

Legislation in Brief

The Companies Act 2006 (Commencement No.5, Consequential Amendments, Transitional Provisions and Savings) Order 2007

Below is a brief summary of some of the more significant technical and substantive changes to company law to be introduced on 6th April 2008, by *The Companies Act 2006 (Commencement No.5, Consequential Amendments, Transitional Provisions and Savings) Order 2007*:

- For private companies, the requirement to appoint a company secretary will be abolished, however, a private company may still wish to have a company secretary. Public companies will still be required to have a company secretary.
- In relation to execution of contracts, there are no substantive changes - a contract can be entered into by a company by writing under its common seal, or on behalf of a company by any person acting under its authority.
- There has been a change however in relation to the execution of deeds, which can now be executed not only by affixing the common seal or the signature of two directors or a director and secretary, the signature of a single director alone in the presence of a witness will also be adequate.
- In relation to information to be given in the notes to the annual accounts produced for financial years beginning on or after 6 April 2008, changes include:
 - New disclosure requirements in respect of any advances or credits granted by the company to directors, as well as disclosure of any guarantees entered into by the company on behalf of its directors; and
 - New disclosure requirements to require companies, other than those subject to the small companies regime, to make disclosures about certain arrangements which may have a material impact on the company but have not be included in the company's balance sheet.
- The time allowed for sending out copies of accounts and reports will be altered. As private companies are no longer required to hold an annual general meeting, accounts

must be sent out no later than the end of the period for filing accounts and reports, or if earlier, the actual date of delivery to the registrar. For public companies, annual accounts and reports must be sent out no later than 21 days before the general meeting at which the accounts and reports are to be laid.

- A specific obligation will be placed on the directors of a company not to approve the accounts unless they are satisfied that the accounts give a true and fair view of the assets, liabilities, financial position and profit or loss of the company.
- As private companies are no longer required to hold general meetings, the accounts and the auditor's report no longer needs to be laid at general meeting. Public companies however are still required to lay the auditors report at the accounts meeting.
- In regard to auditors' liability, it will be possible for auditors to limit their liability to a company by agreement with the company, providing that the agreement is fair and reasonable. Certain requirements must be fulfilled, including authorisation by the members of the company and disclosure of the terms of the agreement.
- While the right to inspect the register of debenture holders has been maintained, changes include new provisions setting out the information that must be included in a request to inspect the register; and a requirement for the company within 5 working days to either comply with the information request, or apply to the court for an order that access to the register is not for a proper purpose.
- If a company refuses to register a transfer of shares or debentures, it must provide the transferee with reasons for the refusal to register. This must be done as soon as practicable, or in any event within two months of the transfer being lodged with the company.
- The law in relation to distributions in kind, that is, determining the distribution amount when a company transfers or sells a non-cash asset is clarified. It is still the position that, where a company without any distributable profits, makes a distribution by way of a transfer of assets at undervalue, it will constitute an unlawful distribution. If however, a company does have distributable profits and an asset is transferred for an amount greater than its book value, the amount of the distribution is zero.

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