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STATUTORY INSTRUMENTS

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**2008 No. 1911**

**The Limited Liability Partnerships (Accounts and Audit)  
(Application of Companies Act 2006) Regulations 2008**

**PART 17**

**LLPs: SUPPLEMENTARY AND INTERPRETATION**

**Courts and legal proceedings**

**51.** Section 1157 applies to LLPs, modified so that it reads as follows—

**“Power of court to grant relief in certain cases**

**1157.**—(1) If in proceedings for negligence, default, breach of duty or breach of trust against—

- (a) a member of an LLP, or
- (b) a person employed by an LLP as auditor,

it appears to the court hearing the case that the member or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.

(2) If any such member or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust—

- (a) he may apply to the court for relief, and
- (b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper.”

**Meaning of “undertaking” and related expressions**

**52.** Sections 1161 and 1162 and Schedule 7 apply to LLPs, modified so that they read as follows—

**“Meaning of “undertaking” and related expressions**

**1161.**—(1) In this Act “undertaking” means—

- (a) a body corporate or partnership, or
  - (b) an unincorporated association carrying on a trade or business, with or without a view to profit.
- (2) In this Act references to shares—
- (a) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
  - (b) in relation to an undertaking without capital, are to interests—
    - (i) conferring any right to share in the profits or 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.

(3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

This is subject to provision in any specific context providing for the translation of such expressions.

(4) References in this Act to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(5) In this Act “group undertaking”, in relation to an undertaking, means an undertaking which is—

- (a) a parent undertaking or subsidiary undertaking of that undertaking, or
- (b) a subsidiary undertaking of any parent undertaking of that undertaking.

### **Parent and subsidiary undertakings**

**1162.**—(1) This section (together with Schedule 7) defines “parent undertaking” and “subsidiary undertaking” for the purposes of this Act.

(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

- (a) it holds a majority of the voting rights in the undertaking, or
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
- (c) it has the right to exercise a dominant influence over the undertaking—
  - (i) by virtue of provisions contained in the undertaking’s articles or in an LLP Agreement, or
  - (ii) by virtue of a control contract, or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—

- (a) if any of its subsidiary undertakings is a member of that undertaking, or
- (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

- (a) it has the power to exercise, or actually exercises, dominant influence or control over it, or
- (b) it and the subsidiary undertaking are managed on a unified basis.

(5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

(6) Schedule 7 contains provisions explaining expressions used in this section and otherwise supplementing this section.

(7) In this section and that Schedule references to shares, in relation to an undertaking, are to allotted shares.”

## “SCHEDULE 7

### PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS

#### **Introduction**

1. The provisions of this Schedule explain expressions used in section 1162 (parent and subsidiary undertakings) and otherwise supplement that section.

#### **Voting rights in an undertaking**

2.—(1) In section 1162(2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights the references to holding a majority of the voting rights in the undertaking are to be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

#### **Right to appoint or remove a majority of members or directors**

3.—(1) In section 1162(2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) An undertaking shall be treated as having the right to appoint to a directorship if—

- (a) a person’s appointment to it follows necessarily from his appointment as director of the undertaking, or
- (b) the directorship is held by the undertaking itself.

(3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

(4) In relation to an undertaking the business of which is managed by the members, references to the board of directors or directors are to be construed as references to members.

#### **Right to exercise dominant influence**

4.—(1) For the purposes of section 1162(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.

(2) A “control contract” means a contract in writing conferring such a right which—

(a) is of a kind authorised by the articles of the undertaking or by the LLP agreement of the LLP in relation to which the right is exercisable, and

(b) is permitted by the law under which that undertaking is established.

(3) In relation to an undertaking the business of which is managed by the members, references to directors are to be construed as references to members.

(4) This paragraph shall not be read as affecting the construction of section 1162(4)(a).

#### **Rights exercisable only in certain circumstances or temporarily incapable of exercise**

5.—(1) Rights which are exercisable only in certain circumstances shall be taken into account only—

(a) when the circumstances have arisen, and for so long as they continue to obtain, or

(b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

#### **Rights held by one person on behalf of another**

6. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

7.—(1) Rights held by a person as nominee for another shall be treated as held by the other.

(2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

#### **Rights attached to shares held by way of security**

8. Rights attached to shares held by way of security shall be treated as held by the person providing the security—

(a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions, and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

#### **Rights attributed to parent undertaking**

9.—(1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of paragraph 8 rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

#### **Disregard of certain rights**

**10.** The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

#### **Supplementary**

**11.** References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.”

#### **Meaning of “dormant”**

**53.** Section 1169 applies to LLPs, modified so that it reads as follows—

##### **“Dormant LLPs**

**1169.**—(1) For the purposes of this Act an LLP is “dormant” during any period in which it has no significant accounting transaction.

(2) A “significant accounting transaction” means a transaction that is required by section 386 to be entered in the LLP’s accounting records.

(3) In determining whether or when an LLP is dormant, there shall be disregarded any transaction consisting of the payment of—

- (a) a fee to the registrar on a change of the LLP’s name,
- (b) a penalty under section 453 (penalty for failure to file accounts), or
- (c) a fee to the registrar for the registration of an annual return.”

#### **Requirements of this Act**

**54.** Section 1172 applies to LLPs, modified so that it reads as follows—

##### **“References to requirements of this Act**

**1172.** References in the provisions of this Act applied to LLPs to the requirements of this Act include the requirements of regulations and orders made under it.”

#### **Minor definitions**

**55.** Section 1173 applies to LLPs, modified so that it reads as follows—

##### **“Minor definitions: general**

**1173.**—(1) In this Act—

“body corporate” includes a body incorporated outside the United Kingdom, but does not include—

- (a) a corporation sole, or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“EEA undertaking” means an undertaking governed by the law of an EEA State.

“parent LLP” means an LLP that is a parent undertaking (see section 1162 and Schedule 7);

“regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000 (c.8);

“regulated market” has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).

(2) In relation to an EEA State that has not implemented Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments, the following definition of “regulated market” has effect in place of that in subsection (1)—

“regulated market” has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field.”

## Regulations

56. Sections 1288 to 1290 apply to LLPs, modified so that they read as follows—

### “Regulations: statutory instrument

1288. Except as otherwise provided, regulations under this Act shall be made by statutory instrument.

### Regulations: negative resolution procedure

1289. Where regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations or order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### Regulations: affirmative resolution procedure

1290. Where regulations under this Act are subject to “affirmative resolution procedure” the regulations must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.”

57. Section 1292 applies to LLPs, modified so that it reads as follows—

### “Regulations and orders: supplementary

1292.—(1) Regulations under this Act may—

- (a) make different provision for different cases or circumstances,
- (b) include supplementary, incidental and consequential provision, and
- (c) make transitional provision and savings.

(2) Any provision that may be made by regulations under this Act subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.”