



Corporate Alert

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Changes to requirements when an auditor leaves office

Under provisions of the Companies Act 2006 which came into force on 6 April 2008 changes have been made to the obligation on an auditor to provide companies with a statement of the circumstances associated with their leaving office. In addition, a new obligation has been placed on companies to notify the “appropriate audit authority” in certain circumstances when an auditor leaves office. The changes apply where the auditor ceases to hold office on or after 6 April 2008.

Statement of circumstances

When an auditor of a quoted company (that is one on the Official List) ceases to hold office for any reason, he must now always give the company a statement of the circumstances connected with his ceasing to hold office. In the case of an unquoted company (which would include companies listed on AIM), the auditor retains the option to give a statement that there are no such circumstances which he considers should be brought to the attention of the members or creditors of the company.

Following receipt of the auditor’s statement, the company has a period of 14 days within which it must either circulate that statement to its members or else apply to the court for an order that it need not circulate the statement on the grounds that the auditor is seeking needless publicity for a defamatory matter. If the company does not notify the auditor that it is making such a court application within 21 days of the auditor depositing his statement, the auditor must file that statement at Companies House. Therefore, the only ground on which the company can prevent the auditor’s statement of circumstances from being made publicly available is that the auditor is seeking needless publicity for a defamatory matter. This is a high hurdle for the company to overcome and both parts of the test must be satisfied: the company must demonstrate not only that the auditor’s statement includes a defamatory matter but also that the auditor sought needless publicity in making the statement. Companies must be careful not to fall foul of the timing requirements here: after receipt of a statement of circumstances from the auditors it has 14 days to apply to the court and 21 days to notify the auditor of the court application if it is to prevent the auditor from filing the statement at Companies House.

Notification to the appropriate audit authority

The Act has also introduced new obligations on both auditors and companies to notify regulators in certain circumstances when auditors leave office. The specific requirements vary depending on whether the relevant audit is a “major audit”. The Act allowed the Professional Oversight Board (“POB”) of the Financial Reporting Council to issue guidance as to what constitutes a “major audit” for these purposes and the POB’s guidance issued in May 2008 confirms that audits of companies on the Official List, AIM and PLUS Market will all be classified as “major audits”.

In the case of a “major audit” where the auditor leaves office before the end of his term, the company must notify the POB. The notice must be accompanied by the auditor’s statement of circumstances or a statement by the company of the reasons for the auditor ceasing to hold office. (Remember, for companies that are not on the Official List the auditor may have given a statement that there are no circumstances connected with his ceasing to hold office which should be brought to the attention of the members or creditors and so in this situation the company must always give its own statement of reasons). The company therefore has a choice whether to let stand the auditor’s statement of the reasons for his resignation or whether to file its own statement, which may or may not correspond with the auditor’s statement. As the auditor is under a separate obligation to file its own statement of circumstances with the POB (even where it has given the company a statement of no circumstances) it will be possible for the POB to receive statements from the auditor and the company which contain differing reasons for the auditor ceasing to hold office. It is inevitable that the POB will compare the statements and want to investigate any inconsistencies.

Note also that although, as referred to above, in limited circumstances the company can apply to the court for an order to prevent an auditor’s statement from being circulated to its members and being made publicly available at Companies House, the company cannot prevent the auditor from sending a statement to the POB.



The POB have published a useful flow chart for companies setting out the circumstances in which they must notify the POB (or, in the case of a non-major audit, the relevant supervisory body) when an auditor ceases to hold office. This can be accessed at

<http://www.frc.org.uk/pob/regulation/companies.cfm>

For assistance on this, or any other matter, please speak to your usual Halliwells' contact or **Sophie Brookes** at sophie.brookes@halliwells.com or Tel: 0161 618 4776.

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