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BULLETIN:

Miscellaneous Reports By Auditors Required By The United Kingdom Companies Act 2006

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BULLETIN: 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 on 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 FRC.
2. Other Bulletins published by the FRC that address reports and statements required to be made by an auditor under CA 2006 are:
 - Bulletin: Illustrative statutory auditor's reports for periods commencing on or after 15 April 2020;
 - Bulletin: Auditor's Reports on Revised Accounts and Reports in the United Kingdom.
3. In December 2019, Sir Donald Brydon published his review into the Quality and Effectiveness of Audit, including some recommendations relating to areas addressed within this bulletin. His recommendations on capital maintenance¹ may impact on reports made in accordance with sections 836 – 839 of CA 2006, whilst his recommendations on auditor's statements made on ceasing to hold office² may impact on statements made in accordance with section 519 of CA 2006. As these recommendations are considered, consulted on and potentially implemented by the UK government, changes may be made to CA 2006 meaning the guidance contained within this bulletin would require revision. Any changes to CA 2006, resulting from the above or otherwise, which would precipitate a change to this bulletin, will be addressed by the FRC in future updates. Readers are cautioned that the references within CA 2006 may change subsequent to publication of this Bulletin.

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

4. Section 830(1) of CA 2006 states that a company may only make a distribution out of profits available for distribution.

¹ Assess, Assure and Inform: Improving Audit Quality and Effectiveness, sections 19.1-19.14, Sir Donald Brydon (2019)

² Assess, Assure and Inform: Improving Audit Quality and Effectiveness, sections 23.0.1 – 23.0.13, Sir Donald Brydon (2019)

5. 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:
 - profits, losses, assets and liabilities;
 - provisions of the following kinds:
 - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified by regulations under Section 396;
 - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
 - share capital and reserves (including undistributable reserves).
6. The relevant accounts are the company's last annual accounts (as defined in section 837 of CA 2006 though interim accounts or initial accounts may be used; these are discussed in paragraphs 17 – 19 below.

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

7. Where the auditor has issued a qualified report on the last annual accounts, the company's ability to make a distribution, by reference to those accounts, may be in doubt. In such circumstances, the company cannot make a distribution unless the auditor has made a statement under section 837(4) of CA 2006. A report that expresses an unqualified opinion but includes an emphasis of matter or "other matter" paragraph is not regarded as being qualified.
8. The auditor must state, in writing, whether in their opinion the qualification is material in determining if a distribution would contravene Part 23 of CA 2006 and must be:
 - in the case of a private company, have been circulated to members in accordance with section 423, or
 - in the case of a public company, have been laid before the company in general meeting.
9. The report may be made in a separate statement addressed to the members ([Example 1](#) on page 6 or included as a separate paragraph at the end of the auditor's report to the members. The illustrative wording contained within [Example 1](#) is also suitable for inclusion in the auditor's report to members.

10. The auditor is required to state whether in its opinion the subject matter of the qualification is material for determining whether proposed distributions are permitted³. 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 distribution.
11. The amount of a proposed distribution is normally stated in the opinion but, if it is not, the auditor's statement will be sufficient providing the now proposed distribution is of the same description as that within the auditor's statement. In this circumstance, the auditor's statement will often be on the company's ability to pay a dividend up to a certain level. In these circumstances the report may be expressed in terms of the company's ability to pay a distribution up to a specific level, or even any level of distribution should that be appropriate to the entity.
12. 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.
15. 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 accounts have been "properly prepared".

³ 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."

18. The “properly prepared report” is discussed in more detail below in paragraph 22 of this bulletin.

EXAMPLE 1

Separate statement on a company's ability to make a distribution where auditor's report was qualified

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

Opinion

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

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 830/831/832⁴ of the Companies Act 2006.

Respective responsibilities of directors and auditor

[Summarisation of directors' responsibilities with respect to the financial statements referred to in the opinion section]. 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 830/831/832 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.

Statutory auditor
Date

Address

⁴The 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)

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 as 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.
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 8 to 16.
25. Though CA 2006 does not state who the report should be addressed to, it is implicit that it is the directors.
26. The same principles apply for the dating of initial accounts as apply to the dating of annual accounts.

EXAMPLE 2

Report on initial accounts when a public company wishes to make a distribution

This example assumes 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

Opinion

We have examined the initial accounts of XYZ PLC for the period from to ...which comprise [state the primary financial statements such as the Income Statement, the Statement of Financial Position, the Cash Flow Statement, the Statement of Changes in Equity] and the related notes. The initial accounts have been prepared under the accounting policies set out therein.

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.

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.

[Signature]

*John Smith (Senior Statutory Auditor)
for and on behalf of ABC LLP, Statutory Auditor*

*Address
Date*

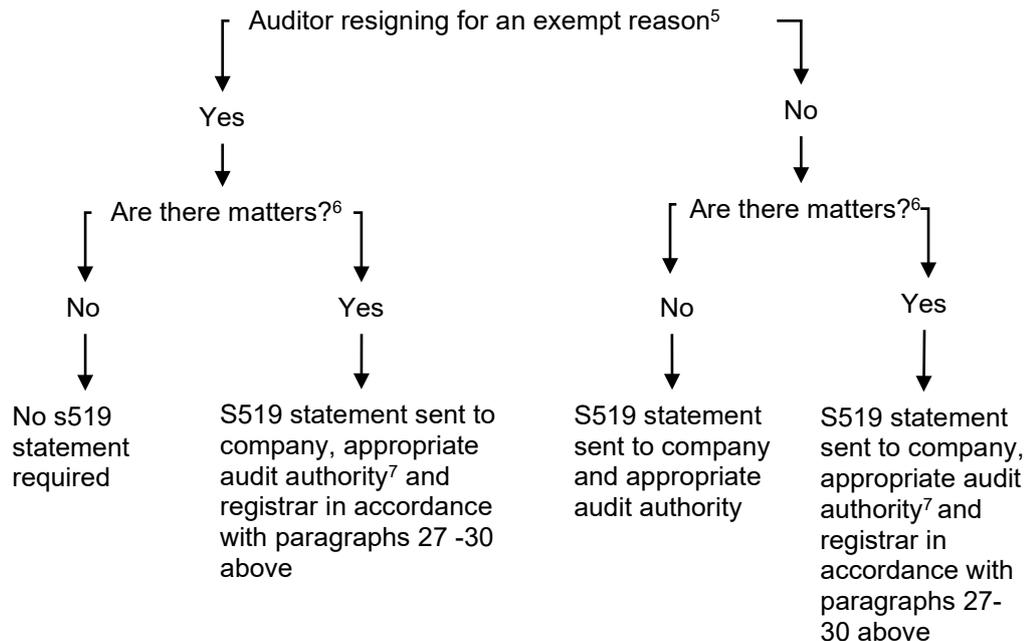
STATEMENT BY AUDITOR ON CEASING TO HOLD OFFICE (SECTION 519 OF CA 2006)

Public Interest Entities

27. Section 519 of CA 2006 requires that, upon ceasing to hold office at any time and for any reason, the auditor of a public interest entity must send to the company a statement of the reasons for doing so.
28. On receiving the section 519 statement, the company may make an application to the court under section 520 if it believes that the auditor's section 519 statement is being used to secure needless publicity for a defamatory matter.
29. If, within 21 days of the section 519 statement being sent, the auditor does not receive notice of an application to the court under section 520 as above, the auditor must send the statement to the registrar within 7 days.
30. If an application is made to court under section 520, the auditor does not send the statement until it receives a notification under section 520 (5), and when this notification is received, the auditor must send the statement within 7 days.
31. Section 522 requires that the section 519 statement must also be sent to the appropriate audit authority, which for a public interest audit, is the FRC.

Non-public interest Entities

32. Similar rules apply for non-public interest entities but there are exemptions from filing, or in some cases, making a section 519 statement in the first instance. The requirements for a non-public interest entity are detailed below:



⁵The exempt reasons for resigning from an audit are, in accordance with section 519A (3);

- (a) the auditor is no longer able to carry out statutory audit work with the meaning of Part 42 (section 1210(1));
- (b) the company is, or is to become, exempt from audit under section 477, section 479A or section 480, or from the requirements of this part under section 482, and intends to include in its balance sheet a statement of the type described in section 475(2);
- (c) The company is a subsidiary undertaking of a parent undertaking that is incorporated in the United Kingdom, the parent undertaking prepares group accounts and the auditor is being replaced by an auditor who is conducting, or is to conduct, an audit of the group accounts; or
- (d) The company is being wound up under Part 4 of the Insolvency Act 1986 or Part 5 of the Insolvency (Northern Ireland) Order 1989 or a petition under Part 4 of that Act or Part 5 of that Order has been presented and not finally dealt with or withdrawn.

⁶ Section 519, subsection (3A)

⁷ For non-public interest entities, the appropriate audit authority will be the Recognised Supervisory Body with which the firm holds its audit registration.

Content of section 519 statement

33. As per section 519 (3) the statement must include:
 - the auditor's name and address;
 - the number allocated to the auditor on being entered in the register of auditors kept under section 1239; and
 - the company's name and registered number.
34. Section 519 (3A) of CA 2006 states that where there are matters connected with the auditor ceasing to hold office, these matters must be included in the statement. The auditor considers, in producing the s519 statement, how to report in a way that is informative for the company's members and creditors as well as for the relevant regulatory authority.
35. In addition, the auditor considers how they can produce the s519 statement in a way such that its content is consistent with the firm's internal processes and documentation regarding its decision to cease holding office as auditor.
36. Where there are no matters, in accordance with s519 (3B) the statement should clearly state this.

EXAMPLE 3

Statement by auditor of a company on ceasing to hold office setting out the matters connected to the auditor ceasing to hold office

STATEMENT TO XYZ [LIMITED] [PLC] OF MATTERS PERTAINING TO:

[THE INTENTION OF PQR NOT TO SEEK RE-APPOINTMENT AS AUDITOR OF XYZ [LIMITED] [PLC] (COMPANY REGISTRATION NUMBER:XXXX) AT THE CONCLUSION OF OUR TERM OF OFFICE];

Or [THE RESIGNATION OF PQR AS AUDITOR OF XYZ [LIMITED] [PLC] (COMPANY REGISTRATION NUMBER:XXXX)];

Or [THE REMOVAL OF PQR AS AUDITOR OF XYZ [LIMITED] [PLC] (COMPANY REGISTRATION NUMBER:XXXX)]

In accordance with section 519 of the Companies Act 2006, we consider that the following matters 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

Number allocated on audit register Date

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

37. 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 detailed below.

Requirements as to net assets

38. 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 38 for discussion of the meaning of “unqualified report”); and
 - (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 reserves. (The terms “net assets” and “undistributable reserves” have the same meaning as in section 831 of CA 2006).
39. 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 reserves. 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.

The balance sheet included with the company’s latest financial statements is eligible for the purpose of section 92(1)(a) of CA 2006 provided it meets the above requirements.

Meaning of unqualified report

40. In paragraph 37(b) above an unqualified report means, as defined in section 92 (3):
- (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 company.

- 41. As per section 92 (5), 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 reserves.

The auditor's statement on net assets

- 42. Section 92(1) of CA 2006 refers to a company applying to re-register as public. Therefore, the auditor's statement required by section 92(1)(c) is addressed to the company.
- 43. With respect to the auditor's responsibility, the auditor's statement states that it is restricted 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.
- 44. 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

- 45. Section 92 (5) 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.
- 46. 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 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.

47. 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.
48. 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

49. 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.
50. The following examples of such combined reports are provided and may also be adapted as necessary in circumstances where the entity makes use of a specially prepared balance sheet:
 - (a) [Example 4](#) Balance Sheet in annual financial statements reported on without qualification (see page X)
 - (b) [Example 5](#) 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 X)

The illustrative wording contained in examples 4 and 5 is also suitable for inclusion in an auditor's report relating to a specially prepared balance sheet as described in paragraph 47 of this bulletin

EXAMPLE 4

Statement when a private company wishes to re-register as a public company where the auditor's opinion on the balance sheet is unqualified

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

Opinion concerning proper preparation of balance sheet

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].

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.

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.

*Statutory auditor
Date*

Address

EXAMPLE 5

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

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

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.

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.

Statutory auditor

Address

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

51. 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

52. 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:

- 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
- 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.

53. In forming their opinion, in respect of paragraph 51 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)

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

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

- First, determine the profits of the company by reference to the following items 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 regulations under Section 396;
 - ii. where the relevant accounts are IAS accounts, provisions of any kind;
 - c. share capital and reserves (including undistributable reserves).
- Second, reduce the amount determined above by:
 - a. any lawful distribution made by the company and;
 - b. any other relevant lawful payment made by the company out of distributable profits.

after the date of the relevant accounts and before the end of the relevant period

- The resulting figure is the amount of available profits.

56. The “relevant accounts” are any accounts that:

- (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 paragraph 54 above.

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

57. 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 6](#) on page 22) 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.
58. Section 716 requires that 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.
59. 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 6

Report when a private company wishes to redeem or purchase its own shares out of capital

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

Opinion

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.

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.

Basis of opinion

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

Statutory auditor

Address

Date

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

60. 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.
61. 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.
62. 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.
63. It is common practice for the company’s own statutory auditor to issue the valuation report. 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 the FRC’s Ethical Standard for Auditor’s 2019 will apply⁸.
64. Guidance on the work to be carried out when relying on an expert is contained in ISA (UK) 620 (Revised June 2016) “Using the work of an expert”. The expert must report to the valuer so as to enable the valuer to make its report.

⁸Section 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

The valuer's report will incorporate the following elements (see [Example 7](#) on page 26):

- (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:
 - (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.

65. There is no provision for the report to be qualified. Unless the opinion is unqualified the valuer does not issue a report.
66. 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 (i.e. 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.
67. 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 7

Report when a public company wishes to allot shares otherwise than for cash

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

Opinion

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.

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

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...

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)

68. Section 598 of CA 2006 requires, amongst other things, that during the first two years following receipt of its trading certificate⁹ 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:
- is eligible for appointment as a statutory auditor (see section 1212 of CA 2006), and
 - 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. Guidance on the work to be carried out when relying on an expert is contained in ISA (UK) 620 (Revised June 2016) "Using the work of an expert". The expert must report to the valuer so as to enable the valuer to make its own report.
79. Section 600 (2) of CA 2006 requires that the valuer's report must state:
- (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.

⁹A trading certificate is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

80. 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.
81. Sections 600(4) and (5), of CA 2006, set out the requirements where the consideration is given partly for the transfer of the asset.
82. 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.
83. The report which is illustrated in [example 8](#) on page 29 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.
84. There is no provision for the report to be qualified. Unless the opinion is unqualified the valuer does not issue a report.
85. 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 8

Report when non-cash assets are transferred to a public company by certain of its members

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

Opinion

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').

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.

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....

Qualified Independent Person
Date

Address



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