ACT

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2 July 2004

Dear Madam ,

MODERNISATION OF ACCOUNTING DIRECTIVES/ IAS INFRASTRUCTURE
A consultation document on the implementation of the accounting modernisation directive and arrangements for the use of IAS for companies and building societies, issued March 2004

The Association

The Association of Corporate Treasurers was formed in 1979 to encourage and promote the study and practice of corporate finance and treasury management and to educate those involved in the field. Today, it is an organisation of professionals in corporate finance, risk and cash management operating internationally. A professional body and not a trade association, it has over 3,000 Fellows, Members and Associate Members. With more than 1,200 students in more than 40 countries, its education and examination syllabuses are recognised as the global standard setters for treasury education. Members of the Association work in many fields. The majority of Fellows work in large UK public companies, responsible for the treasury and corporate finance functions.

The ACT usually comments from the corporate and not the financial services sector standpoint

General

The Association of Corporate Treasurers is supportive of the move to IFRS and welcomes the consistency, and transparency that this move will bring. Accordingly we are very supportive of the proposals put forward in your consultation paper to amend Company Law in order to allow for the implementation of IAS and the modernisation directive. The flexibility you are proposing in permitting companies to use IAS individually or as part of a group is most welcome in allowing companies or groups to plan an ordered transition to IAS.

Associate definition

Before covering your list of questions we note that Para 5.19 seeks views on whether the Company Law definition of an associate should remove the need for a participating interest *and* significant influence to exist and instead simply rely on the requirement for *significant influence*. This is not a move required by the Modernisation Directive, although this Directive did remove the need for a participating interest in the definition of a subsidiary undertaking and thus the sole requirement became one of *control*.

Control is a fairly objective test, but we feel that the concept of *significant influence* is rather more vague. The statutory definition of a participating interest requires there to be an intention to hold both for the long-term and to secure a contribution to the holder's business. Thus, it would be unlikely to present a problem in deciding whether, for example, a joint venture company should be treated as an associate and thus equity-accounted. However, there could also be more peripheral situations where a *significant influence* might exist but it would be bizarre to regard the company in question to be viewed as an associate if the two intentions mentioned above (long term holding and contribution to business) did not exist in relation to the shareholding. For example, a significant influence could be exerted by a strong minded / well respected director who is nominated by a significant institutional shareholder and whose views are often sufficient to carry the board. Is it sensible for the company to be viewed as an associate of the institution, unless there is clear evidence that the above two intentions are present? If so, what if the relevant director is succeeded by someone far less assertive?

The rebuttable presumption in the Companies Act (Section 260) is that a 20% holding is presumed to be a participating interest. In addition to the linking of the above-mentioned intentions to the shareholding, the prima facie 20% level is a useful guide to the type of interest that should be required. Of course, there are joint ventures and similar business links that involve smaller holdings and which are nevertheless viewed as associates, but the prima facie indicator of 20% is still helpful. In short, the concept of a participating interest does have the advantages of (a) providing the handle to which to attach the requirements for the long term holding and contribution to business intentions, and (b) being clear and reasonably objective.

We therefore believe that the existing Companies Act position should not be changed.

Specific Questions

1. *Do you agree with the policy that the option to choose IAS should operate separately for individual and group accounts?*

We fully support the concept of giving companies the option to apply IAS separately in their individual and group accounts, although we agree with your expectation that it is unlikely that a parent would apply IAS in its consolidated accounts but not in its individual accounts. This flexibility is welcome and may be of comfort to groups during the transition phase.

2. *Do you agree with the policy that choice of IAS should be one way, with one exception? Do you think there should be any other exceptions?*

We agree that the decision to move to IAS should be one way, with the stated exception when the ownership of a company moves into another group. One of the benefits of IFRS is to provide greater comparability and standardisation of reporting, so that to allow switching back and forth would negate this, and introduce the possibility of artificial manipulation of the reported numbers.

In addition to the exception you have proposed for the case of a company becoming the subsidiary of an EEA undertaking that does not prepare its individual accounts under IAS we could envisage the reverse occurring. If a parent that does use IAS acquires a very substantial subsidiary (which will probably amount to a reverse takeover and will need defining to prevent abuses) that does not use IAS, it would be helpful to allow the parent the opportunity to opt back to not using IAS. Whilst this may seem very unlikely, it could apply to large acquisitions of unlisted companies and/or non-EEA companies, whether listed or not.

Additionally, in any case of an acquisition, it would be good to allow a transition period such as making the requirements for consistency effective only from the first *full* accounting period following the acquisition. We do not envisage many groups would need to use this option since for any listed group which must prepare its consolidated accounts under IFRS it will need to collect IFRS information from all its subsidiaries irrespective of what accounting convention is used in the individual entity accounts.

3. *Do you agree with the policy on consistency of choice of accounting framework within a group?*

We agree that it makes very good sense that a parent company should ensure that the individual accounts of its subsidiary undertakings should be prepared using an accounting framework that is consistent with the individual parent company accounts unless there are good reasons against it. This ensures consistency and should help to avoid any misleading effects between the various companies. The allowed for exception when the parent is *obliged* to prepare consolidated accounts under IAS and chooses to have the individual parent accounts under IAS for consistency between the two is helpful, although we would also find it helpful (but not essential) to extend this concession to cases where the parent *opts* to prepare its consolidated accounts under IAS.

Under this question we repeat the point made in 2 above that it would be good to allow a transition period following any acquisitions, to make the requirements for consistency effective only from the first full accounting period following the acquisition.

4. *Do you agree with the policy of treating building societies consistently with companies in permitting them to choose to use IAS?*

No comment

5. *Do you agree that charitable companies should not be permitted to choose to use IAS?*

No comment

6. *Do you agree with the Government's proposals to implement (or not implement, as the case may be) the Member State options in the Modernisation Directive for companies and, where applicable, building societies?*

We agree with your proposals as to which elements of the options are to be implemented in the UK, and with your rationales as stated in the consultation paper.

7. *Do you agree with the Government's proposal on dividends?*

We agree with the proposal that the P&L only includes dividends paid or liable to be paid, and that proposed dividends will appear in the notes to the accounts.

These comments are on the record and may be freely quoted and made available for public inspection.

We hope these responses are helpful for your deliberations and if you need any further information or clarifications please contact any of the people listed below.

Yours faithfully,

Richard Raeburn
Chief Executive

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