



INSTITUTE OF DIRECTORS

Ms Anne Willcox
Companies Bill Team
DTI
1 Victoria Street
London
SW1H 0ET

12th May 2006
ref. PP/let/DTI/CLRB/

Dear Anne,

Company Law Reform Bill
Draft clauses on liability for narrative reporting

The Institute of Directors (IoD) welcomes the opportunity to comment on the draft clauses on liability for narrative reporting published on 3rd May.

Our first reaction is to thank all involved for the willingness to listen to concerns and to respond in such a positive way to them. The IoD believes that the concerns of directors and companies have been addressed in a constructive way.

After Clause 447

This provision addresses the major concerns and apart from the minor typo in clause (3)(a) we have no specific comments on the drafting.

Because of the concepts it introduces we believe that the application of this clause will require a significant amount of explanation and guidance to directors. In particular:

- in relation to matters such as the need for matters in the annual report and accounts that form part of the directors report to be clearly identified as such, but that there is no more need than now for them to be collected into a single part of the overall document.
- clarification that if companies go into greater detail in the business review than is required to comply with the Act (e.g. they follow the ASB Reporting Statement), so long as they include these matters in the business review (and call it by that name) the restriction on liability will apply.

New section 90E Financial Services and Markets Act 2000

This clause introduces more difficult concepts because of the interface between legislative provisions and also the regulatory bodies concerned.

Sub-clause (1)

The main problems associated with commenting on this sub-clause dealing with the scope of reports to which the liability regime will apply are that the range of information from which clarification on liability is to be provided is not within the ambit of the Companies Acts, nor is it specified in detail in the Financial Services and Markets Act (FSMA).

In addition the Financial Services Authority (FSA) is still consulting on the rules that will implement the Transparency Directive (TD). Given certain statements in the consultation document issued by the FSA to the effect that certain existing UK requirements that are not replicated in the TD will be retained, the scope of reports in the proposed new clause needs to be wide enough to include such items or the rules made by the FSA under section 90A will have to encompass them. One such aspect is the position of summary financial statements. These are explicitly included in the scope of the clause on director liability, but need to be covered for securities law purposes as well. Other aspects that need to be considered are permissive rather than mandatory reports, such as preliminary announcements and reports made pursuant to the Listing Rules, the Combined Code, etc. These are, we believe of sufficient importance and weight that they should be treated in the same way as other reports. Presentationally it would look odd if they became hedged around by provisions excluding liability.

While we appreciate that the rules made by the FSA are an important aspect of the ultimate scope of the application of the legislation, and we will be making similar representations to them, it is important that the underlying legislative provision does not inadvertently exclude certain reports from the benefit of the provision. We would urge that the government be prepared to amend this provision at a late stage of the Bill's passage if necessary.

Sub-clause (3)

The expression "person exercising managerial responsibilities" is unclear and needs to be clarified.

General

Since these provisions will require no action by issuers, directors or regulators, the IoD would recommend that they come into force on Royal Assent.

This response is being sent by e-mail with a copy by post. If you have any questions, please contact the writer.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'SPH', written over a faint, illegible stamp or watermark.

Patricia Peter
Head of Corporate Governance