



Ms Pauline Wallace
Chair
UK Endorsement Board
8th Floor, 125 London Wall
London
EC2Y 5AS

5 November 2021

Dear Ms Wallace

UK Accounting Standards Endorsement Board (UKEB) – Call for comments on [DRAFT] Endorsement Criteria Assessment: 2020 Annual Improvements and Narrow-Scope Amendments

Please take this letter as procedural notice of the UKEB's failure to comply with the requirements of the Statutory Instrument SI 2019-685¹ in making its Endorsement Criteria Assessment.

We have in consequence copied this letter to the Secretary of State, and the Financial Reporting Council which has the responsibility for ensuring that the UKEB follows due process.

We note that there has been no reply to my letter of 3 June 2021 where we requested to see the legal advice that the UKEB has to consider the endorsement criteria. This is particularly important given that there is a difference of opinion between Mr Martin Moore QC and Mr George Bompas QC as to the "true and fair view" test. We have no doubt that were the UKEB on firm ground we would have received a timely reply, as it is we have now been waiting for 5 months.

We note that neither the position of LAPFF or Mr Bompas QC was refuted by BEIS lawyers, despite some claims that it had. The fact it has not been refuted was revealed by the information obtained from a Freedom of Act (FOI) request.

The FOI revealed that what was confirmed by government lawyers was that there is not a requirement for the disclosure of a figure for distributable profits. We agree there is no such requirement because the Companies Act sets out a profits test and a net assets test for that number to then be calculated, from the assets, liabilities, provisions, share capital and reserves as stated in the accounts for a variety of purposes² The actual figure for distributable profits requires a calculation based on those numbers in the accounts.

There are three criteria for endorsement in the Statutory Instrument, Section 7(1) (a), (b) and (c). The true and fair view test of Section 7(1)(a) is a stand alone test which is the requirement to ensure that the accounts comply with company law.

Unfortunately the Endorsement Criteria Assessment has replaced the true and fair view test with something different, "reflecting economic substance" viz: -

¹ <https://www.legislation.gov.uk/ukxi/2019/685/made> SI 2019 International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 Statutory Instrument (SI) 2019/685

² e.g. Sections 836, s92, s677 and s712 Companies Act 2006

“The assessment therefore considers whether a standard or an amendment to a standard is not contrary to: a) the individual financial statements reflecting the economic substance of transactions and events such that the financial statements give a true and fair view of the undertaking’s assets, liabilities, financial position and profit or loss³; “

If “reflecting economic substance” was the criteria for endorsement then that would be in the Statutory Instrument, or the Companies Act, and it is not.

We would as a minimum expect to see a credible legal opinion regarding the standard required of accounts which considers case law, as well as the functions of accounts as set out in various places in the Companies Act 2006, such as Sections 92, 677, 712 and 836.

Yours sincerely,

cc: The Secretary of State, BEIS
Sir Jon Thompson, The Financial Reporting Council

³ Para 14 of the draft endorsement advice <https://assets-eu-01.kc-usercontent.com/99102f2b-dbd8-0186-f681-303b06237bb2/0e9fbb2c-884a-4c70-ac6e-3ea32d77702f/DECA%20-%20Endorsement%20of%20May%202020%20Amendments.pdf>