

# FineLines 42

The Newsletter of Lubbock Fine Summer 2007

## Companies Act 2006

what do the sweeping changes mean for directors?



The new Companies Act has been issued and it is the longest piece of legislation ever to have been passed by parliament. Running to over 700 pages, there is to be further consultation on many of its details with the expectation that all provisions will have come into force by October 2008.

The overall objectives were to simplify and modernise company law so that it better meets current business needs, whilst providing flexibility for the future. The resulting legislation has an impact on directors, auditors, shareholders and company secretaries of private, public and quoted companies.

It is not yet fully clear how the new Act will apply to existing companies. Whilst the initial consultation process began in 2006, further consultation in 2007 looks to address this question in detail. Broadly, the intention is to respect existing company arrangements. Therefore, if a company's current articles include explicit provisions requiring something that the Act itself no longer requires, the existing articles will have to be amended if the company wishes to take advantage of the deregulation allowed by the Act.

### Main changes in brief

#### Directors

##### • Statement of duties

- There will be a formal, statutory code of director's general duties.
- Act requires each director to act in way most likely to promote success of company.
- Where duty is breached, company or shareholders on its behalf can sue directors.
- Directors will only be liable for breach if losses have been incurred as a result.

##### • Wider social responsibility

In performing duties above, Act requires directors to consider how decisions affect wider interests of employees, community, environment, suppliers and other factors. (Seen as one of the more controversial requirements of the Act.)

##### • Directors' safe harbour from liability

Restricts directors' civil liability in respect of material omissions from, or statements made in, directors' reports. Liability only arises if statements are untrue or misleading and made deliberately or recklessly. In these circumstances, directors only liable to company and not to shareholders.

##### • Transactions with directors'

Current rules regulating transactions between directors and the company requiring shareholder approval effectively reversed. Act permits companies, with shareholder consent, to make loans, give guarantees or provide security in connection with loans to directors.

##### • Directors will also...

- have automatic option to file service address rather than private address, on public records at Companies House
- no longer need to file details of other directorships

\* Does not help directors whose current private address already appears on records at Companies House although additional regulations likely to allow address already on public record to be removed in certain cases.

#### Auditors and accounts

- Introduces comprehensive code of accounting and reporting requirements for small companies.

\* Act makes distinctions between companies that are small and those that are not and those that are quoted and those that are not.

- Reduces time allowed to file at Companies House down from 10 to 9 months for private limited companies and down from 7 to 6 months for public limited companies.

\* There are automatic penalties, which remain as current, if company accounts are filed late ranging from £100 to £1000 for private companies and from £500 to £5000 for public companies.

## Banking on Stephen



Stephen Banks.

We're delighted to announce the appointment (1 June 2007) of Stephen Banks as Lubbock Fine's newest partner.

Stephen, who joined us just over two years ago from a large, city firm, has his roots in Zimbabwe and South Africa. Arriving from Johannesburg in 1990, to join his father who was working in the UK, Stephen was more than a little surprised when his father promptly left to return to South Africa. Undeterred, he set about securing a training contract to qualify as a chartered accountant which he did in 1995, going on to qualify as a tax advisor in 2001.

Stephen manages a portfolio of commercial clients including Alternative Investment Market (AIM) listed and internationally orientated businesses. His wide experience over many years includes due diligence on business acquisitions and disposals together with the related transactional work.

"Stephen has brought an added perspective to our firm" said managing partner, Geoff Goodyear. "His skill in handling the specifics of AIM listed companies and corporate finance assignments has had a clear effect in strengthening our unique range of services and resulted in his speedy promotion. We are confident that he has a very successful future ahead of him and, together with our many clients who already know him, we wish him well."

Stephen and his partner Rachel, whom he met at his previous firm, live outside London, but feel that the considerable commute is a small price to pay for being able to leave the big smoke behind every day.

In the little time they have away from the office, Stephen and Rachel like to work-out at the gym, in-between indulging their interest in wine and dining. With an extended family still in South Africa, They spend holidays travelling both to Africa and to other destinations. ●

- **Continues to help improve audit quality**
  - Act introduces new criminal offence for auditor to knowingly or recklessly include anything materially misleading, false or deceptive in audit report.
  - Companies will be able to agree limit on auditors' liability arising from audit for specified year, subject to shareholders approving main terms of agreement. Amount of limit must be 'fair and reasonable' in order to be effective.
  - Audit reports to be signed by senior statutory auditor, in own name, for and on behalf of firm.

### **Retains option to file abbreviated accounts for small and medium-sized companies.**

- It is expected that turnover will now have to be disclosed.

### **Electronic communications (Effective January 2007)**

- Greater use of electronic communications to be allowed such as with shareholders by email, via websites with notification where individual shareholders consent. There is a right to request continued communication in hard copy. Intention is to cut costs for quoted plcs and other multi-shareholder companies. Smaller companies should also see practical benefits.
- Companies should note that they are now required to disclose registered name and number on their website.

### **Decision making**

- Resolutions of private companies capable of being passed in writing, with exception of those to remove director or auditor
- Written resolutions able to be carried with majority of
  - over 50 per cent (ordinary resolutions),
  - 75 per cent (special resolutions) of eligible votes
- AGM's for private companies no longer necessary unless shareholders positively opt to do so. Public companies continue to be required to hold AGM. Must be within six months of financial year-end.

### **Other areas**

- **Forming a company**  
to become simpler. Company memorandum becomes a formal document recording details of company at time of registration. Articles alone will be the continuing constitutional document, containing minimum key rules on internal workings of company. Private companies to have separate, simple model articles that better reflect the way that they operate.
- **The company secretary**  
Requirement for private company secretaries is abolished although many of the responsibilities previously carried out by the secretary continue to exist. Public companies continue to require a company secretary.

### **Capital maintenance and financial assistance**

- Existing rules regarding capital maintenance and share capital provisions are complex and Act simplifies these by removing unnecessary requirements for private companies. Additionally, private companies not prohibited from giving financial assistance for purchase of own shares, provided they are not subsidiaries of public companies.
- **Authorised share capital**  
Requirement to have authorised share capital removed for both public and private companies.  
  
Finally, the 2006 Act repeals and replaces virtually all existing Companies Acts.

### **What do we need to do now?**

2007 begins as a year of consultation leading to secondary legislation that will implement many of the detailed provisions of the Act. Therefore, many provisions are unlikely to come into force for over a year which provides us all with time to prepare.

If you would like to discuss the changes to company law in more detail, including any action that may be required, please speak to your contact partner. ●

# Whose cash is it anyway

## Inheritance Tax (IHT) planning

By Neville Periera, Financial Services Director,  
Lubbock Fine Financial Solutions LLP (LFFS)



### **Introduction**

With the growth in UK property prices you no longer have to be "rich" for your estate to be subject to IHT. Currently the tax is levied at 40% on everything you leave over £300,000, (2007/2008) the current tax free threshold. Therefore on an estate valued at £1M – not difficult with London house prices – without some careful planning, tax of £280,000 will be due. If your estate is worth in excess of £300,000, it may even be worth considering schemes which permit individuals to "have their cake and eat it" by allowing them to gift assets whilst still receiving an income.

A wiser man than I once said that "inheritance tax is a voluntary tax, paid by those who distrust their heirs more than they dislike the Inland Revenue". Yet, more than £2billion per annum is collected in IHT every year. With careful planning it is possible to mitigate or even avoid this tax in its entirety.

### **Mitigating the liability**

#### **Writing a Will**

For many people, making a will is the most obvious way to plan for the future and the fairest way to provide for loved ones. Yet, an amazing 76% of the UK population do not have an up to date will. If you die 'intestate' i.e. without having made a will, in simple terms, all your "wealth" is divided up between each surviving member of your immediate family. This might leave some of your dependents with a serious shortfall. If you have minor children the situation is very complex. If you haven't any family or beneficiaries, your hard earned money goes straight to the Crown. Not a good idea and not what people really want!

Wills can play a crucial part in IHT planning. The most important part of IHT planning using wills – especially with married couples (and registered civil partners) – is to ensure that the nil rate band (or at least part of it) is utilised upon the first death. Because many people cannot afford to deprive the surviving spouse of the use of the assets, this legacy can be made through a discretionary trust. The surviving spouse can be a possible beneficiary under this trust as well as the children. This way he/she can benefit from the assets in the trust, subject to the discretion of the trustees.

It is important that advice is sought as this area is complex and fraught with difficulties. For example, if the asset to be placed in trust is a share of the house, complications will arise in circumstances where one of the spouses did not contribute money to its acquisition.

### **Other methods**

Short of insuring the liability, there are various exemptions and reliefs available. The Annual Exemption allows individuals to give away up to £3,000 per tax year (or £6,000 if you have not used the previous year's allowance). The Small Gifts Exemption - lets you give up to £250 to as many people as you wish in any tax year whilst the Charitable Donations Gift Exemption allows individuals to give any amount to any registered charitable organisation.

Potentially Exempt Transfers, allows you to gift money or other assets up to any amount. However, you must live for at least 7 years after the gifts have been made. If you die within 7 years, the value of the gift - subject to taper relief - is added back into your estate when calculating if any IHT is due on death.

Very few people have the wealth to give large amounts of money away and not have access to it again. However, there are some possible solutions to overcome this problem.

### **Discounted Gift Trusts**

The trust allows an individual (settlor) to make a life time gift that reduces their potential IHT liability whilst, at the same time, allowing the settlor to retain pre-defined access to the money. This can be in the form of regular income payments. The future growth on the invested amount is also outside the settlors estate for IHT purposes.

### **Gift and Loan Schemes**

The mechanics of this scheme entail the settlor making an interest free loan to a Trust already established. The trustees use the funds and invest this in a suitable investment. The settlor can receive loan repayments as "income" as the trust allows the settlor to retain rights to these loan repayments. In addition, as only the amount of the outstanding loan is included in the settlors estate upon death, he/she can recall the outstanding loan at any time therefore retaining access to the capital.

Furthermore any growth on the investment in the trust is also outside the settlor's estate.

### **Summary**

With careful planning it is possible to mitigate or avoid paying IHT. Surely it is better to leave assets to loved ones rather than the HM Revenue and Customs (HMRC), unless of course your loved one works for the HMRC.

For further information please contact Neville at [nevilleperiera@lubbockfine.co.uk](mailto:nevilleperiera@lubbockfine.co.uk) or speak to your contact partner. ●



# Client Profile

## Rheochem plc



Haydn Gardner.

**AIM listed Lubbock Fine client Rheochem, is an organisation providing drilling fluids and related services to customers in the oil and gas industry.**

In less than a decade the company has positioned itself to compete head on with three of the world's largest oilfield service company players - Halliburton, Schlumberger and Baker Hughes who between them control seventy five per cent of the world drilling fluids market. It is now busy replicating this international success with other customers in the oil services sector and expanding its range of products, services and assets.

But what exactly are drilling fluids? "Simply put," said Rheochem's Australian chief executive officer Haydn Gardner, "oil wells can't be drilled without these fluids. Believe it or not, this is an industry worth \$4bn worldwide." Synthetic oil based fluids are usually blended in dedicated facilities known as Mud Plants (in bygone days, the fluids themselves were known as 'mud') prior to transportation to offshore rigs by workboat. There are a number of functions fulfilled by drilling fluid ranging from

maintaining the stability of a borehole to keeping the 'drill bit' cool and, crucially, these fluids are key to removing the rock cuttings.

Headquartered in Australia, Rheochem came to Lubbock Fine as a result of a joint, competitive pitch with Stantons International, our Russell Bedford associate firm in Perth. The two firms now work closely together on the audit. Since becoming a client Rheochem has extended its operations in Australia as well as expanding into New Zealand, India, the UK and the US. The company has five directors and employs twenty-six full time staff as well as twenty contractors working full time on rigs. Between them the five directors have backgrounds in mining, engineering, industrial chemistry and geology.

There is a team of people working on Rheochem business at Lubbock Fine and one of them, partner Stephen Banks, said, "We are delighted to be involved with Rheochem, a prestigious client of the firm with an unusual business. It is interesting to work with management who are entrepreneurial in their outlook and whose aim is to expand and grow their business into new areas and markets"

It is perhaps a little known fact that the oil business is largely supported by outsourced services, to the extent that around twelve to fifteen companies will typically work together to 'drill a hole'. On oilrigs too, there will be many more outsourced workers than the number actually employed by the major oil company. As smaller companies provide so many services to the majors, much of the industry's technical expertise resides within these smaller service organisations. Knowing it was armed with the appropriate capability, Rheochem has now started to buy into its own oil field assets. It recently acquired an interest in 31 wells in Texas and a thirty three per cent interest in UK based Zeus Petroleum, a company

with North Sea interests and specifically the Athena Field which should start producing in 2009.

Rheochem's medium-term aims are summarised by Gardner as being first to evaluate the UK Zeus assets, currently a collection of assets bought from a private vendor. After an independent evaluation which will be complete in the next few months, an appropriate course of action will be taken. Secondly, the company will start to get some oil production out of the Texas wells; and thirdly, it needs to continue to secure new customers internationally as well as consolidating and expanding upon existing business.

"Having floated on the AIM market in December 2004, we were frustrated with the prescriptive nature of our previous accountants" Haydn Gardner remembered. "They were simply too big in scale at our stage of development. In addition, although they were a so-called global firm, their UK and Australian divisions seemed lacking in co-ordination and synergy. Since working with Lubbock Fine, we're much happier in the knowledge that we're talking to the people in charge and aren't faced with endless layers of approval procedures and bureaucracy. The change has been interesting in that in many respects, it's easier to explain the direction we want to take and solve potential issues before they become problems. There's more flexibility. The two firms work well together and the sizes of their organisations are more suited to us. The process is plainly more streamlined. We're very happy with the service we get and the price that we pay," he added.

With a degree in applied chemistry and a background in chemical engineering and working on offshore rigs, his line of business has mirrored that of his father, an engineer who joined the oil industry late in his career. Prior to joining the oil industry himself, Gardner was an industrial chemist involved in the manufacture of pharmaceuticals before moving to ICI then BHP Petroleum as a research chemist charged with the task of understanding the interactions of drilling fluids and sub-surface formations. So, a fascination with the blend of chemicals and engineering seems to be in the blood.

Rohit Majithia, Lubbock Fine engagement partner said, "It is always rewarding to work with an interesting client, even more so when that client has come to us through the joint effort of our international organisation, Russell Bedford. Communication and understanding your client's business is key to providing a first class service. Rheochem is an example of how we, together with Russell Bedford, can compete globally with the larger firms."

Having taken a strategic decision to base himself in London as it made sense to run operations outside Australasia from the UK, it's proved a little difficult for Haydn Gardner to indulge his passion for sailing. The only trouble, he claims, with living in London is that his boat, a 56' steel sloop, which he spent twenty years building himself, is still in Perth. ●

## Enduring powers of attorney urgent action needed now

**None of us enjoys considering the possibility of becoming mentally incapacitated, but it could happen to any of us at any time and most probably, when we least expect it. It may happen as a result of an unforeseen accident or possibly due to chronic illness. In such a situation, who would become responsible for administering our personal and financial affairs? If there's a business to be considered, who would run it and how would our families access funds?**

As a precautionary arrangement we should all have an Enduring Power of Attorney (EPA). This enables an individual to nominate and name people to deal with his or her financial interests in the event of such mental incapacity. A little like an insurance policy, we would hope never to have to need it but can take comfort in the thought that it's 'there' if and when required.

**The bad news is that from October 2007, it will no longer be possible to create new EPA's** as they are to be replaced by Lasting Powers of Attorney (LPA's). LPA's are far weightier, and at 20 plus pages will cost significantly more to create than EPA's.

**The good news is that EPA's completed before October 2007 will remain effective.** So, if you don't have one but are considering setting one up, now is the time. EPA's are simpler, more flexible and cheaper than LPA's (although an LPA can still be created at a later date).

For anyone whose affairs are even mildly complex, we urge you to act now. For more information on EPA's and LPA's, please speak to your contact partner. ●



Photo of the initial flare whilst testing the 4 Athena Discovery. To test a well they produce the oil to determine the flow rate and burn it through a flare rather than collect it.

Photo compliments of Ithaca Energy



# Tax News

## Nil rate band discretionary trusts in your Will

**A recent case is sending ripples through many Wills.**

Several broadsheet newspapers have reported on the recent 'Phizackerley' case which involved the family home, purchased in joint names but with Dr Phizackerley providing most of the purchase price.

When Mrs Phizackerley died first, her Will had set up a nil rate band discretionary trust. Her half share of the house was assigned to her husband, subject to a debt to the nil rate band trustees. The creation of such a debt in favour of the nil rate band trustees has been standard procedure for many years.

In the past, had the debt remained outstanding until the death of the surviving spouse, the 'debt' would have been deducted from the surviving spouse's estate. In this particular case, it was ruled that upon the husband's death, the outstanding debt could not be offset against the value of his estate thus negating the potential inheritance tax saving.

The deductibility of a debt has historically been questioned if the house was originally in one person's name and then transferred to joint names. This case has gone a step further by examining the specific contributions made by each party to the original purchase price of the property. It is possible that this ruling will be appealed and therefore the full implications of the case and the extent to which the Revenue will apply it are as yet unknown.

If you think you may be affected, you might wish to consider amending your Will to include a 'life interest trust of residue'. For further information, please speak to your contact partner. ●

## Declaring your cash

new rules apply from 15 June 2007

**On 23 April 2007 the Revenue announced new rules applying from 15 June 2007 to people entering or leaving the UK. From that date, if you are travelling to or from a country outside the European Union (EU), you will need to declare any sums of cash of €10,000 or more (or the equivalent in another currency) to HMRC. There is currently no such requirement.**

The change is part of the EU's efforts to prevent money laundering and is designed to make border cash controls consistent across the EU so that they do not upset the operation of the internal market. Details can be found in Regulation 1889/2005 of the European Parliament and of the Council.

HMRC has issued a leaflet explaining the new rules. The declaration must be made on forms which will be available at ports and airports. The term 'cash' covers currency notes and coins, bankers' drafts and cheques of any kind including travellers' cheques.

Penalties can be charged for failing to declare the money or providing incomplete or incorrect information. HMRC can seize cash of £1,000 or more if they have reasonable grounds to suspect it is the proceeds of, or is intended for use in, unlawful conduct. There is a right of appeal against the seizure and seized cash cannot be kept for more than 48 hours without a court order.

There is no requirement to declare cash if you are travelling to or from another EU country. For the purposes of this requirement, the countries of the EU are:

Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain (including the Canary Islands), Sweden, and the United Kingdom (not including the Isle of Man and the Channel Islands). ●

## New office in Dubai



**March 25th 2007 saw the launch of Lubbock Fine's latest venture, Russell Bedford (Dubai) Limited, which opened for business in Dubai. The United Arab Emirates is poised for a major tranche of business and commercial development over the coming years and we see this as a further major step in our international development.**

Doing business in Dubai requires a whole new mindset. Although it can be a profitable and rewarding experience, it must be properly established at the outset. It's all too easy to set off down the wrong path and suffer the harsh consequences of that initial naivety. Therefore, guidance through local regulations and requirements is fundamental. Local knowledge on the ground is vital.

Russell Bedford Dubai is ideally placed to advise businesses wishing to establish themselves in the region or indeed people resident there wishing to look at investing in other regions.

"This is a very exciting time to be operating in Dubai," said Lubbock Fine's managing partner and Russell



Bedford chairman, Geoff Goodyear. "We have assembled an excellent and experienced team to provide the specialist support that is required to enter this new market".

The company is incorporated in the Dubai International Financial Centre (DIFC) and is registered as an Auditor as well as an Ancillary Services Provider in the DIFC.

For further information about Russell Bedford (Dubai) please contact Geoff Goodyear at [geoffgoodyear@lubbockfine.co.uk](mailto:geoffgoodyear@lubbockfine.co.uk) ●

We're always delighted to feature good news about our clients. If you have something special that you'd like to shout about, please email [marketing@lubbockfine.co.uk](mailto:marketing@lubbockfine.co.uk) and we'll try to get your story into our next issue.

**LubbockFine**  
Chartered Accountants

Russell Bedford House, City Forum,  
250 City Road, London EC1V 2QQ  
**Telephone 020 7490 7766**  
Fax 020 7490 5102  
[www.lubbockfine.co.uk](http://www.lubbockfine.co.uk)



Editorial information: Edited by Nicola Coleman.  
E-mails, faxes or letters to the editor are welcome.

[nicolacoleman@lubbockfine.co.uk](mailto:nicolacoleman@lubbockfine.co.uk)  
[marketing@lubbockfine.co.uk](mailto:marketing@lubbockfine.co.uk)

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