



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXII

#### AUDITORS AND ACTUARIES

##### *Appointment*

#### **340 Appointment**

- (1) Rules may require an authorised person, or an authorised person falling within a specified class—
  - (a) to appoint an auditor, or
  - (b) to appoint an actuary,if he is not already under an obligation to do so imposed by another enactment.
- (2) Rules may require an authorised person, or an authorised person falling within a specified class—
  - (a) to produce periodic financial reports; and
  - (b) to have them reported on by an auditor or an actuary.
- (3) Rules may impose such other duties on auditors of, or actuaries acting for, authorised persons as may be specified.
- (4) Rules under subsection (1) may make provision—
  - (a) specifying the manner in which and time within which an auditor or actuary is to be appointed;
  - (b) requiring the Authority to be notified of an appointment;
  - (c) enabling the Authority to make an appointment if no appointment has been made or notified;
  - (d) as to remuneration;
  - (e) as to the term of office, removal and resignation of an auditor or actuary.

- (5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by rules under subsection (3)—
  - (a) must act in accordance with such provision as may be made by rules; and
  - (b) is to have such powers in connection with the discharge of his functions as may be provided by rules.
- (6) In subsections (1) to (3) “auditor” or “actuary” means an auditor, or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.
- (7) “Specified” means specified in rules.

### *Information*

#### **341 Access to books etc**

- (1) An appointed auditor of, or an appointed actuary acting for, an authorised person—
  - (a) has a right of access at all times to the authorised person’s books, accounts and vouchers; and
  - (b) is entitled to require from the authorised person’s officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary.
- (2) “Appointed” means appointed under or as a result of this Act.

#### **342 Information given by auditor or actuary to the Authority**

- (1) This section applies to a person who is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision.
- (2) This section also applies to a person who is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision.
- (3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—
  - (a) information on a matter of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, the authorised person, or
  - (b) his opinion on such a matter,
 if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).
- (6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.
- (7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

### **343 Information given by auditor or actuary to the Authority: persons with close links**

- (1) This section applies to a person who—
  - (a) is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision; and
  - (b) is, or has been, an auditor of a person (“CL”) who has close links with the authorised person.
- (2) This section also applies to a person who—
  - (a) is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision; and
  - (b) is, or has been, an actuary acting for a person (“CL”) who has close links with the authorised person.
- (3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—
  - (a) information on a matter concerning the authorised person of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, CL, or
  - (b) his opinion on such a matter,if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).
- (6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.
- (7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.
- (8) CL has close links with the authorised person concerned (“A”) if CL is—
  - (a) a parent undertaking of A;
  - (b) a subsidiary undertaking of A;
  - (c) a parent undertaking of a subsidiary undertaking of A; or
  - (d) a subsidiary undertaking of a parent undertaking of A.
- (9) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

### **344 Duty of auditor or actuary resigning etc. to give notice**

- (1) This section applies to an auditor or actuary to whom section 342 applies.
- (2) He must without delay notify the Authority if he—
  - (a) is removed from office by an authorised person;
  - (b) resigns before the expiry of his term of office with such a person; or
  - (c) is not re-appointed by such a person.

- (3) If he ceases to be an auditor of, or actuary acting for, such a person, he must without delay notify the Authority—
- (a) of any matter connected with his so ceasing which he thinks ought to be drawn to the Authority's attention; or
  - (b) that there is no such matter.

### *Disqualification*

#### **345 Disqualification**

- (1) If it appears to the Authority that an auditor or actuary to whom section 342 applies has failed to comply with a duty imposed on him under this Act, it may disqualify him from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person.
- (2) If the Authority proposes to disqualify a person under this section it must give him a warning notice.
- (3) If it decides to disqualify him it must give him a decision notice.
- (4) The Authority may remove any disqualification imposed under this section if satisfied that the disqualified person will in future comply with the duty in question.
- (5) A person who has been disqualified under this section may refer the matter to the Tribunal.

### *Offence*

#### **346 Provision of false or misleading information to auditor or actuary**

- (1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.
- (3) “Appointed” means appointed under or as a result of this Act.