

COMPANIES ACT 2006

Provisions to be implemented on 6 April 2008

A number of provisions will be introduced with effect from 6 April 2008 (**The Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (SI 2007 No 3495)**). These include the following, examined in more detail below:

Company secretary (Sections 270-280) (excluding S270(3)(b)(ii) and Sections 275 to 279 coming into effect on 1 October 2009)
Accounts and reports (Sections 380-474)
Audit (Sections 475-539)
Debentures (Sections 738-754)
Private and public companies (Sections 755-767)
Certification and transfer of securities (Sections 768-790)
Distributions (Sections 829-853)
Arrangements and reconstructions (Sections 895-901)
Mergers and divisions of public companies (Sections 902-941)
Statutory auditors (Sections 1209-1264)

COMPANY SECRETARY

Private companies are no longer obliged to appoint a secretary, although a private company may opt to continue to appoint one. The articles of association must be checked before the post is vacated as the articles may require a secretary to be appointed and amendments may be required. Any appointment of a secretary of a private company in force at the date of implementation is not affected by this provision but will continue in force until brought to an end in the usual manner, ie; by resignation of the secretary or by decision of the directors and the submission of a form 288b to Companies House. All the statutory and administrative duties normally fulfilled by the company secretary must still be carried out by companies whether or not a company secretary is appointed. Therefore for those companies that choose not to have a company secretary, alternative administrative procedures will need to be put in place. Public companies continue to be required to have a secretary (Sections 270-274 and 280).

ACCOUNTS AND REPORTS

Sections 380-474 (Part 15) set out the requirements concerning accounts and reports. This Part, together with Part 16, replaces Part 7 of the 1985 Companies Act. The new provisions remain substantially similar to those in the 1985 Act but have been redrafted and rearranged to enable different types of companies to more readily determine what provisions are relevant to them.



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The more significant changes include:

- i Deadlines for the submission of accounts to Companies House have been reduced to six months for public companies and nine months for private companies (Section 442). Filing penalties are also due to be increased in April making it even more important that these revised deadlines are strictly observed.
- ii Quoted companies are now required to publish their accounts and reports on a website. These are to remain available to the public without charge until the following year's accounts are displayed (Section 430). Quoted companies include those on the London Stock Exchange official list, officially listed in an EEA State or admitted to dealing on the New York Stock Exchange or Nasdaq.
- iii Directors now have a specific obligation to approve accounts only if they give a true and fair view of the financial position and results of the company/group (Section 393).
- iv Private companies are no longer required to hold an AGM although they are still required to send out their accounts to members on or before the date that they are submitted to the Registrar. Public companies continue to be required to circulate accounts 21 days prior to the general meeting at which the accounts are to be laid (Section 424).
- v Auditors and companies may agree to limit the liability of the auditor subject to certain conditions (Sections 534-538).

AUDIT

Most of the provisions of Part 16 will apply to the audit of accounts for financial years beginning on or after 6 April 2008. This includes new offences in relation to inaccurate audit reports (Section 507).

Other provisions which will come into effect on 6 April 2008 include revised rules concerning statements that auditors have to make when leaving office with the company, as set out in Sections 519-525. These include new provisions for 'major audits' ie: audits conducted in respect of a listed company, or of any company in whose financial condition there is a major public interest. In such circumstances, the auditors and the company must separately notify the Audit Authority, being the Secretary of State or the relevant authority duly authorised by the Secretary of State.

DEBENTURES

Sections 738-754 (Part 19) set out provisions relating to debentures generally. Section 741 amends the current provisions and includes the additional requirement for a company to register an allotment of debentures made on or after 6 April 2008. Directors are required to effect registration as soon as practicable but in any event within two months of the date of allotment.

Section 748 reduces the maximum time limit for claims arising from errors in the register of debenture holders from 20 years, as set out in the 1985 Act, to 10. This change mirrors equivalent provisions applicable to the register of members (see below).

PRIVATE AND PUBLIC COMPANIES

The prohibition on private companies set out in the 1985 Act is preserved to the extent that they may not offer their securities to the public or allot their securities with the intention that they are offered to the public (Sections 755-760). However it will no longer be a criminal offence. Instead the Court may make an order requiring the company to re-register as a public company unless the minimum share capital requirement is not met.

Sections 761-767 deal with the minimum share capital for public companies. With effect from 6 April public companies may denominate their share capital in either Sterling or the Euro equivalent. Applications for a trading certificate should continue to be submitted using the Form 117.

CERTIFICATION OR TRANSFER OF SECURITIES

Sections 768-790 contain provisions for the certification and transfer of shares and other securities. Section 771 provides that when a transfer of shares or debentures of a company has been lodged with it, the company must register the transfer or give the transferee notice of refusal to register, together with reasons for the refusal, as soon as practicable or in any event within two months after the date on which the transfer is lodged.

This new provision is based on recommendations of the Company Law Review and imposes more stringent obligations on directors when presented with a request for a transfer. These provisions do not apply where a share warrant is being transferred or on a transmission of shares.

INFORMATION ABOUT INTERESTS IN A COMPANY'S SHARES

The information that must be included in the request from any person wishing to inspect a company's register of members is set out in Sections 811(4), 812 and 814. Where a company receives a request under Section 811, it must comply with the request if it is satisfied that it is made for a 'proper purpose' and may refuse the request if it is not so satisfied. If the company refuses the request the aggrieved applicant may apply to Court. If the Court is not satisfied that the inspection or copy of the register is sought for a proper purpose it may direct that the company need not comply.

DISTRIBUTIONS

Sections 829-853 set out the provisions for distributions, mainly restating Part 8 of the 1985 Act. However there are new sections relating to a distribution in kind which are found in Sections 845, 846 and 851, in particular with reference to determining the amount of a distribution, the treatment of unrealised profit and the application of rules of law restricting distribution.

ARRANGEMENTS AND RECONSTRUCTIONS

Provisions relating to arrangements and reconstructions restate, with minor amendments, Sections 425-427 of the 1985 Act covering schemes of arrangement. The new provisions allow the company to alter the rights of either or both its members or creditors so as to effect such actions as for example, an agreed merger, a takeover or a compromise with creditors. The sections have also been re-ordered to provide a more logical progression through the three stages of a scheme, ie the initial application, the meetings and the sanction (Sections 895-901).

MERGERS AND DIVISIONS OF PUBLIC COMPANIES

This part repeals the provisions of Section 427(a) and Schedule 15(b) of the 1985 Act. There are two new sections, Sections 936 and 937, which deal with the independence requirements of experts and valuers.

OTHER PROVISIONS

Other provisions coming into force on 6 April 2008 include Section 44 (execution of documents), which permits a sole director, for a company without a company secretary, to execute documents and deeds, in the presence of a witness. Documents may also be signed by two 'Authorised Signatories', being any director and in the case of a private company with a company secretary, and a public company, the secretary of the company.

Sections 121 and 128 reduce the period for removal of entries and time limits for claims arising from an erroneous entry in the register of members from 20 years to 10.

Commencement Order No. 5 amends an earlier Commencement Order (No.3), following the repeal of elective resolutions. This is aimed at those companies that took advantage of the elective resolution not to hold an AGM but did not remove the specific requirement to hold one from their articles of association. The revised provision permits those companies not to hold AGMs notwithstanding it is expressly stated in their articles that they should. This amendment came into effect on 31 December 2007.

The above is a short summary of the new provisions. We have prepared a fuller power point presentation which we will be pleased to email you on request to info@davidvenus.com. If you have any queries on the new Companies Act provisions please contact a partner on 01372 465330 or by mail to any of the email addresses shown on the front page.