

The Companies Act 2006 Overview



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Introduction

The 2006 Companies Act is the largest piece of legislation ever made, 1300 Sections, and representing the biggest re-think of company law since the first 'proper' Companies Act of 1844.

It focuses attention on the operation of small private companies, which now make up 99% of the Companies Register. It also facilitates the use of electronic communication and information systems, which were never envisaged back in the nineteenth century.

The Act itself is fairly easy to read and understand. The Government has also published explanatory notes to the Act, which give a useful insight into the thinking behind each critical change in the legislation.

The following summary is only intended as a guide to each part of the Act, briefly highlighting some of the significant changes to existing legislation and when they will become effective. At the time of writing, much of the detailed implementation of the Act remains unresolved, particularly the secondary legislation referred to in the Act. Consequently, reference to the website set up by the Department for Business, Innovation & Skills and the associated commentary should always be referred to when interpreting the new legislation (www.berr.gov.uk).

The new legislation will provide a feast of intellectual debate for those charged with interpreting it - namely the legal and accounting professions. It will also provoke much criticism and frustration in the business community over the next few years whilst the new regime settles into place. Nevertheless, major reform of Companies legislation was long overdue and the vast majority of the changes brought about by the new legislation can only benefit the business community as a whole.

Robert Ramsdale
July 2009

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Part 1: General introductory provisions

Sections 1 - 6

Part 1 sets out the general definitions of a company and also lists the type of companies that can be incorporated under the 2006 Act.

Implementation date: 1 October 2009, Section 2 6 April 2007

Part 2: Company formation

Sections 7-16

Part 2 sets out the method of incorporating companies, which allows formation electronically as the 'norm'. All previous Companies Acts had assumed that companies would be formed using pieces of paper.

Section 10 requires a statement of capital and initial shareholding as part of the incorporation information. Previously, this information would have appeared in the Memorandum of Association.

For companies limited by guarantee, Section 11 requires a corresponding 'statement of guarantee'.

Implementation date: 1 October 2009

Part 3: A company's constitution

Sections 17 - 38

These sections relate to the resolutions and agreements affecting the Company's Articles of Association. The Memorandum of Association becomes a simpler document without the objects clause appearing in the Memorandum of Companies formed under the previous Companies Acts.

The Articles of Association although still very much at the discretion of the members, are much simpler to work with and understand.

Section 22 allows 'entrenched' Articles of Association. Previously it had only been possible to entrench certain requirements of the company's constitution by inserting a specific clause in the Memorandum of Association. Now it is possible to specify provisions in the Articles which may only be repealed or amended if certain conditions are met, over and above those required by a special resolution of the members.

Implementation date: 1 October 2009, Sections 29-30 (Resolutions and Agreements) 1 October 2007

Part 4: A company's capacity

Sections 39 - 52

This part sets out the directors' power to bind the company and also addresses the interests of any third parties dealing in good faith with the company.

Implementation date: 1 October 2009, Section 44 6 April 2008

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Part 5: Company name

Sections 53 - 85

Part 5 sets out the controls placed on the registration of company names. Most of the requirements are similar to those set out in the 1985 Act. Sections 69-74 outlines provisions, to frustrate attempts to register companies simply for the purpose abusing someone else's goodwill in a particular industry sector.

Implementation date: 1 October 2009, Sections 69-74 & 82-85 1 October 2008

Part 6: Registered office

Sections 86 - 88

This part concerns the requirement for all companies to have a registered office.

Implementation date: 1 October 2009

Part 7: Re-registration as a means of altering a company's status

Sections 89 - 111

Part 7 concerns itself mainly with the mechanics of changing from "private status" to "public status" and vice-versa. Although the general thrust of these provisions is similar to the old "1985 Regime" there are however a couple of provisions worthy of note in this part of the legislation.

Firstly, it is possible to convert a PLC directly into an unlimited company; previously it was necessary to convert to private status first. Secondly, it is necessary to give a statement of proposed Secretary (Section 95) on conversion of private to PLC, since a private company is no longer obliged to have a Company Secretary – but a PLC is (and he or she must be qualified).

Implementation date: 1 October 2009

Part 8: Members and shareholder rights

Sections 112 - 153

The requirement for a Register of Members and the right of inspection remain. An additional provision (Section 116) requires anyone applying to inspect the register to state who he or she is and any organisation they represent. They will also have to indicate the purpose for which the information is to be used. The Company will then have the option of applying to the Court to refuse the application.

Trusts: It is not possible to enter the name of a trust in the register of members of any company registered in England, Wales & Northern Ireland (Section 126).

Implementation date: 1 October 2009 116 – 119, Inspection of Register 1 October 2007, Sections 121 & 128 6 April 2008

Part 9: Exercise of members rights

Sections 145 - 153

Nominee holdings: There are provisions regarding the rights of "beneficial" shareholders who do not appear on the Companies Register in their own name, but nominate someone else in this capacity (Sections 145-153).

Implementation date: 1 October 2007

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Part 10: Directors

Sections 154 - 259

The rules regarding the conduct of directors are set out in no uncertain terms in this part of the Act and enunciate the duties of directors (Sections 170 – 177): to promote the success of the company, exercise independent judgement, avoid conflicts of interest and not to accept benefits from third parties. Directors theoretically should also become much more accountable to the members of the company, with long term service contracts requiring approval of the members (Section 188) as will payments in connection with loss of office (Section 218). Members also have the power to bring derivative claims against the directors on behalf of the company (Sections 260 - 264 below).

16 is the minimum age for a director and (Section 157). at least one director of the company will need to be a natural person. Directors will be able to keep their residential addresses confidential in future, by nominating a service address (Sections 240 - 246).

Implementation date: 1 October 2007 Except: 155-159, 175-177, 180(1),(2) [in part] (4)(b),181(2)&(3) 182-187, 240-246 1st Oct 2008 162-167, 240-247 which came into force in October 2009

Part 11: Derivative claims and proceedings by members

Sections 260 - 269

These sections bring into statute law, a new “derivative procedure with modern flexible and accessible criteria for determining whether a shareholder can pursue an action [against a director]”. A long-standing principle of common law is that a member can bring an action on behalf of the company against a director under certain circumstances; where the director has been in breach of his duties towards the company, the infamous “Rule in Foss v Harbottle”. This rule of common law has given rise to angst, confusion and frustration to countless students and practitioners in company law for many years

Implementation date: 1 October 2007

Part 12: Company Secretary

Sections 270 - 280

The appointment of a Company Secretary to private companies is optional, but if a private company does appoint a Secretary- he or she will have the same duties and responsibilities as previously under the 1985 Act. The appointment of a Secretary to a Public Company will remain compulsory and that Secretary must be qualified.

Implementation date: 6 April 2008 Sect 270(3b)(ii) & Sect 275-279 1 October 2009

Part 13: Resolutions and meetings

Sections 281 - 361

There is emphasis on passing resolutions by written resolution and the use of electronic voting, authentication and websites. A written “special resolution” only requires a 75% majority of votes cast and a simple majority (more than 50%) for an “ordinary resolution”. Previously all written resolutions had to be passed unanimously.

Notice periods for members meetings are as follows; Annual General Meetings will require 21 days and all other meetings 14 days.

Private Companies are no longer required to hold annual general meetings.

Minutes of meetings only need to be kept for 10 years (as opposed to 20).

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Implementation date: 1 October 2007 Except:308-309 & 333 - in force 20 January 2007 327(2)(c) & 330(6)(c) commencement date not fixed yet

Part 14: Control of political donations

Sections 362 - 379

Comprehensive measures to control political donations and expenditure are set out in Sections 362-379. These measures are to a large extent already in force as a result of the Political Parties, Elections & Law Reforms Act 2000. There are however, a number of subtle changes notably:

- Authorisation by members of a private company is now possible by written resolution
- A specific exemption for Trade Unions

The explanatory notes to the Act emphasises the need to ensure that the threshold above which authorisation must be sought (£5,000) is not breached by separate donations given through subsidiaries and other group companies.

Implementation date: 1 October 2007 Provisions relating to election of independent candidates 1 October 2008. Part 14 comes into force in N. Ireland on 1 November 2007 except for provisions regarding of independent election candidates.

Part 15: Accounts and reports

Sections 380 - 474

This part is largely a revision of part 7 of the 1985 Act to make the accounting regulations more user friendly for small companies and easier to interpret. In part 7 of the 1985 Act, the provisions relating to small companies are expressed by modifying the regulations applying to large companies. In the 2006 Act, this situation is effectively reversed; separate sections dealing with the requirements for public companies and quoted companies are inserted.

Perhaps the most depressing feature of this part of the Act is the reduction in the time limit for delivering accounts to The Registrar: 9 months for a private company and 6 months for a Public Company.

Regarding the approval of accounts, Section 414 reproduces the requirement for a director to sign the balance sheet, but the explanatory notes specifically point out that Section 233(4) of the 1985 Act is excluded to allow electronic filing of accounts.

Section 417 tackles the contents of the Business Review element of the directors' report, which is introduced as a result of EU Accounts Modernisation Directive (2003/51/EEC). It will apply to all companies except those subject to the "small companies regime".

Interestingly, this Section 417 states in no uncertain terms that the purpose of the review is to enable Members of the company to assess how the directors have performed their duty under Section 172 of the Act: "promoting the success of the Company".

It requires amongst other things, a fair review of the Company's business and a description of the principal risks and uncertainties facing the business (Section 417[30]). Accounting records must be kept for a period of at least 3 years for private companies and 6 years for a public company (Section 386). There is also an offence in connection with failure to keep proper accounting records (Section 387) with a maximum penalty of 2 years imprisonment or a fine (or both).

Implementation date: 6 April 2008 Except: 417; 1 October 2007 463; 20 January 2007

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Part 16: Auditors

Sections 475 - 539

Perhaps the most radical change brought about by the Act in relation to auditors is the introduction of "Liability Limitation Agreements" (Sections 532 – 538). Section 532 still expressly renders void any provision exempting an auditor from any liability that would otherwise attach to him in connection with any negligence, default or breach of trust in relation to the company.

Sections 534 & 535 set out when an agreement to limit the liability of the auditors will be acceptable and the conditions attaching thereto.

Section 537 however, imposes the fair and reasonable test condition and it should be noted that the Courts will be able to set aside any Liability Limitation Agreement that cannot be construed as fair and reasonable.

It should also be remembered that there is a criminal offence in relation to the auditors. Section 507 dictates that "knowingly or recklessly causing a report to include anything that is misleading, false or deceptive, or omitting a required statement of a problem with the accounts" will constitute an offence.

One other change worthy of note relates to the signature of the audit report and the new term of 'Senior Statutory Auditor' (Sections 503 & 504), which will give more transparency to the personnel responsible for conducting the Audit.

Implementation date: 6 April 2008 Except: 485-488 in force 1 October 2007

Part 17: A Company's share capital

Sections 540 - 657

Allotment - Section 550 makes an interesting change to the authority vested in the directors to allot shares. Previously, the directors always had prior authority of the members to allot new shares in the company (Section 80 1985 Act). Whereas now, directors of a private company, unless expressly prevented from doing so by the company's articles, are automatically empowered to allot further shares provided only one class of shares is in issue, after the allotment.

Statement of Capital: Section 555 outlines an additional requirement in connection with the allotment of shares. It is necessary to file a "statement of capital" when making a return of allotment, which will be a snapshot of the entire share capital of the company at the time of the allotment.

Re-denomination: Sections 622-628 outlines a whole new procedure for re-denominating share capital in shares of another currency. Previously this had only been possible by cancelling shares in one currency, using the tortuous process of obtaining a Court Order and then issuing new shares in the desired currency.

Reduction of share capital: Sections 642-644 outlines a new procedure for reducing the share capital of a private company without the need for a Court Order.

Implementation date: 1 October 2009 except Sect 544 (6 April 2008) & 641(1)a & (2)-(6) 652 (1) & (3) & 654 1st October 2008

Part 18: Acquisition by a limited company of its own shares

Sections 658 - 737

For companies wishing to buy-back their own shares, Section 690 of the Act removed the requirement for prior authorisation of the company's Articles of Association, as required under the 1985 Act. This therefore removed the rather tedious process of changing the Articles of Association, prior to a buy back – which was frequently necessary under the old regime.

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Sections 155-158 of the 1985 Act (the “white-wash” procedure) concerning the financial assistance given for the purchase of own shares was not carried forward into the 2006 Act. This is a result of the abolition of the prohibition on providing financial assistance for a purchase of own shares.

Implementation date: 1 October 2009. Repeal of Whitewash procedure 1 October 2008

Part 19: Debentures

Sections 738 - 754

This Part largely re-states the existing provisions of the 1985 Act. The only significant change to the previous law concerns the register of debentures itself. The law concerning inspection of the register of debenture holders has been brought into line with that concerning the inspection of the Register of Members and the ability to withhold the right to inspect the register, if it is not for a proper purpose.

Implementation date: 6 April 2008

Part 20: Private and public companies

Sections 755-767

Section 755 prohibits a private company from offering its shares to the public, however, if it does, the remedy will be simply that of being compelled to convert to a public company. If the Court deems this an inappropriate remedy, then the company could be subject to compulsory winding up.

Implementation date: 6 April 2008

Part 21: Certification and transfer of securities

Sections 768 - 790

Section 771 contains a provision, which requires the directors to register a transfer of shares or provide the transferee with a reason why they have refused the transfer. This reason must be communicated to the intended transferee, within two months of the decision to decline the transfer.

There are numerous reasons why directors may wish to, or be required to, refuse the transfer of shares depending upon the nature of the company. One possible example is a flat management company in which the shares may only be transferred to leaseholders in a block of flats. If the transferor of such shares wishes to register a transfer to someone who has no connection with the flat or flats to which the shares relate, the directors may be under a duty to refuse the transfer.

In other circumstances however this particular section could put the directors into a difficult dilemma, if the intended transferee was involved in some form of criminal activity contravening the money laundering regulations. A refusal to transfer shares under these circumstances may be regarded as “tipping off”.

Concerning certification of shares - Section 780 still requires the directors to issue a share certificate but Sections 784, 786, 787 and 789 give the Government ministers powers to enact regulations to govern the issues relating to paperless transfers and shareholdings.

Implementation date: 6 April 2008

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Part 22: Information about interests in company shares

Sections 791 - 828.

Section 812 provides that the company must only allow inspection of the register or provide a copy of it, if it is satisfied it is going to be used for a proper purpose. If a person is refused access to the company's register he or she may apply to the Court to be granted permission to view the register.

Implementation date: 20 January 2007 811(4),812.814 (6 April 2008)

Part 23: Distributions

Sections 829 - 853

This outlines the law concerning distributions. and some attempt is made to clarify the treatment of non-cash assets when they are transferred out of the company.

The valuation of non-cash assets transferred out of the company has always been a potentially contentious procedure but Section 845 attempts to clarify the valuation process.

Implementation date: 6 April 2008

Part 24: Annual Returns

Sections 854 - 859

The Act continues the requirement to file annual returns. However the option that directors will have of lodging a service address instead of their residential address for example, has necessitated amendment to the previous format of the Return.

Implementation date: 1 October 2009

Part 25: Company charges

Sections 860 - 894

The requirements concerning company charges were largely carried forward from the old 1985 Act with few changes.

- The provisions relating to charges created by overseas companies were modified.
- The imposition of daily default fines for failure to register new charges were also be relaxed.

Implementation date: 1 October 2009

Part 26: Arrangements and reconstructions

Sections 895 - 901

This part enables companies to apply to the court for an order sanctioning an arrangement or reconstruction agreed with a majority of members and all creditors.

Implementation date: 6 April 2008

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Part 27: Mergers and reconstructions

Sections 902 - 941

This part enables a public company under certain conditions to apply to the Court for an order under part 26 sanctioning an arrangement or reconstruction, which concerns the merger or division of a public company. To a large extent it is implementing an EU Directive concerning the merger and division of limited liability companies.

The independence requirements for experts and valuers have also been tightened. In relation to mergers and divisions of public companies the independence requirements will now correspond to that of the statutory auditor.

Implementation date: 6 April 2008

Part 28: Takeovers etc

Sections 942 - 992

Part 28 deals exclusively with the law relating to takeovers and the takeover panel itself. It effectively implements the European directive on Takeover Bids (2004/25/EC, the "Takeovers Directive" and is divided into four separate chapters:

- Chapter one deals with matters relating to the takeover panel per se and its regulatory functions.
- Chapter two concerns matters relating to the barriers to takeover bids.
- Chapter three contains the provisions relating to residual minority shareholders following a successful takeover bid: the squeeze out and sell out rules.
- Chapter four concerns the content of annual reports of companies traded on a regulated market.

The legislation concerning takeovers is lengthy and quite complicated. It is also worth noting that some of the legislation will be relevant to companies not yet listed on any regulated market, particularly those who wish to have their shares traded at a later date.

Implementation date: 6 April 2007

Part 29: Fraudulent trading

Section 993

Section 993 of the Act is concerned with the offence of fraudulent trading set. It outlines that the maximum sentence for fraudulent trading was increased from seven years imprisonment to ten years.

Implementation date: 1 October 2007

Part 30: Protection of members against unfair prejudice

Sections 994 - 999

Sections 994-998 provides a remedy where a company's affairs are being conducted in such a way as to be unfairly prejudicial to some of its members.

Implementation date: 1 October 2007

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Part 31: Dissolution and restoration to the Register

Sections 1000 - 1034

This part sets out the procedure for dissolving and reinstating a company which was formerly set out in Sections 652-654 and 656-658 of the 1985 Act. Nevertheless, there were several very significant changes to the law relating to striking off and restoration of a company to the register.

One important change is that for the first time, PLCs will be able to apply for striking off in the same way private companies have been able to under the existing Section 652A of the 1985 Act. This means that PLCs will no longer have to convert to Private status before applying for dissolution.

There were also some changes to the way property vesting as "Bona Vacantia" can be 'disclaimed' by the Crown specifically relating to the time limits applied thereto.

The really significant change brought about by this part of the Act however, was the introduction of an 'administrative' procedure for restoring companies to the register without the need to apply to the Court - but only under certain circumstances. The requirements are broadly as follows:

- that the company was carrying on business at the time of striking off
- the applicant has completed any outstanding documents such as accounts and annual returns and paid any penalties etc.

A procedure for restoring a company to the register by the Court remains and will probably still be necessary in most cases where a company has actually applied to be struck off the register.

Implementation date: 1 October 2009

Part 32: Company investigations

Sections 1035 - 1039

These sections deal with the appointment of inspectors and the rules relating there to. One rather amusing amendment to the previous regulations concerning company investigations is that the Secretary of State will be given power to bring to an end investigations which appear to be taking too long. Presumably this is aimed at closing the door on those investigations which have taken on a character all of their own and are themselves contravening public interest by draining the public purse for little apparent benefit (i.e. turned into a lawyers' money pot).

Implementation date: 1 October 2007

Part 33: UK Companies not formed under Companies Legislation

Sections 1040 - 1043

These sections concern those companies incorporated before 2 November 1862, companies incorporated by Act of Parliament and those companies incorporated by Royal Charter.

Implementation date: 1 October 2009, Sect 1043 6 April 2007, Sect 1043 6 April 2007

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Part 34: Overseas companies

Sections 1044 - 1059

These sections replace part 23 of the old 1985 Act but the much hoped for simplification does not at first sight seem to have materialised. The requirements for registration of Foreign Companies seem to follow a similar theme to those of the 1985 Act, but much will depend upon the secondary legislation and the way the Registrar administers the Overseas Branch Registration Department, as to whether overseas branch registration becomes any easier to comply with.

Implementation date: 1 October 2009

Part 35: The Registrar of Companies

Sections 1060 - 1061

These sections deal with the Registrar of Companies and the Registry itself, effectively setting out the purpose and workings of Companies House.

Much of the new law brought about by this part is required by the extension of electronic filing of documents and the problems associated therewith.

There are however one or two useful changes brought about by this part of the Act which will help alleviate some of the enduring frustrations of dealing with Companies House.

For example, Section 175 provides for the informal correction of documents allowing for the staff of Companies House to telephone companies to resolve minor discrepancies and inconsistencies in documents they have submitted either electronically or in paper format.

There is also provision in Section 1094 for an administrative procedure for having documents removed from the Companies Register in some limited circumstances, without a Court Order.

One other useful introduction is the right to file translations of documents in other EU languages.

This will be particularly useful for those businesses in the EU which register a company in the UK simply to avoid the bureaucracy of registration in their own country.

Section 1116 also gives the Secretary of State power to authorise an alternative method for publishing notices to filing them in the London Gazette. Nevertheless the London Gazette will continue to be the place to publish official notices for the immediate future.

Implementation date: 1 October 2009, Except: 1063; 6 April 2007, 1068(5); 1 January 2007, 1077–1080; 1 January 2007, 1085–1092; 1 January 2007, 1102–1107; 1 January 2007, 1111; 1 January 2007

Part 36: Offences under the Companies Act

Sections 1121 - 1133

The sections in this part deal with the sanctions to be imposed for breaches of the Companies Act and also clarify to whom such sanctions should be imposed.

The provisions of this part make it clear which individuals and in what circumstances they will be liable for a breach of the Companies Act.

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This part also removes criminal liability of the company itself in certain circumstances. A company will no longer be liable for an offence if the victims of the offence are only the company itself and its own shareholders/members.

Implementation date: With relevant provisions Except: 1124 1 October 2007 Section 1126 (6 April 2008)

Part 37: Companies: supplementary provisions

Sections 1134 - 1157

These sections address the issues connected with the general aim of the legislation to do away with the need to maintain documents and records in paper form and the necessity to communicate in paper format.

Sections 1134 & 1135 make it clear that company records may be maintained in electronic format provided it is possible to print out a hard copy of the records, should this be required at any time. Section 1138 makes it an offence not to take adequate measures to prevent falsification of the company's records.

Section 1140 introduces a concept for the requirement of Directors, Secretaries and others to supply a "service" address for the receipt of official notification and for the purposes of the public record. Consequently, the problems of directors having to submit their residential address for the public record, particularly when they are engaged in some controversial or politically sensitive activity will gradually subside.

Section 1143 sets out the general principle that companies should be able to use hard copy or electronic communications in all cases, subject to any specific requirement or enactment that dictates otherwise: such as specific requirements for delivery of information to and from Companies House.

Section 1145 sets out the right of individual members and debenture holders to hard copy documents should they so require them, and Section 1146 sets out the rules regarding the authentication of documents.

Section 1147 lays down the deemed date and time of delivery of documents, a document sent by electronic means is deemed to have been received 48 hours after it has been sent, provided it can be demonstrated that it has been properly addressed.

Implementation date: With relevant provisions Except: 1137(1), (4), (5)(b), (6) 30 September 2007 1143–1148; 20 January 2007 1157; 1 October 2008

Part 38: Companies interpretation

Sections 1158 - 1174

Part 38 is useful in that it sets out in concise terms precisely what is meant by certain expressions used throughout the Act.

What is meant by a "UK Registered Company" is expressed here, as is the meaning of an "undertaking" and "parent and subsidiary" undertakings.

Implementation date: With relevant provisions, Except: 1170; 6 April 2007, Sections 1161, 1162, 1164 1165, 1169 & 1172 (6 April 2008), Section 1167: 30 September 2007, Section 1170 (6 April 2007)

Part 39: Companies: Minor amendments

Sections 1175 - 1181

Section 1175 (and schedule 9) of the Act has the effect of removing certain special provisions concerning the audit and accounts of charitable companies, so the accounts and scrutiny there of fall primarily under Charity Law rather than Company Law.

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Section 1177 repeals certain provisions concerning company directors, including the former requirement of directors to notify their interests in shares and the company to keep a register of directors' interests.

Implementation date: 6 April 2007, 1175; (only for Part 1 of schedule 9) 1 April 2008, 1180 & 1181; 1 October 2009

Part 40: Company directors: Foreign disqualification etc.

Sections 1182 - 1191

Part 40 has the effect of closing a loophole in the present law concerning nefarious foreign directors being appointed to or forming UK companies when they have been disqualified from holding an equivalent position in another country.

Implementation date: 1 October 2009

Part 41: Business names

Sections 1192 - 1208

The provisions of this part largely replace the requirements of the Business Names Act 1985. Nevertheless, the sections in this part of the Act enact wider coverage of the controls placed on names used by businesses. Specifically, controls are placed upon companies from overseas doing business in the UK. They also tighten up and clarify the law concerning the use of business names which has hitherto, been problematic for some areas of the business community.

For example Section 1197 provides for regulations to prohibit the use of indicators suggesting a particular legal status. Consequently, the use of letters "P" "L" "C" and other such designation will be subject to regulation.

Implementation date: 1 October 2009

Part 42: Statutory auditors

Sections 1209 - 1264

This part of the Act sets out the detailed requirements for statutory auditors. Sections 1212 & 1213 detail the eligibility requirements for the appointment of an auditor and Section 1214 sets out the independence requirements.

Section 1241 is a new provision that enacts the definition of a third country auditor. It concerns the arrangements for anyone or any firm responsible for the audit of the accounts of a company incorporated or formed in a non-EU country, whose shares are admitted for trading on a UK market, notably the London Stock Exchange.

Sections 1248 & 1249 empower the Secretary of State to require a second audit of a company in circumstances where the person appointed as statutory auditor was not eligible or had fallen foul of the independence rules in relation to the company they audited.

Section 1255 deals with offences committed by bodies corporate etc. and those who are responsible for consent, connivance or neglect in relation to an offence (pertaining to the audit).

Implementation date: 6 April 2008, Sections 1242 to 1244 (29 June 2008)

Part 43: Transparency obligations and related matters

Sections 1265 - 1273

Part 43 concerns the transparency rules in relation to securities traded on regulated markets in the UK. It also sets out new provisions concerning the Financial Services and Markets Act 2000 and amendments thereto.

Implementation date: Royal assent

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Part 44: Miscellaneous provisions

Sections 1274 - 1283

This part covers several issues, which had no logical place elsewhere in the Act. It contains regulations concerned with actuaries and actuarial standards (Section 1274). It also sets out provisions containing regulation and the requirements of institutional investors, specifically their voting power and rights in Listed Companies (Section 1277 & 1280).

Implementation date: 1274 & 1276 Royal Assent, 1277-1280; 1 October 2008, 1281; 6 April 2007, 1282; 6 April 2008, 1283; 1 October 2009

Part 45: Northern Ireland

Sections 1284 - 1287

Companies Acts have not extended directly to Northern Ireland since 1929. This act however does extend to Northern Ireland and this part of the act sets out the provisions to make it happen.

Implementation date: With relevant provisions

Part 46: General supplementary provisions

Sections 1288 - 1297

This part is primarily concerned with the secondary legislation associated with the Act and how it is made.

It also gives the Secretary of State power to make consequential amendments etc. and how these will be made.

Implementation date: Royal Assent, Except: 1295 with relevant provisions

Part 47: Final provisions

Sections 1298 - 1300

The provisions of this part are largely procedural in nature, setting out the extent of the Act and the commencement provisions (Section 1300).

Implementation date: Royal assent

Specific advice should be obtained before taking action, or refraining from taking action, on any of the subjects covered above.

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