

# Corporate Update



## 1. Director's Indemnity

Previously under the Companies Act 1985 ("CA") a company could not generally exempt its directors and secretary from, or indemnify them against, liability for any negligence, default, breach of duty or breach of trust in relation to the company. However the provisions of the Companies (Audit, Investigations and Community Enterprise) Act 2004 relaxes this prohibition and new sections of the CA which came into force on 6 April 2005 permit companies to:

- a) indemnify directors in respect of both legal costs and the financial costs of any adverse judgements in relation to any civil liability to any third party; and
- b) pay director's defence costs even where an action is brought by the company itself (although the director would still be liable to pay any damages awarded to the company and to repay his defence costs to the company if his defence was unsuccessful).

In each case the board of directors can agree a level of indemnity for directors, and shareholder approval will be required if there are any restrictions regarding the indemnification of directors in the Articles in which case a special resolution will be needed to amend the Articles.

## 2. Share Valuations

The Auditing Practices Board has issued new ethical standards for auditors which came into effect for all accountants on 6 April 2005 in relation to the valuation of the price of shares. The ethical standards prohibit auditors from providing valuation services to audit clients where the valuation would involve a high degree of subjectivity. This can be resolved by amending any pre-emption provisions in the Articles which rely on valuation by auditors to instead rely on valuations by an experienced valuer appointed by the President of the Institute of Chartered Accountants.

## 3. Employee Share Schemes

Under anti-avoidance provisions introduced in the Finance Act 2003, companies are required to notify the Inland Revenue using Form 42 (downloadable on the Inland Revenue website) when employees or directors acquire shares or rights to acquire shares by reason of their employment. There is no obligation for the Inland Revenue to send a copy of the Form 42 to an individual or company, the obligation is on the employer to obtain and submit the form.

Call Milton Keynes: 01908 399600

Call Northampton: 01604 666400

Web: [www.emwlaw.com](http://www.emwlaw.com)

Whilst we endeavour to ensure that the information in the Update is accurate, complete and up-to-date, we make no warranties or representations in respect of such information as it is for general interest only and does not constitute legal or professional advice. As the application of the law can vary widely depending on the facts and circumstances of a particular matter, you should always take specific legal advice before taking or refraining from taking any action which may have legal consequences. We accept no liability for any loss suffered as a result of your use of any information provided in the Update.

*an original law firm*  
**emw law**

emw law llp is a limited liability partnership