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BOARDROOM UPDATE

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BUSINESSLAW FOR BUSINESSLEADERS

Next stage for the Companies Act 2006

A number of further provisions of the Companies Act 2006 (CA 2006) comes into force on 1 October 2008. Latest changes have immediate implications and tighten some of the existing potential consequences for company secretaries and directors.

Sections 175 to 177 CA 2006 set out the remaining three statutory duties for directors that have yet to be introduced. These are: to avoid conflicts of interest, not to accept benefits from third parties and a duty to declare an interest in a proposed transaction/s or arrangement/s.

While public limited companies will require appropriate enabling provisions in their articles of association before directors can authorise these conflicts, private companies incorporated after 1 October 2008, provided there is nothing in the articles prohibiting authorisation by the directors, need take no further action. For private companies incorporated prior to this date, the members will be required to pass an ordinary resolution to permit authorisation by the directors.

In preparation, it is recommended that each director is asked to prepare a list of positions he or she holds and of conflict situations that he or she thinks may need to be authorised. In addition they must also consider if any connected person holds positions that could lead to the director being in breach of s 175.

The Companies (Trading Disclosures) Regulations 2008 (SI 2008/No. 495) are made under s 82 of CA 2006 and replace the relevant provisions of the Companies Act 1985 (CA 1985) and the Business Names Act 1985 in connection with trading disclosure requirements. The Regulations, available at www.opsi.gov.uk, prescribe the standard and manner of disclosures that must be made in company documentation, a company's registered office or business location and on a company's website.

Section 155 of CA 2006 requires that, with effect from 1 October 2008, every company must have at least one director who is a natural person, ie not a corporate body. There is a grace period for those companies that did not have a natural person as a director on 8 November 2006 (the date of the Act's Royal Assent) but these companies need to comply by 1 October 2010 at the latest.

Naturally, all changes and amendments need to be studied and implemented but specific and immediate action and attention should be given to the following areas highlighted in the table below, to be prepared for 1 October deadline.

CA 2006 - October focus

- ✔ Objections to company names (ss 69 to 74) – objections can now be raised by a person who has goodwill attached to a name.
- ✔ Trading disclosures (ss 82 to 85) – check company details displayed on website, stationery and place of business, etc.
- ✔ Appointment of directors (ss 155 to 159) – check register of directors of all group companies within the group and ensure no sole corporate director in office.
- ✔ General duties of directors (ss 175 to 177) – review articles and update to enable authorisation of conflicts.
- ✔ Duty of directors to declare interests in an existing transaction or arrangement (ss 182 to 187) – adopt a more formal policy regarding the identification and disclosure of existing and proposed transactions/arrangements.
- ✔ Reduction of share capital for private companies (s 641(1)a and (2)-(6), s 642, s 643 and s 652 – option for directors to make solvency statement and no court order required.
- ✔ Repeal of the restrictions under Companies Act 1985 on financial assistance for acquisition of shares in private companies, including the 'whitewash' procedure – No change for plcs.
- ✔ Repeal of the current time bar on the restoration of dissolved companies before 16 November 1969. NB: New provisions for the restoration of companies not coming into effect until 1 October 2009.

COMPANY

2009 Dividend Timetable

On 1 September 2008 the London Stock Exchange published its dividend procedure timetable for 2009. The timetable applies to UK companies with shares listed on the Main Market and those companies admitted to trading on AIM. It also applies to overseas issuers which are primary listed on the Main Market or admitted to trading on AIM.

A company's dividend timetable which follows the guidelines set out in the 2009 timetable need not be notified to the LSE in advance provided the required dividend information is disseminated via a primary information provider under the correct headline. The announcement should include the dividend amount (net or gross), record date, pay date and the availability of any Scrip, DRIP or Currency Elections.

Overseas issuers who are secondary listed on the Main Market or AIM should follow the rules for dividends as defined by the market on which they are primary listed.

Details of the procedures to be followed and what information is to be included in the announcement can be found in Rule 3.8 of the Exchange's Admission and Disclosure Standards for companies on the Main Market and Rules 24 and 25 (and notes to these rules) in the AIM rule book for companies listed on AIM.

The guidance issued by the London Stock Exchange states that companies should aim to pay straightforward cash dividends within 30 business days of the record date and dividends with options within 20 days of the election date, which should be after the record date. Although these recommendations are not mandatory, the Stock Exchange believes the timescales are achievable for all companies and produce advantages for issuers and the market as a whole.

Any payment for fixed interest and debt securities must be notified to the Exchange no later than seven business days prior to the record date. Where fixed payment details are available the issuer may use one timetable to inform the Exchange of all future payments.

Dividend timetables which fall outside these guidelines must be cleared by the London Stock Exchange. The timetable includes guidelines on dealing with dividend options, record and payment dates and any payment for fixed interest and debt securities, as set out above.

The 2009 Procedure Dividend Timetable with guidelines on how to use the timetable can be found on the London Stock Exchange website: www.londonstockexchange.com.

Updated Combined Code

As a result of a review of the impact and effectiveness of the Combined Code, the current version has been updated. This means at present there are two versions of the Code; the 2006 edition which applies to accounting periods beginning on or after 1 November 2006 and the June 2008 edition which applies to accounting periods beginning on or after 29 June 2008. Both versions can be downloaded from www.frc.org.uk/corporate/combinedcode.cfm.

The updated version removes the restriction on an individual chairing more than one FTSE100 company. For listed companies outside the FTSE350, the Code will now allow a company chairman to sit on, but not chair the audit committee where he or she is considered to be independent on appointment.

Shareholder dispute resolution

Despite CA 2006 permitting companies to specify in their articles that all disputes with shareholders must be resolved through arbitration, a number of significant industry bodies including the ABI and the NAPF regard such changes to articles as a material reduction to shareholders' rights. As a result, NAPF has made amendments to Section D of their Corporate Governance Policy published in 2007.

While the main provisions remain unchanged, an additional clause has been inserted which clearly states that the introduction or maintenance of this permitted provision, prescribing arbitration as the sole mode for settlement of all or a significant class of disputes between shareholders, should be viewed in the first instance 'as a material reduction in shareholder rights'.

Boiler room scams

The FSA, the ICSA and the UK Registrars have produced a simple warning flyer for shareholders explaining what a 'boiler room' is and how to avoid them. The flyer is an updated version of an earlier notification produced by the FSA/ICSA in 2006. The updated warning which can be viewed at www.moneymadeclear.fsa.gov.uk summarises the main elements of share scams, explains how shareholders and investors can protect themselves and also gives the names of unauthorised firms operating in the UK.

Disclosure and Transparency Rules

The FSA has recently consulted on new disclosure rules to implement parts of the Statutory Audit Directive and the Company Reporting Directive. The key changes will be introduced in a new chapter 7 to the Disclosure and Transparency Rules with a new chapter DTR 1B setting out those companies to which the new rules apply. In the UK this will broadly be listed companies and not those on AIM.

Rights of inspection

In a recent case, the Court of Appeal held that directors can refuse to allow fellow directors to inspect company accounting records if the purpose of the proposed inspection is improper.

Despite the right conferred by s 222 of CA 1985 that permits a director to inspect the books of the accounts of the company to enable him to carry out his duties, and that includes the protection of the interests of the company and its shareholders, the Court of Appeal in Oxford Legal Group Ltd v Sibbasbridge Services Plc [2008] EWCA Civ 387, held that there was clear reasoning to say that the purpose of inspection appeared to be to achieve some collateral advantage in the parallel proceedings in another petition.

Executive remuneration

The ABI and the NAPF have updated their joint statement on best practice on executive contracts and severance for listed companies. The statement is aimed at assisting boards and remuneration committees with the design and appli-

cation of contractual obligations for senior executives. The revised 2008 version can be seen at: www.ivis.co.uk/executivecontractsandseverance.aspx.

Participation in SAYE schemes

The ifs ProShare's 2007 editions of its annual surveys of Save As You Earn and Share Incentive Plan schemes have revealed that 5m UK employees are currently participating in some form of employee share plan and the average amount saved per month is over £80. Participation in SAYE schemes also rose significantly with 2.3m people taking part, an increase of 600,000 on 2006.

EMI guidance

Section 33 of the Finance Act 2008 amends Schedule 5 of the Income Tax (Earnings and Pensions) Act 2003 to insert the new 250 employees limit for Enterprise Management Incentive Schemes.

HMRC have updated the EMI guidance to include information on how the new limit is to be calculated. Directors (including non executive directors) are to be counted as employees but apprentices, students on vocational training and employees on maternity or paternity leave at the time an option is granted are not to be counted.

The guidance also states that a full-time employee is someone whose standard working week (excluding lunch breaks and overtime) is at least 35 hours. However an employee who works more than 35 hours per week will still only count as one full-time employee. For part-time employees, the full-time equivalent should be calculated on a 'just and reasonable basis'. For example, someone working four days a week (28 hours in total) would count as 80% of a full-time employee.

EMPLOYMENT

Flexible working consultation

Employment Relations Minister, Pat McFadden, has said he would seek views from business to explore ways to make dealing with flexible working requests easier.

As part of a consultation published at the end of August and following on from the Government's announcement that it would extend the right to request flexible working to parents with children who are 16 and under, he stated that, "Parenting requirements don't end as children get older. We think it is right to extend this successful scheme and help parents of older children access the flexibility they need."

The consultation will also consider ways to raise awareness of the right to request flexible working among employees and BusinessLink.gov.uk provides guidance which can help save time, money and stress and avoid businesses paying for professional external advice.

The consultation will also consider whether to scrap the requirement that employers write formally to staff to advise their request has been accepted. Further information: www.berr.gov.uk/files/file47434.pdf.

Change to maternity rights

In light of the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008, which came into force on 23 July 2008, employers may need to review employment handbooks or maternity policy documentation.

Since the amendments take effect in relation to employees whose expected week of childbirth begins on or after 5 October this year, the immediate change for companies to be aware of is the extension of rights to receive non-cash benefits whilst taking additional maternity leave. Terms and conditions relating to remuneration, such as pensions, are not included.

Age Concern still fighting

Age Concern's fight against forced retirements, led by the charity's retirement arm, Heyday, took a step forward recently when their legal challenge against the UK Government, reached the European Court of Justice in Luxembourg.

The next stage of the case will come in late September 2008 when the Advocate General will publish his opinion on the case, with a judgement hopefully published before the end of the year.

The Court of Appeal decided in Johns v Solent SD Limited [2008] EWCA Civ 790 that this case should be put on hold pending the outcome of the ECJ decision on whether the UK's default retirement age of 65 is lawful. The eventual outcome could mean that as many as 260 cases on hold with employment tribunals, could be finally resolved. Although the ECJ is expected to give its judgement before the end of the year, the case will then have to revert to the High Court, meaning that it is likely to be mid-2009 at the earliest before the final verdict is known.

Pensions news

The European Court of Justice recently ruled that a gay man who was refused survivor's pension rights following the death of his life partner had been discriminated against. Tadao Maruko and his partner had entered into a registered life partnership, the equivalent in German law of a civil partnership in the UK, but when Maruko's partner died in 2005 his pension fund rejected Maruko's application for a widower's pension. The court found that the scheme in question should be regarded as pay related to employment and that the fund therefore fell within the scope of the General Equal Treatment Directive which prohibited discrimination on the grounds of sexual orientation.

Although the ECJ's decision was helpful to Mr Maruko the ECJ said it was for the German court to decide whether, under German legislation, a life partner and a spouse were in comparable situations. The indications are that the German court may well decide that they are comparable in this way. The precise implications of the ruling may take some time to unravel because legislation on same sex couples varies across the EU ranging from full marriage rights in countries such as the Netherlands to no recognition in Austria and most Eastern European states. In the UK the Civil Partnership Act extends to civil partners' state pension benefits available to married couples, however occupational pension funds have retained discretion to provide for different rules for same sex couples (Tadao Maruko v Versorgungsandalt der deutschem Buhnen, C-267/06).

Employers to be shamed

The UK Border Agency of the Home Office has published on its website details of employers who have been issued with notices of liability and the civil penalties imposed for employing illegal workers.

Employers recruiting skilled staff from outside the European Economic Area (EEA) have until 1 October 2008 to qualify for the new sponsorship register.

A civil penalty system for employers was introduced on 29 February 2008. Employers found to be using illegal migrant workers will be served with a notification of potential liability by immigration staff carrying out enforcement and compliance visits. A civil penalty of up to £10,000 for each illegal worker can be imposed.

The new penalty scheme sits alongside a tough new criminal offence of knowingly employing an illegal migrant worker (s 21 of the Immigration, Asylum and Nationality Act 2006). This will be used in the more serious cases where rogue employers knowingly and deliberately use illegal migrant workers, often for personal financial gain, and will carry a maximum two year custodial sentence and/or an unlimited fine. The Agency have promised to regularly publish the details of employers who have been found to be liable for the payment of the penalty.

Silence not golden when it costs

The estimated 60% of British businesses that have so far failed to adopt whistle-blowing policies will now be able to refer to a new whistleblowing code of practice developed by Public Concern at Work and the BSI. PAS1998:2008 'Whistleblowing Arrangements' produced by the BSI British Standards and the independent authority, Public Concern at Work.

The launch of the Code marks the tenth anniversary of the Public Interest Disclosure Act and identifies whistle-blowing as a key element in any organisation's risk management armoury and shows how it can be a vital tool in combating fraud and crime. The Code can be downloaded free of charge from www.pcaw.co.uk/bsi and presents information to employers on how to implement, run and review effective policies and highlights the key elements of effective whistleblowing arrangements.

Employee disclosure note

The Information Commissioner's Office has published a good practice note on the data protection implications when employers have to provide information about their employees according to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Under TUPE, information on the employees must be provided to the new employer no later than 14 days prior to the transfer taking place. Information such as identity and age, plus a statement of pay, hours of work, holidays and so on must be provided. Some people have feared this requirement breaches data protection principles and the ICO's guidance explains what organisations need to do to ensure that they provide the required information in a way that is consistent with the Data Protection Act 1998.

Restrictive covenants

There have been two interesting cases recently which provide both a useful reminder of some of the key principles in relation to enforcement of restrictive covenants as well as raising some new issues.

Both highlight the importance of ensuring that restrictive covenants are well-drafted. In the case of Norbrook Laboratories (GB) Limited v (1) Adair (2) Pfizer Limited [2008] EWHC 978 (QB) a sales manager working for Norbrook resigned and took up a sales position with Pfizer. Her former employer tried to enforce non-solicitation and non-competition clauses. The non-competition clause was deemed too wide and therefore unenforceable, but the non-solicitation clause, once certain phrases had been removed since it protected a legitimate interest, was held to be enforceable.

In a further case, WRN Ltd v Ayris, restrictive covenants were held to be unreasonably wide because they sought to prevent Mr Ayris from having contact with any of WRN's customers irrespective of whether he had dealt with them personally.

Ex-employee to hand over contacts

A recent decision by the High Court is one of the first to highlight the tension between businesses encouraging employees to use social networking websites for work but then claiming that the contacts remain confidential information at the end of their employment.

The case involved a Mr Ions, an employee of recruitment firm Hays, who told the court that Hays encouraged his use of the social networking site Linkedin and that once Hays' contacts accepted his invitation to join his network they ceased to be confidential as they could be contacted by anyone in his personal network.

It was alleged that Mr Ions, a "middle ranked" consultant operating in Leeds, Newcastle and Edinburgh, had used his LinkedIn network to approach clients for his own rival agency, which he set up in May last year, three weeks before resigning from Hays Specialist Recruitment.

Hays, in taking action against Mr Ions, contended that he had actively taken steps to gather confidential contact details while still employed with Hays, both uploading these details onto his personal LinkedIn network and encouraging Hays' clients and contacts to join him on the site as a means of furthering his own personal business agenda.

The Hays v Ions case is the first time that a disclosure order has been obtained from the court before legal proceedings have been issued to obtain information held on a networking site.

The Court has ordered the disclosure of documents evidencing the business contacts maintained by Mr Ions on the LinkedIn website since the time he resigned from his position. However it refused to allow disclosure of Mr Ions' entire database as this would amount to 'a fishing expedition'.

It is likely that the judgment will be noted by all employers keen to police their employees' activities online. When information is put up online and is shared, it's become harder for the employer to claim it is confidential.

Credit crunch impact on executive pay

According to research from Deloitte, directors of the UK's largest companies enjoyed pay rises well above inflation last year but salary growth has slowed.

The average pay increase for bosses of the largest 350 companies on the FTSE share index was 6.2%, down from 7%. Carol Arrowsmith, head of Deloitte's remuneration team says that, "It is possible that we have now reached the high water mark and that the world of executive remuneration may begin to change."

Union leaders and some politicians argue that bosses paid huge sums are out of step with many staff whose take-home pay is now falling in real terms while pay hikes at banks are unacceptable at a time when many have made large losses.

"There may be tension as the gap widens between the expectations of shareholders and executives," Deloitte said, "Shareholders will be looking very carefully at the levels of payout in the coming year and will expect to see a very strong link between payout and performance."

Chancellor Alistair Darling has called for pay restraint "from the boardroom to the shop floor" to keep inflation under control. Nevertheless, Deloitte found that one in four bosses of FTSE 100 firms saw their annual bonus rise last year, the average payout being about 70-80% of their yearly salary. (Further information at www.deloitte.com)

Diversity good for business

A joint report from the CBI and the TUC, supported by the Equality and Human Rights Commission, suggests promoting diversity in the workplace can bring real business benefits.

The report *Talent not Tokenism* identifies some key ingredients for bringing about change, including leadership from senior management and employee involvement, especially through unions and other workforce representatives.

One of the important aspects is that it stresses that promoting diversity need not be expensive, complex or legally complicated. It makes clear that it is positive action that improves diversity and presents case studies of employers who have developed a more balanced workforce. The report cites improved morale and productivity; lower staff turnover; reduced recruitment costs; a better understanding of customers' needs and entry to previously inaccessible markets. *Talent not Tokenism* can be downloaded at: www.equalityhumanrights.com

Maternity/paternity leave imbalance

Dr Nicola Brewer, chief executive of the Equality and Human Rights Commission has claimed that women's careers are suffering because of the extension to maternity leave rights. Whilst mothers can take a year's leave for each child, fathers are only entitled to a maximum of two weeks off.

She has claimed that current laws had made women a 'less attractive prospect in the workplace' and that the above imbalance reinforces the stereotype that it is women who assume the role of primary carer for children. Legislative change may be needed to address the issue, she suggested, allowing parents to share maternity entitlement between them.

DATA PROTECTION

Data protection review

The European Commission is conducting a review of Europe's data protection laws. Richard Thomas, the UK's Information Commissioner, has employed research organisation Rand Europe to carry out a study of the strengths and weaknesses of the law to feed into the review.

In a recent speech, Mr Thomas observed that, "European data protection law is increasingly seen as out of date, bureaucratic and excessively prescriptive. It is showing its age and is failing to meet new challenges to privacy, such as the transfer of personal details across international borders and the huge growth in personal information online".

New powers for information commissioner

The Criminal Justice and Immigration Act 2008 which received Royal Assent on 8 May, has given greater enforcement powers to the Information Commissioner. The recent spate of high profile information security breaches sharply illustrated the Commissioner's limited powers under the Data Protection Act 1998, particularly when contrasted with the much greater powers enjoyed by other EU Data Protection Regulators.

The new powers under the 2008 Act will enable the Commissioner to impose a monetary penalty on data controllers if, amongst other things, he is satisfied that there has been serious contravention of one of the eight data protection principles in the 1998 Act. The new Act also introduces tougher sanctions for unlawfully obtaining or disclosing personal data as a result of concerns about the growing illegal trade in personal data and can be viewed at www.opsi.gov.uk/acts

Identity fraud

An analysis of over 10,000 ID fraud cases by global information services company Experian, has shown that directors of companies with more than 50 employees are almost five and a half times more likely to become a victim of identity fraud than the average UK resident. Directors of small companies are only two and half times more likely to be affected.

The report also reveals that London residents are the most likely to be defrauded, being twice as likely to fall victim to identity fraud than people living in the rest of the UK. Experian says that it is absolutely vital that company directors regularly monitor their credit reports so that they can spot and take action at the first signs of fraud.

HEALTH AND SAFETY

Asbestos – 'Boltonites'

A series of test claims are being heard in the High Court that could dictate how much a company can recover from insurers in the event of a claim by an employee or third party suffering from the fatal asbestos-related disease, mesothelioma.

These test cases follow the Court of Appeal's 2006 judgement in Bolton MBC v Municipal Mutual Insurance & Commercial Union relating to 'injury occurring' wording in an insurance policy. It was held that the date of injury is not the date of exposure to asbestos because the lungs are not damaged until a tumour starts to develop. The medical evidence was that the first date of injury is sub-clinical malignancy, which occurs at an average point of 10 years prior to the onset of symptoms.

Following the judgement, some insurers refused indemnity for mesothelioma claims where only the date of exposure, and not the date of injury, fell within the policy period. These insurers became known as the 'Boltonites'. If a Boltonite position is upheld, employers may either have to self-fund the black hole or buy top-up cover, in effect paying twice for their mesothelioma liabilities. Because of the significance of the matters involved, the test cases are likely to progress to the Appeal Courts. In the political context, the potential for asbestos victims being left uncompensated may result in Government intervention.

Lack of training is expensive

According to a survey undertaken by The British Safety Council, British businesses are losing £250 a second in costs and payouts for needless accidents in the workplace. The Council was 'shocked' to find that half of all employers had not even bothered to offer training, despite the fact they could be saving billions of pounds in payouts and costs. 62% of workers had received little or no health and safety training from their employers. Workers in the construction industry or small and medium-sized companies were found to be most at risk.

COMPETITION LAW

Fighting cartels

A new product has been launched that will insure specifically against the financial risks of cartel litigation. Businesses that have been charged excessively for goods and services because of 'price-rigging' may now purchase insurance to fund legal action to seek compensation.

Availability of cover will benefit small to medium-sized businesses that may have been deterred in the past from bringing claims by the threat of high legal costs. The 'CartelKey' product available from FirstAssist will levy a premium for insuring against the financial risks of losing a case.

Merger remedies

The Competition Commission has published a new single source of guidelines, Merger Remedies, on solutions to anti-competitive mergers. The guidelines stress that, when remedial action is taken, the Commission will assess its effectiveness, cost and proportionality. Remedies may include full or partial prohibition of a merger in the first place or forcing already-merged companies to divest assets. It also identifies ongoing measures to enable competition, such as limiting a company's ability to require customers to enter into long-term contracts as well as introducing price caps, supply commitments and service level undertakings.

Public sector contracts

The Federation of Small Businesses (FSB) has commented on the Review on the Role of SMEs in Public Procurement. The FSB has said that it supports the Review's target of 30% of all public sector contracts going to small businesses. The FSB also propose that all small businesses should be guaranteed a minimum of 3 weeks to respond to a tender and that larger contracts should be broken down into smaller lots for which they can bid. The Review was set up by the Chancellor, Alistair Darling, to investigate the barriers small firms face in winning public sector contracts and to make recommendations on what can be done to bring those barriers down over the next five years. (Further information at www.fsb.org.uk)

ENVIRONMENT

Packaging waste targets

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (SI1997/648) produced a regime for the recycling and recovery of packaging waste, setting targets, amongst other things, covering the recovery in the UK of at least 60% of packaging waste and the recycling of at least 55% to 80% of packaging waste by 31 December 2008.

Individual producers of packaging or packaging materials with an annual turnover of more than £2m handling more than 50 tonnes of packaging per year are required under the regulations to meet an annual packaging waste recovery and recycling target. Regulations recommended the overall targets set by the 1997 Regulations be increased to 72% in 2008, 73% in 2009 and 74% in 2010. See The Producer Responsibility Obligations (Packaging Waste) Amendment Regulations 2008 (SI2008/413) available at www.opsi.gov.uk.

Environmental liability directive

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted on draft regulations and guidance to implement the Environmental Liability Directive in England and Wales. The directive came into force in the UK in April 2007 but has yet to be enacted. Based on the 'polluter pays' principle it provides that the person operating or controlling occupational activities, which result in damage to the environment, may be liable under its strict or fault-based liability regime. The directive, which is expected to be transposed into UK law by December 2008, does not cover all types of damage to the environment. It only covers 'environmental damage' which is one or more of 'damage to protected species and natural habitats or in a site of special scientific interest', 'damage to water' and 'land damage'.

Waste controls

DEFRA has also published a consultation on controls on the handling, transfer and

transport of waste which can be found at www.defra.gov.uk/corporate/consult/waste-controls.

The regulatory regime for waste management in the UK requires waste operators to seek an environmental permit from the Environment Agency which obliges a waste holder (anyone who imports, produces, keeps, treats or disposes of controlled waste) to comply with a duty of care to ensure that offences are not committed and that waste is transferred to an authorised person.

This consultation seeks comments on draft regulations which, among other things, would widen the definition of 'waste carrier' to include any person who produces controlled waste and transports it in the ordinary course of their normal business. The regulations will create new offences for carriers including providing false and misleading information and important new guidance in relation to the duty of care.

COMMERCIAL ISSUES

Internet libel

A company and its chief executive have agreed to pay damages of £119,000, in an out of court settlement believed to be a record for an internet libel case. Mr J Finn and his company Pallion were accused of posting defamatory comments on a website about a rival housing executive and his firm Gentoo. The comments were posted anonymously on a website which claimed to have evidence to support its attacks but never produced any. People behind the website were careful to conceal their identities and it took many months of investigation to identify those responsible and to get the site shut down.

As a consequence of the comments, Gentoo suffered damage to its corporate reputation. The company was forced to withstand an almost daily barrage of anonymous allegations, threats and abuse and suffered very serious damage to its professional and personal reputation.

Corruption laws

The fact that not one bribery prosecution has been brought in the ten years since the UK Government adopted the OECD's anti-bribery convention, proves that half of all UK companies who 'think that the authorities have been too reluctant to take legal action against suspected bribery', are correct.

The damning conclusion, reported in the 2008 European Corporate Integrity Survey, highlights much dissatisfaction with the current system. The news comes as a survey by Ernst & Young found that within the last two years, one in four companies has been approached to pay a bribe to win or retain business.

A poll of over 1,000 executives in 33 countries suggests that 18% had lost business to a competitor prepared to pay a bribe. Corrupt practices were perceived to be most prevalent in mining, with fewer instances in energy and banking. Only 6% of respondents in France and Germany said that their organisation had experienced at least one incident of bribery or corruption in the last two years. In the UK, this was 13% but still below a global average of 24%.

Mass-market scams rake in £3bn

The Office of Fair Trading (OFT) has issued warnings that fraudsters will devise more mass-marketed consumer scams to take advantage of the economic downturn.

Research by the OFT suggests that as many as three million people a year have lost money to consumer frauds with an estimate that these mass marketing scams have already cost their victims £3.5bn.

The regulator says that a public campaign earlier this year in which it encouraged people to dump examples of scam mailings in bins at local libraries across the UK, gave it some valuable information.

Drawing on an analysis of the 15,000 examples it collected, the OFT found that the most common scams involved bogus sweepstakes, prize-draws, clairvoyants, foreign lotteries and miracle health cures. It warned that the easiest way to tell that such an offer was fraudulent was if it turned up out of the blue, promised something for nothing and asked for some sort of payment up front.

Internal market reform

The European Union is proposing the establishment in every member state of a new 'product contact point' to provide companies with information on the national laws applicable in those states in which they intend to sell their products.

It is concerned that national technical rules constitute a significant impediment to free trade between member states. The mandatory European 'CE' marking which indicates that a product conforms with the requirements of the relevant European Directives, will become a community collective trade mark, giving authorities and competitors additional means to take legal action against its abuse.

Foreign investment outlook

According to a survey by KPMG, Britain continues to be the most popular destination in Europe for investment by foreign companies and is likely to remain so for years to come. The survey covered multinational companies from 15 leading economies, one in seven of which expected to make a significant investment in the UK during 2008; only the US and China were more popular as destinations. The outlook in some sectors is more positive than others. For example as a destination for financial services firms, the UK was second only to the US now and is predicted to become joint first in five years.

Review of consumer law

Much of the UK's more recent consumer protection legislation is based on EU directives. The European Commission is currently reviewing eight of these directives so BERR has concluded that it is timely to review the consumer protection regime in the UK as well. To this end, it has issued a 'call for evidence' for the purposes of its review, the main aims of which are to set out clearly a small number of principles of consumer law, to better target rogue traders and to make it easier for consumers to obtain redress.

Commission forecasts sharper slowdown

The credit crunch is likely to cause a sharper slowdown across Europe than previously anticipated, according to the European Commission.

The Commission's latest interim forecast has trimmed the growth rate for the EU down to 1.4 per cent – a drop of 0.6 per cent from the figure calculated earlier this year.

Inflation, meanwhile, is expected to increase due to rising food and fuel prices, with projected inflation for 2008 expected to hit 3.8 per cent. The Commission cautions, however, that the actual rise will depend on developments in commodity markets, and whether higher prices there filter through into more general price and wage inflation.

The slowdown is being attributed to a number of factors, including ongoing uncertainty in the global economy and a slow-down in global growth, tensions in financial markets, and a widespread deterioration in confidence across countries and sectors. It stresses, however, that fundamentals in the eurozone and EU economy as a whole are still sound.

The next comprehensive forecast of the EU economy is due on 3 November.

Director's Checklist

- ✔ Consider the implications of the Companies Act 2006 provisions introduced with effect from 1 October 2008.
- ✔ Note that the FRC consultation which sets out proposals to revise the guidance for directors of listed companies regarding going concern and financial reporting ends on 24 November 2008.
- ✔ Check Companies House website for more changes to information to be included on annual returns made up to a date after 1 October 2008.
- ✔ From 1 October the Employers' Liability Certificate can be displayed in electronic format provided employers covered by the insurance have reasonable access to it.
- ✔ An increase in VAT voluntary disclosure limits introduced from 1 July 2008 mean that any errors discovered during an accounting period commencing on or after that date do not have to be disclosed if less than under £10,000 (previously £2,000) or 1% of turnover (subject to an upper limit of £50,000).
- ✔ Check the increases of the national minimum wage which changes from 1 October 2008.

About Boardroom Update

This is the first issue of Boardroom Update, a new information service for busy company directors, in-house counsel, company secretaries and their advisers. Published six times a year, Boardroom Update will help to keep you in touch with regulatory changes and new developments, summarizing the steps to take in order to comply with them. Details and implementation dates for future legislation are also provided to help you plan ahead. Every issue will also include a feature article providing insight and analysis and a Director's Checklist as a useful aide-memoire of what to watch in the upcoming weeks.

Our writing team are experts in company law and corporate governance. Working as professional advisers at David Venus & Company they already provide compliance advice and assistance on a daily basis to their own corporate clients. By subscribing to Boardroom Update you can tap into their practical experience and technical knowledge.

We understand that you cannot judge the full value of Boardroom Update on one issue alone. By filling in the order form attached, you can receive two further issues, completely free of charge, before making up your mind whether to subscribe.

Boardroom Update

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