



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

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Our ref: ICAEW Rep 99/07

Mr Pierre Delsaux
Director, Company Law and Governance
European Commission
Directorate General for the Internal Market and Services
B - 1049 Brussels
Belgium

By email: pierre.delsaux@ec.europa.eu

Dear Mr Delsaux

**DIRECTIVE 2006/46/EC - RELATED PARTY TRANSACTIONS NOT
UNDERTAKEN IN THE NORMAL COURSE OF BUSINESS**

We are writing to bring to your attention a legal problem that may prevent Member States from adopting domestically an accounting standard equivalent to IAS 24 *Related Party Disclosures*.

Directive 2006/46/EC, at Article 6, amends Directive 78/660/EEC by inserting, inter alia, a requirement to disclose:

'(7b) transactions which have been entered into with related parties by the company, including the amount of such transactions, the nature of the related party relationship and other information necessary for an understanding of the financial position of the company, if such transactions are material and have not been concluded under normal market conditions.' (emphasis added)

However, this requirement is not intended to apply to IFRS companies. Recital (11) of the Directive states that:

'Companies which already disclose information about transactions with related parties in their accounts pursuant to international accounting standards as adopted in the European Union should not be required to disclose further information under this Directive, as the application of the international accounting standards already results in a true and fair view of such a company.'

Our query relates to what happens if an EU Member State adopts IAS 24 into its national standards (perhaps adjusted slightly to fit in with local standards). The UK Accounting Standards Board is proposing to do so, but a problem has arisen. It had been assumed that a company that is not required, or has not chosen, to use IFRS

would nevertheless be able to take advantage of the intention in Recital 11 if it was following a local standard modelled on IAS 24.

However, this has been challenged and some assert that the law requires separate disclosure of transactions that have not been concluded under normal market conditions. They claim that Recital 11 only applies to IFRS companies and moreover that this is an additional requirement to that in any local standard that is equivalent to IAS 24, which merely requires the disclosure of all related party transactions with no differentiation as to whether they were carried out under normal market conditions. Under this argument, it appears that potentially only IFRS companies can claim the Recital 11 exemption, not those following a standard converged to IAS 24 under UK (or any Member State) GAAP, and the legal position is not entirely clear as to whether the requirement in the Directive represent an additional disclosure requirement.

However, we assume that the Commission's intention was to relieve a burden on companies by restricting disclosure to transactions not conducted under normal market conditions, not to add one. It surely cannot be intended that companies reporting under national GAAP are required to disclose separately transactions that are not under normal market conditions when companies reporting under IFRS would not have to do so.

The Commission presumably does not wish to stand in the way of Member State standard setters adopting an equivalent standard to IAS 24, but they may have difficulty in doing so until this legal matter is resolved.

We are therefore writing to you and the UK Department for Business, Enterprise and Regulatory Reform to ask you to expedite a resolution to this legal problem at the earliest opportunity.

Please contact the Institute's Head of Financial Reporting, Nigel Sleight-Johnson (nigel.sleight-johnson@icaew.com), if you would like to discuss this matter further.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Andy Simmonds', with a long horizontal flourish underneath.

Andy Simmonds
Chairman, Financial Reporting Committee

cc: Jeroen Hooijer, Head of Accounting Unit, DG Internal Market and Services
Ian Mackintosh, Chairman ASB
Geoff Dart, UK Department for Business, Enterprise and Regulatory Reform