

Regulations 11 and 12 implement Article 38.2 of the Audit Directive, which requires Member States to ensure that the audited entity and the auditor inform the authorities responsible for public oversight of the resignation or dismissal of the auditor. Regulation 13 contains penalties for non-compliance with regulations 11 and 12.

Regulation 14 makes a consequential amendment to the Companies Act 2006.

Regulation 15 revokes the 1991 Regulations and makes transitional provision for the continued application of those regulations in respect of financial years of qualifying banks beginning before 6th April 2008.

A transposition note has been prepared which sets out how Directive 2006/43 is to be transposed into UK law. An Impact Assessment of the effect that the implementation of Directive 2006/43 will have on the costs of business, charities or voluntary bodies has also been prepared. Both are

available from the Department for Business, Enterprise and Regulatory Reform, Corporate Law and Governance Directorate, 1 Victoria Street, London, SW1H 0ET. They are also available electronically at www.berr.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament. Otherwise an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies.

STATUTORY INSTRUMENTS

2008 No. 567

BANKS AND BANKING

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

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