

More on the Companies Act 2006

In the last issue of PG Lore we wrote about some of the key areas of change introduced by the Companies Act 2006 (“the Act”). The Act is being implemented in stages with final implementation in October 2009. This is a brief outline of some of the recent and more practical changes which may be significant to private companies.

Company Secretaries

Unless expressly required under their articles of association to have a company secretary, private companies can now choose whether they wish to have one (they are still mandatory for public companies). If your articles of association contain provisions requiring you to have a company secretary, you remain subject to such requirement unless you amend the articles. A provision merely referring to the secretary's duties or setting out the procedure for appointing a secretary will not be deemed a provision expressly requiring the company to have a secretary. We envisage that most companies will choose to maintain their company secretary but companies who decide they no longer need a secretary will need to inform Companies House by submitting the appropriate form.

Execution of Documents

With company secretaries becoming optional, private companies may now have a sole director and no secretary. This resulted in a significant change to the way private companies can execute documents as deeds. Before 6 April 2008 private companies needed two officers – either two directors or one director and the secretary – to execute documents as deeds. The new Act has introduced an additional way for companies to execute deeds, that is,

by signature on behalf of the company by a single director in the presence of an independent witness. We suspect that most private companies will prefer, as a matter of good practice, to continue having documents executed either by two directors or by a director and the secretary as before. However the new position does offer a solution if the company is down to one available director only (e.g. due to the other one and/or the secretary temporarily being abroad) and the deed needs urgent execution.

These new provisions do not apply to Limited Liability Partnerships or foreign companies.

Accounting and Audit

For financial years beginning on or after 6 April 2008 the time for companies to file their accounts with Companies House has been reduced by one month (for both private and public companies). The delivery time for private companies is now 9 months from their year end.

The medium sized group exemption from preparing consolidated accounts has now been abolished and only small groups will be exempt.

Following the removal of the requirement to hold annual general meetings, the appointment of a private

company's auditor will be deemed to be renewed each year unless the company takes steps to end the appointment or to appoint another auditor.

Corporate Directors and Under-Age Directors

Although not yet in force it is worthwhile noting that from 1 October 2008 companies will have to have at least one natural person as a director so can no longer have sole corporate directors. Existing companies who had sole corporate directors before 8 November 2006 (the date on which the Act received Royal Assent) have until 1 October 2010 to remedy the situation.

In addition, there will be a new minimum age of 16 for directors. This will apply from 1 October 2008 and from that date existing under-age directors will automatically cease to be directors. Companies are not required to notify Companies House of the change but must amend their register of directors accordingly.

We will keep providing brief updates as the Act continues to be phased in. For tailored advice and comprehensive description of the provisions that are already in force or due to commence please contact Paul Spector or Tally Maor-Moscona in our corporate team.



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