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## The Companies Act 2006 – Client Briefing No. 8

### 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, this date having been extended from the original target date of October 2008.

A number of sections of the Act came into force on 6 April this year and we take this opportunity of summarising those sections that are more likely to impact private companies.

#### Reduction of periods allowed for filing accounts

The Act has shortened the periods allowed for private and public companies to file their accounts. The new shortened periods will affect companies whose accounting periods begin on or after 6 April 2008. We set out below the present periods for filing (which will continue to affect companies whose accounting periods begin before 6 April 2008) and the new periods.

##### *Accounting periods beginning before 6 April 2008*

Private companies: 10 months from the end of the company's accounting reference period.

Public companies: 7 months from the end of the company's accounting reference period.

The period allowed for filing accounts ends on the same date in the month as the end of the company's accounting reference period the relevant number of months later unless that month is February and there is no corresponding date, in which case the period allowed for filing accounts ends on the last day in February.

##### *Accounting periods beginning on or after 6 April 2008:*

Private companies: 9 months from the end of the company's accounting reference period.

Public companies: 6 months from the end of the company's accounting reference period.

If the end of a company's accounting reference period is not the last day in the month, the period allowed for filing accounts ends on the same date the relevant number of months later. If the end of a company's accounting reference period is the last day in the month, the period allowed for filing accounts ends on the last day of the month, the relevant number of months later. If the end of a company's accounting reference period is not the last day in the month but is the 29<sup>th</sup> or 30<sup>th</sup> and the last month in which the accounts must be filed is February, the period allowed for filing accounts ends on the last day in February.

The above new rules relating to accounting periods which end on the last day of a month reverse the "corresponding date" rule laid down by the House of Lords in *Dodds v Walker*.

We set out below some examples of filing dates under the new regime. All these examples relate to private companies.

- Accounting period ending 20 April 2009. Accounts must be filed by 20 January 2010.
- Accounting period ending 30 April 2009. Accounts must be filed by 31 January 2010. (Note that under the "old" regime the filing date would have been 30 January 2010.)
- Accounting period ending 30 May 2009. Accounts must be filed by 28 February 2010.

### **Increase in fines for late filing of accounts**

The *Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008* came into force on 6 April 2008.

The regulations amend, with effect from 1 February 2009, the schedule of penalties which apply to limited companies and limited liability partnerships who file their accounts after the time period specified in the Companies Acts.

The regulations also amend the time period in which limited liability partnerships are required to file their accounts so it is the same as for companies under the *Companies Act 2006*. The regulations also apply the provision in the 2006 Act on how to calculate this period.

For private companies, the new penalties are as follows:

- accounts filed not more than one month late - £150;
- accounts filed more than one month but not more than three months late - £375;
- accounts filed more than three months but not more than six months late - £750; and
- accounts filed more than six months late - £1,500.

### ***Our advice:***

***Make sure that you file your company accounts in time as the penalties will be increased.***

### **Company secretaries**

From 6 April this year a private company (but not a public company) will no longer be required to have a company secretary. Sections 270 to 280 of the Companies Act 2006 deal with company secretaries and all of these sections, with two exceptions (see below), came into force on 6 April. Section 270(1) states that a private company need not have a secretary and section 271 states that a public company must have a secretary.

Note that section 270(3)(b)(ii) will not come into force until 1 October 2009. Sub-section 270(3) is set out below:

"(3) In the case of a private company without a secretary—

(a) anything authorised or required to be given or sent to, or served on, the company by being sent to its secretary—

(i) may be given or sent to, or served on, the company itself, and

(ii) if addressed to the secretary shall be treated as addressed to the company; and

(b) anything else required or authorised to be done by or to the secretary of the company may be done by or to—

(i) a director, or

(ii) a person authorised generally or specifically in that behalf by the directors."

(We have underlined the subsection that will not come into force until 9 October 2009. It will be seen that until this subsection comes into force it is only a director who can do anything which is required to be done by the secretary (should the company not have a secretary). After this date any person authorised by the directors can do anything which the secretary would have been able to do.)

Section 272 gives powers to the Secretary of State to make a public company appoint a secretary if it has not got one.

Section 273 sets out the required qualifications of a person who is to be the secretary of a public company. This requirement is similar to existing legislation and in practice will allow a number of individuals to be the secretary of a public company, even if they do not have the specific qualifications listed in the Act.

Section 274 provides that when the office of secretary is vacant or where there is no secretary capable of acting, any action required to be carried out by the secretary can be carried out by an assistant or deputy secretary or in their absence by any person authorised by the directors.

Note that sections 275 to 279 will not come into force until 1 October 2009. These sections are:

Section 275: Duty to keep register of secretaries

Section 276: Duty to notify registrar of changes

Section 277: Particulars of secretaries to be registered: individuals (Note that when this section comes into force a service address of the secretary can be given instead of the secretary's home address.)

Section 278: Particulars of secretaries to be registered: corporate secretaries and firms.

Section 279: Particulars of secretaries to be registered: power to make regulations (This section gives the Secretary of State the power to make regulations to amend the particulars of secretaries to be registered (s277) and particulars of secretaries to be registered: corporate secretaries and firms (s278)).

Until the above sections come into force in October 2009, the existing legislation contained in the Companies Act 1985 will apply.

Section 280, which came into force on 6 April 2008 states that if something is required to be done by both a director and a secretary it cannot be done by one person who is both a director and secretary.

#### ***Our advice***

***With the majority of small private companies it is difficult to see why a company will need a company secretary. There are relatively few matters which are required to be carried out by the secretary and these could easily be done by a director.***

***In the case of new companies therefore we would advise that in the majority of instances no secretary need be appointed on incorporation.***

***In the case of existing companies, the company will have a choice. Either do nothing, in which case the existing secretary will continue to act, or have the existing secretary resign by holding a director's meeting, keeping minutes of this meeting and filing the necessary statutory form at Companies House. Set out below is a suggested wording for the directors' minute:***

#### ***“Resignation of company secretary***

***The resignation of xxx as company secretary was laid before the meeting and it was resolved that this resignation be accepted forthwith and the necessary statutory form filed with the registrar of companies.”***

### **Articles of Association**

At present the articles of association of many private companies will make reference to the company secretary along the following lines:

"The first Secretary or Joint-Secretaries of the Company shall be as named in the statement delivered to the Registrar of Companies pursuant to section 10 of the Act.

Table A to the Companies Act 1985 states as follows:

"Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them."

### **Our advice**

***In the case of a company that has no secretary on incorporation or which dispenses with an existing secretary there will be no need to amend the company's articles in that if there was no secretary then both the articles and that part of Table A would not be relevant.***

### **Frequently asked questions**

The registrar of companies has published a number of frequently asked questions relating to company secretaries and the Companies Act 2006 and these are reproduced below with acknowledgement to the registrar.

**Q.** *Do I still need a secretary after April 2008?*

**A.** From 6th April 2008 private companies will have the option whether or not they have a company secretary. If the company decide to no longer have a secretary after that date they will need to inform Companies House on the usual 288b form.

**Q.** *When will the company secretary changes come into force?*

**A.** From 6th April 2008 the provision for enabling private companies to choose whether they wish to have a company secretary, will come into force.

**Q.** *Can the company just have a sole director and no secretary?*

**A.** Yes, as long as it is a private company and from 1st October 2008 that the director is a natural person.

**Q.** *Must a secretary also be a natural person or can they be a corporate?*

**A.** The new provisions relating to natural directors do not apply to secretaries. Secretaries can still be corporate.

**Q.** *Will the company be required to amend the Articles?*

**A.** The company will be required to amend the Articles if there is specific reference to the company having a secretary. However if the Articles only refer to the secretaries duties there is no need to make an amendment.

**Q.** *When the company amends the Articles what documentation must be submitted to Companies House?*

**A.** The company must submit a written or special resolution together with an updated version of the Articles.

**Q.** *When do the remaining provisions relating to secretaries come into force?*

**A.** These come into force on 1st October 2009 From that date secretaries who are an individual person will be able to file a service address for the public record and corporate secretaries will be required to give details of where they are registered and the registered company number, if applicable.

**Accounts and reports**

The whole of Part 15 of the Act (sections 380-474) "Accounts and reports" came into force on 6 April 2008 with the exception of section 417 (Contents of directors' report: business review) which came into force on 1 October 2007 and section 463 (Liability for false and misleading statements in reports) which came into force on 20 January 2007 for reports and statements sent to members and others after that date.

From a practical viewpoint, the main areas that will affect accountants and their clients will be the content and format of company accounts and reports.

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

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