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# COMPANIES BILL 2012

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*Unofficial version*

As amended in ~~Committee-Report~~ Stage (Seanad)  
on ~~17<sup>th</sup> June~~30<sup>th</sup> September 2014

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**Arthur Cox**

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## PART 6

### FINANCIAL STATEMENTS, ANNUAL RETURN AND AUDIT

#### Chapter 1

##### Preliminary

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

[272]. (1) This Part contains the provisions regarding -

- (a) the accounting records to be kept, and the financial statements to be prepared, by companies;
- (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.

(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
- (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
- (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 and annual return date.

[273]. (1) The discretions of a company under 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 compliance by the company with the following requirement.

(2) That requirement is that which arises under *section [347](4)* relating to the earliest date to which the documents annexed to an annual return must be made up.]<sup>198</sup>

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

[274]. (1) In this Part –

“abridged financial statements”, in relation to a company, means the financial statements of the company prepared in accordance with *section [353]* or *[354]*, as appropriate;

“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 –

- (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;

“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 [290]*;

“Companies Act group financial statements” shall be read in accordance with *section [293]*;

“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 loss, since the date of its previous financial statements and generally comprises -

- (a) a balance sheet;
- (b) a profit and loss account; and
- (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;

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

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<sup>198</sup> Substituted by point 63 of Committee Amendments.

“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-

- (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;

“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;

“IFRS” means international financial reporting standards;

“IFRS entity financial statements” shall be read in accordance with *section [290]*;

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

“IFRS group financial statements” shall be read in accordance with *section [293]*;

“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;

“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
- (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,

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 [290]*; and
- (b) in the case of a holding company that prepares group financial statements, the group financial statements required by *section [293]* together with the entity financial statements required by *section [290]*.

(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 [291]* 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 [294]* 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 -

- (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.

(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.

(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.

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

[275]. (1) In this Part –

“accounting standards” means –

- (a) statements of accounting standards; and
- (b) any written interpretation of those standards,

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 [167]*;

“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;

“audit of the statutory financial statements” means work required to fulfil the duties imposed under *section [336]* 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;
- (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
- (d) a company or undertaking that is a trustee savings bank licensed under the Trustee Savings Bank[s]<sup>199</sup> 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;

“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;

“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;

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

“holding undertaking” has the same meaning as “holding company” in *section 8* has save that “company” in [*section 8*]<sup>200</sup> shall, for the

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<sup>199</sup> Correction of typographical error from Bill as initiated.

<sup>200</sup> Deleted by point 65 of Committee Amendments.

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;

“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);
- (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 [of]<sup>201</sup> 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;

“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;

“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);

“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

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<sup>201</sup> Correction of typographical error from Bill as initiated

- (b) an unincorporated body of persons,

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;
- (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;

“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;

(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 -

- (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
- (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
  - (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 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.

(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/[EC]<sup>202</sup> of the European Parliament and of the Council.

(6) Those expressions are:

- (a) "available for sale financial asset";
- (b) "business combination";
- (c) "commodity-based contracts";
- (d) "equity instrument";
- (e) "exchange difference";
- (f) "value hedge accounting system";
- (g) "financial fixed asset";
- (h) "financial instrument";
- (i) "foreign entity";
- (j) "hedge accounting";
- (k) "hedged items";
- (l) "hedging instrument";
- (m) "held to maturity";

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<sup>202</sup> Substituted by point 62 of Seanad Committee Amendments.

- (n) “held for trading purposes”;
- (o) “monetary item”;
- (p) “receivables”;
- (q) “reliable market”; and
- (r) “trading portfolio”.

**Construction of references to realised profits.**

[276]. (1) It is declared, for the avoidance of doubt, that references in this Part to realised profits, in relation to a company’s [entity]<sup>203</sup> 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.

(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.

**Construction of references to exemption.**

[277]. (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.

(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.**

[278]. (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.

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

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<sup>203</sup> Correction of typographical error

- (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
- (b) a case falling within *section [279]* or regulations made under *section [280]* and the holding company concerned avails itself of what is permitted by that section or those regulations.

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

[279]. (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
- (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.

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

[280]. (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 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.

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

- (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;
- (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

- (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.

[281]. A company shall keep or cause to be kept adequate accounting records.

#### Basic requirements for accounting records.

[282]. (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;
- (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 [290]* or *[293]*, and any directors' report required to be prepared under *section [325]*, comply with the requirements of this Act and, where applicable, Article 4 of the IAS Regulation; and
- (d) enable those financial statements of the company so prepared to be audited.

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

(3) Without prejudice to the generality of *subsections (1) and (2)*, accounting records kept pursuant to *section [281]* 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;

- (c) if the company's business involves dealing in goods—
  - (i) [a record of all transactions whereby goods are purchased and whereby goods are sold]<sup>204</sup>, 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;
  - (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
- (d) if the company's business involves the provision or purchase of services, a record [of all transactions whereby services are provided and whereby services are purchased]<sup>205</sup>, 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.

(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 [283](2)*.

(5) The adequate accounting records required by *section [281]* 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
- (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.

(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.

(7) In any case where the accounting records are kept outside the State as mentioned in *section [283](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*

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<sup>204</sup> Substituted by point 87 of Report Amendments.

(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.**

[283]. (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 [290]* or *[293]* and the directors' report required by *section [325]*.

#### **Access to accounting records.**

[284]. (1) A company shall make its accounting records, and any information and returns referred to in *section [283](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 [283](2)* are kept in the manner referred to in *section [282](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.

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<sup>205</sup> Substituted by point 88 of Report Amendments.

(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.

(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.

**Retention of accounting records.**

[285]. An accounting record required to be kept by *section [281]* or information or a return referred to in *section [283](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.

**Accounting records: offences.**

[286]. (1) A company that contravenes *section [281], [282], [283], [284]* or [285] shall be guilty of -

- (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.

(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 [281]* to [285], 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 -

- (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 [\[of\]<sup>206</sup>](#) the following circumstances apply-

- (a) the contravention arose in relation to a company that is subsequently wound up and that company is

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<sup>206</sup> [Inserted by point 31 of Seanad Report Amendments.](#)

unable to pay its debts; and

- (b) the contravention has –
- (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.

(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 275(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.~~

~~(6) Subject to subsection (7), the reference in subsection (5) to the net assets of the company is a reference to net assets, as defined in section 275(1), of the company and for this purpose the amount of its net assets shall be ascertained by reference to the entity financial statements prepared under section 290 and laid in accordance with section 341 in respect of the last preceding financial year in respect of which such entity financial statements were so laid.~~

~~(7) Where no entity financial statements of the company have been prepared and laid under the foregoing sections before that time, the reference in subsection (5) to the net assets of the company shall be taken to be a reference to the amount of its called-up share capital at the time of the contravention.<sup>207</sup>~~

(187) 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 281 to 285, it shall be a defence to prove both of the following :

- (a) that the defendant had reasonable grounds for believing and did believe that a competent and reliable person was –

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<sup>207</sup> [Inserted by point 32 of Seanad Report Amendments.](#)

(i) charged with the duty of undertaking that those requirements were complied with; and

(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.

### Chapter 3

#### Financial year

##### **Financial year end date.**

[287]. 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.

##### **Financial year.**

[288]. (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 –

(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,

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

#### **Statutory financial statements to give true and fair view.**

[289]. (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 and financial position, as at the end of the financial year, and profit or loss, for

the financial year—]<sup>208</sup>

- (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);
- (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.

(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)*.

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

[290]. (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 [293]*.

(3) Subject to *subsections (5) to (8)* and *section [296]*, a company's entity financial statements shall be prepared either (as the company elects) in accordance with —

- (a) *section [291]*; or
- (b) international financial reporting standards and *section [292]*.

(4) Entity financial statements prepared in accordance with -

- (a) *section [291]* 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
- (b) international financial reporting standards and *section [292]* 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 .

(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 [291]*.

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<sup>208</sup> Substituted by point 90 of Report Amendments.

(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 [292]* 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—

- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IFRS 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
- (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.

(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.

**Companies Act entity financial statements.**

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

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

(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 —

- (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;

(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) 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.

(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.

(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

(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.

(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

(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 entity financial statements.**

[292]. (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
- (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 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 [291](2)*.

(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 –

- (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.

## **Obligation to prepare group financial statements under relevant financial reporting framework.**

[293]. (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.

(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 [290]* 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 [294]*; or
- (b) international financial reporting standards and *section [295]*.

(4) Group financial statements prepared in accordance with –

- (a) *section [294]* 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
- (b) international financial reporting standards and *section [295]* 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 [294]*.

(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)*.

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

- (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
- (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.

(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.

(9) This section is subject to –

- (a) *sections [297] and [298]* (size of group);
- (b) *section [299]* (holding company that is subsidiary undertaking of undertaking registered in EEA);
- (c) *section [300]* (holding company that is subsidiary undertaking of undertaking registered outside EEA);
- (d) *section [301]* (all subsidiaries excluded from consolidation); and
- (e) *section [302]* (IFRS exemption).

**Companies Act group financial statements.**

**[294].** (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—

- (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 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.

(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 as concerns the members of the company.

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

- (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.

(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 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.

(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.

(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

(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.

(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

(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.**

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

- (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
- (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 [294](2)*.

(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 –

- (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.

**Consistency of financial statements.**

[296]. (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
- (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.

(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
- (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.

## Chapter 5

### Group financial statements: exemptions and exclusions

#### **Exemption from consolidation: size of group.**

[297]. (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 [298]*.

(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
- (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 -

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

(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 [317]*.

(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.

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

**Application of *section [297]* in certain circumstances and cessation of exemption.**

[298]. (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 [297](3)*.

(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 [297](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.

(3) Where a holding company qualifies to avail itself of the exemption in *section [297](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.

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

[299]. (1) Subject~~[to its not having elected to prepare IFRS group financial statements and ]~~<sup>209</sup> 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.

(2) Those cases are -

- (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 –
  - (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 on the lower holding company not later than 6 months after the end of the financial year before that to which it relates.

(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;
- (b) those accounts are drawn up and audited and the group’s consolidated annual report is drawn up in accordance with –
  - (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;
- (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 –

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<sup>209</sup> [Inserted by point 33 of Seanad Report Amendments.](#)

- (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
- (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,
- 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.

(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) 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,

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;
- (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 –

“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.

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

[300]. (1) Subject ~~to its not having elected to prepare IFRS group financial statements and~~<sup>210</sup> 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.

(2) Those cases are -

- (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 –
  - (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.

(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;
- (b) those accounts and, where appropriate, the group’s consolidated annual report are drawn up –
  - (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;
- (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;
- (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 –
  - (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
- (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
  - (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)* 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)*,

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<sup>210</sup> [Inserted by point 34 of Seanad Report Amendments.](#)

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.**

[301]. A holding company is exempt from the requirement to prepare group financial statements if, by virtue of *section [303](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.**

[302]. 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.**

[303]. (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.

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

[304]. (1) Subject to *subsection (3)*, *subsection (2)* applies with respect to the entity profit and loss account of a holding company where—

- (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.

(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 [324]* (approval by board of directors) but may be omitted from the company's entity financial statements for the purposes of *section [338]* (circulation of financial statements), and shall also be exempt from the requirements of -

- (a) *section [339]* (right of members to demand copies of financial statements);
- (b) *section [341]* (financial statements to be laid before members); and
- (c) *section [347]* (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

## Chapter 6

### Disclosure of directors' remuneration and transactions

**Disclosure of directors' remuneration.**

[305]. (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) —

- (a) the aggregate amount of emoluments paid to or receivable by directors in respect of qualifying services;

- (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;
- (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;
- (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.

(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;
- (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.

(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.

(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;

- (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;
- (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 [1074]*) or shares that are redeemable in cash or puttable in cash;

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

(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—

- (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.

(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.

(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.

(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 -

“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 of them is not ascertainable;

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

“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 –
  - (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
    - (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;

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,

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.

(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;
  - (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 [253]*, to past or present members of the company or any of its subsidiary undertakings or any class of those members; and

(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.

**Supplemental provisions in relation to *section [305]*.**

**[306].** (1) The amounts to be shown for the purpose of *section [305]* in relation to a director shall include all amounts paid or payable to a person connected with a director within the meaning of *section [220]*.

(2) The amounts to be shown for the purpose of *section [305]* 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 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

(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.

(3) Where it is necessary to do so for the purpose of making any distinction required by *section [305]* 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.

(4) If, in the case of any statutory financial statements, the requirements of *section [305]* 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.

(5) In *section [305]* any reference to a company's subsidiary undertaking –

- (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
- (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.

(6) In *section [305]* and this section “director” includes any shadow director and *de facto* director.

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

[307]. (1) Subject to *sections [308]* and *[309]*, 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-

- (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;
- (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
- (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;

- (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
  - (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.

(2) Subject to *sections [308] and [309]*, 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 -

- (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;
- (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;
- (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;
- (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
- (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 –
  - (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 –
  - (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 [the]<sup>211</sup> preceding paragraphs or *subparagraph (i)*; and
  - (II) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from –
    - (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;
    - (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—

- (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;
- (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;

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<sup>211</sup> Inserted by point 65 of Seanad Committee Amendments.

- (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 —

- (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;
- (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—

- (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;
- (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
- (d) the arrangements' main terms.

(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—

- (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

(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 –

(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

(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) –

(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);

(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

(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 [308](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.

(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.

**Supplemental provisions in relation to *section [307]* (including certain exemption from its terms).**

**[308].** (1) References in *section [307]* 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.

(2) The requirements of *section [307]* 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 [239]*.

(3) The requirements of *section [307](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 [307](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 [307](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 [307]* applies, subject to *subsection (3) and section [310]*, 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 [307]* and this section have effect subject to the following modifications :

- (a) the references in *section [307](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 [307]* 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 [307]*, 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 [307]* and this section -

- (a) “quasi-loan”, “credit transaction”, “guarantee” and “value of the arrangement” have the meanings given to them by *section [219]*;
- (b) *section [220]* shall apply in determining whether a person is connected with a director or not;
- (c) *section [219](7)* shall apply in determining whether or not a transaction or arrangement is made for a person.

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

**[309].** (1) Subject to *section [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)* of any other arrangement or transaction not dealt with by *section [305], [307] or [308]* 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.

(2) Subject to *section [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)* of any other arrangement or transaction not dealt with by *section [305], [307] or [308]* 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 -

- (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)* —

- (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
- (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).

(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;
- (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.

(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—

- (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
- (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,

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.

(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”.

(8) For the purposes of this section -

- (a) *section [220]* shall apply in determining whether a person is connected with a director or not;
- (b) “arrangement” includes an agreement; and
- (c) “director” includes any shadow director and *de facto* director.

**[Credit institutions]<sup>212</sup>: exceptions to disclosure by holding company under *sections [307] to [309]* in the case of connected persons and certain officers.**

**[310].** (1) As respects any financial statements prepared by any company which is the holding company of a [credit institution]<sup>213</sup> the requirements of *section [307]* do not apply in relation to any of the following to which the [credit institution]<sup>214</sup> is a party, namely :

- (a) a loan, quasi-loan or other transaction referred to in *section [307](1)(a)* or *(2)(a)* entered into with or for a person connected with a director of that holding company or [institution]<sup>215</sup>;
- (b) an agreement referred to in *section [307](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 [institution]<sup>216</sup>;
- (c) a guarantee entered into or security provided as mentioned in *section [307](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 [institution]<sup>217</sup>) in connection with a loan, quasi-loan or credit transaction entered into with or for such a person so connected;
- (d) an agreement as mentioned in *section [307](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 [institution]<sup>218</sup>) in connection with a loan, quasi-loan or credit transaction entered into with or for such a person so connected; or

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<sup>212</sup> Amendment consequential to Report Amendments.

<sup>213</sup> Substituted by point 91 of Report Amendments.

<sup>214</sup> Substituted by point 92 of Report Amendments.

<sup>215</sup> Substituted by point 93 of Report Amendments.

<sup>216</sup> Substituted by point 94 of Report Amendments.

<sup>217</sup> Substituted by point 95 of Report Amendments.

<sup>218</sup> Substituted by point 96 of Report Amendments.

- (e) an arrangement referred to in *subparagraph (i) or (ii) of section [307](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 institution]<sup>219</sup>, would have fallen into a preceding paragraph of *section [307](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 [ institution]<sup>220</sup>.

(2) As respects any financial statements prepared by any company that is the holding company of a [ credit institution]<sup>221</sup>, the extension of *section [307](8)* by *section [308](5)* does not apply in relation to any transaction, arrangement or agreement made by that [ credit institution]<sup>222</sup> for or with –

- (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 [ credit institution]<sup>223</sup>, the requirements of *subsection (1) or (2) of section [309]* do not apply in relation to any arrangement or transaction referred to in that *subsection (1) or (2)* to which the [credit institution]<sup>224</sup> 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.

(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 [309]*; and
- (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 [credit institution]<sup>225</sup> referred to in *subsection (3)* is a party, then the particulars of the material interest to be disclosed under *section [309]* 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) A word or expression used in this section and also used in *sections [307] to [309]* has the same meaning in this section as it has in those sections.

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<sup>219</sup> Substituted by point 97 of Report Amendments.

<sup>220</sup> Substituted by point 98 of Report Amendments.

<sup>221</sup> Substituted by point 99 of Report Amendments.

<sup>222</sup> Substituted by point 100 of Report Amendments.

<sup>223</sup> Substituted by point 101 of Report Amendments.

**[Credit institutions]<sup>226</sup>: disclosures by holding company of aggregate amounts in respect of connected persons.**

[311]. (1) In this section -

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

“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 [institution]<sup>227</sup> referred to in *subsection (2)*;

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

“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;
- (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;
- (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 [307](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 [institution]<sup>228</sup>, would have fallen into a preceding paragraph of *section [307](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.

(2) The group financial statements of a company which is the holding company of a [credit institution]<sup>229</sup> 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 [credit institution]<sup>230</sup>.

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

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<sup>224</sup> Substituted by point 102 of Report Amendments.

<sup>225</sup> Substituted by point 103 of Report Amendments.

<sup>226</sup> Amendment consequential to Report Amendments.

<sup>227</sup> Substituted by point 104 of Report Amendments.

<sup>228</sup> Substituted by point 66 of Seanad Committee Amendments.

<sup>229</sup> Substituted by point 105 of Report Amendments.

<sup>230</sup> Substituted by point 106 of Report Amendments.

- (a) the aggregate amounts outstanding at the end of the relevant period under transactions, arrangements or agreements made by the [ institution]<sup>231</sup> 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”);
- (b) the aggregate maximum amounts outstanding during the relevant period under relevant transactions, arrangements or agreements made by the [ institution]<sup>232</sup>;
- (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 [ institution]<sup>233</sup>; 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 [ institution]<sup>234</sup>.

(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 [ institution]<sup>235</sup> concerned in the ordinary course of its 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—

- (i) the [ institution]<sup>236</sup> ordinarily offers; or
- (ii) it is reasonable to expect the [institution]<sup>237</sup> to have offered,

to or in respect of a person of the same financial standing but unconnected with the [ institution]<sup>238</sup>.

(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—

- (a) relevant transactions, arrangements and agreements made by the [ institution]<sup>239</sup> 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 exceed €7,500; or

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<sup>231</sup> Substituted by point 107 of Report Amendments.

<sup>232</sup> Substituted by point 108 of Report Amendments.

<sup>233</sup> Substituted by point 109 of Report Amendments.

<sup>234</sup> Substituted by point 110 of Report Amendments.

<sup>235</sup> Substituted by point 111 of Report Amendments.

<sup>236</sup> Substituted by point 112 of Report Amendments.

- (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 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”.

(8) A word or expression used in this section and also used in *sections [307] to [309]* has the same meaning in this section as it has in those sections.

**[Credit institutions]<sup>240</sup>: requirement for register, etc. in the case of holding company as respects certain information.**

**[312].** (1) Subject to *section [313]*, a company which is the holding company of a [credit institution]<sup>241</sup> shall maintain a register containing a copy of every transaction, arrangement or agreement made by that [institution]<sup>242</sup> of which particulars –

- (a) are required by *section [307](1) or (2) or section [309](1) or (2)* to be disclosed; or
- (b) would, but for *section [310]*, 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.

(2) *Subsection (1)* shall not require a company to keep in its register a copy of any transaction, arrangement or agreement made by the [credit institution]<sup>243</sup> for or with a connected person if—

- (a) it is entered into in the ordinary course of the [institution’s]<sup>244</sup> 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—

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<sup>237</sup> Substituted by point 67 of Seanad Committee Amendments.

<sup>238</sup> Substituted by point 113 of Report Amendments.

<sup>239</sup> Substituted by point 114 of Report Amendments.

<sup>240</sup> Amendment consequential to Report Amendments.

<sup>241</sup> Substituted by point 115 of Report Amendments.

<sup>242</sup> Substituted by point 116 of Report Amendments.

<sup>243</sup> Substituted by point 117 of Report Amendments.

<sup>244</sup> Substituted by point 118 of Report Amendments.

- (i) the[ institution]<sup>245</sup> ordinarily offers; or
- (ii) it is reasonable to expect the[ institution]<sup>246</sup> to have offered,

to or in respect of a person of the same financial standing but unconnected with the[ institution]<sup>247</sup>.

(3) Subject to *section [313]*, a company which is the holding company of a[ credit institution]<sup>248</sup> 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)*.

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

(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[ credit institution]<sup>249</sup> which the holding company would, but for *section [310]*, be required by *section [307](1) or (2)* or *section [309](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.

(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 the[ credit institution]<sup>250</sup> if —

- (a) it is entered into in the ordinary course of the[ institution’s]<sup>251</sup> 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—
  - (i) the[ institution]<sup>252</sup> ordinarily offers; or
  - (ii) it is reasonable to expect the[ institution]<sup>253</sup> to have offered,

to or in respect of a person of the same financial standing but unconnected with the[ institution]<sup>254</sup>.

<sup>245</sup> Substituted by point 119 of Report Amendments.

<sup>246</sup> Substituted by point 120 of Report Amendments.

<sup>247</sup> Substituted by point 121 of Report Amendments.

<sup>248</sup> Substituted by point 122 of Report Amendments.

<sup>249</sup> Substituted by point 123 of Report Amendments.

<sup>250</sup> Substituted by point 124 of Report Amendments.

<sup>251</sup> Substituted by point 125 of Report Amendments.

<sup>252</sup> Substituted by point 126 of Report Amendments.

<sup>253</sup> Substituted by point 127 of Report Amendments.

<sup>254</sup> Substituted by point 128 of Report Amendments.

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

- (a) the company's not taking advantage of *section [310]*; or
- (b) the company's being required by a rule, instrument, direction or requirement referred to in *section [313]* to disclose 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 particulars referred to in *section [307](1)* or *(2)* or *section [309](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 [310]*.

(9) A company shall, if required by the Director, produce to the Director for inspection the register kept by it in accordance with *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 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 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 *(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 [307]* to *[309]* has the same meaning in this section as it has in those sections.

**Requirements of banking law not prejudiced by *sections [307]* to *[312]* and minimum monetary threshold for *section [312]*.**

**[313].** (1) Nothing in *sections [307]* to *[312]* prejudices the operation of any—

- (a) rule or other instrument; or

- (b) direction or requirement,

made, issued, granted or otherwise created under the Central Bank Acts 1942 to 2010 or any other enactment requiring the holding company of a[ credit institution]<sup>255</sup> to disclose particulars, whether in financial statements prepared by it or otherwise, of transactions, arrangements or agreements (whether of the kind described in *section [239]* or not) entered into by the[ credit institution]<sup>256</sup>.

(2) So far as those requirements relate to *section [307](1)* or (2), the requirements of *[312](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 [307](1)* and (2) did not at any time during the financial year exceed €7,500 for that individual director and those persons.

(3) So far as those requirements relate to any arrangement or transaction with a[ credit institution]<sup>257</sup> or any of its subsidiary undertakings in which a director of the[ institution]<sup>258</sup> or of its holding undertaking, or a person connected with such a director, had, directly or indirectly, a material interest, the requirements of *section [312](1)* or (3) do not apply if—

- (a) the value of each such arrangement or transaction which was made after the commencement of the financial year with the[ institution]<sup>259</sup> or any of its subsidiary undertakings; and
- (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,

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.

## Chapter 7

Disclosure required in notes to financial statements of other matters

### Information on related undertakings.

[314]. (1) Where at the end of a financial year of the company, a company—

- (a) has a subsidiary undertaking; or

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<sup>255</sup> Substituted by point 129 of Report Amendments.

<sup>256</sup> Substituted by point 130 of Report Amendments.

<sup>257</sup> Substituted by point 131 of Report Amendments.

- (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”);

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—

- (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;
- (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;
- (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
- (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 –

- (a) the name and registered office of each such undertaking;
- (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 [315]* which provides for exemptions in respect of the information specified in *subsection (1)(iii)* and *(iv)*.

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

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<sup>258</sup> Substituted by point 132 of Report Amendments.

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.

(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 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.**

**[315].** The information on related undertakings required by *paragraphs (iii) (net assets) and (iv) (profit or loss) of section [314](1)* need not be given in statutory financial statements—

- (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
  - (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; 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 [299] or [300]* or in accordance with IFRS, and either—
  - (i) the subsidiary undertaking is consolidated in the consolidated accounts of the higher holding undertaking; or
  - (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; or
- (c) in respect of an undertaking of substantial interest of a company, if the interest in the equity shares of

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<sup>259</sup> Substituted by point 133 of Report Amendments.

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

- (d) if—
  - (i) the subsidiary undertaking or the undertaking of substantial interest is not required to publish its financial statements; and
  - (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
- (e) in relation to any undertaking, if the information required by *paragraphs (iii) and (iv) of section [314](1)* is not material to the true and fair view given by the statutory financial statements.

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

[316]. (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 [314]* 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—

- (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
- (b) undertakings excluded from the consolidation under *section [303](3)*.

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

- (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 [348](4)* shall be annexed to the annual return of the company to which the statutory financial statements are annexed.

(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.

**Disclosures of particulars of staff.**

[317]. (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
- (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—

- (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
- (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.

(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.

(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.

(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
- (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.

(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.

(8) In this section-

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

- (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
- (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.]<sup>260</sup> fund or arrangement;

“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)*.

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

[318]. (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—

- (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;

- (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—
  - (i) shares presented as share capital; and
  - (ii) shares presented as a liability;

and

- (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—

- (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
- (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—

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

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<sup>260</sup> Substituted by point 68 of Seanad Committee Amendments.

(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.

(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.

(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

(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.

**Financial assistance for purchase of own shares.**

[319]. (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—

(a) the amount of any money provided, in that financial year, by the company in accordance with a scheme referred to in *section [82](6)(f)*; and

(b) the amount of any loans referred to in *section [82](6)(g)* that have been made in that financial year by the company.

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

**Holding of own shares or shares in holding undertaking.**

[320]. (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 —

- (a) shall be shown in the company's entity financial statements as a deduction from the company's capital and reserves (and the profits available for distribution shall accordingly be restricted by the amount of such deduction); and
- (b) shall be shown in the company's group financial statements, if any, as a deduction from group capital and reserves.]<sup>261</sup>

[(2) Where a company, or a nominee of the company, holds shares in its holding undertaking or an interest in such shares, the profits of the company available for distribution shall be restricted by the amount of the consideration paid for such shares or interest.]<sup>262</sup>

(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.

(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 —

- (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)*.

**Disclosure of accounting policies.**

[321]. (1) A company shall disclose in the notes to its entity financial statements the accounting policies adopted by the company in determining—

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

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<sup>261</sup> Substituted by point 134 of Report Amendments.

<sup>262</sup> Substituted by point 135 of Report Amendments.

policies adopted by the company in determining—

- (a) the items and amounts to be included in its consolidated balance sheet; and
- (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.**

[322]. (1) In this section—

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

“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:

- (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;
- (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;
- (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:

- (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/[EC]<sup>263</sup>) 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.

(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
- (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
  - (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 [350]* 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:

- (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;
- (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;
- (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:

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<sup>263</sup> Substituted by point 69 of Seanad Committee Amendments.

- (a) the audit of the group financial statements;
- (b) other assurance services;
- (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.

**Information on arrangements not included in balance sheet.**

[323]. (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 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

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

[324]. (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.

(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.

(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.

(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.

(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.

(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.

(8) If any copy of a balance sheet is –

- (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
- (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—

- (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.

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

## Chapter 9

### Directors' report

#### Obligation to prepare directors' report for every financial year.

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

- (a) general matters in relation to the company and the directors as specified in *section [326]*;
- (b) a business review in accordance with *section [327]*;
- (c) information on the acquisition or disposal of own shares as specified in *section [328]*;
- (d) information on interests in shares or debentures as specified in *section [329]*;
- (e) statement on relevant audit information as specified in *section [330]*,

and containing the notice referred to in *section [331]* 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 [167](3)* (statement as to establishment or otherwise of an audit committee in the case of a large private company);and
- (b) *section [225](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
- (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.

(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 [167](3)* or *[225](2)*, is provided in the group directors' report.

(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.

(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.

(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.**

[326]. (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;
- (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 [281] to [285]*, with regard to the keeping of accounting records and the exact location of those records;
- (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.

(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;
- (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;
- (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 –

- (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.

(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.

**Directors' report: business review.**

[327]. (1) The directors' report for a financial year shall contain —

- (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 –

- (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.

(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) 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.

(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.**

[328]. Where, at any time during a financial year of a company, shares in the company—

- (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,

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
- (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.

**Directors' report: interests in shares and debentures.**

[329]. (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 —

- (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;
- (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
- (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.

(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.

(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 [267]* and includes interests of shadow directors and *de facto* directors required to be so registered.

**Directors' report: statement on relevant audit information.**

[330]. (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 [332]* —

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

(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—

- (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.

(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 [336]*.

(5) Where a directors' report containing the statement required by this section is approved in accordance with *section [332]* 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
- (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.**

[331]. 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.

**Approval and signing of directors' report.**

[332]. (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.

(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.

(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.

(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
- (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,

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.

## Chapter 10

### Obligation to have statutory financial statements audited

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

[333]. 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.

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

[334]. (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.

(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).

(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.

(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 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 [365]*.

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

[335]. (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—

- (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 [2014]*”);
- ~~[(b) the company is availing itself of the exemption on the grounds that [2 or more of] the conditions specified in *section [358](6) or (7)*, as appropriate, are satisfied;~~
- (b) the company is availing itself of the exemption on the grounds that *section 358 or 359*, as appropriate, is complied with.<sup>264 265</sup>
- (c) no notice under *subsection (1) of section 335* has, in accordance with *subsection (2) of that section*, been served on the company; and
- (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.

(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 [324]* or, as the case may be, the statement required by *section [355]*.

(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

<sup>264</sup> Inserted by point 70 of Seanad Committee Amendments.

<sup>265</sup> Substituted by point 35 of Seanad Report Amendments.

concerned, that subsection shall be read as applying both to its entity balance sheet and its group balance sheet.

[5] Whenever a company has availed itself of the audit exemption in respect of a financial year, the company shall, if required by the Director of Corporate Enforcement to do so—

(a) give to the Director such access to and facilities for inspecting and taking copies of the books and documents of the company, and

(b) furnish to the Director such information,

as the Director may reasonably require for the purpose of satisfying himself or herself that the company did, in respect of that financial year, comply with *section 358* or *359*, as appropriate.

[6] If a company fails to comply with a requirement under *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.]<sup>266</sup>

[75] Where –

- (a) the audit exemption, as referred to in [~~section 358(2)~~ *section 359(1)*]<sup>267</sup>, applies to a group; and
- (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.

[86] In this section “audit exemption” does not include the dormant company audit exemption referred to in *section 365* but that section makes similar provision, by applying and adapting its terms, to that made by this section.

## Chapter 11

### Statutory auditors’ report

#### Statutory auditors’ report on statutory financial statements.

[336]. (1) The report required by *section 391* 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.

(2) The statutory auditors’ report shall include—

<sup>266</sup> Substituted by point 36 of Seanad Report Amendments.

<sup>267</sup> Substituted by point 37 of Seanad Report Amendments.

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

(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—
  - (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;
  - (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 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 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;
- (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 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 [304]* is availed of, the profit and loss account are in agreement with the accounting records and returns.

(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-

(a) in relation to each matter referred to in [subsections (3) to (5)]<sup>268</sup> 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.

(8) If, in the case of any statutory financial statements, the requirements of any of *sections [305] to [312]* 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.

(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.

#### **Signature of statutory auditor's report.**

[337]. (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.

(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

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<sup>268</sup> Substituted by point 136 of Report Amendments.

(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

(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,

in his or her own name, for and on behalf of, the audit firm.

(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 [347](2)*) and the date of the signature.

(5) If a copy of a statutory auditor's report—

(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

(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.

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

## Chapter 12

### Publication of financial statements

**Circulation of statutory financial statements.**

[338]. (1) A copy of each of the documents specified in *subsection (2)* concerning the company there referred to shall be sent to—

- (a) every member of the company (whether that person is or is not entitled to receive notices of general meetings of the company);
- (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,

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 [341]*.

(2) The documents referred to in *subsection (1)* are—

- (a) the statutory financial statements of a company for the financial year concerned;
- (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.

(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.

(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—

- (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
- (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
- (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—

- (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
- (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—

- (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.

(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.

(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.

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

#### **Right to demand copies of financial statements and reports.**

[339]. (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—

- (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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

**Requirements in relation to publication of financial statements.**

[340]. (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 [325]* and any statutory auditors' report made under *section [391]* in the form required by *section [336]*.

(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.

(3) Where a company publishes its abridged financial statements prepared in accordance with *section [353]* or *[354]*, it shall also publish with those abridged financial statements any report in relation to those abridged financial statements specified in *section [356]* 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.

(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—

- (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;
- (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;
- (d) whether the statutory auditors of the company have made a report under *section [391]* in the form required by *section [336]* 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;
- (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.

(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 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.

(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.

### **Financial statements and reports to be laid before company in general meeting.**

[341]. (1) The directors of a company shall, in respect of each financial year, lay before the company in general meeting copies of—

- (a) the statutory financial statements of the company for the financial year;
- (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.

(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.

(4) Where *section [175](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 resolution referred to in *section [175](3)*.

## **Chapter 13**

### **Annual return and documents annexed to it**

#### **Annual return.**

[342]. 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.

#### **Obligation to make annual return.**

[343]. (1) In this section “annual return date”, in relation to a company, means the date in relation to that company as provided under *section [345]* and “first annual return date”, in relation to a company, shall be read accordingly.

(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

(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.

(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.

(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)*.

(7) [In respect of an annual return that is to be delivered on or after the commencement of this section, the court]<sup>269</sup> for the purposes of *subsection (5)* shall be the District Court for the ~~district court area~~ District Court district<sup>270</sup> where the registered office of the company is located or the High Court.

(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.

(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 [731] to [733]] but—

(a) *subsection (10)* has effect as regards the interpretation of this subsection; and

(b) in addition to the foregoing, the exemption conferred by this subsection shall cease to apply where the company is not ultimately dissolved on foot of that procedure or, if it is dissolved on foot thereof, where it is subsequently restored to the register.

(10) For the purposes of *subsection (9)*, the period when the company is in the course of being voluntarily struck off the register by the Registrar pursuant to *sections [731] to [733]* shall only be regarded as having commenced on the publication by the Registrar of a notice under *section [732]* in relation to that application.<sup>271</sup>

[(11)] 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.

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

#### **Special provision for annual return delivered in a particular form.**

[344]. (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;

“required documents” means the documents referred to in *section [347]* or, as the case may be, both that section and *section [348]*;

“required period” means the period referred to in *section [343](2) or (3)*, as the case may be, or, where that period stands extended in accordance with *section [343](5) and (6)*, that period as it stands so extended.

(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 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.

#### **Annual return date.**

[345]. (1) Unless it is altered by the company or the Registrar in accordance with *section [346]*, the annual return date of a company in any year shall be the date determined by this section.

(2) In the case of a company incorporated before the commencement of this section -

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<sup>269</sup> Substituted by point 71 of Seanad Committee Amendments.

<sup>270</sup> [Substituted by point 38 of Seanad Report Amendments.](#)

<sup>271</sup> Substituted by point 67 of Committee Amendments.

- (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)*.

(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
- (b) the annual return date of the company, in each subsequent year, shall be the anniversary of its first annual return date.

**Alteration of annual return date.**

[346]. (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 to which that annual return is made up unless the company -

- (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)*,

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.

[(2) Save in the case of a company delivering its first annual return and subject to *subsections (3) and (4)*, a company may establish a new annual return date by delivering an annual return to the Registrar made up to its existing annual return date in accordance with *section [343](2)*, being an annual return—

- (a) that is so delivered not later than 28 days after its existing annual return date; and
- (b) to which there is annexed a notification in the prescribed form nominating the new annual return date,

but, notwithstanding anything to the contrary in this Act, the company shall not be required to annex statutory financial statements, or the other documents referred to in *section [347](1)*, to such a return.]<sup>272</sup>

(3) The new annual return date established pursuant to *subsection (2)* shall be a date falling within the period of 6 months following

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<sup>272</sup> Substituted by point 68 of Committee Amendments.

the existing annual return date.

(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.

(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.

(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.

**Documents to be annexed to annual return: all cases.**

[347]. (1) Subject to the provisions of this Part, there shall be [annexed to the annual return a copy of the following documents that have been, or are to be, laid before the relevant general meeting—

- (a) the statutory financial statements of the company;
- (b) the directors' report, including any group directors' report; and
- (c) the statutory auditors' report on those financial statements and that directors' report,

and "relevant general meeting" in this subsection means the general meeting of the company held during the period to which the annual return relates or, if the most recent statutory financial statements of the company and the other foregoing documents have not been required to be laid before such a meeting, the next general meeting held after the [\[returnsreturn's\]](#)<sup>273</sup> delivery to the Registrar before which those statements and other documents are required to be laid.]<sup>274</sup>

(2) The reference in *subsection (1)* to a copy of a document is a reference to a copy that satisfies the following conditions –

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original[, and any date or dates thereon, shall appear in typeset form]<sup>275</sup> on the copy; and

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<sup>273</sup> [Substituted by point 39 of Seanad Report Amendments.](#)

<sup>274</sup> Substituted by point 69 of Committee Amendments.

<sup>275</sup> Substituted by point 137 of Report Amendments.

- (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 [or of a date]<sup>276</sup>).

(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 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—

- (a) in the case of the first annual return to which such documents are annexed - since the incorporation of the company; and
- (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.

(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.

#### **Documents to be annexed to annual returns: certain cases.**

[348]. (1) Where a holding company that prepares Companies Act financial statements has availed itself of the exemption in *section [299]* (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 its annual return a copy of the following documents —

- (a) the consolidated accounts referred to in *section [299](4)(a)*;
- (b) the consolidated annual report referred to in *section [299](4)(b)*; and
- (c) the report of the person responsible for auditing the consolidated accounts referred to in *section*

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<sup>276</sup> Inserted by point 138 of Report Amendments.

[299](4)(a).

(2) Where a holding company that prepares Companies Act financial statements has availed itself of the exemption in *section [300]* (subsidiary undertaking of higher non-EEA holding undertaking) and does not prepare group financial statements because it has relied 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 [300](4)(a)*;
- (b) any consolidated annual report referred to in *section [300](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 [300](4)(c)*.

(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 —

- (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.

(4) Where a company has relied on the exemption in *section [316](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 -

- (a) the information referred to in *section [316](1)*; and
- (b) the information referred to in *section [314](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.

(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.

(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 –

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original[, and any date or dates thereon, shall appear in typeset form]<sup>277</sup> 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[ or of a date]<sup>278</sup>).

(8) In *subsection (6)* “officer” includes any shadow director and *de facto* director.

**First annual return: exception from requirement to annex statutory financial statements.**

[349]. 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 [347](1)*, to the first annual return falling to be made by the company after it is incorporated.

## Chapter 14

Exclusions, exemptions and special arrangements with regard to public disclosure of financial information

**Qualification of company as small or medium company.**

[350]. (1) In this section “qualifying conditions” means the conditions referred to in *subsection (5) or (6)*, as appropriate.

(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 –

- (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;

- (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 –

- (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;
- (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 –

- (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;
- (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.

(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)(a)]*<sup>279</sup> shall be proportionately adjusted.

(9) In this section “balance sheet total”, in relation to a company, means the aggregate of the amounts shown as assets in the

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<sup>277</sup> Substituted by point 139 of Report Amendments.

<sup>278</sup> Inserted by point 140 of Report Amendments.

<sup>279</sup> Substituted by point 141 of Report Amendments.



- (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 –

- (a) abridged financial statements prepared in accordance with *section [353]* and which have been approved and signed in accordance with *section [355]*;
- (b) the information referred to in *section [329]* that is required to be stated in the directors' report and extracted therefrom; and
- (c) a special statutory auditors' report prepared in accordance with *section [356]*.

(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 –

- (a) abridged financial statements prepared in accordance with *section [354]* and which have been approved and signed in accordance with *section [355]*;
- (b) the directors' report prepared in accordance with *section [325]*; and
- (c) a special statutory auditors' report prepared in accordance with *section [356]*.

(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 –

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original[, and any date or dates thereon, shall appear in typeset form]<sup>280</sup> 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[ or of a date]<sup>281</sup>).

#### **Abridged financial statements for a small company.**

**[353].** (1) For the purposes of *section [352]*, the abridged financial statements of a company that qualifies as a small company shall,

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<sup>280</sup> Substituted by point 142 of Report Amendments.

<sup>281</sup> Inserted by point 143 of Report Amendments.

in the manner set out in this section, be extracted from the statutory financial statements of the company prepared under *section [290]*.

(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;
- (b) those notes to the financial statements that provide the information required by *sections [305] to [321]*; 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—

- (a) the balance sheet of the company;
- (b) those notes to the financial statements that provide the information required by *sections [305] to [321]*;
- (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*.

(4) *Section [274](3)* (references to balance sheet to include certain notes) does not apply to this section.

**Abridged financial statements for a medium company.**

[354]. (1) For the purposes of *section [352]* 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 [290]* except that the profit and loss account and notes may be abridged in the manner set out in this section.

(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.

(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:

- (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.

(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.

(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 [291]*.

(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*;
- (b) items 1 to 5 in Format 2 of those profit and loss account formats;
- (c) items A.I, B.I 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.

(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.

(8) *Section [274](4)* (references to profit and loss account to include certain notes) does not apply to this section.

### Approval and signing of abridged financial statements.

[355]. (1) Where the directors of a company are satisfied that the requirements of *section [353]* or *[354]*, 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.

(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.

(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 [352]*;
- (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 [353]* or *[354]*, as appropriate.

(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 approved~~ by the board of directors or which is<sup>282</sup> 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 [352](3)* or *(4)* and delivered to the Registrar —

- (a) the copy of the abridged financial statements required by *section [352](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;
- (b) the information referred to in *section [329]* that, as required by *section [352](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);
- (c) the copy of the directors' report required by *section [352](4)(b)* shall state the names of the directors

who signed the report on behalf of the board of directors;

- (d) the copy of the special statutory auditors' report required by section [352](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 [391]*.

(7) If abridged financial statements are approved which have not been prepared in accordance with the requirements of *section [353]* or [354], 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.

(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.

(9) If the requirements of *subsection (6)* as regards documents annexed to an annual return under *section [352](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.

(10) In *subsection (9)* "officer" includes any shadow director and *de facto* director.

#### **Special report of the statutory auditors on abridged financial statements.**

[356]. (1) There shall accompany abridged financial statements annexed to the annual return and delivered to the Registrar [a copy of]<sup>283</sup> a special report of the statutory auditors of the company to the directors of it containing—

- (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 [391]* in the form required by *section [336]*.

(2) Where –

- (a) the directors of a company propose to annex to the annual return abridged financial statements for any financial year prepared pursuant to *section [353]* or [354]; and
- (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 [352]* and the abridged financial statements have been properly prepared pursuant to *section [353]* or [354], as the case may be,

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<sup>282</sup> [Substituted by point 40 of Seanad Report Amendments.](#)

<sup>283</sup> Inserted by point 144 of Report Amendments.

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.

(3) [With respect to the statutory auditors' special report referred to in *subsection (1)* (a copy (as that expression is to be read in accordance with *section [352](5)*) of which is to be delivered to the Registrar), the original of that report shall be signed by the statutory auditors and bear the date of such signing;]<sup>284</sup> the requirements of *section [337](2)* with respect to the signing of the report there referred to shall also apply with respect to the signing of the special report.

(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 [391]*.

(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.

#### **Subsidiary undertakings exempted from annexing their statutory financial statements to annual return.**

[357]. (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 [347]* and *[348]* if, but only if, the following conditions are satisfied —

- (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;
- (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;

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<sup>284</sup> Substituted by point 145 of Report Amendments.

- (c) the company has notified in writing every person referred to in *paragraph (a)* of the guarantee;
- (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;
- (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
  - (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;
- (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
- (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)*.

(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.

(3) *Section [299](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.

(4) *Section [347](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 [347](1)*.

## Chapter 15

### Audit exemption

~~[Main conditions for availing of audit exemption.~~

~~[358]. (1) Subject to this Chapter, *section [360]* (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—~~

- ~~(a) — the directors of the company are of the opinion that the company will satisfy[ at least 2 of]<sup>285</sup> the conditions specified in *subsection (6)* in respect of that year (the “particular year”) and decide that the company should avail itself of *section [360]* in the particular year (and that decision is recorded by the directors in the minutes of the meeting concerned); and~~
- ~~(b) — save in a case where the particular year is the first financial year, the company satisfied[ at least 2 of]<sup>286</sup> the conditions specified in *subsection (6)* in respect of the preceding financial year.~~

~~(2) Subject to this Chapter, *section [360]* (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—~~

- ~~(a) — the directors of the holding company are of the opinion that the company and all of its subsidiary undertakings will satisfy[ at least 2 of]<sup>287</sup> 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 [360]* in the particular year (and that decision is recorded by those directors in the minutes of the meeting concerned); and~~
- ~~(b) — save in a case falling within *subsection (4)* or *(5)*, as appropriate, the company and all those subsidiary undertakings satisfied[ at least 2 of]<sup>288</sup> the conditions specified in *subsection (7)* in respect of the preceding financial year.~~

~~(3) The reference in *subsection (2)(a)* to a decision that all the subsidiary undertakings should avail themselves of *section [360]* shall be read as being subject to *section [334]* (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.~~

~~(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:~~

~~“(b) — those of the foregoing as respects which the particular financial year is not their first financial year (in~~

<sup>285</sup> Inserted by point 72 of Seanad Committee Amendments.

<sup>286</sup> Inserted by point 73 of Seanad Committee Amendments.

<sup>287</sup> Inserted by point 74 of Seanad Committee Amendments.

*subsection (7)(b)* referred to as the ‘relevant bodies’) satisfied<sup>289</sup> at least 2 of 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.~~

#### Main conditions for audit exemption – non-group situation

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<sup>288</sup> Inserted by point 75 of Seanad Committee Amendments.

<sup>289</sup> Inserted by point 76 of Seanad Committee Amendments.

358. (1) Subject to *subsection (3)* and the other provisions of this Chapter, *section 360* (audit exemption) applies to a company in respect of its statutory financial statements for a particular financial year if the company qualifies as a small company in relation to that financial year.

(2) For the purposes of this section, whether a company qualifies as a small company shall be determined in accordance with *section 350(2), (3), (5), (7), (8), (9) and (10)*.

(3) *Section 360* does not apply to a company in respect of its statutory financial statements for a particular financial year during any part of which the company was a group company (within the meaning of *section 359*) unless the group qualifies, under *section 359*, as a small group in relation to that financial year (and the other relevant provisions of this Chapter are complied with).

(4) In *subsection (3)* “group”, in relation to a group company, shall be read in accordance with *section 359(1)(b)*.

(5) Nothing in this section prejudices the operation of *Chapter 16* (special audit exemption for dormant companies).<sup>290</sup>

**[Supplemental provisions in relation to *section [358]*.**

~~[359]. [...]<sup>291</sup>~~

~~(1) In *section [358](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.~~

~~(2) In *section [358](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.~~

~~(3) For the purpose of *section [358](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 [317]* for determining the number required by *subsection (1)* of that section to be stated in a note to the financial statements of a company.~~

~~(4) In the application of *section [358]* to any period which is a financial year but is not in fact a year, the amount specified in *section [358](6)(b), (7)(a)(ii)* and (7)(b)(ii) shall be proportionally adjusted.~~

~~(5) Each occasion of an amendment of the kind referred to in *subsection ((6))* being effected shall operate to enable the Minister to amend, by order, *section [358](6)(a)* and (b), (7)(a)(i) and (ii) and (7)(b)(i) and (ii), by substituting for the total and the amount,~~

<sup>290</sup> Substituted by point 41 of Seanad Report Amendments.

<sup>291</sup> Deleted by point 146 of Report Amendments.

~~respectively, specified in those provisions a greater total and amount (not being a total or an amount that is greater than the total or amount it replaces by 25 per cent).~~

~~(16) The amendment referred to in *subsection (15)* is an amendment of the amount and the total specified in *paragraphs (a) and (b)*, respectively, of *section [350](5)*, being an amendment made for the purpose of giving effect to a Community act.~~

~~(17) Nothing in *section [358]* nor in any other provision of this Chapter (including this section) prejudices the operation of *Chapter 16* (special audit exemption for dormant companies).~~

### **Main conditions for audit exemption – group situation**

**359. (1) In this section—**

(a) “group company” means a company that is a holding company or a subsidiary undertaking; and

(b) references to the group, in relation to a group company, are references to that company, together with all its associated undertakings, and for the purposes of this paragraph undertakings are associated if one is the subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.

(2) Subject to this Chapter, *section 360* (audit exemption) applies to any group company in respect of its statutory financial statements for a particular financial year if the group qualifies as a small group in relation to that financial year.

(3) The determination of whether a group so qualifies shall be made, as provided for in this section, by reference to whether the financial year in question is the first, or a subsequent, financial year of the holding company that heads the group.

(4) A group qualifies as small in relation to the holding company’s first financial year if the qualifying conditions are satisfied in respect of that year.

(5) A group qualifies as small in relation to a subsequent financial year of the holding company—

(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 group qualified as small in relation to the preceding financial year;

(c) if the qualifying conditions were satisfied in respect of the preceding financial year and the group qualified as small in relation to that year.

(6) The qualifying conditions for a small group are satisfied by a group in relation to a financial year in which it fulfils 2 or more of the following requirements:

(a) the balance sheet total of the holding company and the other members of the group taken as a whole does not exceed €4.4 million,

(b) the amount of the turnover of holding company and the other members of the group taken as a whole does not exceed €8.8 million,

(c) the average number of persons employed by the holding company and the other members of the group taken as whole does not exceed 50.

(7) For the purposes of subsection (6)(a)—

(a) “balance sheet total”, in relation to the holding company or another member of the group, means the aggregate of the amounts shown as assets in the company’s or other member’s entity balance sheet;

(b) there shall, in the operation of taking the balance sheet totals as a whole, be eliminated inter-group balances.

(8) For the purposes of subsection (6)(b)—

(a) “amount of the turnover”, in relation to the holding company or another member of the group, means the amount of the turnover shown in the company’s or other member’s entity profit and loss account;

(b) there shall, in the operation of taking the amounts of turnover as a whole, be eliminated inter-group sales.

(9) For the purpose of subsection (6)(c), the average number of persons employed by a company or another member of the group shall be determined by applying the method of calculation prescribed by section 317 for determining the number required by subsection (1) of that section to be stated in a note to the financial statements of a company.

(10) In the application of paragraph (b) of subsection (6) to any period which is a financial year but is not in fact a year, the amount specified in that paragraph shall be proportionally adjusted.

(11) Each occasion of an amendment of the kind referred to in subsection (12) being effected shall operate to enable the Minister to amend, by order, subsection (6)(a) and (b), by substituting for the total and the amount, respectively, specified in those provisions a greater total and amount (not being a total or an amount that is greater than the total or amount it replaces by 25 per cent).

(12) The amendment referred to in subsection (11) is an amendment of the amount and the total specified in paragraphs (a) and (b), respectively, of section 350(5), being an amendment made for the purpose of giving effect to a Community act.

(13) Nothing in this section nor in any subsequent provision of this Chapter prejudices the operation of Chapter 16 (special audit exemption for dormant companies).]<sup>292</sup>

#### **Audit exemption.**

[360]. (1) [The following provisions (the “audit exemption”) have effect where, by virtue of section [358], this section applies in

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<sup>292</sup> Substituted by point 42 of Seanad Report Amendments.

~~respect of the statutory financial statements of a company or a group for a particular financial year:~~

~~(a) without prejudice to *section [384](2), section [333]* (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—~~

~~(i) circumstances, if any, arise in that financial year which result in <sup>293</sup>[one or both of the conditions] specified in *section [358](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,~~

~~the provisions specified in *subsection (2)* shall not apply to the company or group in respect of that year.~~

The following provisions (the “audit exemption”) have effect where, by virtue of *section 358 or 359*, as appropriate, this section applies in respect of the statutory financial statements of a company or a group for a particular financial year—

(a) without prejudice to *section 384(2), section 333* (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 circumstances (if any) arise by reason of which the company or group is not entitled to the audit exemption in respect of that financial year, the provisions specified in *subsection (2)* shall not apply to the company or group in respect of that year.<sup>294</sup>

(2) The provisions mentioned in *subsection (1)* 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 this section in so far, and only in so far, as they make provision of the foregoing kind.

Table

*Section [121](3) and (4)* (report of statutory auditors on statutory financial statements for purposes of distribution);

<sup>293</sup> ~~Substituted by point 77 of Seanad Committee Amendments.~~

<sup>294</sup> Substituted by point 43 of Seanad Report Amendments.

Section [306](4) (statement of particulars of non-compliance with section [305] or [306]);

Section [322] (disclosure of remuneration for audit, audit-related work and non-audit work);

Section [330] (statement on relevant audit information);

Section [336] (form of statutory auditors' report);

Section [337] (signature of statutory auditor's report);

Section [338] (circulation of statutory financial statements);

Section [339] (right of members to demand copies of financial statements and reports);

Section [340] (requirements in relation to publication of financial statements);

Section [341] (financial statements and reports to be laid before company in general meeting);

Section [347] (documents to be annexed to annual return);

Section [356] (special report on abridged financial statements);

Section [380] and sections [382] to [385] (dealing with appointment of statutory auditors);

Sections [390] to [393] (obligations of statutory auditors).

**~~[Audit exemption not available where notice under section [334] served.~~**

~~[361]. (1) Notwithstanding that [ 2 or more of ]<sup>295</sup> the conditions specified in section [358](6) are satisfied, a company is not entitled to the audit exemption, as referred to in section [358](1), in a financial year if a notice, with respect to that year, is served, under and in accordance with section [334](1) and (2), on the company.~~

~~(2) Notwithstanding that [ 2 or more of ]<sup>296</sup> the conditions specified in section [358](7) are satisfied—~~

~~(a) — a holding company and its subsidiary undertakings are not entitled to the audit exemption, as referred to in section [358](2), in a financial year if a notice, with respect to that year, is served, under and in accordance with section [334](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);~~

<sup>295</sup> Inserted by point 78 of Seanad Committee Amendments.

<sup>296</sup> Inserted by point 79 of Seanad Committee Amendments.

~~(b) where no such notice has been served, under and in accordance with those provisions, on the holding company but one has been so served on a subsidiary undertaking, 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 diminishing the extent of the audit exemption, so far as it relates to the holding company's group financial statements, that is availed of by the holding company).~~

**Audit exemption not available where notice under section 334 served**

**361.** (1) ~~Notwithstanding that section 358 is complied with, a company is not entitled to the audit exemption referred to in that section in a financial year if a notice, with respect to that year, is served, under and in accordance with section 334(1) and (2), on the company.~~

~~(2) Notwithstanding that section 359 is complied with—~~

~~(a) a holding company and the other members of the group are not entitled to the audit exemption referred to in that section in a financial year if a notice, with respect to that year, is served, under and in accordance with section 334(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 other members of the group),~~

~~(b) where no such notice has been served, under and in accordance with those provisions, on the holding company but one has been so served on another member of the group, then that member is not entitled to the audit exemption in the year concerned irrespective of whether its holding company and any other members of the group avail themselves of the audit exemption in that year (but this paragraph is not to be read as diminishing the extent of the audit exemption, so far as it relates to the holding company's group financial statements, that is availed of by the holding company).<sup>297</sup>~~

**~~Audit exemption not available where company or subsidiary undertaking falls within a certain category.~~**

~~[362]—(1) Notwithstanding that<sup>298</sup> [2 or more of] the conditions specified in section [358](6) are satisfied, a company is not entitled to the audit exemption, as referred to in section [358](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, or if is a relevant securitisation company]<sup>299</sup>.~~

~~(2) Notwithstanding that<sup>300</sup> [2 or more of] the conditions specified in section [358](7) are satisfied, a holding company and its subsidiary undertakings are not entitled to the audit exemption, as referred to in section [358](2), if—~~

~~(a) the holding company is a company falling within any provision (in so far as applicable to a private company limited by shares) of~~

<sup>297</sup> Substituted by point 44 of Seanad Report Amendments

<sup>298</sup> Inserted by point 80 of Seanad Committee Amendments.

<sup>299</sup> Substituted by point 81 of Seanad Committee Amendments.

<sup>300</sup> Inserted by point 82 of Seanad Committee Amendments.

~~Schedule 5, other than a company referred to in paragraph 5 or 16 of that [Schedule, or if is a relevant securitisation company; or]<sup>301</sup>~~

~~———— (b) any of those subsidiary undertakings is —~~

~~———— (i) — a credit institution;~~

~~———— (ii) — an insurance undertaking;~~

~~———— (iii) — a company falling within any provision of Schedule 5, other than a company referred to in paragraph 5 or 16 of that [Schedule;~~

~~(iv) — a relevant securitisation company; or]<sup>302</sup>~~

~~(v) — a body any of the securities of which are admitted to trading on a regulated market.~~

~~{(3) In this section “relevant securitisation company” means —~~

~~(a) — a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997; or~~

~~(b) — a financial vehicle corporation (“FVC”) within the meaning of —~~

~~(i) — in the period before 1 January 2015, Article 1(1) of Regulation (EC) No. 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions; or~~

~~(ii) — subject to subsection (4), in the period on or after 1 January 2015, Article 1(1) of Regulation (EU) No. 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (recast).~~

~~(4) If a Regulation is made by the European Central Bank concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions that —~~

~~(a) — contains a different definition of financial vehicle corporation (“FVC”) from that referred to in subparagraph (ii) of subsection (3)(b), the reference in that provision to that definition shall be read as a reference to the definition contained in the Regulation so made, or~~

~~(b) — amends the definition so referred to, the reference in that provision to that definition shall be read as a reference to that~~

<sup>301</sup> ~~Substituted by point 83 of Seanad Committee Amendments.~~

<sup>302</sup> ~~Substituted by point 84 of Seanad Committee Amendments.~~

~~definition as it stands so amended.]<sup>303</sup>~~

**Audit exemption not available where company or subsidiary undertaking falls within a certain category**

**362.** (1) Notwithstanding that section 358 is complied with, a company is not entitled to the audit exemption referred to in that section 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, or if it is a relevant securitisation company.

(2) Notwithstanding that section 359 is complied with, a holding company and the other members of the group are not entitled to the audit exemption referred to in that section if—

(a) the holding 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, or if it is a relevant securitisation company, or

(b) any of those other members is—

(i) a credit institution,

(ii) an insurance undertaking,

(iii) a company falling within any provision of Schedule 5, other than a company referred to in paragraph 5 or 16 of that Schedule,

(iv) a relevant securitisation company or

(v) a body any of the securities of which are admitted to trading on a regulated market.

(3) In this section “relevant securitisation company” means—

(a) a qualifying company within the meaning of section 110 of the Taxes Consolidation Act 1997; or

(b) a financial vehicle corporation (“FVC”) within the meaning of—

(i) in the period before 1 January 2015, Article 1(1) of Regulation (EC) No. 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions; or

(ii) subject to subsection (4), in the period on or after 1 January 2015, Article 1(1) of Regulation (EU) No. 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (recast).

(4) If a Regulation is made by the European Central Bank concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions that—

(a) contains a different definition of financial vehicle corporation (“FVC”) from that referred to in subparagraph (ii) of subsection (3)(b), the reference in that provision to that definition shall be read as a reference to the definition contained in the Regulation so made, or

(b) amends the definition so referred to, the reference in that provision to that definition shall be read as a reference to that definition as it stands so amended.]<sup>304</sup>

<sup>303</sup> Inserted by point 85 of Seanad Committee Amendments.

**[Audit exemption (non-group situation) not available unless annual return filed in time.**

~~[363]. (1) Notwithstanding that [2 or more of]<sup>305</sup> the conditions specified in *section [358](6)* are satisfied, a company is not entitled to the audit exemption, as referred to in *section [358](1)*, in a financial year unless—~~

~~(a) — there is delivered to the Registrar, in compliance with *section [343]*, the company's annual return to which the statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed; and~~

~~(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 [343]*, 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 (non-group situation) not available unless annual return filed in time**

363. (1) Notwithstanding that *section 358* is complied with, a company is not entitled to the audit exemption referred to in that section in a financial year unless—

(a) there is delivered to the Registrar, in compliance with *section 343*, the company's annual return to which the statutory financial statements or (as appropriate) abridged financial statements for that financial year are annexed, and

(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 343*, 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 *paragraph (a)* or *(b)* of *subsection (1)* is the company's first annual return, that paragraph shall have effect as if the reference to statutory financial statements or abridged financial statements being annexed to that return were omitted.<sup>306</sup>

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<sup>304</sup> Substituted by point 45 of Seanad Report Amendments

<sup>305</sup> Inserted by point 86 of Seanad Committee Amendments.

<sup>306</sup> Substituted by point 46 of Seanad Report Amendments

**~~[Audit exemption (group situation) not available unless annual return filed in time.~~**

~~[364]. (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 [(but this paragraph is subject to subsection (6))]<sup>307</sup>;~~

~~(b) “preceding financial year” means the financial year preceding the financial year referred to in subsection (2).~~

~~(2) Notwithstanding that [2 or more of]<sup>308</sup> the conditions specified in section [358](7) are satisfied, a holding company and its subsidiary undertakings are not entitled to the audit exemption, as referred to in section [358](2), in a financial year unless—~~

~~(a) there is delivered to the Registrar, in compliance with section [343], 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~~

~~(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.~~

~~(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 [343], 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.~~

~~(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 [343], 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.~~

~~(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.~~

~~[(6) There shall not be reckoned as a subsidiary undertaking for the purposes of this section (other than for the purposes of the expression “subsidiary undertakings” in subsection (2)) an undertaking that is not a company registered under this Act or an existing~~

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<sup>307</sup> ~~Inserted by point 147 of Report Amendments.~~

~~company and the construction provided for by subsection (1)(a) (of references to each of the relevant bodies) shall be read accordingly.~~<sup>309</sup>

**Audit exemption (group situation) not available unless annual return filed in time**

**364. (1) In this section—**

(a) a reference to each of the relevant bodies is a reference to each of the holding company and the other members of the group (but this paragraph is subject to subsection (6)),

(b) “preceding financial year” means the financial year preceding the financial year referred to in subsection (2).

(2) Notwithstanding that section 359 is complied with, a holding company and the other members of the group are not entitled to the audit exemption referred to in that section in a financial year unless—

(a) there is delivered to the Registrar, in compliance with section 343, 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

(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.

(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 343, 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.

(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 343, 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.

(5) In the case of—

(a) the annual return thirdly mentioned in subsection (2)(a), if that return is the company’s or other member’s first annual return, subsection (2)(a) shall have effect (in relation to the company or other member) as if the reference to statutory financial statements or abridged financial statements being annexed to that return were omitted,

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<sup>308</sup> ~~Inserted by point 87 of Seanad Committee Amendments.~~

<sup>309</sup> ~~Inserted by point 148 of Report Amendments.~~

(b) the annual return to which the condition referred to in subsection (3) or (4) applies (namely the annual return to which statutory financial statements or abridged financial statements for the preceding financial year are to be annexed if that annual return is the relevant body's first annual return, subsection (3) or (4), as the case may be, shall have effect (in relation to the relevant body) as if the reference to statutory financial statements or abridged financial statements being annexed to that return were omitted.

(6) There shall not be reckoned as another member of the group for the purposes of this section (other than for the purposes of the expression "other members of the group" in subsection (2)) a subsidiary undertaking that is not a company registered under this Act or an existing company and the construction provided for by subsection (1)(a) (of references to each of the relevant bodies) shall be read accordingly.<sup>310</sup>

## Chapter 16

### Special audit exemption for dormant companies

#### **Dormant company audit exemption.**

[365]. (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 [384](2), section [333] (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)~~

<sup>310</sup> Substituted by point 47 of Seanad Report Amendments.

~~shall not apply to the company in respect of that year.~~

~~(b) unless and until circumstances, if any, arise in that financial year by reason of which the company is not entitled to that audit exemption in respect of that financial year, the provisions specified in *subsection (4)* shall not apply to the company in respect of that year.~~<sup>311</sup>

(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 [360]* in so far, and only in so far, as they make provision of the foregoing kind.

~~*[5] Section [363]* shall apply for the purposes of this section as it applies for the purpose of *section [358](1)* with the substitution in *subsection (1)*—~~

~~————— (a) for the reference to the conditions specified in *section [358](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 [358](1)* of a reference to the dormant company audit exemption.~~

~~*(5) Section 363* shall apply for the purposes of this section as it applies for the purpose of *section 358* with the substitution in *subsection (1)*—~~

~~(a) for the reference to *section 358* being complied with of a reference to the condition specified in *subsection (2)* of this section being satisfied, and~~

~~(b) for the reference to the audit exemption referred to in *section 358* of a reference to the dormant company audit exemption.~~<sup>312</sup>

(6) *Section [335]* shall apply for the purposes of this section as it applies for the purpose of *section [358]* 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

<sup>311</sup> [Substituted by point 48 of Seanad Report Amendments.](#)

exemption provided for by *Chapter 16 of Part 6 of the Companies Act [2014]*);

(b) the company is availing itself of the exemption on the grounds that the condition specified in *section [365](2)* is satisfied;” and

(b) the omission of *subsections (1)(c) and (5)*.

(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 [281] and [282]* to be entered in the company’s accounting records.

(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;

(b) any transaction consisting of the payment of—

(i) a fee to the Registrar on a change of the company’s name;

(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 [889](6)*).

## Chapter 17

Revision of defective statutory financial statements

### Voluntary revision of defective statutory financial statements.

[366]. (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

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<sup>312</sup> [Substituted by point 49 of Seanad Report Amendments.](#)

- (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.

(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 -

- (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.

(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
- (b) information provided in a note to the financial statements was incorrect or incomplete,

then -

- (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—

- (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-

- (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
- (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.

#### **Content of revised financial statements or revised report.**

[367]. (1) Subject to *section [379]*, 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.

(2) In particular, *section [289]* 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.

(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.

### **Approval and signature of revised financial statements.**

[368]. (1) *Section [324]* (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.

(2) Where copies of the original statutory financial statements have been sent to members under *section [338]*, laid before the members in general meeting under *section [341]* or delivered to the Registrar under *section [347]*, the directors shall, before approving the revised financial statements under *section [324]*, 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—

- (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
  - (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;
    - (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;

(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

(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

(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,

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 [324]* 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)*.

#### **Approval and signature of revised directors' report.**

[369]. (1) *Section [332]* (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.

(2) Where copies of the original directors' report have been sent to members under *section [338]*, laid before the members in general meeting under *section [341]* or delivered to the Registrar under *section [347]*, the directors shall, before approving the revised directors' report under *section [332]*, 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;
  - (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;
  - (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;
- (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,

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 [332]* 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)*.

**Statutory auditors' report on revised financial statements and revised report.**

[370]. (1) Subject to *section [371]* 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 [391]*, in the form required by *section [336]*, to the company's members under this section on revised financial statements prepared under *section [366]*.

(2) In that case, *section [392]* (assessment of accounting records) and *section [393]* (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.

(4) Where the person or persons so qualified agree to make that report (and proceed to do so) -

- (a) *subsection (2)* (application of *sections [392]* and *[393]*) 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.

(5) Subject to *section [379]*, 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 [336]*.

(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 [368(2)]* to be made in the revised financial statements or supplementary note, as the case may be.

(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 [337]* (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 [336]* with the necessary modifications.

(9) A statutory auditors' report under this section shall, upon being signed under *section [337]* 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.

**Cases where company has availed itself of audit exemption.**

[371]. (1) *Section [370]* does not apply to a company that is entitled to, and avails itself of, the audit exemption unless *subsection (2)* applies.

(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.

**Statutory auditors' report on revised directors' report alone.**

[372]. (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 [336]*, to the company's members on any revised directors' report prepared under *section [366]* if the relevant statutory financial statements have not been revised at the same time.

(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
- (b) if they are of the opinion that it is not,

they shall state that fact in their report.

(5) *Section [337]* (signature of statutory auditor's report) shall apply to [a]<sup>313</sup> statutory auditors' report under this section as it applies to a statutory auditors' report under *section [336]* with the necessary modifications.

**Effect of revision.**

[373]. (1) Upon the directors approving revised financial statements under *section [324]* as applied by *section [368]*, 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.

(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 [339]* (right to demand copies of financial statements and reports) and *section [340]* (requirements in relation to publication of financial statements); and
- (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 [338]* (circulation of statutory financial statements);
  - (ii) *section [341]* (financial statements and reports to be laid before the members in general meeting); and
  - (iii) *section [347]* (documents to be annexed to annual return: all cases).

(3) Upon the directors approving a revised directors' report under *section [332]* as applied by *section [369]*, 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.

(4) In particular, the revised report shall thereupon be the directors' report for the relevant financial year for the purposes of –

- (a) *section [339]* (right of members to demand copies of financial statements and reports); and
- (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 [338]* (circulation of statutory financial statements);
  - (ii) *section [341]* (financial statements and reports to be laid before the members in general meeting); and

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<sup>313</sup> Correction of typographical error from Bill as initiated

(iii) *section [347]* (documents to be annexed to annual return: all cases).

**Publication of revised financial statements and reports.**

[374]. (1) This section has effect where the directors have prepared revised financial statements or a revised directors' report under *section [366]* and copies of the original statutory financial statements or original directors' report have been sent to any person under *section [338]*.

(2) The directors shall send to any such person—

- (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,

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 [338]* 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
- (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 [324]* as applied by *section [368]* or the revised directors' report under *section [332]* as applied by *section [369]* shall be guilty of a category 3 offence.

(5) Where, prior to the date of revision of the original statutory financial statements, the company -

- (a) had completed sending copies of those financial statements under *section [338]*, references in this Act to

the day on which financial statements are sent under *section [338]* 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

- (b) had not completed sending copies of those financial statements under *section [338]*, 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.**

[375]. (1) This section has effect where the directors of a company have prepared revised financial statements or a revised directors' report under *section [366]* and copies of the original statutory financial statements or directors' report have been laid before a general meeting of the company under *section [341]*.

(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.

#### **Delivery 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 [366]* 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 [343]*.

(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
- (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.

(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.

(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.

[(6) If the original statutory financial statements or directors' report in respect of the company have been registered by the Registrar prior to the date of receipt by the Registrar of the revised financial statements or (as the case may be) the revised directors' report, then, despite anything in *section [373](2)*, this section shall operate so as to require—

(a) that the revised financial statements or (as the case may be) the revised directors' report be placed on the register; and

(b) notwithstanding the taking of such action, that the original statutory financial statements or directors' report continue to remain on the register.]<sup>314</sup>

[(7)]*Section [347](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 [347](1)*.

[(8)] In this section "date of revision" means the date of revision of the original statutory financial statements.

### **Small and medium companies.**

[377]. (1) This section has effect (subject to *section [379](2)*) where the directors have prepared revised financial statements under *section [366]* and the company, prior to the date of revision, has, taking advantage of the exemption for a small or medium company conferred by *section [352]*, delivered to the Registrar abridged financial statements.

(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 –

(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

(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 –

- (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
- (b) if, on the basis of the revised financial statements, the company would be entitled under *section [352]* to do so, to prepare revised abridged financial statements under *section [353]* or *[354]* as appropriate and deliver them to the Registrar, together with a statement as to the effect of the revisions made,

and *sections [352]* to *[354]* 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 –

- (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
- (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.

(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 [347](2)* applies for the purposes of the construction of references to a copy of a document in *subsection (3)* or *(5)* of this

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<sup>314</sup> Inserted by point 70 of Committee Amendments.

section as it applies for the purpose of the construction of the reference to a copy of a document in *section [347](1)*.

(11) In this section “date of revision” means the date of revision of the original statutory financial statements.

**Application of this Chapter in cases where audit exemption available, etc.**

[378]. Where, based on the revised financial statements prepared under *section [366]*, 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 [358](1) or (2) or section [365](1)* (as the case may be) in that regard, to avail itself of the audit exemption in respect of that year,

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.**

[379]. (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 [366]* and *[370](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.

(2) Where the provisions of *section [353]* and *[354]* 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 [370]* 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.

**Chapter 18**

Appointment of statutory auditors

**Statutory auditors – general provisions (including as to the interpretation of provisions providing for auditors’ term of office).**

[380]. (1) One or more statutory auditors shall be appointed in accordance with this Chapter for each financial year of the company.

(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.

(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 –

- (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 –

- (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
- (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 –

- (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
- (iii) the person’s becoming disqualified from holding office by virtue of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010.

**Remuneration of statutory auditors.**

[381]. (1) The remuneration of the statutory auditors—

- (a) where they are appointed by the directors pursuant to this Chapter, shall be agreed with the directors;
  - (b) where they are –
    - (i) appointed by the members pursuant to this Chapter; or
    - (ii) deemed under *section [383](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 [385]*, 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.**

[382]. (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).**

[383]. (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
- (c) he or she has given the company notice in writing, in accordance with *section [400]*, 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)*.

(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 [175](3)*) have relieved the company of the obligation to hold an annual general meeting.

**Appointment of statutory auditors by directors in other cases, etc.**

[384]. (1) Where any casual vacancy in the office of statutory 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—~~

- ~~(a) ——— circumstances referred to in *section [360](1)(b)(i) or [365](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~~

~~(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.~~

(2) Whenever by reason of circumstances arising the 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.]<sup>315</sup>

(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.

#### **Appointment of statutory auditors: failure to appoint.**

[385]. (1) Where at an annual general meeting of a company no 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—

(a) within one week after the date on which the Director of Corporate Enforcement’s power under *subsection (1)* becoming 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.

(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.

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<sup>315</sup> Substituted by point 50 of Seanad Report Amendments.

## Chapter 19

### Rights, obligations and duties of statutory auditors

#### Right of access to accounting records.

[386]. Statutory auditors of a company shall have a right of access at all reasonable times to the accounting records of the company.

#### Right to information and explanations concerning company.

[387]. (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.

(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
- (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,

being, in either case, information or explanations that is or are within the knowledge of, or can be procured by, the officer.

(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.

(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.

[388]. (1) Where a company (in this section referred to as the "holding company") has a subsidiary undertaking, then—

- (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.

#### **Offence to make false statements to statutory auditors.**

[389]. (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.

(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.

**Obligation to act with professional integrity.**

[390]. 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.

**Statutory auditors’ report on statutory financial statements.**

[391]. The statutory auditors of a company shall make, in the form set out in *section [336]*, 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.**

[392]. (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 [281] to [285]* the statutory auditors shall—

- (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.

(2) Where the statutory auditors form the opinion that the company has contravened any of *sections [281] to [285]* 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.

(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.

(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 [281] to [285]*; and

- (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.

(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.

(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.

(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.

(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.

**Report to Registrar and Director: category 1 and 2 offences.**

[393]. (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, forthwith 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.

(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 —

- (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
- (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.

(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.

(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.

(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.

(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.

## Chapter 20

### Removal and resignation of statutory auditors

#### **Removal of statutory auditors: general meeting.**

[394]. 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 –

(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

(b) of whose nomination notice has been given to its members,

but this is –

(i) subject to *section [395]*; and

(ii) without prejudice to any rights of the statutory auditor in relation to his or her removal under this section.

#### **Restrictions on removal of statutory auditor.**

[395]. (1) The passing of a resolution to which this section applies shall not be effective with respect to the matter it provides for unless—

- (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
- (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,

but—

- (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
- (ii) in *paragraph (b)* "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.

(2) This section applies to—

- (a) a resolution removing a statutory auditor from office;
- (b) a resolution at an annual general meeting appointing somebody other than the retiring statutory auditor as statutory auditor;
- (c) a resolution providing expressly that the retiring statutory auditor shall not be re-appointed.

**Extended notice requirement in cases of certain appointments, removals, etc., of auditors.**

[396]. (1) Extended notice shall be required for –

- (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 reappointed;
- (b) a resolution at a general meeting of a company removing statutory auditors from office; and
- (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:

- (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 —

- (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
- (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 situate or in any other mode allowed by this Act, not less 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 deemed to have been properly given for the purposes of that subsection.

**Right of statutory auditors to make representations where their removal or non-reappointment proposed.**

[397]. (1) In this section “relevant meeting” means the meeting at which the resolution mentioned in *section [396](1)(a) or (b)*, as the case may be, is to be considered.

(2) Subject to *subsection (4)*, where notice is given of such an intended resolution as is mentioned in *section [396](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 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.

(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.

(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.**

[398]. (1) Statutory auditors of a company who have been removed shall be entitled to attend—

- (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 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 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—

- (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 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 meeting.

(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.

**Removal of statutory auditors: statement from statutory auditors where audit exemption availed of by company.**

[399]. (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 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.

(6) *Section [398]* shall not apply to statutory auditors as respects their removal from office in the circumstances referred to in *subsection (1)*.

**Resignation of statutory auditors: general.**

[400]. (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.

(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

(b) a statement of any such circumstances as mentioned in *paragraph (a)*.

(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.

(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.

(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 [383](2)(c)* indicating their unwillingness to be re-appointed and, accordingly, for that purpose this section shall have effect as if –

(a) the following subsection were substituted for *subsection (1)* :

“(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

(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)*,

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.

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

#### **Resignation of statutory auditor: requisition of general meeting.**

[401]. (1) A notice served by statutory auditors on a company under *section [400]* 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.

(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.

(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 [400]* contains a statement in accordance with *subsection (3)(b)* of that section; and
- (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—

- (i) in any notice of the meeting given to members of the company state the fact of the statement having been made; and
- (ii) send a copy of the statement to the Registrar and to every person who is entitled under *section [338]* 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.

(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.

(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.**

[402]. (1) Statutory auditors of a company who have resigned from the office of statutory auditors shall be permitted by the company to attend—

- (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 [401](1)*,

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
- (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.

(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

### **Duty of auditor to notify Supervisory Authority regarding cessation of office.**

[403]. (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 [394]* or *[400]*, the auditor shall—

- (a) in such form and manner as the Supervisory Authority specifies; and
- (b) within [30 days]<sup>316</sup> after the date of that cessation,

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 [400](1)*; or
- (b) in the case of removal of the auditor at a general meeting pursuant to *section [394]*, a copy of any representations in writing made to the company, pursuant to *section [397](2)*, by the outgoing auditor in relation to the intended resolution except where such representations were not sent out to the members of

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<sup>316</sup> Substituted by point 71 of Committee Amendments.

the company in consequence of an application to the court under *section [397](4)*.

(3) Where, in the case of resignation, the notice served under *section [400](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.

(4) In this section—

- (a) “resignation” includes an indication of unwillingness to be re-appointed at an annual general meeting;  
and
- (b) a reference to a notice served under *section [400](1)* includes a reference to a notice given by the auditor that is referred to in *section [383](2)(c)*.

**Duty of company to notify Supervisory Authority of auditor's cessation of office.**

**[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 [394]* or *[400]*, the company shall—

- (a) in such form and manner as the Supervisory Authority specifies; and
- (b) within [30 days ]<sup>317</sup> after the date of that cessation,

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 [400](1)*; or
- (b) in the case of removal of the auditor at a general meeting pursuant to *section [394]* —
  - (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 [397](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 [397](4)*.

(3) In this section—

- (a) “resignation” includes an indication of unwillingness to be re-appointed at an annual general meeting;  
and
- (b) a reference to a notice served under *section [400](1)* includes a reference to a notice given by the auditor that is referred to in *section [383](2)(c)*.

**Prohibition on acting in relation to audit while disqualification order in force.**

[405]. (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*)—

- (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
- (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 (1)*, the period for which he or she was disqualified by virtue of the foregoing order shall be extended for –

- (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.

(3) *Section [847]* shall not apply to a person convicted of an offence under *subsection (1)*.

**Chapter 22**

False statements - offence

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<sup>317</sup> Substituted by point 72 of Committee Amendments.

**False statements in returns, financial statements, etc.**

[406]. 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.

**Chapter 23**

Transitional

**Transitional provision - companies accounting by reference to Sixth Schedule to Act of 1963.**

[407]. (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.

(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

(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 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 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;

“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*.