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The Companies Act 2006 – Client Briefing No. 11

The Companies Act 2006

Introduction

As our corporate clients will be aware, the Companies Act 2006 (the Act) is being introduced over a period of time by Statutory Instrument, with the Government having set a target date of October 2009 to have the complete Act in force.

We would remind clients that the Department for Business Enterprise & Regulatory Reform (BERR) has a section on its website devoted to frequently asked questions on the 2006 Act. These are constantly being added to and may be of assistance to clients in answering specific queries.

Go to <http://www.berr.gov.uk/bbf/co-act-2006/index.html>. Then click on "FAQ Companies Act 2006" on the menu on the left of the screen.

Final parts of the Act to commence on 1 October 2009

Barring any last minute changes to the proposed timetable for the introduction of the Companies Act 2006 (the Act), the complete Act will be in operation on 1 October 2009.

"The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008" comes into force on 1 October 2009 and implements the final parts of the Act.

Set out below is a summary of the main provisions coming into force on that day.

Part 35 – The registrar of companies

This Part of the Act gives the registrar of companies a range of powers which include the form and manner in which companies must deliver documents to Companies House, including electronic delivery.

The powers include a power for the registrar not to make certain information available to the public. The most important information concerns the residential addresses of a director, secretary or certain members.

Changes to statutory forms

All company forms (approximately 200 exist) will be changed to bring them in line with the Act. In many instances this will only mean a change being made to the form number. Under the 1985 Act most forms are referenced according to the section number of the Act to which they relate. For example, the existing form for the appointment of a director is form 288a as it is section 288 of the 1985 Act which governs the appointment of directors. Whilst the amended form will still refer to the new section number under the 2006 Act, the numbering system will be different, with forms that are more frequently filed having a lower document number. In the case of the appointment of a director the form code will be AP01.

Our Advice:

Details of all the amended and new forms will be published on the Companies House website in the Forms section, when they are available. The proposed date for publication is 1 July 2009.

Incorporation of companies

The Act introduces a number of important changes relating to the setting up and running of companies. This, to a large degree, was the cause of the delay in the implementation of this part of the Act which was originally due to come into force on 1 October 2008. However, the registrar stated that he would be unable to have systems in place by that date and so this part of the Act was delayed by one year.

The purpose of the changes is to make it easier to set up and run companies.

Our Advice:

There will be a “clearing period” to process any application to incorporate a company received prior to 1 October 2009, such application being governed by the 1985 Act.

In order to register a company under the 2006 Act you will have to send to the registrar:

An application form (Form IN01)

A new style memorandum of association

You can see the new style memoranda in Statutory Instrument 3014 – “*The Companies (Registration) Regulations 2008*”.

The articles of association

As with the present law a company can either adopt the new model articles set out in Statutory Instrument 3329 – “*The Companies (Model Articles) Regulations 2008*”, adopt the model articles subject to certain amendments or draft its own bespoke articles.

A statement of capital

This statement is new and the registrar has advised as follows:

“The statement of capital is a ‘snapshot’ of a limited company’s issued share capital at a given time.

Companies incorporating as limited by shares (whether private or public) on or after 1st October 2009 must complete a statement of capital and initial shareholdings as part of the application to incorporate.

All companies limited by shares must complete a statement of capital as part of any annual return filing made up on or after 1st October 2009.”

The appropriate fee.

Authorised/nominal share capital

For all companies incorporated on or after 1 October 2009 there will be no authorised/nominal share capital.

Statutory declaration of compliance

At present, for companies formed by the “paper method” ie not electronic formations, there has to be a statutory declaration of compliance signed by a solicitor. From 1 October the company will make a statutory statement of compliance which will not involve a solicitor.

Entrenchment of provisions in articles

From 1 October companies can entrench certain provisions in their articles. This means that if a provision is entrenched it can only be amended if certain strict conditions are met (see section 22).

Change of company name

The Act has changed the provisions whereby a company can change its name. Under the 2006 Act a company can change its name using one of four methods, dependant on the circumstances relating to the change. In practice, for most companies a change of name will either be made by special resolution or by other means provided for in the company's articles. This is a change in the law. For example, the company's articles could provide for a change of name to be made by the passing of a directors' resolution (as opposed to a special resolution passed by members). However, if a company changes its name by such a method it must give notice to the registrar and this notice must be accompanied by a statement that the change of name has been made by means provided for by the company's articles.

Company names

The rules contained in the 2006 Act in relation to "same as" names are stricter than under the 1985 Act. For example, if a company exists in the name of "The Green Man Limited", and another company wishes to be registered as "The Green Man.com Limited", the registrar will disregard the ".com" part of the name and will not register the second company.

Directors' service addresses

The registrar has given the following advice in relation to the giving of residential and service addresses by directors of companies:

"From 1st October 2009 every director must provide Companies House with both their usual residential address, and for each directorship they hold, a service address. The service address will be on the public record and will be public information but the residential address will be protected information. A director can choose any address as the service address including the registered office address of the company."

Restoration of companies

If a company is struck off the register under the 1985 Act, application had to be made to the Court to have the company restored. The 2006 Act introduces new legislation which provides for "administrative restorations". This method will be used in the main by companies that have been removed from the register for failing to file accounts. The Court will still retain the power to restore companies where the registrar is unable to act.

Voluntary dissolution

Under the 1985 Act only private companies could apply for voluntary dissolution under section 652A. Under section 1003 of the 2006 Act public companies may now make such applications.

Limited Liability Partnerships

For those clients who operate through a Limited Liability Partnership, we would draw your attention to the draft Statutory Instrument: "*The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009*". The explanatory memorandum to this draft SI states as follows:

"The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 complete the application of the Companies Act 2006 ("the 2006 Act") to limited liability partnerships ("LLPs"). The accounts and audit provisions of the 2006 Act have already been applied to LLPs with effect from 1st October 2008. These Regulations apply as appropriate (with modification) the remaining provisions of the 2006 Act. They will come into force on 1st October 2009, to coincide with the final implementation of the 2006 Act for companies."

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