
STATUTORY INSTRUMENTS

2005 No. 1967

The Companies (Audit, Investigations and
Community Enterprise) (Northern Ireland) Order 2005

PART II

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER II

ACCOUNTS AND REPORTS

Auditing of accounts

Auditors' rights to information

10. For Article 397A of the 1986 Order (rights to information) substitute—

“Rights to information

397A.—(1) An auditor of a company—

- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
- (b) may require any of the persons mentioned in paragraph (2) to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.

(2) Those persons are—

- (a) any officer or employee of the company;
- (b) any person holding or accountable for any of the company's books, accounts or vouchers;
- (c) any subsidiary undertaking of the company which is a body corporate incorporated in Northern Ireland;
- (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
- (e) any person who fell within any of sub-paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.

(3) Where a parent company has a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland, the auditor of the parent company may require it to obtain from any of the persons mentioned in paragraph (4) such information or explanations as he may reasonably require for the purposes of his duties as auditor.

- (4) Those persons are—
- (a) the undertaking;
 - (b) any officer, employee or auditor of the undertaking;
 - (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
 - (d) any person who fell within sub-paragraph (b) or (c) at a time to which the information or explanations relates or relate.

(5) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person within paragraph (4) from whom the auditor has required the company to obtain the information or explanations.

(6) A statement made by a person in response to a requirement under paragraph (1)(b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under Article 397B.

(7) Nothing in this Article or Article 397B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

Offences relating to the provision of information to auditors

397B.—(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under Article 397A(1)(b), and
- (b) is misleading, false or deceptive in a material particular,

the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under Article 397A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under paragraph (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with Article 397A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this Article affects any right of an auditor to apply for an injunction to enforce any of his rights under Article 397A.”.

Statement in directors' report as to disclosure of information to auditors

11.—(1) Part VIII of the 1986 Order (accounts and audit) is amended as follows.

(2) In Article 242 (duty to prepare directors' report), after paragraph (2) insert—

“(2A) If Article 242ZA applies to the report, it shall contain the statement required by paragraph (2) of that Article.”.

(3) After Article 242 insert—

“Statement as to disclosure of information to auditors

242ZA.—(1) This Article applies to a directors' report unless the directors have taken advantage of the exemption conferred by Article 257A(1) or 257AA(1).

(2) The report must contain a statement to the effect that, in the case of each of the persons who are directors at the time when the report is approved under Article 242A, the following applies—

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditors are aware of that information.

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

(4) For the purposes of paragraph (2) a director has taken all the steps that he ought to have taken as a director in order to do the things mentioned in sub-paragraph (b) of that paragraph if he has—

- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as were required by his duty as a director of the company to exercise due care, skill and diligence.

(5) In determining for the purposes of paragraph (2) the extent of that duty in the case of a particular director, the following considerations (in particular) are relevant—

- (a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company, and
- (b) (so far as they exceed what may reasonably be so expected) the knowledge, skill and experience that the director in fact has.

(6) Where a directors' report containing the statement required by paragraph (2) is approved under Article 242A 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 approved,

is guilty of an offence and liable to imprisonment or a fine, or both."