

## Companies Act 2006

### Changes affecting directors and other changes

#### Background Information

The Companies Act 2006 received Royal Assent on 8th November 2006. It contains roughly 1,300 sections and is said to be the largest ever UK statute. The Act, which will not come into effect in its entirety until October 2009, replaces virtually all of the Companies Acts of 1985 and 1989.

This briefing is one in a series looking at the significant changes to company law arising out of the Act.

The second Commencement Order made under the Act came into force on 6th April 2007. The Order was a combination of new provisions and the repeal of parts of the Companies Act 1985. This briefing focuses on what are, in our opinion, the main changes.

#### New from 6 April 2007

Since the Act was passed in November 2006, little new law has been put into place, with the bulk of changes expected late in 2008. The main changes in this Order are:

- 1 Although a broadly equivalent power already existed in company law, the Secretary of State now has power to set Companies House fees (section 1063 of the new Act). We do not anticipate a new fee structure at this stage.
- 2 The community interest company regime has been extended to Northern Ireland (section 1284(1) of the new Act). [A community interest company is a limited company which allows a business or other activity to be carried out for the benefit of a community and not purely for private advantage, but without the strict

reporting obligations that exist for charities].

- 3 The Takeovers Directive has been implemented (Part 28 of the new Act).
- 4 The protection available to members of limited liability partnerships in relation to the disclosure of their residential address was reinstated. The first Commencement Order was badly drafted and had inadvertently removed this.

#### Repealed from 6 April 2007

The repeals involve what might be termed "housekeeping" by eliminating outdated provisions from company law. Some of the main changes, in so far as they relate to private companies are:

- 1 Section 41 Companies Act 1985 - the requirement to have a document or proceeding "requiring authentication by a company" to be authenticated by a director, secretary or other authorised officer has been repealed. This provision has been overtaken by developments in common law and, typically, most companies' articles of association already provide for this.
- 2 Section 293-4 Companies Act 1985 - directors of public companies or of private subsidiaries of public companies no longer have to disclose their age once they reach 70.
- 3 Section 311 Companies Act 1985 - a company may now pay a director "free of" income tax. This change adopts a Law Commission recommendation to simplify company accounting on the basis that the tax that a company pays is

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also taxed as an emolument of the director.

- 4 Sections 323 and 327 Companies Act 1985 - directors and certain of their family members may now deal in options in respect of shares or debentures of a listed company.
- 5 Sections 324-6 and 328-9 Companies Act 1985 - directors, shadow directors, their spouses and minor children no longer have to disclose their interests in shares and debentures of the company/any holding company/any subsidiary company. There is therefore no longer any requirement to maintain a Register of Directors' Interests. There remain different rules relating to interests and dealings in the shares and debentures of listed companies.
- 6 A company no longer has the right to close the register of members for up to 30 days a year.
- 7 The Secretary of State can no longer bring civil proceedings on a company's behalf.
- 8 Certain insurers and deposit, provident or benefit societies no longer have to publish periodical statements containing information about liabilities, assets and certain other financial information. The requirement has been overtaken by specific regulatory requirements.
- 9 Section 729 Companies Act 1985 - the Secretary of State no longer has to prepare an annual report on "matters within the Companies Acts" and present it to the Houses of Parliament.

### Comments

Given the opportunities afforded by a review of corporate law on this scale, it is, perhaps, surprising that there are not more radical changes. At the same time, the Government made clear that one of the primary objectives of the new Act was to consolidate the law as it affects companies in the United Kingdom and this will have been achieved by the time all of the provisions of the Act are in force.

Further changes are due in October 2007 and April 2008, with the final and bulk of changes expected in October 2009.

This briefing paper summarises and comments on certain provisions in The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007.

It is not intended to be comprehensive or to provide legal advice, which should be sought on particular matters.

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