

## Formazione Professionale

### DIRECTORS AND AUDITORS HAVE ADDITIONAL ONUS FOR COMPANY FINANCIAL STATEMENTS BY SOFIA PARASTATIDOU

During our courses, we have examined some interesting comparative issues for professionals (*lawyers, accountants and notaries*) with reference to practical examples flowing from our day to day practice. So today I wanted to re-visit some of these concepts.

Whether preparing or analysing financial accounts prepared in Italy some important matters should be borne in mind. First and foremost, one critical assumption centres around the concept of the purpose of financial statements.

In Italy, financial reporting is aimed at protecting shareholders and creditors and the emphasis is on the net profits (the difference between costs and revenue).

In the Anglo-American systems, financial reports are prepared for the purpose of informing potential investors of the performance of the company. The emphasis here is on the net equity position (*i.e. movements in equity*).

This difference in philosophies may affect the way upgrades to investments are to be treated. Are they to be capitalised or treated as expenses?

But more importantly and flowing from this issue, how does the concept of '**true and fair**' impact on these divergent philosophies. The concept of true and fair is not only a central element in accounting and auditing practice in the UK for many decades but it is also found in s 396 of the Companies Act 2006.

In particular, the Companies Act <sup>1</sup> provides that the accounts (*balance sheet and profit and loss*) must give a **true and fair** view of the company as at the end of the financial year. If a company's individual accounts or notes to these accounts, do not give a **true and fair** view, the necessary additional information must be given in the accounts or in a note to them.<sup>2</sup> Further if in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a *true and fair* view, the directors must give particulars of any such departure, the reason for it and its effect must be given in a note to the accounts.<sup>3</sup>

However, there is no statutory definition of the meaning of 'true and fair'. Authoritative statements on the meaning was found in the legal opinions written by Lord Hoffmann and Dame Mary Arden but there have been some significant changes in accounting standards and company law since these opinions were written and as such they are out of date. The Financial Reporting Council sought a further advice from Martin Moore QC. Mr. Moore endorsed the Opinions of Lord Hoffmann and Dame Mary Arden and confirmed the

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<sup>1</sup> Section 396(2)

<sup>2</sup> Section 396 (4)

<sup>3</sup> Section 396 (5)

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concept of the **true and fair requirement** whether financial statements are prepared in accordance with international or UK accounting standards.

Therefore, the onus is clearly on directors and auditors to ensure that the financial statements meet this requirement. This clearly shows that it is not sufficient for either directors or auditors to rely on the defence that the financial statements were prepared in accordance with applicable accounting standards. There is an additional requirement prevailing and should be taken into account not only when dealing with cross-border financial matters but when setting up a company presence in the UK.

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