

Companies Act 2006 – an update October 2009 implementation

Registrar's Rules

In the July/August issue of *Audit & Beyond*, we reported on the transitional arrangements for signing audit reports that are filed with Companies House and the guidance in the APB's Bulletin 2008/6 *The 'Senior Statutory Auditor' under the United Kingdom Companies Act 2006* **R**.

As from 1 October, the rules on authentication and delivery of documents to the Registrar are governed by the new Registrar's Rules available on the Companies House website, along with relevant guidance **R**. In respect of accounts, Rule 23 requires that the copy of the balance sheet (in annual accounts, initial accounts, interim accounts and additional accounts delivered in euros) be signed by a director.

In respect of the audit report, there is no requirement for an original or facsimile auditor's signature; the audit report need only state the name of the auditor and (if applicable) the senior statutory auditor. The same is true for a report in connection with a permissible capital payment – the director's solvency statement must be signed but the auditor's report need not be. Similarly, the copy of an auditor's statement on ceasing to hold office that the company is required to file with the Registrar, must state the name of the individual or firm who signed it but need not be signed by the auditor.

By not requiring the public record to include signatures, this should help protect against identity theft for individual auditors, but does mean that auditors should consider including appropriate provisions in engagement letters to ensure that reports are only filed once they have actually been signed by the auditor. This could be to require that relevant reports filed by the company must contain the signature of the audit firm (voluntary inclusion of signatures is permitted by the Registrar's Rules), and/or that the company cannot file anything with the Registrar until they have received confirmation from the auditor that the relevant report has been signed.

It is important to note that, in order for documents to be considered 'properly delivered', they must contain only black ink (whether typeface or manuscript), and so care needs to be taken that all text (including any signature) is in black ink. Similarly, the company name and registered number must be included on one of the balance sheet, directors' report, DRR or audit report. Any current practice of including this elsewhere (for example on the cover sheet) will need to be updated. Otherwise, the accounts will not have been properly delivered and are likely to be rejected by the Registrar and (if originally filed close to the deadline), filing penalties could be incurred. Please also note that the concession permitting 14 days to re-file rejected documents (for example, illegible accounts) will no longer be available for documents due to be filed on or after 1 October, and so companies will therefore no longer have 14 days from the date of the rejection letter in which to amend and return accounts in an acceptable format without incurring penalties.

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New forms, online filing and 'PROOF'

All Companies House forms will change from 1 October 2009. The new forms must be used for all company events that take place on or after 1 October 2009; old forms will be rejected. Forms in respect of company events which take place before 1 October, must still be submitted on 1985 Act forms (even if filed after that date). Webfiling will also be available for additional documents; for example, companies can be incorporated online under the Companies Act 2006 (CA 2006) using form IN01 (this facility will be available from 5 October, as some Companies House systems will be temporarily unavailable during the transitional period). Specimen forms are available on the Companies House website.

From 1 October, the Registrar's PROTECTED Online Filing (PROOF) scheme will operate under the framework of the CA 2006, s. 1070. Corporate identity fraud is becoming an increasing problem, with smaller firms just as vulnerable as larger ones. PROOF is a Companies House scheme which reduces the likelihood of companies falling victim to fraud.

PROOF customers are protected from changes to their company details. They agree with the Registrar that certain documents will only be filed electronically (requiring authentication code). If a fraudster tries to 'hijack' their company by filing a piece of paper, this will be rejected.

Companies can easily sign up to PROOF via the WebFiling service using the company's authentication code (you no longer need the written consent of each director).

New 'statement of capital'

From 1 October, the CA 2006 introduces the new statement of capital for all companies with share capital. This is a 'snapshot' of a limited company's share capital at a given time, and must show the following:

1. The total number of shares of the company
2. The aggregate nominal value of those shares
3. For each class of shares:
 - prescribed particulars of the rights attached to the shares
 - the total number of shares of that class, and
 - the aggregate nominal value of shares of that class.
4. The amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

A statement of capital must be filed by companies incorporating with share capital on or after 1 October 2009, as part of any annual return filing made up to a date on or after 1 October 2009, and as part of any online filing in respect of allotment of shares, reduction of capital, etc. carried out on or after that date. There will also be occasions where a limited company needs to file a 'stand-alone'

statement of capital, for example to accompany a reduction of share capital approved by the court or (in the case of a private company) supported by solvency statement, and (in some instances) when re-registering from an unlimited to a limited company. A statement of capital form (SH19) will be available for these purposes.

Service addresses – directors' addresses protected from disclosure

From 1 October, every director will have a service address and a usual residential address. The service address for each director will be publicly available from Companies House. The residential address will only be made available to public authorities and credit reference agencies. On 1 October a director's current residential address will automatically become the service address, unless a Confidentiality Order is already in place. However, if directors wish to have a different service address (eg the company's registered office), they will be able to change these details online from 1 October using form CH01 on the Companies House website. Companies must maintain a register of directors for inspection, but must not disclose residential addresses (except to Companies House) without a court order.

LLPs

From 1 October 2009, some further (non-accounts) provisions of the CA 2006 will apply to Limited Liability Partnerships (LLPs) (under the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009) **R**. These include the requirement to maintain a register of members, which means that from 1 October, all LLPs must keep available for inspection a register of members containing certain particulars, including a service address for each individual member and whether a member is a designated member. Like companies, LLPs must not disclose a member's residential address (except to Companies House) without a court order. In practice, most LLPs currently maintain a list

of the names of all members at their principal place of business. However, particularly given the criminal sanctions associated with failure to comply, it is important that LLPs are aware of these new requirements.

From 1 October 2009, LLP members (like company directors) can submit forms providing service addresses (as opposed to residential addresses). Unlike in respect of company directors, Companies House will be unable to accept online filings from LLP members, but the new hard copy forms will be made available (in final form) on the Companies House website at least a week in advance of 1 October 2009, so that applications (to be submitted on or after 1 October) can be prepared in advance.

Alternative address for registers

From 1 October there will be changes to the arrangements for inspecting company and LLP registers. These registers may be held at the registered office address, or at a single alternative inspection location (SAIL). You must notify Companies House if you set up a SAIL address or if the SAIL address is moved, and you may only have one SAIL address for a company or LLP at a time. Once the SAIL address is set up, you can move some or all registers to the SAIL address by notifying Companies House. New forms for this will be available on the Companies House website (Companies (Company Records) Regulations 2008) **R**.

Readers are reminded that the Institute website provides more information on the CA 2006 **R** and there is the faculty supplement on audit-related provisions **R**.



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