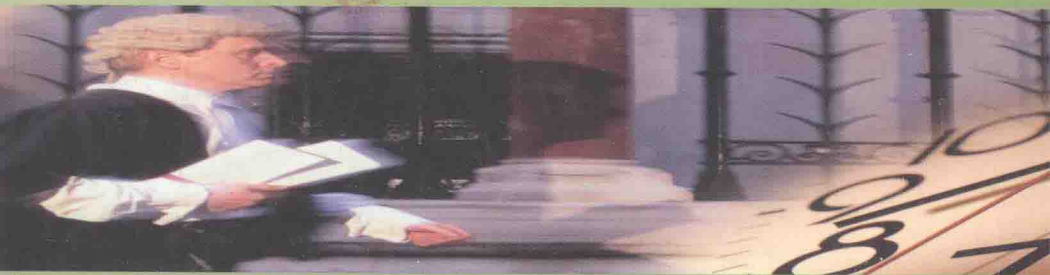


**Tolley's**

# **2003-2004 Company Law Handbook**



by Robert Wareham BSc(Econ), FCA

**Accuracy Clarity Value**

# Tolley's Company Law Handbook 2003–2004

by  
Robert Wareham BSc(Econ) FCA



**Tolley**  
LexisNexis<sup>TM</sup>

## Members of the LexisNexis Group worldwide

United Kingdom	LexisNexis Butterworths Tolley, a Division of Reed Elsevier (UK) Ltd, 2 Addiscombe Road, CROYDON CR9 5AF
Argentina	LexisNexis Argentina, BUENOS AIRES
Australia	LexisNexis Butterworths, CHATSWOOD, New South Wales
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
Canada	LexisNexis Butterworths, MARKHAM, Ontario
Chile	LexisNexis Chile Ltda, SANTIAGO DE CHILE
Czech Republic	Nakladatelství Orac sro, PRAGUE
France	Editions du Juris-Classeur SA, PARIS
Hong Kong	LexisNexis Butterworths, HONG KONG
Hungary	HVG-Orac, BUDAPEST
India	LexisNexis Butterworths, NEW DELHI
Ireland	Butterworths (Ireland) Ltd, DUBLIN
Italy	Giuffrè Editore, MILAN
Malaysia	Malayan Law Journal Sdn Bhd, KUALA LUMPUR
New Zealand	LexisNexis Butterworths, WELLINGTON
Poland	Wydawnictwo Prawnicze LexisNexis, WARSAW
Singapore	LexisNexis Butterworths, SINGAPORE
South Africa	LexisNexis Butterworths, DURBAN
Switzerland	Stämpfli Verlag AG, BERNE
USA	LexisNexis, DAYTON, Ohio

© Reed Elsevier (UK) Limited 2003

All rights reserved. No part of this publication may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of this publication) without the written permission of the copyright owner except in accordance with the provisions of the Copyright, Designs and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency Ltd, 90 Tottenham Court Road, London, England W1P 0LP. Applications for the copyright owner's written permission to reproduce any part of this publication should be addressed to the publisher.

Warning: The doing of an unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland. Any European material in this work which has been reproduced from EUR-lex, the official European Communities legislation website, is European Communities copyright.

A CIP Catalogue record for this book is available from the British Library.

ISBN 0 7545 1738 1

Typeset by Interactive Sciences Ltd, Gloucester

Printed and bound in Great Britain by The Cromwell Press Limited, Trowbridge, Wiltshire

Visit Butterworths LexisNexis *direct* at [www.butterworths.com](http://www.butterworths.com)

---

## About This Book

---

This is the tenth edition of Tolley's Company Law Handbook. It is intended to be a first book of reference for accountants, solicitors, company secretaries and all those involved in company law.

The book includes the provisions of the Companies Acts and all other relevant company law provisions (excluding insolvency) up to and including 1 January 2003. Relevant case law and other important information, including the Listing Rules is also covered.

The chapter on Directors includes coverage of directors' duties and directors' service contracts. This text is based on the chapters in *Tolley's Company Law* written respectively by P L R Mitchell and K Dierden. The author is most grateful to them for permission to use their material.

The book follows the same format and style as Tolley's established tax annuals. Chapters are in alphabetical order for ease of reference to a particular subject and cross-references, an index and a table of statutes provide further ways of quickly finding the matter required.

Comments on the publication and suggestions for improvement of future editions are always welcome.

---

## Future Developments

---

### DTI COMPANY LAW REVIEW

In March 1998, the DTI issued a consultation document entitled *Modern Company Law For a Competitive Economy* which set out the Government's plans for a major review of company law with the aim of developing a simple, modern, efficient and cost effective framework for carrying out business activity in Britain for the 21st century. An independent Steering Group was formed to oversee the management of the Review and it presented its Final Report to the Secretary of State on 26 July 2001.

In response to that final report, on 16 July 2002, the Department of Trade and Industry published a White Paper (*Modernising Company Law*, Cm 5553), which sets out the Government's core proposals for simplifying and modernising company law.

The White Paper is in two volumes. Volume I contains an introduction, followed by an outline of policy on most of the major issues, and a request for comments on some questions where the Government has yet to form a final view. There are then detailed notes explaining the draft Companies Bill clauses set out in Volume II (see below). This is followed by a draft regulatory impact assessment, a summary of questions posed for consultation, and a table to compare the approach taken by a particular part of the current legislation with the corresponding draft clause in the proposed new Bill.

As mentioned above, Volume II sets out draft Companies Bill clauses, some 200 in total. These cover such areas as company formation, the statutory statement of directors' duties, the proposed operating and financial review, meetings, resolutions and written resolutions, and capital maintenance. This is not complete, but the White Paper states that it is preferable to publish those clauses that are ready now, as it gives more time for interested parties to consider the issues raised, and respond to them. The Government expects to publish further draft clauses for consultation, and key draft statutory instruments, over the coming months. These are likely to cover the remaining provisions on accounts as well as new areas, such as company investigations and company management. The White Paper states that once it has received comments on its proposals, it is the Government's 'firm intention to introduce legislation to modernise company law as soon as Parliamentary time permits'.

Amongst the main proposals set out in the White Paper are the following.

- (1) A private company will not have to hold an annual general meeting unless its members want one.
- (2) A company's constitution (currently consisting of its memorandum of association and articles of association) will be a single document.
- (3) Directors' duties will be set out in statute for the first time, and clear guidance will be issued to directors as to what these duties mean.
- (4) Corporate directors will be prohibited.
- (5) The definition of a small company for accounting purposes will be increased to the EU maximum (£4.8 million turnover, £2.4 million balance sheet total, 50 employees).
- (6) The directors' report will be replaced. Small companies will be required to provide a supplementary statement, while the very largest companies will have to provide an Operating and Financial Review, a narrative report on a company's business, performance and future plans.

## Future Developments

- (7) The time allowed for filing accounts will be reduced to seven months for private companies (currently ten months), and six months for public companies (currently seven months).
- (8) A private company will no longer be required to appoint a company secretary.

---

## Abbreviations and References

---

References throughout the book to numbered sections and schedules are to the Companies Act 1985 unless otherwise indicated.

### ABBREVIATIONS

AGM	=	Annual General Meeting
AIM	=	Alternative Investment Market
Art	=	Article
ASL	=	The Financial Service Authority's 'Admission of Securities to Listing' ('Purple Book')
BNA 1985	=	Business Names Act 1985
CA 1948	=	Companies Act 1948
CA 1967	=	Companies Act 1967
CA 1980	=	Companies Act 1980
CA 1985	=	Companies Act 1985
CA 1989	=	Companies Act 1989
CAO	=	Company Announcements Office
CC(CP)A 1985	=	Companies Consolidation (Consequential Provisions) Act 1985
CDDA 1986	=	Company Directors Disqualification Act 1986
Ch	=	Chapter
CS(ID)A 1985	=	Company Securities (Insider Dealing) Act 1985
EA	=	Enterprise Act 2002
EC	=	European Community
ECUs	=	European Currency Units
EEA	=	European Economic Area
EEC	=	European Economic Community
EGM	=	Extraordinary General Meeting
FRS	=	Financial Reporting Standard
FSA 1986	=	Financial Services Act 1986
FSMA 2000	=	Financial Services and Markets Act 2000
FTA 1973	=	Fair Trading Act 1973
IA 1985	=	Insolvency Act 1985
IA 1986	=	Insolvency Act 1986
IA 2000	=	Insolvency Act 2000
ICTA 1988	=	Income and Corporation Taxes Act 1988
LLP	=	Limited Liability Partnership
LLPA 2000	=	Limited Liability Partnership Act 2000
LLPR 2001	=	Limited Liability Partnership Regulations 2001
NI	=	Northern Ireland
No	=	Number
Para	=	Paragraph
POS Regulations	=	Public Offers of Securities Regulations 1995
PPERA 2000	=	Political Parties, Elections and Referendum Act 2000
Pt	=	Part
Reg	=	Regulation
RIS	=	Regulatory Information Service
s(s)	=	Section(s)
Sec	=	Section
Sch	=	Schedule [ <i>4 Sch 10</i> = 4th Schedule, paragraph 10]
SFS	=	Summary Financial Statement
SI	=	Statutory Instrument

SSAP	=	Standard Statement of Accounting Practice
STA 1963	=	Stock Transfer Act 1963
STA 1982	=	Stock Transfer Act 1982
VAT	=	Value Added Tax

## REFERENCES

AC	=	Law Reports, Appeal Cases
All ER	=	All England Law Reports (1936 onwards)
App Cas	=	Law Reports Appeal Cases (1875-90)
BCC	=	British Company Law Cases (CCH Editions Ltd)
BCLC	=	Butterworths Company Law Cases
[1891] Ch	=	Law Reports, Chancery (1891 onwards)
ChD	=	Law Reports, Chancery Division (1876-90)
CLR	=	Commonwealth Law Reports (1903 onwards)
CPD	=	Common Pleas Division (1875-80)
E & B	=	Ellis and Blackburn's Queen's Bench Reports (1852-58)
Ex D	=	Exchequer Division (1875-80)
Hare	=	Hare's Vice-Chancellor's Reports (1841-53)
HL Cas	=	House of Lords Cases (Clark) (1847-66)
[1901] KB	=	Law Reports, King's Bench (1901 onwards)
Lloyd's Rep	=	Lloyd's List Law Reports
LR CP	=	Law Reports, Common Pleas (1865-75)
LR Eq	=	Law Reports, Equity (1865-75)
LR Ex	=	Law Reports, Exchequer (1865-75)
LR HL	=	Law Reports, English and Irish Appeal Cases (1865-75)
LR QB	=	Law Reports, Queen's Bench (1865-75)
LT	=	Law Times (1843 onwards)
Macq	=	Macqueen's Scotch Appeal Cases (1851-65)
[1891] QB	=	Law Reports, Queen's Bench (1891 onwards)
QBD	=	Law Reports, Queen's Bench Division (1876-90)
[1907] SC	=	Court of Session Cases (1907 onwards)
TLR	=	Times Law Reports (1885 onwards)
WLR	=	Weekly Law Reports
WN	=	Weekly Notes (1886 onwards)



---

## Contents

---

### PAGE

iii	About This Book
xii	Abbreviations and References

### CHAPTER

1	Accounting Reference Dates and Periods
2	Accounts: Definitions
3	Accounts: General
4	Accounts: Groups of Companies
5	Accounts: Individual Companies
6	Accounts: Insurance and Banking Companies
6A	Accounts: Limited Liability Partnerships
7	Accounts: Small and Medium-Sized Companies
8	Acquisition of Own Shares
9	Allotment of Shares
10	Annual Returns
11	Articles of Association
12	Auditors
13	Bonus Issues
14	Class Rights
15	Companies not Formed under CA 1985
16	Dealings with Third Parties
17	Debentures and Other Borrowing
18	Definitions
19	Directors
19A	Directors' Remuneration Reports
20	Directors' Report
21	Disclosure of Interests in Public Company Shares
22	Dissolution and Striking Off
23	Distributions
24	Dormant Companies
25	European Community Legislation
26	Fees
27	Formation
28	Forms
29	Guarantee Companies
30	Insider Dealing
31	Investigations
32	Limited Liability Partnerships
33	Meetings
34	Members

35	Memorandum of Association
36	Names and Business Names
37	Open-end Investment Companies
38	Oversea Companies
39	Partnerships
40	Penalties and Legal Proceedings
41	Political Donations
42	Prospectuses and Public Issues
43	Public and Listed Companies
44	Reconstructions and Mergers
45	Records
46	Registered Office
47	Registers
48	Registrar of Companies
49	Registration and Re-Registration
50	Registration of Charges
51	Resolutions
52	Rights Issues
53	Scotland
54	Seals
55	Secretary
56	Share Premium
57	Share Transfers Etc.
58	Shares and Share Capital
59	Takeover Offers
60	Unlimited Companies
61	Unregistered Companies
62	Wales
63	Table of Cases
64	Table of Statutes
65	Table of Statutory Instruments
66	Index

## 1 Accounting Reference Dates and Periods

- 1.1 A company must prepare accounts for each financial year. The financial year is determined by the company's 'accounting reference period' (see 1.2 below) which, in turn, is determined by the selection, or imposition, of an 'accounting reference date' (see 1.3 below). [*Companies Act 1985, s 224(1); Companies Act 1989, s 3*]. Such a date can then only be altered in certain defined circumstances (see 1.4 below).

### 1.2 ACCOUNTING REFERENCE PERIODS

Subject to 1.4 below, a company's first accounting reference period is the period of more than six months, but not more than 18 months, from its date of incorporation to its accounting reference date. Subsequent accounting reference periods are successive periods of twelve months from the end of the previous accounting reference period to the accounting reference date. [*CA 1985, s 224(4)(5); CA 1989, s 3*].

### 1.3 ACCOUNTING REFERENCE DATE

The '*accounting reference date*' is the date on which a company's accounting reference period ends in each calendar year.

**Companies incorporated on or after 1 April 1996.** The accounting reference date of such a company is the last day of the month in which the anniversary of its incorporation falls.

**Companies incorporated before 1 April 1996.** Such a company could, within nine months of incorporation, give notice in the prescribed form to the Registrar of Companies specifying its accounting reference date. Failing such notice, its accounting reference date is

- (i) 31 March for a company incorporated before 1 April 1990; and
- (ii) the last day of the month in which the anniversary of its incorporation falls for a company incorporated after 31 March 1990 and before 1 April 1996.

[*CA 1985, s 224(2)(3)(3A); CA 1989, s 3; SI 1990 No 355, Sch 2, para 4; SI 1996 No 189, Reg 2*].

### 1.4 Alteration of an accounting reference date

A company can, by notice to the Registrar of Companies in the prescribed form (Form 225), specify a new accounting reference date which is to have effect in relation to

- its current and subsequent accounting reference periods; or
- its immediately preceding and subsequent accounting reference periods. This option is not available where the period allowed for laying and delivering of accounts and reports for the immediately preceding period has already expired (normally seven months for public companies and ten months for private companies, see 3.8 ACCOUNTS: GENERAL).

The notice must state whether the current/immediately preceding accounting reference period is to be shortened or extended (i.e. whether it is to end on the first or second occasion on which the new accounting reference date occurs).

**Notice to shorten.** A company may give notice to shorten the current/immediately preceding accounting reference period as often as it likes.

## 1.5 Accounting Reference Dates and Periods

**Notice to extend.** Notice to extend that period is ineffective if given less than five years after the end of an earlier accounting reference period of the company which was extended under these provisions unless

- (a) it is given by a company which is a 'subsidiary undertaking' or 'parent undertaking' (see 4.2 ACCOUNTS: GROUPS OF COMPANIES) of another undertaking established in the EEA and the new accounting reference date coincides with that of the EEA undertaking (or, if that undertaking is not a company, the last day of its financial year);
- (b) the company is in administration under the *Insolvency Act 1986, Pt II*; or
- (c) the Secretary of State allows otherwise.

In any case, unless (b) above applies, an accounting reference period cannot be extended so as to exceed 18 months and any notice attempting to do this is ineffective.

[CA 1985, s 225; CA 1989, s 3; EA 2002, Sch 17 para 3; SI 1996 No 189, Reg 3].

The countries comprising the EEA are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and the UK.

**Listed companies.** Where a company which has listed securities changes its accounting reference date, it must notify the Company Announcements Office without delay of the new accounting reference date. (*The Listing Rules, Chapter 12.60*).

### 1.5 OVERSEA COMPANIES

The provisions in 1.1 to 1.4 above also apply to overseas companies (see 38 OVERSEA COMPANIES) except that

- for the references to the incorporation of a company there should be substituted references to the company establishing a place of business in Great Britain;
- the restrictions in 1.4 above on the frequency with which the accounting reference period may be extended do not apply; and
- the period allowed for filing accounts under 1.4 above is normally 13 months (see 38.38 OVERSEA COMPANIES).

[CA 1985, s 701; CA 1989, Sch 10, para 13].

### 1.6 LIMITED LIABILITY PARTNERSHIPS

The provisions in 1.1 to 1.4 above also apply to an LLP but:

- subject to the general modifications in 32.11(a) LIMITED LIABILITY PARTNERSHIPS;
- in 1.3 above, ignoring the provisions for companies incorporated before 1 April 1996; and
- in 1.4(i) above, for 'laying and delivering accounts' substituting 'delivering the accounts and the auditors' report'.

## 2 Accounts: Definitions

- 2.1 The following definitions apply for the purposes of the *Companies Act 1985, Pt VII* dealt with in 3 ACCOUNTS: GENERAL; 4 ACCOUNTS: GROUPS OF COMPANIES; 5 ACCOUNTS: INDIVIDUAL COMPANIES; 6 ACCOUNTS: INSURANCE AND BANKING COMPANIES; 7 ACCOUNTS: SMALL AND MEDIUM-SIZED COMPANIES and 20 DIRECTORS' REPORT.

**Accounting standards.** References to 'accounting standards' are to statements of standard accounting practice issued by prescribed bodies, and references to 'accounting standards applicable to a company's annual accounts' are to such standards as are, in accordance with their terms, relevant to the company's circumstances and to the accounts. [*CA 1985, s 256(1)(2); Companies Act 1989, s 19*]. The Accounting Standards Board Ltd is a prescribed body for these purposes. [*SI 1990 No 1667*].

**Annual accounts means**

- the individual accounts required under 5.2 ACCOUNTS: INDIVIDUAL COMPANIES, or
- the group accounts required under 4.8 ACCOUNTS: GROUPS OF COMPANIES

and includes notes to the accounts giving information required under *CA 1985*. [*CA 1985, ss 261(2), 262(1); CA 1989, s 22*].

See, however, 4.11 ACCOUNTS: GROUPS OF COMPANIES.

**Annual report** in relation to a company means the directors' report (see 20 DIRECTORS' REPORT). [*CA 1985, s 262(1); CA 1989, s 22*].

**Associated undertaking.** See 4.21 ACCOUNTS: GROUPS OF COMPANIES.

**Balance sheet** includes notes to the accounts giving information required by *CA 1985* and required or allowed to be given in a note to the company's accounts. [*CA 1985, s 261(2); CA 1989, s 22*].

**Capitalisation** in relation to work or cost means treating that work or those costs as a 'fixed asset'. [*CA 1985, s 262(1); CA 1989, s 22*].

**Current assets** mean assets not intended for use as 'fixed assets'. [*CA 1985, s 262(1); CA 1989, s 22*].

**Fellow subsidiary undertakings** are undertakings which are 'subsidiary undertakings' of the same 'parent undertaking' but are not parent undertakings or subsidiary undertakings of each other. [*CA 1985, s 259(4); CA 1989, s 22*].

**Financial year.** A company's first financial year begins on the date of incorporation and ends, subject to below, on its accounting reference date which is more than six months, but not more than 18 months, after that date. See 1 ACCOUNTING REFERENCE DATES AND PERIODS.

Subsequent financial years begin on the day immediately following the end of the previous financial year and, subject to below, end on the next accounting reference date.

Any financial year may, however, end on such other date, not more than seven days before or after the date as above, as determined by the directors. This allows accounts either to be prepared for a 52-week period or always to end on a specific day of the week. [*CA 1985, s 223(1)-(3); CA 1989, s 3*].

In relation to undertakings which are not companies, a reference to its financial year is to any period in respect of which a profit and loss account is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not. [*CA 1985, s 223(4); CA 1989, s 3*].

## 2.1 Accounts: Definitions

**Limited liability partnerships.** The provisions of *CA 1985, s 223* above also apply to an LLP but subject to the general modifications in 32.11(a) LIMITED LIABILITY PARTNERSHIPS.

**Fixed assets** means assets of the company which are intended for use on a continuing basis in the company's activities. [*CA 1985, s 262(1)*; *CA 1989, s 22*].

**Group** means a 'parent undertaking' and its 'subsidiary undertakings' (see 4.2 ACCOUNTS: GROUPS OF COMPANIES).

**Group undertaking** in relation to an 'undertaking' means an undertaking which is

- a 'parent undertaking' or 'subsidiary undertaking' (see 4.2 ACCOUNTS: GROUPS OF COMPANIES) of that undertaking;
- a subsidiary undertaking of any parent undertaking of that undertaking.

[*CA 1985, s 259(5)*; *CA 1989, s 22*].

**Historic cost accounting rules.** See 5.7 ACCOUNTS: INDIVIDUAL COMPANIES.

**Listed investments.** See 5.19 ACCOUNTS: INDIVIDUAL COMPANIES.

**Parent undertakings.** See 4.2 ACCOUNTS: GROUPS OF COMPANIES.

**Participating interest** means an 'interest in shares' of another 'undertaking' held on a long-term basis for the purpose of exercising control or influence over that undertaking's activities. Unless the contrary is shown, a holding of 20% or more of the 'shares' of an undertaking is presumed to be a participating interest.

'Interest in shares' includes an interest which is convertible into an interest in shares and an option to acquire shares or any such interest (even if the relevant shares are unissued until the conversion or exercise of the option).

An interest held on behalf of an undertaking is to be treated as held by it.

For the purposes of the expression 'participating interest'

- in 4.2(e) ACCOUNTS: GROUPS OF COMPANIES (definition of subsidiary undertaking)
  - (a) there is to be attributed to an undertaking any interest held by any of its subsidiary undertakings; and
  - (b) the references above to 'purpose' and 'activities' of an undertaking include the purpose and activities of any of its subsidiary undertakings and of the group as a whole; and
- in the balance sheet and profit and loss formats in 5.4 and 5.5 ACCOUNTS: INDIVIDUAL COMPANIES and 7.6 and 7.7 ACCOUNTS: SMALL AND MEDIUM-SIZED COMPANIES as they apply in relation to group accounts and the definition of associated companies in 4.21 ACCOUNTS: GROUPS OF COMPANIES, the references above to the 'interest held by', and the 'purpose' and 'activities' of, the undertaking concerned are to be construed as references to the interest held by, and the purposes and activities of, the group.

[*CA 1985, s 260*; *CA 1989, s 22*; *SI 1997 No 220, Reg 7*].

**Profit and loss account** includes notes to the accounts giving information required by *CA 1985* and required or allowed to be given in a note to the company's accounts. [*CA 1985, s 261(2)*; *CA 1989, s 22*].

**Provisions.**

- References to provisions for depreciation or diminution in value of assets are to any amount written off by way of providing for depreciation or diminution in value of assets.

- References to provisions for liabilities or charges are to amounts retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

[CA 1985, Sch 4, paras 88, 89].

See also 6.4 and 6.62 ACCOUNTS: INSURANCE AND BANKING COMPANIES for similar definitions applicable to insurance companies and banking companies respectively.

**Qualified** in relation to an auditors' report means that the report does not state the auditors' unqualified opinion that the accounts have been properly prepared in accordance with CA 1985 or, in the case of an 'undertaking' not required to prepare accounts under that Act, under any corresponding legislation. [CA 1985, s 262(1); CA 1989, s 22].

**Quoted company.** A quoted company means a company whose equity share capital

- has been included in the official list in accordance with the provisions of *FSMA Act 2000, Part VI*; or
- is officially listed in an EEA State; or
- is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq

[CA 1985, s 262(1); SI 2002 No 1986, Reg 10].

**Realised profit and realised loss** in relation to a company's accounts are to such profits or losses as fall to be treated as realised in accordance with principles generally accepted, at the time when the accounts are prepared, with respect to their determination. [CA 1985, s 262(3); CA 1989, s 22].

**Shares.** References to shares

- in relation to an 'undertaking' with a share capital, are to allotted shares;
- in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
- in relation to an undertaking without capital, are to interests
  - (a) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking, or
  - (b) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

[CA 1985, s 259(2); CA 1989, s 22].

**Subsidiary undertakings.** See 4.2 ACCOUNTS: GROUPS OF COMPANIES.

**Turnover** in relation to a company means the amount derived from the provision of goods and services falling within the company's ordinary activities, after deducting trade discounts, VAT and other taxes based on the amounts so derived. [CA 1985, s 262(1); CA 1989, s 22].

**Undertaking** means

- a body corporate or partnership; or

## 2.1 Accounts: Definitions

- an unincorporated association carrying on a trade or business with or without a view to profit.

Where an undertaking is not a company, expressions appropriate to companies must be construed as references to the corresponding persons, officers, document or organs, as the case may be, appropriate to the undertaking in question.

[*CA 1985, s 259(1)(3); CA 1989, s 22*].



### 3 Accounts: General

Cross-references. See 2 ACCOUNTS: DEFINITIONS; 4 ACCOUNTS: GROUPS OF COMPANIES; 5 ACCOUNTS: INDIVIDUAL COMPANIES; 6 ACCOUNTS: INSURANCE AND BANKING COMPANIES; 7 ACCOUNTS: SMALL AND MEDIUM-SIZED COMPANIES; 45.1 to 45.4 RECORDS for accounting records.

The contents of this chapter are as follows.

- |          |  |
|----------|--|
| 3.1      | Introduction   |
| 3.2      | Approval and signing of accounts                                 |
| 3.3–3.5  | Publication of accounts and reports                              |
| 3.6      | Laying of accounts and reports before company in general meeting |
| 3.7      | Delivery of accounts and reports to the Registrar of Companies   |
| 3.8      | Period allowed for laying and delivering accounts and reports    |
| 3.9–3.11 | Revision of defective accounts and reports                       |
| 3.12     | Accounting standards   |
| 3.13     | True and fair view   |

#### 3.1 INTRODUCTION

The provisions described in this chapter cover the requirements which relate to accounts generally, whether individual or group. The Secretary of State has power to modify the provisions by Regulations. [*Companies Act 1985, s 257; Companies Act 1989, s 20*].

#### 3.2 APPROVAL AND SIGNING OF ACCOUNTS

A company's annual accounts must be approved by the board and signed on its behalf by a director, the signature appearing on the balance sheet. Every issued copy of the balance sheet must state the signatory's name; the copy delivered to the Registrar of Companies (see 3.7 below) must be signed. If a copy of the balance sheet is laid before the company in general meeting, otherwise circulated, published or issued, or delivered to the Registrar, without satisfying these provisions, the company and every officer in default is liable to a fine up to the level in 40.1(g) PENALTIES.

Every director who is party to the approval of accounts which do not comply with the requirements of *CA 1985* and who is aware of their non-compliance or reckless as to whether they comply, is liable to a fine up to the level in 40.1(d) PENALTIES. Every director of the company at the time the accounts are approved is regarded as being party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

[*CA 1985, s 233, Sch 24; CA 1989, s 7*].

#### 3.3 PUBLICATION OF ACCOUNTS AND REPORTS

**Persons entitled to receive copies.** A copy of the annual accounts, directors' report, (in the case of a quoted company) directors' remuneration report, and auditors' report must be sent, at least 21 days (but see below) prior to the general meeting at which copies of those documents are to be laid (see 3.6 below), to

- every member of the company;
- every debenture-holder; and
- every person entitled to receive notice of general meetings.

[*CA 1985, s 238(1)(IA); CA 1989, s 10; SI 2002 No 1986, Reg 10*].