



C O R P O R A T E

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TOP OF THE FORMS – ARE YOU UP TO DATE?

Introduction

In this third newsletter on the upcoming changes in the Companies Act 2006 (“**2006 Act**”) we focus on the changes to the role of the company secretary, and the new forms and procedures which secretaries will need to comply with. There have been many changes, particularly in relation to the forms which a company secretary will need to be familiar with in their dealings with Companies House. In addition, there are several new procedures and rights which have been introduced by the 2006 Act, and secretaries should ensure that they are fully aware of these new requirements and their implications for their role to ensure that they are fully compliant with the new provisions.

Current Law

The Companies Act 1985 (“**1985 Act**”) is currently the legislation governing the role and duties of company secretaries. Company secretaries have been used to the format and names of the forms which are required to be sent to Companies House in certain circumstances, as these forms, and their names, have changed little since the introduction of the 1985 Act.

The 1985 Act required a company to have a company secretary at all times, and to notify Companies House of any change in the identity of the secretary. The secretary was an officer of the company and as such could be criminally liable for any defaults of the company. The details of the secretary, including their usual residential address, were kept by the company in its register of directors and secretaries, which the 1985 Act specified had to be kept at the company’s registered office, and was to be open to inspection by members.

These requirements meant that the role of a company secretary in a private company was a public role, which required a great deal of

information concerning the secretary to be provided both to Companies House. This position has been significantly changed by the introduction of the 2006 Act.

The New Position – 6th April 2008

From 6th April 2008, a private company is no longer required to have a company secretary. If a private company does not wish to appoint a secretary, then the functions of the secretary can be carried out by a director. From 1st October 2009, the directors of a company can authorise another person to carry out these functions. On incorporation of a company, the first company secretary (if indeed the company chooses to appoint one) will be named on form IN01. Any subsequent change in the secretary must still be notified to Companies House within 14 days of the appointment.

Another significant change introduced by the 2006 Act is the removal of the requirement for a company to maintain a register of secretaries’ usual residential addresses. From 1 October 2009, a company secretary need only provide a service address, which may be the company’s registered address. This reflects the aims of the 2006 Act, to provide more flexible and streamlined requirements for a company’s internal administration.

The 2006 Act has introduced several new procedures which secretaries should ensure they are aware of. One of the most notable is a new right for a member of the public to make a request to inspect the company registers. The 2006 Act sets out specific deadlines as to when these requests should be met, and how to proceed with allowing inspections. In addition, a prescribed limit has now been imposed to fees which may be charged to any member of the public who makes a request to inspect. Company secretaries should therefore make sure that the company registers are up to date and easily accessible to those making requests.

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Changes to Forms and Filing Requirements

The 2006 Act has also introduced a new set of forms which relate to the various statutory obligations to notify Companies House of any changes to the administration of the company. Forms are no longer named after the section of the Act to which they relate, and new forms have been introduced to reflect new provisions. Companies House now permits filing of a range of documents electronically, and has in place a programme that should allow all documents to be delivered electronically by 2010. It will not be compulsory immediately but is expected to be required in the medium term.

Conclusion - What you need to do

The 2006 Act has removed the requirement for a private company to have a secretary, but the functions and responsibilities of a secretary have not been abolished. Whether directors choose to retain a secretary, or whether they decide they or some other person will carry out these functions, they will need to be aware of the updated duties. This applies particularly in relation to the new rights of members of the public to inspect company registers, and to other reforms introduced by the Act. The introduction of a new set of forms is also an important change to be aware of, as any old form filed after 1 October 2009 will be rejected. Secretaries and those carrying out secretarial duties must ensure they are familiar with these forms to avoid potential liabilities to penalties and fines in the event of failure to file the correct form.

Help is at hand

It is important to not underestimate the changes to the duties of a company secretary, despite the removal of the requirement for a secretary in the 2006 Act. If you would like more detailed advice concerning the changes introduced, or if you would like to talk to us about our company secretarial or registered office service (which includes the use of online filing), contact the corporate department on the numbers shown below.

Contact details



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Julian Bond

If you would like to receive more information regarding the contents of this newsletter or information on any other company law related matters then please do not hesitate to contact one of our Company / Commercial partners on **0161 832 4666**.

Julian and John specialise in all aspects of company / commercial work, mainly acting for SMEs but also undertaking international work such as joint ventures and manufacturing agreements.

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