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Companies Act 2006 — 6 April 2008 Provisions

Background

The Companies Act 2006 (the “2006 Act”) is coming into force in phases, which began on 8 November 2006 and will continue until 1 October 2009. This note highlights the principal changes that took effect on 6 April 2008 and the practical consequences for companies.

Further phases of the implementation of the 2006 Act are due on 1 October 2008 and 1 October 2009 and we will produce notes in respect of such changes at those times.

Main Provisions

We set out below a summary of the main provisions of the 2006 Act that came into force on 6 April 2008:

1. Accounts and Reports

Part 15 of the 2006 Act introduces numerous changes in relation to the publication, form and content of companies' accounts, most of which come into effect for accounting periods ending on or after 6 April 2008. The principal changes are:

(a) *Publication of Accounts*

Private companies are no longer required to hold an AGM. Therefore, the date by which private companies must publish their accounts has therefore been changed to the deadline for their delivery to the Companies Registrar (nine months after the accounting reference period

to which they relate) or their actual delivery, if earlier. Public companies are still required to hold an AGM and they must publish their accounts no later than 21 days before the general meeting at which the accounts are to be laid.

(b) *Laying of Accounts*

Private companies are no longer required to hold an AGM or lay accounts before a general meeting. Public companies must do so within six months of the end of each accounting period.

(c) *Filing of Accounts*

As noted above, the period for private companies to file their accounts has been reduced from ten to nine months, whilst for public companies it has been reduced from seven to six months. Quoted companies (including those quoted on the Main Market, but excluding AIM and PLUS) must also make their accounts available on their web sites, at least until such time as the accounts for the next accounting period are published.

(d) *Political Donations*

Directors' reports must disclose details of donations to independent election candidates, as well as any other political donations. A company which makes political donations in

excess of £2,000 will also need to report on this in its accounts.

(e) *Small and Medium Companies*

The thresholds for companies to qualify as “small” or “medium” have been increased. These definitions affect several areas, including the necessary contents of a company’s accounts.

Companies therefore need to be aware of the changes to the timing requirements in relation to the accounts for their next accounting period, as well as discussing with their auditors specific changes to the contents of their accounts as a consequence of the 2006 Act.

2. Auditors

Part 16 of the 2006 Act, most of which came into force on 6 April, makes various changes in relation to audits. The most significant of these is the introduction of the ability for auditors to limit their liability for negligence, default, breach of duty or breach of trust in relation to the audit, by agreement with a company. Such limited liability agreements are only effective if they are “fair and reasonable” and have been approved by a shareholders’ ordinary resolution and they must be limited to one financial year’s audit.

Companies should discuss with their auditors whether they wish to put such an agreement in place. If so, the company will need to propose a resolution to approve the agreement at a forthcoming general meeting.

3. Distributions

Prior to the 2006 Act, the case of *Aveling Barford v Perion* created various uncertainties in relation to intra-group asset transfers at less than market value. It was unclear whether they constituted distributions in kind and, if so, the amount of any such distribution (i.e. whether the transfer was at book value or market value, which impacted on whether or not a company had sufficient distributable reserves to enable it to make such a distribution).

The 2006 Act clarifies the position by confirming that the amount of any distribution arising from the sale or transfer by a company of a non-cash asset to a shareholder should be calculated by reference to the asset’s book value. This should simplify intra-group reorganisations in the future.

4. Company Secretaries

The 2006 Act abolished, from 6 April, the requirement for private companies to appoint a company secretary, although they may still choose to do so.

Private companies should therefore consider whether they still want to retain a company secretary and, if they choose not to, should review their Articles to ensure that they do not require the company to retain one.

5. Execution of Documents

A deed will now be validly executed if it is signed on behalf of a company by either two authorised signatories or by a single director

in the presence of a witness who attests the signature. Authorised signatories are every director of the company and the company secretary (if there is one).

Companies should review their Articles as well as their internal procedures for authorising the signing of documents. In particular, in light of the ability of a single director to now execute deeds and the removal of the requirement, in the case of private companies, for a company secretary.

6. Other Provisions

This note is only an overview of the principal provisions of the 2006 Act that came into force on 6 April. Other provisions which came into force on that date include:

- Part 16 (Audit);
- Part 19 (Debentures);
- Part 20 (Private and public companies);
- Part 21 (Certification and transfer of securities);
- Part 26 (Arrangements and reconstructions);
- Part 27 (Mergers and divisions of public companies); and
- Part 42 (Statutory auditors).

If you would like to discuss further any of the matters covered by this note, please contact either James Green or Jennifer Lovesy at this Firm.

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