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Revised APB Practice Notice 15 “The Audit of Occupational Pension Schemes in the United Kingdom (revised)”

The APB has recently updated Practice Note 15 to reflect developments since it was previously revised in 2004. The principal amendments relate to:

- the implementation of ISA (UK & I), which incorporates the guidance set out in APB Bulletin 2005/5 dealing with audit risk and fraud
- the replacement of OPRA by the Pensions Regulator (“TPR”)
- Guidance on reporting on contributions to reflect the introduction of materiality as a consideration by SI 2005 / 2426 “The Occupational Pension Schemes (Administration & Audited Accounts) (Amendment) Regulations 2005” for accounting periods beginning on or after 22nd September 2005. The wording of the separate report on contributions is included in Appendix 6.
- Guidance on non-statutory audits and revised auditors reports in Appendix 9
- Revised wordings for appointment and resignation letters and engagement letters (in Appendix 4) and letter of representation (in Appendix 5)

Companies Act 2006

The DTI website contains useful guidance on the implementation of the Companies Act 2006 including FAQ's.

It also has two useful booklets that summarise the implications for private companies entitled:

- Companies Act 2006 – Private company information
- Companies Act 2006 – a summary of what it means for private companies.

A draft implementation timetable has also been issued which shows that the full Act will be implemented by October 2008. The proposals are:

With effect from 1 October 2007:

- Part 9 (Exercise of members’ rights);
- Part 10 (A company’s directors), other than provisions relating to directors’ conflict of interest duties, directors’ residential addresses and underage and natural directors;
- Part 11 (Derivative claims and proceedings by members);
- Part 13 (Resolutions and meetings), and, related to this, sections 485 – 488 of Part 16 (Audit);
- Part 14 (Control of political donations and expenditure);

- Section 417 of Part 15 (Contents of Directors' report: business review);
- Part 29 (Fraudulent trading);
- Part 30 (Protection of members against unfair prejudice);
- Part 32 (Company investigations: amendments).

With effect from 6 April 2008:

- Part 12 (Company secretaries);
- Part 15 (Accounts and reports), other than section 417;
- Part 16 (Audit), other than sections 485-488;
- Part 19 (Debentures);
- Part 20 (Private and public companies);
- Part 21 (Certification and transfer of securities);
- Part 23 (Distributions);
- Part 26 (Arrangements and reconstructions);
- Part 27 (Mergers and divisions of public companies);
- Part 42 (Statutory auditors).

With effect from 1 October 2008

- Part 1 (General introductory provisions);
- Part 2 (Company formation);
- Part 3 (A company's constitution);
- Part 4 (A company's capacity and related matters);
- Part 5 (A company's name);
- Part 6 (A company's registered office);
- Part 7 (Re-registration as a means of altering a company's status);
- Part 8 (A company's members);
- Part 10 (A company's directors) – provisions relating to directors' conflict of interest duties, directors' residential addresses and underage and natural directors.
- Part 17 (A company's share capital);
- Part 18 (Acquisition by limited company of its own shares);

- Part 24 (A company's annual return);
 - Part 25 (Company charges);
 - Part 31 (Dissolution and restoration to the register);
 - Part 33 (UK companies not formed under the Companies Act);
 - Part 34 (Overseas companies);
 - Part 35 (The Registrar of Companies);
 - Part 41 (Business Names).
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Fraud Act 2006

The Fraud Act 2006 came into effect on 15 January 2007 and created a new general offence of fraud with three ways of committing it:-

- Fraud by false representation. A person commits this offence if they dishonestly make a false representation and intend to make a gain for themselves or another or to cause loss to another by making a false representation. A representation is false if it is untrue or misleading, and the person making it knows that it is, or might be, untrue or misleading. It is likely that "phishing" and "pharming" would be caught by these provisions.
- Fraud by failing to disclose information. A person commits this offence if they dishonestly fail to disclose information which they are under a legal duty to disclose, and by failing to do so intend to make a gain for themselves or another, or intend to cause loss to another.
- Fraud by abuse of position. A person commits this offence if they occupy a position of trust and use that position to obtain money or property from a vulnerable person whose affairs they are meant to be looking after.

The Act also creates new offences of:

- obtaining services dishonestly (i.e. with the intention of not paying for them);
- possessing, making or supplying articles for use in frauds;
- Fraudulent trading by sole traders and partnerships. Previously this only applied to limited companies and LLP's.

The Act has been introduced to bring the law up-to-date and enable prosecutions of computer and phone based scams and frauds.

Interestingly, the Act does not define the word 'fraud'!

De Facto Directors

There has been a number of recent cases revolving around whether someone is a de facto director, and therefore liable to be disqualified or be liable as a director in insolvency proceedings. The key is whether the person is part of the corporate governing structure.

- A distinction must be drawn as between someone who participates, or has the right to participate, in collective decision making on corporate policy and strategy and its implementation on the one hand, and others who may advise or act on behalf of, or otherwise for the benefit of, the company, but do not participate in decision making as part of the corporate governance of the company.
- The issue is to be determined objectively based on all relevant facts and a person may be a de facto director even though he or she does not have day-to-day control of the company's affairs and is only involved in part of the company's activities.
- Factors such as a family relationship with other admitted directors may be relevant, sometimes supporting and sometimes negating the allegation that a person is a de facto director.

HMRC is particularly keen on pursuing actions against persons they consider to be de facto directors in order to recover amounts due by the insolvent company they are connected with.

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