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1. Introduction

This briefing is a general guide to the Companies Act 2006. It covers only the most important changes being introduced. For an overview of all Parts of the Act and the dates of implementation please see the diagram on page 2 and the dates “in force” in the left hand column of this briefing both of which are based on information published by BERR. Information from BERR is published frequently and dates may change so please contact Eversheds for up-to-date information on implementation dates.

References on page 2 and in this briefing to “Parts” are to the numbered Parts of the 2006 Act and references to the “1985 Act” are to the Companies Act 1985.

Major changes introduced by the 2006 Act include:

- codification of directors’ general duties
- streamlining of regulatory regimes for private companies:
  - they no longer need to have a company secretary
  - they may give financial assistance for purchases of their shares
  - they may reduce their capital without court approval
- establishment of a new procedure for derivative actions
- auditors being given the power to agree liability limits with companies
- introduction of a general scheme of electronic and web-based company communications.
2. Parts 1-4: Formation and constitution of a company

The constitutional documents of a company formed under the 2006 Act will look substantially different from the constitution of existing companies. For example, the memorandum will be a simple pro forma document which will state that the subscribers wish to form a company, and that they have agreed to become its members and, in the case of a company limited by shares, to take at least one share. Changing the concept of the constitution has resulted in a number of other consequential changes:

- The requirement for an authorised share capital is abolished.

- A statement of capital and initial shareholdings must be delivered to the Company Registrar on an application for the registration of a company having a share capital (section 10).

- Provisions in the memoranda of companies incorporated before October 2009, other than provisions required by the new style of memorandum, are deemed to be provisions of the company’s articles (section 28).

- A company’s constitution is defined (section 17). The definition is not exhaustive, but the constitution includes the company’s articles, constitutional-type resolutions and agreements referred to in section 29.

- Companies may entrench provisions of their articles, either on formation or subsequently by unanimous agreement of the members (section 22). However, a company can amend provisions which have been entrenched by the unanimous consent of its members. The company is required to notify the Registrar if the articles entrench provisions on formation of the company or if the articles are amended to add or remove the entrenched provisions (sections 23 and 24).

Other noteworthy changes include:

- A single individual may form any type of company, not just a private company (section 7).

- A company’s objects are unrestricted unless its articles specifically restrict them. Any change in a statement of objects in the articles has to be notified to the Registrar (section 31).

- A company may validly execute documents either by using a common seal or by signature on behalf of the company by two authorised signatories, or by one director signing in the presence of a witness who attests the signature (section 44). Authorised signatories are every director of the company and the company secretary, or any joint company secretary.
3. Part 9: Exercise of members’ rights

Part 9 creates two new rights for the holders of beneficial interests in shares. The first is the right to “enjoy or exercise” rights of the member. The company must include a provision in its articles allowing the shareholder to nominate another person to enjoy all or any of the particular rights that the shareholder would normally have. Examples of the rights which may be nominated by the member to another person include the right to receive a proposed written resolution or to appoint a proxy. However the right to transfer shares must remain with the registered shareholder. Note that if a person is nominated, then they enjoy the rights instead of the original member.

The second is the right to receive information. This applies to listed companies only, and enables a member to nominate a person on whose behalf the member holds shares to enjoy information rights. Here the person (or persons) with information rights enjoys them in addition to the member. The 2006 Act defines information rights as being the right to receive a copy of all communications that the company sends to its members and the right to require copies of reports and accounts. Unless the member informs the company otherwise before making the nomination, the assumption is that the copies will be provided by the company by means of its website. The person with information rights will have the right to request a hard copy pursuant to section 1145 of the 2006 Act. Information rights must be nominated in total, ie all or nothing.

4. Part 10: Directors’ duties

A great part of directors’ duties that have been developed over time are codified by the introduction of a statutory statement of general duties which replace many existing common law duties. It remains the case however that the duties are owed to the company and so (subject to the right to bring a derivative claim (see below)) only the company can bring an action for breach of duty.

Chapter 2 – General duties of directors

The general duties contained in the statutory statement are:

- duty to act within powers
- duty to promote the success of the company – taking into account a number of other factors which are discussed further below
- duty to exercise independent judgement
- duty to exercise reasonable care, skill and diligence
- duty to avoid conflicts of interest
- duty not to accept benefits from third parties
- duty to declare interests in a proposed transaction or arrangement with the company.

The statutory statement does not set out in full all of the duties that a director may owe to a company. Other specific duties are set out in the 2006 Act (eg the duty to file accounts with the Registrar) and also in other pieces of legislation. In addition, it remains the case that certain duties remain uncodified, such as a duty to consider creditors’ interests in times of threatened insolvency.
General duties are owed by the company’s existing directors. In addition, general duties will, in certain circumstances, also apply to shadow directors. When a person ceases to be a director they will continue to be subject to the duty to avoid conflicts of interest and the duty not to accept benefits from third parties with regards to things done or omitted to be done by that person before they cease to be a director.

Promotion of success

This is said to be the most controversial of the new statutory duties and so deserves some commentary.

The duty to promote the success of the company replaces the common law duty to act bona fide in the best interests of the company but with some significant changes (section 172).

The 2006 Act provides that a director must act, in good faith, in a way which he or she considers would be most likely to promote the success of the company for the benefit of its members as a whole. Where a company has been incorporated for purposes other than for the benefit of its members, eg charities, the 2006 Act provides that a director must act in a way which they consider, in good faith, would be most likely to achieve that purpose.

Section 172(1) goes further in that in order for directors to fulfil their duty they must also have regard to:

- the likely consequences of any decision in the long term
- the interests of the company’s employees
- the need to foster the company’s business relationships with suppliers, customers and others
- the impact of the company’s operations on the community and the environment
- the desirability of the company maintaining a reputation for high standards of business conduct
- the need to act fairly as between members of the company.

The list of factors is, however, not exhaustive.

Section 178 – Breach of duties

The civil consequences of breach of directors’ duties which applied before the 2006 Act apply to a breach of the statutory duties (section 178(1)).

Remedies for breaches of directors’ duties may include:

- injunction where the board is threatening to take action beyond its powers
- damages or compensation where the company has suffered loss
- restoration of the company’s property
- an account or repayment of profits made by the director
- rescission of a contract where the director fails to disclose an interest.
5. Part 11: Derivative claims

Section 260 of the 2006 Act gives shareholders a statutory right to take action against directors on behalf of the company for negligence, default, breach of duty or breach of trust by directors. This is a new procedure and covers a broader range of conduct than existed under the common law. For example, shareholders will be able to bring a derivative claim against a director for breach of duty even if the director concerned has not benefited personally from the breach of duty.

In addition, the 2006 Act provides that a shareholder may bring a claim against former directors and that it does not matter if the cause of action arose before or after the person bringing the claim became a shareholder.

Shareholders must apply for permission to continue a claim and will have to prove at an early stage that they have a prima facie case and courts must dismiss their application if that application and the evidence do not disclose a prima facie case.

The court must also refuse permission to continue with the claim if it is satisfied that:

- a person who is acting to promote the success of the company would not seek to continue the claim, or
- the act (or omission) complained of has been authorised in advance or ratified after the event by shareholders.

The courts have the ability to make a costs order against the shareholder who brought the claim which in practice may deter shareholders from pursuing claims against directors.

6. Part 12: Company secretaries

The requirement for private companies to have a company secretary is abolished (section 270). If a private company chooses not to have a secretary, anything that is required or authorised to be done by or to a company secretary is validly done if done by or to a director or a person authorised on that behalf by the directors.

A public company must have a secretary (section 271).
7. Part 13: Resolutions and meetings

Private companies are no longer required by the 2006 Act to hold an AGM but the articles of a private company need to be checked to decide whether they require the holding of an AGM.

Chapter 1 (General provisions for resolutions)

The following changes are made:

- A new written resolution procedure is introduced for private companies. Written resolutions no longer need to be passed unanimously.
- Where a resolution is required and the type of resolution is not specified by statute/ the 2006 Act, the default position will be to pass an ordinary resolution unless the articles require a higher majority (section 281(3)).
- A special resolution still needs to be passed on 75% majority, but no longer requires 21 days' notice (section 283). Again the company's articles need to be checked to decide whether they still contain a specific notice requirement.

Chapter 3 (Resolutions at meetings)

Significant substantive changes introduced by the 2006 Act are:

- If shareholders (holding the necessary amount of paid up capital) require the directors to call a general meeting the request must state the general nature of the business to be dealt with and may include the text of a resolution to be moved at that meeting (section 303). For private companies only, the threshold percentage of share capital needed before the directors are obliged to agree to the request for a meeting will be reduced, in certain circumstances, from 10% to 5%.
- The notice period for all general meetings, including those at which a special resolution is proposed, is 14 days unless the meeting is a public company AGM (21 days notice required) or a meeting requiring special notice, eg to remove a director (28 days notice required or other period required by the company's articles). The majority of members of a private company required to agree to a shorter notice period is decreased from 95% to 90% (section 307).
- Notice of a general meeting may be given in hard copy or electronic form, or by means of a website (section 308).
- Members' rights to appoint proxies are enhanced. In every type of company a member has the right to appoint more than one proxy with the same rights to attend, speak and vote at meetings as the member and the proxy (or proxies) can vote on a show of hands as well as on a poll (section 324).
AGMs

The 2006 Act does not require private companies to hold an AGM. Public companies will still be required to do so and under the 2006 Act a public company is required to hold its AGM within six months of the end of its financial year (section 336).

Chapter 5 (Additional requirements for quoted companies)

A quoted company is defined as a company whose equity share capital is officially listed in the UK or in another EEA state, or is admitted to dealing on the New York Stock Exchange or the Nasdaq Exchange (sections 361 and 385).

Chapter 5 of Part 13 of the 2006 Act sets out two additional requirements for quoted companies in relation to members’ resolutions:

- The results of any poll taken at a general meeting must be made available on a website (section 341).
- The company must obtain an independent report on any poll taken, or to be taken, at a general meeting if requested to do so either by members having at least 5% of the total voting rights of all members who have a right to vote on the poll in question, or by at least 100 members who have a right to vote on the poll in question and who hold shares in the company with an average sum of £100 per member paid up on those shares (section 342). An independent assessor must prepare the report.

It is an imprisonable offence to knowingly or recklessly provide false or misleading information to the assessor. The assessor’s report must state his or her opinion on the fairness, adequacy and accuracy of all the procedures relating to the poll (section 347) and the company must make the report available on a website (section 351).

The website used to publish poll results or assessors’ reports must:

- identify the company
- be maintained by or on behalf of the company
- be freely accessible ie not conditional on the payment of a fee or otherwise restricted in any way
- display the required information for a continuous period of two years from the date it is first made available on the website (section 353).

Chapter 6 (Records of resolutions and meetings)

- Records of resolutions and meetings need only be kept for ten years, rather than indefinitely (section 355).
- Such records may be kept either at the company’s registered office (or at another place if regulations are made under the 2006 Act).
8. Part 15: Accounts and reports

The main substantive changes are:

- Directors are under a new general obligation not to approve accounts unless they give a true and fair view of the financial position of the company and, in the case of group accounts, the undertakings included in the consolidation as a whole.

- Parent companies heading medium sized groups must prepare group accounts (section 399).

- The notes to companies’ annual accounts no longer have to disclose transactions made between the company and officers other than directors.

- The business review in a quoted company’s annual directors’ report is required to include information on:
  - the main factors likely to affect the company’s future business
  - environmental matters, the company’s employees, and social and community issues
  - persons with whom the company has contractual or other arrangements which are essential to the business of the company. However, the report need not disclose such information if disclosure would, in the opinion of the directors, be both seriously prejudicial to one of those persons and contrary to the public interest (section 417).

- A company’s obligation to distribute copies of its annual accounts and reports does not extend to persons for whom the company does not have a current address (section 423).

- A quoted company is obliged to publish its full annual accounts and reports on a website maintained by the company or on its behalf, and these must remain available on the website until the following year’s accounts are published (section 430). There must be free and unrestricted access to the website.

- Only public companies are obliged to lay annual accounts and reports before a general meeting (section 437). Because private companies are no longer obliged to hold an AGM, the time for a private company to send out its accounts and reports is no longer linked to the date of a general meeting. Instead, it is required to send them out no later than the end of the period for filing reports and accounts (ie nine months after the end of the company’s accounting reference period) or, if earlier, the date it actually delivers its accounts to Companies House.

- The period for filing accounts and reports is reduced to nine months after the end of the relevant accounting reference period for private companies, and to six months for public companies (section 442).
9. Part 16: Audit

Chapter 2 (Appointment of auditors)

There are new provisions regulating the appointment and re-appointment of auditors of a private company. In summary, a private company will have to appoint an auditor each year (unless audited accounts are not required) and the appointment has to be made in what is called the “period for appointing auditors”. The auditor may not take office until a previous auditor’s term has ended and must cease to hold office at the end of the next period for appointing auditors unless re-appointed (section 487).

Under section 487(2), there are provisions for deemed re-appointment unless:

- the articles require actual re-appointment
- the original appointment was made by the directors
- members with at least 5% of the voting rights have given notice that the auditor should not automatically be re-appointed
- the members resolve that he or she should not be re-appointed, or
- the directors decide that auditors are not needed for the following year.

Note that whilst Part 16 is in force from April 2008, the provisions set out above came into force on 1 October 2007.

Chapter 3 (Functions of auditors)

New criminal offences are created in relation to the auditors’ report. These offences apply both to an individual auditor and to any director, employee or agent of a firm of auditors who would be eligible to be appointed as an auditor:

- Section 507(1) makes it an offence for any such person to knowingly or recklessly cause the report to include any matter that is misleading, false or deceptive in a material particular.
- Section 507 (2) makes it an offence for such a person knowingly or recklessly to omit from the auditor’s report any of the statements required by the 2006 Act to be included where relevant (for example a statement that the company’s accounts do not agree with accounting records and returns).

Chapter 4 (Removal, resignation, etc of auditors)

When a quoted company’s auditor leaves office, he or she must make a statement of the circumstances of their departure and deposit it with the company (section 519). For all other companies, the statement need not explain the circumstances of his departure if the auditor thinks there is nothing that needs to be brought to the attention of the company’s creditors or shareholders.
Chapter 5 (Quoted companies: right of members to raise audit concerns at accounts meetings)

Members of quoted companies have the right to require the company to publish on a website a statement raising questions about the accounts or about the departure of an auditor, which the members propose to bring up at the next meeting where the accounts are to be discussed (section 527). Requests must come from members holding at least 5% of the total voting rights, or from at least 100 members holding shares on which an average sum of at least £100 per member has been paid up.

Chapter 6 (Auditors’ liability)

The prohibition in the 1985 Act against a company indemnifying its auditor for negligence or other breach of duty is retained (section 532) but the 2006 Act enables a company and its auditor to enter into a Liability Limitation Agreement (LLA). This is an agreement which limits the liability owed to a company by its auditor occurring in the course of an audit (section 534). An LLA may cover, in relation to the audit of a company’s accounts, negligence, default, breach of duty, and breach of trust by the auditor. The general rule is that an LLA must be approved by shareholders and both public and private companies may authorise an LLA either before it is made, by an ordinary resolution approving its principal terms, or after it is signed, by an ordinary resolution approving the agreement itself. However, members of a private company can pass a resolution waiving the need for such approval. An LLA may only apply to the audit of one year’s accounts (ie it must be approved each year if it continues).

An LLA is not effective if it would result in the company receiving an amount less than that which is fair and reasonable in all the circumstances of the case, having regard to:

- the auditor’s responsibilities
- the auditor’s contractual obligations
- the standards expected of the auditor (section 537).
10. Part 17: Share capital

This part makes some important substantive changes to the law relating to a company’s share capital.

Statement of capital

Generally, when a company alters its share capital, it will have to file a new statement of capital with the Registrar. Any statement of capital must give details of:

- the company’s aggregate share capital
- the nominal value of the shares
- the amount paid up on each share
- the number and aggregate value of any class of shares
- particulars of the rights attached to those classes.

Chapter 1 (Shares and share capital of a company)

The following substantive changes have been made:

- All shares must have a fixed nominal value, but they may be denominated in any currency (section 542).
- A company may no longer convert shares into stock (section 540), but it may reconvert stock to shares in accordance with provisions found in Chapter 8 (see below).

Chapter 2 (Allotment of shares: general provisions) and Chapter 3 (Allotment of equity securities: existing shareholders’ right of pre-emption)

Minor changes

Some minor changes have been introduced:

- Directors of a private company with only one class of shares are free to allot shares without prior authorisation from the members (subject to any restriction or prohibition on this power in the company’s articles) (section 550). Allotments by a private company with only one class of shares are still subject to rights of pre-emption in favour of existing shareholders, though, as before, the directors may be given a power by the articles or by special resolution to disapply pre-emption rights (section 569).
- A company is required to file a statement of capital along with its return of allotment (section 555).
- Companies must register an allotment of shares as soon as practicable and in any event within two months after the date of the allotment, unless the company has issued a share warrant in respect of the shares (section 554). Failure to comply with this requirement is an offence.

Chapter 8 (Alteration of share capital)

A limited company with a share capital is prohibited from altering its share capital otherwise than in the ways specified in Parts 17 and 18 of the 2006 Act (section 617). The prohibition does not affect:

- provisions in the 2006 Act that provide for the alteration of share capital in specific circumstances by court order.
• the cancellation of shares under section 662 (duty to cancel shares held by or for a public company)

• alteration of share capital pursuant to an arrangement or reconstruction as contemplated by Part 26 of the 2006 Act.

Three of the ways in which share capital may be altered are provided for in Chapter 8:

**Consolidation or sub-division**

- A company may carry out a consolidation or sub-division of its shares by ordinary resolution, with no need for prior authorisation in its articles (section 618), although the articles may specifically exclude or restrict consolidations or sub-divisions. Such a resolution may authorise the company to exercise its powers of consolidation or sub-division in specified circumstances or at specified times, and on more than one occasion. Notice of a consolidation or sub-division must be given to the Registrar within one month, together with a statement of capital (section 619).

**Reconversion of stock**

- A company may reconvert stock into paid-up shares of any nominal value by ordinary resolution, with no need for prior authorisation in its articles (section 620). A single resolution may give the company authorisation to exercise the power to reconvert on more than one occasion. Notice of the reconversion must be filed with the Registrar within one month, accompanied by a statement of capital (section 621).

**Redenomination in another currency**

- A new scheme is introduced regarding the redenomination of share capital. A company limited by shares may redenominate its shares, or any class of them, in another currency by an ordinary resolution of its members (section 622).

**Chapter 10 (Reduction of capital)**

This Chapter restates the provisions of 1985 Act with some changes:

- The need for prior authorisation in its articles before a company may undertake a reduction in its share capital has been removed.

**Statement of capital**

- On a court-approved reduction of capital, a statement of capital must be filed with the Registrar (section 649).

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**Solvency statement**

- A private company may undertake a reduction of capital by means of a special resolution supported by a solvency statement (section 641). The solvency statement must:
  - state that the company will be able to pay its debts as they fall due in the following twelve months
  - take into account contingent and prospective liabilities
  - be made by all the company’s directors, who must have reasonable grounds for the opinions expressed in it
  - be made not more than 15 days before the resolution to reduce capital is passed
  - be made available to members before they vote on the resolution; and
  - be delivered to the Registrar together with a statement of capital within 15 days of the resolution being passed (section 642 to 644).

**Private companies now have a choice**

Private companies wishing to reduce capital may still elect to use the existing court-approval procedure, but public companies will be restricted to using the court procedure only.
11. Part 18: Acquisition by limited company of its own shares

Chapter 1 (General provisions)

The 2006 Act retains many of the provisions regulating the acquisition of own shares in the 1985 Act. The only substantive change is that when a public company comes under a legal duty to cancel certain of its shares (section 662) it is required to send a statement of capital to the Registrar together with notification of the cancellation (section 663).

Chapter 2 (Financial assistance for purchase of own shares)

The prohibition on a company giving financial assistance for the purchase of its shares is abolished for private companies. Consequently, the whitewash procedure contained in sections 155 to 158 of the 1985 Act is redundant and is repealed.

A public company is still prohibited from giving financial assistance (section 678), subject to all the current exceptions, as well as a new exception that permits post-acquisition financial assistance if the company has become a private company by the time the assistance is given. Financial assistance given by a public company to acquire shares in its private holding company is also prohibited (section 679).

Chapter 4 (Purchase by company of its own shares)

The provisions on the purchase by a company of its own shares found in sections 159 to 169 of the 1985 Act are re-enacted with the following minor changes:

- The requirement for authorisation in a company’s articles for a purchase of its own shares is removed, but the articles may still prohibit or restrict such purchases (section 690). This applies to both public and private companies.
- On informing the Registrar of a share buyback, the company must also file a statement of capital (section 708).

Chapter 5 (Redemption or purchase by private company out of capital)

This Chapter re-enacts sections 171 to 177 of the 1985 Act with the following minor changes:

- A private company need not have prior authorisation in its articles before it is able to make a payment out of capital in respect of the redemption or purchase of its own shares, though the articles may expressly restrict or prohibit such payments (section 709).
- The directors will have to make a statement of solvency, rather than a statutory declaration as before (although these two statements have different names the substance remains the same).
- The directors must take into account the contingent and prospective liabilities of the company when forming their opinion on the company’s solvency (section 714).
12. Part 20: Private and public companies

Chapter 1 (Prohibition of public offers by private companies)

The prohibition on a private company offering shares and debentures to the public is retained (section 755). A new procedure is introduced whereby the Secretary of State, or any member or creditor of the company, may apply to the court for an order restraining a company from carrying out any proposed act which would contravene this prohibition (section 757).

The court is also given a power to make a ‘remedial order’, the purpose of which is to put back anyone who has been affected by a breach of the section 755 prohibition into the position they would have been in had the breach not occurred (section 759). In particular, the court may order any person who has been knowingly involved in such a breach to purchase any securities that the (private) company has allotted pursuant to a public offer, at a price the court thinks fit.

13. Part 22: Information about interests in company shares

As part of the implementation of the Transparency Directive, sections 198 to 211 of the 1985 Act, which contain the automatic disclosure obligations of those holding interests in company shares, are repealed and replaced (for traded companies only) by the Disclosure and Transparency Rules. This Part of the 2006 Act re-enacts section 212 and related provisions found in Part 6 of the 1985 Act, which gives public companies the right to investigate interests held in their shares.

Other substantive changes are as follows:

- The company must keep a register of interests disclosed, in which it must enter any information received after issuing a notice requiring a person to disclose information about interests in its shares (section 808).

- On receipt of a request for inspection of the register of disclosed interests, the company is obliged to refuse the request unless it is satisfied that it is made for a proper purpose (section 812). (April 2008)

- It is an offence to knowingly or recklessly make any false or misleading statement in a request to inspect the register of disclosed interests (section 814). (April 2008)

- The company is not required to keep information on the register of interests disclosed if the entry is over six years old (section 816).

- The company is not required to verify information relating to third parties that it acquired in response to a notice requiring disclosure of information. Such third parties may apply to the company to have their names removed from the register if the information relating to them is incorrect (section 817).
14. Part 23: Distributions

This Part re-enacts Part 8 of the 1985 Act. There is one important substantive change, relating to distributions in kind, which is intended to clarify uncertainty arising from the decision in Aveling Barford Ltd v Perion Ltd. If a company has distributable profits, and the distribution would not contravene the provisions of Part 23, the amount of a distribution comprising of, including, or arising from the disposition of a non cash asset is:

- the amount by which the book value of the asset exceeds the value of the consideration received for it, or
- zero, if the consideration is equal to or exceeds the book value (section 845).

In determining whether a company has distributable profits, any profit that will accrue from the proposed distribution in kind may be added to the sum of its profits.

15. Part 25: Company charges

The following substantive changes have been introduced:

- The register of charges and copies of instruments creating charges, which a company must keep available for public inspection, may be kept either at its registered office or at another place specified in regulations to be made under the 2006 Act. Unless these documents have always been kept at its registered office, the company must inform the Registrar of the place they are kept and of any changes to it (section 877).

- The Secretary of State is given a new power to make provisions for the sharing of information on the register of company charges and information on special registers of security interests (for example, the registers of interests in ships and aircraft).

- Provisions in the 1985 Act, requiring foreign companies with an established place of business in the UK to register charges over their UK property in the register of company charges, have not been retained. Instead, section 1052 in Part 34 gives the Secretary of State a new power to make regulations for the registration of charges on the UK property of overseas companies.
16. Part 28: Takeovers

The Panel on Takeovers and Mergers is put on a statutory footing and is given the statutory power to make rules for regulating takeover bids, mergers and any other transactions that may affect, directly or indirectly, the ownership or control of companies.

17. Part 29: Fraudulent trading

Part 29 restates the offence of fraudulent trading found in section 458 of the 1985 Act. The only substantive change is that the maximum terms of imprisonment for the offence have been increased, from six to 12 months on summary conviction, and from seven to ten years for conviction of indictment (section 993).

18. Part 37: Company communications and other supplementary provisions

General schemes for communications by or to a company are introduced.

Communications to a company (Schedule 4)

Any document or information sent or supplied electronically to a company is deemed to have been validly sent or supplied as long as:

- the company has agreed, either generically or specifically, to it being sent electronically (or is deemed to have so agreed)
- it is sent to an electronic address specified by the company for that purpose.

Communications by a company (Schedule 5)

Any document or information made available by a company on a website is deemed to have been validly sent or supplied to a recipient if:

- The recipient has agreed, or is taken to have agreed, to it being supplied by website publication. Only the company’s members or debenture holders are capable of being “taken to have agreed” to website communication, and only to the extent that the members or the holders of a particular class of debentures have resolved as a whole that the company may communicate with them by website, or if the company’s articles permit such communication. In addition, the company must have asked the individual member or debenture holder to agree to such communication, and the individual must have failed to respond within a period of 28 days.
• The company notifies the intended recipient of the presence of the document or information on the website, the address of the website, the place on the website where it may be accessed and the method of accessing it. The document or information is deemed to have been sent on the date of this notification or, if later, on the date when it is first posted on the website.

• The company keeps the document or information posted for a continuous period of 28 days after notifying the recipient. This requirement will still be met even if, for parts of the period, the document or information is unavailable through unavoidable IT problems.

Where a company can and does communicate to its members and debenture holders electronically or by website, they still have the right as individuals to be supplied with a hard copy on request. The company will commit an offence if it fails to comply within 21 days of receiving such a request (section 1145).

Contact

For further information please contact your usual Eversheds contact or:

Peter Halpin
Partner, Head of Corporate
0845 497 4743
peterhalpin@eversheds.com