ONLINE RESOURCES CHAPTER B

ACCOUNTS AND REPORTS

SUMMARY OF POINTS COVERED

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- Accounting records
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- Annual accounts and reports
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- Revision and external review of accounts and reports
- Reports on payment practices and performance
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B.1 WHAT IS IN THIS CHAPTER

B.1.1 CHAPTER OVERVIEW

An important feature of the companies legislation is the requirement that the directors of a company must, once a year, prepare accounts and present them to the company's members and (unless the company is

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unlimited) file them at Companies House. In ***Caparo Industries plc v Dickman*** [1990] 2 AC 605, Lord Jauncey of Tullichettle said, at p 662:

> the purpose of annual accounts, so far as members are concerned, is to enable them to question the past management of the company, to exercise their voting rights, if so advised, and to influence future policy and management.

Financial results are required to be presented in a balance sheet and profit and loss account (or income statement), and there are elaborate technical rules on the preparation of these financial statements (see **B.4** and **B.5.7**). The Financial Reporting Council (FRC) is the regulator for accountancy, auditing and financial reporting (see **B.2**).

The elaborate requirements calling for directors to account to members seem highly unrealistic for the typical private company whose directors and members are the same persons. For such companies the more important purpose of insisting on annual accounts is so that outsiders can look at them to assess creditworthiness, assess tax liabilities or investigate financial dealings. Every limited company is required to file annual accounts at Companies House where they form part of the documentation available for inspection by anyone.

The fact that a limited company has to reveal its financial affairs by filing accounts at Companies House is often regarded as a price that must be paid for limited liability: people who trade with unlimited liability—whether as sole traders, in partnerships or in unlimited companies—do not have to make their financial affairs public. Accordingly, business people who use limited companies to conduct their businesses and act as directors but persistently fail to discharge their statutory obligations in respect of accounting, must expect to be disqualified from being directors or taking part in the management of companies so that they will have to trade with unlimited liability (per Nicholls V-C in *Secretary of State for Trade and Industry v Ettinger* [1993] BCLC 896 at p 900).

Examining arguments for and against mandatory public disclosure of accounts, the Department of Trade

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and Industry said in 1995 that in its view the accounts of all limited companies should continue to be available at a central registry and that this should apply in all European Union member States (*Accounting Simplifications: A Consultative Document* (URN 95/669) (London: DTI, 1995), para 4.18). Those dealing with limited companies should have access to this information, and normal business practice in the United Kingdom, especially in the provision of credit, depends on public availability of accounts in standardised form.

Accounting requirements of company law are harmonised in the EEA by Directive 2013/34/EU (the New Accounting Directive), which has replaced the Fourth and Seventh Company Law Directives.

In outline, the accounting requirements are as follows. Every company must keep reasonably accurate accounting records of all financial transactions (**B.3**). From these the directors must prepare annual accounts (**B.5.1**) for each of the company's financial years (**B.5.2**), giving a true and fair view (**B.5.8**) of the company's financial position. If the company is a parent company, the directors must also prepare group accounts consolidating the finances of the company and its subsidiary undertakings (**B.8**). A private company which is a parent company can opt out of preparing group accounts if its group qualifies as a small group (see **B.8.5**). Directors must also prepare a strategic report and a directors' report (**B.5.3** and **B.9**). The directors of a quoted company (**B.5.2**) must prepare a directors' remuneration report (**15.8.3.4**). Most private companies are subject to the small companies regime (**B.4.3**), which exempts them from preparing a strategic report. Most companies subject to the small companies regime are micro-entities, which can prepare much less detailed micro-entity accounts (**B.4.3**) and are exempt from preparing a directors' report. The annual accounts must be audited (**B.5.5**), unless the company is a small private company which is not in a group containing a public company (**B.4.6**) or is dormant (**B.4.7**). The annual accounts and reports must be sent to the members and debenture holders (who may be given an option to receive only the strategic report and brief supplementary material) (**B.6.1**). The annual accounts and reports of a public company must be laid before a general meeting of its members (**B.6.3**). All companies must deliver their annual accounts and reports to Companies House (**B.6.4** to **B.6.6**), though most private

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companies can omit the profit and loss account and directors' report (**B.6.6**). A company whose transferable securities are admitted to trading on a regulated market (see **7.3.4.6**) must make public a half-yearly financial report (**B.7**).

There are procedures for revising accounts that are found to be erroneous (**B.10**).

B.1.2 KEY LEGISLATION

Key legislation which you should be able to consult when reading this chapter:

- CA 2006, ss 380–484, 1159–1162.

All that legislation is in *Blackstone's Statutes on Company Law*.

- Regulation (EC) No 1606/2002, which is at the EUR-Lex website: **eur-lex.europa.eu**.
- UK Corporate Governance Code, which is at **www.frc.org.uk/Our-Work/Corporate-Governance-Reporting/Corporate-governance.aspx**.

B.1.3 MOST SIGNIFICANT CASE

The following case, which is considered in this chapter, is particularly significant and is recommended further reading:

- *Caparo Industries plc v Dickman* [1990] 2 AC 605 (also a key case for **Chapter 17**). This case, like *Salomon v A Salomon and Co Ltd* [1897] AC 22 (see **5.2.1**), has been voted one of the 15 most significant cases in the period 1865–2015.

Your particular course of study may require you to read other source materials.

B.2 FINANCIAL REPORTING COUNCIL

The Financial Reporting Council (FRC) describes itself as the UK's independent regulator responsible for promoting high-quality corporate governance and reporting to foster investment. It sets UK standards for the

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form and content of company accounts (see **B.5.7.5**), for auditing and actuarial work. It issues the UK Corporate Governance and Stewardship Codes (see **13.3** and **13.5**) as well as UK standards for accounting, auditing and actuarial work. It monitors (see **B.10**) and takes action to promote the quality of corporate reporting and auditing. It operates independent disciplinary arrangements for accountants and actuaries.

The chair and deputy chair of the FRC's board are appointed by the Secretary of State for Business, Energy and Industrial Strategy. Funding for the FRC's activities in relation to company accounts is provided by the six major professional bodies for accountants and by a preparers' levy, which public companies, large private companies and public sector bodies must contribute.

On 17 April 2018, the government launched an independent review of the FRC led by Sir John Kingman. This follows a great deal of disquiet about the role of accountants and auditors in recent major company insolvencies.

There is a great deal of information about the FRC's work on its website, **www.frc.org.uk**.

B.3 ACCOUNTING RECORDS

B.3.1 EVERY COMPANY MUST KEEP ACCOUNTING RECORDS

CA 2006, s 386, requires every company to keep accounting records which are sufficient to show and explain the company's transactions and also to disclose, with reasonable accuracy, the financial position of the company at any time. The accounting records must also be adequate to enable the directors to ensure that any accounts required to be prepared comply with the requirements of the Act and, where applicable, of Regulation (EC) No 1606/2002, art 4 (see **B.5.7.4**).

R v Bennett (1985) 2 NZCLC 99,279 concerned a similarly worded provision in the New Zealand companies legislation. The New Zealand Court of Appeal held that the obligation to cause accounting records to be 'kept' was not merely an obligation to retain and store records but also to create records conforming with the requirements of the section. It was also held that dealings between a company and its

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members, for example contributions of capital and payments of dividend, are transactions of the company that must be included in its accounting records.

There are criminal sanctions for failure to comply with CA 2006, s 386, subject to a defence of acting honestly where, in the circumstances in which the company's business was carried on, the default was excusable (s 387).

If a company's auditor is of opinion that adequate accounting records have not been kept by the company, that fact must be stated in the auditor's report (s 498(2)).

B.3.2 PRESERVATION OF RECORDS

The accounting records of a private company must be preserved for three years from the date on which they are made; those of a public company must be kept for six years (CA 2006, s 388(4)). An officer of a company who does not take all reasonable steps to ensure that the company complies with these requirements is guilty of an offence (s 389(3) and (4)).

B.3.3 ACCESS TO ACCOUNTING RECORDS

A company's accounting records must, at all times, be open to inspection by the company's officers (CA 2006, s 388(1); see **Online resources, Chapter A.4.5**).

The court will order a company to allow one of its directors to inspect its accounting records (*Burn v London and South Wales Coal Co* (1890) 7 TLR 118; *Edman v Ross* (1922) 22 SR (NSW) 351; both decided before there was any statutory obligation to keep accounts open to inspection). An order can be made only for the purposes of enabling the director to carry out their duties as a director of the company (*Oxford Legal Group Ltd v Sibbasbridge Services plc* [2008] EWCA Civ 387, [2008] Bus LR 1244).

The sole statutory provision for enforcing s 388(1) is the criminal sanction imposed by s 389(1). The court grants orders for inspection under the common law as stated in *Burn v London and South Wales Coal Co* and, as with any injunctive relief, an order is granted at the court's discretion (*Conway v Petronius Clothing*

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Co Ltd [1978] 1 WLR 72). It has been argued that s 388 does create a statutory right to an order for inspection (*M'Cusker v M'Rae* 1966 SC 253, in which the petition was granted by consent; *Berlei Hestia (NZ) Ltd v Fernyhough* [1980] 2 NZLR 150—in which an injunction was granted—per Mahon J at p 163). In *Oxford Legal Group Ltd v Sibbasbridge Services plc* the Court of Appeal found it unnecessary to decide which of these views is correct.

Members of a company do not have a right of access to its accounting records (*R v Merchant Tailors' Co* (1831) 2 B & Ad 115; *Edman v Ross*; *Lonrho Ltd v Shell Petroleum Co Ltd* [1980] 1 WLR 627 per Lord Diplock at p 634; *Murray's Judicial Factor v Thomas Murray and Sons (Ice Merchants) Ltd* [1993] BCLC 1437). The common law rule is repeated in the model articles for private companies, art 50, and the model articles for public companies, art 83, in the Companies (Model Articles) Regulations 2008 (SI 2008/3229). The model articles also allow the directors, or the members by ordinary resolution, to authorise a member to inspect accounting or other records or documents.

A company's auditor has a right of access to its accounting records (CA 2006, s 499(1))—see **17.4.7**.

B.4 REPORTING REQUIREMENTS FOR VARIOUS CLASSES OF COMPANY

B.4.1 CLASSES

The requirements in CA 2006 for companies to report their financial position to their members and to the public vary according to whether the company is a micro-entity, or is small, medium-sized or large (see **B.4.2** to **B.4.5**). A company is subject to additional requirements if it is a quoted company (see **B.5.2**). Public companies cannot be micro-entities or small or medium-sized companies (see **B.4.4.1**). So all public companies must be large companies. All micro-entities, small and medium-sized companies must be private companies, but large companies can be public or private, quoted or unquoted.

Numerically the biggest class is micro-entities, of which there are estimated to be 1.56 million. They must be private companies and they have the least onerous reporting requirements. Quoted companies are subject

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to the most onerous requirements. In particular, they must publish accounts on a website (see **B.6.2.1**) and produce a detailed directors' remuneration report (see **B.5.4** and **15.8.3.4**) and a more detailed strategic report (see **B.9.2**).

Extra requirements are imposed on all companies whose shares are admitted to trading on a regulated market (see **7.3.4.3**). See **B.5.7.4** (group accounts must be IAS group accounts), **B.5.1** and **B.9.1** (statement of assurance in accounts and directors' report), **B.6.2.2** (public availability of accounts), **B.7** (half-yearly financial reports), **B.9.3** (corporate governance statement) and **B.9.4.6** (details of barriers to takeovers in directors' report). These requirements are imposed by EU legislation, mostly by Directives which are implemented by rules in the FCA Handbook, though the rule that group accounts must be IAS accounts is in the directly effective Regulation (EC) No 1606/2002.

Further requirements, in the listing rules in the FCA Handbook and in the UK Corporate Governance Code, affect the directors' report (see **B.9.1**) of a premium listed company (see **7.6**).

B.4.2 QUALIFYING CONDITIONS

The conditions for qualifying as a micro-entity, a small company or a medium-sized company are set out in CA 2006, ss 384A (micro-entity), 382 (small company) and 465 (medium-sized company). There are three size conditions relating to turnover, balance sheet total (that is, total assets) and weekly average number of employees for a financial year. They are set out in **Table B.1**.

If a company is newly incorporated, it qualifies in its first financial year if it meets at least two of the requirements in that first year (ss 382(1) and 465(1)).

If a company does not qualify in one financial year, but then meets at least two of the requirements in two consecutive financial years, it qualifies in the second of those years (ss 382(2)(a) and 465(2)(a)).

Having qualified, a company remains qualified until it fails to satisfy at least two conditions in two consecutive financial years (ss 382(2) and 465(2)).

If a financial year is not 12 months, the turnover limit must be adjusted proportionately.

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A company that qualifies as a micro-entity also qualifies as a small company.

A company that is neither a small company nor a medium-sized company is called a large company (though this term is not formally defined in the legislation).

Table B.1 Size limits for micro-entities, small and medium-sized companies (at least two limits must be satisfied)

	Turnover must not exceed	Balance sheet total must not exceed	Weekly average number of employees must not exceed
Micro-entity	£632,000	£316,000	10
Small company	£10.2 million	£5.1 million	50
Medium-sized company	£36 million	£18 million	250

B.4.3 BENEFITS

The 'small companies regime' for reporting requirements applies to a private company for a financial year if it qualifies as a small company in relation to that year (see **B.4.2**) and is not excluded from the regime (see **B.4.4**) (CA 2006, s 381). The small companies regime is considerably less onerous than the accounting and filing obligations imposed on large companies. In particular, preparation of group accounts (see **B.5.1**) is optional, a strategic report is not required, abridged formats can be used for the balance sheet and profit and loss account (see **B.5.7.7**) and the accounts filed at Companies House can omit the profit and loss account and directors' report (see **B.6.7**).

A company which qualifies as a micro-entity for a financial year is not only entitled to take advantage of the small companies regime but is also exempt from preparing a directors' report and can prepare its accounts as micro-entity accounts which are simpler and less detailed than the accounts required of larger companies.

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B.4.4 EXCLUDED COMPANIES

B.4.4.1 Public companies

Public companies are excluded both from the small companies regime (by CA 2006, s 384(1)(a)) and from being treated as medium-sized (by s 467(1)(a)). Public companies cannot prepare micro-entity accounts (ss 384(1)(a) and 384B(1)(a)).

B.4.4.2 Financial services companies

Some financial services companies are excluded from the small companies regime by CA 2006, s 384(1)(b), and all are excluded from being medium-sized (s 467(1)(b) and (ba)). Many financial services companies cannot prepare micro-entity accounts (s 384B(1)(a) to (e)).

B.4.4.3 Ineligible groups; traded companies

A company is excluded from being either small or medium-sized if it is in an ineligible group (CA 2006, ss 384(1)(c) and 467(1)(c)). This means (ss 384(2) and 467(2)) a group which includes:

(a) a traded company (which means a company any of whose transferable securities are admitted to trading on a regulated market (see **7.3.4.3**) anywhere in the EEA: s 474(1)), or

(b) a corporation (other than a company) whose shares are admitted to trading on a regulated market or

(c) a financial services company.

'Group' means a parent undertaking and its subsidiary undertakings (s 474(1)).

A company which was, at any time during a financial year, in an ineligible group cannot prepare micro-entity accounts for that year (ss 384(1)(c) and 384B(1)(a)).

B.4.4.4 Charities

Charities cannot prepare micro-entity accounts (CA 2006, s 384B(1)(f)).

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B.4.4.5 Parent companies

If a company is a parent company, it cannot qualify as a small company unless the group which it heads qualifies as a small group (CA 2006, s 383(1); see **B.4.5**) and cannot qualify as a medium-sized company unless the group which it heads qualifies as a medium-sized group (s 466(1); see **B.4.5**). Because micro-entity accounts cannot be integrated with group accounts, a company cannot prepare micro-entity accounts if it is in a group for which group accounts are prepared or if its parent company prepares group accounts despite being exempt from doing so (s 384B(2)).

B.4.5 SMALL AND MEDIUM-SIZED GROUPS

If a company is a parent company (defined in **B.8.2**), it cannot qualify as a small company unless the group which it heads qualifies as a small group (CA 2006, s 383(1)). The conditions for qualifying as a small group are in s 383. A parent company cannot qualify as a medium-sized company unless the group which it heads qualifies as a medium-sized group (s 466(1)). The conditions for qualifying as a medium-sized group are in s 466.

The conditions for qualifying as a small or medium-sized group correspond to the conditions under which a company qualifies as a small or medium-sized company except that the relevant figures for turnover, assets and employees are aggregate figures for all the undertakings in the group. The aggregates of turnover and assets may be either the figures (described as 'net') that would appear in group accounts (that is, after set-offs and other adjustments to eliminate transactions within the group) or 'gross' (that is, without such adjustments) (ss 383(6) and 466(6)). Two or more of the requirements set out in **Table B.2** must be met (ss 383(4) and 466(4)).

Table B.2 Conditions for qualifying as a small or medium-sized group (at least two limits must be satisfied)

	Small group

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1. Aggregate turnover	Not more than £10.2 million net (or £12.2 million gross)
2. Aggregate balance sheet total	Not more than £5.1 million net (or £6.1 million gross)
3. Aggregate number of employees	Not more than 50
	Medium-sized group
1. Aggregate turnover	Not more than £36 million net (or £43.2 million gross)
2. Aggregate balance sheet total	Not more than £18 million net (or £21.6 million gross)
3. Aggregate number of employees	Not more than 250

B.4.6 SMALL COMPANIES AND SUBSIDIARY COMPANIES EXEMPTION FROM AUDIT

A company that qualifies as a small company in relation to a financial year (see **B.4.2**) is not required to have its annual accounts for that year audited (CA 2006, s 477).

If a small company is in a group as a parent company or a subsidiary undertaking (defined in **B.8.2**), it is exempt as a small company from the auditing requirements for a financial year only if it is a dormant subsidiary company (s 479(3); see **B.4.7**) or the group is a small group which was not an ineligible group (defined in **B.4.4.3**) at any time during that year (s 479(1)).

The financial services companies which are excluded from the small companies regime by s 384(1)(b) also cannot claim exemption from audit as small companies, nor can public companies (s 478).

A subsidiary company in a group of any size is exempt from having its individual accounts (see **B.5.1**) audited if it satisfies the conditions in ss 479A, 479B and 479C. The conditions for exemption are:

(a) The subsidiary's parent undertaking must be established under the law of an EEA State (s 479A(1)(b)).

(b) All members of the subsidiary must agree to the exemption in respect of the financial year in

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question (s 479A(2)(a)) and written notice of that agreement must be filed with the accounts (s 479A(2)(e)(i)).

(c) The parent undertaking must guarantee full payment of all the subsidiary's liabilities outstanding at the end of the financial year (ss 479A(2)(b) and 479C) and a written statement of the guarantee must be filed with the subsidiary's accounts (s 479A(2)(e)(ii)).

(d) The subsidiary must be included in consolidated accounts complying with EU or IAS accounting requirements (s 479A(2)(c)), those accounts must disclose the exemption (s 479A(2)(d)) and a copy of those accounts (with their auditor's report) and the parent undertaking's consolidated annual report (which seems to mean the group directors' report) must be filed with the subsidiary's accounts (s 479A(2)(e)(iii)–(v)).

Traded companies (see **B.4.4.3**) and financial services companies are excluded from this exemption (s 479B).

The exemption from audit given to small companies by s 477 and subsidiary companies by s 479A is expressed to be subject to s 476. Under s 476, if a company's accounts for a financial year will not be audited, any member or members holding 10 per cent or more in nominal value of the company's issued share capital, or any class of it, may require the company to obtain an audit of those accounts. A written notice requiring an audit must be deposited at the company's registered office during the financial year and not later than one month before the end of the year.

By s 475, a balance sheet of a company which is exempt from the audit requirements must include a statement by the directors that the conditions for exemption have been met and that they acknowledge their responsibility for keeping proper accounting records and preparing proper accounts.

B.4.7 DORMANT COMPANIES

A company is 'dormant' during a period in which 'no significant accounting transaction' occurs (CA 2006, s 1169(1)). Section 1169(2) defines significant accounting transactions as transactions that must be entered in

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the company's accounting records by virtue of s 386 (see **B.3.1**), apart from transactions relating to fulfilment of the undertaking of subscribers of the memorandum to take shares (s 1169(3)(a); see **3.2.2.1**) and the payment to Companies House of certain routine fees listed in s 1169(3)(b).

Section 480(1) exempts a dormant company from having its accounts for a financial year audited if:

(a) it has been dormant since its formation; or

(b) it has been dormant since the end of the previous financial year and, for the current financial year, it is entitled to prepare accounts in accordance with the small companies regime and is not required to prepare group accounts (see **B.8**) (s 480(2)).

The small companies regime does not apply to a public company (s 384(1)(a)) or a member of an ineligible group (s 384(1)(c)). Nevertheless, s 480(2)(a)(ii) allows a public company or a member of an ineligible group to be exempt from audit if it is a dormant company. But traded companies (see **B.4.4.3**) and the financial services companies which are excluded from the small companies regime by s 384(1)(b) cannot claim exemption from audit as dormant companies (s 481).

The exemption from audit given to dormant companies by s 480 is expressed to be subject to ss 475 and 476 (right of members to demand audit and directors' statement required on balance sheet). These provisions are described in **B.4.6**.

A subsidiary company which has been dormant for the whole of a financial year is exempt from having to prepare individual accounts for that year, subject to the same conditions as for exempting subsidiary companies from audit (see **B.4.6**). This exemption is made by CA 2006, ss 394A, 394B and 394C.

B.5 ANNUAL ACCOUNTS AND REPORTS

B.5.1 ANNUAL ACCOUNTS, INDIVIDUAL AND GROUP

For each financial year (see **B.5.2**) of a company, its directors must prepare its individual accounts (CA 2006, s 394). These consist of a balance sheet and profit and loss account and (except in micro-entity

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accounts) notes to the accounts.

If, at the end of the financial year, the company was a parent company, the directors may be required, or may choose, to prepare group accounts (see **B.8**).

According to s 471(1), the 'annual accounts' of a company are its individual accounts required by s 394 and any group accounts required by s 398 or 399. They are usually known as the annual financial statements.

The directors of a premium listed company must state in the annual financial statements that the business is a going concern, with supporting assumptions or qualifications as necessary (FCA Handbook, LR 9.8.6R(3)). This statement must be reviewed by the auditor (LR 9.8.10R(1)). The UK Corporate Governance Code says that the directors should state whether they consider it appropriate to adopt the going concern basis of accounting and identify any material uncertainties to the company's ability to continue to do so over a period of at least 12 months from the date of approval of the financial statements (para C.1.3).

A company's annual accounts must be approved by its board of directors, and signed on behalf of the board by a director of the company (s 414(1)). The signature must be on the company's balance sheet (s 414(2)). If the accounts are micro-entity accounts or were prepared under the small companies regime, that fact must be stated in a prominent position above the signature (s 414(3)). Every person who was a director of a company at the time that its annual accounts were signed on behalf of the board is responsible for those accounts and is taken to know what is stated in them (*Neville v Krikorian* [2006] EWCA Civ 943, [2007] 1 BCLC 1) and is responsible for compliance with relevant legislation (see s 414(4) and (5) at **B.5.7.4**). But a member of a company, who is not a director, does not have a duty to read its annual accounts (*Maidment v Attwood* [2012] EWCA Civ 998, [2013] Bus LR 753).

A company's accounts must give a true and fair view of its financial position (see **B.5.8**):

> the responsibility for the preparation of accounts giving a true and fair view of the company's financial state is placed fairly and squarely on the shoulders of the directors (per Lord Jauncey of Tullichettle in ***Caparo Industries plc v Dickman*** [1990] 2 AC 605 at p 660).

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See **B.9.5** for the statement of assurance to be given by the directors of a company whose transferable securities are admitted to trading on a regulated market.

B.5.2 ACCOUNTING REFERENCE PERIODS, FINANCIAL YEARS AND QUOTED COMPANIES

The timetable for the production of the successive annual accounts of a company is based on the company's 'accounting reference periods'. Accounting reference periods are consecutive periods of, normally, 12 months each, ending on a date called the 'accounting reference date' (CA 2006, s 391(6)). Normally, this is the last day of the month in which the anniversary of the company's incorporation falls (s 391(4)).

The successive annual accounts of a company refer to consecutive periods known as 'financial years', each of which must end not more than seven days before or after the end of an accounting reference period (s 390).

A company may change its accounting reference date by following the procedure set out in s 392. Under s 390(5), it is the duty of directors of a parent company to ensure that the financial years of their company and its subsidiary undertakings coincide, unless in their opinion there are good reasons to the contrary.

A company is a quoted company in relation to a financial year if it is a quoted company (see **7.3.4.6**) immediately before the end of the accounting reference period by reference to which the financial year was determined (s 385(1)).

B.5.3 STRATEGIC REPORT AND DIRECTORS' REPORT

The directors of a company must prepare, for each financial year, a strategic report and a directors' report, with the contents described in **B.9** (CA 2006, ss 414A(1) and 415(1)). For a financial year in which the company is a parent company and the directors prepare group accounts (see **B.8**), these reports must be group reports relating to the undertakings included in the consolidation (ss 414A(3) and 415(2)).

The directors of a company do not have to prepare a strategic report for a financial year if the company is

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entitled to the small companies exemption for that year (s 414A(2)). They do have to prepare a directors' report but it does not have to be delivered to Companies House (s 444A) and need not state the recommended dividend (s 416(3)). Sections 414B and 415A provide that a company is entitled to small companies exemption in relation to the strategic report and the directors' report for a financial year if:

(a) it is entitled to prepare accounts for the year in accordance with the small companies regime (see **B.4.3**); or

(b) it would be so entitled but for being or having been a member of an ineligible group (see **B.4.4.3**).

Directors' reports are not required for micro-entities (s 415(1A)).

The strategic report and directors' report must be approved by the board of directors and signed on behalf of the board by a director or by the secretary (ss 414D(1) and 419(1)). If the directors' report was prepared under the small companies regime, that fact must be stated in a prominent position above the signature (s 419(2)).

Under s 463, a director of a company is liable to compensate it for any loss it suffers as a result of:

(a) any untrue or misleading statement in a strategic report, directors' report or directors' remuneration report; or

(b) the omission from any such report of anything required to be included in it.

A director is liable under s 463 only if he or she knew the statement was untrue or misleading, or was reckless as to whether it was untrue or misleading, or knew the omission was a dishonest concealment of a material fact (s 463(3)).

B.5.4 DIRECTORS' REMUNERATION REPORT

If a company is a quoted company in relation to a financial year (see **B.5.2**), its directors must prepare a directors' remuneration report for that year (CA 2006, s 420; see **15.8.3.4**).

Section 463 (director's liability for untrue or misleading statements or omissions) applies to a directors'

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remuneration report. See **B.5.3**.

B.5.5 AUDITOR'S REPORT

It is usually assumed in company law that the members of a company are not directly active in managing the company. The annual accounts are prepared for the members by people who are directly concerned in management and there is an obvious danger that the accounts will deliberately or accidentally misrepresent the company's financial affairs. So members could benefit from an independent check on the adequacy of the accounts. Independent checks of financial accounts are normally provided by the process known as 'auditing' which has become a highly developed branch of accountancy. Under CA 1862, it was assumed that the members of a company would want to have its annual accounts audited and a provision to that effect was included in the model set of articles of association in Table A (CA 1862, sch 1) but, like any provision in the articles, this could be varied. CA 1900, ss 21 to 23, made the audit of companies' annual accounts a mandatory requirement of company law and this requirement is now contained in CA 2006, ss 475 to 484. Since 1900, users of accounts have demanded increasingly high standards of auditing, and the audit function has become more and more expensive. It has recently been recognised that in most small companies the members are directly concerned in management and regard a sophisticated audit of accounts as an unnecessarily costly protection. So ss 477 to 481 make exemptions from the mandatory audit requirement for small companies (see **B.4.6**) and dormant companies (see **B.4.7**).

If a company is not exempt from the mandatory auditing requirement, it must appoint an auditor in accordance with the rules set out in **17.4.1**.

The company's auditor is required by s 495(1) to report to the members on all annual accounts which are, during the auditor's tenure of office, to be sent to members under s 423 (see **B.6.1**) or, if the company is public, laid before the company in general meeting under s 437 (see **B.6.3**).

For the content of the auditor's report see **17.4.6**. The auditor's report must state the name of the auditor and be signed and dated (s 503; see **17.4.6**).

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In ***Caparo Industries plc v Dickman*** [1990] 2 AC 605, Lord Oliver of Aylmerton said, at p 630:

> It is the auditors' function to ensure, so far as possible, that the financial information as to the company's affairs prepared by the directors accurately reflects the company's position in order, first, to protect the company itself from the consequences of undetected errors or, possibly, wrongdoing (by, for instance, declaring dividends out of capital) and, secondly, to provide shareholders with reliable intelligence for the purpose of enabling them to scrutinise the conduct of the company's affairs and to exercise their collective powers to reward or control or remove those to whom that conduct has been confided.

B.5.6 ANNUAL ACCOUNTS AND REPORTS

By CA 2006, s 471(2) and (3), the annual accounts and reports of a company for a financial year consist of its annual accounts (see **B.5.1**), the directors' report (unless the company is a micro-entity), the strategic report (if any) and the auditor's report (unless the company is exempt from audit), plus, if the company is a quoted company (see **B.5.2**), the directors' remuneration report.

For a company whose transferable securities are admitted to trading on a regulated market (see **7.3.4.6**), the audited annual accounts (financial statements; see **B.5.1**), directors' report and strategic report (management report) and responsibility statements constitute the annual financial report (Directive 2004/109/EC, art 4(2); FCA Handbook, DTR 4.1.5R to 4.1.12R). A listed public company's annual financial report (usually called the annual report) will contain the following items:

(a) strategic report;

(b) corporate governance statement;

(c) directors' report;

(d) directors' remuneration report;

(e) directors' responsibility statement;

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(f) auditor's report; and

(g) financial statements.

The corporate governance statement can be included in the directors' report. In the report of a parent company, items (a), (c) and (g) will be group reports and accounts.

B.5.7 FORM AND CONTENT OF ANNUAL ACCOUNTS

B.5.7.1 Legislation and professional codes

It is very important that annual accounts should be presented in a standard form so that users can locate the information they want and so that accounts of different companies can be compared.

Preparing accounts involves several processes such as valuation (giving a monetary value to non-money items) and classification (for example, into fixed assets and current assets) and users need to be assured that these processes have been carried out in an expected way. Rules for preparation and presentation of accounts are stated:

(a) in legislation, both at national level and at European level, in both harmonising Directives and directly applicable Regulations; and

(b) in accounting standards written by and for professional accountants, both at national and international level.

All of these sources provide different standards for different kinds of company, depending on size and on whether shares are publicly traded. There is an additional element of complexity in that a company may choose to prepare its accounts to a more exacting standard than the one prescribed for its class, subject to detailed conditions.

The rules that are prescribed for a particular company or group depend on:

(a) whether the company or group is small, medium-sized or large;

(b) whether the company is a micro-entity;

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(c) whether the company's securities are admitted to trading on a regulated market;

(d) whether the accounts are prepared and/or audited by professional accountants; and

(e) whether the company is a charity.

B.5.7.2 UK and EU legislation

The UK legislation on form and content of annual accounts is in CA 2006, ss 380 to 474, and in two statutory instruments:

(a) The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409), parts 2 and 4, apply to small companies and groups. Part 2 deals with individual accounts and part 4 deals with group accounts. Part 2 also deals with micro-entity accounts.

(b) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410), part 2, applies to large and medium-sized companies and groups.

This legislation implements Directive 2013/34/EU. Other parts of the statutory instruments deal with the directors' report and the directors' remuneration report.

In addition to the Directive implemented by the UK legislation, there is directly effective EU legislation in Regulation (EC) No 1606/2002 and Commission Regulation (EC) No 1725/2003. These regulations apply only to the group accounts of a company whose securities are admitted to trading on a regulated market (see **7.3.4.3**) on the balance sheet date. They are compulsory for such a company.

B.5.7.3 International accounting standards

International Financial Reporting Standards (IFRSs) are issued by the International Accounting Standards Board (IASB). See **www.ifrs.org**.

The IASB's international standards are primarily intended for use by large companies with publicly traded shares, but it has also issued an IFRS for small and medium-sized entities (SMEs).

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B.5.7.4 Choice of financial reporting framework

Most companies may, by CA 2006, ss 395(1) and 403(2), choose whether their individual and group accounts are prepared:

(a) as ‘Companies Act individual accounts’ or ‘Companies Act group accounts’ in accordance with CA 2006, ss 380 to 474, and SI 2008/409, parts 2 and 4 (small companies and groups), or SI 2008/410, part 2 (large and medium-sized companies and groups); or

(b) as ‘IAS individual accounts’ or ‘IAS group accounts’ in accordance with international accounting standards. In this context, ‘international accounting standards’ means only those which have been adopted by the European Commission under Regulation (EC) No 1606/2002, art 3 (CA 2006, s 474(1)). The annex to Commission Regulation (EC) No 1725/2003, which has been amended several times, contains the complete texts of the standards which have been adopted. The European Financial Reporting Advisory Group maintains a report on the adoption status of all international standards at **www.efrag.org**.

These are called the two ‘accounting frameworks’. The provisions of SI 2008/409, parts 2 and 4, and SI 2008/410, part 2, requiring information about related undertakings and directors’ benefits, apply to both Companies Act accounts and IAS accounts.

A small company which chooses to prepare Companies Act accounts has the option of preparing them in accordance with the requirements in SI 2008/410 for large and medium-sized companies and groups, because such accounts are treated as satisfying the requirements for small companies and groups (SI 2008/409, regs 3(3) and 8(2)).

This general freedom of choice of financial reporting framework is subject to the following restrictions:

(a) The group accounts of a company whose securities are admitted to trading on a regulated market anywhere in the EEA (see **7.3.4.3**) on the balance sheet date must be IAS group accounts (Regulation (EC) No 1606/2002, art 4; CA 2006, s 403(1)).

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(b) The accounts of a charitable company must be Companies Act accounts (ss 395(2) and 403(3)).

(c) The directors of a parent company who are required to prepare group accounts must normally ensure that the same framework is applied in preparing the individual accounts of the parent company and of its subsidiary undertakings whose accounts are required to be prepared under part 15 (s 407(1), (2) and (3)). Different frameworks for individual accounts within a group are allowed to the extent that:

   (i) in the opinion of the parent company's directors there are good reasons for applying different frameworks (s 407(1));

   (ii) a company is a charity which must prepare Companies Act accounts (s 407(4)); and

   (iii) the group and individual accounts of the parent company are both IAS accounts, but the individual accounts of subsidiary undertakings are Companies Act accounts (s 407(5)).

(d) Once a company has prepared IAS accounts (whether individual or group) for a financial year, it may change back to Companies Act accounts for a subsequent year, but this can be done only once every five years unless there is a 'relevant change of circumstances' (s 395(3) to (3B) (individual accounts); s 403(4) to (4B) (group accounts)). A relevant change of circumstances is (s 395(4) (individual); s 403(5) (group)):

   (i) in relation to individual accounts, the company becomes a subsidiary undertaking of another undertaking which does not prepare IAS individual accounts or the company ceases to be a subsidiary undertaking;

   (ii) in relation to group accounts, the company becomes a subsidiary undertaking of another undertaking which does not prepare IAS group accounts;

   (iii) the company ceases to be a company with securities admitted to trading on a regulated market; and

   (iv) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.

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The notes to IAS accounts must state that they have been prepared in accordance with international accounting standards (s 397(2) (individual accounts); s 406(2) (group accounts)).

By s 414(4) and (5), if annual accounts of a company are approved by its directors but do not comply with the requirements of CA 2006 or of Regulation (EC) No 1606/2002, art 4, as appropriate, every director who is a party to their approval and who knows that they do not comply, or is reckless as to whether they comply, is guilty of an offence triable either way.

B.5.7.5 UK accounting standards

In the United Kingdom, Financial Reporting Standards (FRSs) are issued by the Financial Reporting Council (FRC). See **www.frc.org.uk/Our-Work/Codes-Standards/Accounting-and-Reporting-Policy.aspx**.

Notes to the Companies Act accounts of a large company must state whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards, and the reasons for it, must be given (SI 2008/410, reg 4(2A) and sch 1, para 45). Applicable accounting standards are standards issued by the FRC or its predecessors which are relevant to the company's circumstances and to the accounts (CA 2006, s 464; Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012 (SI 2012/1741), arts 23 and 24).

Although the Companies Act accounts of a small or medium-sized company are not required by legislation to follow FRC standards, a person preparing such accounts will wish to work to those standards, because they show what is 'generally accepted accounting practice' (GAAP). In the law of tort, a professional person's actions are not negligent if they are in accordance with a practice accepted as proper by a responsible body of fellow professionals (*Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582).

The legislative provisions, standards and other commonly accepted professional practices applicable to Companies Act accounts are known as 'United Kingdom GAAP' while those applicable to IAS accounts are

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known as ‘international GAAP’.

For small companies, the current version of the Financial Reporting Standard for Smaller Entities (FRSSE) was issued by the FRC to take effect from January 2015. This is a single comprehensive standard for the accounts of small companies. The Companies Act accounts of a small company will comply with UK GAAP if they are prepared in accordance with the FRSSE and no other FRC standards need to be applied.

Other companies which prepare Companies Act accounts must apply FRS 102 *The Financial Reporting Standard Applicable in the UK and Republic of Ireland*, which is based on the IFRS for SMEs (see **B.5.7.3**). Significant differences between the two standards are listed in FRS 102, appendix 2. A company which is a member of a group may prepare its individual accounts, as Companies Act accounts, in accordance with FRS 101 *Reduced Disclosure Framework*. The result is that since 2015 all UK companies not subject to the small companies regime apply IFRSs, either directly if they prepare IAS accounts or in the form of FRS 101 or 102 otherwise.

B.5.7.6 Off-balance sheet arrangements

A big problem for investors has been that companies have entered into risky transactions in ways which do not have to be reported in the annual accounts. CA 2006, s 410A, implementing Directive 2006/46/EC, deals with this. It requires a company to report, in a note to its annual accounts, the nature and business purpose of arrangements to which the company is or has been party but which are not reflected in its balance sheet, if the risks or benefits arising from the arrangements are material. Unless it is subject to the small companies regime, the company must also report the financial impact on it of the arrangements. The information need only be given to the extent necessary for enabling the financial position of the company to be assessed.

B.5.7.7 Abridged accounts of small companies

The directors of a company which is subject to the small companies regime may prepare its balance sheet and/or profit and loss account in an abridged form giving less analysis of the figures than would otherwise be required by SI 2008/409 (see sch 1, para 1A). This can only be done where it is appropriate to the

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circumstances of the company's business and only where all members of the company have consented to the accounts being drawn up in that way. This consent can only be given for the preparation of the accounts for the preceding financial year (sch 1, para 1A(3)) and so must be renewed each year.

B.5.8 TRUE AND FAIR VIEW

CA 2006, s 393(1), states a fundamental principle that the directors of a company must not approve its annual accounts unless satisfied that the accounts give a true and fair view of the assets, liabilities, financial position and profit or loss of the company, or, if they are group accounts, the undertakings included in the consolidation as a whole, so far as concerns members of the company. Auditors must have regard to this requirement when carrying out their functions (s 393(2)).

Items of information which are required by CA 2006, part 15, or SI 2008/409 to be contained in micro-entity accounts are presumed to give a true and fair view (CA 2006, ss 393(2A) and 474(1)).

The phrase 'true and fair view' was introduced into British company law in 1948 (CA 1948, s 149(1)). The phrase has since been adopted in EU law. Directive 2013/34/EU requires that 'The annual financial statements shall give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss' (art 4(3)). Regulation (EC) No 1606/2002, art 3(2), prevents the European Commission from adopting IASB standards which are contrary to the principle that accounts should show a true and fair view (IAS 1, para 13, uses the phrase 'fair presentation').

Earlier, the Companies (Consolidation) Act 1908, s 113(2), had required a company's auditors to certify whether in their opinion its balance sheet 'is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs'. This repeated a phrase used in CA 1900, s 23. CA 1900 had reintroduced the requirement that every company must appoint an auditor. Under the Joint Stock Companies Act 1856 and CA 1862, auditing was a matter for the articles of association but the phrase 'true and correct view' was used in art 94 of the model set of articles, Table A in CA 1862, sch 1, though that article also referred to a 'full and fair balance sheet'. The phrase 'full and fair balance sheet' had appeared in the Joint Stock

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Companies Act 1844, s 35. R J Chambers and P W Wolnizer have found that in partnership agreements and deeds of settlement before 1844, phrases such as ‘full, true and explicit’ and ‘fair, accurate and just’ were used (‘A true and fair view of financial position’ (1990) 8 C & SLJ 353 at p 359). In ***Re London and General Bank (No 2)*** [1895] 2 Ch 673, Rigby LJ said, at p 692, that it was not easy to define what else was required of a ‘full and fair’ balance sheet for it to show a ‘true and correct view’. His Lordship thought that:

> A full and fair balance sheet must be such a balance sheet as to convey a truthful statement as to the company’s position. It must not conceal any known cause of weakness in the financial position, or suggest anything which cannot be supported as fairly correct in a business point of view.

Clearly, there has been some difficulty in finding the right words to express what is expected of accounts, and it may be that the present phrase, ‘true and fair’, cannot withstand too much analysis. H Evans, ‘True and fair revisited’ [1990] LMCLQ 255, for example, suggests that ‘fair’ could mean either ‘tolerable, passable, of moderate quality, average’, or ‘impartial, just, unbiased, equitable’ and, remarkably, prefers the first meaning: it seems unlikely that this is correct.

Whether or not accounts show a true and fair view must be determined by reference to applicable accounting standards. The law does not recognise any higher or more abstract principles (*Commissioners for HM Revenue and Customs v William Grant and Sons Distillers Ltd* [2007] UKHL 15, [2007] 1 WLR 1448).

See further reading for B.5.8 (**B.13**).

B.6 DISTRIBUTION, FILING AND PUBLICATION OF ANNUAL ACCOUNTS AND REPORTS

B.6.1 SENDING ANNUAL ACCOUNTS AND REPORTS TO MEMBERS

B.6.1.1 Obligation to circulate

Copies of a company’s annual accounts and reports for a financial year (see **B.5.6**) must be sent to each of the company’s members and debenture holders (CA 2006, s 423(1)(a) and (b)). Copies of the

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accounts and reports must also be sent to anyone else entitled to receive notice of general meetings (s 423(1) (c)), which includes the company's auditor (s 502(2)(a)). Copies need not be sent to a person for whom the company does not have a current address (s 423(2) and (3)). A company may give persons entitled to receive copies of its accounts and reports the option to receive instead a copy of the strategic report with supplementary material (s 426; see **B.6.1.3**).

For a *private company* the time limit for circulating the annual accounts and reports is the end of the period for filing them at Companies House (see **B.6.5**), or the actual date of filing, if that is earlier (s 424(2)). For a *public company* the limit is 21 days before the accounts meeting of the company at which the accounts and reports in question are to be laid (see **B.6.3**) (s 424(3) and (6)). Copies can be sent out later than the deadline for a public company if all the members entitled to attend and vote at the accounts meeting agree (s 424(4)).

B.6.1.2 Right to demand copies of annual accounts and reports

Any member of a company and any holder of its debentures is entitled to demand a copy of its most recent annual accounts and reports free of charge (CA 2006, ss 431 and 432). One person may demand only one copy of the annual accounts and reports for a year under s 431 or 432, but that is in addition to any right under s 423 (see **B.6.1.1**) to receive a copy (ss 431(2) and 432(2)).

B.6.1.3 Strategic report with supplementary material

Instead of sending the full annual accounts and reports, as required by CA 2006, s 423 (see **B.6.1.1**), a company may send its strategic report with supplementary material to persons who have indicated that they do not wish to receive full annual accounts and reports (s 426). A company is not compelled to give users of its accounts the option of being provided with the strategic report with supplementary material. Detailed provisions are made in the Companies (Receipt of Accounts and Reports) Regulations 2013 (SI 2013/1973).

The supplementary material to be supplied with the strategic report instead of the rest of the company's accounts and reports is quite brief. It must include a warning that the strategic report is only part of the

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company's annual accounts and reports (CA 2006, s 426A(2)(a)) and directions on how to obtain a full copy of the accounts and reports (s 426A(2)(b)). In the case of a quoted company (see **B.5.2**), the main table from the directors' remuneration report must be supplied (s 426A(2)(e)). The supplementary material must state whether the auditor's report on the annual accounts was qualified or unqualified (s 426A(2)(c)) and do the same for the auditor's statement whether the strategic report and directors' report are consistent with the accounts (s 426A(2)(d)). A qualified report must be set out in full together with any further material needed to understand the qualification.

Sections 426 and 426A make no reference to companies that do not produce a strategic report.

B.6.2 WIDER PUBLICATION OF PUBLICLY TRADED COMPANY'S ACCOUNTS

B.6.2.1 Publication on quoted company's website

A quoted company (see **B.5.2**) must make its annual accounts and reports available on a website (CA 2006, s 430(1)(a)). They must remain available until the accounts and reports for the next year are put on the website (s 430(1)(b)). There must be no restrictions on access to the website (other than to meet legal or regulatory requirements in this country or abroad) or requirement for payment (s 430(3)). The annual accounts and reports must be made available as soon as reasonably practicable (s 430(4)(a)) and must be available throughout the required period (s 430(4)(b)).

B.6.2.2 Public availability of accounts of company traded on regulated market

A company whose transferable securities are admitted to trading on a regulated market (see **7.3.4.6**) must make public its annual financial report within four months of the end of the financial year being reported on (Directive 2004/109/EC, art 4(1); FCA Handbook, DTR 4.1.3R) and the report must remain publicly available for at least five years (Directive 2004/109/EC, art 4(1); DTR 4.1.4R).

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B.6.3 LAYING ANNUAL ACCOUNTS BEFORE GENERAL MEETING OF PUBLIC COMPANY

The directors of a *public company* must lay before a general meeting copies of the company's annual accounts and reports (CA 2006, s 437(1)). This must be done not later than the end of the period allowed for filing the accounts and reports (see **B.6.5**). A general meeting of a public company at which its annual accounts and reports are (or are to be) laid is called an 'accounts meeting' (s 437(3)). Normally it will be the company's annual general meeting (see **14.7.1**).

If the directors of a public company fail to lay copies of its annual accounts and reports before a general meeting before the end of the period allowed, every person who was a director of the company immediately before the period ended is guilty of an offence and may be fined (s 438). It is a defence to prove that one took all reasonable steps to get the accounts presented on time (s 438(2)) but not that the accounts were not in fact prepared in time (s 438(3)).

Exactly what has to be done to annual accounts and reports to constitute 'laying before' a general meeting partly depends on the practice of the company concerned. Annual accounts and reports must be sent to the members at least 21 days before the meeting (ss 423 and 424(3)), unless all members entitled to attend and vote at the meeting agree to them being sent later (s 424(4); see **B.6.1.1**). Usually, the notice convening the meeting will state that its business will include 'receiving' the accounts and it is conventional to propose a resolution that the meeting adopts or approves the accounts, so as to provide an opportunity for discussion. The UK Corporate Governance Code (see **13.3**), which applies to premium listed companies (see **7.6**), requires a resolution to be proposed relating to the report and accounts (para E.2.1). Rejection of a resolution to approve or adopt annual accounts and reports would have no legal effect: the documents are the accounts and reports of the directors and auditor, which are produced to inform the members, not to be adopted or rejected by them. However, refusal by the members to adopt the accounts and reports would signal a complete loss of confidence in the directors. The directors of a quoted company (see **B.5.2**) must ensure that a resolution approving the directors' remuneration report is put to the vote at the meeting before which the accounts are laid (CA 2006, ss

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439 and 440), but this statutory requirement does not by itself mean that any director's remuneration depends on the outcome of the vote (s 439(5)).

B.6.4 DELIVERY OF ACCOUNTS AND REPORTS TO COMPANIES HOUSE

In respect of each financial year, the directors of a company must deliver a copy of the company's annual accounts and reports to Companies House (CA 2006, s 441). Small companies may omit some items (see **B.6.6**). Companies House gives public notice of receipt of annual accounts and reports (ss 1077 and 1078(2); see **Online resources, Chapter A.3**).

Delivery of accounts and reports to Companies House must be completed before the end of the period allowed for filing accounts and reports—see **B.6.5**.

Under s 453, fixed penalties, recoverable by the registrar in civil proceedings, are imposed for filing accounts late. The penalties are prescribed in the Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008 (SI 2008/497). A penalty is payable by virtue of the legislation when default occurs, and can be recovered by the registrar in County Court proceedings. The registrar may decide not to recover the penalty, but has announced that this will be done only in very exceptional cases. It has been held that the fixed penalty scheme legitimately promotes compliance with a vital regulatory requirement in the public interest and does so proportionately. Therefore, it is not contrary to the European Convention on Human Rights, Protocol 1, art 1 (protection of property), in the Human Rights Act 1998, sch 1 (*R (POW Trust) v Chief Executive and Registrar of Companies* [2002] EWHC 2783 (Admin), [2003] 2 BCLC 295). The penalty is paid into the Consolidated Fund rather than going to Companies House (CA 2006, s 453(3)).

The amount of the penalty depends on the length of the period 'between' the end of the period for filing the accounts and reports (see **B.6.5**) and the day on which they are filed (s 453(2)(a)). This period excludes both the day when the period for filing ended and the day on which the accounts were filed (*Registrar of Companies v Stonelee Developments Ltd* 2004 SLT (Sh Ct) 116).

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In addition to the fixed civil penalties, CA 2006 provides that if the directors of a company fail to deliver copies of its accounts and reports to Companies House before the end of the period allowed, every person who was a director of the company immediately before the period ended is guilty of a criminal offence for which a fine may be imposed (s 451). It is a defence for a director to prove that he or she took all reasonable steps to get the accounts delivered on time (s 451(2)) but not that the accounts and reports were not in fact prepared in time (s 451(3)).

As well as imposing financial penalties for failure by a company's directors to deliver accounts and reports to Companies House, CA 2006 provides that a notice can be served on the directors requiring compliance (s 452(1)). If they have failed to make good the default within 14 days after service of the notice, the court may order them to do so (s 452(1)). Wilful refusal to comply with that order would be contempt of court. The notice may be served, and the order applied for, by any member or creditor of the company, or by the registrar (s 452(1)).

B.6.5 PERIOD ALLOWED FOR FILING ANNUAL ACCOUNTS AND REPORTS

The period allowed for filing annual accounts and reports is defined in CA 2006, ss 442 and 443. The period is defined by reference to the 'relevant accounting reference period', which is the accounting reference period by reference to which the financial year for the accounts in question was determined (see **B.5.2**). For a *private company*, the period allowed for filing is nine months after the end of the relevant accounting reference period (s 442(2)(a)). For a *public company* it is six months after the end of the relevant accounting reference period (s 442(2)(b)). Whether the private or the public company rule applies depends on the company's status immediately before the end of the relevant accounting reference period (s 442(6)).

Where a company's first accounting reference period is longer than 12 months, the period allowed for filing is calculated from the first anniversary of incorporation or is three months after the end of the accounting reference period, whichever expires later (s 442(3)).

Where a company has shortened the relevant accounting reference period by changing its accounting

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reference date, it is allowed up to three months from the date of the notice changing the reference date, if that is longer than the time which would otherwise apply (s 442(4)).

The Secretary of State may extend the period allowed for filing, for a special reason (s 442(5)). An application for extension must be made before the unextended period expires (s 442(5)). The maximum extension is to 12 months after the end of the relevant accounting reference period (s 442(5A)).

Because of the almost automatic imposition of civil penalties for late filing (see **B.6.4**), arguments over exactly which day is the last day for filing are common. Section 443 specifies how to calculate the period allowed.

The calculation under s 443 is as follows. First, find the month in which the period ends by counting the number of months from the month in which the relevant accounting reference period ended (so nine months after an accounting reference period ending in May ends in the following February). This is the 'appropriate month'. Secondly, the day in the appropriate month on which the period ends is the day with the same number as the day on which the accounting reference period ended (so nine months after 5 May ends on 5 February). This is the 'corresponding date'. Exceptionally, if the accounting reference period ended on the last day of a month, the period for delivering accounts ends on the last day of the appropriate month, whatever its number. So, if the accounting reference period of a public company ends on 30 September, the period for delivering accounts ends six months later on 31 March. (This modifies the common law corresponding date rule, under which it would end on 30 March.) If there is no day with the same number in the appropriate month, the end of the period is the last day of the appropriate month (so nine months after 30 May is 28 February, or 29 February in a leap year). A period 'after' an event ends at the last moment of the corresponding date, but a document is not delivered to Companies House until it is received and the registrar is now entitled to prescribe what amounts to receipt (s 1071) and may, for example, require delivery within office hours.

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B.6.6 SMALL COMPANIES

If a company is subject to the small companies regime, it must deliver to Companies House copies of the company's annual accounts and reports (CA 2006, s 444(3)), but may omit the profit and loss account and/or directors' report (s 444(1); directors' reports are not required for micro-entities). If either of those documents is omitted, the filed balance sheet must contain in a prominent position a statement that the company's annual accounts and reports have been delivered in accordance with the provisions applicable to companies subject to the small companies regime (s 444(5)) and (unless they are micro-entity accounts) there must be a specific statement that a profit and loss account has not been filed, if that is the case (s 444(5A)(a) and (5C)). An auditor's report has to be filed only if a profit and loss account is filed and only if the company is not exempt from audit or the directors have not taken advantage of exemption (s 444(2)). However, if a profit and loss account is not filed and the company is not exempt from audit (or the directors have not taken advantage of exemption), notes to the filed balance sheet must disclose details of the audit report, including any qualifications or emphasised matters (s 444(5A) and (5B)).

If a filed balance sheet or profit and loss account is in abridged form (see **B.5.7.7**), it is also necessary to file a statement by the company that all the members of the company have consented to the abridgement (s 444(2A)).

As an exception to the rule that filed accounts must be copies of the accounts sent to members, filed small group accounts can omit disclosure of shares in the parent company held by subsidiaries (SI 2008/409, reg 11(b); preparation of group accounts is optional in the small companies regime).

If a company is entitled to the small companies exemption in relation to the directors' report for a financial year (see **B.5.3**), but is not subject to the small companies regime, it must deliver to Companies House its full accounts and reports, except that it need not deliver the directors' report (CA 2006, s 444A).

If the directors of a company have prepared accounts in accordance with the small companies regime and in the opinion of the company's auditor they were not entitled to do so, that fact must be stated in the

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auditor's report (s 498(5)). However, usually there will be no auditor's report, because if directors claim their company is small they will also claim it is exempt from audit (see **B.4.6**).

B.6.7 PUBLICATION OF ACCOUNTS

If a company wishes to publish financial statements relating to one of its financial years then, under CA 2006, ss 434 and 435, it has two options. It may publish either its 'statutory accounts' or 'non-statutory accounts'. In this context, a company 'publishes' a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated (that is, likely) to invite members of the public generally, or any class of members of the public, to read it (s 436).

The statutory accounts for a financial year are the individual accounts or group accounts that are required to be delivered to Companies House (s 434(3)).

If a company publishes any of its statutory accounts, they must be accompanied by the relevant auditor's report (s 434(1)). If it is required to prepare group accounts, it must not publish its statutory individual accounts without also publishing with them its statutory group accounts (s 434(2)). (But it can publish its group accounts without its individual accounts.)

Copies of the balance sheet, strategic report, directors' report and directors' remuneration report must state the name of the person who signed the original on behalf of the board (s 433).

The term 'non-statutory accounts' means (s 435):

(a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company; or

(b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company.

If a company publishes non-statutory accounts, then, by s 435(1) and (2), it must not publish with them the auditor's report but it must publish with them a statement indicating:

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(a) that they are not the company's statutory accounts;

(b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to Companies House;

(c) whether the statutory accounts for any such financial year have been reported on by the company's auditor; and

(d) whether the auditor's report was qualified or unqualified, or drew attention to any matter by way of emphasis without qualifying the report, or contained a critical statement under s 498(2) or (3) (see **17.4.6**).

B.7 HALF-YEARLY REPORTS

A company whose transferable securities are admitted to trading on a regulated market (see **7.3.4.6**) must make public a half-yearly financial report covering the first six months of the financial year (Directive 2004/109/EC, art 5; FCA Handbook, DTR 4.2.1R, 4.2.2R(1) and 4.4.2R). It must be issued as soon as possible and no later than two months after the end of the period reported on (DTR 4.2.2R(2)). It must remain available to the public for at least five years (DTR 4.2.2R(3)).

A half-yearly financial report consists of (DTR 4.2.3R):

- a condensed set of financial statements (group accounts and the individual accounts of the parent company);
- an interim management report; and
- responsibility statements.

Details of the requirements are in DTR 4.2.4R to 4.2.11R.

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B.8 GROUP ACCOUNTS

B.8.1 GROUP ACCOUNTS OF A PARENT COMPANY

When a company conducts parts of its business through separate undertakings that it owns or controls, its members will want an overall picture of the financial position of the whole business, not just the part that is carried out by the company of which they are members. Group accounts for a number of related undertakings treat them as one single entity and ignore transactions between undertakings within the group.

'Undertaking' in this context means (CA 2006, s 1161(1)):

(a) a body corporate or partnership firm, or

(b) an unincorporated association carrying on a trade or business, with or without a view to profit.

If, at the end of a financial year, a company is a parent company (defined in **B.8.2**), and is not subject to the small companies regime, the directors must, as well as preparing individual accounts for the year, prepare group accounts (s 399(2) and (2A)(a)(i)), unless one of the exemptions provided by s 400 or 401 (see **B.8.4**) or s 402 (see **B.8.6**) applies. The exemption for companies in the small companies regime is extended to a company which would be a small company but for being a public company, provided it is not in the same group as a company of various economically significant types (s 399(2A)(b) and (2B)). A company that is exempt from preparing group accounts may nevertheless choose to do so (s 399(4)).

B.8.2 PARENT AND SUBSIDIARY UNDERTAKINGS; GROUP UNDERTAKINGS

The relationship of parent undertaking and subsidiary undertaking is defined in CA 2006, s 1162, in a way that is similar to the definition of the relationship of holding company and subsidiary in s 1159 (see **9.6**). A 'parent company' is a parent undertaking which is a company (s 1173(1)).

The relationship of parent undertaking and subsidiary undertaking may arise in the following ways:

(a) under s 1162(2)(a), where the parent undertaking holds a majority of the voting rights in the subsidiary undertaking;

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(b) under s 1162(2)(b), where the parent undertaking is a member of the subsidiary undertaking and has the right to appoint or remove a majority of its board of directors;

(c) under s 1162(2)(c), where the parent undertaking has the right to exercise a dominant influence over the subsidiary undertaking

  (i) by virtue of provisions contained in the subsidiary undertaking's articles, or

  (ii) by virtue of a control contract;

(d) under s 1162(2)(d), where the parent undertaking is a member of the subsidiary undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the subsidiary undertaking;

(e) under s 1162(4), where

  (i) the parent undertaking has the power to exercise, or actually exercises, dominant influence or control over the subsidiary undertaking, or

  (ii) the parent company and the subsidiary undertaking are managed on a unified basis; or

(f) under s 1162(5), where the subsidiary undertaking is a subsidiary undertaking of an undertaking which is itself a subsidiary undertaking of the parent undertaking.

The definition of the relationship of parent undertaking and subsidiary undertaking corresponds to the definition of holding company and subsidiary, except for s 1162(2)(c) and (4) (items (c) and (e) in the above list), which have no equivalent in the definition of holding company and subsidiary.

For the purposes of s 1162(2), an undertaking P is to be treated as a member of an undertaking S if:

(a) any subsidiary undertaking of P is a member of S (s 1162(3)(a)); or

(b) any shares in S are held by a person acting on behalf of P or any of its subsidiary undertakings (s 1162(3)(b)).

There is no equivalent of s 1162(3) in the definition of holding company and subsidiary.

The definition in s 1162 is explained and supplemented by sch 7, which corresponds to sch 6 in the

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definition of holding company and subsidiary.

Schedule 7, para 4, explains s 1162(2)(c) (which has no equivalent in the definition of holding company and subsidiary). Under sch 7, para 4(1), an undertaking is not to 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. 'Control contract' is defined by sch 7, para 4(2), to mean a written contract conferring a right to exercise a dominant influence over another undertaking which:

(a) is of a kind authorised by the articles of the undertaking in relation to which the right is exercisable; and

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

In relation to an undertaking which is not a company, expressions appropriate to companies are to be construed as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description (s 1161(3)). By sch 7, para 4(3), the concept of actual dominant influence of one undertaking over another in s 1162(4) is not to be interpreted by reference to sch 7, para 4.

In relation to an undertaking A, another undertaking B is a 'group undertaking' if (s 1161(5)):

(a) B is a parent undertaking or a subsidiary undertaking of A; or

(b) B is a subsidiary undertaking of any parent undertaking of A.

If a company is a member of a group, its annual accounts must disclose the name of the parent company which draws up group accounts. If there is more than one such group, the parent companies of the largest and the smallest group must be identified. The accounts must also disclose the name of the company which the directors regard as being the company's ultimate parent company (if there is one). The country in which the ultimate parent company is incorporated must be given, if it is known to the directors and is outside the

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United Kingdom. See SI 2008/409, sch 6, paras 35 and 36; SI 2008/410, sch 4, paras 8 and 9.

B.8.3 EFFECT ON INDIVIDUAL ACCOUNTS

A company that prepares group accounts does not have to include an individual profit and loss account for itself in its published annual accounts, provided its individual balance sheet shows the company's profit or loss for the financial year, and provided the accounts disclose that the exemption applies (CA 2006, s 408). However, by s 408(3), the full individual profit and loss account (apart from some notes) must be considered and approved by the board, in accordance with s 414(1). In practice, a separate profit and loss account for a parent company rarely gives useful information and is normally omitted.

Full individual accounts must be prepared for each subsidiary included in a group consolidation.

B.8.4 EXEMPTION FOR SUBGROUPS

Provided it is not a traded company (see **B.4.4.3**), a parent company is exempt from the requirement to prepare group accounts for a financial year if it is itself a subsidiary undertaking and is included in consolidated accounts for a larger group. This exemption is given by CA 2006, s 400, if the group accounts which include the company are drawn up by a parent undertaking incorporated in an EEA State, or by s 401 otherwise. The two sections are in almost identical terms.

The group accounts which include the company must be drawn up to the same date, or to an earlier date in the same financial year (CA 2006, ss 400(2)(a) and 401(2)(a)). The group accounts must be prepared in accordance with Directive 2013/34/EU or, if they are prepared under the law of a non-EEA State, in an equivalent manner (CA 2006, ss 400(2)(b) and 401(2)(b)) and they must be audited (ss 400(2)(b) and 401(2)(c)).

A company which is exempt from preparing group accounts by virtue of s 400 or 401 must disclose in the notes to its individual accounts the fact that it is exempt (ss 400(2)(c) and 401(2)(d)). It must also disclose the name of the parent undertaking in whose accounts its affairs are consolidated and the address of its

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registered office or, if it is not incorporated, the address of its principal place of business (ss 400(2)(d) and 401(2)(e)). An exempt subgroup parent must deliver to Companies House, within the period allowed for delivering its individual accounts, copies of its parent undertaking's group accounts, annual report (which seems to mean the group directors' report) and auditor's report, with certified translations of any document not in English (ss 400(2)(e) and (f) and 401(2)(f) and (g)).

This exemption is qualified by ss 400(1) and 401(1) where the company is not a wholly owned subsidiary, that is, where there are minority interests. In that case, if the immediate parent undertaking holds more than 90 per cent of the shares in the company, all the remaining shareholders must have approved the exemption. If it holds between 50 and 90 per cent, share-holders holding in aggregate at least 5 per cent of the allotted shares in the company can block use of the exemption by serving notice at least six months before the end of the financial year to which it relates.

B.8.5 EXEMPTION FOR SMALL GROUPS

If a company is the parent company of a small group (see **B.4.5**), it will be subject to the small companies regime (CA 2006, s 383(1)), unless it is excluded by s 384 (see **B.4.4.1** to **B.4.4.3**). If it is subject to the small companies regime, preparation of group accounts is optional (s 399(2A)(a)(i) and (4)). If the only reason for being excluded by s 384 is that the company is a public company then, provided the group does not include a traded company (see **B.4.4.3**) or various other economically significant types of company, group accounts are not required (s 399(2A)(b) and (2B)).

B.8.6 SUBSIDIARIES THAT MAY BE EXCLUDED FROM GROUP ACCOUNTS

The general rule is that every subsidiary undertaking of a parent company must be included in the consolidation when Companies Act group accounts are prepared (CA 2006, s 405(1)). However, s 405 allows for some subsidiaries to be excluded. Under s 405(2) and (3), a subsidiary undertaking may be excluded from consolidation in the following circumstances:

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(a) Under s 405(2), if including the subsidiary is not material for the purpose of giving a true and fair view; but two or more undertakings may be excluded on this ground only if they are not material taken together.

(b) Under s 405(3)(a), if severe long-term restrictions substantially hinder the exercise of all the rights of the reporting company over the assets or management of the subsidiary by virtue of which it is deemed to be the parent company.

(c) Under s 405(3)(b), if extremely rare circumstances mean that the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay.

(d) Under s 405(3)(c), if the interest of the parent company in the subsidiary undertaking by virtue of which it is deemed to be the parent company is held exclusively with a view to subsequent resale.

If all the subsidiary undertakings of a parent company fall within these exclusions, no group accounts (either IAS or Companies Act) are required (s 402).

B.8.7 INFORMATION ABOUT RELATED UNDERTAKINGS

Small group accounts and large or medium-sized individual and group accounts must give information about what the legislation refers to as ‘related undertakings’. For small groups the information to be given is specified in SI 2008/409, reg 10 and sch 6, part 2. For large and medium-sized companies and groups the information to be given is specified in SI 2008/410, reg 7 and sch 4. Micro-entity accounts do not include this information (SI 2008/409, reg 5A).

Related undertakings include subsidiary undertakings and undertakings which are not subsidiaries but in which the company has a significant holding (20 per cent or more of the nominal value of any class of shares in the undertaking, or a holding whose value is more than 20 per cent of the reporting company’s assets).

The rules require related undertakings to be named. The country of incorporation must be stated if it is not the United Kingdom. If the undertaking is not incorporated, the address of its principal place of business

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must be given. The company's shareholding in the related undertaking must be identified and certain financial information about the undertaking must be disclosed.

B.9 CONTENTS OF STRATEGIC REPORT AND DIRECTORS' REPORT

B.9.1 INTRODUCTION

The strategic report for a financial year of a company must comply with CA 2006, ss 414A to 414D. The directors' report must comply with ss 415 to 419, and with SI 2008/409, reg 7 and sch 5 (small companies) or SI 2008/410, reg 10 and sch 7 (medium-sized and large companies). These provisions implement the requirements of Directive 2013/34/EU, art 19, to include information in what the Directive calls a 'management report'. CA 2006 divides that information between the strategic report, which covers art 19(1) and the directors' report, which deals with the requirements of art 19(2) (see **B.9.4.7**). The United Kingdom legislation also contains UK requirements to provide information on matters of public interest including gender balance (see **B.9.2**), employment of disabled people (see **B.9.4.8**), involvement of employees (see **B.9.4.9**), political donations (see **B.9.4.10**) and greenhouse gas emissions (see **B.9.4.11**).

Premium listed companies (see **7.6**), as part of their continuing obligations, must include a large quantity of additional information in their annual financial reports (FCA Handbook LR 9.8.4R to 9.8.12R). Apart from the corporate governance statement (see **B.9.3**), those requirements will not be considered here. Premium listed companies are also subject to the UK Corporate Governance Code (see **13.3**), which requires further information (see **B.9.3**, **B.9.4.2** and **B.9.4.3**).

If a company is a parent company and its directors prepare group accounts (see **B.8**), their directors' report must be a group directors' report relating to all the companies included in the group accounts (CA 2006, s 415(2)). The same applies to the strategic report (s 414A(3)). Where appropriate, a group strategic report may give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole (s 414A(4)).

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An auditor's report on a company's annual accounts must state whether, in the auditor's opinion, the information given in the strategic report (if any), the directors' report and any separate corporate governance statement is consistent with those accounts, whether the reports and statement have been prepared in accordance with applicable legal requirements, and whether the auditor has identified in them any material misstatements, giving an indication of the nature of each misstatement (ss 496 and 497A).

B.9.2 STRATEGIC REPORT

The statutory purpose of the strategic report is to inform members and help them assess how the directors have performed their duty under CA 2006, s 172, to promote the success of the company (s 414C(1)) or, in a group strategic report, the undertakings included in the consolidation. Specification of a statutory purpose may limit the persons who can claim that they are owed a duty not to be negligent in the preparation of the report (see **17.5.2** to **17.5.4**).

The strategic report of a quoted company (see **B.5.2**) must describe the company's business model and strategy (s 414C(8)(a) and (b)). This is not required by Directive 2013/34/EU, art 17(1), but it accords with the requirement in the UK Corporate Governance Code that the directors must state in the annual report the basis on which the company generates or preserves value over the longer term (its business model) and the strategy for delivering the company's objectives (UK Corporate Governance Code, para C.1.2).

Every strategic report must include a fair review of the company's or group's business and a description of the principal risks and uncertainties facing the company or group (s 414C(2) and (13)). The report must be a balanced and comprehensive analysis of the development and performance of the company's or group's business during the financial year, and its position at the end of the year, consistent with the size and complexity of the business (s 414C(3) and (13)). A strategic report is required by s 414C(4) to include analysis using financial key performance indicators (KPIs) and, where appropriate, other KPIs, including information relating to environmental matters and employee matters. 'Key performance indicator' is defined to mean a factor which -effect-ively measures the development, performance or position of the company's or

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group's business (s 414C(5) and (9)). A medium-sized company need not deal with non-financial information in the analysis using KPIs (s 414C(6)). A strategic report must, where appropriate, include references to, and additional explanations of, amounts included in the annual accounts (s 414C(12)). It need not disclose information about impending developments or negotiations if disclosure would be seriously prejudicial to the company's interests (s 414C(14)).

The strategic report of a quoted company must also include (s 414C(7)):

(a) the main trends and factors likely to affect the future development, performance and position of the company's business;

(b) information about

(i) environmental matters, including the impact of the company's business on the environment,

(ii) the company's employees, and

(iii) social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies; and

(c) information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

These points must be covered to the extent necessary for an understanding of the development, performance or position of the company's business (s 414C(7)). A strategic report which omits information about all or any of the environmental, employee and social issues must state which of them is omitted (s 414C(7)).

The strategic report of a quoted company is required by s 414C(8)(c) and (10)(a) to show its gender balance by giving a breakdown, as at the end of the year, of:

(a) the number of persons of each sex who were directors of the company (or, in a group report, directors of the parent company);

(b) the number of persons of each sex who were senior managers of the company (other than persons already counted as directors); and

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(c) the number of persons of each sex who were employees of the company.

A 'senior manager' is defined (s 414C(9)) as an employee of the company, or of a group undertaking, who has responsibility for planning, directing or controlling the activities of the company or undertaking, or a strategically significant part of it. In a group strategic report, the breakdown of senior managers must include the number of persons of each sex who were the directors of the undertakings included in the consolidation (s 414C(10)(b)). The analysis of gender balance is not required by Directive 2013/34/EU, art 17(1), but is a matter of public interest in the United Kingdom.

The strategic report of a traded company (see **B.4.4.3**), bank or insurance company must include a non-financial information statement (s 414CA(1) and (2)). This applies only if the company or group has more than 500 employees (s 414CA(4)–(6)), is not subject to the small companies regime and does not qualify as medium-sized (s 414CA(3)).This statement must contain information (s 414CB(1) and (2) about the company's policies, and the outcome of those policies, in relation to, at least:

(a) environmental matters (including the impact of the company's business on the environment);

(b) the company's employees;

(c) social matters;

(d) respect for human rights; and

(e) anti-corruption and anti-bribery matters.

If the company does not have a policy in relation to any of these matters, it must provide a clear and reasoned explanation for not doing so (s 414CB(4)).

A strategic report may also include any matter required to be disclosed in the directors' report if the directors consider it is of strategic importance to the company (CA 2006, s 414C(11)). There must be a statement in the directors' report that the information will be found in the strategic report (SI 2008/410, sch 7, para 1A).

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B.9.3 CORPORATE GOVERNANCE STATEMENT

If a company has transferable securities admitted to trading on a regulated market (see **7.3.4.6**), it must produce a corporate governance statement (Directive 2013/34/EU, art 20). The required content of the corporate governance statement is set out in the FCA Handbook DTR 7.2. A company's corporate governance statement must:

(a) Identify the corporate governance code to which the company is subject, and state whether it has departed from, or not applied, any aspects of the code and why (DTR 7.2.2R and 7.2.3R). Premium listed companies (see **7.6**) are subject to the UK Corporate Governance Code (see **13.3**) and are required to make the statement in relation to that code (LR 9.8.6R(5) and (6)).

(b) Describe the main features of the company's or group's internal control and risk management systems in relation to the financial reporting process (DTR 7.2.5R and 7.2.10R; see also UK Corporate Governance Code, C.2.1).

(c) Give details about capital structure which may be a barrier to takeovers (DTR 7.2.6R; see **B.9.4.6**).

(d) Describe the composition and operation of the company's administrative, management and supervisory bodies and their committees (DTR 7.2.7R). This requirement overlaps with the requirements of the UK Corporate Governance Code, A.1.1, A.1.2, B.2.4, C.3.3 and D.2.1.

A corporate governance statement must either be in the directors' report or in a separate statement which is either published together with the directors' report or is published on the company's website and referred to in the directors' report (DTR 7.2.9R).

A listed company should report its chairman's other significant commitments and explain the impact of any change in them (UK Corporate Governance Code, para B.3.1). There should be a statement of how performance evaluation of the board, its committees and its individual directors has been conducted (UK Corporate Governance Code, para B.6.1).

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B.9.4 DIRECTORS' REPORT

B.9.4.1 Directors

A directors' report must state the names of all persons who, at any time during the financial year reported on, were directors of the company (CA 2006, s 416(1)(a)). Directors of subsidiary undertakings do not have to be named.

A directors' report for a company's financial year must disclose the qualifying indemnity provisions (see **16.16.5**) for the benefit of the company's directors and directors of associated companies that were in place both during the financial year reported on and (if different) at the time the report is approved by the board (s 236).

B.9.4.2 Auditor and audit committee

CA 2006, s 418, requires a directors' report to contain a statement by every person who is a director at the time when the report is approved by the board (s 418(2); see **B.5.3**) that:

(a) So far as the director is aware, there is no relevant audit information of which the company's auditor is unaware. 'Relevant audit information' means information needed by the auditor in connection with preparing the auditor's report (s 418(3)).

(b) The director has taken all the steps he or she ought to have taken, as a director, to make him or herself aware of any relevant audit information and to establish that the company's auditor is aware of that information. The director must have taken such steps for that purpose as were required by his or her duty to exercise due care, skill and diligence (s 418(4)) as assessed by the dual objective/subjective standard discussed in **16.8.1** (s 418(5)). In particular, the director must have made such inquiries of his or her fellow directors and of the company's auditor as are required by the dual objective/subjective standard (s 418(4) and (5)).

This statement is not required if the company is exempt from the auditing requirements, because it is a small company (see **B.4.6**), a subsidiary (see **B.4.6**) or a dormant company (see **B.4.7**) (s 418(1)).

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There should be a statement in the directors' report of a listed company about the reporting responsibilities of its auditor (UK Corporate Governance Code, para C.1.1). If the auditor provides non-audit services, the directors' report should explain to shareholders how auditor objectivity and independence are safeguarded (para C.3.8). There should be a separate section of the report describing how the audit committee has discharged its responsibilities (para C.3.8). If the company has no internal audit function, there should be an explanation of its absence (para C.3.6).

B.9.4.3 Views of major shareholders of listed company

The directors' report of a listed company should state the steps the board has taken to ensure that directors, particularly non-executive directors, develop an understanding of the views of major shareholders, for example, through face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion (UK Corporate Governance Code, para E.1.2).

B.9.4.4 Dividend recommendation

Unless the company is entitled to the small companies exemption (see **B.5.3**), a directors' report must state the amount (if any) that the directors recommend should be paid by way of dividend (CA 2006, s 416(3)).

B.9.4.5 Holdings of own shares

The directors' report of a public company must give details of acquisitions, by or on behalf of the company, of its own shares and the creation in its favour of charges or liens on its own shares (SI 2008/410, sch 7, paras 8 and 9).

B.9.4.6 Barriers to takeovers

If a company has securities which carry voting rights and are admitted to trading on a regulated market (see **7.3.4.3**), its directors' report must give details, as required by Directive 2004/25/EC, art 10, of capital structure which may be a barrier to takeovers (SI 2008/410, sch 7, paras 13 and 14). This information must also be given in the corporate governance statement (see **B.9.3**).

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B.9.4.7 Information required by art 19(2)

Directive 2013/34/EU, art 19(2) requires the following information in the management report and United Kingdom legislation has allocated it to the directors' report. The directors' report of a medium-sized or large company must, by SI 2008/410, sch 7, para 7, contain:

(a) particulars of any important events affecting the company or group which have occurred since the end of the financial year;

(b) an indication of likely future developments in the business of the company or group;

(c) an indication of the activities (if any) of the company or group in the field of research and development; and

(d) (unless the company is an unlimited company) an indication of the existence of branches (as defined in CA 2006, s 1046(3)) of the company outside the United Kingdom.

The directors' report of a medium-sized or large company must contain an indication of the following matters in relation to its, or the group's, use of financial instruments:

(a) the financial risk management objectives and policies of the company, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used; and

(b) the exposure of the company to price risk, credit risk, liquidity risk and cash flow risk.

This information is required by SI 2008/410, sch 7, para 6, which reproduces the requirements of Directive 2013/34/EU, art 19(2)(e), which were formerly in Directive 78/660/EEC, art 46(2)(f) (individual accounts), and Directive 83/349/EEC, art 36(2)(e) (group accounts). SI 2008/410, sch 7, para 6(3), states that various terms used in para 6 'have the same meaning as they have' in those Directives, but the terms are not actually defined either in those Directives or in Directive 2013/34/EU.

This information is not required if it is not material for the assessment of the assets, liabilities, financial position and profit or loss of the company (SI 2008/410, sch 7, para 6(1)).

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B.9.4.8 Employment of disabled persons

If the weekly average number of employees of a company in a financial year exceeded 250, its directors' report must describe its policy (if any) concerning the employment of disabled persons (SI 2008/409, sch 5, para 5; SI 2008/410, sch 7, para 10).

B.9.4.9 Employee involvement

If the weekly average number of employees of a medium-sized or large company in a financial year exceeded 250, its directors' report must describe the action taken to inform and consult employees, to involve them in the company's performance through an employees' share scheme or otherwise, and to achieve awareness of the financial and economic factors affecting the company's performance (SI 2008/410, sch 7, para 11).

B.9.4.10 Political donations and expenditure

Particulars of the political donations and expenditure of a company and its subsidiaries during a financial year must be given in its directors' report, unless the total amount did not exceed £2,000 (SI 2008/409, sch 5, para 2; SI 2008/410, sch 7, para 3). The parties or candidates who received donations must be named and the total amount given to each of them stated. The report must also state the amount given to any 'non-EU political party', meaning a political party which carries on, or proposes to carry on, its activities wholly outside the EU (SI 2008/409, sch 5, para 3; SI 2008/410, sch 7, para 4).

A company that is a wholly owned subsidiary of a company incorporated in the United Kingdom is not required to report political donations and expenditure.

B.9.4.11 Greenhouse gas emissions

SI 2008/410, sch 7, para 15(1), (2) and (3), require the directors' report of a quoted company (see **B.5.2**) to state the annual quantity of emissions in tonnes of carbon dioxide equivalent:

(a) from activities for which that company is responsible, including the combustion of fuel and the

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operation of any facility; and

(b) resulting from the purchase of electricity, heat, steam or cooling by the company for its own use.

The terms ‘emissions’ and ‘tonne of carbon dioxide equivalent’ are defined in the Climate Change Act 2008, ss 92 and 93(2) (SI 2008/410, sch 7, para 20). The report must state the methodologies used to calculate these quantities (sch 7, para 16), which must be given both in absolute amounts and as a ratio to a quantifiable factor associated with the company’s activities (sch 7, para 17). The figures reported for the preceding year must be given for comparison (sch 7, para 18).

This information is required only to the extent that it is practical for the company to obtain it (sch 7, para 15(4)). If it is not practical to obtain some or all of the information, the report must state what information is not included and why (sch 7, para 15(4)).

B.9.5 DIRECTORS’ RESPONSIBILITY STATEMENT

The annual financial report of a company whose transferable securities are admitted to trading on a regulated market (see **7.3.4.6**) must include a statement of assurance (also called a responsibility statement) (Directive 2004/109/EC, art 4(2)(c); FCA Handbook, DTR 4.1.5R and 4.1.12R). This is a statement made by the persons responsible within the company, to the effect that, to the best of their knowledge:

(a) the accounts give a true and fair view of the assets, liabilities, financial position and profit or loss of the company and the undertakings included in group accounts; and

(b) the report includes a fair review of the development and performance of the business and the position of the company and the undertakings included in the group accounts taken as a whole, together with a description of the principal risks and uncertainties that they face.

For a premium listed company, the statement should explain the directors’ responsibility for preparing the accounts and the directors’ report, and that they consider that those documents, taken as a whole, are ‘fair, balanced and understandable’ and provide ‘the information necessary for shareholders to assess the

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company's performance, business model and strategy' (UK Corporate Governance Code, C.1.1). The audit committee should provide the board with advice on this point if requested (C.3.4).

B.10 REVISION AND EXTERNAL REVIEW OF ACCOUNTS AND REPORTS

Under CA 2006, s 454, if the directors of a company discover that annual accounts which they have issued do not comply with the Act or, where applicable, with Regulation (EC) No 1606/2002, art 4, they may prepare a revised version (CA 2006, s 454(1)). The same applies to a non-compliant directors' report, directors' remuneration report or strategic report (s 454(1)) and to a revision of a directors' remuneration policy (s 422A(5)). The detailed procedure is set out in the Companies (Revision of Defective Accounts and Reports) Regulations 2008 (SI 2008/373).

Under CA 2006, s 456, an application may be made to the court for a declaration that the annual accounts, strategic report or directors' report of a company do not comply with the requirements of the Act or, where applicable, Regulation (EC) No 1606/2002, art 4 and for an order requiring the company's directors to revise them (CA 2006, s 456(1)). This modifies the decision in *Devlin v Slough Estates Ltd* [1983] BCLC 497 that, in the absence of bad faith or fraud, the court would not make declarations of how matters should be reported in a company's annual accounts. Section 456 is applied by s 422A(5) to a revision of a directors' remuneration policy. Notice of any application made under s 456, and a copy of any order made by the court on the application, must be filed by the applicant at Companies House (s 456(2) and (7)). The only persons who may apply under s 456 are the Secretary of State and the FRC's Conduct Committee, which is authorised for the purpose by the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012 (SI 2012/1439), art 4. The Conduct Committee has powers under CA 2006, s 459, to require a company, its officers, employees and auditor, to produce documents or provide information or explanations so that the Committee can discover whether there are grounds for applying under s 456 or can determine whether or not to make an application. If the court orders revision of accounts, it may give directions with respect to the auditing of the accounts,

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the revision of any directors' report, directors' remuneration report, or strategic report and supplementary material and publicising the revision (s 456(3)). It may also make the directors liable for the costs of the application (s 456(5) and (6)). In practice, and as agreed with BIS, the Committee normally exercises this authority only in connection with the accounts of public companies and large private companies (*The Conduct Committee: Operating Procedures for Reviewing Corporate Reporting* (1 April 2016)).

Under s 455, the Secretary of State is empowered to notify directors of a company that he or she believes something is wrong with their annual accounts, strategic report or directors' report and give them one month to provide an explanation of the accounts or report or prepare revised accounts or a revised report (s 455(1) to (3)). This power can be exercised only after accounts have been sent out under s 423 or laid before a general meeting or delivered to Companies House (s 455(1)). An application to the court under s 456 may be made by the Secretary of State if there is no response to the notice within the time limit, or the response is unsatisfactory or any revision supplied is unsatisfactory (s 455(4)).

Sections 455 and 456 also apply to accounts which have already been voluntarily revised by directors (ss 455(5) and 456(8)).

The Conduct Committee keeps under review the annual accounts and half-yearly reports (see **B.7**) produced by issuers of shares and other transferable securities (see **7.4.2.3**) admitted to trading on a regulated market (defined in FSMA 2000, s 102A(3); see **7.3.4.3**) (Companies (Audit, Investigations and Community Enterprise) Act 2004, s 14; SI 2012/1439, art 2). The Committee may inform the FCA of any conclusions it reaches in relation to any such accounts or reports (Companies (Audit, Investigations and Community Enterprise) Act 2004, s 14(2)(b)). If the Committee considers that a company's accounts may not comply with Part 6 rules made by the FCA (see **7.4.1.3** and **7.6.1**), it may require the company, or any of its officers or employees, or its auditor, to produce documents or provide information or explanations (s 15B).

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B.11 REPORTS ON PAYMENT PRACTICES AND PERFORMANCE

For the seven years from 2017 to 2024, large companies must publish a half-yearly report on their payment practices, policies and performance (Small Business, Enterprise and Employment Act 2015, s 3; Reporting on Payment Practices and Performance Regulations 2017 (SI 2017/395)). Publication is on a web-based service provided by the Secretary of State.

B.12 WHAT CAN BE LEARNT FROM THIS CHAPTER

B.12.1 SUMMARY

Chapter B has described the accounting requirements of CA 2006. Every company must keep accounting records to show and explain its transactions and disclose its financial position. From these records, the directors must prepare annual financial statements and reports. The precise requirements depend on the classification of a company as micro-entity, small, medium-sized or large. Parent companies must prepare group accounts and reports. Extra requirements are imposed on all companies whose shares are admitted to trading on a regulated market. The most onerous requirements are imposed on listed public companies. A listed public company's annual financial report (usually called the annual report) will contain a strategic report, corporate governance statement, directors' report (which can include the corporate governance statement), directors' remuneration report, directors' responsibility statement, auditor's report and financial statements. At the other end of the scale, a micro-entity will just prepare simplified financial statements called micro-entity accounts. Annual accounts must give a true and fair view. A company's annual accounts and reports must be sent to its members and delivered to Companies House. A public company's accounts and reports must be laid before a general meeting. A company whose transferable securities are admitted to trading on a regulated market issue half-yearly financial reports covering the first six months of each financial year. Large companies must publish a half-yearly report on their payment practices, policies and performance.

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B.12.2 LEGAL CONCEPTS

- Micro-entity
- Small company
- Medium-sized company
- Small group
- Medium-sized group
- Dormant company
- Annual accounts
- Micro-entity accounts
- Accounting reference period
- Financial year
- Annual accounts and reports
- Strategic report
- Corporate governance statement
- Directors' report
- Directors' remuneration report
- Directors' responsibility statement
- Auditor's report
- True and fair view
- Group accounts
- Parent undertaking
- Subsidiary undertaking

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B.12.3 POINTS OF LAW

- Every company must keep accounting records which are sufficient to show and explain the company's transactions and also to disclose, with reasonable accuracy, the financial position of the company at any time (CA 2006, s 386).
- The accounting records of a private company must be preserved for three years from the date on which they are made; those of a public company must be kept for six years (s 388(4)).
- A company's accounting records must, at all times, be open to inspection by the company's officers (s 388(1)).
- For each financial year of a company, its directors must prepare its individual accounts (s 394).
- If, at the end of a financial year, a company is a parent company, and is not subject to the small companies regime, the directors must, as well as preparing individual accounts for the year, prepare group accounts (s 399(2) and (2A)(a)(i)), unless one of the exemptions provided by s 400, 401 or 402 applies.
- The directors of a company must prepare, for each financial year, a strategic report and a directors' report (ss 414A(1) and 415(1)), but a strategic report is not required if the company is entitled to the small companies exemption for that year (s 414A(2) and directors' reports are not required for micro-entities (s 415(1A)).
- If a company is a quoted company in relation to a financial year, its directors must prepare a directors' remuneration report for that year (s 420).
- The directors of a company must not approve its annual accounts unless satisfied that the accounts give a true and fair view of the assets, liabilities, financial position and profit or loss of the company, or, if they are group accounts, the undertakings included in the consolidation as a whole, so far as concerns members of the company (s 393(1)).
- Any strategic report, directors' report or directors' remuneration report must be approved by the

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board of directors and signed on behalf of the board by a director or by the secretary (ss 414D(1), 419(1) and 422(1)).

- A director of a company is liable to the company for any loss it suffers as a result of the director knowingly or recklessly including any untrue or misleading statement in, or omitting anything required to be included in, a strategic report, directors' report or directors' remuneration report (s 463).
- Copies of a company's annual accounts and reports for a financial year must be sent to each of the company's members and debenture holders (s 423(1)(a) and (b)).
- The directors of a public company must lay before a general meeting copies of the company's annual accounts and reports (s 437(1)).
- In respect of each financial year, the directors of a company must deliver a copy of the company's annual accounts and reports to Companies House (s 441).

B.13 FURTHER READING

B.3.3 D D Prentice, 'A director's right of access to corporate books of account' (1978) 94 LQR 184 (Is there a statutory right to inspect accounting records?).

B.5.8 R J Chambers and P W Wolnizer, 'A true and fair view of financial position' (1990) 8 C & SLJ 353 (history of the idea of financial statements showing a true and fair view). H Evans, 'True and fair revisited' [1990] LMCLQ 255 (unlikely interpretation of 'true and fair'). K P E Lasok and E Grace, 'The true and fair view' (1989) 10 Co Law 13; A McGee, 'The "true and fair view" debate: a study in the legal regulation of accounting' (1991) 54 MLR 874; Martin Moore, 'The true and fair requirement revisited: opinion', **https://www.frc.org.uk/getattachment/457caaa4-f1e0-43f9-9b91-12c2d354fa41/T-F-Opinion-21-April-2008.pdf**; E Walker-Arnott, 'A true and fair view: the difficulties for company directors and the case for reform' [2017] JBL 499 (general discussions of true and fair view).

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