



November 2008

More Provisions of the Companies Act 2006 Come Into Force

As if running a business isn't challenging enough during these challenging economic times, yet more provisions of the Companies Act 2006 (the "2006 Act") came into force on 1 October.

Happily, most of the changes during this round of implementation are mostly 'tweaks' to the system of company regulation or new provisions designed to make directors' lives a little bit simpler. We set out below the main changes.

Where do I have to display my company's name?

Every company must display its registered name:

- at its registered office (although dormant companies do not have to do this);
- at any place where the company carries on business (although if you work mostly from home the company may not have to do this); and
- in business correspondence and documents. This includes documents in hard copy, electronic or any other form.

If you share an office with more than 6 other companies, technology can now make your life simpler. Instead of hundreds of shiny nameplates at reception, you may now use an electronic display to display the relevant company names provided that the name is displayed for at least fifteen seconds every three minutes.

Most importantly, the company name, number, place of registration, and its registered office address must appear not only on business correspondence, orders and the like but also on your website. Failure to do so is an offence.

Conflicts of interest

This area can be a bit of a minefield and many companies in the past have found it difficult to comply with the byzantine rules.

In addition to the four duties that have already come into force (the duty to act within powers, the duty to promote the success of your company, the duty to exercise independent judgement and the duty to exercise reasonable care, skill and diligence), the following duties are now also imposed on directors:

- the duty to avoid conflicts of interest;
- the duty not to accept benefits from third parties; and
- the duty to declare an interest in a proposed transaction or arrangement.

Generalisations on how the rules apply to your company in an article like this are dangerous. Laytons will be publishing extra guidance on this area shortly which will detail the steps that you need to take including identifying and, where appropriate, authorising conflicts, checking your articles of association and reviewing your corporate hospitality policy and gifts policy. In the meantime, call any of the team here if you need any help.

Corporate directors and under-age directors

Companies must now have at least one director who is a living person. There is, however, a period of grace until October 2010 for any company that only had corporate directors on 8 November 2006. Companies may now not have directors under the age of 16.

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Reducing share capital through the new 'solvency statement' route

Private companies often find it useful to reduce their share capital. This could be for a variety of accounting, commercial, or even cosmetic reasons. For example, during difficult trading conditions, you may have large accumulated losses which prevent the payment of dividends until such losses have been eliminated by future profits. It may be possible to reduce share capital in order to write off the deficit on the profit and loss account so that dividends can be paid much earlier.

The brand new 'solvency statement' route is designed to be a cheaper and simpler process than the current regime of having to go to court to request a reduction in share capital. The new procedure will require the statement to be given by all the directors and the passing of a special resolution by the shareholders.

Abolition of financial assistance

From 1 October, private companies will no longer be prohibited from giving financial assistance for the purpose of the acquisition of their own shares. The dreaded 'whitewash' procedure, which was a common and tiresome process undertaken during, for example, management buy-outs, has been struck from the statute books. The restriction will still, however, apply to public companies. Furthermore, although the restriction is abolished for private companies, the law does still control the giving of financial assistance albeit to a less bureaucratic and time-consuming extent.

Objection to company names – avoiding 'name-squatting'

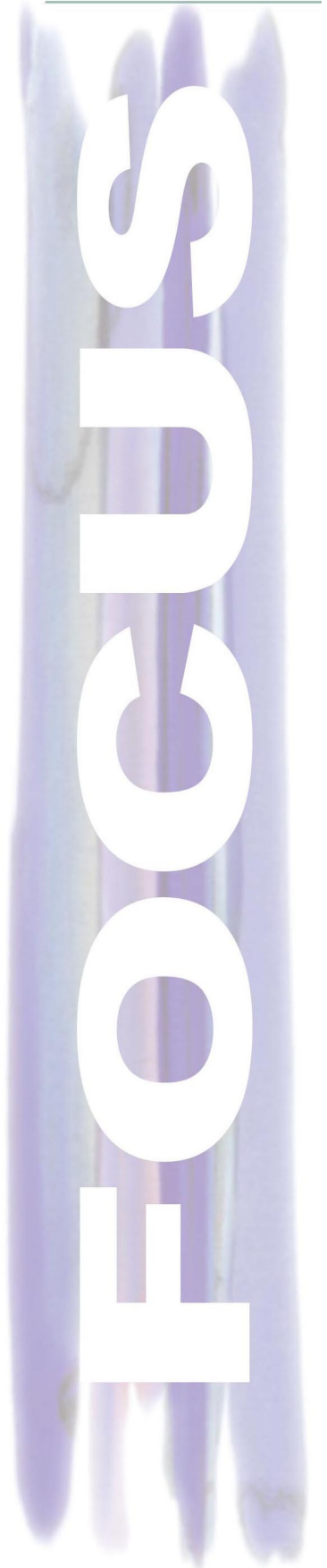
If you are in the business of opportunistically registering company names at Companies House with a view to selling them to the businesses that legitimately have an interest in them, then you had better start changing your business plans – since 1 October the businesses affected by this type of 'name-squatting' are entitled to refer the matter to the Company Names Tribunal.

Political donations

A company must be authorised by its members to give donations above £5,000 to political parties and now to independent candidates standing for election.

Conclusion

We would be happy to discuss the above changes with you in the context of your specific business activities or to discuss how relevant laws will impact upon your business generally.



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