
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Overseas Companies Regulations 2009

PART 6

**DELIVERY OF ACCOUNTING DOCUMENTS:
CREDIT OR FINANCIAL INSTITUTIONS**

CHAPTER 1

Introductory provisions

Application and interpretation of Part

43.—(1) This Part applies to every credit or financial institution that has a branch in the United Kingdom.

(2) In this Part “branch” means a place of business that forms a legally dependent part of the institution and conducts directly all or some of the operations inherent in its business.

CHAPTER 2

Institutions required to prepare accounts under parent law

Application and interpretation of Chapter

44.—(1) This Chapter applies to a credit or financial institution to which this Part applies that—

- (a) is required by its parent law to prepare and have audited accounts; or
- (b) is incorporated in an EEA State, and is required by its parent law to prepare and disclose accounts, but is not required by its parent law to have its accounts audited or deliver its accounts.

(2) In relation to an institution to which this Chapter applies—

“accounting documents” in relation to a financial period of the institution, means—

- (a) the accounts of the institution for the period, including, if it has one or more subsidiaries, any consolidated accounts of its group,
- (b) any annual report of the directors for the period,
- (c) any report of the auditors on the accounts mentioned in sub-paragraph (a),
- (d) any report of the auditors on the report mentioned in sub-paragraph (b),

and for this purpose “subsidiaries” and “consolidated group accounts” have the meaning given to them by the institution’s parent law;

“director”, in the case of an institution which does not have directors, means persons occupying equivalent offices;

“disclosure” means public disclosure, except where an institution is not required under its parent law, any enactment having effect for the United Kingdom or its constitution to publicly

disclose its accounts, in which case it means disclosure of the accounts to the persons for whose information they have been prepared;

“financial period” means a period for which the institution is required or permitted by its parent law to prepare accounts;

“parent law” means the law of the country in which the institution has its head office; and in the case of an institution which does not have directors, references to “directors” shall include the persons occupying equivalent offices.

Initial filing of copies of accounting documents

45. A credit or financial institution must within one month of becoming an institution to which this Chapter applies deliver to the registrar copies of the latest accounting documents of the institution prepared in accordance with its parent law to have been disclosed before the end of the period allowed for compliance with this regulation, or, if earlier, the date of compliance with it.

Filing of copies of subsequent accounting documents

46.—(1) A credit or financial institution to which this Chapter applies must deliver to the registrar copies of all the accounting documents of the institution prepared in accordance with its parent law that are disclosed on or after the end of the period allowed for compliance with regulation 45, or, if earlier, the date on which it complies with that paragraph.

(2) The period allowed for delivery, in relation to a copy of a document required to be delivered under paragraph (1), is three months from the date on which the document is required to be disclosed in accordance with the institution’s parent law.

Statement of details of parent law and other information

47.—(1) The copies of accounting documents delivered to the registrar under regulation 45 or 46 must be accompanied by a statement containing the following information.

(2) The information required is—

- (a) the legislation under which the accounts have been prepared and, if applicable, audited,
- (b) whether those 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,
- (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, and
- (e) if they have not been audited, whether the institution is not required to have its accounts audited.

Supplementary provisions as to obligation to file copies of accounting documents

48.—(1) The following provisions apply in relation to the obligations imposed by regulation 45 or 46.

(2) Where the institution is incorporated or otherwise formed in an EEA State—

- (a) it is not required to deliver copies of accounting documents if its parent law does not require it to deliver accounting documents, and

(b) it may discharge its obligation by delivering accounting documents without an auditor's report if its parent law does not require it to have its accounts audited.

(3) Where the institution's parent law permits it to discharge an obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligation under regulations 45 and 46 by delivering copies of documents modified as permitted by that law.

Exception where documents available for inspection

49.—(1) Neither regulation 45 nor regulation 46 requires an institution to deliver copies of accounting documents if at the end of the period allowed for compliance with those regulations—

- (a) it is not required by its parent law to register them,
- (b) they are made available for inspection at each branch of the institution in the United Kingdom, and
- (c) copies of them are available on request at a cost not exceeding the cost of supplying them.

(2) Where—

- (a) by virtue of paragraph (1) an institution is not required to deliver documents under regulation 45 or 46, and
- (b) any of the conditions specified in paragraph (1) ceases to be met,

the institution must deliver the documents to the registrar for registration within seven days of the condition ceasing to be met.

Penalty for non-compliance

50.—(1) If any of the requirements of this Chapter are not complied with before the end of the period allowed for delivery of copies of accounting documents, an offence is committed by every person who immediately before the end of that period was a director of the institution.

(2) It is a defence for a person charged with such an offence to prove that they took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(3) A person guilty of an offence under paragraph (1) 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.

CHAPTER 3

Institutions not required to prepare accounts under parent law

Application of Chapter

51. This Chapter applies to a credit or financial institution to which this Part applies that is not one to which Chapter 2 of this Part applies.

An institution's financial year

52. Sections 390 to 392 of the Companies Act 2006 apply in relation to an institution to which this Chapter applies, modified so that they read as follows—

“390 An institution's financial year

- (1) An institution'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 institution'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) An institution's accounting reference periods are determined according to its accounting reference date in each calendar year.
- (2) The accounting reference date of an institution is the last day of the month in which the anniversary of its becoming a relevant overseas institution falls.
- (3) An institution'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 institution 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) An institution may by notice given to the registrar specify a new accounting reference date having effect in relation to—
 - (a) the institution’s current accounting reference period and subsequent periods, or
 - (b) the institution’s previous accounting reference period and subsequent periods.

An institution’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 institution 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)).”

Duty to prepare accounts

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

“394 Duty to prepare individual accounts

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

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

395 Individual accounts: applicable accounting framework

- (1) An institution'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 institutions individual accounts").
- (2) An institution may only prepare parent law individual accounts if the content of such accounts includes that required by section 396.

396 Overseas institutions individual accounts

- (1) Overseas institutions 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 6 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 institutions individual accounts

- (1) Where the directors of an institution 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 an institution prepare parent law individual accounts they must state in the notes—
- (a) that the accounts have been prepared in accordance with the institution’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 an institution prepare overseas institutions 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 an institution is a parent institution 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 institution 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 institution's subsidiary undertakings could be excluded from consolidation.

402A Holding institution accounts to be regarded as group accounts

Where an institution, being a parent institution, is required by section 399 to prepare group accounts, and that institution is itself the subsidiary of another institution (“the holding institution”), the group accounts of the holding institution may be deemed to satisfy the requirements of section 399 to prepare group accounts.

403 Group accounts: applicable accounting framework

- (1) The group accounts of an institution 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 institutions group accounts”).
- (2) An institution may only prepare parent law group accounts if the content of such accounts includes that required by section 404.

404 Overseas institutions group accounts

- (1) Overseas institutions group accounts must comprise—
 - (a) a consolidated balance sheet dealing with the state of affairs of the parent institution and its subsidiary undertakings, and
 - (b) a consolidated profit and loss account dealing with the profit or loss of the parent institution and its subsidiary undertakings.
- (2) The accounts must comply with the provisions of Schedule 7 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 institutions group accounts: subsidiary undertakings included in the consolidation

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

406 IAS group accounts, parent law group accounts and overseas institutions group accounts

- (1) Where the directors of an institution 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 an institution prepare parent law group accounts they must state in the notes—
 - (a) that the accounts have been prepared in accordance with the institution'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 an institution prepare overseas institutions 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

54. Section 414 of the Companies Act 2006 applies in relation to an institution to which this Chapter applies, modified so that it reads as follows—

“414 Approval and signing of accounts

- (1) An institution’s annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the institution.
 - (2) The signature must be on the institution’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 6 of the Overseas Companies Regulations, every director of the institution 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

55. Sections 441 and 442 of the Companies Act 2006 apply in relation to an institution to which this Chapter applies, modified so that they read as follows—

“441 Duty to file accounts with the registrar

- (1) The directors of an institution must deliver to the registrar for each financial year a copy of the institution’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.

442 Period allowed for filing accounts

- (1) This section specifies the period allowed for directors of an institution 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 institution’s first and is a period of more than twelve months, the period allowed is thirteen months from the first anniversary of the institution becoming a relevant overseas institution.
- (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 an institution 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.”.
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Penalty for non-compliance

56. Section 451 of the Companies Act 2006 applies in relation to an institution to which this Chapter applies, modified so that it reads as follows—

“451 Default in filing accounts: offences

- (1) If the requirements of section 441 (duty to file accounts) are not complied with in relation to an institution’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 institution 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

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

“471 Meaning of “annual accounts”

In this Part an institution’s “annual accounts”, in relation to a financial year, means the institution’s individual accounts for that year (see section 394) or, if applicable, the institution’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 an institution’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts.

- (2) References in this Part to an institution’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;

“directors”, in the case of an institution which does not have directors, means persons occupying equivalent offices;

“group” means a parent institution 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;

“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/[]);

“parent institution” means an institution that is a parent undertaking (see section 1162 of and Schedule 7 to the Companies Act 2006);

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

“relevant overseas institution” means an institution to which Chapter 3 of Part 6 of the Overseas Companies Regulations applies;

and references to “this Part” are references to those sections of Part 15 of the Companies Act 2006 as applied (with or without modification) by the Overseas Companies Regulations and include Schedules 6 and 7 to those Regulations.”.
