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The Companies Act 2006 – Client Briefing No. 12

The Companies Act 2006

Introduction

As our corporate clients will be aware, the Companies Act 2006 (the Act) has been introduced over a period of time by Statutory Instrument, with the Government having set a target date of 1 October 2009 to have the complete Act in force.

The purpose of this Client Briefing is to summarise the main changes, together with new legislation, which the Act has introduced and which will affect private companies and unlisted public companies.

Summary of the main changes and new provisions

Set out below is a summary of the principal changes and new legislation introduced by the Act. This summary is based on information contained on the Department for Business Innovation & Skills website (formerly the Department for Business, Enterprise & Regulatory Reform) with acknowledgement to the Department. See the BSI website at www.bis.gov.uk.

Company registration and a company's constitution

The procedures for registering a company have been changed due, in the main, to the fact that the Act has introduced new provisions relating to a company's memorandum and articles of association.

Default Model Articles

There will continue to be default model articles, but there will be separate model articles for private companies and public companies.

Memorandum of Association

The company memorandum will become a formal document recording the position at the point of registration, with just the articles being the continuing constitutional document.

For companies formed before 1 October 2009 any provisions contained in their memorandum which go beyond the newly required limited information will be regarded as provisions of their articles of association.

Companies will no longer be required to specify their objects.

Company forms

Numerous changes have been made to company forms and the new forms will be found on the Companies House website at www.companieshouse.co.uk.

Directors addresses

The information that companies must file relating to their directors will change so that for each director a service address and the country of usual residence will be required, in addition to the home address. The service address can be the same as the home address and can be the registered office of the company. The home address is not in the public domain and so will not be revealed if a company search is carried out, unless the home address is the same as the service address. This will apply from 1 October 2009 for new appointments; for existing directors, a service address and the country of residence will be required in Annual Returns made up to dates after 30 September 2009. Home addresses will not be put on the public record after that date.

Secretaries addresses

The rules are different in relation to company secretaries. Only a service address is required for a secretary (as opposed to both a home address and a service address for directors). The service address can be the home address or can be the registered office of the company.

Duties of directors

The Act now sets out the duties of directors and in particular the general duties of directors in respect of conflicts of interest.

Reduction of capital

The Act introduces a new procedure for private companies to make capital reductions supported by a solvency statement instead of by a court order.

Company directors

All companies must have to have at least one natural person as a director, so a company cannot be a sole director of another company (some existing companies will have more time before the rules change).

There is a new minimum age of 16 for directors.

Company secretary

Private companies will no longer be required to have a company secretary, although they may continue to have one if they wish.

Purchase of own shares

The restrictions under the Companies Act 1985 on financial assistance by private companies for the acquisition of their own shares is repealed.

Execution of documents

The rules relating to the execution of documents have been amended.

Accounts and audit

Most accounting and audit provisions will apply to accounts and reports for financial years beginning on or after 6 April 2008. The detailed statutory accounting and reporting requirements can now be found in regulations (rather than in Schedules to the Act).

The reporting requirements for small companies are now set out in a single set of regulations. The requirements themselves are largely unchanged.

The time for private companies to file their accounts with the Registrar of Companies has been reduced from 10 to 9 months from their year end. The time for public companies to file their accounts with the Registrar of Companies has been reduced from 7 to 6 months from their year end. The medium sized group exemption from preparing consolidated accounts has been removed – only small groups will be exempt.

Electronic communication

Companies can make greater use of electronic communications for communication with shareholders.

Annual general meetings

Private companies will not need to hold an annual general meeting unless they positively opt to do so.

Resolutions

The Act has made it easier for private companies to take decisions by written resolutions.

Authorised share capital

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

Entrenchment of provisions in articles

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.

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.

Restoration of companies

If a company was 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.

The Registrar of Companies

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 (see above).

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