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Introduction

Since the last Bulletin in October, the financial world has been on a roller coaster ride with knee jerk reactions from Brussels in particular where the EC Directive on Alternative Investment Fund Managers threatens to drown the private equity industry in a cascade of legislative treacle.

The BVCA is lobbying hard and the Government is supportive of our efforts, but the groundswell of public opinion in Europe is against private equity so a difficult road lies ahead.

This Committee and the Regulatory Committee combined earlier this month to provide a bulletin on the scope and regulatory requirements of the proposed directive. This can be found at <http://www.bvca.co.uk/About-BVCA/features/AlternativeInvestmentFundManagersDirective>. The directive will affect marketing of funds, reporting by portfolio companies and will mean that a substantial and costly administrative burden will be incurred by funds with arguably very little benefit to anyone. Unfortunately, much of this is politically driven in Europe and thus common sense plays a negligible role.

A further important issue that is coming over the horizon in April 2010 is the Carbon Reduction Commitment which will have wide ranging consequences for private equity funds and their portfolio companies. Whereas it is obvious that we should welcome initiatives to reduce carbon emissions, the Government has specifically included a separate section on private equity whereby a private equity fund is treated as a holding company and all majority held portfolio companies are treated as its subsidiaries. Any one portfolio company falling within the requirements of the Carbon Reduction Commitment will draw all the other majority held portfolio companies in as well.

This does not provide a level playing field and the Committee has again been lobbying hard to redress the issue. The Committee's submission can be found on the BVCA website and Roger Fink and Ian Warner of Pinsent Masons have written an informative article on the issues. >>>

No responsibility can be accepted by the BVCA, the Legal & Technical Committee or contributors for action taken or not taken as a result of information contained in this Bulletin. Specific advice should always be taken in each situation.

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For a number of years now, the BVCA has been lobbying for a change in limited partnership law where certain provisions of the Limited Partnership Act of 1907 do not now reflect the reality of investment today. The whole process seemed to have stalled but thanks to the perseverance of those involved, the Department for Business, Enterprise and Regulatory Reform has now agreed that the changes that the BVCA has been pushing for will largely be introduced and Simon Witney of SJ Berwin describes the proposals.

The recent 'Mercury' case has highlighted a change to the long held practice of obtaining pre signed signature pages sent by email or fax to affect closings. Elizabeth Ward of Linklaters with contribution from Gavin Brown of Slaughter and May and Victoria Kershaw of SJ Berwin explains how it must be done to ensure legality.

Pre-packaged administrations are another focus of attention in these days of failing companies and Gavin Brown focuses on this seemingly contentious practice, its pros and cons and how considerable care must be taken in making sure that these are approached correctly.

The International Private Equity Guidelines have recently changed and there has been some concern about the perceived abolition of the current 'safe harbour' provision. This is not the case and Graham Phillips of PricewaterhouseCoopers explains the changes and what they mean. The BVCA is supportive of these changes.


Camilla Barry of Macfarlanes reviews the Code of Practice issued by the Pensions Regulator in response to the BVCA's campaign to obtain further clarity on the new version of the 'contribution notice' introduced by the Pensions Act 2008.

Separately, the Committee has also submitted a set of questions and suggested answers to the Regulator which are intended to clarify the Regulator's interpretation of the legislation. As soon as the Regulator has confirmed the answers, they will be circulated to members and posted on the BVCA website for information.

The final part of the Companies Act 2006 is coming into force in October and Table A will disappear. Stephanie Biggs of Kirkland and Ellis describes the new Model Articles and their key provisions.

We also include some information about changes recently made regarding eligibility to the trade credit insurance top-up scheme which I am aware has been an area of concern for a number of members.

Finally, to ensure that we are addressing all the key concerns of BVCA members in the legal and technical area, if any member has any issues which come within the remit of this Committee, and which we should be considering, please do not hesitate to get in touch either with me or Simon Walker to discuss.

My thanks go to all the members of the Committee who work so hard in the support of the work of the BVCA and to the executive of the BVCA in helping with the production of this Bulletin. 

Carbon Reduction Commitment – How will it affect you?

The draft Carbon Reduction Commitment Order 2010 (the “**Draft Order**”), published by the Department of Energy and Climate Change (“**DECC**”) under the Climate Change Act 2008, has implications for the private equity industry.

This article does not attempt to summarise in any detail the Carbon Reduction Commitment (“**CRC**”) scheme but instead focuses on how it will affect private equity funds and private equity backed portfolio companies.

A. THE CARBON REDUCTION COMMITMENT SCHEME

In brief, the scheme under the Draft Order is as follows:

1. The CRC is a new statutory carbon dioxide emissions trading scheme for the UK.
2. An “**organisation**” is included in the CRC if in the UK it has:
 - one or more half hourly electricity meters settled on the half hourly markets; and
 - total half hourly metered electricity use of at least 6,000 MWh during the 2008 calendar year.
3. An organisation has to register under the CRC if its electricity use in the UK during the year ended 31 December 2008 exceeded 6000 MWh (an organisation which has to register being referred to in this article as a “**Participant**”). The CRC catches any business which exceeds this threshold - not just manufacturing businesses but also businesses in the support services, property and other sectors.
4. Each Participant will have to register with the Environment Agency between April 2010 and September 2010, report its emissions and those of its group companies (as to which see below) to the Environment Agency and then purchase from the Government a sufficient number of allowances to cover its emissions. One allowance will have to be surrendered for each tonne of CO₂ emitted (emitted in this sense means either directly or indirectly, for example through the use of electricity):
 - the first sale of allowances will be in April 2011, covering (i) actual emissions for the twelve months ending April 2011 and (ii) forecast emissions for the twelve months ending April 2012. Thereafter, sales of allowances will be conducted in each April to cover forecasted emissions for the following year;
 - during the first three years of the scheme, allowances will be at a fixed price of £12 per tonne of CO₂. Subsequently, the Government is proposing to cap the number of allowances

which it will sell by auction and remove the fixed price. Allowances will also be traded on a secondary market;

- we estimate that the cost of buying allowances for 6,000 MWh of electricity (the minimum emissions for which allowances will have to be purchased) is just short of £40,000. Clearly, when the cap in the fixed price is removed the cost could be a lot more than this;
- all proceeds from the sale of allowances will be recycled to Participants in proportion to their relative contributions to total emissions under the CRC and their performances and positions in a league table;
- a performance league table will be published by the Government which will rank Participants. A Participant’s performance in energy efficiency will be measured on (i) actual emissions (ii) changes in emissions relative to turnover or revenue expenditure and (iii) how a Participant has managed its energy use prior to the commencement of the scheme. Based on a Participant’s improvement or otherwise it will, as part of the recycling of the proceeds of the sale of allowances, either receive a bonus payment from the Government or be subject to a penalty.

B. GROUPING TOGETHER A FUND AND ITS PORTFOLIO COMPANIES

In its third public consultation on the CRC scheme (published in March this year), the Government stated that:

“Grouping organisations together under their parent will maximise the emissions coverage of the scheme whilst limiting the overall administrative responsibility to only one grouped entity rather than multiple sites and subsidiaries.”

For the purposes of the CRC, including in calculating whether the 6000 MWh threshold is met, the emissions of all members of a group (as defined in the Draft Order) are aggregated. Therefore, the emissions of group members will need to be included even if they do not themselves meet the threshold.

In relation to a group, it is the Primary Member (as explained below) which registers with the Environment Agency and which is therefore the “**Participant**” for the purposes of the Draft Order.



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What is a "group" for CRC purposes?

1. Whilst grouping companies and other entities together under their parent satisfies the Government's objective of increasing the number of companies covered by the scheme, this principle will cause considerable difficulties to private equity funds (and indeed to groups of companies which are not private equity-backed).
2. The CRC groups together "**parent undertakings**" and "**subsidiary undertakings**" by incorporating section 1162 of the Companies Act 2006 into the legislation. Points to note on this are:
 - a person is a "parent undertaking" of a "subsidiary undertaking" if, amongst other matters, it (i) holds a majority of the voting rights or (ii) is a member and has the right to appoint or remove a majority of the board or (iii) has the right to exercise a 'dominant influence' either under the subsidiary undertaking's articles of association or by virtue of a 'control contract';
 - a partnership as well as a company can be a parent or subsidiary undertaking;
 - rights held by a person in a fiduciary capacity are ignored for these purposes and rights held by a person as nominee for another are treated as held by the other;
 - a joint venture could also be treated as part of the group of one of its shareholders (other than where two or more shareholders hold equal voting rights which amount to a majority).

It will be a difficult exercise for private equity funds to work out how these definitions apply to their fund structures and portfolio companies. We have tried below to extract some general principles which may be helpful in analysing the position.

What are the CRC requirements for a group?

5. In a typical private equity fund structure where there are one or more limited partnerships in place, if any of those limited partnerships is a parent

undertaking to one or more portfolio companies then the emissions of the limited partnership and those portfolio companies will be aggregated to determine whether they are required to participate in the CRC scheme. If in aggregate the 6000 MWh threshold is reached, the limited partnership and all those portfolio companies will be required to participate.

6. Although under the Draft Order legal responsibility for compliance with the scheme will rest with the private equity fund group as a whole, the fund group will be required to nominate a "**Primary Member**" with whom the Environment Agency will correspond:
 - in most instances, the Government regards the highest parent organisation as the most likely Primary Member. For private equity funds this means that the limited partnership at the top of the fund structure is likely to be the Primary Member (acting through its general partner);
 - under the Draft Order a request can be made that the Primary Member should be someone other than the highest parent organisation. The Environment Agency has the power to agree to this if it thinks appropriate;
 - if the Primary Member is located overseas, it will be required to nominate a UK agent to carry out its obligations. Emissions of companies outside the UK will not be aggregated for the purposes of the CRC to the extent of their overseas businesses.
7. Whilst a number of private equity funds may as a result of the grouping provisions of the Draft Order be required to consolidate their portfolio companies, other funds may not have to do so if they are structured in such a way that there is no limited partnership or other entity which is parent undertaking (as defined) to any of the fund's portfolio companies.

Thus the legislation would appear to operate indiscriminately and unfairly against a private equity fund if it happens to be structured in a way which is treated as a group for the purpose of the Draft Order.

What are the issues for private equity funds


8. If, as is commonly the case, a private equity fund has delegated the exercise of its rights and responsibilities in relation to its portfolio companies to the fund's general partner and/or manager, will the general partner and manager also be caught by the CRC scheme?
 - we mentioned above that under the Companies Act 2006 rights held by a person in a fiduciary capacity are treated as not held by that person;
 - to the extent that the general partner and manager are performing their functions on behalf

of the limited partnership, they are doing so in a fiduciary capacity;

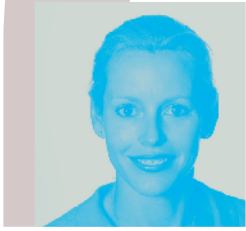
- however it is not clear that they are performing all of their functions in this capacity. This will depend on the relationship between the general partner and manager on the one hand and the limited partnership and portfolio companies on the other hand. For example, if the general partner or manager invests in the fund does this mean it is not acting in a fiduciary capacity?
 - whatever the situation regarding the general partner or manager, the limited partnership would still be caught by the scheme if it were a parent undertaking to portfolio companies in the fund (as discussed above).
9. Grouping together portfolio companies, limited partnerships (and possibly general partners and managers) is going to create a number of difficulties for private equity funds. These include:
- the Draft Order says nothing about how the burdens of complying with the CRC scheme, including the purchase of allowances and the costs of compliance, are shared between group companies. The Order is also silent on how the Primary Member is going to be able to make sure the other group companies comply with their obligations;
 - unlike the way in which a number of groups of companies are structured, a private equity fund does not have a single board of directors which has authority over and manages the boards of the individual portfolio companies. The CEO of one portfolio company is not going to regard himself or herself as being bound by the CEO of another portfolio company. Each company will have its own operational board, each board will have statutory duties by reference to the particular business of its company and each company will have its own shareholding structure with an individually negotiated management stake;
 - likewise, the Draft Order does not give any guidance as to how a Primary Member will decide the proportion in which group companies are entitled to share in any refund payments arising as a result of improvements in energy efficiency;
 - if the legislation is implemented in its current form and a limited partnership in a private equity fund is treated as a Primary Member, then fund managers will need to consider (i) if their fund and transaction documents are flexible enough to allow the manager to allocate the liabilities incurred to the underlying portfolio companies, and (ii) how, if at all, the Primary Member has any ability to direct the true “groups” underneath the fund.

Representations to DECC

10. The BVCA has made representations to DECC on the problems which the legislation will cause to private equity funds and why it is inappropriate to aggregate together group companies. If the idea is to improve energy efficiency, the scheme should focus on those companies whose businesses are energy intensive and make them responsible for their own actions, rather than putting the onus on a Primary Member which is not involved in any operational matters and catching other companies with very low emissions. Unfortunately DECC has not to date shown any interest in this argument; to the extent that the CRC scheme brings within its net a larger number of organisations, DECC feels that the scheme is achieving its purpose.
11. Interestingly enough, the CBI has also expressed concerns for group organisations about the practicalities and associated administrative costs of participating in the scheme. In particular, the CBI is concerned about groups whose divisions have a high degree of operational autonomy, and that the consequence under the CRC scheme of aggregating reporting and operational responsibility at a group level will be to separate accountability from operational control.
12. Whilst of course supportive of the Government's initiative in this area, the BVCA believes that the Government should give private equity funds and other groups the flexibility to decide whether:
- to operate the scheme at an aggregated group level; or
 - allow individual companies to assume their own responsibility for compliance.

The BVCA in its representations is seeking to ensure that companies whose carbon emissions are below 6,000 MWh do not have to face the additional costs and administrative burdens of having to comply with the CRC scheme. 

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Execution of Documents at Virtual Signings or Closings

The 2008 *Mercury* case¹ led to discussion about the effectiveness, under English law, of virtual signings or closings and the practice of using pre-signed signature pages sent by email or fax.

The judge, in his obiter comments, stated that in relation to deeds, “the signature and attestation must form part of the same physical document” when the deed is signed, and in relation to all contracts, whether deeds or not, the document to be signed should exist as a “discrete physical entity” and the parties must sign “an actual existing authoritative version”. This case raised a number of questions, in particular:

- whether simple contracts or deeds which are governed by English law could be executed by signing a blank signature page in advance and then attaching it to the contract or the deed once it had been finalised; and
- what procedure should be followed where parties wish to effect a virtual signing or closing.

Joint working party established

To answer these and several other questions arising from the case, the Law Society Company Law Committee and various committees of The City of London Law Society formed a joint working party (the “JWP”) and sought the advice of leading counsel, Mark Haggood QC. Linklaters LLP, together with Slaughter and May and SJ Berwin LLP who contributed to this article, were among a number of firms who were members of this joint working group.

The view reached by leading counsel and the JWP is that:

- the Court of Appeal decision in *Koenigsblatt*² remains the leading authority in relation to execution of documents; and
- *Mercury* (a first instance decision) should be viewed as limited to its particular facts, and to the extent inconsistent with *Koenigsblatt*, the *Koenigsblatt* decision should prevail.

In the case of both simple contracts and deeds, two propositions set out in *Mercury*, namely that (i) the document to be signed must exist as a “discrete physical entity”; and (ii) a party must sign the “actual existing authoritative version” of the document, conflict with the propositions in *Koenigsblatt* that (a) there is no general requirement for a document to be in final form at the time a party signs it, and (b) if the document is altered after signing, any signature on it can still stand as long as the signatory authorised the amendments at the time or subsequently ratified them.

It should be noted, however, that the judge in *Mercury* also took the view that section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 requires a deed being executed by an individual to be executed in

its final version and, while leading counsel and the JWP take a different view on this point, it is recognised that this is a question of statutory interpretation that was not addressed in *Koenigsblatt*.

Furthermore, the approach of the judge in *Mercury* could, by analogy, also apply in the case of the execution of a deed by a company pursuant to section 74A of the Law of Property Act 1925 and sections 44 and 46 of the Companies Act 2006.

Options for virtual signings and closings going forward

In light of the *Mercury* decision, the JWP has prepared guidelines setting out three options to assist lawyers in executing documents at virtual signings or closings. These options are guidelines only and have been prepared on the basis of a conservative interpretation of the *Mercury* judgment. Consequently, they are not the only ways of validly conducting a virtual signing or closing. These options are set out in more detail in the JWP Guidance Note, which can be found at <http://www.citysolicitors.org.uk/FileServer.aspx?oID=571&iID=0>, but are briefly, as follows:

- **Option 1:** a final execution version of the relevant document is emailed (as a pdf or word attachment) to all parties. Each signatory then prints and signs the signature page only, and sends a single email to the co-ordinating law firm to which is attached that signatory’s signed signature page together with the final version of the document. This return email, together with the final version of the document and the signed signature page, will constitute an original, signed counterpart of the document and will equate to the “same physical document” referred to in *Mercury*. **This option represents a prudent approach in relation to the execution of all contracts, including deeds and real estate contracts.**
- **Option 2:** a final execution version of the relevant document is emailed (as a pdf or word attachment) to all parties. Each signatory then prints and signs the signature page only and emails the signed signature page to the co-ordinating law firm, which has authority (by prior agreement) to attach it to the final approved version of the document. The final approved version of the document with all the signed signature pages attached with the prior approval of the parties will constitute an original signed document. **The prudent approach would be not to use this option in relation to deeds or real estate contracts.**

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- **Option 3:** separate signature pages are emailed (or circulated in hard copy) to the parties before the document is finalised. The signature pages are signed by each party and returned to the co-ordinating law firm by email attachments. The co-ordinating law firm will hold to the order of the signatories until authority is given for the signature pages to be attached to the final document. The final approved version of the document with the pre-signed signature pages attached with the prior approval of the parties will constitute an original signed document. **Again, the prudent approach would be not to use this option in relation to deeds or real estate contracts.**


Which option should be used will depend on the nature of the document to be executed, as shown above.

Importantly, in relation to deeds, the guidance clearly provides that a prudent approach would be not to execute deeds by signing blank signature pages in advance. In relation to guarantees, if they are to be executed as deeds the guidance is that they should be executed using Option 1 above, whereas guarantees included in simple contracts may be executed using any of the options. As for simple contracts which do not include a contract for the sale or other disposition of land or a guarantee, any of the options may be followed.

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Additional considerations

If there is a need to file a signed original of the document with a registry such as Companies House or the Land Registry (both of which will only accept “wet ink” originals), the parties will need to make arrangements for the wet ink signature to be obtained and attached to the final deed or contract.

It will still be necessary for parties to consider the factors affecting a particular transaction, including the place of incorporation of the parties, whether a legal opinion is required on the due execution and the nature of any board authorities. In addition, in cases where particular procedures or restrictions apply to the execution of documents (for example, notarisation, escrow conditions or tax considerations), care should be taken to ensure that use of one of the above options does not conflict with those procedures or restrictions. 

REFERENCES

- 1 R (on the application of Mercury Tax Group and another) v HM Revenue and Customs Commissioners and others [2008] All ER (D) 129
- 2 Koeningsblatt v Sweet [1923] 2 Ch 314

www.fsa.gov.uk/Pages/About/What/financial_crime/market_abuse/index.shtml



Gavin Brown
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Pre-Packaged Administrations – Recent Developments

In recent months pre-packaged administrations (pre-packs) have been used to restructure a number of high profile companies, including Mosaic, Whittard, USC, the Officers Club, Laurel Pubs, FishWorks and Entertainment Rights. Their increased use has attracted greater media attention and is now also attracting a greater degree of scrutiny.

What is a pre-pack?

A pre-pack is an arrangement to sell all or part of a company's business or assets, which is made before an insolvency practitioner (IP) is appointed, with the IP effecting the sale immediately on, or shortly after, his appointment. The insolvency process used is typically administration but pre-packs can also be used with other insolvency processes.

The good and the bad

In the right circumstances, a pre-pack can be the best way of extracting value from an insolvent business. The principal advantage of a pre-pack is the speed at which the business can be sold following the appointment of the IP. This avoids the negative publicity which may destroy a business. Particularly susceptible are "people" businesses or those in regulated sectors that cannot trade when insolvent.

Whilst the speed at which a pre-pack can be put in place brings advantages - preserving value and saving businesses that might otherwise simply shut down - it also gives rise to the main criticism of pre-packs which is the lack of transparency in the process. Typically the sale of a business in a pre-pack will occur with little or no open marketing. Secured creditors are likely to be aware of the transaction as they will generally be required to release their security. In general, however, unsecured creditors will not find out about the sale until it has been completed and so are presented with a done deal. There is also concern that pre-packs frequently involve the sale of a business back to connected parties (it is estimated that this is the case in over half of all pre-pack transactions).

Dealing with the critics

Critics of pre-packs point at the opaque nature of the process which leads to suspicion and to concerns as to whether pre-packs are beneficial for all stakeholders and whether certain stakeholders, such as unsecured or junior creditors, are treated unfairly. The fact that many business sales under a pre-pack are also connected to parties further exacerbates the issue.

In response to these concerns SIP (Standard of Insolvency Practice) 16 was introduced in January 2009. It seeks to address concerns that the pre-pack process is "shrouded in secrecy" from the creditors' point of view and that they are not always informed of the reasons for the pre-packs or shown that "best value" had been achieved. Therefore, SIP 16 requires IPs to:

- keep a detailed record of the reasons why a pre-packaged sale has been chosen as the best course of action for creditors and be able to explain and justify why it was considered appropriate; and
- disclose certain specified information to creditors, including whether efforts were made to consult with major creditors, the identity of the buyer of the business or assets, any valuations of the business or underlying assets obtained, alternative courses of action considered by the administrator, details of the assets involved and the nature of the transaction, the consideration for the sale and the terms of payment, and any connection between the buyer and the directors, former directors, shareholders or secured creditors of the company.

Court's approach to pre-packs

Where the pre-pack involves a court appointed administrator the court will also consider the merits of the intended pre-pack transaction when deciding whether to make the administration order. The recent case of *Kayley Vending Limited* [2009] EWHC 904 (Ch) provides helpful guidance on the information that is likely to assist the court. It held that whilst it was primarily a matter for the applicant to identify the relevant information, it was likely in most cases that the information required by SIP 16 ought to be included in the application (although additional information may also be relevant).

The court also considered the timing of the provision of that information and held that it would not be satisfactory to wait until an application was opposed before giving creditors sufficient information to evaluate

In the right circumstances, a pre-pack can be the best way of extracting value from an insolvent business


the pre-pack. Such information was likely to assist creditors in deciding whether or not to oppose the application, and they should not be in the position of having to commit themselves to opposition, with the cost implications that entailed, in order to obtain such information. Nor was it satisfactory to say that in so far as the information was not provided to the court on the hearing of the application, it would be provided to creditors in due course and they would then be able to exercise any remedy in respect of abuse afterwards.

Another interesting feature of this case is that the proposed administrator's pre-appointment costs were treated as an expense of the administration. That order was made on a discretionary basis and departs from the general principle that the pre-appointment costs of a prospective administrator are a matter between him and the party that instructs him.

More or less?

Pre-packs do offer a means of protecting a company against the erosion of value associated with formal insolvency processes and in so doing they can often preserve employment and minimise losses both for the business and counterparties. The new transparency and

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disclosure rules introduced by SIP 16 help to protect against possible abuse of pre-packs and may promote greater use of the mechanism to achieve business rescue. Any approach to the court involving a pre-pack is also likely to result in greater disclosure and transparency. Will this greater transparency silence the critics? Time will tell, but in current market conditions it seems likely that the pre-pack will continue to be tested. 



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New IPEV Guidelines

On 22 May 2009 the IPEV Board issued an exposure draft on revision to the existing IPEV Guidelines which were issued in March 2005. Once comments have been processed, it is intended that the revised Valuation Guidelines take effect for reporting periods after 1 July 2009.

It will not have escaped most people's notice that in recent months there has been considerable focus on the concept of fair value. Both the International Accounting Standards Board ("IASB") and the Financial Accounting Standards Board in the US ("FASB") are working very closely together on this subject. The IASB have decided that it is appropriate to have a financial reporting standard dealing with the subject of fair value; this mirrors the situation in the US. An exposure draft on fair value was published by the IASB in May 2009.

The International Private Equity and Venture Capital Valuation Board ("IPEV Board") has issued an exposure draft for revisions to the IPEV Guidelines. The first valuation guidelines were issued in March 2005 and since that date there have been a number of industry developments as well as further refinements to the principles inherent in the "fair value" concept. Accordingly the IPEV Board have decided to revise the IPEV Guidelines. The comment period closed on the 12 June 2009.

As with the prior version of the guidelines, they are an articulation of Best Practice for the valuation of investments held by private equity funds and are not mandatory, since each fund and therefore its basis for the valuation of investments is governed by legal, contractual or regulatory terms.

Nevertheless the principles, requirements and implications of both IFRS and US GAAP have been taken into account in revising this current version of the guidelines. The intent is that the guidelines provide a framework to enable managers to present the fair value of an investment which is consistent with underlying accounting principles. It is fair to say that a majority of private equity managers adopt the principles of the guidelines in reporting to investors and, where applicable under the constitution of the Fund, in preparing the annual accounts for the funds. It is not expected that the fair value of an investment derived under the new guidelines would be notably different from one estimated under the existing guidelines.

1. Principal changes to Guideline Recommendations and supplementary commentary

1.1 Marketability discount

The requirement to apply a marketability discount to derive the attributable enterprise value has been removed from the new guidelines. This means that the calculation

of Attributable Enterprise Value does not include a specific deduction for any marketability discount and all the commentary, including the suggested percentage ranges of discount to apply, have been removed. Instead, the new guidelines require the risk associated with a lack of marketability or liquidity of a holding in an unquoted investment to be treated as an adjustment to the market-based earnings multiple of comparator companies.

In essence, the adjustment required to the earnings multiple is designed to reflect the view of a prospective purchaser who, it is contended, would factor in a price adjustment to take account of the additional risks of holding an unquoted share. The guidelines also recognise that this marketability/liquidity discount adjustment will be greater where there is a minority shareholding - and the shareholder cannot control the realisation process - compared to a majority holding where the realisation process can be controlled.

1.2 Price of Recent Investment methodology

There is new guidance on the use of the Price of a Recent Investment methodology to derive fair value. The Price of a Recent Investment methodology is calculated either at initial investment when cost will be used or, if there is a subsequent investment in the entity, the price of the new investment.

What has been removed from the old guidelines is the reference to one year as a reasonable time period for the use of this valuation methodology. Although the one year reference was only referred to as a period "often applied in practice" to some extent it became a norm for keeping an investment at cost for the first 12 months. The one year rule was reinforced in the application guidance section of the guidelines - "the period of time will depend on the specific circumstances of the case, but should not generally exceed a period of one year". In fact the recommendations in the existing guidelines always had a requirement for the valuer to assess at each valuation reporting date whether there had been a change in fair value. "... During the limited period following the date of the relevant transaction, the Valuer should in any case assess at each reporting date whether changes or events subsequent to the relevant transaction would imply a change in the Investment's fair value". The new guidelines make it clearer in the supporting commentary that the use of the Price of Recent Investment methodology depends on stable market conditions

whereas a rapidly changing environment would suggest that such a methodology might not be appropriate.

The commentary has also been expanded to deal with the situation where the Price of Recent Investment methodology is no longer relevant and there are no comparable companies or transactions from which to derive fair value. In these circumstances, the new guidelines refer to use of the milestone analysis approach where the valuer attempts to determine whether a change in milestone and/or benchmark indicates that the fair value of the investment has changed. The new guidelines include illustrative milestone measures under the headings of financial, technical and marketing and sales

1.3 Comparator Multiples

There is more guidance on the use of comparator multiples and the reasons why comparator multiples may need to be adjusted. The guidelines require that the particular reasons for differences should be explained at each valuation date

1.4 Fund-of-Funds

The new guidelines include a new section dealing with the fair value of an investment in an underlying private equity fund. The new guidelines require that the valuer of a Fund-of-Funds entity determines the attributable proportion of the reported net asset value ("NAV") of each underlying investment. Clearly, it will be necessary for the valuer to determine that the reported NAV has been prepared on proper fair valuation principles which should be determined from initial due diligence, ongoing monitoring and reviewing the financial reporting of the investee fund.

It may be necessary for the valuer to make adjustments to the reported NAV. The most common of these would be where there has been no accrual for potential carried interest or performance fees. However, the guidelines detail other adjustments that might be necessary which include the following circumstances:

- where there is significant elapsed time between the reporting date of the investee fund and the Fund-of-Funds reporting date. This could include adjustments relating to further investments, realisations, subsequent changes in the fair value

of investee companies, or changes to the market or other economic conditions which affect the underlying investee fund;

- information from a secondary transaction providing it is sufficient and transparent;
- particular clauses in the Fund agreement that affect distributions which are not reflected in apportioned NAV; and
- materially different valuations by Fund manager GPs for common companies with identical security holdings.

There is also a section relating to secondary transactions which suggests that valuers of Fund-of-Funds should consider the value of a secondary transaction in determining the appropriate NAV of an investee fund but only if the secondary transaction is considered orderly and all the terms are known. In practice, most secondary transactions are opaque and information is extremely limited.

1.5 Available market prices for holdings of Quoted Instruments and discounts

This section has been revised so that the recommendation allows the use of the most representative point estimate in a bid/offer spread (usually taken as the mid-market price) where accounting regulation does not require the use of bid price. Previously, the supporting commentary required the use a bid price where a bid/offer spread existed and an implication that a mid- market price should only be used where the difference to the valuation was not material.

The commentary that stated discounts should not be applied to prices quoted on an active market, unless there is some contractual, Governmental or other legally enforceable restriction preventing realisation at the reporting date has been upgraded to a main recommendation. If a discount is determined as appropriate, the new guidelines refer to the discount reflecting the time value of money and the additional risk from reduced liquidity. The new guidelines use the same six month lock-up period as an example but have ranged the appropriate discount as 10% to 25% at inception compared to the single figure of 20% referred to in the existing guidelines.

The new guidelines make it clearer in the supporting commentary that the use of the Price of Recent Investment methodology depends on stable market conditions

2. Application Guidance

The application guidance section of the new guidelines includes two new topics:

2.1 Distressed market

Reflecting the recent market turmoil and the debate over whether a particular market is distressed or forced (ie not orderly), some guidance has been set out for valuers to consider when they are considering whether individual transactions are indicative of fair value and can be used for comparator purposes. Such indicators are:

- a legal requirement to transact, for example a regulatory mandate.
- a necessity to dispose of an asset immediately and there is insufficient time to market the asset to be sold.
- the existence of a single potential buyer as a result of the legal or time restrictions imposed.
- There was not adequate exposure to the market to allow for usual and customary marketing activities.


2.2 Deducting higher ranking instruments

This topic covers the situation where third party debt is part of the acquisition structure and is actively traded. Again, the market turmoil has meant that such debt can trade at considerable discount to par. The application guidance makes it clear that in calculating Attributable Enterprise Value, the debt amount to be deducted from Enterprise Value should be the amount expected to be

repaid in settlement of the debt at the time of realisation of the investee entity; this would normally be the par value of the debt.

If, on the other hand, a fund has acquired some traded debt at a discount in the market and intends to cancel the debt rather than seek repayment, then the lower amount could be deducted from Enterprise Value

3. Summary

- Assuming the new guidelines are finalised relatively soon, the implementation date of 1 July 2009 means they will apply to funds completing quarterly valuations at 30 September 2009 and all funds reporting at 31 December 2009. Accordingly, directors and principals should be briefed on the changes.
- Amendments to the documentation of data (eg proforma Attributable Enterprise Value worksheets) to support the valuation of an investment will need to be made.
- Consideration should be given to the appropriate level of adjustment to market-based comparator earnings multiples to reflect marketability/liquidity discounts.
- The additional guidance on the use of the Price of Recent Investment valuation methodology needs to be assessed against existing practice and modified where necessary. 

The Pensions Regulator's Code of Practice for the material detriment test: update and comment

Review of the Code of Practice issued by the Pensions Regulator in response to the BVCA's campaign to obtain greater clarity on the new version of the "contribution notice" introduced by the Pensions Act 2008

Since their invention in 2004, contribution notices ("CNs") have been the Pensions Regulator's cruise missiles. Targeted and extremely effective, the mere threat of their potential deployment on the battlefield of pension scheme funding was intended to act as a deterrent against anyone who sought to duck statutory 'section 75' debt obligations. Unlike their cousins financial support directions ("FSDs"), CNs have an immediate and potentially lethal financial impact. And they can be used against individuals, while FSDs are largely reserved for use against companies. But when the rules of engagement for the original version of contribution notices – which we might call CN1s - were actually applied to real-life situations, they were found by the Regulator to be too restrictive.

The threat of being on the receiving end of a CN1, if not exactly an empty one, was at risk of becoming one which could be considered real only in a very limited number of cases. Yet there are still some 10,000 defined benefit pension schemes on the landscape, and to find and deal with the true villain hidden in the pensions foothills was going to be a very difficult task with the operational restrictions in place.

What the Regulator considered to be the inherent CN1 design-fault was that they could only be used where a "main purpose" hurdle could be passed. There had to be provable intent to avoid or artificially reduce the employer's obligations to the scheme arising where a "section 75" debt had been or might be triggered. In addition, certain types of avoidance were subject to an additional "bad faith" hurdle. Evidence of commercial parties acting in bad faith or with the deliberate purpose of avoiding pension liabilities has proved hard to find – possibly because it isn't there.

The design-fault caused particular problems when the Regulator thought about using CN1s in the context of "non-insured pension buy-outs" – the process whereby a scheme sponsor could magically offload all or part of its pension liabilities without actually having to pay insurance company prices to do so. To date, no CN1s have yet left the Regulator's Brighton launchpad, and there does come a time when, to be effective, threats have to be carried out.

Now, from the Pensions Act 2008 drawing-board, we have "CN2s" (again, not their official name but it may catch on). When considering deployment of a CN2, there is now no "main purpose" hurdle to clear. Instead, there simply needs to be some form of "material detriment" to the pension scheme caused by the acts or failures of the potential target.

"Material detriment" exists wherever some act or failure materially reduces the likelihood of scheme benefits being paid. Put another way, unless the scheme is fully funded on a "self-sufficient" or insurance market basis, anything that reduces either the ability of sponsors to provide funding or the dividend which the pension scheme might receive on the insolvency of the sponsors could lead to deployment of a CN2. A CN2 can, however, still only be launched if reasonable in all the circumstances and the independent Determinations Panel has given the order.

To gain access to the new weapons, through the efforts of the BVCA and other industry bodies the Regulator has been persuaded to issue a Code of Practice – a sort of field operations manual - setting out the circumstances in which it expects to deploy them. The list, which is intended to provide comfort to ordinary citizens, is short:

- The transfer of the scheme out of the jurisdiction.
- The transfer of the sponsoring employer out of the jurisdiction or the replacement of the sponsoring employer with an entity that does not fall within the jurisdiction.
- Sponsor support is removed, substantially reduced or becomes nominal.
- The transfer of liabilities of the scheme to another pension scheme or arrangement which leads to a significant reduction of the sponsor support or funding in respect of these liabilities; or
- A business model or the operation of the scheme which creates from the scheme, or which is designed to do so, a financial benefit for the employer or some other person, where proper account has not been taken of the interests of the members of the scheme, including where risks to members are increased.

The Regulator has offered to supplement the Code with illustrative examples.

The comfort, while better than nothing, is however limited. The Regulator has expressly reserved the right to use the CN2 in other situations. Also, under the last three criteria, it is not clear where the line will be drawn: how much reduction in sponsor support will be a "substantial" or "significant" reduction?

The first draft illustrative examples published in the Regulator's recent Consultation Response on the earlier draft Code of Practice highlight the issue by suggesting a



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Unlike their cousins financial support directions (“FSDs”), CNs have an immediate and potentially lethal financial impact.

very low threshold. The examples are also peppered with the words “not normally”, further blurring the line.


Readers are told that the payment of routine annual dividends by profitable companies paying off the pension scheme deficit with “an appropriate recovery plan” will not normally be targeted. But what of special dividends on a disposal? No guidance is given, suggesting perhaps that these could put recipients in range even where there is an appropriate and sustainable recovery plan.

Again, the Code states that the granting of security to a bank as part of a renegotiation of borrowings will not normally constitute a material detriment where the employer has engaged with the trustees and provided appropriate mitigation. What if no mitigation could be provided? How much mitigation would be appropriate?

Poor trading and the adoption of “a properly chosen, compliant scheme investment strategy taking account of the employer’s ability to cope with adverse experience” are given as other examples that would not lead to a CN2. Could such matters ever have been within range? The trustees control the investment strategy.

Perhaps the intention behind the provision of illustrative examples is in fact not to guide citizens to safe zones but to prepare to defend a wide interpretation of the Code of Practice.

The Regulator will be bound by the Code of Practice in the context of determinations by the Determinations Panel and in relation to any appeal court or tribunal that might have to consider whether the issue of a CN2 in a particular case is reasonable or lawful. It is perhaps understandable that the Regulator would not want to limit its own range by being too helpful to its potential targets.

The real message in the Code of Practice, which is due to come into effect (with finished examples), some time “this summer”, is possibly that the Regulator is taking great care to avoid a statement that taking any return from a company with underfunded pension liabilities is always dangerous. To make such a sweeping assertion would drive away investment. On the other hand, the very wide potential target-zone ensures that no-one taking such a return will feel completely safe. This combination may be intended to ensure that any potential return gets shared with the pension scheme. All that is now needed are some returns to share with anyone. 

Limited Partnership Law Reform

Following years of lobbying, the Department for Business Enterprise and Regulatory Reform (BERR) appears to have finalised its approach to the long-overdue reform of limited partnership law. Unfortunately, BERR have considered it necessary to take a modular, staged approach to implementing reform. Although this is not entirely satisfactory, it does at least now appear that many of the changes that the industry has been asking for will be made within the next few years.

The first step in this process is a "Legislative Reform Order" (LRO) which (if it clears the Parliamentary hurdles in time) is intended to come into force on 1 October 2009. This first LRO will confirm that a certificate of registration is conclusive evidence of the existence of a limited partnership. To many practitioners, this is the most urgent reform.

Background

The reform of UK limited partnership law - which governs the market standard private equity fund structure - has been a topical issue for well over a decade. In November 1997, the Department for Trade and Industry (which is now BERR) requested that the Law Commission and the Scottish Law Commission undertake a joint review of partnership law. The joint report was finalised and published in 2003 and interested parties were asked to respond in 2004. The consultation responses made clear that there was no consensus in relation to reforming partnership law as whole, but finally, in 2006 and after much lobbying from the BVCA, the Government decided to move forward with some of the Law Commissions' proposals, and agreed to reform limited partnership law only.

In August 2008, BERR published a consultation document setting out its proposals to 'modernise and simplify' the law of limited partnerships. The initial proposals included a draft LRO that provided for the Limited Partnership Act 1907 to be repealed and new provisions dealing with limited partnerships to be inserted into the Partnership Act 1890 (which sets out the basic structure for general partnership law). The reforms proposed were extensive, although not as wide-ranging as had initially been anticipated. The focus of the reforms related to the establishment, registration and de-registration of a limited partnership, the liability of limited partners to third parties and the rights and obligations of general and limited partners in a limited partnership.

BERR received 33 responses to the proposals, one of which was a co-ordinated and supportive response from the BVCA, the Association of Partnership Practitioners, the Institute of Chartered Accountants in England and Wales and ten law firms who routinely advise on limited partnership funds. But unfortunately, because of some other, dissenting responses to the consultation (and a lack of resources within BERR), the Government

announced in March that the reforms could not proceed in their then proposed form.

The LRO

Following the Government's announcement, BERR has worked with the BVCA to restructure its proposals, opting for a modular approach to reform. In order that certain of the less controversial reforms might be implemented more quickly, it is intended that several successive LROs will be introduced. The first of these deals with the conclusiveness of registration of limited partnerships, with other reforms intended to follow in subsequent LROs.

The first LRO will provide that, once a limited partnership has fulfilled the requirements for registration, the registrar will issue a certificate of registration signed (or sealed) by the registrar, stating the name of the limited partnership, its registration number, the date of registration and the fact that the limited partnership is registered. The certificate is then to be treated as conclusive evidence that the limited partnership came into existence on the date of registration, which is a significant clarification of the current law.

The LRO will also require the name of the limited partnership being registered to end with the words "limited partnership", "LP" or "L.P." (or the Welsh equivalent).

There is also a small but helpful amendment to Section 5 (Registration of limited partnership required) of the Limited Partnership Act 1907, which should make it clear that an error in the registration of a limited partner will not cause the limited partnership to lose its limited partnership status.



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BERR has worked with the BVCA to restructure its proposals, opting for a modular approach to reform.


Other changes

The BVCA has also had informal confirmation that Companies House will offer a guaranteed same day registration service with effect from October, something else that the industry has long sought and which will make establishment of a fund easier.

BERR has intimated that phase 2 of the reform is likely to comprise further technical changes relating to registration formalities, while phase 3 will encompass more contentious issues - including returns of capital and the “white list” (the list of activities that limited partners

may carry out without being deemed to have participated in the management of the limited partnership).

Looking forward

While the modular approach adopted by BERR is far from ideal, it is certainly better than nothing. The first LRO is a good start, and the Legal and Technical Committee will continue to encourage BERR to bring forward further reforms in the coming years to make other necessary changes to the law of limited partnerships in the UK. We hope that it will not take another 12 years before the next change sees the light of day! 

Time for Constitutional Change...

The Companies Act 2006 is heading for the finish line, with all remaining provisions coming into force on 1 October 2009. The implementation of new provisions relating to company constitutions brings with it a new set of default articles of association, known as “Model Articles”, which will replace the familiar “Table A”. This article looks at the key constitutional changes, and how these will affect private equity investment articles.

Memorandum of association

At present, a company’s memorandum of association is a significant constitutional document, which sets out the scope of the company’s legal capacity through its objects clause, and also sets out the amount of its share capital. Under the new regime, the memorandum will simply be a statement confirming that the subscribers wish to form a company; it will no longer contain any operative provisions.

The objects of any company formed on or after 1 October 2009 will be unrestricted, unless the articles expressly provide otherwise, so there is no longer any need for an extensive objects clause. In addition, the concept of “authorised” share capital is to be abolished, so there will be no cap on the company’s ability to issue shares, and no need to state the amount of the company’s share capital in the memorandum. The statement that the members’ liability is limited will instead be contained in the primary constitutional document – the articles of association. For an existing company, the provisions of its memorandum will automatically be transitioned into its articles.

It is possible – although uncommon – under the current rules to entrench provisions in a company’s memorandum in such a way that they cannot be altered. In contrast, a company’s articles of association can always be varied by special resolution. To preserve this possibility, the Companies Act 2006 will allow for provisions to be entrenched in a company’s articles, so that they can be changed only by following the procedure provided for in the articles. The new entrenchment procedure is wide in scope, and may prove to be a useful means of “hard-wiring” investor rights.

Default articles

Any company limited by shares that is incorporated under the Companies Act 1985 will have standard “Table A” articles, except to the extent that Table A is excluded or modified by the company’s tailor-made articles (if any). The same principle applies under the Companies Act 2006: a company will have the relevant “Model Articles”, except to the extent that they are excluded or modified.

However, under the new regime, there are two sets of Model Articles for companies limited by shares: one for private companies and one for public companies. The Model Articles for private companies have been prepared on a “think small first” basis, and are intended to be suitable without alteration for small owner-managed

businesses. This means that they are unlikely to be suitable for private equity investment vehicles without significant amendment.

The Model Articles for public companies are more extensive and envisage more formal corporate governance procedures, so these may, in some cases, provide an alternative starting point. However, in a private equity context, they may well be overly detailed and restrictive. It is likely, therefore, that private equity investment articles will need to be fully bespoke, based on the Model Articles for private companies, but containing some provisions from the Model Articles for public companies and some unique provisions.

The provisions of the Model Articles for private companies that are likely to need most amendment can be split into two broad areas: directors and share capital.

Directors

Like Table A, the Model Articles assume a uniform board, so it will continue to be necessary to include bespoke articles to deal with the appointment of an Investor Director, and to ensure that any Investor Director is suitably entrenched in decision-making processes. These clauses will be substantially the same as at present, but some additional points arise in relation to procedural matters.

The first area to consider is directors’ decision-making. The Model Articles for private companies allow for an informal decision-making process, where directors can take decisions simply by indicating to each other, by any means, that they are all in agreement. This is likely to work well for small businesses, which often work in this informal way, but does not sit comfortably with the concept of a non-executive Investor Director, who is likely to need more formal briefings and procedures. These provisions will, therefore, need to be adapted to reintroduce the necessary level of formality.

In addition, the Model Articles for private companies make no provision for alternate directors. The ability for



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Under the new regime, the memorandum will simply be a statement confirming that the subscribers wish to form a company; it will no longer contain any operative provisions.

an Investor Director to appoint an alternate is often useful, and should be included in investment articles. One option is to incorporate the alternate director provisions from the Model Articles for public companies, which allow the alternate to participate in decision-making in place of the appointing director. The alternative is to include a bespoke provision that is wider in scope and allows the alternate to step more fully into the shoes of the appointor.

The other area where bespoke provisions will almost certainly be needed is in relation to directors' conflicts of interest (see the October 2008 Legal & Technical Bulletin for a full discussion of this topic). Provisions to consider include: express authorisation of conflicts for Investor Directors, both in relation to the conflict inherent in being an Investor Director and for other conflicts that might arise by virtue of being an investment executive (e.g. from carry or co-investment arrangements); provisions allowing Investor Directors to manage conflicts arising from holding multiple portfolio company directorships; and provisions allowing the sponsor to monitor conflicts arising in relation to management.

Share capital

As now, private equity investment articles will include detailed equity arrangements, setting out the rights attaching to different classes of share, and including good leaver-bad leaver provisions, transfer restrictions, drag and tag rights and so on. These commercial provisions will not be materially affected by the essentially technical changes brought in by the Companies Act 2006, and the drafting is likely to remain much the same. However, there are a couple of technical points that are worthy of note.

First, the Model Articles for private companies work on the basis that all shares will be fully paid; they do not provide for partly paid shares, and do not have all the associated provisions relating to calls on shares, lien, forfeiture etc. This has the advantage of brevity, but in some cases it will be beneficial to allow for partly paid shares. In this case, the relevant provisions can be incorporated from the Model Articles for public companies. Even if partly paid shares are not required, it may still be desirable to include a lien over shares for other moneys owed to the company by its shareholders.

Second, the concept of authorised share capital has been abolished, so there is no ceiling on the number of shares that can be issued by directors, provided that they have the necessary authority to allot. Consequently, if the articles include, as is common, a "section 80 authority" (under the Companies Act 2006, a "section 551 authority") for the directors to allot shares, it will be necessary to consider whether this authority should be restricted in scope, or made subject to investor consent, to protect against dilution.

Absent friends


Finally, you may notice that a number of standard provisions cease to appear in articles of association from 1 October 2009.

It is no longer necessary to include an express power for a company to sub-divide, consolidate or reduce its share capital, to issue redeemable shares or to purchase its own shares. A private company limited by shares will automatically have all these powers, unless they are expressly excluded or restricted by the articles.

The provisions relating to shareholder meetings are also much reduced, as Part 13 of the Companies Act 2006 sets out in detail the procedures that must be followed. Likewise, the Companies Act 2006 provides for electronic communications, and these provisions can largely be incorporated into the articles of association by reference, removing the need for detailed e-communication provisions.

Making changes?

Broadly speaking, the Companies Act 2006 transitional arrangements ensure that companies can continue to operate under their existing articles of association. Consequently, provided that existing portfolio company articles have been amended to include up to date conflicts of interest provisions, there should not generally be any immediate need to undertake a full scale updating exercise.

However, it is likely that old articles of association will contain some provisions that do not work well with, or simply do not take full advantage of, the Companies Act 2006, so if articles are being amended in connection with a transaction, it may well be worth undertaking a Companies Act 2006 update at the same time. 

Trade credit insurance top-up scheme

In June, the Government announced an expansion in eligibility of its Trade Credit Insurance Top-Up scheme. The scheme provides support to businesses who have suffered reductions in their level of credit insurance cover by providing additional insurance to 'top up' the level of cover provided by the private sector.

Eligible businesses will be able to purchase 'top-up' credit insurance cover under a new scheme launched by the government. The scheme is a short-term measure to provide real help to businesses, in the current economic climate, whose credit insurance cover has been reduced by their provider.

Key features of the TCI top-up scheme:

- It is open to new applicants until 31 December 2009.
- It can be purchased in respect of reductions in cover that have occurred since 1 October 2008, with cover under the scheme back-dated to start from when the reduction took place.
- The duration of each policy - written under the scheme - is for a maximum of six months.
- The value of cover you receive is determined by the level of cover provided by your underlying policy. If the level of your underlying policy changes during the six month period then the level of top-up cover will also change accordingly.
- You can buy more than one policy - each policy bought under the government scheme covers your relationship with one buyer.

Eligibility for the scheme

- Top-up cover is available if you hold a whole-turnover trade credit insurance policy
- Your trades are within the UK with payment terms of no more than 120 days
- The level of cover being compared to was in place for at least 30 days
- Your cover was reduced on, or after, 1 October 2008
- The reduction in cover was triggered by the credit insurance provider
- This scheme does not cover exports

Please also note that:

- top up cover is available if you hold a whole-turnover trade credit insurance policy
- this scheme does not cover exports

Level of cover provided by the scheme

You can buy insurance to the value of the lower of the following amounts:

- the amount equal to the level of cover now offered under your credit insurance policy
- the amount which restores the level of cover to the amount you had previously
- £1 million

Information taken from Business Link.

For further information visit www.businesslink.gov.uk/creditinsurance

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TAX



David Huff

Chair – Tax Committee

3i

Topics likely to include:

- 1 Practical tax compliance issues for Private Equity firms
- 2 Overview of VAT issues for Private Equity firms, transactions and portfolio companies
- 3 Update on tax structuring options for funds and transactions

LEGAL & TECHNICAL



Sue Woodman

Chair – Legal & Technical Committee

Alchemy Partners

Topics likely to include:

- 1 Consolidation, fund accounting and valuation issues
- 2 Carbon reduction requirements
- 3 EU Transparency and portfolio disclosure requirements

REGULATORY



Margaret Chamberlain

Chair – Regulatory Committee

Travers Smith

Topics likely to include:

- 1 EC Directive on Alternative Investment Fund Managers
- 2 Regulatory updates: UK and other
- 3 Market abuse, insider dealing and confidential information

CPD Points Accreditation being sought

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