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The Companies Act 2006 – Client Briefing No. 1

The Companies Act 2006

The Companies Bill received Royal Assent on 8 November 2006 and is now the Companies Act 2006 (the Act).

The Act represents the most significant piece of corporate legislation for more than fifty years. It is the longest ever Act to be passed by Parliament and runs to 1,300 sections and 16 schedules.

The Act will affect companies of all sizes and type, although many of the provisions within the Act have been drafted to assist private companies.

The Act is being introduced over a number of months and the Government's target date for full implementation of the Act is October 2008. During this period we shall be keeping all our corporate clients aware as to which parts of the Act have been implemented, how the Act may affect certain clients and what actions, if any, should be considered by clients.

It should be stressed that one of the core principles of the Act is to "think small first". The Government recognises that the vast majority of companies registered in the United Kingdom are private companies and many of these are small companies, often owned and managed by the same individuals. With this in mind a number of measures are included in the Act which are aimed at assisting such companies and are intended to relieve them of unnecessary administrative procedures. Set out below is a summary of those parts of the Act that are likely to affect smaller companies.

- There will be a simpler method of forming new companies with a new style Memorandum of Association and separate and simpler model Articles of Association.
- Regulations will set out a separate, comprehensive code of accounting and reporting requirements for small companies.
- A private company will not be required to appoint a company secretary.
- A private company will not need to hold an annual general meeting unless it wishes to.
- With two exceptions, a private company will be able to pass all its resolutions by written resolution, thus obviating the need to hold general meetings. In addition, it will no longer be necessary for all shareholders to agree to a written resolution before it is passed.
- Private companies will be able to provide financial assistance for the purchase of their own shares, thus facilitating certain business transactions, eg takeovers.
- The rules will be relaxed for private companies in relation to the reduction of their share capital. Under new rules it will no longer be necessary for such companies to apply to the court before returning share capital to shareholders. This could be advantageous to those companies that have share capital in excess of their requirements.
- Companies of all sizes will be able to make use of electronic communication, eg emails and websites, to communicate with their shareholders.
- For those directors that do not wish the general public to know their residential address, the Act will allow directors to file a "service address" at Companies House rather than their home address.
- The Act will allow shareholders to agree limitations on the liability of auditors.
- No company will be allowed to have a sole director who is not a natural person and a person under the age of 16 will not be allowed to be a director of a company.

As stated above, the Act is being introduced piecemeal over the coming months. As at today's date a number of sections of the Act are in force, the majority of which will affect quoted companies. However, the parts of the Act that allow communication by companies with their shareholders by electronic communication are now in force and we would advise clients who require more detail as to this part of the Act to contact us.

We set out below a summary of when the Government intends to bring in the various parts of the Act.

With effect from 6 April 2007:

The majority of the provisions coming into force on 6 April 2007 concern repeals of the Companies Act 1985. The main provision of practical importance will be repeals made so as to allow directors aged 70 or over to be directors of public companies.

With effect from 1 October 2007:

- Part 9 (Exercise of members' rights);
- Part 10 (A company's directors), other than provisions relating to directors' conflict of interest duties, directors' residential addresses and underage and natural directors;
- Part 11 (Derivative claims and proceedings by members);
- Part 13 (Resolutions and meetings), and, related to this, sections 485-488 of Part 16 (Audit);
- Part 14 (Control of political donations and expenditure);
- Section 417 of Part 15 (Contents of directors' report: business review);
- Part 29 (Fraudulent trading);
- Part 30 (Protection of members against unfair prejudice);
- Part 32 (Company investigations: amendments).

With effect from 6 April 2008:

- Part 12 (Company secretaries);
- Part 15 (Accounts and reports), other than section 417;
- Part 16 (Audit), other than sections 485-488;
- Part 19 (Debentures);
- Part 20 (Private and public companies);
- Part 21 (Certification and transfer of securities);
- Part 23 (Distributions);
- Part 26 (Arrangements and reconstructions);
- Part 27 (Mergers and divisions of public companies);
- Part 42 (Statutory auditors).

With effect from 1 October 2008:

- Part 1 (General introductory provisions);
- Part 2 (Company formation);
- Part 3 (A company's constitution);
- Part 4 (A company's capacity and related matters);
- Part 5 (A company's name);
- Part 6 (A company's registered office);
- Part 7 (Re-registration as a means of altering a company's status);
- Part 8 (A company's members);
- Part 10 (A company's directors)—provisions relating to directors' conflict of interest duties, directors' residential addresses and underage and natural directors
- Part 17 (A company's share capital);
- Part 18 (Acquisition by limited company of its own shares);
- Part 24 (A company's annual return);
- Part 25 (Company charges);
- Part 31 (Dissolution and restoration to the register);
- Part 33 (UK companies not formed under the Companies Acts);
- Part 34 (Overseas companies);
- Part 35 (The registrar of companies);
- Part 41 (Business names).

The Government will aim to make all secondary legislation, including commencement orders, or lay it in draft if parliamentary approval is required, by the end of 2007 to facilitate business preparation for full implementation.

Advice:

Clients should be aware that at present only a small part of the Act is in force. You should keep a watching brief as to when the various parts of the Act are to be brought in, although we shall be informing all clients when to consider taking any necessary action.

Should you have any queries relating to the content of this document, please do not hesitate to contact us.

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