

*Miscellaneous Reports by
Auditors Required by the
United Kingdom
Companies Act 2006*

2008

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BULLETIN

The Auditing Practices
Board

THE AUDITING PRACTICES BOARD

The Auditing Practices Board (APB), which is part of the Financial Reporting Council (FRC), prepares for use within the United Kingdom and the Republic of Ireland:

- Standards and guidance for auditing;
- Standards and guidance for reviews of interim financial information performed by the auditor of the entity;
- Standards and guidance for the work of reporting accountants in connection with investment circulars; and
- Standards and guidance for auditor's and reporting accountant's integrity, objectivity and independence

with the objective of enhancing public confidence in the audit process and the quality and relevance of audit services in the public interest.

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THE AUDITING PRACTICES BOARD

MISCELLANEOUS REPORTS BY AUDITORS REQUIRED BY THE UNITED KINGDOM COMPANIES ACT 2006

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INTRODUCTION

1. The purpose of this Bulletin is to provide guidance with respect to those reports and statements required to be made by an auditor under the Companies Act 2006 (CA 2006), that are not dealt with in other Bulletins published by the APB.
2. Other Bulletins published by the APB that address reports and statements required to be made by an auditor under CA 2006 are:
 - (a) The auditor's statement on the summary financial statement in the United Kingdom (Bulletin 2008/3);
 - (b) The special auditor's report on abbreviated accounts in the United Kingdom (Bulletin 2008/4);
 - (c) Auditor's reports on revised accounts and reports, in the United Kingdom (Bulletin 2008/5); and
 - (d) Auditor's reports for short accounting periods in compliance with the United Kingdom Companies Act 2006 (Bulletin 2008/8).
3. The table in the Appendix lists the example reports in Bulletin 2007/1¹ indicating within which APB Bulletin the equivalent example, revised to reflect the requirements of CA 2006, can be found.
4. The guidance in this Bulletin takes account of the law as at 6 April 2008. Readers are cautioned that the provisions of CA 2006 on which the guidance and examples on pages 21 to 42 are based do not come into effect until 1 October 2009, and may be subject to transitional provisions under the final "Commencement Order" which at the date of this Bulletin is still in draft. Until the provisions of CA 2006 apply, the equivalent illustrative reports in Bulletin 2007/1 "Example reports by auditors under company legislation in Great Britain" remain in effect².
5. Readers are cautioned that the references within CA 2006 may change subsequent to publication of this Bulletin.

1 Bulletin 2007/1 updated example reports originally issued by the APB in Practice Note 8.

2 However, see footnote 32 on page 43 for description of transitional provisions.

DISTRIBUTIONS: JUSTIFICATION OF DISTRIBUTION BY REFERENCE TO RELEVANT ACCOUNTS (SECTIONS 836 TO 839 OF CA 2006)

Effective where distribution made on or after 6 April 2008

6. Section 830(1) of CA 2006 prohibits companies from making a distribution otherwise than out of profits available for the purpose.
7. Whether a distribution may be made by a company is determined by reference to the items described in section 836(1) of CA 2006 as stated in the “relevant accounts”. The items are:
 - (a) profits, losses, assets and liabilities;
 - (b) provisions of the following kinds;
 - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified by paragraph 7 of Schedule 9 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008³ or by paragraph 5 of Schedule 7 to The Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008⁴;
 - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
 - (c) share capital and reserves (including undistributable reserves).
8. The relevant accounts are the company’s last annual accounts (as defined in section 837 of CA 2006), except that:
 - (a) where the distribution would be found to contravene the requirements of Part 23 of CA 2006 by reference to the company’s last annual accounts⁵, the distribution may be justified by reference to interim accounts; and
 - (b) where the distribution is proposed to be declared during the company’s first accounting reference period, or before any accounts have been circulated in respect of that period, the distribution may be justified by reference to initial accounts.

³ SI 2008 No. 410.

⁴ SI 2008 No. 409.

⁵ For transitional provisions see paragraph 35 of Schedule 4 of The Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007 No. 3495 (C. 150). Amongst other things these provisions permit the relevant accounts to be accounts for financial years beginning before 6 April 2008 to which the provisions of the Companies Act 1985 apply.

Requirements where the auditor has issued a qualified report on the last annual accounts

9. Where the auditor has issued a “qualified report”⁶ on the last annual accounts, the company’s ability to make a distribution, by reference to those accounts, could be in doubt. In such circumstances, the company may not proceed to make the distribution unless the auditor has made a statement under section 837(4) of CA 2006 as to whether, in the auditor’s opinion, the matters in respect of which the auditor’s report is qualified are material for determining whether a distribution would contravene the requirements of Part 23 of CA 2006.
10. The auditor’s statement under section 837(4) of CA 2006 must be in writing and can be:
 - (a) made in a separate statement which would be addressed to the members (See Example 1 on page 7); or
 - (b) included as a separate paragraph at the end of the auditor’s report to the members on the financial statements (See Example 2 on page 9).
11. The auditor is required to state whether in its opinion the subject matter of the qualification is material for determining whether proposed distributions are permitted⁷. A qualification is not material for this purpose if the financial effect of the matters giving rise to the qualification could not be such as to reduce the distributable profits below the levels required for the purpose of such distributions
12. The level of the proposed or potential distribution will normally be quantified in the opinion. Where the maximum effect of a qualification cannot be quantified, it would normally be material for distribution purposes unless the auditor can conclude that the qualification either does not impact distributable profits or that its effect could only be favourable.
13. A disclaimer of opinion on the financial statements as a whole would be material as the auditor would be unable to form an opinion on the amount at which the company’s distributable profits are stated.
14. If a separate statement is made, the date used is that on which the statement is completed. The statement will need to have been completed by the date of the distribution, at the latest.

6 A report that expresses an unqualified opinion but includes an emphasis of matter or “other matter” paragraph is not regarded as being qualified.

7 Section 837(5) of CA 2006 states that “An auditor’s statement is sufficient for the purposes of a distribution if it relates to distributions of a description that includes the distribution in question, even if at the time of the statement it had not been proposed.”

15. On a change of auditor the report under section 837(4) of the Companies Act 2006 can only be made by the statutory auditor who reported on the last annual financial statements.

Requirements where interim accounts used

16. Section 838 of CA 2006 establishes the requirements for making a distribution where interim accounts are used. In this circumstance there are no requirements made of the company's auditor.

Requirements where initial accounts used

17. Section 839 of CA 2006 establishes the requirements for making a distribution where initial accounts are used. Where initial accounts are used by a public company to justify a distribution the company's auditor is required to have made a report stating whether, in its opinion, the initial accounts have been "properly prepared".
18. The "properly prepared report" is discussed in more detail in connection with Example 3, on pages 10 and 11.

EXAMPLE 1

**SEPARATE STATEMENT ON A COMPANY'S ABILITY TO MAKE A
DISTRIBUTION WHERE AUDITOR'S REPORT WAS QUALIFIED**

Effective where distribution made on or after 6 April 2008

**STATEMENT OF THE INDEPENDENT AUDITOR TO THE [MEMBERS]
[SHAREHOLDERS] OF XYZ LIMITED PURSUANT TO SECTION 837(4)⁸ OF THE
COMPANIES ACT 2006**

We have audited the financial statements of XYZ Limited for the year ended... in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board and have expressed a qualified opinion thereon in our report dated....

Respective responsibilities of directors and auditor

[*Summarisation of directors' responsibilities with respect to the financial statements referred to in the introductory paragraph*]. They are also responsible for considering whether the company, subsequent to the balance sheet date, has sufficient distributable profits to make a distribution at the time the distribution is made.

Our responsibility is to report whether, in our opinion, the subject matter of our qualification of our auditor's report on the financial statements for the year ended ... is material for determining, by reference to those financial statements, whether the distribution proposed by the company is permitted under section 830⁹ [section 831/832] of the Companies Act 2006. We are not required to form an opinion on whether the company has sufficient distributable reserves to make the distribution proposed at the time it is made.

Opinion

In our opinion the subject matter of the qualification is not material for determining, by reference to those financial statements, whether [the distribution of £...]/[the interim/final dividend for the year ended... of £...] proposed by the company is permitted under section 830⁹ [section 831/832] of the Companies Act 2006.

Statutory auditor

Address

Date

-
- 8 Section 837(4) applies where the last annual accounts are used. Where initial accounts are used a similar report is prepared based on the report in Example 3 on page 11.
 - 9 The reference in all cases to section 830 in this example is extended to cover also section 831 in the case of a public company and also sections 831 and 832 if the public company is also an "investment company".

Notes:

1 As an alternative the auditor's statement might be expressed in terms of the company's ability to make potential distributions up to a specific level. This may be particularly appropriate where the amount of the dividend has not yet been determined. In such circumstances the opinion paragraph would be worded as follows:

"In our opinion the subject matter of the qualification is not material for determining, by reference to those financial statements, whether a distribution of not more than £... by the company is permitted under section 830⁹ [section 831/832] of the Companies Act 2006".

2 As a further alternative the auditor's statement might be expressed in terms of the company's ability to make "any distribution". In such circumstances the opinion paragraph would be worded as follows:

"In our opinion the subject matter of the qualification is not material for determining by reference to those financial statements, whether any distribution proposed by the company is permitted under section 830⁹ [section 831/832] of the Companies Act 2006".

3 Where the auditor concludes that the subject matter of the qualification is material to either a specific distribution which is proposed or to any distribution, then an adverse opinion is given. In such circumstances the opinion paragraph would be worded as follows:

"Adverse opinion

In our opinion the subject matter of the qualification is material for determining, by reference to those financial statements, whether [the distribution of £...]/[the interim/final dividend for the year ended ... of £...]/[any distribution] proposed by the company is permitted under section 830⁹ [section 831/832] of the Companies Act 2006."

EXAMPLE 2

“OTHER MATTER” PARAGRAPH INCLUDED IN AUDITOR’S REPORT ON FINANCIAL STATEMENTS ON A COMPANY’S ABILITY TO MAKE A DISTRIBUTION WHERE AUDITOR’S REPORT WAS QUALIFIED

Effective where distribution made on or after 6 April 2008

The following statement is added to the end of the auditor’s report following either the opinion paragraph or, where there is one, the emphasis of matter paragraph.

“Statement pursuant to section [837(4)]¹⁰ [839(6)]¹¹ of the Companies Act 2006

Respective responsibilities of directors and the auditor

In addition to their responsibilities described above, the directors are also responsible for considering whether the company, subsequent to the balance sheet date, has sufficient distributable profits to make a distribution at the time the distribution is made.

Our responsibility is to report whether, in our opinion, the subject matter of our qualification of our auditor’s report on the financial statements for the year ended ... is material for determining, by reference to those financial statements, whether the distribution proposed by the company is permitted under section 830¹² [section 831/832] of the Companies Act 2006. We are not required to form an opinion on whether the company has sufficient distributable reserves to make the distribution proposed at the time it is made.

Opinion

In our opinion the subject matter of the above qualification is not material for determining whether [the distribution of £...]/[the interim/final dividend for the year ended of £....] proposed by the company is permitted under section 830¹² [sections 831/ 832] of the Companies Act 2006.”

Notes:

The notes to Example 1 also apply to this Example

10 Section 837(4) applies where the last annual accounts are used.

11 Section 839(6) applies to Example 3 on page 11 where the report on the initial accounts is qualified.

12 The reference in all cases to section 830 in this example is extended to cover also section 831 in the case of a public company and also sections 831 and 832 if the public company is also an “investment company”.

DISTRIBUTIONS: THE USE OF INITIAL ACCOUNTS (SECTION 839(5) OF CA 2006) *Effective where distribution made on or after 6 April 2008*

19. A company may wish to make a distribution during its first accounting reference period or after the end of that period but before the accounts for that period have been circulated.
20. In such instances section 839(1) of CA 2006 requires “initial accounts” to be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1) of CA 2006.
21. Initial accounts of a public company are required to have been “properly prepared” or have been so prepared except for matters that are not material for determining (by reference to the items mentioned in section 836(1) of CA 2006) whether the distribution would contravene Part 23 of CA 2006 (Distributions).
22. “Properly prepared” means prepared in accordance with sections 395 to 397, and the regulations made thereunder, of CA 2006 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.
23. With respect to a public company, the company’s auditor is required, by section 839(5) of CA 2006 to make a report stating whether, in its opinion, the accounts have been properly prepared. (Such a report is illustrated in Example 3 on page 11).
24. If the auditor’s opinion is qualified, the auditor must state, in writing (either at the time of the report or subsequently), whether in its opinion the matters giving rise to the qualification are material for determining whether the distribution is permitted. These requirements are discussed further in paragraphs 9 to 15.
25. CA 2006 does not state to whom the report should be addressed. However, it is implicit from CA 2006 that it be addressed to the directors.
26. The same principles apply for the dating of initial accounts as apply to the dating of annual accounts.

EXAMPLE 3

**REPORT ON INITIAL ACCOUNTS WHEN A PUBLIC COMPANY
WISHES TO MAKE A DISTRIBUTION** *Effective where distribution made
on or after 6 April 2008*

This example is based on the assumption that the initial accounts have been prepared in accordance with UK GAAP. (Initial accounts may also be prepared in accordance with IFRSs as adopted by the European Union.)

**REPORT OF THE INDEPENDENT AUDITOR TO THE DIRECTORS OF XYZ PLC
UNDER SECTION 839(5) OF THE COMPANIES ACT 2006**

We have examined the initial accounts of XYZ PLC for the period from to ...which comprise [state the primary financial statements such as the Profit and Loss Account, the Balance Sheet, the Cash Flow Statement, the Statement of Total Recognised Gains and Losses] and the related notes. The initial accounts have been prepared under the accounting policies set out therein.

Respective responsibilities of directors and auditors

As described ... the directors are responsible for the preparation of the initial accounts in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice).

Our responsibility is to report to you our opinion as to whether the initial accounts have been properly prepared within the meaning of section 839(4) of the Companies Act 2006.

Opinion

In our opinion the initial accounts for the period from... to... have been properly prepared within the meaning of section 839(4) of the Companies Act 2006.

[Signature]

John Smith (Senior Statutory Auditor)

for and on behalf of ABC LLP, Statutory Auditor

Address

Date

STATEMENT BY AUDITOR ON CEASING TO HOLD OFFICE (SECTION 519 OF CA 2006) *Effective when auditor ceases to hold office on or after 6 April 2008*

Unquoted companies

27. Where an auditor of an unquoted company ceases for any reason to hold office, it must deposit at the company's registered office either:
- (a) a statement of the circumstances connected with it ceasing to hold office (see Example 4 on page 16); or
 - (b) where it considers that there are no circumstances in connection with it ceasing to hold office that need to be brought to the attention of members or creditors of the company, a statement to that effect (see Example 5 on page 17).

Quoted companies¹³

28. Where an auditor of a quoted company ceases for any reason to hold office, it must deposit at the company's registered office a statement of the circumstances connected with its ceasing to hold office. The auditor of a quoted company is not able to deposit a statement stating that there are no circumstances connected with it ceasing to hold office.

Deadlines for filing the statement

29. The auditor's statement is required to be deposited –
- (a) in the case of resignation along with the notice of resignation;
 - (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor;
 - (c) in any other case, not later than the end of the period of 14 days beginning with the date on which the auditor ceases to hold office.

13 The definition of "quoted company" set out in sections 385 and 531 of CA 2006 do not strictly apply to the section of CA 2006 that deals with auditor resignation statements. The Institute of Chartered Accountants in England & Wales (ICAEW) suggests, in its note entitled "Auditor cessation statements (Version 2 July 2008), www.icaew.com/auditnews" that "quoted company" should be taken to mean a company whose equity share capital on the day of the audit cessation:

- (a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000, or
- (b) is officially listed in an EEA State, or
- (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

Company's duties in relation to statement (section 520 of CA 2006)

30. Where the statement deposited by the auditor sets out the circumstances connected with the auditor ceasing to hold office (ie is not a statement of no circumstances) the company must, within 14 days, either:
 - (a) send a copy of it to every person who under section 423 of CA 2006 is entitled to be sent copies of the accounts, or
 - (b) apply to the court (in which case it must notify the auditor of the application) to direct that copies need not be sent out where the auditor is using the provisions of section 519 of CA 2006 to secure needless publicity for defamatory matter.

Obligation to send copy of statement to the Registrar of Companies

31. Unless within 21 days beginning with the day on which the auditor deposited the statement under section 519 of CA 2006 the auditor receives notice of an application to the court under section 520 of CA 2006 it must within a further seven days send a copy of the statement to the Registrar of Companies. There are criminal offences for failure to comply with these provisions.
32. If an application to the court has been made under section 520 and the auditor subsequently receives notice that the court is not going to direct that copies of the statement not be sent out, the auditor must within seven days of receiving the notice send a copy of the statement to the Registrar of Companies.

Duty of auditor to notify appropriate audit authority (section 522 of CA 2006)

33. Where in the case of:
 - (a) a "major audit" (see paragraph 38), an auditor ceases for any reason to hold office, or
 - (b) an audit that is not a major audit, an auditor ceases to hold office before the end of its term of office¹⁴,the auditor must notify the "appropriate audit authority" (see paragraph 37).
34. The notice must:
 - (a) inform the appropriate audit authority that the auditor has ceased to hold office, and

¹⁴ The question of when an auditor's term of office ends is more complicated under the provisions of CA 2006 (compared to the provisions of the Companies Act 1985) whereby the auditor of a private company is deemed to be re-appointed automatically. The ICAEW's note referred to in footnote 13 provides helpful guidance in this area.

- (b) be accompanied by a copy of the statement deposited by the auditor at the company's registered office in accordance with section 519 of CA 2006.
- 35. If the statement deposited is to the effect that the auditor considers that there are no circumstances in connection with the auditor ceasing to hold office that need to be brought to the attention of members or creditors of the company, the notice must also be accompanied by a statement of the reasons for the auditor ceasing to hold office.
- 36. The auditor must notify the appropriate audit authority:
 - (a) in the case of a major audit, at the same time as it deposits a statement at the company's registered office in accordance with section 519 of CA 2006; or
 - (b) in the case of an audit that is not a major audit at such time as the appropriate audit authority may require (such time not being earlier than "a").

Meaning of “appropriate audit authority” and “major audit” (section 525 of CA 2006)

- 37. In the case of a major audit (other than one conducted by an Auditor General¹⁵), the term “appropriate audit authority” means the Professional Oversight Board (POB) of the Financial Reporting Council. In the case of an audit (other than one conducted by an Auditor General) that is not a major audit, the term “appropriate audit authority” means the relevant supervisory body as defined in section 1217 of CA 2006.
- 38. The term “major audit” means a statutory audit conducted in respect of:
 - (a) a company any of whose securities have been admitted to the Official List; or
 - (b) any other person in whose financial condition there is a major public interest.
- 39. The POB has issued guidance (which constitutes statutory guidance) on the circumstances in which the notification should be made to the POB, how it should be sent and what it should cover. This includes guidance on what is a “major audit” for this purpose¹⁶.

Parallel duty of company to notify appropriate audit authority

- 40. Where an auditor ceases to hold office before the end of its term of office, the company is also required to notify the appropriate audit authority. The notice provided by the company must:

¹⁵ See: The Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007 No. 3494) Regulation 41.

¹⁶ This guidance can be found at <http://www.frc.org.uk/pob/regulation/auditfirms.cfm>.

- (a) inform the appropriate audit authority that the auditor has ceased to hold office; and
 - (b) be accompanied by:
 - i. a statement by the company of the reasons for the auditor ceasing to hold office¹⁷; or
 - ii. if the copy of the statement deposited by the auditor at the company's registered office in accordance with section 519 of CA 2006 contains a statement of circumstances in connection with the auditor ceasing to hold office that need to be brought to the attention of members or creditors of the company, a copy of that statement.
41. When the auditor is acting on the basis that the audit is a "major audit" it is helpful if the auditor advises the company of that fact and that the POB, therefore, is the appropriate audit authority that the company should be notifying. Similarly, when the audit is not a major audit it is helpful if the auditor advises the company of the identity of its relevant supervisory body which will be the appropriate audit authority that the company should be notifying.

17 It should be noted that the company is required to provide a statement of the reasons for the auditor ceasing to hold office even in those circumstances where the auditor is permitted to, and has, provided a statement that it considers that there are no circumstances connected with it ceasing to hold office that need to be brought to the attention of the members or creditors of the company.

EXAMPLE 4

STATEMENT BY AUDITOR OF A COMPANY ON CEASING TO HOLD OFFICE SETTING OUT THE CIRCUMSTANCES CONNECTED TO THE AUDITOR CEASING TO HOLD OFFICE¹⁸ *Effective when auditor ceases to hold office on or after 6 April 2008*

STATEMENT TO XYZ [LIMITED] [PLC] OF CIRCUMSTANCES RELATING TO:

- [THE INTENTION OF PQR NOT TO SEEK RE-APPOINTMENT AS AUDITOR OF XYZ [LIMITED] [PLC] AT THE CONCLUSION OF OUR TERM OF OFFICE]; or
- [THE RESIGNATION OF PQR AS AUDITOR OF XYZ [LIMITED] [PLC]]; or
- [THE REMOVAL OF PQR AS AUDITOR OF XYZ [LIMITED] [PLC]]

In accordance with section 519 of the Companies Act 2006, we consider that the following circumstances connected with our ceasing to hold office should be brought to the attention of the company's members or creditors:

[Set out circumstances]

Statutory auditor

Address

Date

¹⁸ This statement must always be filed in respect of quoted companies. In respect of unquoted companies this statement need only be filed where there are circumstances which the auditor considers should be brought to the attention of members and creditors. See footnote 13 on page 12 for the definition of quoted company to be applied in this respect.

EXAMPLE 5

**STATEMENT BY AUDITOR OF AN UNQUOTED COMPANY ON
CEASING TO HOLD OFFICE WHERE THERE ARE NO
CIRCUMSTANCES WHICH NEED TO BE BROUGHT TO THE
ATTENTION OF MEMBERS OR CREDITORS** *Effective when auditor
ceases to hold office on or after 6 April 2008*

STATEMENT TO XYZ [LIMITED] [PLC] RELATING TO:

- [THE INTENTION OF PQR NOT TO SEEK RE-APPOINTMENT AS AUDITOR OF XYZ [LIMITED] [PLC] AT THE CONCLUSION OF OUR TERM OF OFFICE]; or
- [THE RESIGNATION OF PQR AS AUDITOR OF XYZ [LIMITED] [PLC]]; or
- [THE REMOVAL OF PQR AS AUDITOR OF XYZ [LIMITED] [PLC]]

In accordance with section 519 of the Companies Act 2006, we confirm that there are no circumstances connected with our ceasing to hold office that we consider should be brought to the attention of the company's members or creditors.

Statutory auditor

Address

Date

IMPORTANT NOTE:

READERS ARE CAUTIONED THAT THE GUIDANCE (AND THE EXAMPLES) SET OUT ON THE FOLLOWING PAGES DOES NOT COME INTO EFFECT UNTIL 1 OCTOBER 2009 AND MAY BE SUBJECT TO TRANSITIONAL PROVISIONS UNDER THE FINAL “COMMENCEMENT ORDER” WHICH AT THE DATE OF THIS BULLETIN IS STILL IN DRAFT.

Readers should consult the table in the Appendix which sets out where example reports that are effective for the period up to 1 October 2009 may be found.

AUDITOR'S STATEMENT WITH RESPECT TO NET ASSETS WHEN A PRIVATE COMPANY RE-REGISTERS AS A PUBLIC COMPANY (SECTION 92 OF CA 2006) Effective 1 October 2009

42. Under CA 2006 a private company may re-register as a public company if, among other things, it meets certain requirements regarding its net assets. The company's auditor is required to:
 - (a) make a written statement regarding the net assets; and
 - (b) to have issued a report on a balance sheet that is prepared at a date no more than seven months before application for re-registration is made to the Registrar of Companies, that is either:
 - (i) unqualified; or
 - (ii) qualified and the auditor expresses an opinion that the qualification is not material for determining the net assets of the company.

Requirements as to net assets

43. Section 92 of CA 2006 requires a private company applying to re-register as a public company to obtain:
 - (a) a balance sheet of the company prepared as at a date not more than seven months before the date on which the application is delivered to the Registrar of Companies;
 - (b) an "unqualified report" by the company's auditor on that balance sheet (see paragraph 46 for discussion of the meaning of "unqualified report"),
 - (c) a written statement by the company's auditor that in its opinion at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves¹⁹. (The terms "net assets" and "undistributable reserves" have the same meaning as in section 831 of CA 2006).
44. Between the balance sheet date and the date on which the application for re-registration is delivered to the Registrar of Companies, there must be no change in the company's financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves²⁰. As the auditor's statement is required to be made as at the balance sheet date, the auditor has no responsibility for the period between the balance sheet date and the date the application is delivered to the Registrar of Companies by the company.

19 Section 92 CA 2006

20 Section 92(2) CA 2006.

45. The balance sheet included with the company's latest financial statements is eligible for the purpose of section 92(1)(a) of CA 2006 if :
- (a) it was prepared less than seven months before the company's application to re-register as a public company; and
 - (b) at the time it was prepared the balance sheet met the net assets test in section 92(1)(c) of CA 2006.

Meaning of unqualified report

46. In paragraph 43(b) above an unqualified report means²¹:
- (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of CA 2006;
 - (b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of CA 2006 which would have applied if it had been prepared for a financial year of the company²².
47. A qualification is material unless the auditor states in its report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves²³.

The auditor's statement on net assets

48. Section 92(1) of CA 2006 makes reference to a company applying to re-register as a public company. Therefore, the auditor's statement required by section 92(1)(c) is addressed to the company.
49. With respect to the auditor's responsibility the auditor's statement states that it is limited to an examination of the relationship between the company's net assets and its called up share capital and undistributable reserves as stated in the audited balance sheet, so that it is clear that no further audit procedures have been carried out.

21 Section 92(3) CA 2006.

22 Under section 92(4) of CA 2006 "For the purposes of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary by reason of that fact".

23 Section 92(5) CA 2006.

50. The statement by the auditor is dated when it is signed, which cannot be earlier than the date of the auditor's report on the balance sheet.

Auditor's report on the balance sheet

51. Section 92 of CA 2006 requires that, for it to be "unqualified", the auditor's report on the balance sheet must state without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of CA 2006. For a qualified report to be acceptable, the auditors are required to state in their report that the matter giving rise to the qualification is not material for determining (by reference to the balance sheet) whether at the balance sheet date the amount of the net assets of the company were not less than the aggregate of its called-up share capital and undistributable reserves.
52. If there has been a change of auditor, the new auditor can accept the balance sheet audited by the previous auditor, as a basis for the work referred to in paragraph 49 above, unless the auditor's report thereon contains a material qualification regarding the proper preparation of the balance sheet in accordance with CA 2006. The new auditor indicates in its report by whom the audit of the balance sheet was carried out.
53. If the balance sheet included with the company's latest financial statements is not eligible for use, it will be necessary for the company to prepare a balance sheet. A balance sheet may not be eligible for use if:
 - (a) it was prepared more than seven months before the company's application to re-register as a public company; or
 - (b) at the time it was prepared it did not meet the net assets test in section 92(1)(c) of CA 2006.
54. With respect to a balance sheet that has been specially prepared and has not been included with the company's annual financial statements the auditor is required to report without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of CA 2006 which would have applied had it been prepared for a financial year of a company.

Reporting

55. CA 2006 does not require the auditor's report on the balance sheet and the auditor's statement on the net assets to be included within a combined report. However, as a practical matter this will often be the most effective way for the auditor to report on these matters.

56. The following examples of such combined reports are provided:

- (a) Example 6 Balance Sheet in annual financial statements reported on without qualification (see page 25)
- (b) Example 7 Balance sheet in annual financial statements reported on with a qualification in respect of proper preparation in accordance with CA 2006, but the qualification is not material (see page 26)
- (c) Example 8 Specially prepared balance sheet reported on without qualification (see page 28)
- (d) Example 9 Specially prepared balance sheet reported on with a qualification in respect or proper preparation in accordance with the Companies Act 2006, but the qualification is not material (see page 29)

EXAMPLE 6

STATEMENT WHEN A PRIVATE COMPANY WISHES TO RE-REGISTER AS A PUBLIC COMPANY WHERE THE AUDITOR'S OPINION ON THE BALANCE SHEET IS UNQUALIFIED Effective 1 October 2009

This example is used when the company's annual financial statements were prepared within seven months before its application to re-register as a public company.

STATEMENT OF THE INDEPENDENT AUDITOR TO XYZ LIMITED FOR THE PURPOSE OF SECTION 92(1)(b) and (c) OF THE COMPANIES ACT 2006

We have examined the balance sheet and related notes of XYZ Limited as at... which formed part of the financial statements for the year then ended which were audited by [us]/[ABC LLP].

Respective responsibilities of directors and auditors

The company's directors are responsible for the preparation of the balance sheet and related notes.

It is our responsibility to:

- (a) report on whether the balance sheet has been properly prepared in accordance with the requirements of the Companies Act 2006; and
- (b) form an independent opinion, based on our examination, concerning the relationship between the company's net assets and its called-up share capital and undistributable reserves at the balance sheet date.

Opinion concerning proper preparation of balance sheet

In our opinion the audited balance sheet at... has been properly prepared in accordance with the requirements of the Companies Act 2006.

Statement on net assets

In our opinion, at ... the amount of the company's net assets (within the meaning given to that expression by section 831(2) of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves.

Statutory auditor

Address

Date

EXAMPLE 7

STATEMENT WHEN A PRIVATE COMPANY WISHES TO RE-REGISTER AS A PUBLIC COMPANY WHERE THE AUDITOR'S OPINION ON THE BALANCE SHEET IS QUALIFIED WITH RESPECT TO PROPER PREPARATION IN ACCORDANCE WITH THE COMPANIES ACT 2006, BUT THE QUALIFICATION IS NOT MATERIAL *Effective 1 October 2009*

This example is used when the company's annual financial statements were prepared within seven months before its application to re-register as a public company

STATEMENT OF THE INDEPENDENT AUDITOR TO XYZ LIMITED FOR THE PURPOSE OF SECTION 92(1)(b) and (c) OF THE COMPANIES ACT 2006

We have examined the balance sheet and related notes of XYZ Limited as at... which formed part of the financial statements for the year then ended which were audited by [us]/[ABC LLP].

Respective responsibilities of directors and auditors

The company's directors are responsible for the preparation of the balance sheet and related notes.

It is our responsibility to:

- (a) report on whether the balance sheet has been properly prepared in accordance with the requirements of the Companies Act 2006; and
- (b) form an independent opinion, based on our examination, concerning the relationship between the company's net assets and its called-up share capital and undistributable reserves at the balance sheet date.

Qualified opinion concerning proper preparation of balance sheet

[We] / [ABC LLP] audited the financial statements for the year ended...and expressed a qualified opinion regarding the proper preparation of the balance sheet in accordance with the requirements of the Companies Act 2006.

The matter giving rise to [our] / [the] qualification is not material for determining by reference to the balance sheet at ... whether, at that date, the amount of the company's net assets (within the meaning given to that expression by section 831(2) of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves.

Statement on net assets

In our opinion at... the amount of the company's net assets (within the meaning given to that expression by section 831(2) of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves.

Statutory auditor

Address

Date

EXAMPLE 8

STATEMENT WHEN A PRIVATE COMPANY WISHES TO RE-REGISTER AS A PUBLIC COMPANY BASED ON A SPECIALLY PREPARED BALANCE SHEET THAT IS UNQUALIFIED Effective 1 October 2009

This example is used when the latest financial statements are not eligible for use as they were prepared more than seven months before the company's application to re-register as a public company, or because at the time they were prepared the balance sheet did not meet the test in section 92(1)(c) of CA 2006. In these circumstances it is necessary for the company to prepare a balance sheet which is required to be audited.

REPORT OF THE INDEPENDENT AUDITOR TO XYZ LIMITED FOR THE PURPOSE OF SECTIONS 92(1)(b) and (c) OF THE COMPANIES ACT 2006

We have audited the balance sheet and related notes of XYZ Limited as at...set out on pages... to.... which have been prepared under the accounting policies set out therein.

Respective responsibilities of directors and auditors

The company's directors are responsible for the preparation of the balance sheet and related notes.

It is our responsibility to:

- (a) report on whether the balance sheet has been properly prepared in accordance with the provisions of the Companies Act 2006 that would have applied if it had been prepared for a financial year of the company with such modifications as are necessary by reason of that fact; and
- (b) form an independent opinion concerning the relationship between the company's net assets and its called-up share capital and undistributable reserves at the balance sheet date.

Opinion concerning preparation of balance sheet

In our opinion the balance sheet and related notes as at...have been properly prepared in accordance with the provisions of the Companies Act 2006, which would have applied had the balance sheet been prepared for a financial year of the company.

Statement on net assets

In our opinion, at ... the amount of the company's net assets (within the meaning given to that expression by section 831(2) of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves.

Statutory auditor

Address

Date

EXAMPLE 9

STATEMENT WHEN A PRIVATE COMPANY WISHES TO RE-REGISTER AS A PUBLIC COMPANY BASED ON A SPECIALLY PREPARED BALANCE SHEET THAT IS QUALIFIED WITH RESPECT TO PROPER PREPARATION IN ACCORDANCE WITH THE COMPANIES ACT 2006, BUT THE QUALIFICATION IS NOT MATERIAL *Effective 1 October 2009*

This example is used when the latest financial statements are not eligible for use as they were prepared more than seven months before the company's application to re-register as a public company, or because at the time they were prepared the balance sheet did not meet the test in section 92(1)(c) of CA 2006. In these circumstances it is necessary for the company to prepare a balance sheet which is required to be audited.

REPORT OF THE INDEPENDENT AUDITOR TO XYZ LIMITED FOR THE PURPOSE OF SECTIONS 92(1)(b) and (c) OF THE COMPANIES ACT 2006

We have audited the balance sheet and related notes of XYZ Limited as at...set out on pages... to.... which have been prepared under the accounting policies set out therein.

Respective responsibilities of directors and auditors

The company's directors are responsible for the preparation of the balance sheet and related notes.

It is our responsibility to:

- (a) report on whether the balance sheet has been properly prepared in accordance with the provisions of the Companies Act 2006 that would have applied if it had been prepared for a financial year of the company with such modifications as are necessary by reason of that fact; and
- (b) form an independent opinion concerning the relationship between the company's net assets and its called-up share capital and undistributable reserves at the balance sheet date.

Qualified opinion concerning proper preparation of balance sheet

[Except for [describe area of non-compliance with CA 2006] in our opinion the balance sheet and related notes as at... have been properly prepared in accordance with the provisions of the Companies Act 2006, which would have applied had the balance sheet been prepared for a financial year of the company.]²⁴

24 This style of wording is used where the auditor's have expressed a qualified opinion concerning the proper preparation of the balance sheet.

[Because[describe area of non-compliance with CA 2006] in our opinion the balance sheet and related notes as at...have not been properly prepared in accordance with the provisions of the Companies Act 2006, which would have applied had the balance sheet been prepared for a financial year of the company.]²⁵

However, in our opinion, this matter is not material for determining by reference to the balance sheet at ... whether, at that date, the amount of the company's net assets (within the meaning given to that expression by section 831(2) of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves.

Statement on net assets

In our opinion, at ... the amount of the company's net assets (within the meaning given to that expression by section 831(2) of the Companies Act 2006) was not less than the aggregate of its called-up share capital and undistributable reserves.

Statutory auditor

Address

Date

²⁵ This style of wording is used where the auditor's have expressed an adverse opinion concerning the proper preparation of the balance sheet.

REPORT WHEN A PRIVATE COMPANY WISHES TO REDEEM OR PURCHASE ITS OWN SHARES OUT OF CAPITAL (SECTION 714(6) OF CA 2006) *Effective 1 October 2009*

57. A payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of sections 714, 716, 719, 720 and 721 of CA 2006 are met. Section 716 of CA 2006 requires that a payment out of capital must be approved by special resolution which must be passed on, or within the week immediately following, the date on which the directors make the statement required by section 714 of CA 2006.

Directors' statement

58. To make a payment out of capital the directors are required by sections 714(1) to (5) of CA 2006 to make a statement specifying the amount of the permissible capital payment for the shares in question. Section 714(3) requires the directors to state that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion:
- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and
 - (b) as regards its prospects for the year immediately following that date, that having regard to –
 - (i) their intentions with respect to the management of the company's business during that year, and
 - (ii) the amount and character of the financial resources that will in their view be available to the company during that year,
 - (iii) the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.
59. In forming their opinion, in respect of paragraph 58(a) above, the directors are required to take into account all of the company's liabilities (including any contingent or prospective liabilities).

The permissible capital payment (section 710 of CA 2006)

60. The payment that may be made out of capital is described as the "permissible capital payment" and is such amount as, after applying:
- (a) any available profits of the company; and

- (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase

is required to meet the price of redemption or purchase.

Determination of available profits (sections 711 and 712 of CA 2006)

61. The available profits of the company are determined as follows:

1. First, determine the profits of the company by reference to the following items as stated in the relevant accounts (see paragraph 62):
 - (a) profits, losses, assets and liabilities;
 - (b) provisions of the following kinds:
 - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by paragraph 4 of Schedule 9 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008²⁶ or by paragraph 4 of Schedule 7 to The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008²⁷ by regulations under section 396 of CA 2006;
 - (ii) where the relevant accounts are IAS accounts, provisions of any kind.
 - (c) share capital and reserves (including undistributable reserves).
2. Second, reduce the amount so determined by the amount of
 - (a) any distribution lawfully made by the company, and
 - (b) any other relevant payment lawfully made²⁸ by the company out of distributable profits,after the date of the relevant accounts and before the end of the relevant period (see paragraph 62).
3. The resulting figure is the amount of available profits.

62. The "relevant accounts" are any accounts that:

26 SI 2008 No. 410.

27 SI 2008 No. 409.

28 See section 712(4) of CA 2006 for definition of "other payments lawfully made".

- (a) are prepared as at a date within the relevant period, and
- (b) are such as to enable a reasonable judgment to be made as to the amounts of the items mentioned under "1" in the above table.

The "relevant period" means the period of three months ending with the date on which the directors' statement is made in accordance with section 714 of CA 2006.

Report by the company's auditor

- 63. The directors' statement is required by section 714(6) to have annexed to it a report addressed to the directors by the company's auditor (see Example 10 on page 34) stating that:
 - (a) it has inquired into the company's state of affairs,
 - (b) the amount specified in the statement as the permissible capital payment for the shares in question is in its view properly determined in accordance with sections 710 to 712 of CA 2006, and
 - (c) it is not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters mentioned in subsection (3) of section 714 of CA 2006 is unreasonable in all the circumstances.
- 64. The directors' statement and therefore the annexed auditor's report are required to be made in the week before the resolution is passed specifying the amount of the permissible capital payment for the shares in question. The auditor's report cannot be dated earlier than the date of the director's statement to which it relates. The date of the auditor's report is the date on which the auditor signs its report expressing its opinion.
- 65. There is no provision for the auditor's report to be other than unqualified. Unless the opinion is unqualified the auditor does not issue a report.

EXAMPLE 10

REPORT WHEN A PRIVATE COMPANY WISHES TO REDEEM OR PURCHASE ITS OWN SHARES OUT OF CAPITAL *Effective 1 October 2009*

REPORT OF THE INDEPENDENT AUDITOR TO THE DIRECTORS OF XYZ LIMITED PURSUANT TO SECTION 714(6) OF THE COMPANIES ACT 2006

We report on the attached statement of the directors dated..., prepared pursuant to the Companies Act 2006, in connection with the company's proposed [purchase]/[redemption] of... (number) [ordinary]/[preferred] shares by a payment out of capital.

Basis of opinion

We have inquired into the company's state of affairs in order to review the bases for the directors' statement.

Opinion

In our opinion the amount of £... specified in the directors' statement as the permissible capital payment for the shares to be [purchased]/[redeemed] is properly determined in accordance with sections 710 to 712 of the Companies Act 2006.

We are not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters mentioned in section 714(3) of the Companies Act 2006 is unreasonable in all the circumstances.

Statutory auditor

Address

Date

REPORT WHEN A PUBLIC COMPANY WISHES TO ALLOT SHARES OTHERWISE THAN FOR CASH (SECTION 593 OF CA 2006) Effective 1 October 2009

66. Section 593 of CA 2006 addresses the valuation of non-cash consideration for shares in a public company. Where a public company proposes to allot shares for such non-cash consideration it must, subject to certain exceptions, obtain during the six months before the date of the allotment a report on the value of the assets to be received in payment for the shares. Sections 594 and 595 of CA 2006 set out exceptions to the valuation requirement with respect to mergers and certain “arrangements” with other companies.
 67. Section 596 of CA 2006 sets out the requirements as to the valuation and the report and in particular provides that the provisions of sections 1150 to 1153 of CA 2006 should apply to the valuation and report required by section 593. Under section 1150 of CA 2006 the valuation and the report must be made by a person who:
 - (a) is eligible for appointment as a statutory auditor (see section 1212 of CA 2006), and
 - (b) meets the independence requirement in section 1151 of CA 2006.
 68. However, where it appears to the valuer to be reasonable for the valuation of the consideration, or part of it, to be made by another person (an expert) the valuer may arrange for or accept such a valuation, together with a report which will enable him to make his own report.
 69. If the company's own statutory auditor is requested to undertake a valuation in accordance with section 593 of CA 2006 the standards and guidance in APB Ethical Standard 5 (Revised) “Non-audit services provided to audited entities” are applied²⁹.
 70. Guidance on the work to be carried out when relying on an expert is contained in ISA (UK and Ireland) 620 “Using the work of an expert”. The expert must report to the valuer so as to enable the valuer to make its report.
 71. The valuer's report will incorporate the following elements (see Example 11 on page 38):
 - (a) **Addressee** – the report is made to the company itself and sent to the company secretary for circulation to the proposed allottees.
 - (b) **Introductory paragraph/s** – in addition to expressing the opinion set out in (d) below, the report must include the following information:
-
- 29 Section 1150 of CA 2006 requires the valuation and report required by section 593 to be made by a person who is eligible for appointment as a statutory auditor and meets the independence requirements in Section 1151 of CA 2006. By virtue of section 1151(2) of CA 2006 the auditor of the company meets the independence requirements in section 1151.

- (i) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
 - (ii) the amount of any premium payable on the shares;
 - (iii) a description of the consideration;
 - (iv) a description of the part of the consideration valued by the valuer, the method used to value it and the date of the valuation; and
 - (v) the extent to which the nominal value of the shares and any premium are to be treated as paid up –
 - by the consideration;
 - in cash
- (c) **Basis of valuation** – the report indicates the basis of valuation of the consideration. If the valuation has been made by another person (ie an expert) the expert's name and relevant qualifications are stated in the basis of valuation. The basis of valuation also describes the part of the consideration valued by the expert, the method used to value it and specifies the date of the valuation.
- (d) **Opinion** – section 596(3) of CA 2006 requires that the valuer's report must contain, or be accompanied by, a note from the valuer, stating:
- (i) if the valuation has been made by an expert, it appears to be reasonable to arrange for it to be so made or to accept a valuation so made;
 - (ii) the method of valuation of the consideration was reasonable in all the circumstances.
 - (iii) there appears to have been no material change in the value of the consideration since the date at which the valuation was made; and
 - (iv) on the basis of the valuation, the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (e) **Date** – the date used is the date on which the report is signed.
72. There is no provision for the report to be qualified. Unless the opinion is unqualified the valuer does not issue a report.
73. In certain circumstances the allotment of shares may represent only a part of the consideration for the transfer of a non-cash asset to the allotting company (e.g. cash may also be paid). In such cases, the valuer's report must cover the proportion of the value of

the non-cash assets which applies to the full value of shares issued (ie nominal value and any premium). The report must also state:

- (a) what valuations have been made in order to determine that proportion of the consideration;
 - (b) the reason for those valuations;
 - (c) the method and date of any such valuation; and
 - (d) any other matters which may be relevant to that determination.
74. Before the valuer can make a statement that there appears to have been no material change in the value of the asset since the valuation, it may have to perform additional work. If the period of time between the making of the valuation and the date of the report is such that there may have been a change in the value, the valuer will need to reconsider the valuation. If the auditor made arrangements for an expert to perform the valuation the auditor obtains written confirmation from that expert as to whether there has been a change in value.

EXAMPLE 11

REPORT WHEN A PUBLIC COMPANY WISHES TO ALLOT SHARES OTHERWISE THAN FOR CASH Effective 1 October 2009

REPORT OF THE INDEPENDENT [VALUER] [AUDITOR] TO XYZ PLC FOR THE PURPOSES OF SECTION 593(1) OF THE COMPANIES ACT 2006

We report on the value of the consideration for the allotment to... [name of allottee] of... [number] shares, having a nominal value of [...] each, to be issued at a premium of... pence per share. The shares and share premium are to be treated as fully paid up.

The consideration for the allotment to [name of allottee] is the [freehold building situated at... address] and... [number] shares, having a nominal value of [...] each, in LMN PLC.

Basis of valuation

The freehold building was valued on the basis of its open market value by [name of expert], a Fellow of the Royal Institution of Chartered Surveyors.

The shares in LMN PLC were valued by us on... on the basis of the price shown in the Stock Exchange Daily Official List at....

Opinion

In our opinion:

- it is reasonable to accept the valuation made by (name of expert);
- the methods of valuation of the freehold building and the shares in LMN PLC were reasonable in all the circumstances; and
- there appears to have been no material change in the value of either part of the consideration since the date(s) at which the valuations were made.

On the basis of the valuations, in our opinion, the value of the total consideration is not less than the aggregate of the nominal value and share premium to be treated as paid up by the consideration.

Qualified independent person

Date

Address

REPORT WHEN NON-CASH ASSETS ARE TRANSFERRED TO A PUBLIC COMPANY BY CERTAIN OF ITS MEMBERS (SECTION 599 OF CA 2006) *Effective 1 October 2009*

75. Section 598 of CA 2006 requires, amongst other things, that during the first two years following receipt of its trading certificate³⁰ a public company may not lawfully acquire from certain of its members a non-cash asset for a consideration worth one tenth or more of the company's issued share capital unless:
 - (a) the terms of the transfer have been approved by an ordinary resolution of the company (see section 601 of CA 2006); and
 - (b) a valuer's report has been made to the company within six months immediately preceding the date of the agreement to transfer the non-cash assets (see section 599 of CA 2006).
76. Under section 1150 of CA 2006 the valuation and the report must be made by a person who:
 - (a) is eligible for appointment as a statutory auditor (see section 1212 of CA 2006), and
 - (b) meets the independence requirement in section 1151 of CA 2006.
77. However, where it appears to the valuer to be reasonable for the valuation of the consideration to be made by another person (an expert) the valuer may arrange for or accept such a valuation, together with a report which will enable him to make his own report.
78. If the company's own statutory auditor is requested to undertake a valuation in accordance with section 599 of CA 2006 the standards and guidance in APB Ethical Standard 5 (Revised) "Non-audit services provided to audited entities" are applied³¹.
79. Guidance on the work to be carried out when relying on an expert is contained in ISA (UK and Ireland) 620 "Using the work of an expert". The expert must report to the valuer so as to enable the valuer to make its own report.
80. Section 600 (2) of CA 2006 requires that the valuer's report must state:

30 A trading certificate is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

31 Section 1150 CA 2006 requires the valuation and report required by Section 599 to be made by a person ("the valuer") who is eligible for appointment as a statutory auditor and meets the independence requirements in section 1151 of CA 2006. By virtue of section 1151(2) of CA 2006 the auditor of the company meets the independence requirements in section 1151.

- (a) the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash), and
 - (b) the method and date of valuation.
81. Section 600 (3) further requires that the valuer's report must contain or be accompanied by a note from the valuer stating:
- (a) in the case of a valuation made by an expert that it appeared reasonable to arrange for it to be so made or to accept a valuation so made,
 - (b) that the method of valuation was reasonable in all the circumstances (whoever made the valuation),
 - (c) that it appears to the valuer that there has been no material change in the value of the consideration since the valuation, and
 - (d) that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.
82. Sections 600(4) and (5), of CA 2006, set out the requirements where the consideration is given partly for the transfer of the asset.
83. Where the consideration, or part of it, is valued by an expert rather than the valuer the valuer's report must state that fact and also:
- (a) state the expert's name and what knowledge and experience the expert has to carry out the valuation, and
 - (b) describe the asset valued by the expert and the method used to value it specifying the date of the valuation.
84. The report which is illustrated in example 12 on page 42 incorporates the following elements:
- (a) **Addressee** – the report is made to the company itself and sent to the company secretary for circulation to the members of the company and to the person selling the asset.
 - (b) **Introductory Paragraphs** – in addition to expressing the opinion set out in (d) below, the report must contain the following information:
 - (i) the consideration to be received by the company, describing the asset in question, and the consideration to be given by the company and specifying any amounts to be received or given in cash, and
 - (ii) the method and date of valuation.

- (c) **Basis of valuation** – the report indicates the basis of valuation of the consideration. If the valuation has been made by another person (ie an expert) the expert's name is stated in the basis of opinion as well as the knowledge and experience the expert has to carry out the valuation. The basis of opinion also describes the part of the consideration valued by the expert, the method used to value it and specifies the date of the valuation.
 - (d) **Opinion** – the valuer must state that in its opinion:
 - (i) if the valuation has been made by an expert, it appears to be reasonable to accept or arrange for such a valuation;
 - (ii) the method of valuation was reasonable in all the circumstances;
 - (iii) there appears to have been no material change in the values of the asset in question since the date at which the valuation was made, and
 - (iv) on the basis of the valuation used, the value of the consideration to be received by the company is not less than the value of the consideration to be given by the company.
 - (e) **Date** – the date used is that on which the report is signed.
85. There is no provision for the report to be qualified. Unless the opinion is unqualified the valuer does not issue a report.
86. Before the valuer can make a statement that there appears to have been no material change in the value of the asset since the valuation, it may have to perform additional work. If the period of time between the making of the valuation and the date of the report is such that there may have been a change in the value, the valuer will need to reconsider the valuation. If the auditor made arrangements for an expert to perform the valuation the auditor obtains written confirmation from that expert as to whether there has been a change in value.

EXAMPLE 12

**REPORT WHEN NON-CASH ASSETS ARE TRANSFERRED TO A
PUBLIC COMPANY BY CERTAIN OF ITS MEMBERS** *Effective 1 October
2009*

**REPORT OF THE INDEPENDENT [VALUER] [AUDITOR] TO XYZ PLC FOR THE
PURPOSES OF SECTION 599 OF THE COMPANIES ACT 2006**

We report on the transfer of non-cash assets to XYZ PLC ('the Company') by subscribers to the Company's memorandum of association.

The consideration to be received by the Company is a [freehold building situated at... address] ('the consideration to be received').

The consideration to be given by the Company is... [number] shares, having a nominal value of £1 each, in LMN PLC ('the consideration to be given').

Basis of valuation

The freehold building was valued on the basis of its open market value by [name of expert], a Fellow of the Royal Institution of Chartered Surveyors.

The shares in LMN PLC were valued by us on... on the basis of the price shown in the Stock Exchange Daily Official List at....

Opinion

In our opinion:

- it is reasonable to accept the valuation made by (name of expert);
- the methods of valuation of the freehold building and the shares in LMN PLC were reasonable in all the circumstances; and
- there appears to have been no material change in the value of the consideration to be received or the consideration to be given since the date(s) at which the valuations were made.

On the basis of the valuations, in our opinion, the value of the consideration to be received by the Company is not less than the value of the consideration to be given by the Company.

Qualified Independent Person

Address

Date

APPENDIX

**CHECKLIST OF EXAMPLE REPORTS IN BULLETIN 2007/1
INDICATING WHICH BULLETIN, OR EXAMPLE REPORT IN THIS
BULLETIN, REFLECTS THE REQUIREMENTS OF THE COMPANIES
ACT 2006**

Example Report in Bulletin 2007/1 (reflecting the requirements of CA 1985)	Location of equivalent example report reflecting the requirements of CA 2006	Commencement date of report under CA 2006
1 Auditor's report on revised financial statements: revision by replacement.	Bulletin 2008/5 (Appendix 2)	Periods beginning on or after 6 April 2008
2 Auditor's report on revised financial statements: revision by supplementary note.	Bulletin 2008/5 (Appendix 3)	Periods beginning on or after 6 April 2008
3 Auditor's report on revised directors' report.	Bulletin 2008/5 (Appendix 4)	Periods beginning on or after 6 April 2008
4 Report on abbreviated accounts.	Bulletin 2008/4	Periods beginning on or after 6 April 2008
5 Auditor's statement on a summary financial statement.	Bulletin 2008/3	Periods beginning on or after 6 April 2008
6 Report on entitlement to exemption from preparing group financial statements.	Requirement withdrawn in 1996	n/a
7 Statement on a company's ability to make a distribution.	Examples 1 and 2 of this Bulletin	6 April 2008
8 Statement when a private company wishes to re-register as a public company ³² .	Examples 6, 7, 8 and 9 of this Bulletin	1 October 2009
9 Report on balance sheet prepared other than in respect of an accounting reference period for the purpose of a private company re-registering as a public company.	Now combined with the statement when a private company wishes to re-register as a private company (see Examples 8 and 9)	1 October 2009
10 Report when a private company wishes to redeem or purchase its own shares out of capital	Example 10 of this Bulletin	1 October 2009

32 For private companies re-registering as public companies after 6 April 2008 but before 1 October 2009, paragraph 58 of Schedule 1 to The Companies Act 2006 (Consequential Amendments etc) Order 2008 (SI No. 2008 No 948) will require references to section 264(2) of the Companies Act 1985, in Example 8 of Bulletin 2007/1, to be replaced by references to section 831 of CA 2006.

Example Report in Bulletin 2007/1 (reflecting the requirements of CA 1985)	Location of equivalent example report reflecting the requirements of CA 2006	Commencement date of report under CA 2006
11 Report when a private company wishes to provide financial assistance for the purchase of its own shares or those of its holding company.	Report no longer required under CA 2006. (Provisions under CA 1985 repealed as from 1 October 2008 in relation to financial assistance given on or after that date ³³)	n/a
12 Report when a public company wishes to allot shares otherwise than for cash.	Example 11 of this Bulletin	1 October 2009
13 Report when non-cash assets are transferred to a public company by certain of its members.	Example 12 of this Bulletin	1 October 2009
14 Report on initial accounts when a public company wishes to make a distribution.	Example 3 of this Bulletin	6 April 2008
15 Report on ceasing to hold office.	Examples 4 and 5 of this Bulletin	6 April 2008

33 The Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007 No. 3495 (C. 150)), Schedule 4 paragraph 51.

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