

## **COMPANIES ACT REFORMS APPLICABLE TO JANUARY AND APRIL 2007**

The changes effected on 1 and 20 January and 6 April 2007 are a little more extensive than originally expected and in particular include the new safe harbor for statements in directors' reports. We set out below the most relevant changes for UK limited companies and their directors.

### **PROVISIONS WHICH CAME INTO FORCE IN JANUARY 2007**

- **Implementation of amendments to the First Company Law Directive**

The obligation to put the company's statutory details (name, registered number etc.) on company letters and order forms will apply irrespective of whether they are in hard copy or electronic form and will also be extended to company websites.

- **Statutory liability regime and safe harbour for financial statements**

Section 463 of the 2006 Act contains a safe harbour in respect of directors' liability for statements in the directors' report, the remuneration report and summary financial statements derived from those reports. This provision came into force on 20 January 2007 and it will cover any reports issued after that date, irrespective of a company's financial year end. Under the safe harbour, a director will be liable only in relation to statements which are untrue or misleading and are made in bad faith or recklessly or where there is deliberate and dishonest concealment of material facts. The safe harbour also provides that liability is only to the company and not to any third party.

- **Shareholder communications**

The key change is the introduction of a new ability to use electronic communications with shareholders as the default position, by placing documents such as the annual report and accounts on a website rather than having to mail them to shareholders in hard copy. Under the 2006 Act, a company can write to shareholders once every 12 months asking for their consent to receive communications via its website. Failure by a shareholder to respond within 28 days can be taken as consent to receive communications in this way. However, even if a shareholder is deemed to have accepted communications via a website, a hard copy notification of the fact that the document has been placed on the website must still be sent. The cost saving is therefore for longer documents.



In order to make use of the new ability to use website communications, companies need to follow a series of steps. These include having a provision in their articles or passing a shareholder resolution approving the use of websites for all communications in the manner provided for by the 2006 Act. Many companies will not have a wide enough power in their current articles for the deemed acceptance of the website route. They should first change their articles or pass a shareholder resolution at their AGM in 2007. A company will then need to write individually to each shareholder to ask for consent to communicate via a website. The 2006 Act requires individual shareholder consent for communications via email, as is necessary under the Companies Act 1985.

**If you would like us to review and amend your Articles, please contact us.**

#### **PROVISIONS WHICH CAME INTO FORCE ON APRIL 2007**

- **Repeal of age limit on directors**

In the light of the recent age discrimination legislation, the age limit on directors was repealed. Section 293 of the Companies Act 1985 currently provides that someone over 70 cannot be appointed or continue their appointment on the board of a public company without shareholder approval. Companies which have 70 year (or other) age limits enshrined in their articles should consider removing such limitations at the next AGM because the legislation means they are now potentially discriminatory.

**Please contact us if you would like us to look into this for your Company.**

- **Electronic signature**

The Companies Act 1985 as amended requires the company's name to appear legibly in all its business communications. In addition, the company's business letters, order forms and websites have to include fuller particulars, i.e.

- (a) the company's place of registration and the number with which it is registered,
- (b) the address of its registered office,
- (c) in the case of an investment company, the fact that it is such a company, and
- (d) in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company.

All these requirements apply whether the document is in hard copy or electronic or any other form. Therefore, as correspondence is commonly by email, emails should be regarded as "business letters in electronic form".



The new rules also extend the trading disclosure requirements to company websites. The directors and secretary of any company authorizing the appearance of a website not complying with the trading disclosure requirements will be liable to a maximum fine of £1,000. The rules do not require the information to be displayed on every page of a company's website. It would, for example, suffice for the information to be made available on the home page or via a link on the home page.

**We hope that this information proves to be useful. Should you require any further assistance, Company Law International can provide you with up to date legal advice and corporate compliance to ensure that your company is guided through the complex changes proposed under the Act.**

Please note that this information is general guidance only and does not constitute legal advice. While every effort has been made to ensure the accuracy of its content, Company Law International Limited accepts no responsibility for the consequences of errors or omissions



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