

Companies Act 2006

Although many parts of the Companies Act 2006 ("the Act") have now been delayed to October 2009, there are still important changes that will take effect during 2008. Here we look at just 3 of these upcoming changes.

6 April 2008 – Company secretary

A private company will no longer need to appoint a company secretary. It will be possible for a company to have a sole participant, who acts as both director and shareholder.

Most existing companies that want to benefit from this change need take no action. The company's articles will only override the Act on this point if they specifically require a company secretary to be appointed.

The provisions in Table A, which require or authorise the secretary to do certain things, or which specify the manner or terms for appointing or removing a secretary, do not amount to a requirement to have a company secretary.

Checklist for action

- Review your articles. Does the wording require you to have a secretary? If necessary, remove this wording.
- If you remove your secretary, file form 288b at Companies House and update the register of secretaries.
- Think about who will be able to sign for the company. If you use a seal, check what your articles say about who can attest the seal. Does it require both a director and secretary? If your company has a sole director, consider amending the articles to allow that sole director to attest the seal. If you don't have a seal then the Act deals with this for you, allowing a director to execute any document in the presence of a witness.
- Consider other practical implications:
 - Are third parties, such as banks, used to receiving secretary certifications? Will they accept a director certification instead?
 - Who will do all the compliance jobs that the secretary usually does – filing returns, keeping registers etc?

1 October 2008 – Appointment of directors

The prohibitions on child and sole corporate directors come into force in October 2008.

Any person under 16 on 1 October 2008 who is holding office as a company director will cease to be a director of the company on that date.

A new requirement that every company must have a 'natural person' (ie an individual) on the board of directors also takes effect on that date.

If the company only had corporate directors on 8 November 2006 (the day the Act came into force) and the company had the minimum number of directors required by law on that date, then the company will not have to appoint a natural person until 1 October 2010.

If these precise rules were not fulfilled on 8 November 2006 – so perhaps the company had both a corporate director and an individual director in place on that date, and the individual has subsequently resigned – the company will need to appoint at least one individual to the board on or before 1 October 2008.

Checklist for action

- The removal of a child director takes effect automatically, so all the company need do is update the register of directors. It does not need to notify Companies House. However, this vacation of office may leave the company with fewer directors than it is required to have by law, so replacement directors may have to be appointed.
- Any company which only has corporate directors has to consider whether it needs to take any action.

1 October 2008 – New trading disclosure requirements

The company will have to display its registered name at its registered office, at any place where it keeps any company record which is available for inspection under the Act (called an “inspection place”) and at any location at which it carries on business.

The display must be able to be read with the naked eye and easily seen by any visitor to the premises. It must be a continuous display, unless there are more than 6 names to be displayed in which case each name must be displayed for at least 15 continuous seconds at least once in every 3 minutes.

This disclosure requirement does not apply companies which have been dormant at all times since incorporation, which is a relief to company formation agents.

The current rules re disclosing name, number, registered office address and place of registration on all business correspondence and the company’s website are also reiterated.

Checklist for action

- Check that you are displaying the company’s name at all of the required premises, and that you meet the new rules for the format of the display.
- If you use a third party’s address for your registered office, or you have a registrar or agent maintain your register of members or other registers, check that they are complying with these disclosure obligations. The penalties for failure to comply fall on the officers of the company, not the third party.

How Jordans can help?

As we mention above, if your company was incorporated before October 2007, you may need or wish to make some constitutional changes in order to benefit from the deregulatory provisions already in force.

This is where Jordans Healthcheck for private companies limited by shares can help. For just £125 our legal experts will:

- Review your company’s current memorandum and articles of association
- Produce a comprehensive checklist of areas in need of revision
- Make recommendations for future action
- Give clear information and practical suggestions for updating your memorandum and articles of association
- Provide guidance on making the amendments appropriate to your company.

For further details please contact Helen Goose on helen_goose@jordans.co.uk or register for regular updates from Jordans on the Companies Act 06 on www.companiesact.co.uk.