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STATUTORY INSTRUMENTS

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**2008 No. 565**

**The Insurance Accounts Directive (Miscellaneous  
Insurance Undertakings) Regulations 2008**

**PART 3**

**AUDITORS**

**Appointment of auditors**

6.—<sup>[F1]</sup>(1) The sections of the Companies Act 2006 listed in paragraph (1A) apply in relation to the appointment of auditors of an insurance undertaking as if the undertaking was a private company which is also a public interest entity, subject—

- (a) where the undertaking concerned is unincorporated, to any necessary modifications to take account of that fact, and
- (b) to the modifications made by paragraph (2).]

<sup>[F1]</sup>(1A) The sections of the Companies Act 2006 are—

- (a) 485 (appointment of auditors of private company: general),
- (b) 485A (appointment of auditors of private company: additional requirements for public interest entities with audit committees),
- (c) 485B (appointment of auditors of private company: additional requirements for public interest entities without audit committees),
- (d) 485C (restriction on appointment of auditor of private company which is a public interest entity),
- (e) 486 (appointment of auditors of private company: default power of Secretary of State),
- (f) 486A (defective appointments: default power of Secretary of State),
- (g) 487 (term of office of auditors of private company),
- (h) 488 (prevention by members of deemed re-appointment of auditor), and
- (i) 494ZA (the maximum engagement period).]

(2) The modifications are—

- (a) in section 485(2)(a), the reference to “the time allowed for sending out copies of the company's annual accounts and reports” is to be construed as a reference to the time allowed under regulation 3(2)(a) of these Regulations for preparing the accounts required by regulation 3;
- (b) in section 485(2)(b), the reference to “the day on which copies of the company's annual accounts and reports for the previous financial year are sent out under section 423” is to be construed as a reference to the day on which the accounts required by regulation 3 are prepared;

<sup>[F2]</sup>(ba) in section 485A(4), the words after “Audit Regulation” are omitted;]

- [<sup>F2</sup>(bb) in section 485B(4), the words after “must be drawn” are omitted;]
- (c) in section 487(3), the reference to “the provisions of this Part as to removal and resignation of auditors” is to be construed as a reference to provisions in these Regulations, and to any public general Act governing an insurance undertaking, as to removal and resignation of auditors;
- (d) in section 488(3)(c), the reference to “the accounting reference period” is to be construed as a reference to the financial year.

<sup>F3</sup>(3) .....

<sup>F3</sup>(4) .....

<b>F1</b>	Reg. 6(1)(1A) substituted for reg. 6(1) (with effect in accordance with reg. 2(4) of the amending S.I.) by The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 6(a)</b> (with reg. 2(6)(7))
<b>F2</b>	Reg. 6(2)(ba)(bb) inserted (with effect in accordance with reg. 2(4) of the amending S.I.) by The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 6(b)</b> (with reg. 2(6)(7))
<b>F3</b>	Reg. 6(3)(4) omitted (with effect in accordance with reg. 2(4) of the amending S.I.) by virtue of The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 6(c)</b> (with reg. 2(6)(7))

**Functions of auditor**

7.—(1) The following provisions of the Companies Act 2006 apply to the auditor of an insurance undertaking as they apply to an auditor of a [<sup>F4</sup>private] company—

- (a) section 495 (auditor's report on company's annual accounts);
- [<sup>F5</sup>(aa) section 496 (auditor’s report on strategic report and directors’ report);]
- (b) section 498 (duties of auditor);
- <sup>F6</sup>(c) .....

(2) The auditor of an insurance undertaking must supply the directors of that undertaking with such information as is necessary to enable the disclosure required by regulation 3(5) to be made.

<sup>F7</sup>(3) .....

<b>F4</b>	Word in reg. 7(1) inserted (with effect in accordance with reg. 2(4) of the amending S.I.) by The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 7(a)(i)</b> (with reg. 2(6)(7))
<b>F5</b>	Reg. 7(1)(aa) inserted (with effect in accordance with reg. 2(4) of the amending S.I.) by The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 7(a)(ii)</b> (with reg. 2(6)(7))
<b>F6</b>	Reg. 7(1)(c) omitted (with effect in accordance with reg. 2(4) of the amending S.I.) by virtue of The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 7(a)(iii)</b> (with reg. 2(6)(7))
<b>F7</b>	Reg. 7(3) omitted (with effect in accordance with reg. 2(4) of the amending S.I.) by virtue of The Statutory Auditors Regulations 2017 (S.I. 2017/1164), reg. 1(2)(3), <b>Sch. 2 para. 7(b)</b> (with reg. 2(6)(7))

### Signature of auditor's report

8.—(1) Sections 503 to 506 of the Companies Act 2006 (signature of auditor's report) apply in relation to the auditor's report required by regulation 3(1)(b), subject to—

- (a) any necessary modifications to take account of the fact that the insurance undertaking is unincorporated, and
- (b) the modifications made by paragraph (2).

(2) The modifications are—

- (a) in section 505(1)(b) and section 506(2)(b), the references to the Secretary of State are to be construed as references to the Authority [<sup>F8</sup>and the Financial Conduct Authority (if it is not the Authority)], and
- (b) in section 506(1)(b), the reference to the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports) is to be construed as a reference to any copy of the report made available for inspection by, or supplied to, the Authority [<sup>F8</sup>and the Financial Conduct Authority (if it is not the Authority)].

<sup>F9</sup>(3) .....

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| <b>F8</b> | Words in reg. 8(2) inserted (1.4.2013) by <a href="#">The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472)</a> , art. 1(1), <b>Sch. 2 para. 137(b)</b>                               |
| <b>F9</b> | <a href="#">Reg. 8(3)</a> omitted (with effect in accordance with reg. 2(4) of the amending S.I.) by virtue of <a href="#">The Statutory Auditors Regulations 2017 (S.I. 2017/1164)</a> , reg. 1(2)(3), <b>Sch. 2 para. 8</b> (with reg. 2(6)(7)) |

### [<sup>F10</sup>Offences in connection with auditor's report and guidance

8A. Sections 507 to 509 of the Companies Act 2006 apply in relation to an auditor's report on an insurance undertaking's annual accounts as they apply to an auditor's report on a private company's annual accounts, subject to the modification that references in those sections to provisions of the Companies Act 2006 are to be construed as references to those provisions as applied by these Regulations.]

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| <b>F10</b> | <a href="#">Reg. 8A</a> inserted (with effect in accordance with reg. 2(4) of the amending S.I.) by <a href="#">The Statutory Auditors Regulations 2017 (S.I. 2017/1164)</a> , reg. 1(2)(3), <b>Sch. 2 para. 9</b> (with reg. 2(6)(7)) |
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### Removal of auditors on improper grounds

9.—(1) Where the auditor of an insurance undertaking is removed from office an application may be made to the High Court under this regulation.

(2) The persons who may make such an application are—

- (a) any member of the insurance undertaking who was also a member at the time of the removal, <sup>F11</sup>...
- (b) the Authority [<sup>F12</sup>; ] [<sup>F13</sup>and]

[<sup>F13</sup>(c) the Financial Conduct Authority (in cases where it is not the Authority).]

(3) If the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures, or
- (b) on any other improper grounds,

it may make such order as it thinks fit for giving relief in respect of the removal.

- (4) The court may, in particular—
- (a) declare that any resolution of the insurance undertaking removing an auditor, or appointing a new auditor in his place, is void;
  - (b) require the directors of the insurance undertaking to re-appoint the dismissed auditor until the next general meeting of the insurance undertaking;
  - (c) give directions as to the conduct of the insurance undertaking's affairs in the future.

(5) In the application of this regulation to an insurance undertaking whose principal place of business is in Scotland or Northern Ireland, references to the High Court are to be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

- F11** Word in reg. 9(2)(a) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 137(c)(i)**
- F12** Semicolon in reg. 9(2)(b) substituted for full stop (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 137(c)(ii)**
- F13** Reg. 9(2)(c) and word inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), art. 1(1), **Sch. 2 para. 137(c)(iii)**

#### [<sup>F14</sup>Application to court to remove auditor from office

**9A.**—(1) The Financial Reporting Council Limited may apply to the High Court for an order removing an auditor of an insurance undertaking from office if the Council considers that there are proper grounds for removing the auditor from office.

(2) The members of an insurance undertaking may apply to the High Court for an order removing an auditor of the undertaking from office if the applicant or applicants consider that there are proper grounds for removing the auditor from office.

(3) If the court is satisfied, on hearing an application under paragraph (1), that there are proper grounds for removing the auditor from office, it may make an order removing the auditor from office.

(4) If the court is satisfied, on hearing an application under paragraph (2), that—

- (a) the applicants represent in total—
  - (i) not less than 5% of the voting rights of all the members for the time being entitled to vote at a general meeting of the insurance undertaking, or
  - (ii) not less than 5% in nominal value of any share capital of the insurance undertaking as shown by the latest balance sheet, and
- (b) there are proper grounds for removing the auditor from office,

the court may make an order removing the auditor from office.

(5) For the purposes of this regulation, divergence of opinions on accounting treatments or audit procedures are not to be taken to be proper grounds for removing an auditor from office.

(6) In the application of this regulation to an insurance undertaking whose principal place of business is in Scotland or Northern Ireland, references to the High Court are to be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.]

- F14** [Reg. 9A](#) inserted (with effect in accordance with reg. 2(4) of the amending S.I.) by [The Statutory Auditors Regulations 2017 \(S.I. 2017/1164\)](#), reg. 1(2)(3), **Sch. 2 para. 10** (with reg. 2(6)(7))

### **Duty of auditor to notify appropriate audit authority**

**10.**—(1) Where an auditor of an insurance undertaking ceases for any reason to hold office, he must notify the appropriate audit authority.

- (2) The notice must—
- (a) inform the appropriate audit authority that he has ceased to hold office, and
  - (b) if the auditor resigns, be accompanied by a copy of any notice of resignation and a statement of the reasons for his resignation.
- (3) The auditor must comply with this regulation—
- (a) if he resigns, at the same time as he deposits his notice of resignation at the head office of the insurance undertaking or otherwise informs it of his resignation;
  - (b) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

### **Duty of insurance undertaking to notify appropriate audit authority**

**11.**—(1) Where an auditor of an insurance undertaking ceases to hold office before the end of his term of office, the undertaking must notify the appropriate audit authority.

- (2) The notice must—
- (a) inform the appropriate audit authority that the auditor has ceased to hold office, and
  - (b) be accompanied by—
    - (i) a statement by the undertaking of the reasons for his ceasing to hold office, or
    - (ii) if the auditor has resigned and he has given the insurance undertaking a statement of the reasons for his resignation, a copy of that statement.
- (3) The insurance undertaking must give notice under this paragraph—
- (a) if the auditor resigns, not later than the end of the period of 14 days beginning with the date on which the auditor first informs the insurance undertaking of his resignation (whether by notice deposited at its head office or otherwise);
  - (b) in any other case, not later than the end of the period of 14 days beginning with the date on which the auditor ceases to hold office.

### **Penalties for non-compliance (notification of appropriate audit authority)**

- 12.**—(1) If an auditor fails to comply with regulation 10, an offence is committed by—
- (a) the auditor, and
  - (b) if the auditor is a firm, every officer of the firm who is in default.
- (2) If an insurance undertaking fails to comply with regulation 11, an offence is committed by—
- (a) the insurance undertaking, and
  - (b) every director of the insurance undertaking who is in default.
- [<sup>F15</sup>(2A) In relation to an offence by a body under paragraph (1)—
- (a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and
  - (b) if the body is a company, any shadow director is treated as an officer of the company.]
- <sup>F16</sup>(3) .....

(4) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) A person guilty of an offence under this regulation is liable—

(a) on conviction on indictment, to a fine, and

(b) on summary conviction, to a fine not exceeding the statutory maximum.

<sup>F17</sup>(6) .....

**F15** Reg. 12(2A) inserted (with effect in accordance with reg. 2(4) of the amending S.I.) by [The Statutory Auditors Regulations 2017 \(S.I. 2017/1164\)](#), reg. 1(2)(3), **Sch. 2 para. 11(a)** (with reg. 2(6)(7))

**F16** Reg. 12(3) omitted (with effect in accordance with reg. 2(4) of the amending S.I.) by virtue of [The Statutory Auditors Regulations 2017 \(S.I. 2017/1164\)](#), reg. 1(2)(3), **Sch. 2 para. 11(b)** (with reg. 2(6)(7))

**F17** Reg. 12(6) omitted (with effect in accordance with reg. 2(4) of the amending S.I.) by virtue of [The Statutory Auditors Regulations 2017 \(S.I. 2017/1164\)](#), reg. 1(2)(3), **Sch. 2 para. 11(b)** (with reg. 2(6)(7))

**Changes to legislation:**

There are currently no known outstanding effects for the The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008, PART 3.