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| **Brief Contents** |
|

|  |  |  |
| --- | --- | --- |
| [**1. Recent Corporate Law and Corporate Governance Developments**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#h1) [**2. Recent ASIC Developments**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#h2)[**3. Recent ASX Developments**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#h3)[**4. Recent Takeovers Panel Developments**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#h4)[**5. Contributions**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#5) |   | [**6. Subscription**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#6)[**7. Change of Email Address**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#7)[**8. Website Version**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#8)[**9. Copyright**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#9)[**10. Disclaimer**](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#10) |

 |
| **Detailed Contents** |
| **[1. Recent Corporate Law and Corporate Governance Developments](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm%22%20%5Cl%20%221)**[1.1 US institutional investors press companies for a shareowner vote on executive pay](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#011)[1.2 Auditors' liability: Commission consults on possible reform of liability rules in the EU](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#012)[1.3 Shareholders vote in record numbers in 2006](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#013)[1.4 Directors obligations during heightened M & A activity](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#014)[1.5 Report on integration of EU mortgage markets](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#015)[1.6 Greater economic freedom worldwide stalled over the last year according to 13th Annual Index of Economic Freedom](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#016) [1.7 Review of narrative reporting](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#017)[1.8 Canadian regulators release results of hedge funds review](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#018)[1.9 Global risks 2007 report](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#019)[1.10 Statement concerning elevated risk of complex structured finance activities](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0110)[1.11 Commencement of Trade Practices Act reforms](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0111)[1.12 New proposals for auditor independence issued by IFAC](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0112)[1.13 Review of relevant interests under the Corporations Act](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0113)[1.14 Developments in the global capital markets](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0114)[1.15 Ranking of world's most globalized nations](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0115)[1.16 Corporate compliance and enforcement panel discussion](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#0116)**[2. Recent ASIC Developments](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm%22%20%5Cl%20%222)**[2.1 National Audit Office review of ASIC's processes for dealing with statutory reports of suspected breaches of the Corporations Act](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#021)[2.2 ASIC changes managed investments class order relief to permit discounted issues to associates](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#022)[2.3 ASIC issues report on relief applications - July to September 2006](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#023)[2.4 ASIC calls for submissions on review of EFT Code of Conduct](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#024)[2.5 ASIC further extends interim relief for actuaries](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#025)[2.6 ASIC further extends transitional compensation arrangements for AFS licensees](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#026)[2.7 ASIC consults on policy on listed managed investment scheme buy-backs](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#027)[2.8 ASIC grants PDS relief for multiple deemed issuers of exchange traded derivatives](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#028) **[3. Recent ASX Developments](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm%22%20%5Cl%20%223)**[3.1 Miscellaneous amendments to the ACH Clearing Rules and ASTC Settlement Rules](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#031)[3.2 Amendments to ASX supervisory powers and processes](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#032)**[4. Recent Takeovers Panel Developments](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm%22%20%5Cl%20%224)**[4.1 Queensland Gas Company Limited – Panel decision](file:///C%3A/Documents%20and%20Settings/petersj/Local%20Settings/Temporary%20Internet%20Files/OLKB9/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202007.htm#041)http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif |
| **1. Recent Corporate Law and Corporate Governance Developments** |
| **1.1 US institutional investors press companies for a shareowner vote on executive pay**On 25 January 2007, a network of US institutional investors announced the filing of shareholder resolutions at 44 US corporations as part of an unprecedented push to press companies in the 2007 proxy season to give corporate shareowners an advisory vote on executive remuneration packages.The investors are seeking an annual, non-binding advisory vote on the summary remuneration table that every corporate board presents to investors in its yearly proxy statement. The resolution was submitted at companies where the investors argue pay has been excessive or where there has been a misalignment between pay and performance over the past three to five years, including Affiliated Computer Services, Citigroup, Coca-Cola, Exxon Mobil, Home Depot, Jones Apparel, Merck, Nabors, Pfizer, Qwest, Time Warner, UnitedHealth, and Wal-Mart.Active leaders in the resolution filing include the AFSCME Employees Pension Plan, Walden Asset Management, the New York City Employees' Retirement System (NYCERS), the AFL-CIO, the Connecticut Retirement Plans and Trust Funds (CRPTF), Hermes Investment Management, the Needmor Fund, Amalgamated Bank, Boston Common Asset Management, the Marianists, Bon Secours Health System, the Unitarian Universalist Association and the Benedictine Sisters of Texas.A similar resolution was filed with a half-dozen companies in 2006 and averaged more than 40 percent support in its first year-including 44 percent support at Sun Microsystems and Countrywide Financial, 43 percent support at Sara Lee, 41 percent at US Bancorp, and 40 percent at Home Depot.The United Kingdom and Australia have enacted laws requiring shareholder advisory votes on remuneration.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.2 Auditors' liability: Commission consults on possible reform of liability rules in the EU**On 18 January 2006, the European Commission launched a public consultation on whether there is a need to reform rules on auditors' liability in the EU and on the possible ways forward. This follows an independent study on the economic impact of current auditors' liability regimes and on insurance conditions in Member States (IP/06/1307). The Commission presents four possible options for reforming auditors' liability regimes in the EU and invites stakeholders to give their views on the issues involved by 15 March 2007.**Possible ways forward**In October 2006, the Commission published an economic impact study prepared by an external consultant. On the basis of this study, the Commission invites stakeholders to give their views on four possible options for reforming auditors' liability:* The introduction of a fixed monetary cap at European level, but this might be difficult to achieve.
* The introduction of a cap based on the size of the audited company, as measured by its market capitalisation.
* The introduction of a cap based on a multiple of the audit fees charged by the auditor to its client.
* The introduction by Member States of the principle of proportionate liability, which means that each party (auditor and audited company) is liable only for the portion of loss that corresponds to the party’s degree of responsibility.

In addition, the Commission has published an overview of the legal situation in Member States.Further information is available on the [Europa](http://ec.europa.eu/internal_market/auditing/liability/index_en.htm%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.3 Shareholders vote in record numbers in 2006** Australian investors turned out in record numbers during 2006 to vote their shares at company meetings, with nearly 60% of all shares at top 100 companies being voted according to new research from proxy voting adviser, ISS Australia published on 18 January 2007.Investors' increased voting was also apparent outside of the top 100 as for the first time more than half all of shares in companies ranked 101 to 200 in the S&P/ASX 200 Index were voted during 2006.In the first 11 months of 2006, an average of 58.2% of all shares in S&P/ASX 100 companies were voted, compared to 48.1% in 2005 and 53.3% in 2004. For companies ranked 101 to 200 in the S&P/ASX 200, average turnout was 50.6% in 2006, up from 47.9% in 2005 and 46.8% in 2004.Turnout at the top 100 companies has nearly doubled since 1999, when proxy turnout on director re-election resolutions for top 100 companies was just 35%. The turnout levels for top 100 companies in 2006 also show that Australia has now drawn level with the UK, where turnout at company AGMs is about 60% for FTSE 100 companies.Across the S&P/ASX 200, 54.7% of all shares were voted in 2006, up from 48% in 2005 and 50.1% in 2004.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.4 Directors obligations during heightened M & A activity** On 17 January 2007, the Australian Institute of Company Directors (AICD) warned that directors of Australia's listed companies need to exercise caution and to pay particular attention to their corporate governance procedures during the current time of high merger and acquisition and corporate activity. AICD urged directors of listed companies to be meticulous in their corporate governance processes during any M&A or corporate transaction activity, particularly in the areas of disclosure and where there is potential for conflicts of interest.AICD released a position paper on directors' responsibilities during heightened M & A activity. The paper is available on the [AICD](http://www.companydirectors.com.au/default.htm%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.5 Report on integration of EU mortgage markets**On 17 January 2007, the European Commission published the reports of two expert groups established in April 2006 in order to explore in detail the issues of mortgage funding and consumer protection. These issues had been particularly highlighted as deserving specific attention in the contributions received on the Commission's 2005 Green Paper on Mortgage Credit in the EU. The reports will assist the Commission in finalising its White Paper, due in June 2007. The Commission welcomes comments, in particular on the Recommendations contained in the Funding Group Report. The report of the Mortgage Funding Expert Group (IP/06/855) reviews all barriers to the emergence of an efficient and competitive pan-European mortgage funding market, and proposes solutions – mostly market-driven – to remove existing obstacles. It focuses on both primary and secondary markets and covers all funding techniques such as deposits, covered bonds and residential Mortgage Backed Securities. The Report concludes that although European mortgage funding markets are already relatively competitive and efficient, targeted measures at national or EU level could further improve their operation.The Mortgage Industry and Consumer Dialogue (see IP/06/642) explored in detail four key consumer protection issues, namely pre-contractual information, advice, early repayment and the annual percentage rate of charge. The reports are available on the [Europa](http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.6 Greater economic freedom worldwide stalled over the last year according to 13th Annual Index of Economic Freedom** The move toward greater economic freedom worldwide stalled over the last year, according to the 13th Annual Index of Economic Freedom published on 16 January 2007 by The Heritage Foundation and The Wall Street Journal.The 157 nations rated in the new Index received an average economic freedom score of 60.6 (on a scale in which 100 represents ideal economic freedom). That is down slightly (0.3 percentage point) from the previous year's average, but still rates as the second highest level of freedom in Index history.Hong Kong and Singapore finished 1st and 2nd in the rankings for the 13th straight year. Australia jumped from 9th to 3rd, giving Asia a sweep of the top three spots and, with New Zealand at number 5, four of the top 10.Europe also placed four countries in the top 10: the United Kingdom, Ireland, Luxembourg and Switzerland. For the first time, "Americas" is listed as a separate region. The United States finished 4th worldwide, joining Canada (10th) as the sole representatives of this region in the top 10.This year's edition measures economic freedom within 10 specific categories (as previous Indexes did), but with changes. The new Index measures "labour freedom" for the first time and emphasizes entrepreneurship as a segment of the "business freedom" factor. The other categories are: trade freedom, fiscal freedom, freedom from government, monetary freedom, investment freedom, financial freedom, property rights and freedom from corruption. Scores in these categories are averaged to create an overall score.The Most Free

|  |  |
| --- | --- |
| 1. | Hong Kong |
| 2. | Singapore |
| 3. | Australia |
| 4. | United States |
| 5. | New Zealand |
| 6. | United Kingdom |
| 7. | Ireland |
| 8. | Luxembourg |
| 9. | Switzerland |
| 10. | Canada |

The Least Free

|  |  |
| --- | --- |
| 148. | Guinea-Bissau |
| 149. | Angola |
| 150. | Iran |
| 151. | Congo |
| 152. | Turkmenistan |
| 153. | Burma |
| 154. | Zimbabwe |
| 155. | Libya |
| 156. | Cuba |
| 157. | North Korea |

The Index finds that only seven of the 157 countries graded scored 80 or higher, making them "free" economies. Another 23 countries earned 70-79.9 points and are characterized as "mostly free" economies. Forty-eight of the countries surveyed are "moderately free" (with scores between 60 and 69.9) while 59 are "mostly unfree" (scores from 50 to 59.9). The remaining 20 countries are economically "repressed" (with scores lower than 50).Across the five regions, Europe is the most free, with an average score of 67.5. The Americas follow at 62.3, with the remaining regions below the world average. Yet, "trends in freedom are mirrored closely across all regions, and in each region, the richest countries tend to be those with the strongest economic freedoms," the editors note.Asia-PacificWhat makes Asia unique is the variance in the region. Hong Kong and Singapore continue to lead the world in economic freedom, along with Australia and New Zealand.Meanwhile, Turkmenistan, Vietnam, Laos, Bangladesh and Burma are all "repressed," and North Korea remains the world's least-free economy. In all, 13 countries in the region improved their Index scores from 2006, while 16 declined. Vietnam remained unchanged.EuropeThis year's Index separates Europe from North America. A majority of the world's 20 freest countries are in Europe, and it produces one quarter of the world's economic output. The United Kingdom is the highest-rated European country, ranked 6th worldwide, followed immediately by Ireland at 7th, Luxembourg at 8th and Switzerland at 9th.However, Europe suffers from the second-worst regional score in labor freedom and is last in fiscal freedom and freedom from government. Overall, 26 economies lost ground in economic freedom and 15 did better.The AmericasThis year, Latin America and the Caribbean are categorized along with North American economies in a single region.The United States (4th) Canada (10th) and Chile (11th) all made the top 20 this year, and the Americas has been the second-highest region in terms of freedom since 1999, when it was the world leader. Overall, 18 countries saw their scores decline, while 11 improved. Canada remained the same.North Africa and the Middle EastThis is the only region to increase its average economic freedom score over the last year, but it still lags the rest of the world. Most of its economies are not free.Israel is ranked only 37th in the world, but leads this region. Bahrain is a close second at 39th. At the other end of the scale are Syria, Iran and Libya. Overall 12 countries improved their scores, while only five lost ground.Sub-Saharan AfricaThe region is still without a free economy, and is well-known as the poorest and most violent region in the world. Africa's overall level of economic freedom is weaker than any other region's and declined in the past year.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.7 Review of narrative reporting** On 15 January 2007, the UK Accounting Standards Board (ASB) published its first review of narrative reporting by UK listed companies, with the aim of keeping the spotlight on narrative reporting and the importance of encouraging continuing improvement in this area. The review, which also draws on work by other bodies in the field, found that while most companies were good at describing their strategy and current performance, they were weaker on providing forward looking information and identifying their principal risks and how they are managed. The purpose of the review was to highlight the strengths and weaknesses of current narrative reporting, in the interests of widespread adoption of best practice. The report had dual objectives of assessing: * Best practice - the degree to which companies have adopted the recommendations in the ASB's Reporting Statement on the Operating and Financial Review (OFR), given that it is the most complete and authoritative source of best practice guidance; and
* Compliance - how UK companies are performing in the light of the requirement under the EU Accounts Modernisation Directive for companies to provide a business review in the Directors report in their 2006 Annual report.

Whilst companies are generally complying with the legal requirements, when measured against the best practice recommendations set out in the ASB's Reporting Statement, the ASB found the following: Areas of good reporting: * Companies are generally good at providing descriptions of their business and markets, together with their strategies and objectives, although some improvements could be made in providing information on their external environment.
* All companies within the sample are providing satisfactory or better descriptions of the current development and performance of the business.
* There has been an increase in companies reporting environmental, employee and social issues; although very few discuss their contractual arrangements and relationships in any depth.

Areas for improvement: * The greatest area of difficulty for companies when producing their narrative reports is the disclosure of forward-looking information. The proposed 'safe harbour' provisions in the Companies Act 2006 may encourage companies to provide greater detail in the future.
* Companies need to improve their descriptions of resources available to the entity, in particular intangible items such as brand strength, corporate reputation and natural resources not reflected in the balance sheet.
* Companies need to describe more carefully their principal risks and uncertainties, and set out their approach to managing and mitigating those risks, rather than simply providing a list of all their risks and uncertainties (33 risks in one case).
* Many companies are providing a good deal of information on measures and indicators, but improvements can be made in identifying their Key Performance Indicators, both financial and non-financial.

The report on 'Review of Narrative Reporting by UK Listed Companies in 2006' is available on the [FRC](http://www.frc.co.uk/images/uploaded/documents/A%20review%20of%20narrative%20reporting%20by%20UK%20listed%20companies%20in%202006.pdf%22%20%5Ct%20%22_new) website. http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.8 Canadian regulators release results of hedge funds review** On 12 January 2007, the Canadian Securities Administrators (CSA) issued Staff Notice 81-316 Hedge Funds, summarizing the findings of a sample based review of hedge funds in Canada. The CSA conducted the review in response to increased retail interest in hedge funds. The review was done through a combination of compliance reviews of fund managers and advisers, disclosure reviews and industry consultations. Based on the review, the CSA determined that while an appropriate securities regulatory framework exists for hedge funds in Canada, certain areas can be improved.The review identified areas for improvement, including issues with principal protected notes (PPNs), referral arrangements, distribution, disclosure and registration of fund managers. The notice sets out the CSA's views on how these areas will be monitored or improved. Further information is available on the [CSA](http://www.csa-acvm.ca/html_CSA/news/07_03_results_of_hedge_fund_review.htm%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.9 Global risks 2007 report** The Global Risks 2007 report released on 10 January 2007 highlights a growing disconnect between the power of global risks to cause major systemic disruption, and ability to mitigate them. The annual Global Risks report, published by the World Economic Forum, suggests that many of the 23 core global risks explored in the report have worsened over the last 12 months, despite growing awareness of their potential impacts. In addition to specific risk mitigation measures, institutional innovations may be needed to create effective responses to a complex risk landscape.The report suggests two such innovations – the appointment of Country Risk Officers and the creation of flexible "coalitions of the willing" around specific global risk issues, providing momentum to mitigation efforts. The first would provide a focal point in government for mitigating global risks across departments, learning from private-sector approaches and escaping a 'silo-based' approach. The second would allow mitigation strategies to emerge from interplay between governments and business. In addition, the report recommends a number of key needs for addressing specific global risks, including: * Linking energy security with considerations on climate change;
* Urgently beginning work on a successor to the Kyoto agreement with three central principles:– Involvement of the United States and major developing countries (particularly China and India);– Differential responsibilities for future emissions' reduction dependent upon past emissions and stage of economic development; and – Common overall responsibility for climate change;
* Renewing terrorism insurance schemes scheduled to sunset in 2007 in some form.

Global Risks 2007 was compiled by the Global Risk Network of the World Economic Forum, drawing insights from experts engaged throughout 2006 and from partnership with Citigroup, Marsh & McLennan Companies (MMC), Swiss Re and the Wharton School Risk Center. The report is available on the [World Economic Forum](http://www.weforum.org/en/initiatives/globalrisk/index.htm%22%20%5Ct%20%22_new) website. http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.10 Statement concerning elevated risk of complex structured finance activities**On 5 January 2007, five US federal agencies issued a final statement on the complex structured finance activities of financial institutions. The statement describes the types of internal controls and risk management procedures that should help financial institutions identify, manage, and address the heightened legal and reputational risks that may arise from certain complex structured finance transactions (CSFTs).The final statement is substantially similar to the revised statement issued for comment in May 2006, but has been modified in certain respects to address comments received on the revised statement. Like the proposal issued in May, the final statement takes a risk and principles based approach to addressing the risks CSFTs may pose to institutions and focuses on those CSFTs that may present elevated levels of legal or reputational risk to institutions.The final statement was issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the Securities and Exchange Commission. The statement represents supervisory guidance for institutions supervised by the four banking agencies and a policy statement for institutions supervised by the Securities and Exchange Commission. Because the statement focuses on sound practices related to elevated risk CSFTs transactions that typically are conducted by a limited number of large financial institutions it will not affect or apply to the vast majority of financial institutions, including most small institutions.The interagency statement is available on the [SEC](http://www.sec.gov/news/press/2007/2007-3.htm%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.11 Commencement of Trade Practices Act reforms** On 1 January 2007, the Australian Government's [Trade Practices Legislation Amendment Act (No 1) 2006](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=93214" \t "_default) (the Act) and supporting regulations commenced operation.The Act implements the Government's response to the Review of the Competition Provisions of the Trade Practices Act (Dawson Review), and contains a number of important reforms to the [Trade Practices Act 1974 (TPA)](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=6426" \t "_default). It creates a voluntary formal merger clearance system, and provides for changes to the existing merger authorisation process. The Act also creates a new collective bargaining notification regime, for the benefit of small business.The Act makes a number of important changes to existing notification and review processes, makes improvements to the Australian Competition and Consumer Commission’s enforcement powers, and significantly increases the maximum penalty that can be imposed in relation to serious breaches of Australia’s trade practices laws.The Government is continuing to consult in relation to the higher thresholds that will apply under the new collective bargaining regime. Additional regulations will be made early in 2007 to amend the threshold that applies to particular industries, in light of comments received from stakeholders on a discussion paper issued in 2006. In the meantime, the Act provides for a default $3 million threshold for all collective bargaining applicants.The Government has commenced consultations with small business on the next stage of its TPA reform to strengthen the misuse or market power provisions and unconscionable conduct provisions of the TPA. Further information is available on the [Treasury](http://www.treasurer.gov.au/tsr/content/pressreleases/2006/143.asp%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.12 New proposals for auditor independence issued by IFAC** On 29 December 2006, the International Ethics Standards Board for Accountants (IESBA), an independent standard-setting board within the International Federation of Accountants (IFAC), issued an exposure draft updating and strengthening the independence requirements contained in the IFAC Code of Ethics for Professional Accountants. The last substantive revisions to the Code were made in November 2001. The changing environment in the past few years has led the IESBA to consider what revisions to auditor independence requirements might be needed. Over the two-year development period of the exposure draft, the IESBA consulted with interested stakeholders, including regulators, standard setters, leaders of accountancy organizations, and members of the profession. Significant proposed modifications to the Code include:* Expanding the applicability of partner rotation requirements;
* Updating requirements related to the provision of non-assurance services, including setting out additional guidance on the provision of tax services to audit clients; and
* Extending the independence requirements to the audits of a wider range of entities of significant public interest.

Further information is available on the [IFAC](http://www.ifac.org/News/LastestReleases.tmpl?NID=11674147484534304" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.13 Review of relevant interests under the Corporations Act** On 21 December 2006 the Australian Treasury released a consultation paper titled "Review of register of relevant interests".The [Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=78496" \t "_default) included amendments to the [Corporations Act 2001](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default) requiring entities which receive information in response to their own or ASIC 'tracing notices' to put the information in a publicly available register. This requirement, in section 672DA of the Corporations Act, was designed to increase the information available to interested persons in relation to relevant interests in listed entities, information which does not appear on the face of the register of members. The relevant provisions commenced on 1 January 2005. Subsequently, the Parliamentary Secretary to the Treasurer, the Honourable Chris Pearce MP, decided that the operation of the provision should be reviewed in the light of the experience to date. The purpose of the consultation paper is to initiate that review. With the assistance of the comments and evidence received, the Treasury will report to the Minister on the operation of the current provisions. In particular, the report will discuss the effects of the requirements, including whether they have increased the information available and whether there is evidence that they have had the adverse consequences predicted at the time they were reintroduced in 2004. The context of these provisions is the takeovers regime in Chapter 6 of the Corporations Act. The purposes of Chapter 6, as described in section 602, include to ensure that: * the acquisition of control over those entities subject to the provisions takes place in an efficient, competitive and informed market;
* the holders of shares and interests in an entity know the identity of the person who proposes to acquire a substantial interest, have reasonable time to consider the proposal and enough information to assess the merits; and
* as far as practicable, the holders of the relevant class of shares or interests have a reasonable and equal opportunity to participate in any benefits accruing.

Consistently with these policy objectives, the Corporations Act includes provisions that:* require persons with a 'substantial holding' in the company or scheme to give notice to the company or responsible entity (and the market operator) (Part 6C.1); and
* allow ASIC, a listed company or the responsible entity of a listed managed investment scheme to issue 'tracing notices' to find those with relevant interests who stand behind the names on the members register (Part 6C.2).

The consultation paper is available on the [Treasury](http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1213" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.14 Developments in the global capital markets** Research by the consulting firm McKinsey indicates that the world's financial assets now total more than US$140 trillion and will reach US$214 trillion by the decade's end. Moreover, the value of the world's financial assets now exceeds global GDP by a factor of three—an unprecedented degree of financial depth, which largely bodes well for the world's economies. According to the research, while the United States remains the world's largest financial intermediary, the eurozone has emerged as a powerhouse in the financial landscape, and Japan remains strikingly isolated. The research outlines the way capital markets around the globe are becoming stronger, more liquid, and increasingly integrated.More information about the research is available on the [McKinsey Quarterly](http://www.mckinseyquarterly.com/article_abstract_visitor.aspx?ar=1899" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.15 Ranking of world's most globalized nations** Globalization continues to move ahead despite worldwide economic and political instability - but is advancing on different paths in different nations, according to the 2006 AT Kearney/Foreign Policy Magazine Globalization Index, an annual study which assesses the extent to which nations accounting for the majority of the world's population are becoming more or less globally connected.The 2006 index examines data from 2004, a year that saw the European Union, NATO, and the World Trade Organization take on new members yet also witnessed terrorist attacks in the heart of Europe and increasing concern about immigration and border security. Overall, globalization proved resilient. Global trade grew by 10.3 percent. Foreign direct investment increased overall by 6 percent; financial and personnel contributions to U.N. peacekeeping missions jumped despite new global tensions emerging from the Iraq war; international tourist arrivals soared to record levels; and internet usage spiked in some unlikely places, including Indonesia, Morocco, Nigeria, and Senegal.The Index, now in its sixth year, is the first comprehensive empirical measure of globalization and its impact. It measures 12 variables which are divided into four baskets: economic integration, person to person contact, political engagement, and technological connectivity. The data represent 62 countries, accounting for 96 percent of the world's gross GDP and 85 percent of its population.The Global Top 20

|  |  |
| --- | --- |
| 1. | Singapore |
| 2. | Switzerland  |
| 3. | United States  |
| 4. | Ireland |
| 5. | Denmark |
| 6. | Canada |
| 7. | Netherlands |
| 8. | Australia |
| 9. | Austria  |
| 10. | Sweden |
| 11. | New Zealand |
| 12. | United Kingdom |
| 13. | Finland |
| 14. | Norway |
| 15. | Israel |
| 16. | Czech Republic |
| 17. | Slovenia |
| 18. | Germany |
| 19. | Malaysia |
| 20. | Hungary |

Further information is available on the [AT Kearney](http://www.atkearney.com/main.taf?p=1,5,1,178" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**1.16 Corporate compliance and enforcement panel discussion** As part of the annual corporate law teachers conference, a public panel discussion will be held on the topic of 'Corporate Law and Corporate Governance: Stocktaking on Compliance and Enforcement'. The panel discussion will be held in Melbourne on Monday 5 February from 5.15pm to 7pm. Speakers on the Panel include representatives from ASIC, ACCC, ASX, a major law firm and academia. Further information is available from [Deakin University](http://www.deakin.edu.au/conferences/clta/panel.php%22%20%5Ct%20%22_new).http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif |
| **2. Recent ASIC Developments** |
| **2.1 National Audit Office review of ASIC's processes for dealing with statutory reports of suspected breaches of the Corporations Act**On 24 January 2007 the Australian National Audit Office published its report titled "ASIC's processes for receiving and referring for investigation statutory breaches of the [Corporations Act 2001](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default)". The objective of the report is to examine the effectiveness of ASIC’s processes in relation to statutory reports it receives from external administrators of companies. The report notes that ASIC has acted on fewer statutory reports, both in absolute terms and as a proportion of reports received. The Audit Office has made a series of recommendations in the report. One of these recommendations is that ASIC identify opportunities for increasing the number of statutory reports that it currently investigates. The report contains a reply by ASIC.The report is available on the [National Audit Office](http://www.anao.gov.au/%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.2 ASIC changes managed investments class order relief to permit discounted issues to associates** On 19 January 2007, the Australian Securities and Investments Commission (ASIC) announced changes to Class Order [CO 05/26] "Constitutional provisions about the consideration to acquire interests" which will allow issues of discounted interests to associates of the responsible entity of listed managed investment schemes.ASIC has also made some technical changes to the class order to improve its operation. ASIC has made these changes in response to feedback it has received following the class order’s release in May 2005. The class order will commence after it has been gazetted and recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form and is available on the [FRLI](http://www.frli.gov.au/%22%20%5Ct%20%22_new) website.The class orders are available on the [ASIC](http://www.asic.gov.au/asic/asic.nsf%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.3 ASIC issues report on relief applications - July to September 2006** On 18 January 2007, the Australian Securities and Investments Commission (ASIC) released a report outlining its recent decisions on applications for relief from the corporate finance, financial services and managed investment provisions of the [Corporations Act](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default) (the Act) between 1 July 2006 and 30 September 2006. The report, "Overview of decisions on relief applications (July to September 2006)", provides an overview of situations where ASIC has exercised, or refused to exercise, its exemption and modification powers, from the financial reporting, managed investment, takeovers, fundraising and financial services provisions of the Act. The report also highlights instances where ASIC decided to adopt a no-action position regarding specified non-compliance with the provisions, and features an appendix detailing the relief instruments it executed. For ease of reference, the appendix contains cross-references linking the instruments to the relevant paragraph(s) of the report. The appendix now also contains hyperlinks to the relevant ASIC Gazette where those instruments have been published.**Background**ASIC is vested with powers to exempt or modify the Act under the provisions of Chapters 2D (officers and employees), 2J (share buybacks), 2L (debentures), 2M (financial reporting and audit), 5C (managed investment schemes), 6 (takeovers), 6A (compulsory acquisitions and buy-outs), 6C (information about ownership of entities), 6D (fundraising) and 7 (financial services) of the Act. ASIC uses its discretion to vary or set aside certain requirements of the law, where the burden of complying with the law significantly detracts from its overall benefit, or where business can be facilitated without harming other stakeholders. The report is available on the [ASIC](http://www.asic.gov.au/asic/asic.nsf/lkuppdf/ASIC%2BPDFW?opendocument&key=Overview_relief_report_July_Sept2006_pdf" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.4 ASIC calls for submissions on review of EFT Code of Conduct** On 12 January 2007, the Australian Securities and Investments Commission (ASIC) released a consultation paper inviting members of the public to make submissions on the Electronic Funds Transfer Code of Conduct (EFT Code). The EFT Code is a voluntary industry code of practice covering all forms of consumer electronic payments transactions. ASIC is responsible for administration of the EFT Code, including undertaking periodic reviews. The Code was first introduced in 1986 and was most recently reviewed between 1999 and 2001. The great majority of consumer banking transactions are now undertaken electronically and the EFT Code is important in regulating the way transactions are carried out and maintaining consumer confidence in the electronic payments marketplace.Key matters to be examined as part of the review include: * liability issues arising from the growth and growing sophistication of Internet fraud;
* regulation of alternative payment facilities;
* coverage issues, including whether the protections of the Code should extend to small business as well as consumer account holders;
* obligations around mistaken payments;
* administrative arrangements associated with the EFT Code, including compliance monitoring and ASIC's role as Code administrator; and
* other more specific issues raised by stakeholders in preliminary consultations.

All submissions will be considered and the EFT Code will be redrafted by a stakeholder working group chaired by ASIC. The working group, which will be established in early 2007, will include representatives of relevant industry, consumer, dispute resolution scheme and government stakeholders, as well as other experts in the electronic payments area. There will be a further public consultation on a revised draft code once the working group has completed its initial redrafting of the Code.**Background**The EFT Code regulates consumer ATM and EFTPOS transactions, card-not-present credit card transactions (for example, when goods and services are purchased by phone or over the Internet), telephone and online banking, and telephone and online bill payments. The Code also regulates stored value cards and other stored value products. The EFT Code only applies to businesses that subscribe to it. All retail banks, building societies and credit unions that offer EFT services to consumer clients subscribe to the Code. In addition, there are a small number of other subscribers. Subscribers agree to be bound contractually by the requirements of the Code, and must reflect this commitment in the terms and conditions applying to their payment services.The EFT Code has a three-part structure:* Part A applies to funds transfers to and from accounts maintained with account institutions including, but not limited to, banks and other financial institutions;
* Part B separately regulates stored value facilities and transactions; and
* Part C covers privacy, electronic communications and Code administration.

The EFT Code provides consumer protection in areas including: * disclosure of terms and conditions;
* receipt requirements/ records of available balance;
* provision of statements;
* liability allocation when there is a dispute about an unauthorised transaction;
* rights to exchange stored value, and refund lost or stolen value (in the case of stored value facilities);
* dispute resolution procedures;
* privacy; and
* electronic delivery of statements and other information.

A central aspect of the EFT Code is the detailed regime it sets out (in Clause 5) for determining when the account institution (and when the cardholder) bears losses resulting from an unauthorised transaction by a third party. Under the Code, the account holder will be liable if the account institution can prove that: * The account holder (or authorised user) acted fraudulently;
* There was 'unreasonable delay' by the account holder/ user in notifying loss or theft of the card or other security breach; or
* The account holder/user failed to safeguard the security of access codes (such as PINs) in one of a number of specific ways - by voluntarily disclosing their PIN, by keeping an undisguised record of their PIN on or with their card, by using certain easily guessed PIN numbers, or by acting 'with extreme carelessness' in failing to protect their PIN and any other access codes.

Otherwise, however, the account holder is either:* Liable for a maximum of $150 only (on a 'no fault' basis); or
* Not liable at all. For instance, in situations when the loss is due to conduct of the account institution's employee, when loss occurs before the account user receives their access code, or when it occurs after notification of the security breach.

ASIC has been responsible for administering the EFT Code since 1998. As part of its responsibilities, ASIC is required under Clause 24.1(a) to periodically review the Code and associated administrative arrangements, in consultation with other stakeholders.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.5 ASIC further extends interim relief for actuaries** On 20 December 2006, the Australian Securities and Investments Commission (ASIC) further extended interim relief for actuaries from the requirement to hold an Australian financial services licence (AFSL) to 30 June 2007. ASIC has extended this interim relief while the Federal Government finalises the regulations regarding actuaries. The extension of the relief is provided under ASIC Class Order [CO 06/1012] Variation of Class Orders [CO 03/1096] and [CO 06/495].Under section 911A of the [Corporations Act 2001](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default) (the Act), a person who carries on a financial service business is required to hold an AFSL to perform those activities. Corporations Regulation 7.1.29 provides exemption from the need to be licensed for certain classes of professional activities. Actuaries have previously raised concerns that the categories of exemption from licensing may not apply to all aspects of their ordinary business.In response, ASIC issued Class Order [CO 03/1096] 'Actuaries" to provide temporary relief to certain types of actuaries from the requirement to hold an AFSL when undertaking the usual activities of an actuary. The original relief was then extended under Class Order [CO 05/680] "Transitional relief for actuaries", Class Order [CO 05/1194] "Actuaries – amendment" and Class Order [CO 06/469] "Further transitional relief for actuaries", allowing additional time for the Government to finalise its position on the regulation of actuaries.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.6 ASIC further extends transitional compensation arrangements for AFS licensees** On 20 December 2006, the Australian Securities and Investments Commission (ASIC) announced a new class order [CO 06/1012] extending the transitional compensation arrangements under section 912B of the [Corporations Act 2001](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default) until 30 June 2007.ASIC understands that the Government plans to finalise the compensation regulations during these next six months, including any further transition period.Further information is available on the [ASIC](http://www.asic.gov.au/asic/asic.nsf%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.7 ASIC consults on policy on listed managed investment scheme buybacks** On 19 December 2006, the Australian Securities and Investments Commission (ASIC) released a consultation paper regarding a proposed policy about on-market buybacks by managed investment schemes listed on the Australian Securities Exchange (ASX).ASIC expects the consultation paper to be of particular interest to property trusts and infrastructure funds listed on the ASX. On-market buybacks for these types of schemes are difficult to implement because of the application of the withdrawal procedures under Part 5C.6 of the [Corporations Act](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default). The main proposals include: * ASIC will give conditional exemptions to allow buybacks of interests in listed schemes carried out in the ordinary course of trading on the ASX;
* the buy-back price must not be greater than five per cent above the market price of the interests;
* buybacks that are greater than 10 per cent of the smallest number of interests, at any time, during the previous 12 months, must be approved by scheme members. Buybacks that do not exceed this limit will not require member approval, however the responsible entity must wait at least 21 days after announcing the buyback through ASX before commencing the buyback; and
* no requirement to lodge any notices or forms with ASIC, provided the responsible entity makes all necessary disclosures through the ASX.

ASIC invites comments on the proposals in the consultation paper by 12 March 2007. After considering the comments, ASIC aims to publish a final policy by the end of August 2007. The consultation paper is available on the [ASIC](http://www.asic.gov.au/asic/asic.nsf/lkuppdf/ASIC%2BPDFW?opendocument&key=ConsultationPaper_SchemeBuyBacks_Dec2006_pdf" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**2.8 ASIC grants PDS relief for multiple deemed issuers of exchange traded derivatives** On 18 December 2006, the Australian Securities and Investments Commission (ASIC) announced relief from the product disclosure statement (PDS) provisions of the [Corporations Act](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default) (the Act) for financial services licensees who are deemed to be issuers of exchange traded derivatives by section 761E(6) of the Act. This relief is provided in ASIC Class Order [CO 06/682].The relief applies in the situation where exchange traded derivatives are acquired by retail clients through a series of arrangements involving both: * a financial services licensee (an intermediary licensee) who is not a participant on a relevant financial market and who makes recommendations about the acquisition of a derivative and introduces the client to a financial services licensee (market participant) who is a participant on the relevant financial market; and
* the market participant who acquires the derivative for the client on the relevant financial market.

Currently, the law states that generally both of these licensees must prepare a PDS for the derivative. The PDS must contain statements and information about each licensee. Although the Act permits preparation of a joint PDS where a financial product is jointly issued, the common practice is that the intermediary licensees and market participants prepare separate PDSs for exchange traded derivatives. **Background** The effect of [CO 06/682] is that: * the intermediary licensee is not required to prepare a PDS for the derivative (the market participant will need to prepare the PDS, and make it available to intermediary licensees to distribute to retail clients); and
* the market participant is not required to include in the PDS (or a short-form PDS) information specific to each intermediary licensee that is also a deemed issuer of the derivatives described in the PDS. The market participant can instead comply with the PDS content requirements by including in the PDS:(a) statements that there may be additional risks, fees or costs, rights, terms, conditions or obligations that attach to the derivative, and available dispute resolution schemes that relate only to the intermediary licensees; and(b) a statement that details of these matters may be obtained from the relevant intermediary licensee; and
* the intermediary licensee must give to retail clients to whom the intermediary licensee offers to issue, arrange for the issue of, or makes a recommendation to acquire, the derivative, in writing, the information or statements that relate only to the intermediary licensee that would otherwise have been required to be included in the PDS, or a Short-Form PDS, for the derivative. The intermediary licensee can include this information either in their Financial Services Guide, or in a separate document.

A consequential modification has been made to section 1013E of the Act to ensure that information that relates only to the intermediary licensee would not have to be included in the PDS, or a Short-Form PDS, prepared by the market participant on the basis that it is information that would reasonably be expected to have a material influence on decisions made by retail clients about the acquisition of the derivative.The relief will only be available where the intermediary licensee and the market participant have entered into a written agreement under which the intermediary licensee agrees to take reasonable steps to ensure that retail clients to whom the intermediary licensee offers to issue, arrange for the issue of, or makes a recommendation to acquire the derivative are given the market participant’s PDS and the additional product-related information that relates to the intermediary licensee.The Class Order is available on the [ASIC](http://www.asic.gov.au/asic/asic.nsf/lkuppdf/ASIC%2BPDFW?opendocument&key=co06-682_pdf" \t "_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif |
| **3. Recent ASX Developments** |
| **3.1 Miscellaneous amendments to the ACH Clearing Rules and ASTC Settlement Rules**Miscellaneous amendments to the ACH Clearing Rules and Procedures and ASTC Settlement Rules and Procedures came into effect on 18 December 2006.The amendments are mainly administrative, consequential and/or miscellaneous in nature and include the following changes:**ACH Clearing Rules*** ACH Rule 3.5.1 and 4.16.1 have been amended to remove the requirements for a Controller of a Participant to provide undertakings to ACH.
* ACH Rule 9.4.1 has been amended to confirm that General Participants are bound by the minimum terms for Clearing Agreements in Schedule 3 to the ACH Rules, regardless of whether the Participants are parties to agreements containing those terms.
* ACH Rules 9.1.5 and 9.2.5 have been amended to provide that certain minor amendments to Clearing Agreements, as set out in the Procedures, do not need to be notified to ACH.
* ACH Rule 12.2.2 has been amended to expressly state that novated Cash CCP Contracts and Derivatives CCP Contracts incorporate the netting provisions set out in the Clearing Rules.
* ACH Rules 12.20.3 and 12.21.1 have been amended to provide that Participants may notify ACH of certain errors by a message in the Derivatives Clearing System, as specified in the Procedures.

**ASTC Settlement Rules*** ASTC Rule 4.9.1 has been amended to include Participant Bidders as a class of Participants which are not required to maintain a Settlement Bond.
* ASTC Rule 5.23.1 has been amended to provide that the audit of registry functions must cover the matters specified in the Procedures.
* ASTC Rule 7.2.2 has been amended to provide for the Holder Identification Number (HIN) to be inserted in a Sponsorship Agreement after the agreement has been executed in circumstances where there is a new CHESS Holding.
* ASTC Rule 13.8.2 and 13.8.9 have been amended to bring the notice of meeting provisions relating to Depositary Interests in CHESS into alignment with the [Corporations Act](http://research.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "_default).
* The list of FOR Financial Products (subject to foreign ownership restrictions) in Schedule 1 to the ASTC Rules has been moved to the Procedures and updated.

http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif**3.2 Amendments to ASX supervisory powers and processes**ASX has released a consultation paper entitled "Amendments to ASX Supervisory Powers and Processes".The paper contains an outline of internal changes to the supervisory processes which have been, or are in the process of being, made. It contains proposals, upon which ASX is seeking comment, to various supervisory processes and powers which may require rule changes. These include:* Publication of Tribunal determinations.
* Maximum dollar penalty determined by Tribunals.
* The time to pay penalties.

The consultation paper is available from the [ASX](http://www.asx.com.au/%22%20%5Ct%20%22_new) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif |
| **4. Recent Takeovers Panel Developments** |
| **4.1 Queensland Gas Company Limited - Panel decision**On 19 December 2006, the Takeovers Panel (Panel) advised that it has considered the application (Application) from Santos CSG Pty Ltd (Santos) in relation to its off-market takeover offer for Queensland Gas Company Limited (QGC and Offer). Having regard to the further disclosures agreed to be provided by QGC in a second supplementary target's statement, the recent announcements by QGC about the proposed transaction with AGL Energy Ltd (AGL Proposal) and the proposed transaction with Sentient Gas (Sentient Proposal) (collectively the Proposals) the further information to be provided in the notice of meeting and explanatory memorandum for those Proposals and submissions from QGC and Santos, the Panel has decided not to make a declaration of unacceptable circumstances in relation to the Application.QGC has agreed to provide a supplementary target's statement to address a number of issues raised by the Panel which were the subject of the Application and which also addresses a number of issues raised by Santos. The Panel has also considered the recent announcements by QGC in relation to the AGL Proposal and the Sentient Proposal. The Panel considered that the Application must be considered in light of the recent announcement of the Proposals, which are subject to the approval of QGC shareholders. QGC announced that it will send the notice of the meeting and explanatory memorandum to QGC shareholders in January 2007. QGC has also advised the Panel that it has appointed Deloitte Corporate Finance Pty Ltd (Deloitte) to prepare an independent expert's report to accompany the notice and explanatory memorandum, advising whether, in Deloitte's opinion, the AGL Proposal is fair and reasonable to QGC shareholders. QGC has advised the Panel that Deloitte will assess the value of QGC shares on a stand alone basis for the purpose of its report.The Panel considered that QGC's directors will have an obligation to provide proper disclosure about the AGL Proposal and Sentient Proposal and the basis of their recommendations for those Proposals in the notice of meeting and explanatory memorandum for those Proposals.The Panel also considered that if Deloitte's report is prepared on this basis, QGC shareholders should have sufficient information to be able to assess:(a) the value of QGC shares on a stand alone basis; and (b) the relative merits and demerits of Santos' Offer and the AGL Proposal; and information to assist them to assess the Sentient Proposal. The information package that QGC shareholders will receive for the AGL and Sentient Proposals will assist QGC shareholders to decide whether or not they should accept the Santos Offer. Accordingly, the Panel did not consider that QGC shareholders would be materially assisted by receiving further information in the form of another supplementary target's statement explaining only the basis of QGC's directors' recommendation in relation to the Santos Offer. This is fundamentally because:(a) further information will be provided in mid-late January 2007 in the forthcoming notice of meeting and explanatory memorandum (including the Deloitte independent expert's report) in relation to the AGL Proposal; (b) the closing date for Santos' Offer has been extended to 31 January 2007; (c) the meeting to consider the AGL Proposal is not due to be held until February 2007; and (d) QGC shareholders who choose to trade in the current market know that they are trading in a period prior to significant information releases in relation to proposals that may change the value of their shares materially. The Panel advised both Santos and QGC that if the explanatory memorandum and the Deloitte expert's report are not adequate or there is a material deficiency of information following the January releases of information, it would be open for Santos or any other person to make a further application to the Panel.Further information is available on the [Takeovers Panel](http://www.takeovers.gov.au/) website.http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20113%20January%202008_files/go_up.gif |
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