MILLS & REEVE

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CorporateBites

Updating you on company and commercial issues

Forward to a Friend

Welcome to our second edition of *Corporate Bites*, mixing legal and non-legal briefings to keep you up to date with topical issues affecting companies, directors and shareholders. Please contact me or your usual Mills & Reeve contact if you have any feedback on the topics covered in this edition.

One of this month's topics focuses on the controversial subject of pre-pack administrations. Loved and loathed in seemingly equal measure, pre-packs are becoming an increasingly attractive option for companies facing financial difficulties that require urgent action. Pre-packs tend to polarise opinion - critics argue that they disenfranchise creditors and lack transparency whereas supporters stress the advantages of speed (a quick sale, they argue, enhances value and goodwill) and reduced costs. Whatever your view, it's clear that in today's economic climate, pre-packs are likely to remain in the spotlight for some time.

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Pre-packs in the spotlight

Pre-packs occur where an agreement to sell the business and assets of an insolvent company is negotiated prior to the appointment of the administrators and the transaction is completed minutes after the administrators' appointment is approved by the court. This minimises the period in which the administrators are actually in charge (making them highly attractive to administrators) and, once completed, allows the administrators to focus on the winding up rather than trading.

Statement of Insolvency Practice 16 came into force on 1 January 2009, with the intention of providing greater transparency for creditors following general criticism that the pre-pack process disadvantages creditors, particularly unsecured creditors, who are not consulted on the terms of the sale. Administrators will be required to provide detailed information about the sale as evidence that they have acted with due regard to the interests of creditors, including justifying the choice of a pre-pack and details of:

- the purchase price;
- any valuations obtained;
- connections between the company and the buyer; and
- the level of the administrator's involvement with the company prior to their appointment.

For further information, contact Mary Prentice.

The introduction of the SIP coincides with the launch by The Insolvency Service of a complaints hotline (0845 601 3546), inviting complaints from persons who wish to complain or feel they have been unduly disadvantaged.

A helpful guide to pre-packs can be found here.

Europe's Sarbanes Oxley?

When the Enron crisis broke, the knee-jerk reaction among the US regulators produced the raft of regulation that has become affectionately known as "Sarbanes Oxley". The effect was to encourage businesses seeking to raise capital on the public markets in the US into the open arms of Europe and other financial centres. In this regard, the US's loss was largely London's gain and it is no coincidence that London's emergence as one of the leading financial centres has taken place in the wake of Sarbanes Oxley.

The regulators in Europe, and indeed the rest of the world, are now facing similar calls for regime change. This has not gone unnoticed by arguably the most influential body among investors in the UK's public markets, the Association of British Insurers (the ABI), whose members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU and whose members control assets equivalent to a quarter of the UK's capital.

The ABI has stated that the future of the UK's financial services rests on a knife edge. In their opinion, a pan-European supervisor of supervisors could be a sensible way to improve cross-border regulation in the EU but the ABI was keen to stress that such a body should be based in London due to London's position at the heart of world markets. The ABI acknowledged that London can lead the way out of the global crisis in financial services but also that it has the most to lose.

What happens next (and the impact on the regulation of the UK's equity and capital markets) is unclear but it's certainly one to watch.

For further information, contact Stephen Hamilton.

Taxation of Foreign Profits of Companies

HMRC recently published draft legislation to implement proposed reforms to the taxation of foreign profits of companies. The main elements are:

- an exemption from corporation tax for most foreign dividends (but with particular restrictions on the extent of the exemption available to "small companies");
- a cap on the amount of intra-group financing expenses that will be deductible for UK corporation tax purposes;
- an extension to the concept of "unallowable purpose" for the rules on loan relationships and derivative contracts;
- changes to the rules on controlled foreign companies in light of the new foreign dividend exemption; and
- replacement of the current Treasury consent rules with a reporting obligation for prescribed movements of capital above £100 million.

The consultation period announced in December came to a close on 3 March 2009. Although the new regime was due to come into effect on 1 April 2009, this has now been pushed back. HMRC published an update on 8 April 2009 to summarise its current thinking on the design and function of the worldwide debt cap.

For further information, contact Christopher Townsend.

Tougher penalties for late accounts

All companies - private or public, trading or non-trading - must deliver annual accounts to Companies House.

From 1 February 2009, Companies House will impose tougher financial penalties on both companies and LLPs for annual accounts filed late after 31 January 2009 in addition to potential criminal liabilities for failure to deliver accounts on time. The aim of the increase is twofold:

- to provide a greater deterrent, encouraging persistent offenders to abide by their statutory duties; and
- to take account of inflation since 1992 when the penalty was first introduced.

By way of an example, a private company or LLP that is more than six months late in delivering its annual accounts would be liable for a £1,500 fine (previously £500) and a public company would be liable for a £7,500 fine (previously £2,000). These figures are doubled for companies if their accounts were also late the year before (provided that both accounts were for financial years that began on or after 6 April 2008).

A guide to late filing penalties, produced by Companies House, can be accessed here.

For further information, contact Ben Turner.

SHORTCUT - does the Carbon Reduction Commitment affect me?

CRC is a mandatory emissions trading scheme aimed at securing reductions in carbon dioxide emissions from large, non energy-intensive organisations in both the public and private sector. Although not in force until April 2010, there are certain actions that demand immediate consideration.

To see whether it will apply to your business, click here.

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