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subject to *subsection (4)*, be a defence for a defendant to prove that, due to circumstances beyond the control of that defendant, that defendant was unable to take all reasonable steps, being steps that were reasonable in the circumstances to have been taken by that defendant, to prevent the default. 5

(4) The defence provided for in *subsection (3)* is not available if this Act elsewhere provides for a defence in proceedings for the offence concerned.

PART 6

FINANCIAL STATEMENTS, ANNUAL RETURN AND AUDIT 10

CHAPTER 1

*Preliminary*

What this Part contains and use of prefixes — “Companies Act” and “IFRS”.

- 273.**—(1) This Part contains the provisions regarding—
- (a) the accounting records to be kept, and the financial statements to be prepared, by companies; 15
  - (b) the periodic returns to be made by companies to the Registrar; and
  - (c) the auditing of financial statements of companies and matters related to the auditing of them and, in particular, the rules governing the appointment of statutory auditors to, and their removal from, office. 20

(2) Those financial statements shall be prepared in accordance with (as this Part authorises)—

- (a) the requirements of *Schedule 3* or *4* and the relevant requirements of this Part; or 25
- (b) international financial reporting standards and the relevant requirements of this Part,

and the prefix—

- (i) “Companies Act” is used in references in this Part to financial statements that must comply with the requirements referred to in *paragraph (a)*; and 30
- (ii) “IFRS” is used in references in this Part to financial statements that must comply with the requirements referred to in *paragraph (b)*.

Overall limitation on discretions with respect to length of financial year, timing of annual general meeting, etc.

- 274.**—(1) The discretions of a company under— 35
- (a) *Part 4* with respect to the date of the holding of an annual general meeting; and
  - (b) this Part with respect to the length of its financial year or to its annual return date,

are subject to the overall limitation that those discretions must be exercised in a manner that results in each of the following, namely: 40

(i) compliance by the company with the requirement of *section 348(4)* as to the earliest date to which the documents annexed to an annual return must be made up; and

5 (ii) an annual general meeting of the company being held in the period to which an annual return of the company delivered to the Registrar relates.

(2) Where *section 176(3)* is availed of, the reference in *subsection (1)(ii)* to the holding of an annual general meeting is a reference to all the members entitled to attend and vote at such a meeting signing  
10 the written resolution referred to in *section 176(3)*.

**275.—(1)** In this Part—

Interpretation (*Part 6*): provisions relating to financial statements.

“abridged financial statements”, in relation to a company, means the financial statements of the company prepared in accordance with *section 354* or *355*, as appropriate;

15 “balance sheet”, in relation to a company, means a statement of assets, liabilities and financial position drawn up at a particular date showing the assets, liabilities and equity of the company at that date in a manner required by the financial reporting framework adopted by the company, and—

20 (a) for the avoidance of doubt, where the financial statements are prepared in accordance with IFRS, the expression means the statement of financial position referred to in those standards; and

(b) *subsection (3)* supplements this definition;

25 “Companies Act financial statements” means Companies Act entity financial statements or Companies Act group financial statements;

“Companies Act entity financial statements” shall be read in accordance with *section 291*;

30 “Companies Act group financial statements” shall be read in accordance with *section 294*;

“entity financial statements” means, in relation to a company, a summary (as at a particular date) respecting the company alone (as distinct from the company and any subsidiary undertakings) of its assets, liabilities and financial position, together with its profit or  
35 loss, since the date of its previous financial statements and generally comprises—

(a) a balance sheet;

(b) a profit and loss account; and

40 (c) other statements and notes attached to the foregoing and forming part of them,

and the expression “entity”, where used in relation to such a balance sheet or profit and loss account, shall be read accordingly;

45 “financial reporting framework” means the collective provisions and requirements (and, in particular, the applicable accounting standards) applied in the preparation of financial statements;

“financial statements”, in relation to a company, means entity financial statements and any group financial statements;

“group” means a holding undertaking and all its subsidiary undertakings;

“group financial statements” means, in relation to a holding company, a summary (as at a particular date) respecting the assets, liabilities and financial position of the company and its subsidiary undertakings as a whole, together with the profit or loss of the company and its subsidiary undertakings as a whole, since the date of the previous financial statements and generally comprises— 5  
10

- (a) a consolidated balance sheet;
- (b) a consolidated profit and loss account; and
- (c) other consolidated statements and notes attached to the foregoing and forming part of them,

and the expression “group”, where used in relation to such a balance sheet or profit and loss account, shall be read accordingly; 15

“IAS Regulation” means Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 and a reference to Article 4 of that Regulation is, in the case of a private company limited by shares, a reference to Article 5 of that Regulation; 20

“IFRS” means international financial reporting standards;

“IFRS entity financial statements” shall be read in accordance with *section 291*;

“IFRS financial statements” means IFRS entity financial statements or IFRS group financial statements; 25

“IFRS group financial statements” shall be read in accordance with *section 294*;

“international financial reporting standards” means the international financial reporting standards, within the meaning of the IAS Regulation, adopted from time to time by the Commission of the European Union in accordance with the IAS Regulation; 30

“non-statutory financial statements”—

- (a) in relation to a company, means any balance sheet or profit and loss account, or summary or abstract of a balance sheet or profit and loss account, relating to a financial year of the company that is published by the company otherwise than as part of the statutory financial statements of the company for that financial year; and 35
- (b) in relation to a holding company, includes any information purporting to be a consolidated balance sheet or consolidated profit and loss account, or a summary or abstract of a consolidated balance sheet or consolidated profit and loss account, of the group consisting of the holding company and its subsidiary undertakings that is published otherwise than as part of the statutory financial statements of that group for that financial year, 40  
45

and “non-statutory entity financial statements” shall be read accordingly;

“profit and loss account”, in relation to a company, means a statement of performance of the company showing revenues, expenses, gains and losses earned and incurred by the company during a period in a manner required by the financial reporting framework adopted by the company, and—

(a) for the avoidance of doubt, where the financial statements are prepared in accordance with IFRS, the expression means an income statement referred to in those standards; and

(b) *subsection (4)* supplements this definition;

“statutory financial statements”, in relation to a company, means—

(a) in the case of a company that is not a holding company or is a holding company that has availed itself of an exemption under this Part from the requirement to prepare group financial statements, the entity financial statements required by *section 291*; and

(b) in the case of a holding company that prepares group financial statements, the group financial statements required by *section 294* together with the entity financial statements required by *section 291*.

(2) References in this Act to financial statements giving a true and fair view are references—

(a) in the case of Companies Act entity financial statements, to the requirement under *section 292* that the entity financial statements prepared in accordance with that section give a true and fair view of the assets, liabilities, financial position and profit or loss of the company alone (as distinct from the company and any subsidiary undertakings);

(b) in the case of Companies Act group financial statements, to the requirement under *section 295* that the group financial statements prepared in accordance with that section give a true and fair view of the assets, liabilities, financial position and profit or loss of the company and the subsidiary undertakings included in the consolidation taken as a whole, so far as concerns the members of the company; and

(c) in the case of IFRS entity financial statements and IFRS group financial statements, to the equivalent requirement under international financial reporting standards to present fairly the assets, liabilities, financial position, financial performance and cash flows of the company or group concerned.

(3) References in this Part to a company’s balance sheet include references to notes to the company’s financial statements giving information relating to the balance sheet, being information that is both—

(a) required by any provision of this Act (including IFRS or other applicable accounting standards); and

(b) required or permitted by any such provision to be given in a note to those financial statements.

(4) References in this Part to a company's profit and loss account include references to notes to the company's financial statements giving information relating to the profit and loss account, being information that is both— 5

(a) required by any provision of this Act (including IFRS or other applicable accounting standards); and

(b) required or permitted by any such provision to be given in a note to those financial statements. 10

(5) References in this Act to an undertaking being included in—

(a) the consolidation in relation to group financial statements; or

(b) consolidated group financial statements,

shall be read as references to the undertaking being included in the financial statements by the method of full (and not proportional) consolidation, and references to an undertaking being excluded from consolidation shall be read accordingly. 15

(6) A requirement imposed on the directors of a company to prepare financial statements is satisfied by the financial statements being caused to be prepared by the directors. 20

Interpretation (*Part 6*): other definitions and construction provisions.

**276.**—(1) In this Part—

“accounting standards” means—

(a) statements of accounting standards; and

(b) any written interpretation of those standards, 25

issued by a body or bodies prescribed for the purposes of this definition under *section 945(1)(j)*;

“associated undertaking” has the meaning given to it by *paragraph 20 of Schedule 4*;

“audit committee” means the committee established under *section 168*;

“audit exemption”, unless expressly provided otherwise, means—

(a) other than in *Chapter 15*, the audit exemption under that Chapter or *Chapter 16*; or

(b) in *Chapter 15*, the audit exemption under that Chapter; 35

“audit of the statutory financial statements” means work required to fulfil the duties imposed under *section 337* on a statutory auditor of a company;

“credit institution” means—

(a) a company or undertaking that is the holder of a licence under *section 9 of the Central Bank Act 1971*;

5 (b) a company or undertaking engaged solely in the making of hire purchase agreements (within the meaning of the Hire Purchase Act 1946) and credit sale agreements (within the meaning of that Act), in respect of goods owned by the company or undertaking;

(c) a company or undertaking engaged in the business of accepting deposits or other repayable funds or granting credit for its own account; or

10 (d) a company or undertaking that is a trustee savings bank licensed under the Trustee Savings Bank Act 1989;

“equity share capital” or “equity shares” means, in relation to a company, its allotted share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

15 “fellow subsidiary undertakings” means 2 or more undertakings that are subsidiary undertakings of the same holding undertaking but which are not the holding undertaking or subsidiary undertaking of each other;

20 “group undertaking”, in relation to an undertaking, means an undertaking which is—

(a) a holding undertaking or subsidiary undertaking of that undertaking; or

(b) a subsidiary undertaking of any holding undertaking of that undertaking;

25 “higher holding undertaking” means an undertaking that is the holding undertaking of an undertaking that is itself a holding undertaking;

30 “holding undertaking” has the same meaning as “holding company” in *section 8* has save that “company” in *section section 8* shall, for the purposes of this definition, include, as well as a body corporate—

(a) a partnership; and

(b) an unincorporated body of persons,

falling within the definition of “undertaking” in this subsection;

35 “insurance undertaking” means an undertaking that is the holder of an authorisation within the meaning of—

(a) Regulation 2 of the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976);

40 (b) Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994);

(c) Regulation 2 of the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984);

(d) Regulation 2 the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994); or

(e) European Communities (Reinsurance) Regulations 2006  
(S.I. No. 380 of 2006).

“net assets”, in relation to a company or group, means the total assets of the company or group less the total liabilities of it or them as shown in the financial statements of the company or group; 5

“participating interest” has the meaning given to it by *paragraph 22 of Schedule 4*;

“publish”, in relation to a document, includes issue, circulate or otherwise make it available for public inspection in a manner calculated to invite the public generally, or any class of members of the public, to read the document, and cognate words shall be read accordingly; 10

“regulated market” has the same meaning as it has in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007); 15

“subsidiary undertaking” has the same meaning as “subsidiary” in *section 7* has save that “company” in *section 7* shall, for the purposes of this definition, include, as well as a body corporate—

(a) a partnership; and

(b) an unincorporated body of persons, 20

falling within the definition of “undertaking” in this subsection;

“turnover”, in relation to a company, means the amounts of revenue derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of—

(a) trade discounts; 25

(b) value-added tax; and

(c) any other taxes based on the amounts so derived,

and, in the case of a company whose ordinary activities include the making or holding of investments, includes the gross revenue derived from such activities; 30

“undertaking” means—

(a) any body corporate;

(b) a partnership; or

(c) an unincorporated body of persons,

engaged for gain in the production, supply or distribution of goods, the provision of services or the making or holding of investments; 35

(2) For the purposes of this Part, the definition of “wholly owned subsidiary” in *section 8(2)* shall apply as if each reference in that definition to a company included a reference to an undertaking.

(3) In this Part references to shares— 40

(a) in relation to an undertaking with share capital, are references to allotted shares;

(b) in relation to an undertaking with capital but no share capital, are references to rights to share in the capital of the undertaking; and

5 (c) in relation to an undertaking without capital, are references to interests—

(i) conferring any rights to share in the profits or imposing liability to contribute to the losses of the undertaking, or

10 (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(4) In this Part references to derivative financial instruments shall be deemed to include references to commodity-based contracts that give either contracting party the right to settle in cash or some other  
15 financial instrument except when such contracts—

(a) were entered into and continue to meet the company's expected purchase, sale or usage requirements;

(b) were designed for such purpose at their inception; and

(c) are expected to be settled by delivery of the commodity.

20 (5) The expressions specified in *subsection (6)* have the same meaning in this Part as they have in Council Directive 78/660/EEC, as amended by Directive 2001/65/EEC of the European Parliament and of the Council.

(6) Those expressions are:

25 (a) “available for sale financial asset”;

(b) “business combination”;

(c) “commodity-based contracts”;

(d) “equity instrument”;

(e) “exchange difference”;

30 (f) “value hedge accounting system”;

(g) “financial fixed asset”;

(h) “financial instrument”;

(i) “foreign entity”;

(j) “hedge accounting”;

35 (k) “hedged items”;

(l) “hedging instrument”;

(m) “held to maturity”;

(n) “held for trading purposes”;

(o) “monetary item”;

- (p) “receivables”;
- (q) “reliable market”; and
- (r) “trading portfolio”.

Construction of references to realised profits.

**277.**—(1) It is declared, for the avoidance of doubt, that references in this Part to realised profits, in relation to a company’s financial statements, are references to such profits of the company as fall to be treated as realised profits for the purposes of those financial statements in accordance with principles generally accepted with respect to the determination for accounting purposes of realised profits at the time when those financial statements are prepared. 5 10

(2) *Subsection (1)* is without prejudice to—

- (a) the construction of any other expression by reference (where appropriate) to generally accepted accounting principles or practice; or
- (b) any specific provision for the treatment of profits of any description as realised. 15

Construction of references to exemption.

**278.**—(1) For the avoidance of doubt, any provision of this Part providing for an exemption from a requirement of this Part does not prevent the company concerned, if it so chooses, from doing the thing that the provision provides it is exempted from doing. 20

(2) This section applies whether the expression “shall be exempt” or “need not” or any other form of words is used in the provision concerned.

Accounting standards generally — power of Minister to specify.

**279.**—(1) The Minister may specify by regulations the accounting standards in accordance with which statutory financial statements are to be prepared but any such regulations shall not apply in any excepted case. 25

(2) In *subsection (1)* “excepted case” means—

- (a) a case in which this Part permits (and the company concerned avails itself of that permission), or requires, statutory financial statements to be prepared in accordance with IFRS; or 30
- (b) a case falling within *section 280* or regulations made under *section 281* and the holding company concerned avails itself of what is permitted by that section or those regulations. 35

US accounting standards may, in limited cases, be availed of for particular transitional period.

**280.**—(1) In this section—  
“relevant holding company” means a holding company—

- (a) whose securities (or whose receipts in respect of those securities) are registered with the Securities and Exchange Commission of the United States of America, or which is otherwise subject to reporting to that Commission, under the laws of the United States of America; and 40

(b) which—

(i) prior to 4 July 2012, has not made and was not required to make an annual return to the Registrar to which accounts were required to have been annexed, or

(ii) on or after 23 December 2009 but prior to 4 July 2012, used, in accordance with the provisions of the Companies (Miscellaneous Provisions) Act 2009, US accounting standards in the preparation of its Companies Act individual accounts or its Companies Act group accounts;

“relevant financial statements” means Companies Act entity financial statements and Companies Act group financial statements;

“US accounting standards” means US generally accepted accounting principles, that is to say, the standards and interpretations, in relation to accounting and financial statements, issued by any of the following bodies constituted under the laws of the United States of America or of a territorial unit of the United States of America—

(a) the Financial Accounting Standards Board;

(b) the American Institute of Certified Public Accountants;

(c) the Securities and Exchange Commission.

(2) This section applies to the relevant financial statements of a relevant holding company that are prepared for such of its financial years after it is incorporated in the State as end or ends not later than 31 December 2020.

(3) To the extent that the use of US accounting standards does not contravene any provision of this Part—

(a) a true and fair view of the assets and liabilities, financial position and profit or loss of a relevant holding company may be given by the use by that company of those standards in the preparation of its Companies Act entity financial statements; and

(b) a true and fair view of the assets and liabilities, financial position and profit or loss of a relevant holding company and its subsidiary undertakings as a whole may be given by the use by that relevant holding company of those standards in the preparation of its Companies Act group financial statements.

**281.—(1)** In this section “relevant financial statements” means Companies Act entity financial statements and Companies Act group financial statements.

(2) The Minister may make regulations providing for specified categories of holding companies and providing that—

(a) a true and fair view of the assets and liabilities, financial position and profit or loss of a holding company in such a category may be given by the preparation by it of its Companies Act entity financial statements for a specified

Regulations may permit use of other internationally recognised accounting standards for a particular transitional period.

number of its financial years in accordance with specified accounting standards; and

(b) a true and fair view of the assets and liabilities, financial position and profit or loss of a holding company in such a category and its subsidiary undertakings as a whole may be given by the preparation by that holding company of its Companies Act group financial statements for a specified number of its financial years in accordance with specified accounting standards. 5

(3) Regulations made under *subsection (2)* shall— 10

(a) specify the accounting standards, which shall be—

(i) internationally recognised; and

(ii) generally accepted accounting principles or practice of a jurisdiction to which a majority of the subsidiary undertakings of the holding company have a substantial connection; 15

(b) specify the number of financial years in respect of which the regulations apply, and the date on which the latest of such financial years shall end, which shall be not later than 31 December 2020; and 20

(c) provide that the preparation of such financial statements shall not contravene any provision of this Part.

## CHAPTER 2

### *Accounting records*

Obligation to keep adequate accounting records.

**282.**—A company shall keep or cause to be kept adequate accounting records. 25

Basic requirements for accounting records.

**283.**—(1) For the purposes of this Part, adequate accounting records are those that are sufficient to—

(a) correctly record and explain the transactions of the company; 30

(b) enable, at any time, the assets, liabilities, financial position and profit or loss of the company to be determined with reasonable accuracy;

(c) enable the directors to ensure that any financial statements of the company, required to be prepared under *section 291* or *294*, and any directors' report required to be prepared under *section 326*, comply with the requirements of this Act and, where applicable, Article 4 of the IAS Regulation; and 35

(d) enable those financial statements of the company so prepared to be audited. 40

(2) The accounting records shall be kept on a continuous and consistent basis, which is to say, the entries in them shall be made in a timely manner and be consistent from one period to the next; if those records are not kept by making entries in a bound book but by some 45

other means, adequate precautions shall be taken for guarding against falsification and facilitating discovery of such falsification, should it occur.

5 (3) Without prejudice to the generality of *subsections (1) and (2)*, accounting records kept pursuant to *section 282* shall contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) a record of the assets and liabilities of the company;

10 (c) if the company's business involves dealing in goods—

15 (i) a record of all goods purchased, and of all goods sold (except those sold by way of ordinary retail trade), showing the goods and the sellers and buyers (except buyers of goods in ordinary retail trade) in sufficient detail to enable the goods and the sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales;

20 (ii) statements of stock held by the company at the end of each financial year and all records of stocktakings from which any such statement of stock has been, or is to be, prepared; and

25 (d) if the company's business involves the provision or purchase of services, a record of the services provided or purchased, to whom they were provided or from whom they were purchased (unless provided or purchased by way of ordinary retail trade) and of all the invoices relating thereto.

30 (4) For the purposes of *subsections (1) to (3)*, adequate accounting records shall be deemed to have been maintained if they comply with those subsections and explain the company's transactions and facilitate the preparation of financial statements that give a true and fair view of the assets, liabilities, financial position and profit or loss of the company and, if relevant, the group and include any information and returns referred to in *section 284(2)*.

35 (5) The adequate accounting records required by *section 282* to be kept, including the information and returns referred to in this Chapter, shall be kept either—

(a) in written form in an official language of the State; or

40 (b) so as to enable the accounting records, including the information and returns, to be readily accessible and readily convertible into written form in an official language of the State.

45 (6) Subject to *subsection (7)*, any computer (the "server computer") that provides services to another computer, being services the provision of which to the latter is necessary so that the accounting records, and the other foregoing information and returns, stored in the latter can be accessed at all times, shall be kept in a place in the State.

50 (7) In any case where the accounting records are kept outside the State as mentioned in *section 284(2)*—

- (a) save to the extent that the Minister by regulations provides otherwise, *subsection (6)* shall not apply;
- (b) the Minister may by regulations impose requirements on the companies so keeping their accounting records (and which companies are not subject to *subsection (6)* by virtue of regulations under *paragraph (a)*) for the purpose of securing the effective access, in accordance with this Act, at all times to the accounting records stored in the computers concerned.

(8) A holding company which has a subsidiary undertaking in relation to which the preceding requirements of this section or similar such requirements do not apply shall take the following steps.

(9) Those steps are all reasonable steps to secure that the subsidiary undertaking keeps such adequate accounting records as will enable the directors of the holding company to ensure that any group financial statements required to be prepared under this Part comply with the requirements of this Part and, where applicable, Article 4 of the IAS Regulation.

Where accounting records are to be kept.

**284.**—(1) Subject to *subsection (2)*, a company's accounting records shall be kept at its registered office or at such other place as the directors think fit.

(2) If accounting records are kept at a place outside the State, there shall be sent to and kept at a place in the State such information and returns relating to the business dealt with in the accounting records so kept as will—

- (a) disclose with reasonable accuracy the assets, liabilities, financial position and profit or loss of that business at intervals not exceeding 6 months; and
- (b) enable to be prepared in accordance with this Part (and, where applicable, Article 4 of the IAS Regulation) the company's statutory financial statements required by *section 291* or *294* and the directors' report required by *section 326*.

Access to accounting records.

**285.**—(1) A company shall make its accounting records, and any information and returns referred to in *section 284(2)*, available in an official language of the State at all reasonable times for inspection without charge by the officers of the company and by other persons entitled pursuant to this Act to inspect the accounting records of the company.

(2) Where accounting records or any information and returns referred to in *section 284(2)* are kept in the manner referred to in *section 283(5)(b)* the obligation under *subsection (1)* shall be read as including a requirement the company secure that the records or information are converted, without charge, into written form in an official language of the State if the person making the request so requests.

(3) No member (not being a director) shall have any right of inspecting any financial statement or accounting record of the company except—

(a) as conferred by statute or by the company's constitution;  
or

(b) authorised by the directors under *subsection (4)* or by the company in general meeting.

5 (4) The directors of a company shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the financial statements and accounting records of the company or any of them shall be open to the inspection of its members, not being directors of the company.

15 **286.**—An accounting record required to be kept by *section 282* or information or a return referred to in *section 284(2)* shall be preserved by the company concerned for a period of at least 6 years after the end of the financial year containing the latest date to which the record, information or return relates. Retention of accounting records.

15 **287.**—(1) A company that contravenes *section 282, 283, 284, 285 or 286* shall be guilty of— Accounting records: offences.

(a) subject to *paragraph (b)*, a category 2 offence; or

(b) if the contravention falls within a case to which *subsection (3), (4) or (5)* relates, a category 1 offence.

20 (2) A director of a company who fails to take all reasonable steps to secure compliance by the company with the requirements of any of *sections 282 to 286*, or has by his or her own intentional act been the cause of any default by the company under any of them, shall be guilty of—

25 (a) subject to *paragraph (b)*, a category 2 offence; or

(b) if the contravention falls within a case to which *subsection (3), (4) or (5)* relates, a category 1 offence.

(3) This subsection relates to a case in which both the following circumstances apply—

30 (a) the contravention arose in relation to a company that is subsequently wound up and that company is unable to pay its debts; and

(b) the contravention has—

35 (i) contributed to the company's inability to pay all of its debts; or

(ii) resulted in substantial uncertainty as to the assets and liabilities of the company; or

(iii) substantially impeded the orderly winding up of the company.

40 (4) This subsection relates to a case in which the contravention persisted during a continuous period of 3 years or more.

(5) This subsection relates to a case in which the contravention involved the failure to correctly record and explain one or more transactions of a company the value or aggregate value of which

transaction or transactions exceeded €1 million or 10 per cent of the net assets of the company, whichever is the greater.

(6) In *subsection (5)*, the reference to net assets of the company is a reference to net assets, as defined in *section 276(1)*, of the company at the time of the contravention, being the net assets as ascertainable from the accounting records of the company or, where accounting records sufficient to enable them to be ascertained have not been kept in relation to the company, the assets that appear to the court before which the prosecution is taken to be the net assets of the company. 5  
10

(7) In any proceedings against a person in respect of an offence under *subsection (2)* consisting of a failure to take reasonable steps to secure compliance by a company with the requirements of any of *sections 282 to 286*, it shall be a defence to prove both of the following— 15

- (a) that the defendant had reasonable grounds for believing and did believe that a competent and reliable person was—
  - (i) charged with the duty of undertaking that those requirements were complied with; and 20
  - (ii) in a position to discharge that duty,
- and
- (b) that the discharge of that duty by such competent and reliable person was monitored by the defendant, by means of reasonable methods properly used. 25

### CHAPTER 3

#### *Financial year*

Financial year end date. **288.**—In this and each subsequent Chapter of this Part a reference to a company's financial year end date is a reference to the last day of the financial year concerned of the company and a reference to its next financial year end date shall be read accordingly. 30

Financial year. **289.**—(1) A company's first financial year is the period beginning with the date of its incorporation and ending on a date no more than 18 months after that date.

(2) Each subsequent financial year of a company begins with the day immediately after its previous financial year end date and, subject to *subsection (4)*, continues for— 35

- (a) 12 months; or
- (b) such other period, not being more than 7 days shorter or longer than 12 months, as the directors may determine to its next financial year end date, 40

and the power of the directors to make such a determination is referred to in *subsection (5)* as the "*subsection (2)(b) power*".

(3) Except where there are substantial reasons not to do so, which reasons shall be disclosed in the notes to the statutory financial statements of the company, the directors of a holding company shall ensure the financial year end dates of each of the subsidiary undertakings included in the consolidation concerned coincide with that of the holding company.

(4) Subject to the subsequent subsections of this section, a company may, by notice in the prescribed form, given to the Registrar, alter what for the time being is its current financial year end date or its previous financial year end date.

(5) Where a notice under *subsection (4)* is given to the Registrar then—

(a) each subsequent financial year end date shall, subject to any exercise of the *subsection (2)(b)* power or (where permitted by *subsection (10)*) further exercise of the power under *subsection (4)*, be the anniversary of the new financial year end date specified in that notice; and

(b) in consequence, the commencement of each of the financial years that follow the new financial year end date so specified is postponed or, as the case may be, brought forward by the appropriate period of time.

(6) For the purposes of *subsection (4)* a company's "previous financial year end date" means the date immediately preceding its current financial year.

(7) A notice under *subsection (4)* may not alter a financial year end date if the particular alteration specified in it would result in a financial year in excess of 18 months.

(8) A notice may not be given under *subsection (4)* in respect of a previous financial year end date if, at the date of the giving of the notice, the period for delivering to the Registrar financial statements and reports for that previous financial year has expired.

(9) Subject to *subsection (10)*, a notice under *subsection (4)* purporting to alter a company's current or previous financial year end date is not valid if given less than 5 years after the day on which there has fallen the new financial year end date specified in a previous notice given under that subsection.

(10) *Subsection (9)* does not apply to a notice given by a company—

(a) that is a subsidiary undertaking or holding undertaking of another EEA undertaking if the new financial year end date specified coincides with that of the other EEA undertaking; or

(b) that is being wound up; or

(c) where the Director, on application to him or her by the company, directs that it shall not apply.

(11) In this section “EEA undertaking” means an undertaking established under the law of the State or the law of any other EEA state.

#### CHAPTER 4

##### *Statutory financial statements*

5

Statutory financial statements to give true and fair view.

**290.**—(1) The directors of a company shall not approve financial statements for the purposes of this Part unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss—

(a) in the case of the company’s entity financial statements, of the company alone (as distinct from the company and its subsidiary undertakings, if any, taken as a whole); 10

(b) in the case of the company’s group financial statements, of the company and all the subsidiary undertakings included in the consolidation taken as a whole, so far as concerns the members of the company. 15

(2) The statutory auditors of a company, in performing their functions under this Act in relation to the company’s statutory financial statements, shall have regard to the directors’ duty under *subsection (1)*. 20

Obligation to prepare entity financial statements under relevant financial reporting framework.

**291.**—(1) The directors of a company shall prepare entity financial statements for the company in respect of each financial year of it.

(2) The entity financial statements prepared under this section shall be the statutory financial statements of a company that does not prepare group financial statements under *section 294*. 25

(3) Subject to *subsections (5) to (8)* and *section 297*, a company’s entity financial statements shall be prepared either (as the company elects) in accordance with—

(a) *section 292*; or

(b) international financial reporting standards and *section 293*. 30

(4) Entity financial statements prepared in accordance with—

(a) *section 292* shall be known, and are in this Act referred to, as “Companies Act entity financial statements” — and this also applies in any ensuing case where preparation of such statements in accordance with that section is obligatory; or 35

(b) international financial reporting standards and *section 293* shall be known, and are in this Act referred to, as “IFRS entity financial statements” — and this also applies in any ensuing case where preparation of such statements in accordance with those standards and that section is obligatory. 40

(5) In respect of a company not trading for the acquisition of gain by its members, entity financial statements shall be prepared in accordance with *section 292*. 45

5 (6) After the first financial year in which the directors of a company prepare IFRS entity financial statements (in this section referred to as the “first IFRS year”), all subsequent entity financial statements of the company shall be prepared in accordance with international financial reporting standards and *section 293* unless there is a relevant change of circumstances as referred to in *subsection (7)*.

(7) There is a relevant change of circumstances where at any time during or after the first IFRS year—

10 (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IFRS financial statements;

15 (b) the company, having re-registered as a private company limited by shares, ceases to be a company with securities admitted to trading on a regulated market in an EEA state; or

(c) a holding undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA state.

20 (8) Where, following a relevant change of circumstances, Companies Act entity financial statements are prepared in relation to a company, the directors of the company may subsequently prepare IFRS entity financial statements for the company and *subsections (6)* and *(7)* shall apply as if the financial year for which such IFRS entity financial statements are subsequently prepared was the first IFRS year.

**292.—**(1) Companies Act entity financial statements in relation to a company for any financial year of it shall comprise— Companies Act entity financial statements.

(a) a balance sheet as at the financial year end date;

30 (b) a profit and loss account for the financial year; and

(c) any other additional statements and information required by the financial reporting framework adopted in relation to the company.

35 (2) Companies Act entity financial statements shall give a true and fair view of the assets, liabilities and financial position of the company as at the financial year end date and of the profit or loss of the company for the financial year.

(3) Companies Act entity financial statements shall comply with—

40 (a) the provisions of *Schedule 3* as to the accounting principles to be applied, the form and content of the balance sheet and profit and loss account and the additional information to be provided by way of notes to the financial statements;

45 (b) applicable accounting standards; and

(c) the other provisions of this Act.

(4) Where compliance with *Schedule 3*, applicable accounting standards and the other provisions of this Act as to the matters to be included in entity financial statements (or in notes to those financial statements) would not be sufficient to give a true and fair view of the matters referred to in *subsection (2)*, the necessary additional information shall be given in the entity financial statements or a note to them. 5

(5) If in special circumstances compliance with any of the provisions of this Act (even if additional information were provided under *subsection (4)*) is inconsistent with the requirement to give a true and fair view of the matters referred to in *subsection (2)*, the directors of the company shall depart from that provision to the extent necessary to give a true and fair view. 10

(6) Particulars of any departure under *subsection (5)*, the reasons for it and its effect shall be given in a note to the financial statements of the company. 15

(7) A company shall ensure—

(a) that its Companies Act entity financial statements include a statement as to whether they have been prepared in accordance with applicable accounting standards and identify the standards in question; and 20

(b) that any material departure from those standards, the effect of the departure and the reasons for it are noted in the Companies Act entity financial statements.

(8) Accounting standards are applicable to a company's entity financial statements if those standards are, in accordance with their terms, relevant to the company's circumstances and those entity financial statements. 25

(9) If a company fails to comply with any of *subsections (2) to (7)*, the company and any officer of it who is in default shall be guilty of a category 2 offence. 30

(10) In any proceedings against a person in respect of an offence under *subsection (9)*, it shall be a defence to prove that the defendant had reasonable grounds for believing and did believe that—

(a) a competent and reliable person was charged with the duty of ensuring that the provisions of the subsection concerned were complied with; and 35

(b) the latter person was in a position to discharge that duty.

(11) In *subsection (9)* “officer” includes any shadow director and *de facto* director. 40

IFRS entity financial statements.

**293.—**(1) Where the directors of a company prepare IFRS entity financial statements they shall comply with all IFRS in that regard and—

(a) shall make an unreserved statement in the notes to those entity financial statements that those financial statements have been prepared in accordance with international financial reporting standards; and 45

(b) shall ensure that those financial statements contain the additional information required by this Act other than that required by *Schedules 3 and 4*.

5 (2) For the avoidance of doubt, the requirement for entity financial statements prepared in accordance with IFRS to present fairly the assets, liabilities, financial position, financial performance and cash flows is deemed to be equivalent to the true and fair view required by *section 292(2)*.

10 (3) If a company fails to comply with *subsection (1)*, the company and any officer of it who is in default shall be guilty of a category 2 offence.

(4) In any proceedings against a person in respect of an offence under *subsection (3)*, it shall be a defence to prove that the defendant had reasonable grounds for believing and did believe that—

15 (a) a competent and reliable person was charged with the duty of ensuring that the provisions of the subsection concerned were complied with; and

(b) the latter person was in a position to discharge that duty.

20 (5) In *subsection (3)* “officer” includes any shadow director and *de facto* director.

25 **294.**—(1) Where at the end of its financial year a company is a holding company, the directors of the company, as well as preparing entity financial statements for the financial year, shall prepare group financial statements for the holding company and all its subsidiary undertakings for that financial year. Obligation to prepare group financial statements under relevant financial reporting framework.

30 (2) Where a holding company prepares group financial statements under this section, there shall be associated with those group financial statements the entity financial statements prepared under *section 291* and together they shall constitute the statutory financial statements of the company.

(3) Subject to *subsections (5) to (9)*, a company that is required to prepare group financial statements shall prepare the statements either (as the company elects) in accordance with—

(a) *section 295*; or

35 (b) international financial reporting standards and *section 296*.

(4) Group financial statements prepared in accordance with—

40 (a) *section 295* shall be known, and are in this Act referred to, as “Companies Act group financial statements” – and this also applies in any ensuing case where preparation of such statements in accordance with that section is obligatory; or

45 (b) international financial reporting standards and *section 296* shall be known, and are in this Act referred to, as “IFRS group financial statements” — and this also applies in any ensuing case where preparation of such statements in accordance with those standards and that section is obligatory.

(5) In respect of a group not trading for the acquisition of gain by its members, group financial statements shall be prepared in accordance with *section 295*.

(6) After the first financial year in which the directors of a holding company prepare IFRS group financial statements (in this section referred to as the “first IFRS year”), all subsequent group financial statements shall be prepared in accordance with international financial reporting standards unless there is a relevant change of circumstances as referred to in *subsection (7)*. 5

(7) There is a relevant change of circumstances where at any time during or after the first IFRS year— 10

- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IFRS group financial statements;
- (b) the company, having re-registered as a private company limited by shares, ceases to be a company with securities admitted to trading on a regulated market in an EEA state; or 15
- (c) a holding undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA state. 20

(8) Where, following a relevant change of circumstances, Companies Act group financial statements are prepared in relation to a company, the directors of the company may subsequently prepare IFRS group financial statements for the company and *subsections (6) and (7)* shall apply as if the financial year for which such IFRS group financial statements are subsequently prepared was the first IFRS year. 25

(9) This section is subject to—

- (a) *sections 298 and 299* (size of group); 30
- (b) *section 300* (holding company that is subsidiary undertaking of undertaking registered in EEA);
- (c) *section 301* (holding company that is subsidiary undertaking of undertaking registered outside EEA);
- (d) *section 302* (all subsidiaries excluded from consolidation); 35  
and
- (e) *section 303* (IFRS exemption).

Companies Act  
group financial  
statements.

**295.—**(1) Companies Act group financial statements in relation to a holding company and its subsidiary undertakings included in the consolidation for any financial year of it shall comprise— 40

- (a) a consolidated balance sheet dealing with the assets, liabilities and financial position of the holding company and its subsidiary undertakings (including those being wound up) as at the financial year end date;
- (b) a consolidated profit and loss account dealing with the profit or loss of the holding company and its subsidiary 45

undertakings (including those being wound up) for the financial year; and

(c) any other additional information required by the financial reporting framework adopted in relation to them.

5 (2) Companies Act group financial statements shall give a true and fair view of the assets, liabilities and financial position of the company and the undertakings included in the consolidation taken as a whole, as at the financial year end date and of the profit or loss of the company and those undertakings for the financial year so far  
10 as concerns the members of the company.

(3) Companies Act group financial statements shall comply with—

15 (a) the provisions of *Schedule 4* as to the accounting principles to be applied, the form and content of the consolidated balance sheet and consolidated profit and loss account and the additional information to be provided by way of notes to the group financial statements;

(b) applicable accounting standards; and

(c) the other provisions of this Act.

20 (4) Where compliance with *Schedule 4*, applicable accounting standards and the other provisions of this Act as to the matters to be included in group financial statements (or in notes to those financial statements) would not be sufficient to give a true and fair view of the matters referred to in *subsection (2)*, the necessary additional  
25 information shall be given in the group financial statements or a note to them.

(5) If in special circumstances compliance with any of the provisions of this Act (even if additional information were provided under *subsection (4)*) is inconsistent with the requirement to give a true and fair view of the matters referred to in *subsection (2)*, the directors of the company shall depart from that provision to the extent necessary to give a true and fair view.  
30

(6) Particulars of any departure under *subsection (5)*, the reasons for it and its effect shall be given in a note to the financial statements.

35 (7) A company shall ensure—

(a) that its Companies Act group financial statements include a statement as to whether they have been prepared in accordance with applicable accounting standards and identify the standards in question; and

40 (b) that any material departure from those standards, the effect of the departure and the reasons for it are noted in the Companies Act group financial statements.

(8) Accounting standards are applicable to a holding company's group financial statements if those standards are, in accordance with their terms, relevant to that company's and its subsidiary undertakings' circumstances and those group financial statements.  
45

(9) If a company fails to comply with any of *subsections (2) to (7)*, the company and any officer of it who is in default shall be guilty of a category 2 offence.

(10) In any proceedings against a person in respect of an offence under *subsection (9)*, it shall be a defence to prove that the defendant had reasonable grounds for believing and did believe that—

- (a) a competent and reliable person was charged with the duty of ensuring that the provisions of the subsection concerned were complied with; and 5
- (b) the latter person was in a position to discharge that duty.

(11) In *subsection (9)* “officer” includes any shadow director and *de facto* director.

IFRS group financial statements. **296.**—(1) Where the directors of a holding company prepare IFRS group financial statements, they shall comply with all IFRS in that regard and— 10

- (a) shall make an unreserved statement in the notes to those group financial statements that those financial statements have been prepared in accordance with international financial reporting standards; and 15
- (b) shall ensure that those financial statements contain the additional information required by this Act, other than that required by *Schedules 3* and *4*.

(2) For the avoidance of doubt, the requirement for group financial statements prepared in accordance with IFRS to present fairly the assets, liabilities, financial position, financial performance and cash flows is deemed to be equivalent to the true and fair view required by *section 295(2)*. 20

(3) If a company fails to comply with *subsection (1)*, the company and any officer of it who is in default shall be guilty of a category 2 offence. 25

(4) In any proceedings against a person in respect of an offence under *subsection (3)*, it shall be a defence to prove that the defendant had reasonable grounds for believing and did believe that— 30

- (a) a competent and reliable person was charged with the duty of ensuring that the provisions of the subsection concerned were complied with; and
- (b) the latter person was in a position to discharge that duty.

(5) In *subsection (3)* “officer” includes any shadow director and *de facto* director. 35

Consistency of financial statements. **297.**—(1) Subject to the provisions of this section, the directors of a holding company shall ensure that the entity financial statements of—

- (a) the holding company; and 40
- (b) each of the subsidiary undertakings of the holding company,

are prepared using the same financial reporting framework, except to the extent that, in their opinion, there are good reasons for not

doing so, and those reasons are disclosed in the entity financial statements of the holding company.

5 (2) As respects financial statements of subsidiary undertakings, *subsection (1)* only applies to entity financial statements of subsidiary undertakings that are required to be prepared under this Act.

(3) *Subsection (1)* does not apply—

(a) where the directors do not prepare group financial statements for the holding company; or

10 (b) to the financial statements of undertakings which do not trade for the acquisition of gain by the members.

(4) Where the directors of the holding company prepare IFRS group financial statements and IFRS entity financial statements for the holding company, *subsection (1)* shall have effect as if *paragraph (a)* of it were omitted.

15 CHAPTER 5

*Group financial statements: exemptions and exclusions*

**298.**—(1) *Subsection (2)* applies save where the company has elected to prepare IFRS group financial statements; its operation is subject to *subsections (3) to (8)* and *section 299*. Exemption from consolidation: size of group.

20 (2) A holding company shall, in respect of a particular financial year, be exempt from the requirement to prepare group financial statements if, at the financial year end date of the holding company—

(a) for that financial year; and

25 (b) for the financial year of that company immediately preceding that financial year,

the holding company and all of its subsidiary undertakings taken as a whole satisfy at least 2 of the following 3 qualifying conditions.

(3) Those qualifying conditions are—

30 (a) the balance sheet total of the holding company and its subsidiary undertakings taken as a whole does not exceed €10 million;

35 (b) the amount of the turnover of the holding company and its subsidiary undertakings taken as a whole does not exceed €20 million; and

(c) the average number of persons employed by the holding company and its subsidiary undertakings taken as a whole does not exceed 250.

40 (4) In this section “balance sheet total”, in relation to a company or undertaking, means the aggregate of the amounts shown as assets in the company’s or undertaking’s balance sheet.

(5) In this section “amount of the turnover”, in relation to a company or undertaking, means the amount of the turnover shown in the company’s or undertaking’s profit and loss account.

(6) For the purposes of this section, the average number of persons employed shall be that required to be disclosed in accordance with *section 318*.

(7) In the application of this section to any period which is a financial year but is not in fact a year, the amount specified in *subsection (3)(b)* shall be proportionally adjusted. 5

(8) This section shall not apply where—

(a) any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market in an EEA state; or 10

(b) any of the subsidiary undertakings is a credit institution or an insurance undertaking.

Application of *section 298* in certain circumstances and cessation of exemption.

**299.**—(1) In this section the reference to the group requirement being met is a reference to the company concerned and all of its subsidiary undertakings taken as a whole satisfying at least 2 of the 3 conditions in *section 298(3)*. 15

(2) A company which before the commencement of this Part is not a holding company but which becomes a holding company on or after the commencement of this Part may avail itself of the exemption in *section 298(2)* in respect of the financial year in which it becomes a holding company if the group requirement is met in respect of that financial year. 20

(3) Where a holding company qualifies to avail itself of the exemption in *section 298(2)* it shall continue to be so qualified, unless in the latest financial year of the company and the financial year of the company immediately preceding that financial year, the group requirement is not met. 25

Exemption from consolidation: holding company that is subsidiary undertaking of undertaking registered in EEA.

**300.**—(1) Subject to its not having elected to prepare IFRS group financial statements and to *subsection (4)*, a holding company is exempt from the requirement to prepare group financial statements if that holding company (the “lower holding company”) is itself a subsidiary undertaking and its holding undertaking is established under the laws of an EEA state and one or other of the following cases applies. 30

(2) Those cases are— 35

(a) the lower holding company is a wholly owned subsidiary of that other holding undertaking;

(b) that other holding undertaking holds more than 50 per cent of the shares in the lower holding company and notice requesting the preparation of group financial statements has not been served on the lower holding company by shareholders holding in aggregate— 40

(i) more than half of the remaining shares in the lower holding company; or

(ii) 5 per cent or more of the total shares in the lower holding company. 45

(3) The notice referred to in *subsection (2)(b)* shall be served on the lower holding company not later than 6 months after the end of the financial year before that to which it relates.

5 (4) *Subsection (1)* shall not apply unless the following conditions are satisfied—

(a) the lower holding company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a holding undertaking established under the laws of an EEA state;

10 (b) those accounts are drawn up and audited and the group's consolidated annual report is drawn up in accordance with—

15 (i) the provisions of the Seventh Directive (where applicable, as modified by Council Directive 86/635/EEC of 8 December 1986 or Council Directive 91/674/EEC of 23 December 1991); or

(ii) international financial reporting standards;

20 (c) the lower holding company discloses in its entity financial statements that it is exempt from the obligation to prepare and deliver group financial statements;

(d) the lower holding company states in its entity financial statements the name of the holding undertaking which draws up the consolidated accounts referred to in *paragraph (a)* and—

25 (i) if the holding undertaking is incorporated outside the State, the country in which it is incorporated, or

(ii) if the holding undertaking is unincorporated, the address of its principal place of business;

and

30 (e) the lower holding company delivers to the Registrar, within the period allowed for delivering its entity financial statements, copies of—

(i) the holding undertaking's consolidated accounts; and

(ii) the consolidated annual report,

35 together with the auditors' report on them.

(5) Shares held by directors of the lower holding company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of *subsection (2)(a)* whether the company is a wholly owned subsidiary of another.

40 (6) For the purposes of *paragraph (b)* of *subsection (2)*, shares held by a wholly owned subsidiary of the first-mentioned undertaking in that paragraph, or held on behalf of that undertaking or its wholly owned subsidiary, shall be attributed to that undertaking.

45 (7) Without prejudice to the construction provided in *subsection (8)* for the expression "consolidated annual report", references in this section to—

- (a) an undertaking established under the laws of an EEA State;
- (b) consolidated accounts prepared by such an undertaking; and
- (c) other relevant matters in that regard, 5

shall, in a case where the undertaking is a company registered under this Act or an existing company, be read, respectively, as references to—

- (i) the company so registered or the existing company, as the case may be; 10
- (ii) group financial statements prepared by the company; and
- (iii) the matters provided by, or referred to in, this Part or any other enactment that correspond to those relevant matters.

(8) In this section— 15

“consolidated annual report” means the report prepared by management of the group in accordance with the Seventh Directive and is equivalent to the expression “directors’ report” as used in this Part;

“Seventh Directive” means the Seventh Council Directive 83/349/EEC of 13 June 1983. 20

Exemption from consolidation: holding company that is subsidiary undertaking of undertaking registered outside EEA.

**301.**—(1) Subject to its not having elected to prepare IFRS group financial statements and to *subsection (4)*, a holding company is exempt from the requirement to prepare group financial statements if the holding company (the “lower holding company”) is itself a subsidiary undertaking and its holding undertaking is not established under the laws of an EEA state and one or other of the following cases applies. 25

(2) Those cases are—

- (a) the lower holding company is a wholly owned subsidiary of that other holding undertaking; 30
- (b) that other holding undertaking holds more than 50 per cent of the shares in the lower holding company and notice requesting the preparation of group financial statements has not been served on the lower holding company by shareholders holding in aggregate— 35
  - (i) more than half of the remaining shares in the lower holding company, or
  - (ii) 5 per cent or more of the total shares in the lower holding company.

(3) The notice referred to in *subsection (2)(b)* shall be served not later than 6 months after the end of the financial year before that to which it relates. 40

(4) *Subsection (1)* shall not apply unless the following conditions are satisfied—

- (a) the lower holding company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a holding undertaking;
- 5 (b) those accounts and, where appropriate, the group's consolidated annual report are drawn up—
- 10 (i) in accordance with the provisions of the Seventh Directive (where applicable, as modified by Council Directive 86/635/EEC of 8 December 1986 or Council Directive 91/674/EEC of 23 December 1991); or
- (ii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;
- 15 (c) the consolidated accounts are audited by one or more persons authorised to audit accounts under the laws under which the holding undertaking which draws them up is established;
- (d) the lower holding company discloses in its entity financial statements that it is exempt from the obligation to prepare and deliver group financial statements;
- 20 (e) the lower holding company states in its entity financial statements the name of the holding undertaking which draws up the consolidated accounts referred to in *paragraph (a)* and—
- 25 (i) if the holding undertaking is a body corporate, the country in which it is incorporated; or
- (ii) if the holding undertaking is unincorporated, the address of its principal place of business; and
- and
- 30 (f) the lower holding company delivers to the Registrar, within the period allowed for delivering its entity financial statements, copies of—
- (i) the other holding undertaking's consolidated accounts; and
- 35 (ii) where appropriate, the consolidated annual report, together with the auditors' report on them.

(5) Shares held by directors of the lower holding company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of *subsection (2)(a)*

40 whether the company is a wholly owned subsidiary of another.

(6) For the purposes of *paragraph (b)* of *subsection (2)*, shares held by a wholly owned subsidiary of the first-mentioned undertaking in that paragraph, or held on behalf of that undertaking or its wholly owned subsidiary, shall be attributed to that undertaking.

(7) In this section—

“consolidated annual report” means—

- (a) the report prepared by management of the group in accordance with the Seventh Directive; or
- (b) the report by management of the group required to be prepared under the laws or administrative measures that result in the equivalence referred to in *subsection (4)(b)(ii)*,

and, in either case, is equivalent to the expression “directors’ report” as used in this Part;

“Seventh Directive” means the Seventh Council Directive 83/349/EEC of 13 June 1983.

Exemption from consolidation: holding company with all of its subsidiary undertakings excluded from consolidation.

**302.**—A holding company is exempt from the requirement to prepare group financial statements if, by virtue of *section 304(2) or (3)*, all of its subsidiary undertakings could be excluded from the consolidation in Companies Act group financial statements.

Exemption from consolidation where IFRS so permits.

**303.**—A holding company that prepares IFRS financial statements is exempt from the requirement to prepare group financial statements in the circumstances provided, and subject to compliance with the conditions in that behalf specified, in IFRS.

Subsidiary undertakings included in the group financial statements.

**304.**—(1) In the case of Companies Act group financial statements, all of the subsidiary undertakings of the holding company shall be consolidated in the group financial statements, but this is subject to the exceptions authorised by the subsequent provisions of this section.

(2) A subsidiary undertaking may be excluded from consolidation in Companies Act group financial statements if its inclusion is not material for the purposes of giving a true and fair view; but 2 or more undertakings may be excluded only if they are not material, for those purposes, taken together.

(3) In addition, a subsidiary undertaking may be excluded from consolidation in Companies Act group financial statements where—

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the holding company over the assets or management of that subsidiary undertaking; or
- (b) the information necessary for the preparation of group financial statements in accordance with this Part cannot be obtained without disproportionate expense or undue delay; or
- (c) the interest of the holding company is held exclusively with a view to subsequent resale.

(4) The reference in *subsection (3)(a)* to the rights of the holding company and the reference in *subsection (3)(c)* to the interest of the

holding company are, respectively, to rights and interest held by or attributed to the holding company for the purposes of *section 7* (definition of subsidiary) in the absence of which it would not be the holding company.

- 5 **305.**—(1) Subject to *subsection (3)*, *subsection (2)* applies with respect to the entity profit and loss account of a holding company where—
- 10 (a) the company is required to prepare and does prepare group financial statements in accordance with this Act; and
- (b) the notes to the company’s entity balance sheet show the company’s profit or loss for the financial year determined in accordance with this Act.

Treatment of entity profit and loss account where group financial statements prepared.

15 (2) The entity profit and loss account together with the information specified in *paragraphs 62 to 66 of Schedule 3* (information supplementing the profit and loss account) or equivalent information required by IFRS shall be approved in accordance with *section 325* (approval by board of directors) but may be omitted from the company’s entity financial statements for the purposes of *section 339* (circulation of financial statements), and shall also be exempt from the requirements of—

- 20 (a) *section 340* (right of members to demand copies of financial statements);
- 25 (b) *section 342* (financial statements to be laid before members); and
- (c) *section 348* (documents to be annexed to annual return).

(3) *Subsection (2)* does not apply unless the fact that it has been availed of is disclosed in the entity financial statements published with the group financial statements.

30 CHAPTER 6

*Disclosure of directors’ remuneration and transactions*

35 **306.**—(1) The notes to the statutory financial statements of a company shall disclose both for the current and the preceding financial year the following amounts in relation to directors of the company (and that expression includes the one or more persons who, at any time during the financial year concerned, were directors of it)—

Disclosure of directors’ remuneration.

- (a) the aggregate amount of emoluments paid to or receivable by directors in respect of qualifying services;
- 40 (b) the aggregate amount of the gains by the directors on the exercise of share options during the financial year;
- (c) the aggregate amount of the money or value of other assets, including shares but excluding share options, paid to or receivable by the directors under long term incentive schemes in respect of qualifying services;
- 45 (d) the aggregate amount of any contributions paid, treated as paid, or payable during the financial year to a retirement

benefit scheme in respect of qualifying services of directors, identifying separately the amounts relating to—

(i) defined contribution schemes; and

(ii) defined benefit schemes,

and in each case showing the number of directors, if any, to whom retirement benefits are accruing under such schemes in respect of qualifying services; 5

(e) the aggregate amount of any compensation paid or payable to directors in respect of loss of office or other termination payments in the financial year. 10

(2) The notes to the statutory financial statements of a company shall disclose both for the current and the preceding financial year the following amounts in relation to the one or more persons who are past directors of it or past directors of its holding undertaking—

(a) the aggregate amount paid or payable for such directors' retirement benefits; 15

(b) the aggregate amount of any compensation paid or payable to such directors in respect of loss of office or other termination benefits.

(3) In this section “qualifying services”, in relation to any person, means his or her services as a director of the company and his or her services, while director of the company, as director of any of its subsidiary undertakings or otherwise in connection with the management of the affairs of the company or any of its subsidiary undertakings. 20  
25

(4) For the purpose of *subsection (1)(a)*, “emoluments”, in relation to a director, includes salaries, fees and percentages, bonuses, any sums paid by way of expenses allowance in so far as those sums are chargeable to income tax, and, subject to *subsection (5)*, the estimated money value of any other benefits received by him or her otherwise than in cash. 30

(5) However, for the purpose of *subsection (1)(a)*, “emoluments”, in relation to a director, does not include—

(a) the value of any share options granted to him or her or gains made by him or her on the exercise of share options; 35

(b) any contributions paid, treated as paid or payable in respect of him or her to a retirement benefit scheme or any benefits to which he or she is entitled from such a scheme; 40

(c) any money or other assets paid to or receivable by him or her under any long term incentive scheme.

(6) In *subsections (1)(b)* and *(c)* and *(5)(a)*—

“shares” means quoted shares (that is to say shares quoted on any securities or other market referred to in *section 1071*) or shares that are redeemable in cash or puttable in cash; 45

“share options” means options over quoted shares or shares that are redeemable in cash.

5 (7) In *subsection (1)(c)*, “long term incentive scheme” means any agreement or arrangement under which money or other assets may become receivable by a director and which includes one or more qualifying conditions with respect to services or performance which cannot be fulfilled within a single financial year; and for this purpose the following shall be disregarded—

10 (a) bonuses the amount of which falls to be determined by reference to service or performance within a single year;

(b) compensation for loss of office and other termination payments; and

(c) retirement benefits.

15 (8) The amount to be shown for the purpose of *subsection (2)(a)* shall not include any retirement benefits paid or receivable under a retirement benefit scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme.

20 (9) However the amount to be so shown shall include any retirement benefits paid or receivable in respect of any qualifying services of a past-director of the company, whether to or by him or her, on his or her nomination or by virtue of dependence on or other connection with him or her, to or by any other person.

25 (10) The amount to be shown for the purpose of *subsection (2)(a)* shall distinguish between retirement benefits in respect of services as director, whether of the company or its subsidiary undertakings, and other retirement benefits.

(11) For the purposes of this section—

30 “contribution”, in relation to a retirement benefit scheme, means any payment (including an insurance premium) made for the purposes of the scheme by or in respect of persons rendering services in respect of which retirement benefits will or may become payable under the scheme, except that it does not include any payment in respect of 2 or more persons if the amount paid in respect of each  
35 of them is not ascertainable;

“retirement benefits” includes any pension, superannuation allowance, superannuation gratuity or similar payment;

40 “retirement benefit scheme” means a scheme for the provision of retirement benefits in respect of services as director or otherwise which is maintained in whole or in part by means of contributions.

(12) The amounts to be shown for the purpose of *subsections (1)(e)* and *(2)(b)*—

(a) shall include any sums paid to or receivable by a director or past director—

45 (i) by way of compensation for loss of office or other termination payment as director of the company;

- (ii) while director of the company, or on or in connection with his or her ceasing to be a director of the company, by way of—
  - (I) compensation for loss of any other office in connection with the management of the company's affairs or other termination payment in respect of such office; or 5
  - (II) compensation for loss of office or other termination payment as director or otherwise in connection with the management of the affairs of any of its subsidiary undertakings; 10

and

- (b) shall distinguish between compensation or termination payments in respect of the office of director, whether of the company or of its subsidiary undertakings, and compensation or termination payments in respect of other offices, 15

and, for the purposes of this section, references to termination payments include references to sums paid or payable as consideration for or in connection with a person's retirement from office. 20

(13) The amounts to be shown for the purpose of *subsections (1) and (2)*—

- (a) shall include all relevant sums paid by or receivable from—
  - (i) the company; 25
  - (ii) the company's subsidiary undertakings;
  - (iii) any holding undertaking of the company; and
  - (iv) any other person,

except sums to be accounted for to the company or any of its subsidiary undertakings or, by virtue of *section 254*, to past or present members of the company or any of its subsidiary undertakings or any class of those members; and 30

- (b) shall distinguish, in the case of the amount to be shown for the purpose of *subsection (1)(e) or (2)(b)*, between the sums respectively paid by or receivable from the company, the company's subsidiary undertakings, any holding undertaking of the company and any other persons. 35

Supplemental provisions in relation to *section 306*.

**307.**—(1) The amounts to be shown for the purpose of *section 306* in relation to a director shall include all amounts paid or payable to a person connected with a director within the meaning of *section 221*. 40

(2) The amounts to be shown for the purpose of *section 306* for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

- (a) any sums are not shown in the statutory financial statements for the relevant financial year on the ground that 45

the person receiving them is liable to account for them as mentioned in *subsection (13)(a)* of that section, but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or

- 5 (b) any sums paid by way of expenses allowance are chargeable to income tax after the end of the relevant financial year,

those sums shall, to the extent to which the liability is released or not enforced or they are chargeable as so mentioned, as the case may be, be shown in the first statutory financial statements in which it is practicable to show them and shall be distinguished from the amounts to be shown in those statements apart from this provision.

- 15 (3) Where it is necessary to do so for the purpose of making any distinction required by *section 306* or this section in any amount to be shown for the purpose of either section, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

- 20 (4) If, in the case of any statutory financial statements, the requirements of *section 306* or this section are not complied with, it shall be the duty of the statutory auditors of the company by whom the statutory financial statements are examined to include in the report on those statements, so far as they are reasonably able to do so, a statement giving the required particulars.

- 25 (5) In *section 306* any reference to a company's subsidiary undertaking—

- 30 (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary undertaking; and

- 35 (b) shall for the purpose of *subsections (3) to (6) and (8) to (10)* of that section, be taken as referring to a subsidiary undertaking at the time the services were rendered, and, for the purposes of *subsection (12)* of that section, be taken as referring to a subsidiary undertaking immediately before the loss of office as director of the company.

- 40 (6) In *section 306* and this section "director" includes any shadow director and *de facto* director.

45 **308.**—(1) Subject to *sections 309* and *310*, the entity financial statements of a company shall disclose, both for the current and the preceding financial year, in the notes to the statements the particulars specified in *subsection (3), (4), (5), (6) or (7)*, as appropriate, of—

Obligation to disclose information about directors' benefits: loans, quasi-loans, credit transactions and guarantees.

- (a) loans, quasi-loans and credit transactions entered into by the company with or for its directors, directors of its holding undertaking or persons connected with such directors;

- (b) any agreement by the company to enter into any loans, quasi-loans and credit transactions with or for its directors, directors of its holding undertaking or persons connected with such directors;
- (c) guarantees entered into and security provided by the company on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction entered into with or for those directors or other persons; 5
- (d) any agreement by the company to enter into guarantees or provide any security on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction entered into with or for those directors or other persons; and 10 15
- (e) any of the following arrangements made by the company or which it takes part in, namely—
  - (i) an assignment to it, or an assumption by it, of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have fallen into any of the preceding paragraphs; 20
  - (ii) an arrangement under which—
    - (I) another person enters into a transaction which, if it had been entered into by the company, would have fallen into any of preceding paragraphs or *subparagraph (i)*; and 25
    - (II) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding undertaking or a subsidiary undertaking of the company or its holding undertaking. 30

(2) Subject to *sections 309* and *310*, the group financial statements of a holding company shall disclose, both for the current and the preceding financial year, in the notes to the statements the particulars specified in *subsection (3), (4), (5), (6) or (7)*, as appropriate, of— 35

- (a) loans, quasi-loans and credit transactions entered into by the company or any of its subsidiary undertakings with or for its directors, directors of its holding undertaking or persons connected with such directors; 40
- (b) any agreement by the company or any of its subsidiary undertakings to enter into any loans, quasi-loans and credit transactions with or for its directors, directors of its holding undertaking or persons connected with such directors; 45
- (c) guarantees entered into and security provided by the company or any of its subsidiary undertakings on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction entered into with or for those directors or other persons; 50

5 (d) any agreement by the company or any of its subsidiary undertakings to enter into guarantees or provide any security on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction entered into with or for those directors or other persons; and

10 (e) any of the following arrangements made by the company or any of its subsidiary undertakings or which it or any of them takes part in, namely—

15 (i) an assignment to the company or the subsidiary undertaking, or an assumption by the company or the subsidiary undertaking, of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company or undertaking, would have fallen into any of the preceding paragraphs;

(ii) an arrangement under which—

20 (I) another person enters into a transaction which, if it had been entered into by the company or the subsidiary undertaking (each of which is referred to in *clause (II)* as a “relevant entity”), would have fallen into any of preceding paragraphs or *subparagraph (i)*; and

25 (II) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from—

30 (A) if the relevant entity is the company — the company or its holding undertaking or a subsidiary undertaking of the company or its holding undertaking;

35 (B) if the relevant entity is the subsidiary undertaking — the subsidiary undertaking or its holding undertaking or a subsidiary undertaking of the first-mentioned subsidiary undertaking or its holding undertaking.

(3) The particulars mentioned in *subsections (1)* and *(2)* in respect of arrangements comprising loans, quasi-loans or credit transactions referred to in *paragraph (a)* of either subsection are, separately for each director or other person—

40 (a) the name of the person for whom the arrangements were made and where that person is or was connected with a director of the company or undertaking, the name of the director;

45 (b) the value of the arrangements at the beginning and end of the financial year;

(c) advances made under the arrangements during the financial year;

(d) amounts repaid under the arrangements during the financial year;

- (e) the amounts of any allowance made during the financial year in respect of any failure or anticipated failure by the borrower to repay the whole or part of the outstanding amount;
- (f) the maximum amount outstanding under the arrangements during the financial year; 5
- (g) an indication of the interest rate; and
- (h) the arrangements' other main conditions.

(4) The particulars mentioned in *subsections (1) and (2)* in respect of an agreement to enter into loans, quasi-loans or credit transactions referred to in *paragraph (b)* of either subsection are, separately for each director or other person— 10

- (a) the name of the person for whom the agreement was made and where that person is or was connected with a director of the company or undertaking, the name of the director; 15
- (b) the value of the arrangements agreed to;
- (c) an indication of the interest rate; and
- (d) the agreement's other main conditions.

(5) The particulars mentioned in *subsections (1) and (2)* in respect of arrangements comprising guarantees entered into or security provided in connection with a loan, quasi-loan or credit transaction referred to in *paragraph (c)* of either subsection are, separately for each director or other person— 20

- (a) the name of the person for whom the arrangements were made and where that person is or was connected with a director of the company or the undertaking, the name of the director; 25
- (b) the amount of the maximum liability that may be incurred by the company (or any of its subsidiary undertakings);
- (c) any amount paid and any liability incurred by the company (or any of its subsidiary undertakings) for the purpose of fulfilling the guarantee or on foot of the provision of security (including any loss incurred by reason of enforcement of the guarantee or loss of the security); and 30
- (d) the arrangements' main terms. 35

(6) The particulars mentioned in *subsections (1) and (2)* in respect of agreements to enter into guarantees or provide security in connection with a loan, quasi-loan or credit transaction referred to in *paragraph (d)* of either subsection are, separately for each director or other person— 40

- (a) the name of the person for whom the agreement was made and where that person is or was connected with a director of the company or the undertaking, the name of the director;
- (b) the amount of the maximum liability that may be incurred by the company (or any of its subsidiary undertakings); and 45

(c) the agreement's main terms.

(7) The particulars mentioned in *subsections (1) and (2)* in respect of an arrangement referred to in *paragraph (e)* of either subsection are—

5 (a) in the case of an arrangement referred to in *subparagraph (i) or (ii)* of that *paragraph (e)*, whichever of the particulars specified in any of *subsections (3) to (6)* would have to be disclosed if the arrangement had fallen into a preceding paragraph of *subsection (1)* or, as the case may be, *subsection (2)* or (in the case of an arrangement referred to in *subparagraph (ii)* of that *paragraph (e)*) *subparagraph (i)* of that *paragraph (e)*; and

10 (b) in addition – in the case of an arrangement referred to in *subparagraph (ii)* of that *paragraph (e)* – the amount of the benefit referred to in that subparagraph obtained or to be obtained by the other person referred to therein.

(8) There shall also be stated, both for the current and the preceding financial year in the notes to the financial statements (whether entity or group financial statements)—

20 (a) the total of the amounts stated for the purposes of *paragraphs (b) to (f)* of *subsection (3)* (that is to say a separate total for the amounts stated for each of those paragraphs);

25 (b) the total of the amounts stated for the purposes of *paragraphs (b) and (c)* of *subsection (5)* (that is to say a separate total for the amounts stated for each of those paragraphs); and

30 (c) the amounts stated for the purposes of *subsection (3)(b)* expressed as a percentage of the net assets of the company at the beginning and end of the financial year.

(9) The disclosure required by *subsection (8)* is extended by *section 309(5) to (8)*, in the manner specified in those provisions, to persons who are officers (but not directors) of the company, holding undertaking or subsidiary undertaking concerned.

35 (10) Where at any time during the financial year the aggregate of the amounts outstanding under all arrangements of the type referred to in *subsections (3)(f) and (5)(b)* amount to more than 10 per cent of the net assets of the company, the aggregate amount shall be stated and the percentage of net assets that the total represents.

40 **309.**—(1) References in *section 308* and this section to a director of the company or the undertaking are references to the person who was a director of the company or the undertaking at any time in the financial year to which the financial statements relate (or, as the case may be, the preceding financial year) and “director” in those sections includes any shadow director and *de facto* director.

Supplemental provisions in relation to *section 308* (including certain exemption from its terms).

(2) The requirements of *section 308* apply in relation to every loan, quasi-loan, credit transaction or guarantee or agreement referred to in that section subsisting at any time in the financial year to which the financial statements relate (or, as the case may be, the preceding financial year)—

- (a) whenever it was entered into;
- (b) whether or not the person concerned was a director of the company or the undertaking in question at the time it was entered into;
- (c) in the case of an arrangement entered into involving a subsidiary undertaking of that company, whether or not that undertaking was a subsidiary undertaking at the time it was entered into; and
- (d) whether or not the transaction or agreement was prohibited by *section 240*.

(3) The requirements of *section 308(1) to (8)* do not apply in relation to an individual director and persons connected with him or her if the aggregate value of all agreements, transactions and arrangements referred to in *section 308(1) and (2)* did not, at any time during the financial year, exceed €7,500 for that director and those persons.

(4) Where a holding company avails itself of an exemption under this Part from the requirement to prepare group financial statements in relation to any financial year, *section 308(2)* shall have effect in relation to the company and that financial year as if “entity financial statements” were substituted for “group financial statements”.

(5) In addition to, and not in derogation from any of its requirements in relation to directors, *subsection (8) of section 308* applies, subject to *subsection (3) and section 311*, to persons who are officers (but not directors) of the company, holding company or subsidiary undertaking concerned and, accordingly operates, with respect to such officers, to require to be disclosed, both for the current and the preceding financial year, in the notes to the financial statements (whether entity or group financial statements) the matters mentioned in that subsection, but separately from the disclosures under it in respect of directors.

(6) For the purposes of that application, the following provisions of *section 308* and this section have effect subject to the following modifications—

- (a) the references in *section 308(1) and (2)* to directors are to be read as references to officers (not being directors) of the company, holding undertaking or subsidiary undertaking concerned;
- (b) *subsection (3)(b) to (f) and subsection (5)(b) and (c) of section 308* are to be read as if they applied to officers (not being directors) of the company, holding undertaking or subsidiary undertaking concerned;
- (c) the following references to director in this section, namely, the first and second references to director in *subsection (1)* and each such reference in *subsections (2) and (3)*, are to be read as references to an officer who is not a director.

(7) The operation of *subsection (8) of section 308*, as applied by virtue of *subsections (5) and (6)*, also requires the number of officers mentioned in *subsection (5)*, arrangements in respect of whom are the subject of the matters disclosed pursuant to that *subsection (8)*,

as so applied, to be stated in the notes to the financial statements concerned.

(8) For the purposes of *section 308* and this section—

- 5 (a) “quasi-loan”, “credit transaction”, “guarantee” and “value of the arrangement” have the meanings given to them by *section 220*;
- (b) *section 221* shall apply in determining whether a person is connected with a director or not;
- 10 (c) *section 220(7)* shall apply in determining whether or not a transaction or arrangement is made for a person.

15 **310.**—(1) Subject to *section 311*, the entity financial statements of a company shall disclose, both for the current and the preceding financial year, in the notes to the statements the particulars specified in *subsection (3)* of any other arrangement or transaction not dealt with by *section 306, 308* or *309* entered into by the company in which a person, who at any time during the financial year was a director, a director of its holding undertaking or a person connected with such a director, had, directly or indirectly, a material interest.

Other arrangements and transactions in which the directors, etc. have material interest.

20 (2) Subject to *section 311*, the group financial statements of a holding company shall disclose, both for the current and the preceding financial year, in the notes to the statements the particulars specified in *subsection (3)* of any other arrangement or transaction not dealt with by *section 306, 308* or *309* entered into by the company or any of its subsidiary undertakings in which a person, who at any time during the financial year was a director, a director of its holding undertaking or a person connected with such a director, had, directly or indirectly, a material interest.

(3) The particulars mentioned in *subsections (1)* and *(2)* are—

- 30 (a) particulars of the principal terms of the arrangement or transaction;
- (b) the name of the director or other person with the material interest; and
- (c) the nature of the interest.

(4) For the purposes of *subsections (1)* and *(2)*—

- 35 (a) an arrangement or transaction between a company and a director of the company or of its holding undertaking or a person connected with such a director shall (if it would not otherwise be so treated) be treated as an arrangement or transaction in which that director is interested; and
- 40 (b) an interest in such an arrangement or transaction is not material if in the opinion of the majority of the directors (other than that director) of the company which is preparing the financial statements in question it is not material (but without prejudice to the question whether or not such an interest is material in any case where those directors have not considered the matter).
- 45

(5) *Subsections (1)* and *(2)* do not apply in relation to the following arrangements or transactions—

- (a) an arrangement or transaction between one company and another in which a director of the first company or of its subsidiary undertaking or holding undertaking is interested only by virtue of his or her being a director of the other; 5
- (b) a contract of service between a company and one of its directors or a director of its holding undertaking or between a director of a company and any of that company's subsidiary undertakings; and
- (c) an arrangement or transaction which was not entered into during the financial year concerned and which did not subsist at any time during that year. 10

(6) *Subsections (1) and (2)* do not apply to any arrangement or transaction with a company or any of its subsidiary undertakings in which a director of the company or of its holding undertaking, or a person connected with such a director, had, directly or indirectly, a material interest if— 15

- (a) the value of each arrangement or transaction in which that director or other person had, directly or indirectly, a material interest and which was made after the commencement of the financial year with the company or any of its subsidiary undertakings; and 20
- (b) the value of each such arrangement or transaction which was made before the commencement of the financial year less the amount (if any) by which the liabilities of the person for whom the arrangement or transaction was made have been reduced, 25

did not at any time during the financial year exceed in the aggregate €5,000 or, if more, did not exceed €15,000 or one per cent of the value of the net assets of the company preparing the entity or group financial statements, whichever is the less. 30

(7) Where a holding company avails itself of an exemption under this Part from the requirement to prepare group financial statements in relation to any financial year, *subsection (2)* shall have effect in relation to the company and that financial year as if “entity financial statements” were substituted for “group financial statements”. 35

(8) For the purposes of this section—

- (a) *section 221* shall apply in determining whether a person is connected with a director or not;
- (b) “arrangement” includes an agreement; and 40
- (c) “director” includes any shadow director and *de facto* director.

Licensed banks: exceptions to disclosure by holding company under *sections 308 to 310* in the case of connected persons and certain officers.

**311.—(1)** As respects any financial statements prepared by any company which is the holding company of a licensed bank the requirements of *section 308* do not apply in relation to any of the following to which the licensed bank is a party, namely— 45

- (a) a loan, quasi-loan or other transaction referred to in *section 308(1)(a)* or *(2)(a)* entered into with or for a person connected with a director of that holding company or bank;
- 5 (b) an agreement referred to in *section 308(1)(b)* or *(2)(b)* to enter into a loan, quasi-loan or other transaction referred to in that provision with or for a person connected with a director of that holding company or bank;
- 10 (c) a guarantee entered into or security provided as mentioned in *section 308(1)(c)* or *(2)(c)* on behalf of a person connected with any of the directors referred to in that provision (being any of the directors of the holding company or bank) in connection with a loan, quasi-loan or credit transaction entered into with or for such a person so connected;
- 15 (d) an agreement as mentioned in *section 308(1)(d)* or *(2)(d)* to enter into a guarantee or provide security on behalf of a person connected with any of the directors mentioned in that provision (being any of the directors of the holding company or bank) in connection with a loan, quasi-loan or credit transaction entered into with or for such a person so connected; or
- 20 (e) an arrangement referred to in *subparagraph (i)* or *(ii)* of *section 308(1)(e)* or *(2)(e)* where the transaction referred to in that subparagraph (that is to say, a transaction that, if it had been made by the bank, would have fallen into a preceding paragraph of *section 308(1)* or *(2)*, as the case may be, or (in the case of that *subparagraph (ii)*) that *subparagraph (i)*) was entered into with or for a person connected with a director of that holding company or bank.
- 25  
30

(2) As respects any financial statements prepared by any company that is the holding company of a licensed bank, the extension of *section 308(8)* by *section 309(5)* does not apply in relation to any transaction, arrangement or agreement made by that licensed bank for or with—

35

(a) any of its officers; or

(b) any of the officers of the holding company.

(3) As respects any financial statements prepared by any company that is the holding company of a licensed bank, the requirements of *subsection (1)* or *(2)* of *section 310* do not apply in relation to any arrangement or transaction referred to in that *subsection (1)* or *(2)* to which the licensed bank is a party if the only person referred to in that *subsection (1)* or *(2)*, as the case may be, who has, directly or indirectly, a material interest in the arrangement or transaction is a person connected with any of the directors referred to in that *subsection (1)* or *(2)*, as the case may be.

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45

(4) In a case that would fall within *subsection (3)* but for the fact that both—

(a) a person (the “connected person”) connected with any of the directors referred to in *subsection (1)* or *(2)*, as the case may be, of *section 310*; and

50

- (b) a director or directors referred to in that *subsection (1)* or *(2)*, as the case may be,

have, directly or indirectly, a material interest in the arrangement or transaction concerned to which the licensed bank referred to in *subsection (3)* is a party, then the particulars of the material interest to be disclosed under *section 310* need not include the name of the connected person nor (if his or her interest is different from that of the foregoing director or directors) the nature of the connected person's interest. 5

(5) A word or expression used in this section and also used in *sections 308* to *310* has the same meaning in this section as it has in those sections. 10

Licensed banks:  
disclosures by  
holding company of  
aggregate amounts  
in respect of  
connected persons.

**312.—(1)** In this section—

“relevant period” means the financial year to which the financial statements concerned relate; 15

“relevant persons” means persons who, at any time during the financial year to which the financial statements concerned relate, were connected with a director of the company or the bank referred to in *subsection (2)*;

“relevant transaction, arrangement or agreement” shall be read in accordance with *subsection (3)*; 20

“transactions, arrangements or agreements” means any of the following classes of transactions, arrangements or agreements—

- (a) loans, quasi-loans or credit transactions entered into with or for relevant persons; 25
- (b) agreements to enter into any loans, quasi-loans or credit transactions with or for relevant persons;
- (c) guarantees entered into or security provided on behalf of relevant persons in connection with a loan, quasi-loan or credit transaction entered into with or for such persons; 30
- (d) agreements to enter into guarantees or provide any security on behalf of relevant persons in connection with a loan, quasi-loan or credit transaction entered into with or for such persons;
- (e) arrangements referred to in *subparagraph (i)* or *(ii)* of either *section 308(1)(e)* or *(2)(e)* where the transactions referred to in that subparagraph (that is to say, transactions that, if they had been made by the bank, would have fallen into a preceding paragraph of *section 308(1)* or *(2)*, as the case may be, or (in the case of that *subparagraph (ii)*) that subparagraph *(i)*) were entered into with or for relevant persons. 35 40

(2) The group financial statements of a company which is the holding company of a licensed bank shall contain a statement, by way of notes to those statements, of the matters specified in *subsection (3)* in relation to transactions, arrangements or agreements made by the licensed bank. 45

(3) The matters mentioned in *subsection (2)* are—

5 (a) the aggregate amounts outstanding at the end of the relevant period under transactions, arrangements or agreements made by the bank and coming within any particular paragraph of *subsection (1)* (which transactions, arrangements or agreements, coming within any particular such paragraph, are referred to subsequently in this section as “relevant transactions, arrangements or agreements”);

10 (b) the aggregate maximum amounts outstanding during the relevant period under relevant transactions, arrangements or agreements made by the bank;

15 (c) the number of relevant persons for or with whom relevant transactions, arrangements and agreements that subsisted at the end of the relevant period were made by the bank; and

(d) the maximum number of relevant persons for or with whom relevant transactions, arrangements and agreements that subsisted at any time during the relevant period were made by the bank.

20 (4) A transaction, arrangement or agreement to which *subsection (2)* applies need not be included in the statement referred to in that subsection if—

(a) it is entered into by the bank concerned in the ordinary course of its business; and

25 (b) its value is not greater, and its terms no more favourable,

in respect of the person for or with whom it is made, than that or those which—

(i) the bank ordinarily offers; or

(ii) it is reasonable to expect the bank to have offered,

30 to or in respect of a person of the same financial standing but unconnected with the bank.

(5) In reckoning the aggregate maximum amounts or the maximum number of persons referred to in *subsection (3)(b)* or *(d)*, as appropriate, there shall not be counted, as the case may be—

35 (a) relevant transactions, arrangements and agreements made by the bank concerned for or with a person if the aggregate maximum amount outstanding during the relevant period under relevant transactions, arrangements and agreements made for or with him or her by it does not  
40 exceed €7,500; or

(b) a person for or with whom such transactions, arrangements and agreements have been so made and for whom the aggregate maximum amount outstanding as mentioned in *paragraph (a)* does not exceed the amount  
45 there mentioned.

(6) For the purposes of this section, “amount outstanding” means the amount of the outstanding liabilities of the person for or with whom the transaction, arrangement or agreement in question was

made, or, in the case of a guarantee of security, the amount guaranteed or secured.

(7) Where a holding company avails itself of an exemption under this Part from the requirement to prepare group financial statements in relation to any financial year, *subsection (2)* shall have effect in relation to the company and that financial year as if “entity financial statements” were substituted for “group financial statements”. 5

(8) A word or expression used in this section and also used in *sections 308 to 310* has the same meaning in this section as it has in those sections. 10

Licensed banks: requirement for register, etc. in the case of holding company as respects certain information.

**313.**—(1) Subject to *section 314*, a company which is the holding company of a licensed bank shall maintain a register containing a copy of every transaction, arrangement or agreement made by that bank of which particulars—

(a) are required by *section 308(1)* or (2) or *section 310(1)* or (2) to be disclosed; or 15

(b) would, but for *section 311*, be required by any such provision to be disclosed,

in the company’s entity or group financial statements for the current financial year and for each of the preceding 10 financial years or, if such a transaction, arrangement or agreement is not in writing, a written memorandum setting out its terms. 20

(2) *Subsection (1)* shall not require a company to keep in its register a copy of any transaction, arrangement or agreement made by the licensed bank for or with a connected person if— 25

(a) it is entered into in the ordinary course of the bank’s business; and

(b) its value is not greater, and its terms no more favourable, in respect of the person for or with whom it is made, than that or those which— 30

(i) the bank ordinarily offers; or

(ii) it is reasonable to expect the bank to have offered,

to or in respect of a person of the same financial standing but unconnected with the bank.

(3) Subject to *section 314*, a company which is the holding company of a licensed bank shall, before the annual general meeting of the holding company, make available, at its registered office for inspection by its members, the statement specified in *subsection (5)*. 35

(4) That statement shall be made so available for a period of not less than 15 days ending with the date of the meeting. 40

(5) The statement mentioned in *subsection (3)* (referred to in *subsections (6) to (8)* as the “statement”) is one containing the particulars of transactions, arrangements and agreements made by the licensed bank which the holding company would, but for *section 311*, be required by *section 308(1)* or (2) or *section 310(1)* or (2) to disclose in its entity or group financial statements for the last complete financial year preceding the meeting referred to in that subsection. 45

(6) The statement shall also be made available for inspection by the members at that annual general meeting.

(7) This section shall not require the inclusion in the statement of particulars of any transaction, arrangement or agreement made by  
5 the licensed bank if—

(a) it is entered into in the ordinary course of the bank's business; and

(b) its value is not greater, and its terms no more favourable, in respect of the person for or with whom it is made, than  
10 that or those which—

(i) the bank ordinarily offers; or

(ii) it is reasonable to expect the bank to have offered,

to or in respect of a person of the same financial standing but unconnected with the bank.

(8) This section shall not require the inclusion in the statement of particulars of any transaction, arrangement or agreement if, by  
15 reason of—

(a) the company's not taking advantage of *section 311*; or

(b) the company's being required by a rule, instrument, direction or requirement referred to in *section 314* to disclose  
20 such information in the following manner,

the company has included in its entity or group financial statements for the last complete financial year mentioned in *subsection (5)* the  
25 particulars referred to in *section 308(1)* or *(2)* or *section 310(1)* or *(2)*, as the case may be, of the transaction, arrangement or agreement which, but for either of those reasons, it would not have disclosed in those financial statements by virtue of *section 311*.

(9) A company shall, if required by the Director, produce to the Director for inspection the register kept by it in accordance with  
30 *subsection (1)* and shall give the Director such facilities for inspecting and taking copies of the contents of the register as the Director may require.

(10) It shall be the duty of the statutory auditors of the company to examine any such statement specified in *subsection (5)* before it  
35 is made available to the members of the company in accordance with *subsections (3)* and *(4)* and to make a report to the members on that statement; and the report shall be annexed to the statement before it is made so available.

(11) A report under *subsection (10)* shall state whether in the  
40 opinion of the statutory auditors the statement contains the particulars required by *subsection (5)* and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.

(12) Where a company fails to comply with *subsection (1)*, *(3)* or  
45 *(9)*, the company and every person who at the time of that failure is a director of the company shall be guilty of a category 3 offence.

(13) In any proceedings against a person in respect of an offence under *subsection (12)* (being an offence consisting of a failure to

comply with *subsection (1) or (3)*), it shall be a defence to prove that the defendant took all reasonable steps for securing compliance with *subsection (1) or (3)*, as the case may be.

(14) A word or expression used in this section and also used in *sections 308 to 310* has the same meaning in this section as it has in those sections. 5

Requirements of banking law not prejudiced by *sections 308 to 313* and minimum monetary threshold for *section 313*.

**314.**—(1) Nothing in *sections 308 to 313* prejudices the operation of any—

- (a) rule or other instrument; or
- (b) direction or requirement, 10

made, issued, granted or otherwise created under the Central Bank Acts 1942 to 2010 or any other enactment requiring the holding company of a licensed bank to disclose particulars, whether in financial statements prepared by it or otherwise, of transactions, arrangements or agreements (whether of the kind described in *section 240* or not) entered into by the licensed bank. 15

(2) So far as those requirements relate to *section 308(1) or (2)*, the requirements of *313(1) or (3)* do not apply in relation to an individual director and persons connected with him or her if the aggregate value of all arrangements, transactions and agreements referred to in *section 308(1) and (2)* did not at any time during the financial year exceed €7,500 for that individual director and those persons. 20

(3) So far as those requirements relate to any arrangement or transaction with a licensed bank or any of its subsidiary undertakings in which a director of the bank or of its holding undertaking, or a person connected with such a director, had, directly or indirectly, a material interest, the requirements of *section 313(1) or (3)* do not apply if— 25

- (a) the value of each such arrangement or transaction which was made after the commencement of the financial year with the bank or any of its subsidiary undertakings; and 30
- (b) the value of each such arrangement or transaction which was made before the commencement of the financial year less the amount (if any) by which the liabilities of the person for whom the arrangement or transaction was made have been reduced, 35

did not at any time during the financial year exceed in the aggregate €5,000 or, if more, did not exceed €15,000 or one per cent of the value of the net assets of the company preparing the entity or group financial statements, whichever is the less. 40

## CHAPTER 7

### *Disclosure required in notes to financial statements of other matters*

Information on related undertakings.

**315.**—(1) Where at the end of a financial year of the company, a company—

- (a) has a subsidiary undertaking; or 45

(b) holds an interest in any class of equity shares equal to 20 per cent or more of all such interests (in that class) in an undertaking that is not its subsidiary undertaking (in this section referred to as an “undertaking of substantial interest”);

5

a note shall be included in the statutory financial statements of the company for that year distinguishing between the subsidiary undertakings and the undertakings of substantial interest and giving the following information in relation to them—

10 (i) the name and registered office or, if there is no registered office, the principal place of business of each subsidiary undertaking or undertaking of substantial interest and the nature of the business carried on by it;

15 (ii) the identity of each class of shares held by the company in each subsidiary undertaking or undertaking of substantial interest and the proportion of the nominal value of the allotted shares in the subsidiary undertaking or undertaking of substantial interest of each such class represented by the shares of that class held by the company;

20 (iii) the aggregate amount of the net assets of each subsidiary undertaking or undertaking of substantial interest as at the end of the financial year of the subsidiary undertaking or undertaking of substantial interest ending with or last before the end of the financial year of the company to which the statutory financial statements relate; and

25

(iv) the profit or loss of the subsidiary undertaking or undertaking of substantial interest for its financial year identified in *paragraph (iii)*.

(2) The notes to the statutory financial statements of a company shall contain the following particulars regarding each undertaking of which the company is a member having unlimited liability unless the information is not material to the true and fair view given by the statutory financial statements of the company—

30

(a) the name and registered office of each such undertaking;

35 (b) if the undertaking does not have a registered office, its principal place of business; and

(c) the legal form of the undertaking.

(3) *Subsection (1)* is subject to *section 316* which provides for exemptions in respect of the information specified in *subsection (1)(iii)* and *(iv)*.

40

(4) *Subsections (1)* and *(2)* are subject to *section 317* which provides for exemptions generally in respect of the information specified in them.

(5) For the avoidance of doubt, the information required by *subsections (1)* and *(2)* is required for the financial year to which the statutory financial statements relate and comparable information for the preceding financial year need not be given.

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(6) For the purposes of *paragraph (b)* of *subsection (1)*, interests held by persons acting in their own name but on behalf of the first-mentioned company in that subsection shall be deemed to be held

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by that company and “an interest in any class of equity shares” in subsection (1) includes an interest in an instrument that is convertible into equity shares as well as an option to acquire equity shares.

Information on related undertakings: exemption from disclosures.

**316.**—The information on related undertakings required by paragraphs (iii) (net assets) and (iv) (profit or loss) of section 315(1) need not be given in statutory financial statements— 5

- (a) in respect of a subsidiary undertaking of a company, if the company prepares group financial statements and either—
  - (i) the subsidiary undertaking is consolidated in the statutory financial statements prepared by the company; or 10
  - (ii) the interest of the company in the equity shares of the subsidiary undertaking is included in or in a note to the company’s statutory financial statements by way of the equity method of accounting; 15

or

- (b) in respect of a subsidiary undertaking of a company, if the company is exempt from the requirement to prepare group financial statements because it is relying on the consolidated accounts of a higher holding undertaking in accordance with section 300 or 301 or in accordance with IFRS, and either— 20
  - (i) the subsidiary undertaking is consolidated in the consolidated accounts of the higher holding undertaking; or 25
  - (ii) the interest of the company in the equity shares of the subsidiary undertaking is included in or in a note to the higher holding undertaking’s consolidated accounts by way of the equity method of accounting; 30

or

- (c) in respect of an undertaking of substantial interest of a company, if the interest in the equity shares of the undertaking of substantial interest is included in or in a note to the company’s statutory financial statements by way of the equity method of accounting; or 35
- (d) if—
  - (i) the subsidiary undertaking or the undertaking of substantial interest is not required to publish its financial statements; and 40
  - (ii) the interest held in the equity shares of the subsidiary undertaking or the undertaking of substantial interest does not amount to at least 50 per cent of all such interests;

or 45

(e) in relation to any undertaking, if the information required by paragraphs (iii) and (iv) of section 315(1) is not

material to the true and fair view given by the statutory financial statements.

5 **317.—**(1) If the directors of a company form the opinion that the number of undertakings in respect of which the company is required to disclose information under *section 315* is such that compliance with the provisions of that section would result in a note to the statutory financial statements of excessive length, the information mentioned in that section need only be given in such a note in respect of—

10 (a) the undertakings whose assets, liabilities, financial position or profit or loss, in the opinion of the directors, principally affected the amounts shown in the company's statutory financial statements; and

15 (b) undertakings excluded from the consolidation under *section 304(3)*.

(2) If advantage is taken of *subsection (1)*—

20 (a) there shall be included in the notes to the company's statutory financial statements a statement that the information given deals only with the undertakings mentioned in that subsection; and

(b) the information specified in *section 349(4)* shall be annexed to the annual return of the company to which the statutory financial statements are annexed.

25 (3) If a company fails to comply with *subsection (2)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(4) In *subsection (3)* "officer" includes any shadow director and *de facto* director.

30 **318.—**(1) The following information shall be given in the notes to the entity financial statements of a company with respect to the employees of the company—

(a) the average number of persons employed by the company in the financial year concerned; and

35 (b) the average number of persons employed within each category of persons employed by the company in that year.

(2) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of *subsection (1)(a)* there shall also be stated the aggregate amounts respectively of—

40 (a) wages and salaries paid or payable in respect of that year to those persons;

(b) social insurance costs incurred by the company on their behalf;

(c) other retirement benefit costs so incurred; and

Information on related undertakings: provision for certain information to be annexed to annual return.

Disclosures of particulars of staff.

(d) other compensation costs of those persons (such costs to be specified by type) incurred by the company in the financial year.

(3) In relation to the aggregate of all amounts stated for the purposes of *subsection (2)* there shall be shown the amount capitalised into assets and the amount treated as an expense or loss of the financial year. 5

(4) The categories of persons employed by the company by reference to which the number required to be disclosed by *subsection (1)(b)* is to be determined shall be such as the directors may select, having regard to the manner in which the company's activities are organised. 10

(5) For the purposes of *subsection (1)(a)* and *(b)*, the average number of persons employed by the company shall be determined by dividing the relevant annual number by the number of months in the financial year of the company. 15

(6) For the purposes of *subsection (5)*, the relevant annual number shall be determined by ascertaining for each month in the financial year of the company concerned—

(a) in the case of *subsection (1)(a)*, the number of persons employed under contracts of service by the company in that month (whether throughout the month or not); and 20

(b) in the case of *subsection (1)(b)*, the number of persons in the category in question of persons so employed,

and, in either case, adding together all the monthly numbers. 25

(7) Where the company prepares group financial statements, those group financial statements shall contain the information required by *subsections (1) to (3)* for the company and its subsidiary undertakings included in the consolidation taken as a whole and *subsections (4) to (6)* have effect as if references in them to the company were references to the company and its subsidiary undertakings included in the consolidation. 30

(8) In this section—

“retirement benefit costs” includes any expenses incurred by the company in respect of— 35

(a) any retirement benefit scheme established for the purpose of providing retirement benefits for persons currently or formerly employed by the company;

(b) any amounts set aside for the future payment of retirement benefits directly by the company to current or former employees; and 40

(c) any retirement benefits paid directly by the company to such persons without first being so set aside.

“social insurance costs” means any contribution by a company to any state social insurance, social welfare, social security or retirement benefit scheme (including provision amounting to such under the Social Welfare Acts) or to any fund or arrangement, being a fund or arrangement connected with such a scheme, and “social insurance” means any such scheme fund or arrangement; 45

“wages and salaries” in a company’s profit and loss account shall be determined by reference to payments made or expenses incurred in respect of all persons employed by the company during the financial year concerned who are taken into account in determining the relevant annual number for the purposes of *subsection (1)(a)*.

**319.—(1)** The following information shall be given in the notes to the entity financial statements of a company with respect to the company’s share capital—

Details of authorised share capital, allotted share capital and movements.

- 10 (a) the number and aggregate nominal value of the shares comprised in the authorised (if any) share capital;
- (b) where shares of more than one class have been allotted, the number and aggregate nominal value of shares of each class allotted;
- 15 (c) in relation to each class of allotted share capital, the amount that has been called up on those shares and of this the amount that has been fully paid up at the financial year end date;
- (d) an analysis of allotted and called up share capital by class between—
  - 20 (i) shares presented as share capital; and
  - (ii) shares presented as a liability;and
- 25 (e) where shares are held as treasury shares, the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been allotted, the number and aggregate nominal value of each class held as treasury shares.

(2) In the case of any part of the allotted share capital that consists of redeemable shares, the following information shall be given—

- 30 (a) the earliest and latest dates on which the company has power to redeem those shares;
- (b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or the shareholder and at who’s option; and
- 35 (c) whether any (and, if so, what) premium is payable on redemption.

(3) If the company has allotted any shares during the financial year to which the entity financial statements relate, the following information shall be given—

- 40 (a) the reason for making the allotment;
- (b) the classes of shares allotted;
- (c) in respect of each class of shares, the number allotted, their aggregate nominal value and the consideration received by the company for the allotment; and

(d) whether the shares are presented as share capital or as a liability.

(4) With respect to any contingent right to the allotment of shares in the company, the following particulars shall be given—

(a) the number, description and amount of the shares in relation to which the right is exercisable; 5

(b) the period during which it is exercisable; and

(c) the price to be paid for the shares allotted.

(5) In *subsection (4)*, “contingent right to the allotment of shares” means any option to subscribe for shares and any other right to require the allotment of shares to any person whether arising on the conversion into shares of securities of any other description or otherwise. 10

(6) Subject to *subsection (7)*, where the company is a holding company, the number, description and nominal value of the shares in the company held by its subsidiary undertakings or their nominees and the consideration paid for those shares shall be disclosed in the notes to the entity financial statements of the company. 15

(7) *Subsection (6)* does not apply in relation to any shares—

(a) in the case of which the subsidiary undertaking is concerned as personal representative; or 20

(b) subject to *subsection (8)*, in the case of which the subsidiary undertaking is concerned as trustee.

(8) The restriction on the application of *subsection (6)* by *subsection (7)(b)* does not have effect if the company or a subsidiary undertaking of the company is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money. 25

Financial assistance for purchase of own shares.

**320.**—(1) The entity financial statements of a company shall show the aggregate amount of financial assistance provided by the company, in the financial year to which the financial statements relate, that is permitted by *section 83* (including the aggregate amount of any outstanding loans, guarantees and securities at the financial year end date) and shall separately disclose the aggregate of— 30 35

(a) the amount of any money provided, in that financial year, by the company in accordance with a scheme referred to in *section 83(6)(f)*; and

(b) the amount of any loans referred to in *section 83(6)(g)* that have been made in that financial year by the company. 40

(2) Where a company prepares group financial statements, those group financial statements shall contain the information required by *subsection (1)* for the company and its subsidiary undertakings included in the consolidation taken as a whole.

(3) The entity and group financial statements shall show for the financial year immediately preceding the financial year to which those statements relate amounts corresponding to the amounts 45

required to be shown by *subsection (1)* in those statements for the latter year.

5 **321.—**(1) Where a company, or a nominee of a company, holds shares in the company or an interest in such shares, such shares or interest shall not be shown as an asset but the consideration paid for such shares or interest—

Holding of own shares or shares in holding undertaking.

(a) shall be shown in the company's entity financial statements as a deduction from the company's capital and reserves;

10 (b) the profits available for distribution shall accordingly be restricted by the amount of such deduction; and

(c) shall be shown in the company's group financial statements, if any, as a deduction from group capital and reserves.

15 (2) Where a company, or a nominee of the company, holds shares in its holding undertaking or an interest in such shares, such shares or interest shall not be shown as an asset but the consideration paid for such shares or interest—

20 (a) shall be shown in the company's entity financial statements as a deduction from the company's capital and reserves; and

(b) the profits available for distribution shall accordingly be restricted by the amount of such deduction.

25 (3) In addition to the requirements of *subsection (2)*, in the case of the holding of shares by a company, or a nominee of the company, in its holding company (or the holding by a company or its nominee of an interest in such shares), the consideration paid for such shares or interest shall be shown in the holding company's group financial statements, if any, as a deduction from group capital and reserves.

30 (4) The notes to the company's entity financial statements (and, as the case may be, the group financial statements of the company or its holding company) shall give separately for the shares referred to in each of the preceding subsections—

35 (a) the number and aggregate nominal value of those shares and, where shares of more than one class have been acquired, the number and aggregate nominal value of each class of such shares; and

(b) particulars of any restriction on profits available for distribution by virtue of the application of *subsection (1)* or (2).

40 **322.—**(1) A company shall disclose in the notes to its entity financial statements the accounting policies adopted by the company in determining—

Disclosure of accounting policies.

(a) the items and amounts to be included in its balance sheet; and

45 (b) the items and amounts to be included in its profit and loss account.

(2) Where a company prepares group financial statements, the notes to those financial statements shall disclose the accounting policies adopted by the company in determining—

- (a) the items and amounts to be included in its consolidated balance sheet; and 5
- (b) the items and amounts to be included in its consolidated profit and loss account.

Disclosure of remuneration for audit, audit-related and non-audit work.

**323.**—(1) In this section—

“group auditor” means the statutory auditor carrying out the audit of group financial statements; 10

“remuneration” includes benefits in kind, reimbursement of expenses and other payments in cash.

(2) Subject to *subsection (5)*, a company shall disclose in the notes to its entity financial statements relating to each financial year the following information— 15

- (a) the remuneration for all work in each category specified in *subsection (3)* that was carried out—
  - (i) for the company;
  - (ii) in respect of that financial year,
    - by the statutory auditors of the company; 20
- (b) the remuneration for all work in each category specified in *subsection (3)* that was carried out—
  - (i) for the company;
  - (ii) in respect of the preceding financial year,
    - by the statutory auditors of the company; 25
- (c) where all or part of the remuneration referred to in *paragraph (a)* or *(b)* is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.

(3) Remuneration shall be disclosed under *subsection (2)* for each of the following categories of work— 30

- (a) the audit of entity financial statements;
- (b) other assurance services;
- (c) tax advisory services;
- (d) other non-audit services.

(4) Where the statutory auditors of a company are a statutory audit firm (within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EEC) Regulations 2010 (S.I. No. 220 of 2010)), any work carried out by a partner in the firm or a statutory auditor on its behalf is considered for the purposes of this section to have been carried out by the audit firm. 40

(5) A company need not make the disclosure required by *subsection (2)* where—

- (a) the company is to be treated as a small company in accordance with *section 351*; or
- (b) the company is to be treated as a medium company in accordance with *section 351*; or
- 5 (c) the company is a subsidiary undertaking, the holding company of which is required to prepare and does prepare group financial statements, provided that—
  - (i) the subsidiary undertaking is included in the group financial statements; and
  - 10 (ii) the information specified in *subsection (8)* is disclosed in the notes to the group financial statements.

(6) Where a company that is to be treated as a medium company in accordance with *section 351* does not make the disclosure of information required by *subsection (2)* it shall provide such information to the Supervisory Authority when requested so to do.

(7) A holding company that prepares group financial statements shall disclose in the notes to those statements relating to each financial year the following information—

- 20 (a) the remuneration for all work in each category specified in *subsection (8)* that was carried out in respect of that financial year by the group auditor for the holding company and the subsidiary undertakings included in the consolidation;
- 25 (b) the remuneration for all work in each category specified in *subsection (8)* that was carried out in respect of the preceding financial year by the group auditor for the holding company and those undertakings;
- 30 (c) where all or part of the remuneration referred to in *paragraph (a)* or *(b)* is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.

(8) Remuneration shall be disclosed under *subsection (7)* for each of the following categories of work—

- (a) the audit of the group financial statements;
- (b) other assurance services;
- 35 (c) tax advisory services;
- (d) other non-audit services.

(9) Where more than one statutory auditor (whether a statutory auditor or a statutory audit firm) has been appointed as the statutory auditors of a company in a single financial year, separate disclosure in respect of the remuneration of each of them shall be provided in the notes to the company's entity financial statements.

45 **324.**—(1) Subject to *subsection (2)*, the nature and business purpose of any arrangements of a company that are not included in its balance sheet and the financial impact on the company of those arrangements shall be provided in the notes to the statutory financial statements of the company if the risks or benefits arising from such arrangements are material and in so far as the disclosure of such

Information on arrangements not included in balance sheet.

risks or benefits is necessary for assessing the financial position of the company.

(2) In the case of a holding company that prepares group financial statements—

(a) *subsection (1)* shall be read as requiring the information there referred to in respect of arrangements there referred to, whether of the company or of any subsidiary undertaking included in the consolidation, to be provided in the notes to the group financial statements in so far as the disclosure of the risks or benefits concerned is necessary for assessing the financial position, taken as a whole, of the holding company and the subsidiary undertakings included in the consolidation; and

(b) the notes to the entity financial statements of the holding company shall not be required to provide information that is provided in the notes to its group financial statements in compliance with *subsection (1)*, as it is to be read in accordance with this subsection.

## CHAPTER 8

### *Approval of statutory financial statements* 20

Approval and signing of statutory financial statements by board of directors.

**325.**—(1) Where the directors of a company are satisfied that the statutory financial statements of the company give a true and fair view and otherwise comply with this Act or, where applicable, with Article 4 of the IAS Regulation, those statements shall be approved by the board of directors and signed on their behalf by 2 directors, where there are 2 or more directors. 25

(2) Without prejudice to the generality of *section 11* and its application to the other provisions of this section, where the company has a sole director *subsection (1)* operates to require that director, if he or she is satisfied as to the matters referred to in that subsection in respect of the statements, to approve and sign the statutory financial statements. 30

(3) Where group financial statements are prepared, the group financial statements and the entity financial statements of the holding company shall be approved by the board of directors of that company at the same time. 35

(4) The signature or signatures evidencing approval of the financial statements by the board shall be inserted on the face of the entity balance sheet and any group balance sheet.

(5) Every copy of every balance sheet which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the names of the persons who signed the balance sheet on behalf of the board of directors. 40

(6) If statutory financial statements are approved which do not give a true and fair view or otherwise comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation, every director of the company who is party to their approval, and who knows that they do not give such view or otherwise so comply or is reckless as to whether that is so, shall be guilty of a category 2 offence. 45 50

(7) For that purpose, every director of the company at the time the statutory financial statements are approved shall be taken to be a party to their approval unless he or she shows that he or she took all reasonable steps to prevent their being approved.

- 5 (8) If any copy of a balance sheet is—
- 10 (a) laid before the members or otherwise issued, circulated or published without the balance sheet (the original of it as distinct from the copy) having been signed as required by this section or without the required statement of the signatory's name on the copy being included; or
  - 15 (b) delivered to the Registrar without the balance sheet (the original of it as distinct from the copy) having been signed as required by this section or without the required statement of the signatory's name on the copy being included,

the company and any officer of it who is in default shall be guilty of a category 2 offence.

(9) *Subsection (8)* shall not prohibit the issue, circulation or publication of—

- 20 (a) a fair and accurate summary of any statutory financial statement after such statutory financial statement shall have been signed on behalf of the directors;
- (b) a fair and accurate summary of the profit or loss figures for part of the company's financial year.

25 (10) In *subsection (8)* "officer" includes any shadow director and *de facto* director.

## CHAPTER 9

### *Directors' report*

30 **326.**—(1) The directors of a company shall for each financial year prepare a report (a "directors' report") dealing with the following matters—

Obligation to prepare directors' report for every financial year.

- (a) general matters in relation to the company and the directors as specified in *section 327*;
- (b) a business review in accordance with *section 328*;
- 35 (c) information on the acquisition or disposal of own shares as specified in *section 329*;
- (d) information on interests in shares or debentures as specified in *section 330*;
- 40 (e) statement on relevant audit information as specified in *section 331*,

and containing the notice referred to in *section 332* that (if such be the case) has been issued in that financial year in respect of the company under section 33AK of the Central Bank Act 1942.

(2) *Subsection (1)* is in addition to the other requirements of this Act that apply in certain cases with regard to the inclusion of matters in a directors' report, namely the requirements of—

(a) *section 168(3)* (statement as to establishment or otherwise of an audit committee in the case of a large private company); and 5

(b) *section 226(2)* (directors' compliance statement in case of a company to which that section applies).

(3) For a financial year in which—

(a) the company is a holding company; and 10

(b) the directors of the company prepare group financial statements,

the directors shall also prepare a directors' report that is a consolidated report (a "group directors' report") dealing, to the extent provided in the following provisions of this Part, with the company and its subsidiary undertakings included in the consolidation taken as a whole. 15

(4) Where group financial statements are published with entity financial statements, it is sufficient to prepare the group directors' report referred to in *subsection (3)* (as distinct from that report and a directors' report in respect of the holding company as well) provided that any information relating to the holding company only, being information which would otherwise be required to be provided by *subsection (1)* or *section 168(3)* or *226(2)*, is provided in the group directors' report. 25

(5) A group directors' report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation taken as a whole.

(6) If a director fails to fulfil his or her obligation under *subsection (1)*, *(3)* or *(4)*, he or she shall be guilty of a category 3 offence. 30

(7) Without limiting the obligations of the directors of a company under this section or *subsection (6)*, it shall be the duty of a person who is a shadow director or *de facto* director of a company to ensure that the requirements of *subsections (1)*, *(3)* and *(4)* are complied with in relation to the company. 35

(8) If a person fails to comply with his or her duty under *subsection (7)*, the person shall be guilty of a category 3 offence.

Directors' report:  
general matters.

**327.**—(1) The directors' report for a financial year shall state—

(a) the names of the persons who, at any time during the financial year, were directors of the company; 40

(b) the principal activities of the company during the course of the year;

(c) a statement of the measures taken by the directors to secure compliance with the requirements of *sections 282 to 286*, with regard to the keeping of accounting records and the exact location of those records; 45

(d) the amount of any interim dividends paid by the directors during the year and the amount, if any, that the directors recommend should be paid by way of final dividend.

5 (2) Where relevant in a particular financial year, the directors' report shall state—

(a) particulars of any important events affecting the company which have occurred since the end of that year;

(b) an indication of the activities, if any, of the company in the field of research and development;

10 (c) an indication of the existence of branches (within the meaning of Council Directive 89/666/EEC) of the company outside the State and the country in which each such branch is located;

15 (d) political donations made during the year that are required to be disclosed by the Electoral Act 1997.

(3) Where material for an assessment of the company's financial position and profit or loss, the directors' report shall describe the use of financial instruments by the company and discuss, in particular—

20 (a) the financial risk management objectives and policies of the company, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used; and

(b) the exposure of the company to price risk, credit risk, liquidity risk and cash flow risk.

25 (4) In relation to a group directors' report, *subsections (1)(b) and (c), (2) and (3)* shall have effect as if the reference to the company were a reference to the company and its subsidiary undertakings included in the consolidation.

**328.**—(1) The directors' report for a financial year shall contain— Directors' report:  
business review.

30 (a) a fair review of the business of the company; and

(b) a description of the principal risks and uncertainties facing the company.

(2) The review required by *subsection (1)* shall be a balanced and comprehensive analysis of—

35 (a) the development and performance of the business of the company during the financial year; and

(b) the assets and liabilities and financial position of the company at the end of the financial year,

consistent with the size and complexity of the business.

40 (3) The review required by *subsection (1)* shall, to the extent necessary for an understanding of such development, performance or financial position or assets and liabilities, include —

(a) an analysis of financial key performance indicators; and

(b) where appropriate, an analysis using non-financial key performance indicators, including information relating to environmental and employee matters.

(4) The directors' report shall, where appropriate, include additional explanations of amounts included in the statutory financial statements of the company. 5

(5) The review required by *subsection (1)* shall include an indication of likely future developments in the business of the company.

(6) In relation to a group directors' report, this section has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation. 10

(7) In this section, "key performance indicators" means factors by reference to which the development, performance and financial position of the business of the company can be measured effectively.

Directors' report:  
acquisition or  
disposal of own  
shares.

**329.**—Where, at any time during a financial year of a company, shares in the company— 15

(a) are held or acquired by the company, including by forfeiture or surrender in lieu of forfeiture; or

(b) are held or acquired by any subsidiary undertaking of the company, 20

the directors' report with respect to that financial year of the company shall state—

(i) the number and nominal value of any shares of the company held by the company or any subsidiary undertaking at the beginning and end of the financial year together with the consideration paid for such shares; and 25

(ii) a reconciliation of the number and nominal value of such shares from the beginning of the financial year to the end of the financial year showing all changes during the year including further acquisitions, disposals and cancellations, in each case showing the value of the consideration paid or received, if any. 30

Directors' report:  
interests in shares  
and debentures.

**330.**—(1) The directors' report in respect of a financial year shall, as respects each person who, at the end of that year, was a director of the company— 35

(a) state whether or not he or she was, at the end of that financial year, interested in shares in, or debentures of, the company or any group undertaking of that company;

(b) state, if he or she was so interested at the end of that year, the number and amount of shares in, and debentures of, the company and each other undertaking (specifying it) in which he or she was then interested; 40

(c) state whether or not he or she was, at the beginning of the financial year (or, if he or she was not then a director, when he or she became a director), interested in shares in, or debentures of, the company or any other group undertaking; and 45

5 (d) state, if he or she was so interested at either of the immediately preceding dates, the number and amount of shares in, and debentures of, the company and each other undertaking (specifying it) in which he or she was so interested at the beginning of the financial year or, as the case may be, when he or she became a director.

10 (2) The reference in *subsection (1)* to the time when a person became a director shall, in case of a person who became a director on more than one occasion, be read as a reference to the time when he or she first became a director.

(3) The information required by *subsection (1)* to be given in respect of the directors of the company shall also be given in respect of the person who was the secretary of the company at the end of the financial year concerned.

15 (4) For the purposes of this section, references to interests of a director and secretary in shares or debentures are references to all interests required to be recorded in the register of interests under *section 268* and includes interests of shadow directors and *de facto* directors required to be so registered.

20 **331.**—(1) The directors' report in relation to a company shall contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved in accordance with *section 333*—

Directors' report:  
statement on  
relevant audit  
information.

25 (a) so far as the director is aware, there is no relevant audit information of which the company's statutory auditors are unaware; and

30 (b) the director has taken all the steps that he or she ought to have taken as a director in order to make himself or herself aware of any relevant audit information and to establish that the company's statutory auditors are aware of that information.

(2) In this section "relevant audit information" means information needed by the company's statutory auditors in connection with preparing their report.

35 (3) A director is regarded as having taken all the steps that he or she ought to have taken as a director in order to do the things mentioned in *subsection (1)(b)* if he or she has—

40 (a) made such enquiries of his or her fellow directors (if any) and of the company's statutory auditors for that purpose; and

(b) taken such other steps (if any) for that purpose,

as are required by his or her duty as a director of the company to exercise reasonable care, skill and diligence.

45 (4) Nothing in this section shall be read as reducing in any way the statutory and professional obligations of the statutory auditors in relation to forming their opinion on the matters specified in *section 337*.

(5) Where a directors' report containing the statement required by this section is approved in accordance with *section 333* but the statement is false, every director of the company who—

(a) knew that the statement was false, or was reckless as to whether it was false; and 5

(b) failed to take reasonable steps to prevent the report from being so approved,

shall be guilty of a category 2 offence.

Directors' report: copy to be included of any notice issued under certain banking legislation.

**332.**—The directors' report shall contain a copy of any Disclosure Notice issued in respect of the company under section 33AK (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003 and amended by the Central Bank Reform Act 2010) of the Central Bank Act 1942 during the financial year to which the report relates. 10

Approval and signing of directors' report.

**333.**—(1) The directors' report and, where applicable, the group directors' report shall be approved by the board of directors making the report and signed on their behalf by 2 directors, where there are 2 or more directors. 15

(2) Without prejudice to the generality of *section 11* and its application to the other provisions of this section, where the company has a sole director *subsection (1)* operates to require that director to approve and sign the report or reports concerned. 20

(3) Every copy of every directors' report which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the names of the persons who signed it on behalf of the board of directors. 25

(4) If any copy of a directors' report is—

(a) laid before the members, or otherwise issued, circulated or published without the report (the original of it as distinct from the copy) having been signed as required by this section or without the required statement of the signatory's name on the copy being included; or 30

(b) delivered to the Registrar without the report (the original of it as distinct from the copy) having been signed as required by this section or without the required statement of the signatory's name on the copy being included, 35

the company and any officer of it who is in default shall be guilty of a category 3 offence.

(5) In *subsection (4)* "officer" includes any shadow director and *de facto* director. 40

## CHAPTER 10

### *Obligation to have statutory financial statements audited*

Statutory financial statements must be audited (unless audit exemption availed of).

**334.**—The directors of a company shall arrange for the statutory financial statements of the company for a financial year to be audited

by statutory auditors unless the company is entitled to, and chooses to avail itself of, the audit exemption.

5 **335.**—(1) Any member or members of a company holding shares in the company that confer, in aggregate, not less than one-tenth of the total voting rights in the company may serve a notice in writing on the company stating that that member or those members do not wish the audit exemption to be available to the company in a financial year specified in the notice.

Right of members to require audit despite audit exemption otherwise being available.

10 (2) A notice under *subsection (1)* may be served on the company either—

(a) during the financial year immediately preceding the financial year to which the notice relates; or

(b) during the financial year to which the notice relates (but not later than 1 month before the end of that year).

15 (3) The reference in *subsection (1)* to a voting right in a company shall be read as a reference to a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances.

20 (4) For the avoidance of doubt, the reference in *subsection (1)* to the one or more members not wishing the audit exemption to be available to the company in a specified financial year is, if the company is a subsidiary undertaking, a reference to their not wishing the audit exemption to be available to the subsidiary undertaking  
25 irrespective of whether its holding company and any other undertakings in the group avail themselves of the audit exemption in that year.

(5) In this section “audit exemption” does not include the dormant company audit exemption referred to in *section 366*.

30 **336.**—(1) If a company avails itself of the audit exemption in a financial year, the balance sheet prepared by the company in respect of that year shall contain a statement by the directors of the company that, in respect of that year—

Statement to be included in balance sheet if audit exemption availed of.

35 (a) the company is availing itself of the audit exemption (and the exemption shall be expressed to be “the exemption provided for by *Chapter 15 of Part 6 of the Companies Act 2012*”);

40 (b) the company is availing itself of the exemption on the grounds that the conditions specified in *section 359(6)* or (7), as appropriate, are satisfied;

(c) no notice under *subsection (1)* of *section 335* has, in accordance with *subsection (2)* of that section, been served on the company; and

45 (d) the directors acknowledge the obligations of the company, under this Act, to—

(i) keep adequate accounting records and prepare financial statements which give a true and fair view of the

assets, liabilities and financial position of the company at the end of its financial year and of its profit or loss for such a year; and

- (ii) otherwise comply with the provisions of this Act relating to financial statements so far as they are applicable to the company. 5

(2) The statement required by *subsection (1)* shall appear in the balance sheet in a position immediately above the signatures of the directors required by *section 325* or, as the case may be, the statement required by *section 356*. 10

(3) If *subsection (1)* or *(2)* is not complied with, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(4) If the company referred to in *subsection (1)* is a holding company that prepares group financial statements for the financial year concerned, that subsection shall be read as applying both to its entity balance sheet and its group balance sheet. 15

(5) Where—

- (a) the audit exemption, as referred to in *section 359(2)*, applies to a group; and 20

- (b) any subsidiary undertaking in that group relies on that exemption (and does not have its statutory financial statements for the year concerned audited in consequence),

references in this section to a company availing itself of the audit exemption shall be read, as respects that subsidiary undertaking, as including references to such an undertaking and *subsection (3)* shall be read accordingly. 25

(6) In this section “audit exemption” does not include the dormant company audit exemption referred to in *section 366* but that section makes similar provision, by applying and adapting its terms, to that made by this section. 30

## CHAPTER 11

### *Statutory auditors’ report*

Statutory auditors’  
report on statutory  
financial statements.

**337.**—(1) The report required by *section 392* to be made by the statutory auditors of a company on statutory financial statements to be laid before the company in general meeting shall comply with the requirements of this section. 35

(2) The statutory auditors’ report shall include—

- (a) an introduction identifying the entity financial statements, and where appropriate, the group financial statements, that are the subject of the audit and the financial reporting framework that has been applied in their preparation; and 40

- (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted. 45

(3) The statutory auditors' report shall state clearly the statutory auditors' opinion as to—

(a) whether the statutory financial statements give a true and fair view—

5 (i) in the case of an entity balance sheet, of the assets, liabilities and financial position of the company as at the end of the financial year;

(ii) in the case of an entity profit and loss account, of the profit or loss of the company for the financial year;

10 (iii) in the case of group financial statements, of the assets, liabilities and financial position as at the end of the financial year and of the profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns the members of  
15 the company;

(b) whether the statutory financial statements have been properly prepared in accordance with the relevant financial reporting framework and, in particular, with the requirements of this Act (and, where applicable, Article 4 of the  
20 IAS Regulation).

(4) The statutory auditors' report shall also state—

(a) whether they have obtained all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit;

25 (b) whether, in their opinion, the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited;

(c) whether, in their opinion, information and returns adequate for their audit have been received from  
30 branches of the company not visited by them; and

(d) in the case of entity financial statements, whether the company's balance sheet and, except where the exemption in *section 305* is availed of, the profit and loss account are in agreement with the accounting records and returns.

35 (5) The statutory auditors' report shall state whether, in their opinion, the information given in the directors' report for the financial year is consistent with the statutory financial statements.

(6) The statutory auditors' report shall—

40 (a) in relation to each matter referred to in *subsections (3) to (6)* contain a statement or opinion, as the case may be, which shall be either—

(i) unqualified; or

(ii) qualified;

and

(b) include a reference to any matters to which the statutory auditors wish to draw attention by way of emphasis without qualifying the report.

(7) For the purposes of *subsection (6)(a)(ii)*, a statement or opinion may be qualified, including to the extent of an adverse opinion or a disclaimer of opinion, where there is a disagreement or limitation in scope of work. 5

(8) If, in the case of any statutory financial statements, the requirements of any of *sections 306 to 313* are not complied with, the statutory auditors of the company by whom the statutory financial statements are examined shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars. 10

(9) Where the entity financial statements of a holding company are combined with (that is to say, associated with) the group financial statements, the statutory auditors' report on the group financial statements shall be so combined with the report on the entity financial statements. 15

Signature of statutory auditor's report.

**338.**—(1) The report of the statutory auditor shall state the name of the statutory auditor and be signed, as provided for in *subsection (2)*, and bear the date of the signature or signatures. 20

(2) Where the auditor is—

(a) a statutory auditor (within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010)), the report shall be signed by that person; or 25

(b) a statutory audit firm (within the meaning of the foregoing Regulations), the report shall be signed by—

(i) the statutory auditor (or, where more than one, each statutory auditor) designated by the statutory audit firm for the particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm; or 30

(ii) in the case of a group audit, at least the statutory auditor (or, where more than one, each statutory auditor) designated by the statutory audit firm as being primarily responsible for carrying out the statutory audit at the level of the group, 35

in his or her own name, for and on behalf of, the audit firm. 40

(3) Every copy of the report of the statutory auditor which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the name of the statutory auditor or auditors and bear their signature and the date of the latter.

(4) The copy of the statutory auditor's report which is delivered to the Registrar shall state the name of the statutory auditor or auditors and bear their signature (in the typeset form specified in *section 348(2)*) and the date of the signature. 45

(5) If a copy of a statutory auditor's report—

5 (a) is laid before the members, or otherwise issued, circulated or published without the report (the original of it as distinct from the copy) being signed and dated as required by this section, or without the copy including the required statement of the statutory auditor's or auditors' name and the other particulars specified in *subsection (2)*; or

10 (b) is delivered to the Registrar without the report (the original of it as distinct from the copy) being signed and dated as required by this section, or without the copy including the required statement of the statutory auditor's or auditors' name and the other particulars specified in *subsection (3)*,

the company and any officer of it who is in default shall be guilty of a category 3 offence.

15 (6) In *subsection (5)* "officer" includes any shadow director and *de facto* director.

## CHAPTER 12

### *Publication of financial statements*

20 **339.**—(1) A copy of each of the documents specified in *subsection (2)* concerning the company there referred to shall be sent to— Circulation of statutory financial statements.

(a) every member of the company (whether that person is or is not entitled to receive notices of general meetings of the company);

25 (b) every holder of debentures of the company (whether that person is or is not so entitled); and

(c) all persons, other than members or holders of debentures of the company, who are so entitled,

30 not less than 21 days before the date of the meeting of the company at which copies of those documents are to be laid in accordance with *section 342*.

(2) The documents referred to in *subsection (1)* are—

(a) the statutory financial statements of a company for the financial year concerned;

35 (b) the directors' report in relation to it, including any group directors' report, for that financial year;

(c) the statutory auditors' report on those financial statements and that directors' report.

40 (3) If the copies of the documents referred to in *subsection (1)* are sent less than 21 days before the date of the meeting referred to in that subsection they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

45 (4) References in this section to sending to any person copies of the documents specified in *subsection (2)* include references to using electronic communications for sending copies of those documents to

such address as may for the time being be notified to the company by that person for that purpose.

(5) Unless the company's constitution provides otherwise, copies of the foregoing documents are also to be treated, for the purposes of this section, as sent to a person where— 5

- (a) the company and that person have agreed to his or her having access to the documents on a website (instead of their being sent to him or her);
- (b) the documents are documents to which that agreement applies; and 10
- (c) that person is notified, in a manner for the time being agreed for the purpose between him or her and the company, of—
  - (i) the publication of the documents on a website,
  - (ii) the address of that website, and 15
  - (iii) the place on that website where the documents may be accessed, and how they may be accessed.

(6) For the purposes of this section documents treated in accordance with *subsection (5)* as sent to any person are to be treated as sent to him or her not less than 21 days before the date of a meeting if, and only if— 20

- (a) the documents are published on the website throughout a period beginning at least 21 days before the date of the meeting and ending with the conclusion of the meeting; and 25
- (b) the notification given for the purposes of *paragraph (c)* of that subsection is given not less than 21 days before the date of the meeting.

(7) Nothing in *subsection (6)* shall invalidate the proceedings of a meeting where— 30

- (a) any documents that are required to be published as mentioned in *paragraph (a)* of that subsection are published for a part, but not all, of the period mentioned in that paragraph; and
- (b) the failure to publish those documents throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid. 35

(8) Where copies of documents are sent out under this section over a period of days, references elsewhere in this Act to the day on which those copies are sent out shall be read as references to the last day of that period. 40

(9) If default is made in complying with this section, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence. 45

(10) In *subsection (9)* "officer" includes any shadow director and *de facto* director.

340.—(1) Any member of a company and any holder of debentures of the company shall be entitled to be furnished by the company, on demand and without charge, with a copy of—

Right to demand copies of financial statements and reports.

- 5
- (a) the company's statutory financial statements for the most recent financial year;
  - (b) the directors' report for that year; and
  - (c) the statutory auditors' report for that year on those financial statements and that directors' report.

10 (2) If the group financial statements do not deal with a subsidiary undertaking of the company, any member of the company shall be entitled to demand to be furnished by the company, without charge, with a copy of the statutory financial statements of such subsidiary undertaking for the most recent financial year which have been sent to the members of that subsidiary undertaking, together with a copy of the directors' and statutory auditors' reports.

15

(3) Without prejudice to *subsection (2)* but subject to *subsection (4)*, any member of the company shall be entitled to be furnished, within 14 days after the date on which he or she has made a demand in that behalf to the company, with a copy of any statutory financial statement (including every document required by law to be annexed thereto and a copy of the directors' and auditors' reports) of any subsidiary undertaking of the company laid before any annual general meeting of such subsidiary undertaking, at a charge not exceeding €3.00 for each financial year's financial statements so furnished.

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25

(4) A member shall not be entitled to be furnished with a copy of any statements referred to in *subsection (3)* laid before an annual general meeting held more than 10 years before the date on which the demand under that subsection is made.

30 (5) Copies of financial statements need not be sent to any member of a company if, on the application either of the company or of any person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused and orders that such copies need not be sent.

35 (6) The court may order the company's costs on such an application to be paid in whole or in part by the member whose demands for copies of statements are the subject of the application to the court.

40 (7) Any obligation by virtue of *subsection (1)* or *(2)* to furnish a person with a document may, unless the company's constitution provides otherwise, be complied with by using electronic communications for sending that document to such address as may for the time being be notified to the company by that person for that purpose.

45 (8) If a demand made under this section by a member of a company is not complied with within 14 days after the date on which the demand is made then (unless it is proved that the member has already made a demand for and been furnished with a copy of the financial statements for the financial year concerned) the company and any officer of it who is in default shall be guilty of a category 3 offence.

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(9) In the case of any default under this section, the court may direct that the copies demanded shall be sent to the member demanding them.

(10) In *subsection (8)*, “officer” includes any shadow director and *de facto* director.

5

Requirements in relation to publication of financial statements.

**341.**—(1) If a company publishes its statutory financial statements, it shall also publish with those statutory financial statements any directors’ report prepared in accordance with *section 326* and any statutory auditors’ report made under *section 392* in the form required by *section 337*.

10

(2) Where a company is required to prepare group financial statements for a financial year, it shall not publish entity financial statements for that year unless they are combined with the group financial statements and published together as the statutory financial statements of the company.

15

(3) Where a company publishes its abridged financial statements prepared in accordance with *section 354* or *355*, it shall also publish with those abridged financial statements any report in relation to those abridged financial statements specified in *section 357* and, if the statutory auditors of the company have refused to provide the directors of the company with a report under that section, an indication of the refusal.

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(4) If a company publishes non-statutory financial statements (and that expression shall be read as including any abbreviated accounts relating to any period), it shall also publish a statement indicating—

25

(a) the reason for the preparation of the non-statutory financial statements;

(b) that the non-statutory financial statements are not the statutory financial statements of the company;

30

(c) whether statutory financial statements dealing with any financial year with which the non-statutory financial statements purport to deal have been annexed to the annual return and delivered to the Registrar and, if not, an indication of when they are likely to be so delivered;

35

(d) whether the statutory auditors of the company have made a report under *section 392* in the form required by *section 337* in respect of the statutory financial statements of the company which relate to any financial year with which the non-statutory financial statements purport to deal;

40

(e) whether any matters referred to in the statutory auditors’ report were qualified or unqualified, or whether the statutory auditors’ report included a reference to any matters to which the statutory auditors drew attention by way of emphasis without qualifying the report.

45

(5) Where a company publishes non-statutory financial statements, it shall not publish with those financial statements any such statutory auditors’ report as is mentioned in *subsection (4)(d)*.

(6) Where a holding company publishes non-statutory entity financial statements dealing with the company alone (as distinct from

50

the company and its subsidiary undertakings), it shall indicate in a note to those financial statements whether or not group financial statements have been prepared for that period and, if so, where they can be obtained.

5 (7) If a company fails to comply with any of *subsections (1) to (6)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(8) In *subsection (7)* “officer” includes any shadow director and *de facto* director.

10 **342.**—(1) The directors of a company shall, in respect of each financial year, lay before the company in general meeting copies of—

Financial statements and reports to be laid before company in general meeting.

(a) the statutory financial statements of the company for the financial year;

15 (b) the directors’ report, including any group directors’ report, for the financial year;

(c) the statutory auditors’ report on those financial statements and that directors’ report.

20 (2) Those financial statements and those reports of the directors and the statutory auditors for a financial year shall be so laid not later than 9 months after the financial year end date.

(3) The statutory auditors’ report shall be open to inspection by any member at the general meeting.

25 (4) Where *section 176(3)* (dispensing with the holding of an annual general meeting) is availed of, then *subsections (1) and (3)* shall be disregarded and *subsection (2)* shall apply as if the reference in it to the laying of financial statements by the time referred to in that subsection were a reference to those statements being provided, by that time, to all the members (entitled to attend and vote at an annual general meeting) for the purpose of their signing the written  
30 resolution referred to in *section 176(3)*.

## CHAPTER 13

### *Annual return and documents annexed to it*

35 **343.**—In this Act “annual return” means a return that, in accordance with the provisions of this Part, has to be made by a company to the Registrar in respect of successive periods as determined in accordance with those provisions.

Annual return.

40 **344.**—(1) In this section “annual return date”, in relation to a company, means the date in relation to that company as provided under *section 346* and “first annual return date”, in relation to a company, shall be read accordingly.

Obligation to make annual return.

(2) Subject to the provisions of this section, a company shall deliver to the Registrar an annual return in accordance with *subsection (4)* not later than 28 days after the annual return date of the company.

(3) However, if the annual return is made up to an earlier date than the company's annual return date, it shall be so delivered not later than 28 days after that earlier date.

(4) An annual return of a company shall—

(a) be in the prescribed form and contain the prescribed information; and 5

(b) be made up to a date that is not later than its annual return date,

except that the first annual return falling to be made by a company after it is incorporated shall be made up to the date that is its first annual return date. 10

(5) The court, on an application made (on notice to the Registrar) by a company, may, if it is satisfied that it would be just to do so, make an order extending the time for the purposes of *subsection (2)* or *(3)* in which the annual return of the company in relation to a particular period may be delivered to the Registrar; only one such order may be made as respects the particular period to which the return concerned of the company relates. 15

(6) Within 28 days after the date on which an order under *subsection (5)* is made, or such longer period as the court may allow on the making of the order, the company to which the order relates shall deliver a certified copy of the order to the Registrar; if the order is not received by the Registrar within whichever foregoing period is applicable it shall not be valid for the purposes of *subsection (5)*. 20

(7) The court for the purposes of *subsection (5)* shall be the District Court for the district court area where the registered office of the company is located or the High Court. 25

(8) *Subsection (2)* shall not apply in respect of any annual return date that falls during a period when the company is in the course of being wound up and a liquidator stands appointed to it. 30

(9) *Subsection (2)* shall not apply in respect of any annual return date that falls during a period when the company is in the course of being voluntarily struck off the register by the Registrar pursuant to *sections 732 to 734* unless the company is restored to the register subsequent to its having been dissolved on foot of that procedure. 35

(10) If a company fails to comply with the requirements of this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(11) In *subsection (10)* “officer” includes any shadow director and *de facto* director. 40

**345.—(1)** In this section—

“electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in *sections 12(2)(b)* and *13(2)(a)* of that Act; 45

“required documents” means the documents referred to in *section 348* or, as the case may be, both that section and *section 349*;

Special provision for annual return delivered in a particular form.

“required period” means the period referred to in *section 344(2)* or *(3)*, as the case may be, or, where that period stands extended in accordance with *section 344(5)* and *(6)*, that period as it stands so extended.

5 (2) Where a company makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that none of the required documents have been annexed to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing  
10 documents annexed to it if those documents are delivered to the Registrar within 28 days after the date on which the annual return has been delivered to the Registrar by electronic means.

**346.**—(1) Unless it is altered by the company or the Registrar in accordance with *section 347*, the annual return date of a company in  
15 any year shall be the date determined by this section. Annual return date.

(2) In the case of a company incorporated before the commencement of this section—

20 (a) the company’s existing annual return date (as determined in accordance with the prior Companies Acts) shall be taken to be its annual return date falling next after that commencement; and

(b) the annual return date of the company, in each subsequent year, shall be the anniversary of the date referred to in *paragraph (a)*.

25 (3) In the case of a company incorporated on or after the commencement of this section—

(a) the first annual return date of the company shall be the date 6 months after the date of its incorporation; and

30 (b) the annual return date of the company, in each subsequent year, shall be the anniversary of its first annual return date.

**347.**—(1) Where the annual return of a company is made up in any year to a date earlier than its annual return date, the company’s annual return date shall thereafter be each anniversary of the date  
35 to which that annual return is made up unless the company— Alteration of annual return date.

(a) elects in the annual return to retain its existing annual return date; or

(b) establishes a new annual return date in accordance with *subsection (2)*,

40 but, for the avoidance of doubt, an election under *paragraph (a)* does not operate to make the next annual return date of the company fall in any year other than in the year in which it would have fallen had the election not been made.

45 (2) Subject to *subsections (3)* and *(4)*, a company may establish a new annual return date by delivering an annual return to the Registrar, in accordance with *section 344*, made up to a date falling in the 6 months preceding its existing annual return date, to which return

shall be annexed a statement in the prescribed form nominating the new annual return date.

(3) The new annual return date established pursuant to *subsection (2)* shall be a date falling within the period of 6 months following the existing annual return date. 5

(4) Where a company has established a new annual return date pursuant to *subsection (2)*, it shall not establish a further new annual return date pursuant to that subsection until at least 5 years have elapsed since the establishment of the first-mentioned new annual return date. 10

(5) Where it appears to the Registrar desirable for a holding company or a holding company's subsidiary undertaking to extend its annual return date so that the subsidiary undertaking's annual return date may correspond with that of the holding company, the Registrar may, on the application or with the consent of the directors of the company or undertaking whose annual return date is to be extended, direct that an extension is to be permitted in the case of that company or undertaking. 15

(6) Where the annual return date of a company or subsidiary undertaking in a year is altered pursuant to *subsection (2)* or *(5)*, its annual return date thereafter shall be each anniversary of the date so altered, but subject to any subsequent invocation, in accordance with their terms, of the preceding provisions of this section. 20

Documents to be annexed to annual return: all cases.

**348.**—(1) Subject to the provisions of this Part, there shall be annexed to the annual return a copy of the following documents laid or to be laid before the general meeting of the company held during the period to which the annual return relates— 25

(a) the statutory financial statements of the company so laid (or to be so laid);

(b) the directors' report, including any group directors' report, so laid (or to be so laid); and 30

(c) the statutory auditors' report on those financial statements and that directors' report.

(2) The reference in *subsection (1)* to a copy of a document is a reference to a copy that satisfies the following conditions— 35

(a) it is a true copy of the original save for the difference that the signature or signatures on the original shall appear in typeset, and not written, form on the copy; and

(b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and one such certificate relating to all of the documents mentioned in *subsection (1)* suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature). 40 45

(3) Where any document referred to in *subsection (1)* that has been annexed to the annual return is in a language other than the English language or the Irish language, there shall be annexed to each such document a translation of it in the English language or the 50

Irish language certified in the prescribed manner to be a correct translation.

(4) Every document annexed to the annual return in accordance with *subsection (1)* shall cover the period—

5 (a) in the case of the first annual return to which such documents are annexed — since the incorporation of the company; and

10 (b) in any other case — since the end of the period covered by the statutory financial statements annexed to the preceding annual return,

and shall be made up to a date falling not more than 9 months before the date to which the annual return is made up.

15 (5) If a company fails to comply with *subsection (1)*, (3) or (4), the company and any officer of it who is in default shall be guilty of a category 3 offence.

(6) In *subsection (5)* “officer” includes any shadow director and *de facto* director.

20 **349.**—(1) Where a holding company that prepares Companies Act financial statements has availed itself of the exemption in *section 300* (subsidiary undertaking of higher EEA holding undertaking) and does not prepare group financial statements because it has relied on the following consolidated accounts and annual report prepared by a higher holding undertaking in which it and all of its subsidiary undertakings are consolidated, the holding company shall annex to  
25 its annual return a copy of the following documents—

Documents to be annexed to annual returns: certain cases.

(a) the consolidated accounts referred to in *section 300(4)(a)*;

(b) the consolidated annual report referred to in *section 300(4)(b)*; and

30 (c) the report of the person responsible for auditing the consolidated accounts referred to in *section 300(4)(a)*.

(2) Where a holding company that prepares Companies Act financial statements has availed itself of the exemption in *section 301* (subsidiary undertaking of higher non-EEA holding undertaking) and does not prepare group financial statements because it has relied  
35 on the following consolidated accounts and any annual report prepared by a higher holding undertaking in which it and all of its subsidiary undertakings are consolidated, the holding company shall annex to its annual return a copy of the following documents—

(a) the consolidated accounts referred to in *section 301(4)(a)*;

40 (b) any consolidated annual report referred to in *section 301(4)(b)*; and

(c) the report of the person or persons responsible for auditing the accounts referred to in *paragraph (a)*, being the person or persons mentioned in *section 301(4)(c)*.

45 (3) Where a holding company that prepares IFRS financial statements has availed itself of the exemptions in IFRS and does not

prepare group financial statements because it has relied on consolidated accounts and an annual report prepared by its higher holding undertaking in which it and all of its subsidiary undertakings are consolidated, the holding company shall annex to its annual return a copy of the following documents— 5

- (a) the consolidated accounts on which it has so relied;
- (b) the consolidated annual report of the higher holding undertaking; and
- (c) the report of the person or persons auditing those accounts on those accounts and that annual report. 10

(4) Where a company has relied on the exemption in *section 317(1)* regarding information on related undertakings, the company shall annex to the annual return to which the statutory financial statements referred to in that provision are annexed the full information concerned, that is say— 15

- (a) the information referred to in *section 317(1)*; and
- (b) the information referred to in *section 315(1)* and (2), not falling within *paragraph (a)*, that it would have disclosed in the notes to those statements but for its reliance on that exemption. 20

(5) Where any document required to be annexed to the annual return by this section is in a language other than the English language or the Irish language, there shall be annexed to the copy of that document delivered a translation of it into the English language or the Irish language, certified in the prescribed manner to be a correct translation. 25

(6) If a company fails to comply with any of *subsections (1) to (5)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(7) The reference in *subsection (1), (2) or (3)* to a copy of a document is a reference to a copy that satisfies the following conditions— 30

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original shall appear in typeset, and not written, form on the copy; and
- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and one such certificate relating to all of the documents mentioned in *subsection (1), (2) or (3)*, as the case may be, suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature). 35 40

(8) In *subsection (6)* “officer” includes any shadow director and *de facto* director. 45

First annual return: exception from requirement to annex statutory financial statements.

**350.**—Notwithstanding anything to the contrary in this Act, a company shall not be required to annex statutory financial statements, or the other documents referred to in *section 348(1)*, to the first

annual return falling to be made by the company after it is incorporated.

## CHAPTER 14

### 5 *Exclusions, exemptions and special arrangements with regard to public disclosure of financial information*

**351.**—(1) In this section “qualifying conditions” means the conditions referred to in *subsection (5)* or *(6)*, as appropriate.

Qualification of company as small or medium company.

10 (2) A company that is not excluded by *subsection (11)* qualifies as a small company or a medium company in relation to its first financial year if the qualifying conditions are satisfied in respect of that year.

(3) A company that is not excluded by *subsection (11)* qualifies as a small company in relation to a subsequent financial year—

15 (a) if the qualifying conditions are satisfied in respect of that year and the preceding financial year;

(b) if the qualifying conditions are satisfied in respect of that year and the company qualified as a small company in relation to the preceding financial year;

20 (c) if the qualifying conditions were satisfied in the preceding financial year and the company qualified as a small company in relation to that year.

(4) A company that is not excluded by *subsection (11)* qualifies as a medium company in relation to a subsequent financial year—

25 (a) if the qualifying conditions are satisfied in respect of that year and the preceding financial year;

(b) if the qualifying conditions are satisfied in respect of that year and the company qualified as a medium company in relation to the preceding financial year;

30 (c) if the qualifying conditions were satisfied in the preceding financial year and the company qualified as a medium company in relation to that year.

(5) The qualifying conditions for a small company are satisfied by a company in relation to a financial year in which it fulfils 2 or more of the following requirements—

35 (a) the amount of the turnover of the company does not exceed €8.8 million;

(b) the balance sheet total of the company does not exceed €4.4 million;

40 (c) the average number of employees of the company does not exceed 50.

(6) The qualifying conditions for a medium company are satisfied by a company in relation to a financial year in which it fulfils 2 or more of the following requirements—

- (a) the amount of the turnover of the company does not exceed €20 million;
- (b) the balance sheet total of the company does not exceed €10 million;
- (c) the average number of employees of the company does not exceed 250. 5

(7) In this section “amount of the turnover”, in relation to a company, means the amount of the turnover shown in the company’s profit and loss account.

(8) In the application of this section to any period which is a financial year but is not in fact a year, the amounts specified in *subsections (5)(a) and (6)(c)* shall be proportionately adjusted. 10

(9) In this section “balance sheet total”, in relation to a company, means the aggregate of the amounts shown as assets in the company’s balance sheet. 15

(10) For the purposes of *subsections (5)(c) and (6)(c)*, the average number of employees of a company shall be determined by applying the method of calculation prescribed by *section 318* for determining the number required by *subsection (1)(a)* of that section to be stated in a note to the financial statements of a company. 20

(11) This section shall not apply to a company if it is—

- (a) a holding company that prepares group financial statements; or
- (b) a company falling within any provision (in so far as applicable to a private company limited by shares) of *Schedule 5*. 25

Exemptions in respect of directors’ report in the case of small and medium companies.

**352.**—A company that qualifies as a small or medium company in accordance with *section 351* is exempt from the requirement in—

- (a) *section 327(3)* to give information in its director’s report for the period concerned regarding the use of financial instruments during that period; and 30
- (b) *section 328(3)* to provide in its directors’ report for the period concerned an analysis of key performance indicators during that period.

Exemption from filing certain information for small and medium companies.

**353.**—(1) The exemption in *subsection (2)* is available to a company that qualifies as a small or medium company in accordance with *section 351*. 35

(2) That exemption is an exemption from the requirement in *section 348* to annex to the company’s annual return the following documents— 40

- (a) the statutory financial statements of the company;
- (b) in the case of a small company, the directors’ report; and
- (c) the statutory auditors’ report on those financial statements and that directors’ report.

(3) If a company that qualifies as a small company avails itself of the exemption provided by this section, it shall instead annex to its annual return a copy of each of the following documents—

- 5 (a) abridged financial statements prepared in accordance with *section 354* and which have been approved and signed in accordance with *section 356*;
- (b) the information referred to in *section 330* that is required to be stated in the directors' report and extracted therefrom; and
- 10 (c) a special statutory auditors' report prepared in accordance with *section 357*.

(4) If a company that qualifies as a medium company avails itself of the exemption provided by this section, it shall instead annex to its annual return a copy of each of the following documents—

- 15 (a) abridged financial statements prepared in accordance with *section 355* and which have been approved and signed in accordance with *section 356*;
- (b) the directors' report prepared in accordance with *section 326*; and
- 20 (c) a special statutory auditors' report prepared in accordance with *section 357*.

(5) The reference in *subsection (3)* or *(4)* to a copy of a document is a reference to a copy that satisfies the following conditions—

- 25 (a) it is a true copy of the original save for the difference that the signature or signatures on the original shall appear in typeset, and not written, form on the copy; and
- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and one such certificate relating to all of the documents mentioned in *subsection (3)* or *(4)*, as the case may be, suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature).
- 30
- 35

**354.**—(1) For the purposes of *section 353*, the abridged financial statements of a company that qualifies as a small company shall, in the manner set out in this section, be extracted from the statutory financial statements of the company prepared under *section 291*.

Abridged financial statements for a small company.

40 (2) Where the statutory financial statements of the company are IFRS financial statements, the abridged financial statements shall comprise—

- (a) the balance sheet of the company;
- 45 (b) those notes to the financial statements that provide the information required by *sections 306* to *322*; and
- (c) those notes to the financial statements that provide the following information—

- (i) information in relation to the maturity of non-current liabilities; and
- (ii) details of any security given in respect of those liabilities.

(3) Where the statutory financial statements of the company are Companies Act financial statements, the abridged financial statements shall comprise— 5

- (a) the balance sheet of the company;
- (b) those notes to the financial statements that provide the information required by *sections 306 to 322*; 10
- (c) those notes to the financial statements that provide the information required by *paragraphs 52, 53, 57, 58 and 68 of Schedule 3*; and
- (d) if not shown separately on the face of the balance sheet, the total amounts falling due within one year and after one year shall be shown separately for item B.II (Debtors) if the balance sheet is prepared in accordance with Format 1 and items B.II (Debtors) and C (Creditors) if the balance sheet is prepared in accordance with Format 2 in *Schedule 3*. 15 20

(4) *Section 275(3)* (references to balance sheet to include certain notes) does not apply to this section.

Abridged financial statements for a medium company.

**355.**—(1) For the purposes of *section 353* the abridged financial statements of a company that qualifies as a medium company shall be the same as the statutory financial statements of the company prepared under *section 291* except that the profit and loss account and notes may be abridged in the manner set out in this section. 25

(2) Where the statutory financial statements of the company are IFRS financial statements an abridged income statement which combines as one item under the heading “gross profit or loss” the company’s revenue and certain expenses for the period may be extracted from the income statement prepared in accordance with international financial reporting standards. 30

(3) For the purposes of *subsection (2)*, the following provisions apply as regards the combination of expenses as one item with the revenue of the company: 35

- (a) where the expenses are classified by function, only those expenses classified as “cost of sales” may be so combined, and
- (b) where the expenses are classified by nature, only changes in finished goods and work-in-progress and raw materials and consumables used may be so combined. 40

(4) For the purposes of *subsection (2)*, the notes to the statutory financial statements may be abridged such that items that are combined on the face of the income statement are not separately identified in the notes. 45

(5) Where the statutory financial statements of the company are Companies Act financial statements an abridged profit and loss

account which combines as one item under the heading “gross profit or loss” the company’s turnover and certain expenses for the period may be extracted from the profit and loss account prepared in accordance with *section 292*.

5 (6) For the purpose of *subsection (5)*, the turnover and expenses that may be combined as one item are—

(a) items 1, 2, 3 and 6 in Format 1 of the profit and loss account formats set out in *Schedule 3*;

10 (b) items 1 to 5 in Format 2 of those profit and loss account formats;

(c) items A.1, B.1 and B.2 in Format 3 of those profit and loss account formats;

(d) items A.1, A.2 and B.1 to B.4 in Format 4 of those profit and loss account formats.

15 (7) For the purpose of *subsection (5)*, the notes to the statutory financial statements may be abridged such that items that are combined on the face of the income statement are not separately identified in the notes and in particular the information required by *paragraph 65* of *Schedule 3* need not be given.

20 (8) *Section 275(4)* (references to profit and loss account to include certain notes) does not apply to this section.

25 **356.**—(1) Where the directors of a company are satisfied that the requirements of *section 354* or *355*, as appropriate, have been complied with as regards the preparation of the abridged financial statements, those financial statements shall be approved by the board of directors and signed on their behalf by 2 directors, where there are 2 or more directors.

Approval and signing of abridged financial statements.

30 (2) Without prejudice to the generality of *section 11* and its application to the other provisions of this section, where the company has a sole director *subsection (1)* operates to require that director, if he or she is satisfied as to the matters referred to in that subsection in respect of the statements, to approve and sign the abridged financial statements.

35 (3) In addition to the preceding requirements, there shall be included the following statement on the face of the abridged balance sheet, namely a statement by the directors of the company that—

(a) they have relied on the specified exemption contained in *section 353*;

40 (b) they have done so on the ground that the company is entitled to the benefit of that exemption as a small company or (as the case may be) as a medium company; and

(c) the abridged financial statements have been properly prepared in accordance with *section 354* or *355*, as appropriate.

45 (4) The signatures or signature required by *subsection (1)* or *(2)*, as the case may be, shall be inserted on the face of the abridged balance sheet immediately after the statement referred to in *subsection (3)*.

(5) Every copy of every abridged balance sheet which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the names of the persons who signed the balance sheet on behalf of the board of directors.

(6) The following requirements apply to the documents annexed to the annual return under *section 353(3)* or *(4)* and delivered to the Registrar— 5

(a) the copy of the abridged financial statements required by *section 353(3)(a)* or *(4)(a)* shall state the names of the directors who signed the abridged balance sheet on behalf of the board of directors; 10

(b) the information referred to in *section 330* that, as required by *section 353(3)(b)*, has been extracted from the directors' report shall be accompanied by a certificate of the secretary of the company stating that it is a true copy of the information laid before the members in general meeting (and that certificate shall bear the signature of the secretary in written or electronic form); 15

(c) the copy of the directors' report required by *section 353(4)(b)* shall state the names of the directors who signed the report on behalf of the board of directors; 20

(d) the copy of the special statutory auditors' report required by *section 353(3)(c)* or *(4)(c)* shall state the name of the statutory auditors who signed the report and, if different, the name of the statutory auditors who signed the report under *section 392*. 25

(7) If abridged financial statements are approved which have not been prepared in accordance with the requirements of *section 354* or *355*, as the case may be, every director of the company who is party to their approval, and who knows that they have not been so prepared or is reckless as to whether they have been so prepared, shall be guilty of a category 2 offence. 30

(8) For that purpose, every director of the company at the time the abridged financial statements are approved shall be taken to be a party to their approval unless he or she shows that he or she took all reasonable steps to prevent their being approved. 35

(9) If the requirements of *subsection (6)* as regards documents annexed to an annual return under *section 353(3)* or *(4)* are not complied with, the company concerned and any officer of it who is in default shall be guilty of a category 2 offence. 40

(10) In *subsection (9)* "officer" includes any shadow director and *de facto* director.

Special report of the statutory auditors on abridged financial statements.

**357.**—(1) There shall accompany abridged financial statements annexed to the annual return and delivered to the Registrar a special report of the statutory auditors of the company to the directors of it containing— 45

(a) a statement of the statutory auditors with respect to the matters set out in *subsection (2)* on those abridged financial statements; and

(b) a copy of the statutory auditors' report under *section 392* in the form required by *section 337*.

(2) Where—

5 (a) the directors of a company propose to annex to the annual return abridged financial statements for any financial year prepared pursuant to *section 354* or *355*; and

10 (b) the statutory auditors of the company are of opinion that the directors of the company are entitled, for that purpose, to rely on the exemption contained in *section 353* and the abridged financial statements have been properly prepared pursuant to *section 354* or *355*, as the case may be,

15 it shall be the duty of the statutory auditors of the company to state in the special report referred to in *subsection (1)* that, in the opinion of those auditors—

(i) the directors of the company are entitled to annex those abridged financial statements to the annual return; and

(ii) the abridged financial statements so annexed are properly so prepared.

20 (3) The special report prepared by the statutory auditors in accordance with *subsection (1)* shall be signed by them and bear the date of such signing; the requirements of *section 338(2)* with respect to the signing of the report there referred to shall also apply with respect to the signing of the special report.

25 (4) Every copy of the special report of the statutory auditors prepared in accordance with *subsection (1)* that is circulated, published or issued shall state the name of the statutory auditors providing the report and, if different, the names of the statutory auditors who provided the report under *section 392*.

30 (5) If a company fails to comply with *subsection (1)* or (4), the company and any officer of it who is in default shall be guilty of a category 2 offence.

(6) In *subsection (5)* “officer” includes any shadow director and *de facto* director.

35 **358.**—(1) Where a company is a subsidiary undertaking of a holding undertaking that is established under the laws of an EEA state, the company shall, as respects any particular financial year of the company, stand exempted from the provisions of *sections 348* and *349* if, but only if, the following conditions are satisfied—

Subsidiary undertakings exempted from annexing their statutory financial statements to annual return.

40 (a) every person who is a shareholder of the company on the date of the holding of the next annual general meeting of the company after the end of that financial year or on the next annual return date of the company after the end of that financial year, whichever is the earlier, shall declare his or her consent to the exemption;

45

(b) there is in force in respect of the whole of that financial year an irrevocable guarantee by the holding undertaking

of all amounts shown as liabilities in the statutory financial statements of the company in respect of that financial year;

(c) the company has notified in writing every person referred to in *paragraph (a)* of the guarantee; 5

(d) the statutory financial statements of the company for that financial year are consolidated in the consolidated accounts prepared by the holding undertaking;

(e) the exemption of the company under this section is disclosed in a note to those consolidated accounts; 10

(f) a notice stating that the company has availed itself of the exemption under this section in respect of that financial year together with—

(i) a copy of the guarantee and notification referred to in *paragraphs (b)* and *(c)*; and 15

(ii) a declaration by the company in writing that *paragraph (a)* has been complied with in relation to the exemption,

is annexed to the annual return for the financial year made by the company to the Registrar; 20

(g) the consolidated accounts of the holding undertaking are drawn up in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 or in accordance with international financial reporting standards and are audited in accordance with Article 37 of that Seventh Council Directive; and 25

(h) a copy of the consolidated accounts of the holding undertaking together with the report of the auditors on them are annexed to the annual return of the company referred to in *paragraph (f)*. 30

(2) Where any document referred to in *subsection (1)* that has been annexed to the annual return is in a language other than the English language or the Irish language, there shall be annexed to each such document a translation of it in the English language or the Irish language certified in the prescribed manner to be a correct translation. 35

(3) *Section 300(7)* (construction of certain references) shall apply to *subsection (1)* in a case where the holding undertaking referred to in *subsection (1)* is a company registered under this Act or an existing company. 40

(4) *Section 348(2)* applies for the purpose of the construction of the reference to a copy of a document in *subsection (1)(h)* of this section as it applies for the purpose of the construction of the reference to a copy of a document in *section 348(1)*.

*Audit exemption*

5 **359.**—(1) Subject to this Chapter, *section 361* (audit exemption) applies to a company, not being a holding company or a subsidiary undertaking, in respect of its statutory financial statements for a particular financial year if—

Main conditions for availing of audit exemption.

10 (a) the directors of the company are of the opinion that the company will satisfy the conditions specified in *subsection (6)* in respect of that year (the “particular year”) and decide that the company should avail itself of *section 361* in the particular year (and that decision is recorded by the directors in the minutes of the meeting concerned); and

15 (b) save in a case where the particular year is the first financial year, the company satisfied the conditions specified in *subsection (6)* in respect of the preceding financial year.

20 (2) Subject to this Chapter, *section 361* (audit exemption) applies to a company that is a holding company and to each of its subsidiary undertakings in respect of their respective statutory financial statements for a particular financial year if—

25 (a) the directors of the holding company are of the opinion that the company and all of its subsidiary undertakings will satisfy the conditions specified in *subsection (7)* in respect of that year (the “particular year”) and decide that the company and those undertakings should avail themselves of *section 361* in the particular year (and that decision is recorded by those directors in the minutes of the meeting concerned); and

30 (b) save in a case falling within *subsection (4)* or *(5)*, as appropriate, the company and all those subsidiary undertakings satisfied the conditions specified in *subsection (7)* in respect of the preceding financial year.

35 (3) The reference in *subsection (2)(a)* to a decision that all the subsidiary undertakings should avail themselves of *section 361* shall be read as being subject to *section 335* (right of members to require audit) and, in particular, *subsection (4)* thereof.

(4) *Subsection (2)(b)* does not apply in a case where the particular financial year is the first financial year of the holding company and all of its subsidiary undertakings.

40 (5) In a case where the particular financial year is the first financial year of one or more but not all of that company and its subsidiary undertakings, then *subsection (2)* has effect as if the following were substituted for *paragraph (b)* of it:

45 “(b) those of the foregoing as respects which the particular financial year is not their first financial year (in *subsection (7)(b)* referred to as the ‘relevant bodies’) satisfied the conditions specified in *subsection (7)* in respect of the preceding financial year.”.

(6) The conditions mentioned in *subsection (1)* are that in respect of the year concerned—

- (a) the balance sheet total of the company does not exceed €4.4 million;
- (b) the amount of the turnover of the company does not exceed €8.8 million; and
- (c) the average number of persons employed by the company does not exceed 50.

(7) The conditions mentioned in *subsection (2)* are that—

(a) in respect of the year concerned (not being a year to which *paragraph (b)* applies)—

- (i) the balance sheet total of the holding company and its subsidiary undertakings taken as a whole does not exceed €4.4 million;
- (ii) the amount of the turnover of the holding company and its subsidiary undertakings taken as a whole does not exceed €8.8 million; and
- (iii) the average number of persons employed by the holding company and its subsidiary undertakings taken as whole does not exceed 50,

or

(b) in respect of the year concerned, being a year as respects which *subsection (2)* has, by virtue of *subsection (5)*, effect with the substitution of the *paragraph (b)* of it as set out in the latter subsection—

- (i) the balance sheet total of the relevant bodies taken as a whole does not exceed €4.4 million;
- (ii) the amount of the turnover of the relevant bodies taken as a whole does not exceed €8.8 million; and
- (iii) the average number of persons employed by the relevant bodies taken as a whole does not exceed 50.

Supplemental provisions in relation to *section 359*.

**360.**—(1) A reference in *section 359* or in any subsequent provision of this Chapter (including this section) to a subsidiary undertaking does not include a reference to any undertaking that is not a company registered under this Act or an existing company.

(2) In *section 359(6)* and (7), “balance sheet total”, in relation to a company or undertaking, means the aggregate of the amounts shown as assets in the company’s or the undertaking’s entity balance sheet.

(3) In *section 359(6)* and (7), “amount of the turnover”, in relation to a company or undertaking, means the amount of the turnover shown in the company’s or the undertaking’s entity profit and loss account.

5 (4) For the purpose of *section 359(6)(c)*, *(7)(a)(iii)* and *(7)(b)(iii)*, the average number of persons employed by a company or an undertaking shall be determined by applying the method of calculation prescribed by *section 318* for determining the number required by *subsection (1)* of that section to be stated in a note to the financial statements of a company.

(5) In the application of *section 359* to any period which is a financial year but is not in fact a year, the amount specified in *section 359(6)(b)*, *(7)(a)(ii)* and *(7)(b)(ii)* shall be proportionally adjusted.

10 (6) Each occasion of an amendment of the kind referred to in *subsection (7)* being effected shall operate to enable the Minister to amend, by order, *section 359(6)(a)* and *(b)*, *(7)(a)(i)* and *(ii)* and *(7)(b)(i)* and *(ii)*, by substituting for the total and the amount, respectively, specified in those provisions a greater total and amount (not  
15 being a total or an amount that is greater than the total or amount it replaces by 25 per cent).

(7) The amendment referred to in *subsection (6)* is an amendment of the amount and the total specified in *paragraphs (a)* and *(b)*, respectively, of *section 351(5)*, being an amendment made for the  
20 purpose of giving effect to a Community act.

(8) Nothing in *section 359* nor in any other provision of this Chapter (including this section) prejudices the operation of *Chapter 16* (special audit exemption for dormant companies).

25 **361.**—(1) The following provisions (the “audit exemption”) have effect where, by virtue of *section 359*, this section applies in respect of the statutory financial statements of a company or a group for a particular financial year—

30 (a) without prejudice to *section 385(2)*, *section 334* (obligation to have statutory financial statements audited) shall not apply to the company or group in respect of that financial year; and

(b) unless and until—

35 (i) circumstances, if any, arise in that financial year which result in one or more of the conditions specified in *section 359(6)* or *(7)*, as appropriate, not being satisfied in respect of that year, or

(ii) circumstances otherwise arise by reason of which the company or group is not entitled to the audit exemption in respect of that financial year,

40 the provisions specified in *subsection (2)* shall not apply to the company or group in respect of that year.

(2) The provisions mentioned in *subsection (1)* are those provisions of this Act, being provisions that—

45 (a) confer any powers on statutory auditors or require anything to be done by or to or as respects statutory auditors; or

(b) make provision on the basis of a report of statutory auditors having been prepared in relation to the statutory financial statements of a company in a financial year,

and, without prejudice to the generality of the foregoing, include the provisions specified in the Table to this section in so far, and only in so far, as they make provision of the foregoing kind.

Table

<i>Section 122(3) and (4)</i> (report of statutory auditors on statutory financial statements for purposes of distribution);	5
<i>Section 307(4)</i> (statement of particulars of non-compliance with <i>section 306</i> or <i>307</i> );	
<i>Section 323</i> (disclosure of remuneration for audit, audit-related work and non-audit work);	10
<i>Section 331</i> (statement on relevant audit information);	
<i>Section 337</i> (form of statutory auditors' report);	
<i>Section 338</i> (signature of statutory auditor's report);	
<i>Section 339</i> (circulation of statutory financial statements);	
<i>Section 340</i> (right of members to demand copies of financial statements and reports);	15
<i>Section 341</i> (requirements in relation to publication of financial statements);	
<i>Section 342</i> (financial statements and reports to be laid before company in general meeting);	20
<i>Section 348</i> (documents to be annexed to annual return);	
<i>Section 357</i> (special report on abridged financial statements);	
<i>Section 381</i> and <i>sections 383</i> to <i>386</i> (dealing with appointment of statutory auditors);	25
<i>Sections 391</i> to <i>394</i> (obligations of statutory auditors).	

Audit exemption not available where notice under *section 335* served.

**362.**—(1) Notwithstanding that the conditions specified in *section 359(6)* are satisfied, a company is not entitled to the audit exemption, as referred to in *section 359(1)*, in a financial year if a notice, with respect to that year, is served, under and in accordance with *section 335(1)* and (2), on the company. 30

(2) Notwithstanding that the conditions specified in *section 359(7)* are satisfied—

(a) a holding company and its subsidiary undertakings are not entitled to the audit exemption, as referred to in *section 359(2)*, in a financial year if a notice, with respect to that year, is served, under and in accordance with *section 335(1)* and (2), on the holding company (irrespective of whether such a notice is served under and in accordance with those provisions on one or more of the subsidiary undertakings); 35 40

5 (b) where no such notice has been served, under and in  
accordance with those provisions, on the holding com-  
pany but one has been so served on a subsidiary under-  
taking, then that subsidiary undertaking is not entitled to  
the audit exemption in the year concerned irrespective of  
whether its holding company and any other undertakings  
in the group avail themselves of the audit exemption in  
that year (but this paragraph is not to be read as dimin-  
ishing the extent of the audit exemption, so far as it  
10 relates to the holding company's group financial state-  
ments, that is availed of by the holding company).

15 **363.**—(1) Notwithstanding that the conditions specified in *section*  
*359(6)* are satisfied, a company is not entitled to the audit exemption,  
as referred to in *section 359(1)*, if the company is a company falling  
within any provision (in so far as applicable to a private company  
limited by shares) of *Schedule 5*, other than a company referred to  
in *paragraph 5* or *16* of that Schedule. Audit exemption  
not available where  
company or  
subsidiary  
undertaking falls  
within a certain  
category.

20 (2) Notwithstanding that the conditions specified in *section 359(7)*  
are satisfied, a holding company and its subsidiary undertakings are  
not entitled to the audit exemption, as referred to in *section 359(2)*,  
if—

25 (a) the holding company is a company falling within any pro-  
vision (in so far as applicable to a private company lim-  
ited by shares) of *Schedule 5*, other than a company  
referred to in *paragraph 5* or *16* of that Schedule; or

(b) any of those subsidiary undertakings is—

(i) a credit institution;

(ii) an insurance undertaking;

30 (iii) a company falling within any provision of *Schedule 5*,  
other than a company referred to in *paragraph 5* or  
*16* of that Schedule; or

(iv) a body any of the securities of which are admitted to  
trading on a regulated market.

35 **364.**—(1) Notwithstanding that the conditions specified in *section*  
*359(6)* are satisfied, a company is not entitled to the audit exemption,  
as referred to in *section 359(1)*, in a financial year unless— Audit exemption  
(non-group  
situation) not  
available unless  
annual return filed  
in time.

40 (a) there is delivered to the Registrar, in compliance with  
*section 344*, the company's annual return to which the  
statutory financial statements or (as appropriate)  
abridged financial statements for that financial year are  
annexed; and

45 (b) if the annual return referred to in *paragraph (a)* is not the  
company's first annual return, there has been delivered  
to the Registrar, in compliance with *section 344*, its  
annual return to which the statutory financial statements  
or (as appropriate) abridged financial statements for its  
preceding financial year were annexed.

(2) Where the annual return referred to in *subsection (1)(a)* is the  
company's first annual return, that provision has effect as if the

words “to which the statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed” were omitted.

Audit exemption (group situation) not available unless annual return filed in time.

**365.**—(1) In this section—

- (a) a reference to each of the relevant bodies is a reference to each of the holding company and its subsidiary undertakings; 5
- (b) “preceding financial year” means the financial year preceding the financial year referred to in *subsection (2)*.

(2) Notwithstanding that the conditions specified in *section 359(7)* are satisfied, a holding company and its subsidiary undertakings are not entitled to the audit exemption, as referred to in *section 359(2)*, in a financial year unless— 10

- (a) there is delivered to the Registrar, in compliance with *section 344*, the annual return of each of the relevant bodies to which the particular relevant body’s statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed; and 15
- (b) if the annual return referred to in *paragraph (a)* is not the first annual return of each of the relevant bodies, the condition specified in *subsection (3)* or *(4)*, as the case may be, is satisfied. 20

(3) If the annual return referred to in *paragraph (a)* of *subsection (2)* is not the first annual return of any of the relevant bodies, the condition referred to in *paragraph (b)* of that subsection is that there has been delivered to the Registrar, in compliance with *section 344*, the annual return of each of the relevant bodies to which the particular relevant body’s statutory financial statements or (as appropriate) abridged financial statements for the preceding financial year were annexed. 25 30

(4) If the annual return referred to in *paragraph (a)* of *subsection (2)* is the first annual return of one or more, but not all, of the relevant bodies, the condition referred to in *paragraph (b)* of that subsection is that there has been delivered to the Registrar, in compliance with *section 344*, the annual return of each of the relevant bodies (excluding any of them the annual return of which is its first annual return) to which the particular relevant body’s statutory financial statements or (as appropriate) abridged financial statements for the preceding financial year were annexed. 35

(5) Where the annual return referred to in *subsection (2)(a)* is the company’s or subsidiary undertaking’s first annual return, that provision has effect, in relation to the company or subsidiary undertaking (as appropriate), as if the words “to which the statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed” were omitted. 40 45

## CHAPTER 16

### *Special audit exemption for dormant companies*

Dormant company audit exemption.

**366.**—(1) Subject to *subsection (5)*, *subsection (3)* applies to a company in respect of its statutory financial statements for a financial

year if the directors of the company are of the opinion that the company will satisfy the condition specified in *subsection (2)* in respect of that year and decide that the company should avail itself of *subsection (3)* in that year (and that decision is recorded by the directors in the minutes of the meeting concerned).

(2) The condition mentioned in *subsection (1)* is that in respect of the year concerned the company is dormant that is to say, during that year—

(a) it has no significant accounting transaction; and

(b) its assets and liabilities comprise only permitted assets and liabilities.

(3) The following provisions (the “dormant company audit exemption”) have effect where, by virtue of the preceding subsections, this subsection applies in respect of the statutory financial statements of a company for a particular financial year—

(a) without prejudice to *section 385(2)*, *section 334* (obligation to have statutory financial statements audited) shall not apply to the company in respect of that financial year; and

(b) unless and until circumstances, if any, arise in that financial year which result in the condition specified in *subsection (2)* not being satisfied in respect of that year, the provisions specified in *subsection (4)* shall not apply to the company in respect of that year.

(4) The provisions mentioned in *subsection (3)* are those provisions of this Act, being provisions that—

(a) confer any powers on statutory auditors or require anything to be done by or to or as respects statutory auditors; or

(b) make provision on the basis of a report of statutory auditors having been prepared in relation to the statutory financial statements of a company in a financial year,

and, without prejudice to the generality of the foregoing, include the provisions specified in the Table to *section 361* in so far, and only in so far, as they make provision of the foregoing kind.

(5) *Section 364* shall apply for the purposes of this section as it applies for the purpose of *section 359(1)* with the substitution in *subsection (1)*—

(a) for the reference to the conditions specified in *section 359(6)* of a reference to the condition specified in *subsection (2)* of this section; and

(b) for the reference to the audit exemption referred to in *section 359(1)* of a reference to the dormant company audit exemption.

(6) *Section 336* shall apply for the purposes of this section as it applies for the purpose of *section 359* with—

(a) the substitution, in *subsection (1)*, of the following paragraphs for *paragraphs (a)* and *(b)*:

“(a) the company is availing itself of the audit exemption (and the exemption shall be expressed to be ‘the exemption provided for by Chapter 16 of Part 6 of the Companies Act 2012’);” 5

(b) the company is availing itself of the exemption on the grounds that the condition specified in section 366(2) is satisfied;”;

and

(b) the omission of subsections (1)(c) and (5). 10

(7) In this section—

“permitted assets and liabilities” are investments in shares of, and amounts due to or from, other group undertakings;

“significant accounting transaction” means a transaction that is required by sections 282 and 283 to be entered in the company’s accounting records. 15

(8) In determining whether or when a company is dormant for the purposes of this section, there shall be disregarded—

(a) any transaction arising from the taking of shares in the company by a subscriber to the constitution as a result of an undertaking of his or her in connection with the formation of the company; 20

(b) any transaction consisting of the payment of—

(i) a fee to the Registrar on a change of the company’s name; 25

(ii) a fee to the Registrar on the re-registration of the company; or

(iii) a fee to the Registrar for the registration of an annual return (including any fee of an increased amount by virtue of regulations under section 890(6)). 30

## CHAPTER 17

### *Revision of defective statutory financial statements*

Voluntary revision of defective statutory financial statements.

**367.—**(1) If it appears to the directors of a company that—

(a) any statutory financial statements of the company (referred to subsequently in this Chapter as the “original statutory financial statements”); or 35

(b) any directors’ report (referred to subsequently in this Chapter as the “original directors’ report”),

in respect of a particular financial year, did not comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation, they may prepare revised financial statements or a revised directors’ report in respect of that year. 40

(2) Where copies of the original statutory financial statements or original directors' report have been laid before the company in general meeting or delivered to the Registrar, the revisions shall be confined to—

5 (a) the correction of those respects in which the original statutory financial statements or original directors' report did not comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation; and

(b) the making of any necessary consequential alterations.

10 (3) Where the reason for the revision of the statutory financial statements is—

(a) that information that should have been included by way of note to the financial statements was not so included; or

15 (b) information provided in a note to the financial statements was incorrect or incomplete,

then—

20 (i) in a case where the amounts and presentation of the profit and loss account, balance sheet or other statements required by the financial reporting framework are not affected by reason thereof — the revision may be effected by supplementary note; and

(ii) in all other cases — revised financial statements shall be prepared.

(4) Where the reason for the revision of the directors' report is—

25 (a) that information that should have been included in the report was not so included; or

(b) information provided in the report was incorrect or incomplete,

then—

30 (i) in a case where the additional information to be provided by way of revision does not affect other information included in the report — the revision may be effected by supplementary note; and

35 (ii) in all other cases — a revised directors' report shall be prepared.

(5) Where the statutory financial statements for any financial year are revised, the next statutory financial statements prepared after the date of revision shall refer to the fact that a previous set of financial statements was revised and provide particulars of the revision, its effect and the reasons for the revision in a note to the financial statements.

45 **368.**—(1) Subject to *section 380*, the provisions of this Act as to the matters to be included in the statutory financial statements of a company shall apply to revised financial statements as if the revised financial statements were prepared and approved by the directors as at the date of the original statutory financial statements.

Content of revised financial statements or revised report.

(2) In particular, *section 290* shall apply so as to require a true and fair view to be shown in the revised financial statements of the matters referred to in that section viewed as at the date of the original statutory financial statements.

(3) In the case of Companies Act financial statements, *paragraph 14(b)* of *Schedule 3* shall apply to revised financial statements as if the reference in that provision to the date on which the financial statements were signed was to the date on which the original statutory financial statements were signed. 5

(4) The provisions of this Act as to the matters to be included in a directors' report apply to a revised directors' report as if the revised report were prepared and approved by the directors of the company as at the date of the original directors' report. 10

Approval and signature of revised financial statements.

**369.**—(1) *Section 325* (approval and signing of statutory financial statements) shall apply to revised financial statements save that, in the case of a revision effected by supplementary note, it shall apply as if it required a signature or signatures on the supplementary note instead of on the balance sheet. 15

(2) Where copies of the original statutory financial statements have been sent to members under *section 339*, laid before the members in general meeting under *section 342* or delivered to the Registrar under *section 348*, the directors shall, before approving the revised financial statements under *section 325*, cause the following statements to be made in a prominent position in the revised financial statements or, in the case of a revision effected by supplementary note, in that note— 20 25

(a) in the case of a revision effected by replacement—

(i) a statement clearly identifying the replacement financial statements as being revised financial statements; and 30

(ii) statements as to the following matters—

(I) that the revised financial statements replace the original statutory financial statements for the financial year, specifying it;

(II) that they are now the statutory financial statements of the company for that financial year; 35

(III) that they have been prepared as at the date of the original financial statements and not as at the date of the revision and, accordingly, do not deal with events and transactions between those dates; 40

(IV) the respects in which the original statutory financial statements did not comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation; and 45

(V) any significant amendments made consequential upon the remedying of those defects;

(b) in the case of a revision effected by supplementary note, statements as to the following matters—

(i) that the note revises in certain respects the original statutory financial statements of the company and is to be treated as forming part of those original statutory financial statements; and

5 (ii) that the statutory financial statements have been revised as at the date of the original statutory financial statements and not as at the date of the revision and, accordingly, do not deal with events and transactions between those dates,

10 and shall, when approving the revised financial statements, cause the date on which the approval is given to be stated in them (or, in the case of revision effected by supplementary note, in that note).

(3) Without prejudice to the generality of *subsection (1)*, *subsections (8) to (10)* of *section 325* shall have effect as if, in addition to the references in that *subsection (8)* to the requirements as to the signing of the balance sheet and the inclusion of a statement of the signatory's name, there were included references in that subsection to each of the requirements of *paragraph (a) or (b)*, as the case may be, of *subsection (2)*.

20 **370.**—(1) *Section 333* (approval and signing of directors' report) shall apply to a revised directors' report save that, in the case of a revision effected by supplementary note, it shall apply as if it required a signature or signatures on the supplementary note instead of on the report.

Approval and signature of revised directors' report.

25 (2) Where copies of the original directors' report have been sent to members under *section 339*, laid before the members in general meeting under *section 342* or delivered to the Registrar under *section 348*, the directors shall, before approving the revised directors' report under *section 333*, cause statements as to the following matters to be made in a prominent position in the revised directors' report or, in the case of a revision effected by supplementary note, in that note—

(a) in the case of a revision effected by replacement—

(i) that the revised directors' report replaces the original directors' report for the financial year, specifying it;

35 (ii) that it has been prepared as at the date of the original directors' report and not as at the date of the revision and, accordingly, does not deal with events and transactions between those dates;

40 (iii) the respects in which the original directors' report did not comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation; and

(iv) any significant amendments made consequential upon the remedying of those defects;

45 (b) in the case of a revision effected by supplementary note—

(i) that the note revises in certain respects the original directors' report of the company and is to be treated as forming part of that original directors' report; and

(ii) that the directors' report has been revised as at the date of the original directors' report and not as at the date of the revision and accordingly does not deal with events and transactions between those dates,

5

and shall, when approving the revised directors' report, cause the date on which the approval is given to be stated in them (or, in the case of revision effected by supplementary note, in that note).

(3) Without prejudice to the generality of *subsection (1)*, *subsections (4) and (5) of section 333* shall have effect as if, in addition to the references in that *subsection (4)* to the requirements as to the signing of the directors' report and the inclusion of the signatory's name, there were included references in that subsection to each of the requirements of *paragraph (a) or (b)*, as the case may be, of *subsection (2)*.

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Statutory auditors' report on revised financial statements and revised report.

**371.**—(1) Subject to *section 372* and *subsection (3)*, a company's current statutory auditors shall make a report or, as the case may be, a further report of the kind referred to in *section 392*, in the form required by *section 337*, to the company's members under this section on revised financial statements prepared under *section 367*.

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(2) In that case, *section 393* (assessment of accounting records) and *section 394* (reporting of offences) shall apply with the necessary modifications.

(3) Where the statutory auditors' report on the original statutory financial statements was not made by the company's current statutory auditors, the directors of the company may resolve that the report required by *subsection (1)* is to be made by the person or persons who made the first-mentioned report, provided that that person or those persons agree to do so and the person or persons would be qualified for appointment as statutory auditors of the company.

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(4) Where the person or persons so qualified agree to make that report (and proceed to do so)—

(a) *subsection (2)* (application of *sections 393* and *394*) equally applies in such a case; and

(b) subsequent references in this Chapter, in relation to a report under this section, to statutory auditors shall be read as references to that person or those persons.

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(5) Subject to *section 380*, a statutory auditors' report under this section shall state whether, in the statutory auditors' opinion, the revised financial statements have been properly prepared in accordance with the relevant financial reporting framework and, in particular, the provisions of this Act or, where applicable, of Article 4 of the IAS Regulation and, in relation to the latter, whether a true and fair view as at the date the original statutory financial statements were approved by the directors is given by the revised financial statements with respect to the matters set out in *section 337*.

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(6) The report shall also state whether, in the statutory auditors' opinion, the original statutory financial statements failed to comply with the requirements of this Act or, where applicable, of Article 4 of the IAS Regulation in the respects identified by the directors in the statement required by *section 369(2)* to be made in the revised financial statements or supplementary note, as the case may be.

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(7) The statutory auditors shall also consider whether the information contained in the directors' report for the financial year for which the revised financial statements are prepared (or where that report has been revised under this Chapter, the revised directors' report) is consistent with those financial statements, and—

(a) if they are of the opinion that it is; or

(b) if they are of the opinion that it is not,

they shall state that fact in their report under this section.

(8) *Section 338* (signature of statutory auditor's report) shall apply to a statutory auditors' report under this section as it applies to a statutory auditors' report referred to in *section 337* with the necessary modifications.

(9) A statutory auditors' report under this section shall, upon being signed under *section 338* as so applied, be, as from the date of signature, the statutory auditors' report on the statutory financial statements of the company in place of the report on the original statutory financial statements.

**372.**—(1) *Section 371* does not apply to a company that is entitled to, and avails itself of, the audit exemption unless *subsection (2)* applies.

Cases where company has availed itself of audit exemption.

(2) Where as a result of the revisions to the statutory financial statements a company which, in respect of the original statutory financial statements, was entitled to, and availed itself of, the audit exemption becomes a company which is no longer entitled to that exemption, the company shall cause a report by the statutory auditors of the company on the revised financial statements to be prepared.

(3) The report made in accordance with *subsection (2)* shall be delivered to the Registrar within 2 months after the date of the revision of the financial statements.

**373.**—(1) Subject to *subsection (2)*, a company's current statutory auditors shall make a report or, as the case may be, a further report, in the form required by *section 337*, to the company's members on any revised directors' report prepared under *section 367* if the relevant statutory financial statements have not been revised at the same time.

Statutory auditors' report on revised directors' report alone.

(2) Where the statutory auditors' report on the original statutory financial statements was not made by the company's current statutory auditors, the directors of the company may resolve that the report required by *subsection (1)* is to be made by the person or persons who made the first-mentioned report, provided that that person or those persons agree to do so and the person or persons would be qualified for appointment as statutory auditors of the company.

(3) Where the person or persons so qualified agree to make that report (and proceed to do so), subsequent references in this Chapter, in relation to a report under this section, to statutory auditors shall be read as references to that person or those persons.

(4) The report shall state that the statutory auditors have considered whether the information given in the revised report is consistent with the original statutory financial statements for the relevant year (specifying it) and—

(a) if they are of the opinion that it is; or 5

(b) if they are of the opinion that it is not,

they shall state that fact in their report.

(5) *Section 338* (signature of statutory auditor's report) shall apply to an statutory auditors' report under this section as it applies to a statutory auditors' report under *section 337* with the necessary modifications. 10

Effect of revision.

**374.**—(1) Upon the directors approving revised financial statements under *section 325* as applied by *section 369*, the provisions of this Act shall have effect as if the revised financial statements were, as from the date of their approval, the statutory financial statements of the company in place of the original statutory financial statements. 15

(2) In particular, the revised financial statements shall thereupon be the company's statutory financial statements for the relevant financial year for the purposes of—

(a) *section 340* (right to demand copies of financial statements and reports) and *section 341* (requirements in relation to publication of financial statements); and 20

(b) each of the following (but only, in each case, if the requirements of the section concerned have not been complied with prior to the date of revision)— 25

(i) *section 339* (circulation of statutory financial statements);

(ii) *section 342* (financial statements and reports to be laid before the members in general meeting); and

(iii) *section 348* (documents to be annexed to annual return: all cases). 30

(3) Upon the directors approving a revised directors' report under *section 333* as applied by *section 370*, the provisions of this Act shall have effect as if the revised report were, as from the date of its approval, the directors' report in place of the original directors' report. 35

(4) In particular, the revised report shall thereupon be the directors' report for the relevant financial year for the purposes of—

(a) *section 340* (right of members to demand copies of financial statements and reports); and 40

(b) each of the following (but only, in each case, if the requirements of the section concerned have not been complied with prior to the date of revision)—

(i) *section 339* (circulation of statutory financial statements); 45

- (ii) *section 342* (financial statements and reports to be laid before the members in general meeting); and
- (iii) *section 348* (documents to be annexed to annual return: all cases).

5     **375.**—(1) This section has effect where the directors have prepared revised financial statements or a revised directors' report under *section 367* and copies of the original statutory financial statements or original directors' report have been sent to any person under *section 339*. Publication of revised financial statements and reports.

10    (2) The directors shall send to any such person—

15       (a) in the case of a revision effected by replacement, a copy of the revised financial statements, or (as the case may be) the revised directors' report, together with a copy of the statutory auditors' report on those financial statements, or (as the case may be) on that report; or

      (b) in the case of a revision effected by supplementary note, a copy of that note together with a copy of the statutory auditors' report on the revised financial statements, or (as the case may be) on the revised directors' report,

20    not more than 28 days after the date of revision.

      (3) The directors shall also, not more than 28 days after the date of revision, send a copy of the revised financial statements or (as the case may be) the revised directors' report, together with a copy of the statutory auditors' report on those financial statements or (as the case may be) on that report, to any person who is not a person entitled to receive a copy under *section 339* but who is, as at the date of revision—

      (a) a member of the company;

      (b) a holder of any debentures of the company; or

30       (c) a person who is entitled to receive notice of general meetings.

      (4) If default is made in complying with this section, each of the directors who approved the revised financial statements under *section 325* as applied by *section 369* or the revised directors' report under *section 333* as applied by *section 370* shall be guilty of a category 3 offence.

      (5) Where, prior to the date of revision of the original statutory financial statements, the company—

40       (a) had completed sending copies of those financial statements under *section 339*, references in this Act to the day on which financial statements are sent under *section 339* shall be read as references to the day on which the original statutory statements were sent under that section (applying *subsection (8)* of it as necessary) despite the fact that those financial statements have been revised; or

45       (b) had not completed sending copies of those financial statements under *section 339*, the foregoing references in this Act shall be read as references to the day, or the last day,

on which the revised financial statements are sent under this section.

Laying of revised financial statements or a revised report.

**376.**—(1) This section has effect where the directors of a company have prepared revised financial statements or a revised directors' report under *section 367* and copies of the original statutory financial statements or directors' report have been laid before a general meeting of the company under *section 342*. 5

(2) A copy of the revised financial statements or (as the case may be) the revised directors' report, together with a copy of the statutory auditors' report on those financial statements, or (as the case may be) on that report, shall be laid before the next general meeting of the company held after the date of revision at which any statutory financial statements for a financial year are laid, unless the revised financial statements, or (as the case may be) the revised directors' report, have already been laid before an earlier general meeting. 10 15

Delivery of revised financial statements or a revised report.

**377.**—(1) This section has effect where the directors of a company have prepared revised financial statements or a revised directors' report under *section 367* and a copy of the original statutory financial statements or directors' report, as annexed to the company's annual return, has been delivered to the Registrar under *section 344*. 20

(2) The directors of the company shall, within 28 days after the date of revision, deliver to the Registrar—

(a) in the case of a revision effected by replacement, a copy of the revised financial statements or (as the case may be) the revised directors' report, together with a copy of the statutory auditors' report on those financial statements or (as the case may be) on that report; or 25

(b) in the case of a revision effected by supplementary note, a copy of that note, together with a copy of the statutory auditors' report on the revised financial statements or (as the case may be) on the revised report. 30

(3) If a director fails to comply with *subsection (2)*, he or she shall be guilty of a category 3 offence.

(4) Without limiting the obligations of the directors of a company under this section or *subsection (3)*, it shall be the duty of a person who is a shadow director or *de facto* director of a company to ensure that the requirements of *subsection (2)* are complied with in relation to the company. 35

(5) If a person fails to comply with his or her duty under *subsection (4)*, the person shall be guilty of a category 3 offence. 40

(6) *Section 348(2)* applies for the purposes of the construction of references to a copy of a document in *subsection (2)* of this section as it applies for the purpose of the construction of the reference to a copy of a document in *section 348(1)*.

(7) In this section “date of revision” means the date of revision of the original statutory financial statements. 45

Small and medium companies.

**378.**—(1) This section has effect (subject to *section 380(2)*) where the directors have prepared revised financial statements under

*section 367* and the company, prior to the date of revision, has, taking advantage of the exemption for a small or medium company conferred by *section 353*, delivered to the Registrar abridged financial statements.

5 (2) Where the abridged financial statements so delivered to the Registrar would, if they had been prepared by reference to the matters taken account of in the revised financial statements, not comply with the provisions of this Act or, where applicable, of Article 4 of the IAS Regulation whether because—

10 (a) the company would not have qualified as a small or (as the case may be) medium company in the light of the revised financial statements; or

15 (b) the financial statements have been revised in a manner which affects the content of the abridged financial statements,

the directors of the company shall have the following duty.

(3) That duty is to cause the company either—

20 (a) to deliver to the Registrar, within 28 days after the date of revision, a copy of the revised financial statements, together with a copy of the directors' report and the statutory auditors' report on the revised financial statements; or

25 (b) if, on the basis of the revised financial statements, the company would be entitled under *section 353* to do so, to prepare revised abridged financial statements under *section 354* or *355* as appropriate and deliver them to the Registrar, together with a statement as to the effect of the revisions made,

30 and *sections 353* to *355* shall be read as being applicable in the circumstances referred to in *paragraph (b)* as they are applicable in circumstances not falling within this Chapter.

(4) 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, where that Article is applicable, the relevant requirements of this Act and the requirements of Article 4 of the IAS Regulation, the directors of the company shall have the following duty.

(5) That duty is to cause the company to deliver to the Registrar—

40 (a) a note stating that the statutory financial statements of the company for the relevant financial year (specifying it) have been revised in a respect which has no bearing on the abridged financial statements delivered for that year; and

45 (b) a copy of the statutory auditors' report on the revised financial statements.

(6) Revised abridged financial statements referred to in *subsection (3)(b)* or a note under *subsection (5)* shall be delivered to the Registrar within 28 days after the date of revision.

(7) If a director fails to comply with his or her duty under *subsection (2) or (4)*, he or she shall be guilty of a category 3 offence.

(8) Without limiting the obligations of the directors of a company under this section or *subsection (7)*, it shall be the duty of a person who is a shadow director or *de facto* director of a company to ensure that the requirements of *subsections (3) and (5)* are complied with in relation to the company. 5

(9) If a person fails to comply with his or her duty under *subsection (8)*, the person shall be guilty of a category 3 offence.

(10) *Section 348(2)* applies for the purposes of the construction of references to a copy of a document in *subsection (3) or (5)* of this section as it applies for the purpose of the construction of the reference to a copy of a document in *section 348(1)*. 10

(11) In this section “date of revision” means the date of revision of the original statutory financial statements. 15

Application of this Chapter in cases where audit exemption available, etc.

**379.**—Where, based on the revised financial statements prepared under *section 367*, a company—

- (a) is entitled to, and avails itself of, the audit exemption in respect of the financial year concerned; or
- (b) would have been entitled, but for the time that it takes to complete the preparation of those revised statements resulting in the directors not being able to make a decision in accordance with *section 359(1) or (2) or section 366(1)* (as the case may be) in that regard, to avail itself of the audit exemption in respect of that year, 20 25

this Chapter shall have effect as if any reference in it to a statutory auditors’ report, or to the making of such a report, were omitted.

Modifications of Act.

**380.**—(1) Where the provisions of the Act as to the matters to be included in the statutory financial statements of a company or (as the case may be) in a directors’ report have been amended after the date of the original statutory financial statements or (as the case may be) directors’ report but prior to the date of revision, references in *sections 367 and 371(3)* to the provisions of this Act shall be read as references to the provisions of this Act as in force at the date of approval of the original statutory financial statements or (as the case may be) directors’ report. 30 35

(2) Where the provisions of *section 354 and 355* as to the matters to be included in abridged financial statements have been amended after the date of delivery of the original abridged financial statements but prior to the date of revision of the revised financial statements or report, references in *section 371* to the provisions of this Act or to any particular provision of it shall be read as references to the provisions of this Act, or to the particular provision, as in force at the date of approval of the original abridged financial statements. 40

CHAPTER 18

*Appointment of statutory auditors*

381.—(1) One or more statutory auditors shall be appointed in accordance with this Chapter for each financial year of the company.

Statutory auditors  
— general provisions  
(including as to the interpretation of provisions providing for auditors' term of office).

5 (2) For convenience of expression (but save in certain instances where use of the singular form is more appropriate) the plural form — “statutory auditors” — is used throughout this Part irrespective of the fact that a single statutory auditor has been or is to be so appointed.

10 (3) A reference elsewhere in this Act to statutory auditors shall be read accordingly.

(4) The appointment of a firm (not being a body corporate) by its firm name to be the statutory auditors of a company shall be deemed to be an appointment of those persons who are—

15 (a) from time to time during the currency of the appointment the partners in that firm as from time to time constituted; and

(b) qualified to be statutory auditors of that company.

(5) Any—

20 (a) reference in this Chapter to a person being appointed statutory auditor of a company to hold office until the conclusion of the next annual general meeting of the company; or

25 (b) provision otherwise of this Chapter stating that a person appointed statutory auditor shall hold such office until the conclusion of such a general meeting,

shall be read as meaning that the person shall hold such office until the conclusion of such a general meeting save where one of the following sooner happens—

30 (i) the person's resignation (in accordance with this Part) or death;

(ii) the termination of the person's office (or his or her removal otherwise from office) pursuant to this Part; or

35 (iii) the person's becoming disqualified from holding office by virtue of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010.

382.—(1) The remuneration of the statutory auditors—

Remuneration of statutory auditors.

(a) where they are appointed by the directors pursuant to this Chapter, shall be agreed with the directors;

40 (b) where they are—

(i) appointed by the members pursuant to this Chapter;  
or

(ii) deemed under *section 384(2)* to be re-appointed,

may be fixed by the members—

(I) at the annual general meeting or extraordinary general meeting concerned and thereafter at each annual general meeting subsequent to that meeting falling during the auditors' term of office; or

(II) in such other manner as the members may from time to time resolve;

or

(c) where they are appointed by the Director of Corporate Enforcement pursuant to *section 386*, may be fixed by the Director of Corporate Enforcement or, to the extent, and in the circumstances, that the Director of Corporate Enforcement authorises such to be done, by the directors or members.

(2) For the purposes of this section, any sums paid by the company in respect of the statutory auditors' expenses shall be deemed to be included in the expression "remuneration".

Appointment of statutory auditors – first such appointments and powers of members *vis a vis* directors.

**383.**—(1) The first statutory auditors of a company may be appointed by the directors at any time before the first annual general meeting of the company.

(2) Statutory auditors so appointed shall hold office until the conclusion of that first annual general meeting save that the company may, at a prior general meeting, remove any such auditors and appoint in their place as statutory auditors of the company any other persons who have been nominated for such appointment by any member of the company.

(3) Notice of the nomination of those persons for such appointment shall have been given to the members of the company not less than 14 days before the date of the prior meeting.

(4) If the directors of the company fail to exercise their powers under *subsection (1)*, the company in general meeting may appoint the first statutory auditors of the company and, in the event of their doing so, those powers of the directors shall then cease.

(5) Statutory auditors appointed by the company in general meeting pursuant to *subsection (2)* or *(4)* shall hold office until the conclusion of the first annual general meeting of the company.

Subsequent appointments of statutory auditors (including provision for automatic re-appointment of auditors at annual general meetings).

**384.**—(1) Subject to *subsection (2)*, a company shall at each annual general meeting appoint statutory auditors to hold office from the conclusion of that until the conclusion of the next annual general meeting.

(2) Subject to *subsection (3)*, at any annual general meeting a retiring statutory auditor, however appointed under this Part, shall be deemed to be re-appointed without any resolution being passed unless—

(a) he or she is not qualified for re-appointment; or

(b) a resolution has been passed at that meeting appointing somebody instead of him or her or providing expressly that he or she shall not be re-appointed; or

5 (c) he or she has given the company notice in writing, in accordance with *section 401*, of his or her unwillingness to be re-appointed.

(3) Where notice is given of an intended resolution to appoint some other person or persons in place of a retiring statutory auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring statutory auditor shall not be automatically re-appointed by virtue of *subsection (2)*.

15 (4) A retiring statutory auditor, however appointed under this Part, shall also be deemed to be re-appointed, as of the date on which the last member to sign it signed the resolution, in a case where the members of the company (by signing the resolution referred to in *section 176(3)*) have relieved the company of the obligation to hold an annual general meeting.

20 **385.**—(1) Where any casual vacancy in the office of statutory Appointment of statutory auditors by directors in other cases, etc. auditors arises, it shall be the duty of the directors to appoint statutory auditors to the company as soon as may be after that vacancy has arisen.

(2) Whenever by reason of—

25 (a) circumstances referred to in *section 361(1)(b)(i)* or *366(3)(b)* (as the case may be) arising in the financial year concerned the audit exemption ceases to have effect in relation to a company in respect of that year; or

30 (b) circumstances otherwise arising, a company is not entitled to the audit exemption in respect of the financial year concerned,

it shall be the duty of the directors of the company to appoint statutory auditors of the company as soon as may be after those circumstances arise.

35 (3) Statutory auditors appointed pursuant to *subsection (1)* or *(2)* shall hold office until the conclusion of the next annual general meeting of the company held after their appointment.

40 **386.**—(1) Where at an annual general meeting of a company no Appointment of statutory auditors: failure to appoint. statutory auditors are appointed by the members and the company is not entitled to avail itself of the audit exemption, the Director of Corporate Enforcement may appoint one or more persons to fill the position of statutory auditors of the company.

(2) A company shall—

45 (a) within one week after the date on which the Director of Corporate Enforcement's power under *subsection (1)* becomes exercisable in relation to the company, give the Director of Corporate Enforcement notice in writing of that fact; and

(b) where a resolution removing the statutory auditors is passed, give notice of that fact in the prescribed form to the Registrar within 14 days after the date of the meeting at which the resolution removing the statutory auditors was passed. 5

(3) If a company fails to give notice as required by *subsection (2)(a)* or *(b)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(4) Statutory auditors appointed pursuant to *subsection (1)* shall hold office until the conclusion of the next annual general meeting of the company held after their appointment. 10

## CHAPTER 19

### *Rights, obligations and duties of statutory auditors*

Right of access to accounting records. **387.**—Statutory auditors of a company shall have a right of access at all reasonable times to the accounting records of the company. 15

Right to information and explanations concerning company. **388.**—(1) Statutory auditors of a company may require from the officers of the company such information and explanations as appear to the auditors to be within the officers' knowledge or can be procured by them and which the statutory auditors think necessary for the performance of their duties. 20

(2) Without limiting *subsection (1)*, an officer of a company shall be guilty of a category 2 offence if the officer fails to comply—

(a) within 2 days after the date on which it is made, with a requirement made of him or her by the statutory auditors of the company to provide to those auditors any information or explanations that those auditors require as statutory auditors of the company; or 25

(b) within 2 days after the date on which it is made, with a requirement made of him or her by the statutory auditors of the holding company of that company to provide to those auditors any information or explanations that those auditors require as statutory auditors of the holding company, 30

being, in either case, information or explanations that is or are within the knowledge of, or can be procured by, the officer. 35

(3) In any proceedings against a person in respect of an offence under *subsection (2)*, it shall be a defence to prove that it was not reasonably possible for the person to comply with the requirement under *subsection (2)(a)* or *(b)* to which the offence relates within the time specified in that provision but that he or she complied with it as soon as was reasonably possible after the expiration of such time. 40

(4) In this section “officer”, in relation to a company, includes any employee of the company and any shadow director and *de facto* director of it.

Right to information and explanations concerning subsidiary undertakings. **389.**—(1) Where a company (in this section referred to as the “holding company”) has a subsidiary undertaking, then— 45

(a) where the subsidiary undertaking is either—

(i) an existing company, a company registered under this Act or a body established in the State; or

(ii) a partnership or unincorporated body of persons having its principal place of business in the State,

it shall be the duty of the subsidiary undertaking and the statutory auditors, if any, of it to give to the statutory auditors of the holding company such information and explanations as the second-mentioned statutory auditors may reasonably require for the purposes of their duties as statutory auditors of the holding company;

(b) in any other case, it shall be the duty of the holding company, if required by its statutory auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as are mentioned in *paragraph (a)*.

(2) If an undertaking, body or other person fails to comply, within 5 days after the date on which it is made, with a requirement made of it or him or her under *subsection (1)(a)* or *(b)*, the undertaking, body or other person, and any officer of the undertaking or body who is in default, shall be guilty of a category 2 offence.

(3) In any proceedings against a person in respect of an offence under *subsection (2)*, it shall be a defence to prove that it was not reasonably possible for the person to comply with the requirement under *subsection (1)(a)* or *(b)* to which the offence relates within the time specified in *subsection (2)* but that he or she complied with it as soon as was reasonably possible after the expiration of such time.

(4) In *subsection (2)* “officer”, in relation to an undertaking or body, includes any employee of the undertaking or body and, if it is a company, any shadow director and *de facto* director of it.

**390.**—(1) An officer of a company who knowingly makes a statement to which this section applies that is misleading or false in a material particular, or makes such a statement being reckless as to whether it is so, shall be guilty of a category 2 offence.

Offence to make false statements to statutory auditors.

(2) This section applies to any statement made to the statutory auditors of a company (whether orally or in writing) which conveys, or purports to convey, any information or explanation which they require under this Act, or are entitled so to require, as statutory auditors of the company.

(3) In this section “officer”, in relation to a company, includes any employee of the company and any shadow director and *de facto* director of it.

**391.**—Without prejudice to the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010), the one or more persons who are appointed as statutory auditors of a company shall be under a general duty to carry out the audit services concerned with professional integrity.

Obligation to act with professional integrity.

Statutory auditors' report on statutory financial statements.

**392.**—The statutory auditors of a company shall make, in the form set out in *section 337*, a report to the members on all statutory financial statements laid before the members during their tenure of office.

Report to Registrar and to Director: accounting records.

**393.**—(1) If, at any time, the statutory auditors of a company form the opinion that the company is contravening, or has contravened, any of *sections 282 to 286* the statutory auditors shall— 5

(a) as soon as may be, by recorded delivery, serve a notice in writing on the company stating their opinion; and

(b) not later than 7 days after the date of service of such notice on the company, notify the Registrar in the prescribed form of the notice and the Registrar shall forthwith forward a copy of the notice to the Director. 10

(2) Where the statutory auditors form the opinion that the company has contravened any of *sections 282 to 286* but that, following such contravention, the directors of the company have taken the necessary steps to ensure that those provisions are complied with, *subsection (1)(b)* shall not apply. 15

(3) This section shall not require the statutory auditors to make the notifications referred to in *subsection (1)* if they are of the opinion that the contraventions concerned are minor or otherwise immaterial in nature. 20

(4) Where the statutory auditors of a company make a notification pursuant to *subsection (1)(b)*, they shall, if requested by the Director—

(a) furnish to the Director such information, including an explanation of the reasons for their opinion that the company had contravened any of *sections 282 to 286*; and 25

(b) give to the Director such access to documents, including facilities for inspecting and taking copies,

being information or documents in their possession or control and relating to the matter the subject of the notification, as the Director may require. 30

(5) Any written information given in response to a request of the Director under *subsection (4)* shall in all legal proceedings (other than proceedings for an offence) be admissible without further proof, until the contrary is shown, as evidence of the facts stated in it. 35

(6) No professional or legal duty to which statutory auditors are subject by virtue of their appointment as statutory auditors of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, statutory auditors, by reason of their compliance with an obligation imposed on them by or under this section. 40

(7) Nothing in this section compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession. 45

(8) A person who fails to make the notification required by *subsection (1)(a) or (b)* or to comply with a request under *subsection (4)(a) or (b)* shall be guilty of a category 3 offence.

5 **394.**—(1) Where, in the course of, and by virtue of, their carrying out an audit of the financial statements of the company, information comes into the possession of the statutory auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed a category 1 or 2 offence, the statutory auditors shall, forth-  
10 with after having formed it, notify that opinion to the Director and provide the Director with particulars of the grounds on which they have formed that opinion.

Report to Registrar and Director: category 1 and 2 offences.

15 (2) Where the statutory auditors of a company notify the Director of any matter pursuant to *subsection (1)*, they shall, in addition to performing their obligations under that subsection, if requested by the Director—

20 (a) furnish the Director with such further information in their possession or control relating to the matter as the Director may require, including further information relating to the particulars of the grounds on which they formed the opinion referred to in that subsection;

(b) give the Director such access to books and documents in their possession or control relating to the matter as the Director may require; and

25 (c) give the Director such access to facilities for the taking of copies of or extracts from those books and documents as the Director may require.

30 (3) Any written information given in response to a request of the Director under *subsection (2)* shall in all legal proceedings (other than proceedings for an offence) be admissible without further proof, until the contrary is shown, as evidence of the facts stated in it.

35 (4) No professional or legal duty to which statutory auditors are subject by virtue of their appointment as statutory auditors of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, statutory auditors, by reason of their compliance with an obligation imposed on them by or under this section.

40 (5) Nothing in this section compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.

45 (6) A person who contravenes *subsection (1)* or fails to comply with a request under *subsection (2)* shall be guilty of a category 3 offence.

*Removal and resignation of statutory auditors*

Removal of statutory auditors: general meeting.	<p><b>395.</b>—A company may, by ordinary resolution at a general meeting, remove a statutory auditor and appoint, in his or her place, any other person or persons, being a person or persons—</p> <p>(a) who have been nominated for appointment by any member of the company and who are qualified by virtue of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010) to be statutory auditors of the company; and</p> <p>(b) of whose nomination notice has been given to its members,</p> <p>but this is—</p> <p>(i) subject to <i>section 396</i>; and</p> <p>(ii) without prejudice to any rights of the statutory auditor in relation to his or her removal under this section.</p>	<p>5</p> <p>10</p> <p>15</p>
Restrictions on removal of statutory auditor.	<p><b>396.</b>—(1) The passing of a resolution to which this section applies shall not be effective with respect to the matter it provides for unless—</p> <p>(a) in case the resolution provides for the auditor’s removal from office, there are good and substantial grounds for the removal related to the conduct of the auditor with regard to the performance of his or her duties as auditor of the company or otherwise; or</p> <p>(b) in the case of any other resolution to which this section applies, the passing of the resolution is, in the company’s opinion, in the best interests of the company,</p> <p>but—</p> <p>(i) for the foregoing purposes, diverging opinions on accounting treatments or audit procedures cannot constitute the basis for the passing of any such resolution; and</p> <p>(ii) in <i>paragraph (b)</i> “best interests of the company” does not include any illegal or improper motive with regard to avoiding disclosures or detection of any failure by the company to comply with this Act.</p> <p>(2) This section applies to—</p> <p>(a) a resolution removing a statutory auditor from office;</p> <p>(b) a resolution at an annual general meeting appointing somebody other than the retiring statutory auditor as statutory auditor;</p> <p>(c) a resolution providing expressly that the retiring statutory auditor shall not be re-appointed.</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>

397.—(1) Extended notice shall be required for—

Extended notice requirement in cases of certain appointments, removals, etc., of auditors.

5 (a) a resolution at an annual general meeting of a company appointing as statutory auditors any persons other than the incumbent statutory auditors or providing expressly that the incumbent statutory auditors shall not be re-appointed;

(b) a resolution at a general meeting of a company removing statutory auditors from office; and

10 (c) a resolution at a general meeting of a company filling a casual vacancy in the office of statutory auditor.

(2) For the purpose of this section extended notice shall comprise the following requirements—

15 (a) the company shall be given by the person proposing the resolution not less than 28 days' notice of the intention to move any such resolution;

and

(b) on receipt of notice of such an intended resolution, the company—

20 (i) shall forthwith send a copy of it to the incumbent statutory auditors or the person (if any) whose ceasing to hold the office of statutory auditor of the company occasioned the casual vacancy; and

25 (ii) shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of it, either by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated or in any other mode allowed by this Act, not less  
30 than 21 days before the date of the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the date on which the notice has been given, the notice though not given within the time required by *subsection (2)* shall be  
35 deemed to have been properly given for the purposes of that subsection.

398.—(1) In this section “relevant meeting” means the meeting at which the resolution mentioned in *section 397(1)(a)* or *(b)*, as the case may be, is to be considered.

Right of statutory auditors to make representations where their removal or non-re-appointment proposed.

40 (2) Subject to *subsection (4)*, where notice is given of such an intended resolution as is mentioned in *section 397(1)(a)* or *(b)* and the statutory auditors there mentioned make, in relation to the intended resolution, representations in writing to the company (not exceeding a reasonable length) and request their notification to be  
45 sent to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

- (b) send a copy of the representations to every member of the company to whom notice of the relevant meeting is sent (whether before or after receipt of the representations by the company).

(3) If a copy of the representations is not sent as is mentioned in *subsection (2)* (because either they were received too late or because of the company's default) the statutory auditors concerned may (without prejudice to their right to be heard orally) require that the representations shall be read out at the relevant meeting. 5

(4) Copies of the representations need not be sent out and the representations need not be read out at the relevant meeting as mentioned in *subsection (2)* or (3) if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and orders that those things need not be done. 10 15

(5) The court may order the company's costs on such an application to be paid in whole or in part by the statutory auditors concerned notwithstanding that they are not a party to the application.

Statutory auditors removed from office: their rights to get notice of, attend and be heard at general meeting.

**399.**—(1) Statutory auditors of a company who have been removed shall be entitled to attend— 20

- (a) the next annual general meeting of the company after their removal; and
- (b) the general meeting of the company at which it is proposed to consider a resolution for the filling of the vacancy 25 occasioned by their removal,

and to receive all notices of, and other communications relating to, any such meeting which a member of the company is entitled to receive and to be heard at any general meeting that such a member attends on any part of the business of the meeting which concerns 30 them as former statutory auditors of the company.

(2) Subject to *subsection (4)*, where notice is given of such an intended resolution as is mentioned in *subsection (1)* and the statutory auditors there mentioned make, in relation to the intended resolution, representations in writing to the company (not exceeding a reasonable length) and request their notification to be sent to members of the company, the company shall, unless the representations are received by it too late for it to do so— 35

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and 40
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company). 45

(3) If a copy of the representations is not sent as is mentioned in *subsection (2)* (because either they were received too late or because of the company's default) the statutory auditors concerned may (without prejudice to their right to be heard orally) require that the representations shall be read out at the meeting. 50

(4) Copies of the representations need not be sent out and the representations need not be read out at the meeting as mentioned in *subsection (2) or (3)* if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and orders that those things need not be done.

(5) The court may order the company's costs on such an application to be paid in whole or in part by the statutory auditors concerned notwithstanding that they are not a party to the application.

**400.**—(1) If a company, which avails itself of the audit exemption—

(a) decides that the appointment of persons as statutory auditors to the company should not be continued during the whole or part of a financial year in which the exemption is being availed of in relation to the company; and

(b) decides, accordingly, to terminate the appointment of those persons as statutory auditors to the company,

then—

(i) the statutory auditors shall, within the period of 21 days after the date of their being notified by the company of that decision, serve a notice on the company containing the statement referred to in *subsection (2)*;

(ii) unless and until the statutory auditors serve such a notice, any purported termination of their appointment as statutory auditors to the company shall not have effect.

(2) The statement to be contained in a notice under *subsection (1)(i)* shall be whichever of the following is appropriate, namely—

(a) a statement to the effect that there are no circumstances connected with the decision of the company referred to in *subsection (1)* that the statutory auditors concerned consider should be brought to the notice of the members or creditors of the company; or

(b) a statement of any such circumstances as mentioned in *paragraph (a)*.

(3) Where a notice under *subsection (1)(i)* is served on a company—

(a) the statutory auditors concerned shall, within 14 days after the date of such service, send a copy of the notice to the Registrar; and

(b) subject to *subsection (4)*, the company shall, if the notice contains a statement referred to in *subsection (2)(b)*, within 14 days after the date of such service, send a copy of the notice to every person who is entitled under *section 339* to be sent copies of the documents referred to in that section.

(4) Copies of a notice served on a company under *subsection (1)* need not be sent to the persons specified in *subsection (3)(b)*, if, on

Removal of statutory auditors: statement from statutory auditors where audit exemption availed of by company.

the application of the company concerned or any other person who claims to be aggrieved, the court is satisfied that the notice contains material which has been included to secure needless publicity for defamatory matter and orders that that thing need not be done.

(5) The court may order the company’s costs on such an application to be paid in whole or in part by the statutory auditors concerned notwithstanding that they are not a party to the application. 5

(6) *Section 399* shall not apply to statutory auditors as respects their removal from office in the circumstances referred to in *subsection (1)*. 10

Resignation of statutory auditors: general.

**401.**—(1) Statutory auditors of a company may, by a notice in writing that complies with *subsection (3)* served on the company and stating their intention to do so, resign from the office of statutory auditors to the company.

(2) The resignation shall take effect on the date on which the notice is so served or on such later date as may be specified in the notice. 15

(3) A notice under *subsection (1)* shall contain either—

(a) a statement to the effect that there are no circumstances connected with the resignation to which it relates that the statutory auditors concerned consider should be brought to the notice of the members or creditors of the company; or 20

(b) a statement of any such circumstances as mentioned in *paragraph (a)*. 25

(4) Where a notice under *subsection (1)* is served on a company—

(a) the statutory auditors concerned shall, within 14 days after the date of such service, send a copy of the notice to the Registrar; and

(b) subject to *subsection (5)*, the company shall, if the notice contains a statement referred to in *subsection (3)(b)*, not later than 14 days after the date of such service, send a copy of the notice to every person who is entitled under *section 339* to be sent copies of the documents referred to in that section. 30 35

(5) Copies of a notice served on a company under *subsection (1)* need not be sent to the persons specified in *subsection (4)(b)* if, on the application of the company concerned or any other person who claims to be aggrieved, the court is satisfied that the notice contains material which has been included to secure needless publicity for defamatory matter and orders that that thing need not be done. 40

(6) The court may order the company’s costs on such an application to be paid in whole or in part by the statutory auditors concerned notwithstanding that they are not a party to the application.

(7) This section shall also apply to a notice given by statutory auditors referred to in *section 384(2)(c)* indicating their unwillingness to be re-appointed and, accordingly, for that purpose this section shall have effect as if— 45

(a) the following subsection were substituted for *subsection (1)*:

5 “(1) Statutory auditors of a company may, by a notice in writing that complies with subsection (3) and which is served on the company, indicate their unwillingness to be re-appointed as statutory auditors to the company.”;

(b) *subsection (2)* were omitted; and

10 (c) the reference to the statutory auditors’ resignation in *subsection (3)* were a reference to the indication of their unwillingness to be re-appointed.

(8) A person who fails to comply with—

(a) *subsection (3)* or *(4)(a)*; or

(b) either such provision as it applies by virtue of *subsection (7)*,

15 shall be guilty of a category 3 offence.

(9) If default is made in complying with *subsection (4)(b)* or that provision as it applies by virtue of *subsection (7)*, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

20 (10) In *subsection (9)* “officer” includes any shadow director and *de facto* director.

25 **402.**—(1) A notice served by statutory auditors on a company under *section 401* which contains a statement in accordance with *subsection (3)(b)* of that section may also requisition the convening by the directors of the company of a general meeting of the company for the following purpose. Resignation of statutory auditor: requisition of general meeting.

30 (2) That purpose is the purpose of receiving and considering such information and explanation of the circumstances connected with the statutory auditors’ resignation from office as they may wish to give to the meeting.

35 (3) Where the statutory auditors make such a requisition, the directors of the company shall, within 14 days after the date of service on the company of the foregoing notice, proceed duly to convene a general meeting of the company for a day not more than 28 days after the date of such service.

(4) Subject to *subsection (5)*, where—

(a) a notice served on a company under *section 401* contains a statement in accordance with *subsection (3)(b)* of that section; and

40 (b) the statutory auditors concerned request the company to circulate to its members—

(i) before the next general meeting after their resignation; or

- (ii) before any general meeting at which it is proposed to fill the vacancy caused by their resignation or convened pursuant to a requisition referred to in *subsection (1)*,

a further statement in writing prepared by the statutory auditors of circumstances connected with their resignation that the statutory auditors consider should be brought to the notice of the members, the company shall— 5

- (i) in any notice of the meeting given to members of the company state the fact of the statement having been made; and 10
- (ii) send a copy of the statement to the Registrar and to every person who is entitled under *section 339* to be sent copies of the documents referred to in that section.

(5) *Subsection (4)* need not be complied with by the company concerned if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and orders that that subsection need not be complied with. 15 20

(6) The court may order the company's costs on such an application to be paid in whole or in part by the statutory auditors concerned notwithstanding that they are not a party to the application.

(7) If default is made in complying with *subsection (3)* or *(4)*, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence. 25

(8) In *subsection (7)* "officer" includes any shadow director and *de facto* director.

Resignation of statutory auditors: right to get notice of, attend, and be heard at general meeting.

**403.**—(1) Statutory auditors of a company who have resigned from the office of statutory auditors shall be permitted by the company to attend— 30

- (a) the next annual general meeting of the company after their resignation; and
- (b) any general meeting of the company at which it is proposed to fill the vacancy caused by their resignation or convened pursuant to a requisition of theirs referred to in *section 402(1)*, 35

and, for that purpose, the company shall—

- (i) send them all notices of, and other communications relating to, any such meeting that a member of the company is entitled to receive; and 40
- (ii) permit them to be heard at any such meeting which they attend on any part of the business of the meeting which concerns them as former statutory auditors of the company. 45

(2) If default is made in complying with *subsection (1)*, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(3) In *subsection (2)* “officer” includes any shadow director and *de facto* director.

CHAPTER 21

*Notification to Supervisory Authority of certain matters and auditors acting while subject to disqualification order*

5

**404.**—(1) Where, for any reason, during the period between the conclusion of the last annual general meeting and the conclusion of the next annual general meeting of a company, a statutory auditor ceases to hold office by virtue of *section 395* or *401*, the auditor shall—

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Duty of auditor to notify Supervisory Authority regarding cessation of office.

(a) in such form and manner as the Supervisory Authority specifies; and

(b) within 1 month after the date of that cessation,

15 notify the Supervisory Authority that the auditor has ceased to hold office.

(2) That notification shall be accompanied by—

(a) in the case of resignation of the auditor, the notice served by the auditor under *section 401(1)*; or

20

(b) in the case of removal of the auditor at a general meeting pursuant to *section 395*, a copy of any representations in writing made to the company, pursuant to *section 398(2)*, by the outgoing auditor in relation to the intended resolution except where such representations were not sent out to the members of the company in consequence of an application to the court under *section 398(4)*.

25

(3) Where, in the case of resignation, the notice served under *section 401(1)* is to the effect that there are no circumstances connected with the resignation to which it relates that the auditor concerned considers should be brought to the notice of members or creditors of the company, the notification under *subsection (1)* shall also be accompanied by a statement of the reasons for the auditor’s resignation.

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(4) In this section—

(a) “resignation” includes an indication of unwillingness to be re-appointed at an annual general meeting; and

35

(b) a reference to a notice served under *section 401(1)* includes a reference to a notice given by the auditor that is referred to in *section 384(2)(c)*.

**405.**—(1) Where, for any reason, during the period between the conclusion of the last annual general meeting and the conclusion of the next annual general meeting of a company, a statutory auditor ceases to hold office by virtue of *section 395* or *401*, the company shall—

40

Duty of company to notify Supervisory Authority of auditor’s cessation of office.

(a) in such form and manner as the Supervisory Authority specifies; and

(b) within 1 month after the date of that cessation,

notify the Supervisory Authority that the auditor has ceased to hold office. 5

(2) That notification shall be accompanied by—

(a) in the case of resignation of the auditor, the notice served by the auditor under *section 401(1)*; or

(b) in the case of removal of the auditor at a general meeting pursuant to *section 395*— 10

(i) a copy of the resolution removing the auditor; and

(ii) a copy of any representations in writing made to the company, pursuant to *section 398(2)*, by the outgoing auditor in relation to the intended resolution except where such representations were not sent out to the members of the company in consequence of an application to the court under *section 398(4)*. 15

(3) In this section—

(a) “resignation” includes an indication of unwillingness to be re-appointed at an annual general meeting; and 20

(b) a reference to a notice served under *section 401(1)* includes a reference to a notice given by the auditor that is referred to in *section 384(2)(c)*.

Prohibition on acting in relation to audit while disqualification order in force.

**406.—**(1) If a person who is subject or deemed to be subject to a disqualification order (within the meaning of *Chapter 4 of Part 14*)— 25

(a) becomes, or remains more than 28 days after the date of the making of the order, a partner in a firm of statutory auditors;

(b) gives directions or instructions in relation to the conduct of any part of the audit of the financial statements of a company; or 30

(c) works in any capacity in the conduct of an audit of the financial statements of a company,

he or she shall be guilty of a category 2 offence.

(2) Where a person is convicted of an offence under *subsection subsection (1)*, the period for which he or she was disqualified by virtue of the foregoing order shall be extended for— 35

(a) a further period of 10 years beginning after the date of conviction; or

(b) such other (shorter or longer) further period as the court, on the application of the prosecutor or the defendant and having regard to all the circumstances of the case, may order.

5 (3) *Section 848* shall not apply to a person convicted of an offence under *subsection (1)*.

## CHAPTER 22

### *False statements — offence*

10 **407.**—If a person in any return, statement, financial statement or other document required by or for the purposes of any provision of this Part intentionally makes a statement, false in any material particular, knowing it to be so false, the person shall be guilty of a category 2 offence.

False statements in returns, financial statements, etc.

## CHAPTER 23

15 *Transitional*

**408.**—(1) Notwithstanding anything in this Part, the directors of an existing company may, in respect of a financial year to which this section applies, opt to prepare financial statements (and approve them) in accordance with the provisions of the Act of 1963 and the Sixth Schedule thereto.

Transitional provision — companies accounting by reference to Sixth Schedule to Act of 1963.

(2) This section applies to a financial year of an existing private company that satisfies the following conditions—

(a) it begins before the commencement of this section and ends thereafter; and

25 (b) accounts in respect of it could, but for the repeal of the prior Companies Acts, have been prepared by the directors of the company in accordance with the provisions of the Act of 1963 and the Sixth Schedule thereto (as distinct from the Companies (Amendment) Act 1986 and  
30 the other provisions of the prior Companies Acts or regulations made under the European Communities Act 1972).

(3) All obligations and rights that arise under this Act consequent on or in respect of financial statements having been approved by the  
35 directors of a company shall likewise arise in relation to financial statements approved by directors in a case falling within *subsection (1)*.

(4) In this section—

“accounts” means accounts under the Act of 1963;

40 “existing private company” shall have the meaning given to it by *section 15* but with the omission of all the words appearing after *paragraphs (a) and (b)* of that definition in *section 15*.

## SCHEDULE 3

## ACCOUNTING PRINCIPLES, FORM AND CONTENT OF ENTITY FINANCIAL STATEMENTS

## PART I

## CONSTRUCTION OF REFERENCES TO PROVISIONS OF SCHEDULE 5

1. (1) Without prejudice to the generality of section 9 of the Interpretation Act 2005 and its application to the body of this Act and to Schedules 1, 2 and 5 to 17—

- (a) a reference in this Schedule to a paragraph or Part is a reference to a paragraph or Part of this Schedule, unless it is indicated that a reference to some other enactment is intended; 10
- (b) a reference in this Schedule to a Section is a reference to the Section of the Part in which the reference occurs, unless it is indicated that a reference to some other enactment is intended; and 15
- (c) a reference in this Schedule to a subparagraph or clause is a reference to the subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment is intended. 20

(2) Provisions providing for the interpretation of certain expressions appearing in this Schedule are contained in *Part VI*.

## PART II

## GENERAL RULES AND FORMATS

## SECTION A 25

## GENERAL RULES

2. (1) Subject to the provisions of this Schedule—

- (a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out in *Section B*; and 30
- (b) every profit and loss account of a company shall show the items listed in any one of the profit and loss accounts formats so set out,

in either case in the order and under the headings and sub-headings given in the format adopted. 35

(2) *Subparagraph (1)* shall not be read as requiring the heading or sub-heading for any item in the balance sheet, or profit and loss account, of a company to be distinguished by any letter or number assigned to that item in the formats set out in *Section B*.

3. (1) Where, in accordance with *paragraph 2(1)*, a company's balance sheet or profit and loss account for any financial year has been prepared by reference to one of the formats set out in *Section B*, the directors of the company shall adopt the same format in preparing the financial statements for subsequent financial years unless, in their opinion, there are special reasons for a change.

(2) Where any change is made in the format adopted in preparing a balance sheet or profit and loss account of a company, the reasons for the change, together with full particulars of the change, shall be given in a note to the financial statements in which the new format is first adopted.

4. (1) Any item required in accordance with *paragraph 2* to be shown in the balance sheet or profit and loss account of a company may be shown in greater detail than that required by the format adopted.

(2) The balance sheet, or profit and loss account, of a company may include an item representing or covering the amount of any asset or liability or income or expenditure not otherwise covered by any of the items listed in the format adopted but the following shall not be treated as assets in the balance sheet of a company—

- (a) preliminary expenses;
- (b) expenses of and commission on any issue of shares or debentures;
- (c) costs of research; and
- (d) own shares or treasury shares.

(3) Any items to which an Arabic number is assigned in any of the formats set out in *Section B* may be combined in the financial statements of a company—

- (a) in any case where the individual amounts of such items are not material to assessing the financial position or profit or loss of the company for the financial year concerned, or
- (b) in any case where the combination of such items facilitates that assessment.

(4) Where items are combined in a company's financial statements pursuant to *subparagraph (3)(b)*, the individual amounts of any items so combined shall be disclosed in a note to the financial statements.

(5) In preparing the balance sheet, or profit and loss account, of a company, the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by *paragraph 2* in respect of items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.

(6) Every profit and loss account of a company shall show the amount of the profit or loss of the company on ordinary activities before taxation.

5. In respect of every item shown in the balance sheet, or profit and loss account, or notes thereto, of a company, the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown and, if that corresponding amount is not comparable with the

amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount may be adjusted, and particulars of the adjustment and the reasons therefor shall be given in a note to the financial statements. 5

6. (1) Subject to *subparagraph (2)*, a heading or sub-heading corresponding to an item listed in the format adopted in preparing the balance sheet or profit and loss account of a company shall not be included in the balance sheet or profit and loss account, as the case may be, if there is no amount to be shown for that item in respect of the financial year to which the balance sheet or profit and loss account relates. 10

(2) *Subparagraph (1)* shall not apply in any case where an amount can be shown for the item in question in respect of the financial year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by the format adopted as aforesaid. 15

7. Amounts in respect of items representing assets or income may not be set off in the financial statements of a company against amounts in respect of items representing liabilities or expenditure, as the case may be, or *vice versa*. 20

SECTION B  
THE REQUIRED FORMATS FOR FINANCIAL  
STATEMENTS

*Preliminary* 25

8. References in this Part to the items listed in any of the formats set out in this Part are references to those items read together with any notes following the formats which apply to any of those items.

9. A number in brackets following any item in, or any heading to, any of the formats set out in this Part is a reference to the note of that number in the notes following the formats. 30

10. In the notes following the formats—

(a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out in this Part; and 35

(b) references to a numbered format are references to the balance sheet format or (as the case may require) to the profit and loss account format of that number set out in this Part. 40

BALANCE SHEET FORMATS

*Format 1*

A. Fixed Assets

I. Intangible assets

1. Development costs 45

2. Concessions, patents, licences, trade marks and similar rights and assets (1)

- 3. Goodwill (2)
- 4. Payments on account

II. Tangible assets

- 5
  - 1. Land and buildings
  - 2. Plant and machinery
  - 3. Fixtures, fittings, tools and equipment
  - 4. Payments on account and assets in course of construction

III. Financial assets

- 10
  - 1. Shares in group undertakings
  - 2. Loans to group undertakings
  - 3. Participating interests
  - 4. Loans to undertakings in which a participating interest is held
- 15
  - 5. Other investments other than loans
  - 6. Other loans

B. Current Assets

I. Stocks

- 20
  - 1. Raw materials and consumables
  - 2. Work in progress
  - 3. Finished goods and goods for resale
  - 4. Payments on account

II. Debtors (3)

- 25
  - 1. Trade debtors
  - 2. Amounts owed by group undertakings
  - 3. Amounts owed by undertakings in which a participating interest is held
  - 4. Other debtors
- 30
  - 5. Called up share capital not paid
  - 6. Prepayments
  - 7. Accrued income

III. Investments

- 35
  - 1. Shares in group undertakings
  - 2. Other investments

IV. Cash at bank and in hand

C. Creditors: amounts falling due within one year

- 40
  - 1. Debenture loans (4)
  - 2. Bank loans and overdrafts
  - 3. Called up share capital presented as a liability (8)
  - 4. Payments received on account (5)
  - 5. Trade creditors

6. Bills of exchange payable	
7. Amounts owed to group undertakings	
8. Amounts owed to undertakings in which a participating interest is held	
9. Other creditors including tax and social insurance (6)	5
10. Accruals (7)	
11. Deferred income (7)	
D. Net current assets (liabilities)	
E. Total assets less current liabilities	10
F. Creditors: Amounts falling due after more than one year	
1. Debenture loans (4)	
2. Bank loans and overdrafts	
3. Called up share capital presented as a liability (8)	15
4. Payments received on account (5)	
5. Trade creditors	
6. Bills of exchange payable	
7. Amounts owed to group undertakings	20
8. Amounts owed to undertakings in which a participating interest is held	
9. Other creditors including tax and social insurance (6)	
10. Accruals (7)	25
11. Deferred income (7)	
G. Provisions for liabilities	
1. Retirement benefit obligations	
2. Taxation, including deferred taxation	
3. Other provisions for liabilities	30
H. Capital and reserves	
I. Called up share capital presented as equity (8)	
II. Share premium account	
III. Revaluation reserve	
IV. Other reserves	35
1. Other undenominated capital	
2. Reserve for own shares held	
3. Reserves provided for by the constitution	
4. Other reserves (specified as necessary)	
V. Profit and loss account	40

#### BALANCE SHEET FORMATS

*Format 2*

ASSETS

## A. Fixed Assets

### I. Intangible assets

- 1. Development costs
- 2. Concessions, patents, licences, trade marks and similar rights and assets (1)
- 3. Goodwill (2)
- 4. Payments on account

### II. Tangible assets

- 1. Land and buildings
- 2. Plant and machinery
- 3. Fixtures, fittings, tools and equipment
- 4. Payments on account and assets in course of construction

### III. Financial assets

- 1. Shares in group undertakings
- 2. Loans to group undertakings
- 3. Participating interests
- 4. Loans to undertakings in which a participating interest is held
- 5. Other investments other than loans
- 6. Other loans

## B. Current Assets

### I. Stocks

- 1. Raw materials and consumables
- 2. Work in progress
- 3. Finished goods and goods for resale
- 4. Payments on account

### II. Debtors (3)

- 1. Trade debtors
- 2. Amounts owed by group undertakings
- 3. Amounts owed by undertakings in which a participating interest is held
- 4. Other debtors
- 5. Called up share capital not paid
- 6. Prepayments and accrued income

### III. Investments

- 1. Shares in group undertakings
- 2. Other investments

### IV. Cash at bank and in hand

## 40 LIABILITIES

### A. Capital and reserves

#### I. Called up share capital presented as equity (8)

#### II. Share premium account

III. Revaluation reserve	
IV. Other reserves	
1. Other undenominated capital	
2. Reserve for own shares held	
3. Reserves provided for by the constitution	5
4. Other reserves (specify as necessary)	
V. Profit and loss account	
B. Provisions for liabilities	
1. Retirement benefit obligations	
2. Taxation, including deferred taxation	10
3. Other provisions for liabilities	
C. Creditors (9)	
1. Debenture loans (4)	
2. Bank loans and overdrafts	
3. Called up share capital presented as a liability (8)	15
4. Payments received on account (5)	
5. Trade creditors	
6. Bills of exchange payable	
7. Amounts owed to group undertakings	
8. Amounts owed to undertakings in which a participating interest is held	20
9. Other creditors including tax and social insurance (6)	
10. Accruals (7)	
11. Deferred income (7)	25

#### NOTES ON THE BALANCE SHEET FORMATS

(1) *Concessions, patents, licences, trade marks and similar rights and assets*

(Formats 1 and 2, items A. I. 2)

Amounts in respect of assets shall only be included in a company's balance sheet under this item if either—

(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill, or

(b) the assets in question were created by the company itself.

(2) *Goodwill* 35

(Formats 1 and 2, items A. I. 3)

Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

(3) *Debtors*

(Formats 1 and 2, items B. II. 1 to 6) 40

The amount falling due after more than one year shall be shown separately for each item included under debtors.

(4) *Debenture loans*

(Format 1, item C.1 and F.1 and Format 2, item C.1)

5 The amount of any convertible loans shall be shown separately and the terms and conditions under which those loans are convertible into share capital shall be disclosed in the notes to the financial statements.

(5) *Payments received on account*

(Format 1, items C.4 and F.4 and Format 2, item C.4)

10 Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.

(6) *Other creditors including tax and social insurance*

(Format 1, items C.9 and F.9 and Format 2, item C.9)

15 The amount for creditors in respect of taxation and social insurance shall be shown separately from the amount for other creditors and in respect of taxation there shall be stated separately the amounts included in respect of income tax payable on emoluments to which Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 applies, any other income tax, corporation tax, capital gains tax, value-added tax and any other tax.

20 (7) *Accruals and deferred income*

(Format 1, items C. 10 and 11 and F. 10 and 11 and Format 2, items C.10 and 11)

25 The amount in respect of Government grants, that is to say, grants made by or on behalf of the Government, included in this item shall be shown separately in a note to the financial statements unless it is shown separately in the balance sheet.

(8) *Called up share capital*

(Format 1, item C. 3, F. 3 and H. I, and Format 2, item A. I and C. 3)

30 In accordance with the accounting principle in *paragraph 17*, called up share capital must be analysed between shares that are presented as liabilities and share capital.

(9) *Creditors*

(Format 2, items C.1 to 11)

35 Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

## PROFIT AND LOSS ACCOUNT FORMATS

*Format 1 (13)*

1. Turnover
- 40 2. Cost of Sales (10)
3. Gross Profit or Loss
4. Distribution costs (10)

5. Administrative expenses (10)	
6. Other operating income	
7. Income from shares in group undertakings	
8. Income from participating interests	
9. Income from other financial assets (11)	5
10. Other interest receivable and similar income (11)	
11. Amounts written off financial assets and investments held as current assets	
12. Interest payable and similar charges (12)	
13. Tax on profit or loss on ordinary activities	10
14. Profit or loss on ordinary activities after taxation	
15. Extraordinary income	
16. Extraordinary charges	
17. Extraordinary profit or loss	
18. Tax on extraordinary profit or loss	15
19. Other taxes not shown under the above items	
20. Profit or loss for the financial year	

#### PROFIT AND LOSS ACCOUNT FORMATS

##### *Format 2*

1. Turnover	20
2. Variation in stocks of finished goods and in work in progress	
3. Own work capitalised	
4. Other operating income	
5.	
(a) Raw materials and consumables	25
(b) Other external charges	
6. Staff costs:	
(a) Wages and salaries	
(b) Social insurance costs	
(c) Other retirement benefit costs	30
(d) Other compensation costs	
7.	
(a) Depreciation and other amounts written off tangible and intangible fixed assets	
(b) Exceptional amounts written off current assets	35
8. Other operating charges	
9. Income from shares in group undertakings	
10. Income from participating interests	
11. Income from other financial assets (11)	
12. Other interest receivable and similar income (11)	40
13. Amounts written off financial assets and investments held as current assets	
14. Interest payable and similar charges (12)	
15. Tax on profit or loss on ordinary activities	
16. Profit or loss on ordinary activities after taxation	45
17. Extraordinary income	
18. Extraordinary charges	

- 19. Extraordinary profit or loss
- 20. Tax on extraordinary profit or loss
- 21. Other taxes not shown under the above items
- 22. Profit or loss for the financial year

5                    **PROFIT AND LOSS ACCOUNT FORMATS**

*Format 3 (13)*

A. Charges

- 1. Cost of sales (10)
- 2. Distribution costs (10)
- 10 3. Administrative expenses (10)
- 4. Amounts written off financial assets and investments held as current assets
- 5. Interest payable and similar charges (12)
- 6. Tax on profit or loss on ordinary activities
- 15 7. Profit or loss on ordinary activities after taxation
- 8. Extraordinary charges
- 9. Tax on extraordinary profit or loss
- 10. Other taxes not shown under the above items
- 11. Profit or loss for the financial year

20 B. Income

- 1. Turnover
- 2. Other operating income
- 3. Income from shares in group undertakings
- 4. Income participating interests
- 25 5. Income from other financial assets (11)
- 6. Other interest receivable and similar income (11)
- 7. Profit or loss on ordinary activities after taxation
- 8. Extraordinary income
- 9. Profit or loss for the financial year

30                    **PROFIT AND LOSS ACCOUNT FORMATS**

*Format 4*

A. Charges

- 1. Reduction in stocks of finished goods and in work in progress
- 2.
- 35            (a) Raw materials and consumables
- (b) Other external charges
- 3. Staff costs:
- (a) Wages and salaries
- (b) Social insurance costs
- 40            (c) Other retirement benefit costs
- (d) Other compensation costs

4.		
	(a) Depreciation and other amounts written off tangible and intangible fixed assets	
	(b) Exceptional amounts written off current assets	
5.	Other operating charges	5
6.	Amounts written off financial assets and investments held as current assets	
7.	Interest payable and similar charges (12)	
8.	Tax on profit or loss on ordinary activities	
9.	Profit or loss on ordinary activities after taxation	10
10.	Extraordinary charges	
11.	Tax on extraordinary profit or loss	
12.	Other taxes not shown under the above items	
13.	Profit or loss for the financial year	
B.	Income	15
1.	Turnover	
2.	Increase in stocks of finished goods and in work in progress	
3.	Own work capitalised	
4.	Other operating income	
5.	Income from shares in group undertakings	20
6.	Income from participating interests	
7.	Income from other financial assets (11)	
8.	Other interest receivable and similar income (11)	
9.	Profit or loss on ordinary activities after taxation	
10.	Extraordinary income	25
11.	Profit or loss for the financial year	

#### NOTES ON THE PROFIT AND LOSS ACCOUNT FORMATS

(10)	<i>Cost of sales: Distribution costs: Administrative expenses</i>	
	<i>(Format 1, items 2, 4 and 5 and Format 3, items A. 1, 2 and 3)</i>	
	These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.	30
(11)	<i>Income from other financial assets: other interest receivable and similar income</i>	
	<i>(Format 1, items 9 and 10; Format 2, items 11 and 12; Format 3, items B. 5 and 6; Format 4, items B. 7 and 8)</i>	35
	Income and interest derived from group undertakings shall be shown separately from income and interest derived from other sources.	
(12)	<i>Interest payable and similar charges</i>	
	<i>(Format 1, item 12; Format 2, item 14; Format 3, item A. 5; Format 4, item A. 7)</i>	40
	The amount payable to group undertakings shall be shown separately.	

(13) *Formats 1 and 3*

5 The amounts of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under *items 7 (a) and A. 4 (a)*, respectively, in *Formats 2 and 4* shall be disclosed in a note to the financial statements in any case where the profit and loss account is prepared by reference to *Format 1 or Format 3*.

### PART III

#### ACCOUNTING PRINCIPLES AND VALUATION RULES

#### 10 SECTION A

#### ACCOUNTING PRINCIPLES

##### *Preliminary*

15 **11.** Subject to *paragraph 18*, the amounts to be included in the financial statements of a company in respect of the items shown shall be determined in accordance with the principles set out in *paragraphs 12 to 17*.

##### *Accounting principles*

**12.** The company shall be presumed to be carrying on business as a going concern.

20 **13.** Accounting policies shall be applied consistently from one financial year to the next.

**14.** The amount of any item in the financial statements shall be determined on a prudent basis and in particular—

25 (a) only profits realised at the financial year end date shall be included in the profit and loss account; and

30 (b) all liabilities which have arisen in the course of the financial year to which the financial statements relate or of a previous financial year shall be taken into account, even if such liabilities only become apparent between the financial year end date and the date on which the financial statements are signed under *section 325*.

**15.** All income and charges relating to the financial year to which the financial statements relate shall be taken into account without regard to the date of receipt or payment.

35 **16.** In determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately.

40 **17.** The presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement in accordance with applicable accounting standards.

##### *Departure from the accounting principles*

45 **18.** If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in any particular year, they may so depart, but particulars of the departure, the reasons for it

and its effect on the balance sheet and profit and loss account of the company shall be stated in a note to the financial statements.

## SECTION B

### HISTORICAL COST ACCOUNTING RULES

#### *Preliminary* 5

**19.** Subject to *Sections C* and *D*, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with the rules set out in *paragraphs 20* to *31*.

#### FIXED ASSETS 10

##### General rules

**20.** Subject to any provision for depreciation or diminution in value made in accordance with *paragraph 21* or *22* the amount to be included in respect of any fixed asset shall be its purchase price or production cost. 15

##### *Rules for depreciation and diminution in value*

**21.** In the case of any fixed asset which has a limited useful economic life, the amount of—

- (a) its purchase price or production cost; or
- (b) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value, 20

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life. 25

**22.** (1) Where a financial asset of a description falling to be included under item A. III of either of the balance sheet formats set out in *Part II* has diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements. 30

(2) Provisions for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not) and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements. 35 40

(3) Where the reasons for which any provision was made in accordance with *subparagraph (1)* or *(2)* have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this subparagraph which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements. 45

*Rules for determining particular fixed asset items*

23. (1) Notwithstanding that an item in respect of “development costs” is included under “fixed assets” in the balance sheet formats set out in *Part II*, an amount may only be included in a company’s balance sheet in respect of that item in special circumstances.

(2) If an amount is included in a company’s balance sheet in respect of development costs, the following information shall be given in a note to the financial statements—

(a) the period over which the amount of those costs originally capitalised is being or is to be written off, and

(b) the reasons for capitalising the costs in question.

24. (1) The application of *paragraphs 20 to 22* in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.

(2) Subject to *subparagraph (3)*, the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for depreciation calculated to write off that amount systematically over a period chosen by the directors of the company.

(3) The period chosen shall not exceed the useful economic life of the goodwill in question.

(4) In any case where any goodwill acquired by a company is shown or included as an asset in the company’s balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the financial statements.

CURRENT ASSETS

25. Subject to *paragraph 26*, the amount to be included in respect of any current asset shall be its purchase price or production cost.

26. (1) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.

(2) Where the reasons for which any provision for diminution in value was made under *subparagraph (1)* have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

MISCELLANEOUS

*Excess of money owed over value received as an asset item*

27. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any such amount exists—

(a) it shall be written off by reasonable amounts each year and shall be completely written off before repayment of the debt; and

- (b) if the amount not written off is not shown as a separate item in the company's balance sheet, it shall be disclosed in a note to the financial statements.

#### ASSETS INCLUDED AT A FIXED AMOUNT

**28.** (1) Subject to *subparagraph (2)*, assets which fall to be included— 5

- (a) amongst the fixed assets of a company under the item “tangible assets”; or

- (b) amongst the current assets of a company under the item “raw materials and consumables”,

may be included at a fixed quantity and value. 10

(2) *Subparagraph (1)* applies to assets of a kind which are constantly being replaced, where—

- (a) their overall value is not material to assessing the company's state of affairs; and

- (b) their quantity, value and composition are not subject to 15 material variation.

#### DETERMINATION OF PURCHASE PRICE OR PRODUCTION COST

**29.** (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition. 20

(2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition there may be included in the production cost of an 25 asset—

- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production, and 30

- (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production,

provided, however, in a case within *clause (b)*, that the inclusion of the interest in determining the cost of that asset and the amount of 35 the interest so included is disclosed in a note to the financial statements.

(4) In the case of current assets, distribution costs may not be included in production costs.

**30.** (1) Subject to the qualification mentioned subsequently in this 40 subparagraph, the purchase price or production cost of—

- (a) any assets which fall to be included under any item shown in a company's balance sheet under the general item “stocks”; and

(b) any assets which are fungible assets (including investments),

5 may be determined by the application of any of the methods mentioned in *subparagraph (2)* in relation to any such assets of the same class.

The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(2) Those methods are—

(a) the method known as “first in, first out” (FIFO);

10 (b) a weighted average price; and

(c) any other method similar to any of the methods mentioned above.

(3) Where, in the case of any company—

15 (a) the purchase price or production cost of assets falling to be included under any item shown in the company’s balance sheet has been determined by the application of any method permitted by this paragraph; and

20 (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph,

the amount of that difference shall be disclosed in a note to the financial statements.

25 (4) Subject to *subparagraph (5)*, for the purposes of *subparagraph (3)(b)*, the relevant alternative amount, in relation to any item shown in a company’s balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the financial year end date.

30 (5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the financial year end date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the  
35 company to constitute the more appropriate approach in the case of assets of that class.

(6) For the purpose of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable from one another.

#### 40 SUBSTITUTION OF ORIGINAL STATED AMOUNT WHERE PRICE OR COST UNKNOWN

31. Where there is no record of the purchase price or production cost of any asset of a company or of any price, expense or costs relevant for determining its purchase price or production cost in accordance  
45 with *paragraph 29* or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of *paragraphs 20 to 26* to be the value

ascribed to it in the earliest available record of its value made on or after its acquisition or production by the company.

## SECTION C

### ALTERNATIVE ACCOUNTING RULES

#### *Preliminary* 5

**32.** (1) The rules set out in *Section B* are referred to subsequently in this Schedule as the historical cost accounting rules.

(2) Those rules, with the omission of *paragraphs 19, 24 and 28 to 31*, are referred to subsequently in this Part as the depreciation rules; and references subsequently in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of *paragraph 35*. 10

**33.** Subject to *paragraphs 35 to 37*, the amounts to be included in respect of assets of any description mentioned in *paragraph 34* may be determined on any basis so mentioned. 15

#### *Alternative accounting rules*

**34.** (1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined as at the date of their last valuation or at their current cost. 20

(3) Financial fixed assets may be included either—

(a) at a market value determined as at the date of their last valuation; or

(b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company, 25

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the financial statements.

(4) Investments of any description falling to be included under item B. III of either of the balance sheet formats set out in *Part II* may be included at their current cost. 30

(5) Stocks may be included at their current cost.

#### *Application of depreciation rules*

**35.** (1) Where the value of any asset of a company is determined on any basis mentioned in *paragraph 34*, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's financial statements, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in *paragraph 34*. 35  
40

5 (2) The amount of any provision for depreciation required in the case of any fixed asset by *paragraph 21* or *22* as it applies by virtue of *subparagraph (1)* is referred to subsequently in this paragraph as the adjusted amount; and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

(3) Where *subparagraph (1)* applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset—

10 (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or

15 (b) taken into account in stating any item so shown which is required by *note (10)* of the notes on the profit and loss account formats set out in *Part II* to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,

20 may be the historical cost amount instead of the adjusted amount, provided that, if the amount of the provision for depreciation is the historical cost amount, the amount of any difference between the two shall be shown separately in the profit and loss account or in a note to the financial statements.

*Additional information in case of departure from historical cost accounting rules*

25 **36.** (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's financial statements have been determined on any basis mentioned in *paragraph 34*.

30 (2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item shall be disclosed in a note to the financial statements.

(3) In the case of each balance sheet item affected (except stocks) either—

35 (a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item,

40 shall be shown separately in the balance sheet or in a note to the financial statements.

(4) In *subparagraph (3)*, references in relation to any item to the comparable amounts determined as there mentioned are references to—

45 (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

*Revaluation Reserve* 5

**37.** (1) With respect to any determination of the value of an asset of a company on any basis mentioned in *paragraph 34*, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve (referred to in this paragraph as the “revaluation reserve”). 10

(2) The amount of the revaluation reserve shall be shown in the company’s balance sheet under a separate sub-heading in the position given for the item “revaluation reserve” in *Format 1* or *2* of the balance sheet formats set out in *Part II*. 15

(3) An amount may be transferred—

(a) from the revaluation reserve— 20

(i) to the profit and loss account, if the amount was previously charged to that account, or it represents realised profit; or

(ii) on capitalisation;

(b) to or from the revaluation reserve in respect of the taxation relating to any profit or loss credited or debited to the reserve, 25

and the revaluation reserve shall be reduced to the extent that the amounts transferred to it are no longer necessary for the purpose of the valuation methods used. 30

(4) In *subparagraph (3)(a)(ii)* “capitalisation”, in relation to an amount standing to the credit of the revaluation reserve, means applying it in wholly or partly paid up unissued shares in the company to be allotted to members of the company as fully or partly paid shares. 35

(5) The revaluation reserve shall not be reduced except as mentioned in this paragraph.

(6) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the financial statements. 40

SECTION D

FAIR VALUE ACCOUNTING RULES

*Inclusion of financial instruments at fair value*

**38.** (1) Subject to *subparagraphs (2) to (4)* and *paragraph 39*, financial instruments, including derivative financial instruments, may be accounted for at fair value. 45

(2) Subject to *paragraph 41, subparagraph (1)* does not apply to financial instruments which constitute liabilities unless—

- (a) they are held as part of a trading portfolio; or
- (b) they are derivative financial instruments.

5 (3) *Subparagraph (1)* does not apply to—

- (a) financial instruments (other than derivative financial instruments) held to maturity;
- (b) loans and receivables originated by the company and not held for trading purposes;
- 10 (c) interests in subsidiary undertakings, associated undertakings and joint ventures;
- (d) equity instruments issued by the company;
- (e) contracts for contingent consideration in a business combination; and
- 15 (f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments.

(4) If the fair value of a financial instrument cannot be determined reliably by any of the methods described in *paragraph 40, subparagraph (1)* does not apply to that financial instrument and it shall be measured using the accounting rules set out in *Section B* or *C*.

(5) In this paragraph—

25 “associated undertaking” has the meaning given to it by *paragraph 20 of Schedule 4*;

“joint venture” has the meaning given to it by *paragraph 19 of Schedule 4*.

30 **39.** (1) Financial instruments which constitute liabilities, other than such instruments referred to in *subparagraphs (2)(a) and (b) of paragraph 38*, may be accounted for by a company at fair value if—

- (a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation on or before 5 September 2006; and
- 35 (b) the associated disclosure requirements, provided for in international financial reporting standards, are made.

(2) Financial instruments referred to in *paragraph 38(3)* may be accounted for by a company at fair value if—

- 40 (a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation, on or before 5 September 2006; and
- (b) the associated disclosure requirements, provided for in international financial reporting standards, are made.

(3) In this paragraph “Commission Regulation” means Commission Regulation (EC) No. 1725/2003 of 29 September 2003.

*Methods for determining fair value*

**40.** (1) The fair value of a financial instrument is its value determined in accordance with this paragraph.

(2) If a reliable market can readily be identified for the financial instrument, its fair value is to be determined by reference to its market value. 5

(3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar instrument, its fair value is to be determined by reference to the market value of its components or of the similar instrument. 10

(3) If neither *subparagraph (2)* nor *(3)* applies, the fair value of the financial instrument is to be a value resulting from generally accepted valuation models and techniques.

(4) Any valuation models and techniques used for the purposes of *subparagraph (4)* shall ensure a reasonable approximation of the market value. 15

*Inclusion of hedged items at fair value*

**41.** A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets and liabilities, at the amount required under that system. 20

*Other assets that may be included at fair value*

**42.** (1) This paragraph applies to—

(a) investment property; and

(b) living animals and plants, 25

that, under relevant international financial reporting standards, may be included in financial statements at fair value.

(2) Such investment property and such living animals and plants may be included at fair value, provided that all such investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined. 30

(3) In this paragraph, “fair value” means fair value determined in accordance with relevant international financial reporting standards.

*Accounting for changes in fair value of financial instruments*

**43.** (1) This paragraph applies where a financial instrument is valued at fair value in accordance with *paragraph 38* or *41* or where an asset is valued in accordance with *paragraph 42*. 35

(2) Notwithstanding *paragraph 14*, but subject to *subparagraphs (3)* and *(4)*, a change in the fair value of the financial instrument or of the investment property or living animal or plant shall be included in the profit and loss account. 40

(3) Where—

(a) the financial instrument accounted for is a hedging instrument under a system of hedge accounting that allows

some or all of the change in value not to be shown in the profit and loss account; or

- 5 (b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity,

the amount of the change in value shall be credited or (as the case may be) debited to a separate reserve to be known as the "fair value reserve".

(4) Where the instrument accounted for-

- 10 (a) is an available for sale financial asset; and  
(b) is not a derivative,

the change in value may be credited or (as the case may be) debited to the fair value reserve.

*The fair value reserve*

15 **44.** (1) An amount shall be transferred—

- (a) from the fair value reserve to the profit and loss account if the related asset is impaired, transferred or disposed of; or  
20 (b) from the fair value reserve in respect of tax relating to any amount transferred under *clause (a)*.

(2) The fair value reserve shall be adjusted when amounts therein are no longer necessary for the purposes of *paragraph 43(3)* or *(4)*.

(3) The fair value reserve shall not be reduced except as provided for in this paragraph.

25 (4) The treatment for taxation purposes of amounts credited or debited to the fair value reserve shall be disclosed in a note to the financial statements.

PART IV

30 INFORMATION REQUIRED BY WAY OF NOTES TO FINANCIAL STATEMENTS

*Preliminary*

35 **45.** Any information required in the case of any company by the following provisions of this Part shall (if not given in the company's financial statements) be given by way of a note to those financial statements.

*Information supplementing the balance sheet*

40 **46.** *Paragraphs 47 to 61* require information which either supplements the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's financial position in the light of the information so given.

*Debentures*

**47.** (1) If the company has issued any debentures during the financial year to which the financial statements relate, the following information shall be given—

- (a) the reason for making the issue; 5
- (b) the classes of debentures issued; and
- (c) in respect of each class of debentures, the amount issued and the consideration received by the company for the issue.

(2) Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with *section 282* shall be stated. 10

*Fixed assets*

**48.** (1) In respect of each item which is or would, but for *paragraph 4(3)(b)*, be shown under the general item "fixed assets" in the company's balance sheet, the following information shall be given— 15

- (a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the financial year end date respectively; 20
- (b) the effect on any amount shown in the balance sheet in respect of that item of—
  - (i) any revision of the amount in respect of any assets included under that item made during that year on any basis mentioned in *paragraph 34*; 25
  - (ii) acquisitions during that year of any assets;
  - (iii) disposals during that year of any assets; and
  - (iv) any transfers of assets of the company to and from that item during that year.

(2) The reference in *subparagraph (1)(a)* to the appropriate amounts in respect of any item as at any date there mentioned is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item either— 30

- (a) on the basis of purchase price or production cost 35 (determined in accordance with *paragraphs 29* and *30*); or
- (b) on any basis mentioned in *paragraph 34*,

(leaving out of account in either case any provisions for depreciation or diminution in value).

(3) In respect of each item within *subparagraph (1)* — 40

- (a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in *subparagraph (1)(a)*;
- (b) the amount of any such provisions made in respect of the financial year concerned; 45

(c) the amount of any adjustments made in respect of any such provisions during that year in consequence of the disposal of any assets; and

(d) the amount of any other adjustments made in respect of any such provisions during that year,

shall also be stated.

**49.** Where any fixed assets of the company (other than listed investments) are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in *paragraph 34*, the following information shall be given—

(a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and

(b) in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (in either case) the bases of valuation used by them.

*Financial assets and investments held as current assets*

**50.** (1) In respect of the amount of each item which is or would, but for *paragraph 4(3)(b)*, be shown in the company's balance sheet under the general items "financial assets" or "investments held as current assets" there shall be stated how much of that amount is ascribable to listed investments.

(2) Where the amount of any listed investments is stated for any item in accordance with *subparagraph (1)*, the following amounts shall also be stated—

(a) the aggregate market value of those investments where it differs from the amount so stated; and

(b) both the market value and stock exchange value of any investments of which the former value is, for the purposes of the financial statements, taken as being higher than the latter.

*Information about fair valuation of assets and liabilities*

**51.** (1) This paragraph applies where financial instruments have been included at fair value by virtue of *paragraph 38* or *41*.

(2) There shall be stated—

(a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with *paragraph 40(4)*;

(b) for each category of financial instrument the fair value of the financial instruments in that category and the amounts —

(i) included in the profit and loss account; and

(ii) credited or debited to the fair value reserve,

in respect of instruments in that category;

- (c) for each class of derivative financial instrument, the extent and nature of the instruments including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year. 5

**52.** Where the company has derivative financial instruments that it has not accounted for at fair value, there shall be stated for each class of such derivatives—

- (a) the fair value of the derivatives in that class, if such a value can be determined in accordance with *paragraph 40*; and 10
- (b) the extent and nature of the derivatives.

**53.** Where—

- (a) a company has financial assets which could be included at fair value by virtue of *paragraph 38*; 15
- (b) those assets are included in the company's financial statements at an amount in excess of their fair value; and
- (c) the company has not made provision for the diminution in value of those assets in accordance with *paragraph 22(1)*,

there shall be stated— 20

- (i) the amount at which either the individual assets or appropriate groupings of those assets is stated in the company's financial statements;
- (ii) the fair value of those assets or groupings; and
- (iii) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the financial statements will be recovered. 25

*Information where investment property and living animals and plants included at fair value* 30

**54.** (1) This paragraph applies where the amounts to be included in a company's financial statements in respect of investment property or living animals and plants have been determined in accordance with *paragraph 42*. 35

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets concerned in the case of each such item shall be disclosed in a note to the financial statements.

(3) In the case of investment property, for each balance sheet item affected there shall be shown, either separately in the balance sheet or in a note to the financial statements— 40

- (a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

5 (4) In *subparagraph (3)*, references in relation to any item to the comparable amounts determined in accordance with that subparagraph are references to—

10 (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

15 (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

*Dividends, reserves and provisions for liabilities*

**55.** (1) The profit and loss account reserve of a company for a financial year shall show—

20 (a) the aggregate amount of dividends paid in the financial year (other than dividends for which a liability existed at the immediately preceding financial year end date);

25 (b) the aggregate amount of dividends the company is liable to pay at the financial year end date (other than dividends for which a liability existed at the immediately preceding financial year end date);

(c) separately, any transfer between the profit and loss account reserve and other reserves;

30 (d) any other increase or reduction in the balance on the profit and loss account reserve since the immediately preceding financial year end date;

(e) the profit or loss brought forward at the beginning of the financial year; and

(f) the profit or loss carried forward at the end of the financial year.

35 (2) The aggregate amount of dividends proposed by the directors for approval of the members at the next general meeting shall be stated in a note to the financial statements.

**56.** (1) Where any amount is transferred—

(a) to or from any reserves; or

40 (b) to any provision for liabilities; or

(c) from any provision for liabilities other than for the purpose for which the provision was established,

45 and the reserves or provisions for liabilities are or would, but for *paragraph 4(3)(b)*, be shown as separate items in the company's balance sheet, the information mentioned in *subparagraph (2)* shall be given in respect of each such reserve or provisions for liabilities.

(2) That information is—

- (a) the amount of the reserves or provisions for liabilities as at the date of the beginning of the financial year and as at the financial year end date respectively;
- (b) any amount transferred to or from the reserves or provisions for liabilities during that year; and 5
- (c) the source and application respectively of any amounts so transferred.

(3) Particulars shall be given of each provision included in the item “other provisions for liabilities” in the company’s balance sheet in any case where the amount of that provision is material. 10

*Provision for taxation*

**57.** The amount of any provision for deferred taxation shall be shown separately from the amount of any provision for other taxation.

*Details of indebtedness* 15

**58.** (1) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of 5 years beginning with the day next following the end of the financial year; and 20
- (b) in the case of any debts so included which are payable or repayable by instalments, the amount of any instalments which fall due for payment after the end of that period. 25

(2) Subject to *subparagraph (3)*, in relation to each debt falling to be taken into account under *subparagraph (1)*, the terms of payment or repayment and the rate of any interest payable on the debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with *subparagraph (2)* would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts. 30

(4) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated— 35

- (a) the aggregate amount of any debts included under that item in respect of which any security has been given; and
- (b) an indication of the nature of the securities so given.

(5) References in *subparagraph (1)* to an item shown under “creditors” in the company’s balance sheet include references, where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet— 40

- (a) in a case within *subparagraph (1)*, to an item shown under the latter of those categories, and 45

(b) in a case within *subparagraph (4)*, to an item shown under either of those categories,

5 and references to items shown under “creditors” include references to items which would, but for *paragraph 4(3)(b)*, be shown under that heading.

**59.** If any fixed cumulative dividends on the company’s shares are in arrears, there shall be stated, distinguishing between those shares presented as a liability and other shares—

(a) the amount of the arrears; and

10 (b) the period for which the dividends or, if there is more than one class, each class of them are in arrears.

*Guarantees and other financial commitments*

**60.** (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including, 15 where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for—

(a) the amount or estimated amount of that liability;

(b) its legal nature; and

20 (c) whether any valuable security has been provided by the company in connection with that liability and, if so, what.

(3) There shall be stated, where practicable—

(a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and

25 (b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Particulars shall be given of:

30 (a) any unfunded retirement benefit commitments included under any provision shown in the company’s balance sheet; and

(b) any such commitments for which no provision has been made,

35 and, where any such commitment relates wholly or partly to retirement benefits payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such retirement benefits.

(5) The following information shall also be given:

40 (a) the nature of every retirement benefit scheme operated by, or on behalf of, the company including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme;

- (b) whether each such scheme is externally funded or internally financed;
- (c) whether any retirement benefit costs and liabilities are assessed in accordance with the advice of a professionally qualified actuary and, if so, the date of the most recent relevant actuarial valuation; 5
- (d) whether and, if so, where any such actuarial valuation is available for public inspection.

(6) Particulars shall also be given of any other financial commitments which— 10

- (a) have not been provided for; and
- (b) are relevant to assessing the company's financial position.

*Miscellaneous matters*

**61.** Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 31. 15

*Information supplementing the profit and loss account*

**62.** Paragraphs 63 to 66 require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account. 20

*Separate statement of certain items of income and expenditure*

**63.** Each of the following amounts shall be stated—

- (a) the amount of interest on or any similar charges in respect of— 25
  - (i) bank loans and overdrafts made to the company;
  - (ii) loans to the company from group undertakings;
  - (iii) loans of any other kind made to the company;
- and 30
- (b) the amount of income from listed and unlisted investments.

*Particulars of tax*

**64.** (1) The basis on which the charge for corporation tax, income tax and other taxation on profits (whether payable in or outside the State) is computed shall be stated. 35

(2) Particulars shall be given of any special circumstances which affect the liability in respect of taxation on profits, income or capital gains for the financial year concerned or the liability in respect of taxation of profits, income or capital gains for succeeding financial years. 40

5 (3) The amount of the charge for corporation tax, income tax and other taxation on profits or capital gains, so far as charged to revenue, including taxation payable outside the State on profits (distinguishing where practicable between corporation tax and other taxation) shall be stated.

10 (4) The amounts referred to in *subparagraph (3)* shall be stated separately in respect of each of the amounts which is or would, but for *paragraph 4(3)(b)*, be shown under the following items in the profit and loss account, that is to say, “tax on profit or loss on ordinary activities” and “tax on extraordinary profit or loss”.

*Particulars of turnover*

15 **65.** (1) If, in the course of the financial year, the company has carried on business of 2 or more classes which, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each class (describing it) the amount of the turnover attributable to that class.

20 (2) If, in the course of the financial year, the company has supplied markets which, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated.

(3) In *subparagraph (3)* “market” means a market delimited by geographical bounds.

25 (4) In analysing for the purposes of this paragraph the source (in terms of business or in terms of market) of turnover, the directors of the company shall have regard to the manner in which the company’s activities are organised.

(5) For the purpose of this paragraph—

30 (a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and

(b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market,

35 and any amounts properly attributable to one class of business or (as the case may be) to one market which are not material may be included in the amount stated in respect of another.

40 (6) Where, in the opinion of the directors, the disclosure of any information required by this paragraph would be seriously prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed must be stated.

*Miscellaneous matters*

45 **66.** (1) Where any amount relating to any preceding financial year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the financial year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence notwithstanding the fact that they fall within the ordinary activities of the company.

(4) Any amount expended on research and development in the financial year, and any amount committed in respect of research and development in subsequent years, shall be stated. 5

(5) Where, in the opinion of the directors, the disclosure of any information required by *subparagraph (4)* would be prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed shall be stated. 10

#### *Related party transactions*

**67.** (1) Particulars shall be given in the notes to the financial statements of a company of transactions which have been entered into with related parties by the company if such transactions are material and have not been concluded under normal market conditions and the particulars shall include the amount of such transactions, the nature of the related party relationship and other information about the transactions which is necessary for an understanding of the financial position of the company. 15 20

(2) The provision of particulars and other information about individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company. 25

(3) *Subparagraph (1)* shall not apply to transactions which are entered into between 2 or more members of a group if any subsidiary undertaking which is party to the transaction is wholly owned by such a member.

(4) A word or expression that is used in this paragraph and is also used in Directive 2006/46/EC of the European Parliament and the Council of 14 June 2006 has the meaning in this paragraph that it has in that Directive. 30

#### *General*

**68.** Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into euro or, if different, the functional currency of the company, shall be stated. 35

### PART V 40

#### SPECIAL PROVISIONS WHERE A COMPANY IS A HOLDING COMPANY OR SUBSIDIARY UNDERTAKING

#### *Entity financial statements*

**69.** (1) This Part applies where the company is a holding company, whether or not it is itself a subsidiary undertaking. 45

(2) Where a company is a holding company or a subsidiary undertaking and any item required by *Part II* to be shown in the company's balance sheet, in relation to group undertakings, includes—

(a) amounts attributable to dealings with or interests in any holding undertaking or fellow subsidiary undertaking; or

(b) amounts attributable to dealings with or interests in any subsidiary undertaking of the company,

5 the aggregate amounts within *clauses (a) and (b)*, respectively, shall be shown as separate items, either by way of subdivision of the relevant item in the balance sheet or in a note to the company's financial statements.

10 *Guarantees and other financial commitments in favour of group undertakings*

**70.** Commitments within any of the *subparagraphs (1) to (6)* of *paragraph 60* (guarantees and other financial commitments) which are undertaken on behalf of or for the benefit of—

15 (a) any holding undertaking or fellow subsidiary undertaking; or

(b) any subsidiary undertaking of the company,

shall be stated separately from the other commitments within that subparagraph, and commitments within *clause (a)* shall also be stated separately from those within *clause (b)*.

20 **71.** (1) Subject to *subparagraph (2)*, where the company is a holding undertaking, the number, description and amount of the debentures of the company held by its subsidiary undertakings or their nominees shall be disclosed in a note to the company's financial statements.

(2) *Subparagraph (1)* does not apply in relation to any debentures—

25 (a) in the case of which the subsidiary undertaking is concerned as personal representative; or

(b) in the case of which it is concerned as trustee,

30 provided that in the latter case neither the company nor a subsidiary undertaking of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

35 **72.** (1) Where a company is a subsidiary undertaking, the information specified in *subparagraphs (2), (3) and (4)* shall be stated with respect to the holding undertaking of—

(a) the largest group of undertakings for which group financial statements are drawn up and of which the company is a member; and

(b) the smallest such group of undertakings.

40 (2) The name of the holding undertaking shall be stated.

(3) There shall be stated—

(a) if the holding undertaking is incorporated, the country in which it is incorporated; or

(b) if it is unincorporated, the address of its principal place of business.

(4) If copies of the group financial statements referred to in *subparagraph (1)* are available to the public, there shall be stated the addresses from which copies of the financial statements can be obtained. 5

*Provisions of general application*

73. (1) This paragraph applies where a company is a holding company and either—

(a) does not prepare group financial statements; or 10

(b) prepares group financial statements which do not deal with one or more of its subsidiary undertakings,

and references in this paragraph to subsidiary undertakings shall be read, in a case within *clause (b)*, as references to such of the subsidiary undertakings of the company concerned as are excluded from the group financial statements. 15

(2) Subject to the following provisions of this paragraph, there shall be given in the notes to the company's entity financial statements —

(a) the reasons why subsidiary undertakings are not dealt with in group financial statements; and 20

(b) a statement—

(i) showing any qualifications contained in the reports of the statutory auditors of the subsidiary undertakings on their financial statements for their respective financial years ending with or during the financial year of the company; and 25

(ii) of any note or saving contained in those financial statements to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, 30

in so far as the matter which is the subject of the qualification or note is not covered by the company's entity financial statements and is material from the point of view of its members.

(3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiary undertakings shall be stated in a note to the company's entity financial statements by way of the equity method of accounting. 35

(4) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's entity financial statements is not obtainable, a statement to that effect shall be given instead in a note to those entity financial statements. 40

(5) Where, in any case within *subparagraph (1)(b)*, the company prepares group financial statements, references in the preceding subparagraphs to the company's entity financial statements shall be read as references to the group financial statements. 45

74. Where a company has subsidiary undertakings whose financial years did not end with that of the company, the following information shall be given in relation to each such subsidiary undertaking (whether or not dealt with in any group financial statements prepared by the company) by way of a note to the company's entity financial statements or (where group financial statements are prepared) to the group financial statements, that is to say—

(a) the reasons why the company's directors consider that the subsidiary undertakings' financial years should not end with that of the company; and

(b) the dates on which the subsidiary undertakings' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

## PART VI

### INTERPRETATION OF CERTAIN EXPRESSIONS IN SCHEDULE

#### *Assets: fixed or current*

75. For the purposes of this Schedule, assets of a company shall be taken to be fixed assets if they are intended for use on a continuing basis in the company's activities, and any assets not intended for such use shall be taken to be current assets.

#### *Capitalisation*

76. References in this Schedule to capitalising any work or costs are references to treating that work or those costs as a fixed asset.

#### *Investment property*

77. In this Schedule "investment property" means land or buildings (or both) held to earn rentals or for capital appreciation (or both).

#### *Listed investments*

78. In this Schedule, "listed investments" means investments as respects which there has been granted a listing on—

(a) any regulated market or other stock exchange in the State;

(b) any regulated market or other stock exchange of repute in any other EEA state; or

(c) any stock exchange of repute in a state that is not an EEA state.

#### *Loans*

79. For the purposes of this Schedule, a loan shall be treated as falling due for payment, and an instalment of a loan shall be treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if the lender exercised all options and rights available to him or her.

*Materiality*

**80.** Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

*Provisions*

5

**81.** (1) References in this Schedule to provisions for depreciation or diminution in value of assets are references to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in *Part II* to the depreciation of, or amounts written off, assets of any description is a reference to the movement in any provision for depreciation or diminution in value of assets of that description. 10

**82.** References in this Schedule to provisions for liabilities are references to any amount retained as reasonably necessary for the purpose of providing for any liability the nature of which is clearly defined and which exists at the financial year end date but, as respects the amount of which or the date on which it will be settled, there is uncertainty. 15

*Purchase price*

**83.** References in this Schedule (however expressed) to the purchase price of an asset of a company or of any raw materials or consumables used in the production of any such asset shall be read as including references to any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require). 20  
25

ACCOUNTING PRINCIPLES, FORM AND CONTENT OF GROUP FINANCIAL  
STATEMENTS

## PART I

5 CONSTRUCTION OF REFERENCES TO PROVISIONS OF  
SCHEDULE

1. Without prejudice to the generality of section 9 of the Interpretation Act 2005 and its application to the body of this Act and to *Schedules 1, 2 and 5 to 17*—

- 10 (a) a reference in this Schedule to a paragraph or Part is a reference to a paragraph or Part of this Schedule, unless it is indicated that a reference to some other enactment is intended; and
- 15 (b) a reference in this Schedule to a subparagraph or clause is a reference to the subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment is intended.

## PART II

## GENERAL RULES AND FORMATS

## 20 GENERAL RULES

2. (1) Group financial statements shall comply, except for any necessary modifications to take account of differences between group financial statements and entity financial statements, with the provisions of *Schedule 3* as if the undertakings included in the consolidation  
25 (the “group”) were a single company.

(2) In particular, for the purposes of *paragraph 69* of *Schedule 3* (dealings with or interests in group undertakings) as it applies to group financial statements—

- 30 (a) any subsidiary undertakings of the holding company not dealt with in the group financial statements shall be treated as a subsidiary undertaking of the group; and
- 35 (b) if the holding company is itself a subsidiary undertaking, the group shall be treated as a subsidiary undertaking of any holding undertaking of the holding company, and the reference to fellow subsidiary undertakings shall be read accordingly.

3. (1) The group balance sheet and group profit and loss account shall consolidate in full the information contained in the separate balance sheets and profit and loss accounts of the holding company  
40 and of the subsidiary undertakings included in the consolidation, subject to the adjustments required or permitted by the following provisions of this Schedule and to such other adjustments (if any) as

may be appropriate in accordance with generally accepted accounting practice.

(2) If the financial year of a subsidiary undertaking dealt with in the group financial statements differs from that of the holding company, the group financial statements shall be drawn up— 5

(a) from the entity financial statements of the subsidiary undertaking for its financial year last ending before the end of the holding company's financial year provided that the financial year ended no more than 3 months before that of the holding undertaking; or 10

(b) from interim financial statements drawn up by the subsidiary undertaking as at the end of the holding company's financial year.

#### AMENDMENTS TO FORMATS IN *SCHEDULE 3*

##### *Minority interest* 15

**4.** (1) In applying Balance Sheet *Formats 1* and *2* set out in *Part II* of *Schedule 3* to group financial statements a separate item under the heading "Minority Interest" shall be shown—

(a) in *Format 1* after *item H*; and

(b) in *Format 2* under the general heading "Liabilities", between *items A* and *B*. 20

(2) The amount to be shown under the heading "Minority Interest" referred to in *subparagraph (1)* shall be the amount of share capital and reserves attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings. 25

**5.** (1) In applying Profit and Loss *Formats 1, 2, 3* and *4* set out in *Part II* of *Schedule 3* to group financial statements a separate item under the heading "Minority Interest" shall be shown— 30

(a) in *Format 1*, before *item 20*;

(b) in *Format 2*, before *item 22*;

(c) in *Format 3*, before *item 11* in *Section A* and before *item 9* in *Section B*; and

(d) in *Format 4*, before *item 13* in *Section A* and before *item 11* in *Section B*. 35

(2) The amount to be shown under the heading "Minority Interest" in accordance with *subparagraph (1)* shall be the amount of any profit or loss for the year attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings. 40

##### *Other changes*

**6.** (1) The formats set out in *Part II* of *Schedule 3* shall have effect in relation to group financial statements with the following modifications. 45

(2) In the Balance Sheet Formats, the items headed “Participating interests”, that is—

(a) in *Format 1, item A.III.3*; and

(b) in *Format 2, item A.III.3* under the heading “ASSETS”,

5 shall be replaced by 2 items, “Interests in associated undertakings” and “Other participating interests”.

(3) In the Profit and Loss Account Formats, the items headed “Income from participating interests”, that is—

(a) in *Format 1, item 8*;

10 (b) in *Format 2, item 10*;

(c) in *Format 3, item B.4*; and

(d) in *Format 4, item B.6*,

shall be replaced by 2 items, “Income from interests in associated undertakings” and “Income from other participating interests”.

15

### PART III

#### ACCOUNTING PRINCIPLES AND VALUATION RULES

##### ACCOUNTING PRINCIPLES

###### *General*

20 **7.** In determining the amounts to be included in the group financial statements, the accounting principles and valuation rules contained in *Part III* of *Schedule 3* shall apply and shall be applied consistently within those group financial statements.

25 **8.** (1) Subject to *subparagraph (2)*, a holding company shall apply the same methods of valuation in drawing up its group financial statements as it applies in drawing up its entity financial statements.

(2) Subject to *paragraph 6, subparagraph (1)* shall not apply where, in the opinion of the directors, a departure from that paragraph is necessary for the purpose of giving a true and fair view.

30 (3) Where there is any application of *subparagraph (2)*, the particulars of the departure and the reasons therefor shall be disclosed in the notes to the group financial statements.

35 **9.** (1) Where the assets and liabilities to be included in the group financial statements have been valued or otherwise determined by undertakings included in the consolidation according to accounting rules differing from those used in the group financial statements, the values or amounts shall be adjusted so as to accord with the rules used for the group financial statements.

(2) The adjustments referred to in this paragraph need not be made if they are not material for the purpose of giving a true and fair view.

40 (3) If, in the opinion of the directors of the holding company, there are special reasons for departing from *subparagraph (1)* they may do

so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements.

*Preparing the consolidation*

**10.** (1) Group financial statements shall show the assets, liabilities and financial position as at the end of the financial year and the profit or loss for the financial year of the holding company and the undertakings included in the consolidation as if they were a single undertaking. 5

(2) In particular—

(a) debts and claims between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements; 10

(b) income and expenditure relating to transactions between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements; 15

(c) where profits and losses resulting from transactions between the undertakings included in the consolidation are included in the book values of assets, they shall be eliminated in preparing the group financial statements,

but *clauses (a) to (c)* need not be complied with where the amounts involved are not material for the purpose of giving a true and fair view. 20

**11.** (1) The methods of consolidation shall be applied consistently from one financial year to the next.

(2) If, in the opinion of the directors of the holding company, there are special reasons for departing from *subparagraph (1)* they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements. 25

*Accounting for an acquisition*

**12.** (1) *Paragraphs 13 to 16* apply where an undertaking becomes a subsidiary undertaking of the holding company. 30

(2) That event is referred to in those provisions as an “acquisition” and references to the undertaking acquired shall be read accordingly.

**13.** An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger as set out in *paragraph 15* are satisfied and the merger method of accounting is adopted. 35

**14.** (1) The acquisition method of accounting is as described in *subparagraphs (2) to (6)*.

(2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition. 40

(3) In *subparagraph (2)* “identifiable assets or liabilities” means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking. 45

(4) The income and expenditure of the undertaking acquired shall be brought into the group financial statements only as from the date of acquisition.

5 (5) There shall be calculated the difference between the acquisition cost of the interest in the shares of the acquired undertaking incurred by the undertakings included in the group financial statements, and the interest of the undertakings included in the group financial statements in the adjusted capital and reserves of the undertaking acquired.

10 (6) For the foregoing purpose—

“acquisition cost” means the amount of any cash consideration and the fair value of any other consideration, together with such amounts (if any) in respect of fees and other expenses of the acquisition as the holding company may determine to have been incurred in relation to  
15 the acquisition;

“adjusted capital and reserves of the undertaking acquired” means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

20 (7) The resulting amount, if positive, shall be treated as goodwill and the provisions of *Schedule 3* in relation to goodwill shall apply.

(8) The resulting amount, if negative, shall be treated as a negative consolidation difference.

25 **15.** The conditions for accounting for an acquisition as a merger are—

(a) that at least 90 per cent of the nominal value of the equity shares in the undertaking acquired is held by or on behalf of the undertakings consolidated in the group financial statements,

30 (b) that the proportion referred to in *clause (a)* was attained pursuant to the arrangement providing for the issue of equity shares by the undertakings consolidated in the group financial statements,

35 (c) that the fair value of any consideration other than the issue of equity shares given pursuant to the arrangement by the undertakings consolidated in the group financial statements did not exceed 10 per cent of the nominal value of the equity shares issued.

40 **16.** (1) The merger method of accounting is as set out in *subparagraphs (2) to (6)*.

(2) The assets and liabilities of the undertaking acquired shall be brought into the group financial statements at the amount at which they stand in the acquired undertaking’s financial statements, subject to any adjustment authorised or required by this Part.

45 (3) The income and expenditure of the acquired undertaking shall be included in the group financial statements for the entire financial year, including the period before the acquisition.

(4) The group financial statements shall show corresponding amounts relating to the previous financial year as if the undertaking had been included in the consolidation throughout that year.

(5) There shall be set off against the aggregate of—

(a) the appropriate amount in respect of shares issued by the undertakings consolidated in the group financial statements as part of the arrangement referred to in *paragraph 15(1)(b)* in consideration for the acquisition of shares in the acquired undertaking; and 5

(b) the fair value of any other consideration for the acquisition of shares in the acquired undertaking, determined as at the date when those shares were acquired, 10

the nominal value of the issued share capital of the acquired undertaking held by the undertakings consolidated in the group financial statements. 15

(6) The resulting amount shall be shown as an adjustment to the consolidated reserves.

**17.** (1) Where a group is acquired, *paragraphs 12 to 16* apply with the following adaptations.

(2) References to shares of the acquired undertaking shall be read as references to shares of the holding undertaking of the group acquired. 20

(3) Other references to the acquired undertaking shall be read as references to the group acquired; and references to the assets and liabilities, income and expenditure and capital and reserves of the acquired undertaking shall be read as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set offs and other adjustments required by this Part in the case of group financial statements. 25

*Changes in the composition of the group* 30

**18.** If the composition of the undertakings consolidated in the group financial statements has changed significantly in the course of a financial year, the group financial statements must include information which makes the comparison of successive sets of group financial statements meaningful. 35

#### ACCOUNTING FOR JOINT VENTURES AND ASSOCIATES IN GROUP FINANCIAL STATEMENTS

##### *Joint ventures*

**19.** (1) Where a holding company or one of its subsidiary undertakings consolidated in the group financial statements manages another undertaking jointly with one or more undertakings not consolidated in the group financial statements, that other undertaking (the “joint venture”) may, if it is not— 40

(a) a body corporate; or

(b) a subsidiary undertaking of the holding company, 45

be proportionally consolidated in the group financial statements in proportion to the rights in its capital held by the holding company

or the subsidiary undertakings consolidated in the group financial statements, as the case may be.

5 (2) The provisions of this Schedule relating to the preparation of consolidated financial statements shall apply, with any necessary modifications, to the inclusion of joint ventures in the consolidated financial statements by proportional consolidation in accordance with *subparagraph (1)*.

#### *Associated undertakings*

10 **20.** (1) In *paragraph 21* “associated undertaking” means an undertaking in which an undertaking consolidated in the group financial statements has a participating interest and over whose operating and financial policy it exercises a significant influence and which is not—

(a) a subsidiary undertaking of the holding company; or

15 (b) a joint venture proportionally consolidated in accordance with *paragraph 19*.

(2) Where an undertaking holds 20 per cent or more of the voting rights in another undertaking, it shall be presumed to exercise such an influence over it unless the contrary is shown.

20 (3) The voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all or substantially all matters.

25 (4) The provisions of *section 7(5)* and *(6)* with respect to determining whether shares are held in a body corporate and with respect to reckoning the amount of voting rights held apply, with any necessary modifications, in determining for the purpose of this paragraph whether an undertaking holds 20 per cent or more of the voting rights in another undertaking.

30 **21.** (1) The interest of an undertaking consolidated in the group financial statements in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown in the group financial statements by way of the equity method of accounting including dealing with any goodwill arising in accordance with *paragraphs 20 to 22* and *24 of Schedule 3*.

35 (2) Where the associated undertaking is itself a holding undertaking, the net assets and profits or losses to be taken into account are those of the holding and its subsidiary undertakings (after making any consolidation adjustments).

40 (3) The equity method of accounting need not be applied if the amounts in question are not material for the purpose of giving a true and fair view.

#### *Participating interest*

45 **22.** (1) In *paragraph 20* and this paragraph “participating interest” means an interest held by one undertaking in the equity shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to that undertaking’s own activities by the exercise of control or influence arising from or related to that interest.

(2) The reference in *subparagraph (1)* to an interest in equity shares includes—

(a) an interest which is convertible into an interest in equity shares; and

(b) an option to acquire equity shares or any such interest, 5

and an interest or option falls within *clause (a)* or *(b)* notwithstanding that the equity shares to which it relates are, until the conversion or the exercise of the option, unissued.

(3) Where an undertaking holds an interest in equity shares and such an interest represents 20 per cent or more of all such interests in the other undertaking it shall be presumed to hold that interest on the basis and for the purpose mentioned in *subparagraph (1)* unless the contrary is shown. 10

(4) For the purpose of this paragraph an interest held on behalf of an undertaking shall be treated as held by it. 15

(5) In the balance sheet and profit and loss formats set out in *Part II of Schedule 3*, “participating interest” does not include an interest in a group undertaking.

#### PART IV

#### INFORMATION REQUIRED BY WAY OF NOTES TO GROUP FINANCIAL STATEMENTS 20

**23.** Without prejudice to *paragraph 2*, the notes to the group financial statements shall, in addition to providing the information required by *Schedule 3*, also state the information required by *paragraphs 24 to 28*. 25

**24.** Where sums originally denominated in currencies, other than the currency in which the group financial statements are presented, have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into the currency in which the group financial statements are presented shall be stated. 30

**25.** In respect of the aggregate of the amounts shown in the group balance sheet under the heading “Creditors” there shall be stated the information required by *paragraph 58 of Schedule 3* as if references in that paragraph to a company were to the company and its subsidiary undertakings taken as a whole. 35

**26.** In relation to each joint venture proportionately consolidated, there shall be stated the nature of the joint management arrangement.

**27.** In relation to acquisitions taking place in the financial year, there shall be stated in the notes to the group financial statements – 40

(a) the name and registered office of the acquired undertaking, or where a group was acquired, the name and registered office of the holding undertaking of that group; and 45

(b) whether the acquisition has been accounted for by the acquisition method or the merger method of accounting.

28. Paragraph 67 (related party transactions) of Schedule 3 shall, in the case of group financial statements, apply to all transactions entered into by the holding company, or any subsidiary undertaking included in the consolidation, with related parties, being transactions of the kind referred to in that paragraph but not being intra-group transactions.