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## **The Companies Act 2006 – Client Briefing No. 3**

### **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 2008 to have the complete Act in force.

Parts of the Act came into force on 8 November 2006, 1 January 2007, and 20 January 2007. Two further statutory instruments brought still more parts of the Act into force from 6 April. These were:

- Statutory Instrument 2006 No. 3428 (C.132) (Commencement No. 1, Consequential Amendments, Transitional Provisions and Savings) Order 2006
- Statutory Instrument 2007 No. 1093 (C.49) "The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007

We have provided details of the first of the above statutory instruments in a previous Client Briefing. This Briefing summarises the content of the second statutory instrument.

#### **Statutory Instrument 2007 No. 1093 (C.49) "The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007**

This Order was made on 29 March 2007 and came into force on 6 April 2007.

#### ***Overview***

The Order provides for the commencement of a number of sections of the Act from 6 April, details of which are set out below. With the exception of the sections relating to Takeovers (sections 942 to 992 and Schedule 2) the majority of the sections are specialised and will rarely be encountered by the majority of companies. However, there are some sections that of practical significance, eg the definition of "company records" and the liability of directors who are in default of the Act.

#### **Detailed content**

The following sections came into force on 6 April:

##### *Section 2*

This section states what the expression "the Companies Acts" means and also defines the term "the company law provisions" in the Act.

##### *Sections 942 to 992 and Schedule 2 (takeovers etc)*

These sections comprise Part 28 of the Act. This Part of the Act relates to the Takeover Panel and to the mechanics relating to takeovers.

***Advice: In the vast majority of cases this part of the Act will only affect listed companies and for that reason we do not go into detail in this Client Briefing. For those companies that may be controlled by the Takeover Panel and the sections of the Act relating to takeovers, it is important that the detailed content of the relevant parts of the Act are considered and that expert advice is sought.***

*Section 1043 – unregistered companies*

This is a specialised area which will not affect companies registered under the Companies Acts. It can safely be ignored.

*Section 1170 – meaning of “EEA State” and related expressions*

This section is a definitions section only.

*Section 1284(1) – extension of Companies Acts to Northern Ireland.*

This section extends the Companies Acts to Northern Ireland for the purpose of extending to Northern Ireland the provisions of community interest companies.

The following provisions of the Act came into force on 6 April 2007 so far as is necessary for the purposes of the above sections:

*Section 546 – issued and allotted share capital*

Defines the above terms and clarifies previous legislation by stating that issued and allotted shares including those taken by the subscribers to the memorandum. This means that the current form 88 (or its successor under the 2006 Act) should not be filed for subscriber shares.

*Section 558 – when shares are allotted*

States that shares are held to be allotted when a person acquires an unconditional right to be included in the company's register of members.

*Sections 1121 to 1123 and 1125 to 1133 – provisions relating to offences*

These sections deal with the liabilities of officers who are in default of the Act and other general provisions relating to defaults.

*Sections 1134, 1135 and 1138 – company records*

These sections will be of practical importance in that they include the definition of “company records”, the form of such records (eg hard copy, electronic etc) and the duty of a company to take precautions against the falsification of its records.

***Advice: It is important that directors are aware as to the forms in which company records can be kept.***

*Section 1139 – service of documents on a company*

This section states how a document must be served on a company. For companies registered under the Act this will be by leaving the document, or sending it by post, to the company's registered office. Different rules apply to overseas companies with a place of business in the United Kingdom.

***Advice: There is no material change to existing legislation but it is important that documents are delivered to companies using the correct procedures.***

*Section 11450 – service of documents on directors, secretaries and others*

This section states how a document must be served on certain individuals, eg directors and secretaries. In general terms this means that a document must be sent by post or left at the address in the part of the company register available for public inspection.

***Advice: There is no material change to existing legislation but it is important that documents are delivered to officers using the correct procedures.***

*Section 1168 – hard copy and electronic form and related expressions*

This section explains what is meant by terms as “hard copy form” and “electronic form”.

*Section 1173 – minor definitions*

This section contains a number of definitions such as “body corporate”, “the Gazette” “officer” etc

*Schedules*

The Order has a number of schedules which include of transitional adaptations, repeals to existing legislation and amendments in consequence of provision made in Part 28 of the Act (Takeovers).

## **Information available on the DTI website in relation to the Companies Act**

The DTI has a section of its website devoted to the Companies Act 2006. This can be found at <http://www.dti.gov.uk/bbf/co-act-2006/>. Those responsible for the management of companies may find this website useful, especially in relation to a number of questions posted in the Frequently Asked Questions section.

Set out below are some of the main contents of this webpage:

- Links to the Act and its Explanatory Notes and the tables of origins and destinations
- Link to the TSO Bookshop for those who wish to purchase a hard copy of the Act, the Explanatory Notes and the tables of origins and destinations
- A summary leaflet – 'Companies Act 2006' - A summary of what it means for private companies' A more detailed leaflet - 'Companies Act 2006' - Private Company

The website also contains a number of Frequently Asked Questions on the Companies Act 2006. These are constantly being updated.

The following subjects have attached questions and answers

- 1 Access to register of members (Part 8 ss 116-119)
- 2 Accounting Issues
- 3 Capital Provisions (Part 20)
- 4 Child Directors and Corporate Directors
- 5 Control of Political Donations and Expenditure (Part 14)
- 6 Directors Conflict of Interest Duties (Part 10)
- 7 E-Communications
- 8 Enforcement Issues
- 9 False or misleading statements in reports
- 10 Financial Assistance by private companies for acquisitions of own shares
- 11 Language & Trading Disclosure Regulations 2006
- 12 Model Articles
- 13 (Political Expenditure) Exemption Order 2007
- 14 Timetable
- 15 What is left behind in the 1985, 1989 and 2004 Acts

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

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