

Commercial Alert

1 April 2008

Company Law – New provisions under the Companies Act 2006

The latest raft of change to Company Law to be implemented by the Companies Act 2006 (“2006 Act”) will be brought in on the 6th April 2008. The most significant changes that might concern small and medium sized companies are outlined below.

Company Secretary

Under the 2006 Act private companies will no longer be required to have a company secretary.

However, most current companies will have a provision in their articles of association that require the company to appoint a company secretary. Therefore a company wishing to do away with their company secretary may need to pass a special resolution to alter the articles of association. Anything that is currently authorised to be done by a company secretary can be done by a director so there is no need to make amendments beyond removing the requirement to have a company secretary.

For those companies whose articles do not require them to have a company secretary, they will need to inform Companies House that they no longer have a company secretary if they choose to vacate the position.

Execution of Documents

Under the Companies Act 1985 a company can execute a deed either by:

- a) affixing its common seal; or
- b) a director and a company secretary or two directors signing the document with the document being expressed as to be executed by the company.

However, under section 44 of the 2006 Act a company will be able to execute any document or deed in one of three ways, namely:

- a) by affixing its common seal;
- b) by the signature of two authorised signatories of the company; or
- c) by the signature of a single director in the presence of a witness who attests the signature.

In the case of (b) and (c) the document must be expressed as being executed by the company.

These measures are designed to tie in with the ability of a private company to do away with the company secretary and to have only a sole director. These provisions apply to all companies, subject to what might be contained in their articles which can provide for further attestation requirements.

Accounts

For private companies whose accounting reference period starts on or after 6th April 2008 the delivery time for accounts has been reduced from 10 months to 9 months from the end of the relevant period.

Directors are under a new obligation not to approve the accounts unless they give a true and fair view of the company's financial position. The company's auditor must give an opinion of whether the accounts provide a true and fair view when they audit the accounts.

Directors are also required to prepare a directors' report for each financial year, although small companies are exempt. This must contain prescribed information, such as the names of all persons who acted as directors during the financial year, the company's principal business during the year and the amount of any dividend recommended, amongst other matters.

The (audit) exemption thresholds for small and medium sized businesses have also been changed as follows:

Exemption	Turnover	Balance Sheet	Employees
Small Company	≤ £6.5m	≤ £3.26m	≤ 50
Small Group	≤ £6.5m (net) or ≤ £7.8m (gross)	≤ £3.26m (net) or ≤ £3.9m (gross)	≤ 50
Medium-sized Company	≤ £25.9m	≤ £12.9m	≤ 250
Medium- sized Group	≤ £25.9m (net) or ≤ £31.1 (gross)	≤ £12.9m (net) or ≤ £15.5m (gross)	≤ 250

To claim a total audit exemption a company must qualify as a small company (that is, its turnover must be less than £6.5 million, *and* its balance sheet must be less than £3.26 million *and* it must have a maximum of 50 employees).

Auditors

For accounting reference periods starting on or after the 6th April 2008 the auditors report will have to state the name of the auditor and be signed by him/her. Where the auditor is a firm the senior statutory auditor will have to state the name of the firm and be signed by the auditor in his/her own name.

A new offence is created by section 507, whereby it is an offence to knowingly or recklessly cause an auditors report to include any misleading, false or deceptive material. The new offence carries a maximum fine of £5,000.

If you would like further information or advice about any of the above, any changes brought in by the Companies Act 2006 or advice about your company in general please do not hesitate to contact Graham King (graham.king@rpj.uk.com), Tony Hatton (tony.hatton@rpj.uk.com) or Carl Selby (carl.selby@rpj.uk.com) by email or by phone on 01494 525941.