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## **The Companies Act 2006 – Client Briefing No. 6**

### **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. (The original target date of October 2008 has been extended by one year.)

This Client Briefing gives information concerning a further Written Statement made by the Minister for Competitiveness, Stephen Timms, concerning amended dates for the implementation of certain parts of the Act.

We also include advice on a number of miscellaneous practical matters concerning the 2006 Act.

#### **Final implementation timetable for the 2006 Act**

Based on the above Written Statement, we set out below a summary of the commencement dates for future provisions of the Act, some of which have been changed from their original proposed commencement dates. We would advise readers that a full summary of all past and future commencement dates for the Act can be found on the BERR website at [www.berr.gov.uk/files/file42847.doc](http://www.berr.gov.uk/files/file42847.doc)

#### **The following provisions will be commenced with effect from 6 April 2008:**

Section 44 (Execution of documents).

Sections 121 and 128 (Register of members: removal of entries belonging to former members).

Part 12 (Company secretaries), other than section 270(3)(b)(ii) and sections 275 to 279.

Part 15 (Accounts and reports), other than sections 417 and 463.

Part 16 (Audit), other than sections 485 to 488.

Part 19 (Debentures).

Part 20 (Private and public companies).

Part 21 (Certification and transfer of securities).

Sections 811(4), 812 and 814 (Inspection of register of interests in a company's shares).

Part 23 (Distributions).

Part 26 (Arrangements and reconstructions).

Part 27 (Mergers and divisions of public companies).

Section 1172 (References to requirements of this Act).

Part 42 (Statutory auditors).

Section 1282 (Payment of expenses of winding up).

**The following provisions will be commenced with effect from 1 October 2008:**

Sections 69 to 74 (Objection to company names).

Sections 82 to 85 (Trading disclosures).

Sections 155 to 159 (Provisions relating to corporate directors and under-age directors).

Sections 175 to 177, 180(1), (2)(in part) & (4)(b), & 181(2) & (3) (General duties of directors in respect of conflicts of interest).

Sections 182 to 187 (Declaration by a director of an interest in an existing transaction or arrangement).

Control of political donations and expenditure: provisions relating to independent election candidates.

Sections 544, 641(1)(a) & (2)-(6), 642, 643, 652 & 654 (Share capital provisions, mostly introducing the new solvency statement procedure for capital reduction for private companies).

Section 1157 (Power of court to grant relief in certain cases).

Sections 1277 to 1280 (Information as to exercise of voting rights by institutional investors).

The commencement order will also repeal the restrictions under the Companies Act 1985 on financial assistance for acquisition of shares in private companies, including the "whitewash" procedure.

**The following provisions will be commenced with effect from 1 October 2009:**

Part 1 (General introductory provisions) (most);

Part 2 (Company formation);

Part 3 (A company's constitution) (most);

Part 4 (A company's capacity and related matters) (most);

Part 5 (A company's name) (most);

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) (most);

Part 10 (register of directors and directors' residential addresses);

Part 12 (register of secretaries);

Part 17 (A company's share capital) (most);

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) (most);

Part 34 (Overseas companies);

Part 35 (The registrar of companies) (most);

Part 37 (company records, service addresses, independent valuation);

Part 40 (Company directors: foreign disqualification);

Part 41 (Business names).

**Advice:**

***You can view a number of frequently asked questions concerning the new implementation dates on the BERR website at <http://www.dti.gov.uk/bbf/co-act-2006/>. Click on the 'what's new' link in the middle column of the page.***

## **Miscellaneous advice concerning the 2006 Act**

Readers may find the following information of interest and assistance:

### ***Requirement for one director to be a natural person***

Section 155 of the 2006 Act requires a company to have at least one director who is a natural person. The Fifth Commencement Order allows a period of grace until 1st October 2010 for companies to comply with this requirement (subject to certain provisions).

### ***Chairman's casting vote at members' meetings***

Sections 281 and 282 of the 2006 Act do not allow a company to use the chairman's casting vote on a resolution passed at a meeting of members.

However the Fifth Commencement Order allows those companies whose articles of association allowed for such a casting vote before 1<sup>st</sup> October 2007 to continue to use this vote. If a company had such a provision in its articles before 1<sup>st</sup> October 2007 but has removed this provision, the company can, at any time in the future, restore this provision.

### ***Form and content of accounts and reports***

Many accountants are concerned as to when the new requirements of the Act in relation to the form and content of a company's accounts and reports will come into force.

The requirements as to the form and content of a company's accounts and reports is contained in Part 15 of the 2006 Act. The detailed form and content will be contained in separate regulations which are at present in draft form.

The accounting periods affected will be those commencing on or after 6<sup>th</sup> April 2008. Accounting periods commencing prior to this date will be governed by the Companies Act 1985.

### ***Annual General Meetings (AGMs)***

Some confusion still exists in relation to the requirement for a company to hold an AGM. We summarise the present position below:

Under the 1985 Act all companies had to have an AGM but a private company could pass an elective resolution not to have an AGM.

The 2006 Act no longer requires a private company to hold an AGM (but a public company must always hold an AGM) unless its articles expressly provide that an AGM must be held.

But there is a potential problem, dependant on which Table A is adopted by the company.

If the company adopts Table A of the 1985 Act this does not count as the company expressly providing that an AGM must be held as this Table A only refers to AGMs and does not expressly require the company to hold an AGM. If the company wishes to hold AGMs then its articles must set out this requirement expressly rather than by reference to Table A.

However, if the company adopts Table A of the 1948 Act, this Table specifically requires an AGM to be held. If however, the company has previously passed an elective resolution to dispense with an AGM then the company will not be required to hold AGMs. If the company has not passed such a resolution then it must hold AGMs unless it amends its articles.

### ***Laying of accounts at general meetings***

Readers should note that if a company wishes to automatically be relieved from the requirement to lay accounts at a meeting of the company (as is allowed under the 2006 Act) this will only apply to accounts for financial years ending on or after 1st October 2007. For financial years ending before this date, accounts must still be laid at a meeting of the company unless the company has passed an elective resolution not to do so (which will usually be the case when the company has passed an elective resolution to dispense with an AGM – see above).

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