

Companies Act 2014

Revision of defective financial statements

Key points

- *Chapter 17 of Part 6 of the Act will allow, for the first time, for necessary corrections to be made to financial statements which have been laid before the members or filed;*
- *Where the reason for the revision is that information that should have been included in the statements or report was omitted, incorrect or incomplete, the revision may be effected by supplementary note to the financial statements or report; in all other cases revised financial statements or a revised directors' report must be prepared;*
- *A statutory auditor's report must be prepared on the revised financial statements, directors' report or note, unless the company is entitled to avail, and avails, of an audit exemption;*
- *Additional provisions apply where the circumstances regarding the audit exemption, or the filing of abridged accounts as a small or medium company, change as a result of the revision.*

Introduction

Chapter 17 of Part 6 of the Companies Act 2014 (the “**Act**”) proposes to permit the revision of defective statutory financial statements. At present, where financial statements have been finalised and filed with the Companies Registration Office (“**CRO**”), and those financial statements are then found to be defective, there is no provision for their correction. The Act proposes to address this gap by setting out a clear procedure which if followed would allow the preparation, approval, audit and filing of revised financial statements or revised directors' report in respect of a prior year.

Revision of defective financial statements

Section 366 provides that, if it appears to the directors that any financial statements of the company (the ‘original financial statements’) or directors' report (the ‘original directors' report’) for a financial year did not comply with the requirements of the Act or, where applicable, the IAS Regulation, the directors may prepare revised financial statements or a revised directors' report in respect of that year.

This is the case even where copies of the original financial statements or report have been laid before the company in general meeting or delivered to the CRO. In such cases, the revisions shall be confined to necessary corrections and any necessary consequential alterations.

Where the reason for the revision is that information that should have been included by way of note to the financial statements was not so included, or was incorrect or incomplete, and the profit and loss account, balance sheet or other required statements are not affected, the revision may be effected by supplementary note. In all other cases revised financial statements shall be prepared.

Similarly, where information that should have been included in a directors' report was omitted, incorrect or incomplete, and the revision of the directors' report does not affect other information in the report, the revision may be effected by supplementary note; otherwise a revised report shall be prepared.

Where financial statements are revised, the fact of the revision and particulars of it, its effect and the reasons for it shall be set out in a note to the next financial statements prepared.

Sections 367 and 379 require that the revised financial statements be prepared under the provisions of the Act as were in force at the date of approval of the original statements. In particular, the revised statements must give a true and fair view as viewed at the date of the original statements.

Approval and signature of the revised financial statements

Section 368 requires that the revised financial statements (or where the revision is by supplementary note, that note) be approved and signed, following the rules in s 324 (as it applied when the original financial statements were approved), save that, where the original financial statements have already been sent to, or laid before, the members, or delivered to the Registrar, the directors shall, prior to approval, cause the date on which the approval is given to be stated, and cause the following statements to be made prominently in the revised financial statements (or in the note if applicable):

- (a) where the revision is effected by replacement, a statement clearly identifying the replacement financial statements as being revised financial statements, and statements:
 - (i) that the revised financial statements replace the original statements for a specified financial year and are now the statutory financial statements for that financial year;
 - (ii) that they have been prepared at the date of the original statements and not at the date of revision and so do not deal with events and transactions between those dates;
 - (iii) as to the respects in which the original financial statements did not comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation; and
 - (iv) as to any significant amendments made consequential to remedying those defects;
- (b) where the revision is effected by supplementary note, statements:
 - (i) that the note revises in certain respects the company's original financial statements and is to be treated as forming part of those original financial statements; and
 - (ii) that the financial statements have been revised as at the date of the original financial statements and not as at the date of the revision and so do not deal with events and transactions between those dates.

Similar provisions apply in relation to the approval and signing of a revised directors' report (or of a supplementary note to such a report), save that the relevant rules are those set out in s 332 (s 369).

Audit report on the revised financial statements, directors' report or supplementary note

Section 370 requires that the company's current statutory auditors make a report (or a further report) in the form required on any revised financial statements to the company's members.

Where the auditors' report on the original financial statements was not made by the company's current statutory auditors, the directors may resolve that the report on the revised financial statements be made

by the former statutory auditor(s) who made the first report, provided that they agree to do so and would be qualified for appointment as statutory auditors of the company.

The statutory auditors' report shall state whether, in their opinion:

- (a) the revised financial statements have been properly prepared in accordance with the relevant financial reporting framework and the provisions of the Act (or, where applicable, of the IAS Regulation) and, where the IAS Regulation applies, whether the revised financial statements give a true and fair view as at the date of approval of the original financial statements;
- (b) the original financial statements failed to comply with the relevant requirements in the respects identified by the directors.

The auditors shall also consider whether the information contained in the directors' report (or revised directors' report) is consistent with those financial statements, and shall state that fact in their report.

The requirements of s 337 regarding the signature of a statutory auditor's report shall apply (with necessary modifications) to the above report, and it shall be the auditors' report on the company's financial statements in place of the report on the original statements.

Where the directors' report has been revised, and not the financial statements, corresponding provisions to the above apply to the auditors' report (or further report) on the directors' report (s 372).

Audit Exemption

Where a company is entitled to, and avails itself of, the audit exemption, the above audit report shall not be required (s 371).

Where the entitlement to avail of the exemption only arises or is apparent following the revision, an audit report shall also not be required, even if the time taken in revising the financial statements meant that the directors were not able to make the decision to avail of the exemption at the time of the original financial statements (s 378). However where, following revision, a company is no longer entitled to the audit exemption, an auditors' report on the revised statements must be prepared, and delivered to the Registrar within 2 months after the date of revision (s 371).

Effect of the revision of the financial statements or directors' report

Upon the directors approving revised financial statements or a revised directors' report, the provisions of the Act shall have effect as if the revised statements or report were, from the date of their approval, the company's financial statements or directors' report, in place of the original. In particular, the revised statements or report shall be the relevant financial statements or report as regards the right to demand copies of financial statements and reports, the publication of financial statements, and if such steps have not yet been carried out, in relation to the circulation, laying before the members and annexing to the annual return of financial statements (s 373).

(a) Circulation of revised financial statements or revised directors' report

Where the directors have prepared revised financial statements or a revised directors' report and copies of the original statements or report have previously been sent to any person, the directors shall, not more than 28 days after the date of revision, send to any such person, and to any other person who although not entitled to receive a copy of the financial statements is a member or debenture-holder of the company, or a person entitled to receive notice of general meetings, a copy of (as applicable) the revised financial statements or report, or supplementary note, together with a copy of the auditors' report on the revised statements or report (s 374).

(b) Laying of revised financial statements or revised directors' report before members

Where the directors have prepared revised financial statements or a revised directors' report and copies of the original statements or report have been laid before a general meeting of the company, a copy of the revised statements or revised report, and a copy of the auditors' report on those financial statements or report, shall be laid before the company's next general meeting after the date of revision at which any statutory financial statements are laid (s 375).

(c) Delivery to Registrar of revised financial statements or revised directors' report

Where revised financial statements or a revised directors' report are prepared, and a copy of the original statements or report has been delivered to the Registrar (with the company's annual return), the directors shall, within 28 days after the date of revision, deliver to the Registrar a copy of (as applicable) the revised financial statements, revised directors' report or supplementary note, with a copy of the auditors' report on the revised financial statements or report. The original financial statements shall also remain on the public record (s 376).

Small and medium companies

Where a company has, prior to the date of revision, delivered to the Registrar abridged financial statements, pursuant to the exemption for a small or medium company, and the company would not qualify as such a company in light of the revised financial statements, or those statements affect the content of the abridged financial statements, the directors must cause the company to deliver to the Registrar, within 28 days after the date of revision, a copy of the revised financial statements (or if it is permitted to do so on the basis of the revised statements, abridged revised financial statements), together with a copy of the directors' and auditors' reports.

Where the abridged financial statements would, if they had been prepared by reference to the matters taken account of in the revised financial statements, comply with the requirements of this Act (or of the IAS Regulation), the directors of the company must cause the company to deliver to the Registrar, within 28 days after the date of revision, a note stating that the financial statements for the specified financial year have been revised in a respect which has no bearing on the abridged financial statements delivered, and a copy of the statutory auditors' report on the revised statements.

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