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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Overseas Companies Regulations 2009**

**PART 5**

**DELIVERY OF ACCOUNTING DOCUMENTS: GENERAL**

**CHAPTER 3**

Companies not required to prepare and disclose accounts under parent law

**Application of Chapter**

**36.** This Chapter applies to an overseas company to which this Part applies that is not a company to which Chapter 2 of this Part applies.

**A company's financial year**

**37.** Sections 390 to 392 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

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**“390 A company's financial year**

- (1) A company's financial year is determined as follows.
- (2) Its first financial year—
  - (a) begins with the first day of its first accounting reference period, and
  - (b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.
- (3) Subsequent financial years—
  - (a) begin with the day immediately following the end of the company's previous financial year, and

- (b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

### **391 Accounting reference periods and accounting reference date**

- (1) A company's accounting reference periods are determined according to its accounting reference date in each calendar year.
- (2) The accounting reference date of a company is the last day of the month in which the anniversary of its becoming a relevant overseas company falls.
- (3) A company's first accounting reference period is the period of more than six months, but not more than eighteen months, beginning with the date of its becoming a relevant overseas company and ending with its accounting reference date.
- (4) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (5) This section has effect subject to the provisions of section 392.

### **392 Alteration of accounting reference date**

- (1) A company may by notice given to the registrar specify a new accounting reference date having effect in relation to—
  - (a) the company's current accounting reference period and subsequent periods, or
  - (b) the company's previous accounting reference period and subsequent periods.

A company's "previous accounting reference period" means the one immediately preceding its current accounting reference period.

- (2) The notice must state whether the current or previous accounting reference period—
  - (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or

- (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.
- (3) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts for the financial year determined by reference to that accounting reference period has already expired.
- (4) An accounting reference period may not be extended so as to exceed eighteen months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

This does not apply where the company is in administration under Part 2 of the Insolvency Act 1986 (c.45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).”

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### **Duty to prepare accounts**

**38.** Sections 394 to 397, 399, and 402 to 406 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

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#### **“394 Duty to prepare individual accounts**

Subject to section 399 (duty to prepare group accounts), the directors of a company must prepare accounts for the company for each of its financial years.

Those accounts are referred to as the company’s “individual accounts”.

#### **395 Individual accounts: applicable accounting framework**

- (1) A company’s annual accounts may be prepared in accordance with—
  - (a) its parent law (“parent law individual accounts”),
  - (b) international accounting standards (“IAS individual accounts”), or
  - (c) section 396 (“overseas companies individual accounts”).
- (2) A company may only prepare parent law individual accounts if the content of such accounts includes that required by section 396.

**396 Overseas companies individual accounts**

- (1) Overseas companies individual accounts must comprise—
  - (a) a balance sheet as at the last day of the financial year, and
  - (b) a profit and loss account.
- (2) The accounts must comply with the provisions in Schedule 4 to the Overseas Companies Regulations as to—
  - (a) the content of the balance sheet and the profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.

**397 IAS individual accounts, parent law individual accounts and overseas company individual accounts**

- (1) Where the directors of a company prepare IAS individual accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with international accounting standards,
  - (b) whether the accounts have been audited, and
  - (c) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (2) Where the directors of a company prepare parent law individual accounts they must state in the notes—

- (a) that the accounts have been prepared in accordance with the company's parent law,
  - (b) the legislation under which the accounts have been prepared,
  - (c) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (d) whether the accounts have been audited, and
  - (e) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (3) Where the directors of a company prepare overseas company individual accounts they must state in the notes—
- (a) that the accounts have been prepared in accordance with section 396,
  - (b) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (c) whether the accounts have been audited, and
  - (d) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.

### **399 Duty to prepare group accounts**

If at the end of a financial year a company is a parent company the directors must, instead of preparing individual accounts for the year, prepare group accounts for the year.

### **402 Exemption from duty to prepare group accounts**

A parent company is exempt from the requirement to prepare group accounts where—

- (a) it has prepared accounts under section 395(1)(a) and its parent law does not require consolidated accounts;
- (b) it has prepared accounts under section 395(1)(b) and in accordance with the international accounting standards it is not required to prepare consolidated accounts;
- (c) it has prepared accounts under section 395(1)(c) and if under section 405 all of the company's subsidiary undertakings could be excluded from the consolidation.

### **402A Holding company accounts to be regarded as group accounts**

Where a company, being a parent company, is required by section 399 to prepare group accounts, and that company is itself the subsidiary of another company ("the holding company"), the group accounts of the holding company are deemed to satisfy the requirements of section 399 to prepare group accounts.

### **403 Group accounts: applicable accounting framework**

- (1) The group accounts of an overseas company may be prepared in accordance with—
  - (a) its parent law ("parent law group accounts"),
  - (b) international accounting standards ("IAS group accounts"), or
  - (c) section 404 ("overseas companies group accounts").

- (2) A company may only prepare parent law group accounts if the content of such accounts includes that required by section 404.

#### **404 Overseas companies group accounts**

- (1) Overseas companies group accounts must comprise—
  - (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
  - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
- (2) The accounts must comply with the provisions of Schedule 5 to the Overseas Companies Regulations as to—
  - (a) the content of the consolidated balance sheet and consolidated profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.

#### **405 Overseas companies group accounts: subsidiary undertakings included in the consolidation**

- (1) Where a parent company prepares overseas companies group accounts, all the subsidiary undertakings of the company must be included in the consolidation, subject to the following exceptions.
- (2) A subsidiary undertaking may be excluded from the consolidation if its inclusion is not material (but two or more undertakings may be excluded only if they are not material taken together).
- (3) A subsidiary undertaking may be excluded from consolidation where—
  - (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or
  - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or

- (c) the interest of the parent company is held exclusively with a view to subsequent resale.
- (4) The reference in subsection (3)(a) to the rights of the parent company and the reference in subsection (3)(c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of the definition of “parent undertaking” (see section 1162) in the absence of which it would not be the parent company.

**406 IAS group accounts, parent law group accounts and overseas company group accounts**

- (1) Where the directors of a company prepare IAS group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with international accounting standards,
  - (b) whether the accounts have been audited, and
  - (c) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (2) Where the directors of a company prepare parent law group accounts they must state in the notes—
  - (a) that the accounts have been prepared in accordance with the company’s parent law,
  - (b) the legislation under which the accounts have been prepared,
  - (c) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,



- (d) whether the accounts have been audited, and
  - (e) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.
- (3) Where the directors of a company prepare overseas company group accounts they must state in the notes—
- (a) that the accounts have been prepared in accordance with section 404,
  - (b) whether the accounts have been prepared in accordance with a set of generally accepted accounting principles, and if so, the name of the organisation or other body which issued those principles,
  - (c) whether the accounts have been audited, and
  - (d) if they have been audited—
    - (i) whether they have been audited in accordance with a set of generally accepted auditing standards, and
    - (ii) if so, the name of the organisation or other body which issued those standards.”.

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### **Approval and signing of accounts**

**39.** Section 414 of the Companies Act 2006 applies in relation to a company to which this Chapter applies, modified so that it reads as follows—

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#### **“414 Approval and signing of accounts**

- (1) A company’s annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.

- (2) The signature must be on the company's balance sheet.
- (3) If annual accounts are approved that do not comply with the requirements of Part 15 as applied (with modifications) by Part 5 of the Overseas Companies Regulations, every director of the company who—
  - (a) knew that they did not comply, or was reckless as to whether they complied, and
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved,commits an offence.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

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#### **Duty to file accounts**

**40.** Sections 441 and 442 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

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#### **“441 Duty to file accounts with the registrar**

- (1) The directors of a company must deliver to the registrar for each financial year a copy of the company's annual accounts and such other reports as are required to be prepared.
- (2) The copy of the balance sheet delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (3) The directors required by this section to deliver accounts must deliver them in respect of each UK establishment that it has at the end of that year, subject as follows.
- (4) Subsection (3) does not require the delivery of accounts in respect of an establishment if—

- (a) a return under the Overseas Companies Regulations in respect of that establishment has stated the intention to file accounts in respect of another UK establishment (giving the registered number of that establishment), and
- (b) the accounts are delivered in respect of that establishment before the end of the period allowed for doing so.

#### **442 Period allowed for filing accounts**

- (1) This section specifies the period allowed for directors of a company to comply with their obligation under section 441 to deliver accounts for a financial year to the registrar.

This is referred to in sections 392 and 451 as the “period for filing” those accounts.

- (2) The period is thirteen months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

- (3) If the relevant accounting reference period is the company’s first and is a period of more than twelve months, the period allowed is thirteen months from the first anniversary of the company becoming a relevant overseas company.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given under section 392, the period is—

- (a) that applicable in accordance with the above provisions, or
- (b) three months from the date of the notice under that section,

whichever last expires.

- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.
- (6) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.”.

## **Penalty for non-compliance**

**41.** Section 451 of the Companies Act 2006 applies in relation to a company to which this Chapter applies, modified so that it reads as follows—

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### **“451 Default in filing accounts: offences**

- (1) If the requirements of section 441 (duty to file accounts) are not complied with in relation to a company’s accounts for a financial year before the end of the period for filing those accounts, every person who immediately before the end of that period was a director of the company commits an offence.
  - (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
  - (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
  - (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.”
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## **Supplementary provisions**

**42.** Sections 471, 472 and 474 of the Companies Act 2006 apply in relation to a company to which this Chapter applies, modified so that they read as follows—

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### **“471 Meaning of “annual accounts”**

In this Part a company’s “annual accounts”, in relation to a financial year, means the company’s individual accounts for that year (see section 394) or, if applicable, the company’s group accounts for that year (see section 399).

### **472 Notes to the accounts**

- (1) Information required by this Part to be given in notes to a company’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts.
- (2) References in this Part to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts.

### **474 Minor definitions**

In this Part—

“balance sheet” includes a statement of financial position or other equivalent financial statement;

“group” means a parent undertaking and its subsidiary undertakings;

“IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19th July 2002 on the application of international accounting standards<sup>(1)</sup>;

“international accounting standards” means the international accounting standards, within the meaning of Article 2 of the IAS Regulation;

“Overseas Companies Regulations” means the Overseas Companies Regulations 2009 (S.I. 2009/[ ]);

“profit and loss account” includes an income statement or other equivalent financial statement;

“relevant overseas company” means a company to which Chapter 3 of Part 5 of the Overseas Companies Regulations applies,

and references to “this Part” are to be read as references to those sections of Part 15 of the Companies Act 2006 as applied (with modification) by the Overseas Companies Regulations and include Schedules 4 and 5 to those Regulations.”.

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(1) OJ L 243, 11.9.2002, p. 1.