

March 2007 / Special Alert

A legal update from Dechert's Corporate and Securities group

## Companies Act 2006 – Implementation Timetable

The implementation timetable for the Companies Act 2006 was announced on 28 February by Margaret Hodge, Industry and Regions Minister. The whole of the Act will be in place by October 2008, with many elements to be implemented earlier than previously thought.

### October 2007

The areas coming into force in October 2007 include the provisions in Part 9 of the Act relating to the rights of *indirect investors*. The provisions are intended to assist investors in being better informed about the performance of companies and to allow them to more fully participate in company decision-making.

Most of the provisions relating to *directors' duties* will also take effect in October 2007. As we have discussed in previous updates, the new statutory statement of directors' duties has been an area of considerable debate. Whilst the statement of duties should be interpreted and applied with regard to the corresponding common law rules and equitable principles, it will be interesting to see how practice develops in this area (especially regarding the requirement to consider a list of factors in endeavouring to promote the success of the company).

The provisions for the enhanced *business review* (an obligation for all companies, save for those subject to the small companies regime) and the somewhat contentious area of *derivative claims* by a member of a company will be implemented at the same time.

### April 2008

Those parts of the Act relating to *reports and accounts, audit and statutory auditors* will be

commenced in April 2008 so that EU company law requirements can be implemented alongside implementation of the Act in a way which minimises the number of changes for business.

### October 2008

The provisions relating to directors' *conflict of interest duties* will take effect from October 2008. Companies will therefore have the opportunity to change their articles of association before commencement of these provisions, as the Act permits authorisation of conflicts by independent directors, subject to the company's articles. Consideration will of course need to be given to the scope of such authorisation, bearing in mind the views of institutional shareholders.

### Schedule

A full schedule listing implementation dates for the Act is set out below.

### Companies Act Implementation Timetable

The following parts will be introduced from **1 October 2007**:

- Part 9 (Exercise of members' rights);
- Part 10 (A company's directors), other than provisions relating to directors' conflict of interest duties, directors' residential addresses and underage and natural directors;
- Part 11 (Derivative claims and proceedings by members);

- Part 13 (Resolutions and meetings), and, related to this, sections 485-488 of Part 16 (Audit);
- Part 14 (Control of political donations and expenditure);
- Section 417 of Part 15 (Contents of directors' report: business review);
- Part 29 (Fraudulent trading);
- Part 30 (Protection of members against unfair prejudice);
- Part 32 (Company investigations: amendments).

The commencement provisions in respect of Part 9 will be drafted so as to enable nominee investment operators to send indirect investors' requests to companies from 1 October to entitle indirect investors to enjoy information rights from 31 December 2007.

The following parts will be introduced from **6 April 2008**:

- Part 12 (Company secretaries);
- Part 15 (Accounts and reports), other than section 417;
- Part 16 (Audit), other than sections 485-488;
- Part 19 (Debentures);
- Part 20 (Private and public companies);
- Part 21 (Certification and transfer of securities);
- Part 23 (Distributions);
- Part 26 (Arrangements and reconstructions);
- Part 27 (Mergers and divisions of public companies);
- Part 42 (Statutory auditors).

The following parts will be introduced from **1 October 2008**:

- Part 1 (General introductory provisions);
- Part 2 (Company formation);
- Part 3 (A company's constitution);
- Part 4 (A company's capacity and related matters);
- Part 5 (A company's name);

- Part 6 (A company's registered office);
- Part 7 (Re-registration as a means of altering a company's status);
- Part 8 (A company's members);
- Part 10 (A company's directors) - provisions relating to directors' conflict of interest duties, directors' residential addresses and underage and natural directors;
- Part 17 (A company's share capital);
- Part 18 (Acquisition by limited company of its own shares);
- Part 24 (A company's annual return);
- Part 25 (Company charges);
- Part 31 (Dissolution and restoration to the register);
- Part 33 (UK companies not formed under the Companies Acts);
- Part 34 (Overseas companies);
- Part 35 (The registrar of companies);
- Part 41 (Business names).

Note also that, section 358 of the CA85, which provides a power for companies to close the register of members, will be repealed with effect from **1 October 2008**.

## Other Points to Note

**Checklists** for different users are also being prepared by the DTI. The first of these, for small private companies, has been published and is available on the DTI website: <http://www.dti.gov.uk/bbf/co-act-2006/index.html>

## Comment

With some of the more contentious provisions of the Act coming into force sooner than previously expected, companies would be advised to begin to consider any relevant changes to their articles or board procedures now.

Further updates on the Act will follow.

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## Practice group contacts

For more information, please contact one of the lawyers listed or the Dechert lawyer with whom you regularly work. Visit us at [www.dechert.com/corporateandsecurities](http://www.dechert.com/corporateandsecurities).

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