

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and sections 473(3), 1069, 1290 and 1292(4) of the Companies Act 2006 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COMPANIES PARTNERSHIP

The Reports on Payments to Governments Regulations 2014

Made - - - - *****
Coming into force - - *1st December 2014*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation⁽²⁾.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, sections 15 and 17 of the Limited Liability Partnerships Act 2000⁽³⁾ and sections 468, 1069 and 1105 of the Companies Act 2006⁽⁴⁾.

In accordance with paragraph 2(2)⁽⁵⁾ of Schedule 2 to the European Communities Act 1972, section 17(4) of the Limited Liability Partnerships Act 2000 and sections 473(3), 1069(3), 1290 and 1292(4) of the Companies Act 2006, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Reports on Payments to Governments Regulations 2014.

(2) These Regulations come into force on 1st December 2014.

(1) [1972 c.68](#). Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) and by Part 1 of the Schedule to the European Union (Amendment) Act [2008 \(c.7\)](#). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act [1993 \(c.51\)](#).
(2) [S.I. 2007/193](#).
(3) [2000 c.12](#). Section 17 was amended by [S.I. 2009/1804](#).
(4) [2006 c.46](#).
(5) Paragraph 2(2) was amended by section 27(c) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#).

Interpretation

2.—(1) In these Regulations—

“the Act” means the Companies Act 2006;

“affiliated undertakings” means any two or more undertakings within a group;

“Companies Act accounts” has the meaning given by sections 395(1)(a) and 403(2)(a) of the Act;

“consolidated report” has the meaning given in regulation 8;

“the Directive” means Directive 2013/34/EU of the European Parliament and of the Council of 26th June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings⁽⁶⁾;

“director” means—

(a) in relation to a company—

- (i) a director of the company, and any person occupying in relation to it the position of a director (by whatever name called), and
- (ii) any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the company are accustomed to act;

(b) in relation to a limited liability partnership, a member;

(c) in relation to a limited partnership, a general partner; and

(d) in relation to a partnership, a partner;

“electronic means” has the meaning given in section 1168 of the Act;

“equivalent reporting requirements” are reporting requirements in non-member States that are equivalent to the requirements of Chapter 10 of the Directive and which have been assessed by the European Commission as being equivalent in accordance with Article 47 of the Directive;

“general partner” has the same meaning as in the Limited Partnerships Act 1907⁽⁷⁾;

“government” means any national, regional or local authority of a country, and includes a department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking;

“group” means a parent undertaking and all its subsidiary undertakings;

“IAS accounts” has the meaning given in sections 395(1)(b) and 403(1) and (2)(b) of the Act;

“large undertaking” means an undertaking that meets at least two of the three following criteria

- (a) its balance sheet total on its balance sheet date exceeds £18 million;
- (b) its net turnover on its balance sheet date exceeds £36 million;
- (c) the average number of employees during the financial year to which the balance sheet relates exceeds 250;

“limited partnership” means a partnership formed in accordance with the Limited Partnerships Act 1907;

“logging undertaking” means an undertaking which undertakes in primary forests the activity referred to in Section A, Division 02, Group 02.2 of Annex 1 to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20th December 2006 establishing the

⁽⁶⁾ OJ L 182 29.06.2013 p.19.

⁽⁷⁾ 1907 c.24.

statistical classification of economic activities NACE Revision 2⁽⁸⁾ as set out in Table 1 in the Schedule to these Regulations;

“mining or quarrying undertaking” means an undertaking which performs any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the activities listed in Section B, Divisions 05 to 08 of Annex 1 to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20th December 2006 establishing the statistical classification of economic activities NACE Revision 2 as set out in Table 2 in the Schedule to these Regulations;

“net turnover” means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover;

“parent undertaking” has the meaning given in the Act, but is to be read as if “undertaking” has the meaning given in these Regulations;

“partnership” means a partnership within the Partnership Act 1890⁽⁹⁾;

“payment” means an amount paid, whether in money or in kind, for relevant activities, where the payment is any of the following types—

- (a) production entitlements;
- (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
- (c) royalties;
- (d) dividends, other than dividends paid by an undertaking to a government as an ordinary shareholder of that undertaking, where—
 - (i) the dividend is paid to the government on the same terms as to other ordinary shareholders, and
 - (ii) the dividend is not paid in lieu of production entitlements or royalties;
- (e) signature, discovery and production bonuses;
- (f) licence fees, rental fees, entry fees and other considerations for licences or concessions; or
- (g) payments for infrastructure improvements;

“primary forest” means a forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed;

“project” means the operational activities which—

- (a) are governed by a single contract, licence, lease, concession or similar legal agreement, and
- (b) form the basis for payment liabilities with a government;

“public interest entity” means an undertaking—

- (a) whose transferable securities are admitted to trading on a regulated market of any member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments⁽¹⁰⁾;
- (b) that is a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking

⁽⁸⁾ OJ L 393, 30.12.2006, p.1, as last amended by Regulation (EU) No 70/2012.

⁽⁹⁾ 1890 c.39.

⁽¹⁰⁾ OJ L 145 30.04.2004 p.1, as last amended by Directive 2010/78/EU.

up and pursuit of the business of credit institutions⁽¹¹⁾, other than those referred to in Article 2 of that Directive; or

- (c) that is an insurance undertaking within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19th December 1991 on the annual accounts of insurance undertakings⁽¹²⁾;

“the registrar” has the meaning given in section 1060 of the Act;

“relevant activities” means—

- (a) the activity as set out in Table 1 in the Schedule to these Regulations within primary forests; or
- (b) any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the activities listed in Table 2 in the Schedule to these Regulations;

“report” has the meaning given in regulation 4;

“subsidiary undertaking” has the meaning given in the Act, but is to be read as if “undertaking” has the meaning given in these Regulations;

“undertaking” means—

- (a) a limited company;
- (b) a limited liability partnership;
- (c) a limited partnership, each of whose general partners is—
 - (i) a limited company,
 - (ii) an unlimited company, each of whose members is a limited company,
 - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
 - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;
- (d) a partnership, each of whose partners is—
 - (i) a limited company,
 - (ii) an unlimited company each of whose members is a limited company,
 - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
 - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;
- (e) an unlimited company, each of whose members is—
 - (i) a limited company,
 - (ii) an unlimited company each of whose members is a limited company,
 - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
 - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;

(2) The references in paragraphs (c)(i) to (iv), (d)(i) to (iv) and (e)(i) to (iv) of the definition of “undertaking” to a limited company, an unlimited company, a Scottish partnership which is not

(11) OJ L 177 30.06.2006 p.1.

(12) OJ L 374 31.12.1991, p.7, as last amended by Directive 2006/46/EC.

a limited partnership or a Scottish partnership which is a limited partnership include a comparable undertaking incorporated in or formed under the law of a country or territory outside the United Kingdom; and in relation to such an undertaking the references in those paragraphs to the members and general partners are to be construed as references to the members of the undertaking comparable to members or general partners.

(3) An undertaking which is a large undertaking in a financial year does not cease to be a large undertaking because it no longer meets at least two of the criteria in the definition of “large undertaking” in the following financial year.

(4) But if a large undertaking ceases to meet at least two of the criteria in the definition of “large undertaking” in two consecutive financial years, it ceases to be a large undertaking on the first day of the financial year immediately following the second of those consecutive years.

(5) If agreements of the kind referred to in the definition of “project” are substantially interconnected, those agreements are treated for the purposes of these Regulations as a single project.

(6) For the purpose of paragraph (5), “substantially interconnected” means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities.

(7) Such agreements may be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.

Application and transitional provision

3.—(1) These Regulations apply in relation to a financial year of an undertaking beginning on or after 1st January 2015 subject to paragraph (2).

(2) These Regulations do not apply in relation to a financial year beginning before 1st January 2016 of an undertaking that is a subsidiary undertaking and whose parent undertaking is required to prepare consolidated group accounts in a member State other than the United Kingdom.

PART 1

REPORT ON PAYMENTS TO GOVERNMENTS

Duty to prepare report on payments to governments

4. The directors of an undertaking must prepare a report annually on payments made to governments for each financial year of the undertaking (the “report”) if that undertaking is—

- (a) a large undertaking or a public interest entity; and
- (b) a mining or quarrying undertaking or a logging undertaking.

Content of report

5.—(1) For each financial year, the report must state the following information in relation to the relevant activities of the undertaking—

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment made to each government; and