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from the IP and Technology Unit

New Year - New Legislation (Gowers Review - IP) (Companies Act 2006)

In a move away from our traditional subject matter we devote part of this month's Brief Update to a look at some of the provisions of the Companies Act 2006. We start however with recent proposals for an overhaul of the UK's IP system:

Gowers Review of Intellectual Property

Published in December 2006 this lengthy (140 pages) report recommends a series of proposals to strengthen the enforcement of IP rights, to reduce the cost to business of dealing with IP rights and to make IPRs as "balanced and flexible" as possible. We highlight one or two aspects of these:

- Better information for business - the Patent Office and Business Link (a DTI agency) should work together to increase awareness and recognition of IPRs amongst the business community; the provision of information and model contracts for the registration and use of IP rights and an on-line database of all licences of right issued under granted patents are amongst the suggestions.
- Reduced costs to business - applications and grant procedures for patents and trade marks should be streamlined; fast track litigation for IP cases and more use of mediation.
- Flexibility - proposals for the introduction of an "orphan works" provision (making it easier to use copyright works whose owner is unknown or cannot be traced); also limited private copying and fair use exemptions in place of copyright law's current and rather restrictive provisions on permitted copying for research purposes and fair dealing.

Companies Act 2006

Dwarfing the Gowers review - at over 700 pages, 1,300 sections long - the Act will not be fully in force until 2008. Here are some of the provisions which will be of relevance to private and/or owner/managed limited companies:

- Communication with shareholders (effective 20 January 2007) - detailed provisions enabling a company to communicate with members in electronic form including by means of a website. Prior resolution of members/new enabling provision in Articles needed to set this up **and** individual consent (revocable) of each shareholder is required.
- Requirement for private companies to have a company secretary is abolished (unless the company wants one). Under Part 13 of the Act private companies will no longer be required to hold an AGM or any other general meeting.
- Narrative reporting - a requirement (subject to an exemption for "small" companies) for a company to produce a Business Review (as part of the annual Director's Report) whose purpose is to inform shareholders and help them assess how directors have performed their duties (see below).
- Codification of directors' duties - for the first time in UK law we have a statutory statement of directors' duties. The overall requirement and primary duty of directors remains one of acting in the interests of shareholders but, in doing so, directors have to pay regard to the longer term, the interests of employees, suppliers, consumers and the environment. The precise wording is "to act in a way [the director] considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole".

Although for the moment its "wait and see", it may well be sensible in future for companies to adopt new Articles designed for the new legislation and to take advantage of the opportunities offered by the Act.

Lastly, almost unnoticed, a Statutory Instrument has come into force extending the company identification requirements of CA 1985 to a company's "electronic documents". Company e-mails and websites must now disclose country of incorporation, registered number and registered office - with effect from 1 January this year.

For more information on any of the matters set out in this Update please contact Lester Cameron (LFCameron@paull-williamsons.co.uk).