

# **The Legal Requirements Relating to Accounts, Audits, Filing and Disclosure**

## **1) General Introduction**

Up until 1990, largely covered by individual profession, not statute.

Companies Act 1985 (as amended by 1989) - formalised requirements.

UK & Republic of Ireland - professional standards developed by the ASC and responsible formality.

Statement of Accounting Practice - remedy deficiencies and inconsistencies in presenting financial accounts

Across the EU and International, there have also been several draft statements on standards - in 1989 the ICAEW sponsored a report by the US FASB.

The ASC also produced SoRPS, and the IASC has produced 30 standards.

Recommendations and draft papers are recognised by S.256 of the Companies Act, which also allows the Secretary of State to designate certain bodies to consider and recommend statements of accounting practice.

## **2) Accounts**

Accounts are a series of documents that include:

- *A profit and loss account* (or income and expenditure statement if the company is not trading for profit)
- *A balance sheet* signed by a director. If there are any statements about accounting or filing exemptions, they must appear above the director's signature
- *An auditor's report* signed by the auditor (if appropriate). Report must state the names of the auditors or accountants and be signed by them
- *A director's report* signed by a director or secretary of the company
- *Notes to the accounts* and group accounts (if appropriate)

Annual accounts do not have to be put before a general meeting or be agreed by the Inland Revenue, before submission to Companies House.

### Why the Legal Requirements?

In return for the benefits of limited liability, the Registrar of Companies House must make this information available to the public on demand so that they can make "informed" choices about their investments.

Companies House also stipulate that accounts must not be on glossy paper, that black text on white A4 paper should be used, etc. Again, this is for the privilege of limited liability!

### **3) What Types of Companies must keep Accounting Records?**

All limited companies (whether trading or not) must keep accounting records and file accounts for each accounting period.

If the company is public, accounts must be retained for six years.

If the company is private, accounts must be retained for three years.

Investors must be able to determine the financial position of the company, its current economic resources, financial structure, and adapt to changes ... BUT does the past really predict the future?

### **4) Audits**

An audit is an annual report that states:

- Whether company's annual accounts have been properly prepared in accordance with the Companies Act.
- If the company's accounts give a "true and fair view" of the company's financial affairs.
- Whether information given in the director's report is consistent with annual accounts.

Most companies must have accounts audited - except "very small companies" and "dormant" companies.

### *Very small company*

To qualify as a small company, the turnover for financial year must be by £350,000 or less - balance sheet total of £1.4 million or less. (£250,000 gross for charitable companies).

Also note that there are certain exceptions for *medium-sized* companies -they can submit an abbreviated profit and loss account and do not need to disclose full turnover. Small and medium companies accounts of this form also need a "special" auditor' s report submitted to Companies House. If they take advantage of the abbreviated profit and loss account, the directors must make a statement to that effect on the balance sheet, as well as stating they relied on the exemptions to small and medium companies, but full accounts must be available to members of that company.

### *Dormant Company*

A dormant company is one that has not traded during past financial year (unless banking / insurance).

Members can pass a resolution not to appoint auditors. This resolution must be filed with Companies House, and can send an abbreviated balance sheet with the notes. The company must state on its filing return that it was dormant for that period.

## **5) Filing**

If accounts or annual returns are not filed at Companies House - all the directors of the company could be prosecuted. Failure to deliver documents on time is a criminal offence. If convicted, a director could end up with a criminal record and a fine of up to £5,000 for each offence. On average more than 1,000 directors are prosecuted each year for failure to deliver statutory documents to the registrar on time. Accountants and financial advisors do not get prosecuted / penalised for late filing.

During the financial year 1996/97, 560 directors of 431 companies were convicted of failing to deliver documents to Companies House.

"Delivery" of documents only takes place when they reach Companies House - not when they are posted.

Rules and regulations were tightened up with part 2 of the Companies Act 1989. The accounting body is now a Recognised Auditing Supervisory Body and is recognised by the Secretary of State to oversee fitness, proper training / competence and professional accounting qualifications.

## **6) General Principles**

### **Information that must be provided:**

- Any change in the memorandum or article of association
- Any change in the registered office address
- Any new shares issued
- "special", "extraordinary" and certain other resolutions passed by the members
- any appointment, reorganisation or change in the directors or secretary
- any mortgage or charge given over the company' s property

## **7) Annual Return**

The Annual Return is a "snapshot" of the general information about a company, giving details of:

- Directors
- Secretary
- Registered office address
- Shareholders
- Share capital
- The company' s name and registered number
- Its main business activity
- Location of the register of members (if not at the registered office)
- Location of the register of debenture holders (if not at the registered office)

NB - an annual return is not the same thing as the annual accounts

An annual return must be filed every 12 months at either the anniversary of the date of the last return or by the date of the first anniversary of incorporation.

Companies House will send a company a pre-printed form, detailing the information already held on their database. This form must be checked for accuracy and amended if necessary, signed and dated and returned to Companies House within 28 days.

Late or failure to file the annual return may result in the company and its director(s) / secretary being prosecuted.