haysmacintyre

corporate | the companies act 2006 for accountants

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The Companies Act 2006 is the longest Act ever written and has introduced a number of new requirements. This factsheet deals with the major changes already in force that affect accounts and accountants.

The following provisions came into force on 6 April 2008 (for accounting periods commencing on or after this date).

private companies: filing deadline

The period for a private company to file its accounts is reduced from ten to nine months.

public companies: filing and circulation requirements

The period for a public company to file its accounts is reduced from seven to six months. A public company is still required to hold an AGM and lay its accounts before the members at that meeting within six months of the end of the relevant accounting period. The accounts must be sent to the members at least 21 days before the AGM. In a new requirement, quoted companies must also publish their annual accounts on their website.

small and medium-sized companies thresholds increased

	Turnover (not more than)	Gross asset (not more than)	Employees (no change)
Small company	£6.5 million	£3.26 million	50
Small group	£6.5 million net (or £7.8 million gross)	£3.26 million net (or £3.9 million gross)	50
Medium-sized company	£25.9 million	£12.9 million	250
Medium-sized group	£25.9 million net (or £31.1 million gross)	£12.9 million net (or £15.5 million gross)	250

Small companies are audit exempt if their turnover is less than £6.5m and gross assets are less than £3.26m. A company is not entitled to this exemption if it is a public company. In addition group companies are only audit exempt if:

- the group qualifies as a small group, and
- it was not at any time in the year an ineligible group, and
- the group's turnover is not more than £6.5m net (or £7.8 million gross), and
- the group's gross assets are not more than £3.26 million net (or £3.9 million gross).

The higher thresholds only apply to LLPs with accounting periods commencing on or after 1 October 2008.

medium-sized companies: changes in accounting arrangements

Medium-sized companies/groups are:

- no longer exempt from preparing consolidated accounts
- now required to disclose their turnover in the accounts filed at Companies House
- now exempt from making disclosures about related party transactions.

signing of accounts by senior statutory auditor

There is a new requirement that the auditor's report must be signed by the "senior statutory auditor". At haysmacintyre this will be the assignment audit partner. The audit partner will not be subject to any additional civil liability as a result of doing this. Accounts that are filed at Companies House can continue to be signed in the name of the audit firm.

liability limitation agreements

For the first time, auditors are able to limit their liability to a company in respect of their audit engagement. This can be done via a "liability limitation agreement" which can only apply to one year's audit and which must be approved by the company's shareholders. The limit must be a "fair and reasonable" one in all the circumstances having regard to the auditor's responsibilities, professional standards and contractual obligations.

new section numbers!

Although the majority of provisions remain the same as before, they all have different section numbers. Some of the key changes are included below:

- Audit report – s235 is now s495
- Abbreviated report – s246 is now s444
- Audit exemption – s249 is now s477
- Auditor reappointment – s385 is now s485

late filing penalties

The new penalties, for accounts filed after 1 February 2009, irrespective of the year-end date of those accounts, will be:

Length of period late	Public company	Private company
Less than 1 month	£750	£150
1 month – 3 months	£1,500	£375
3 months – 6 months	£3,000	£750
More than 6 months	£7,500	£1,500

If the accounts were late in the previous year then the above penalties are doubled!

provisions already in force

audit resignations

When auditors are replaced both the company and the outgoing auditor need to write to the ICAEW (for most companies) or the POB (for listed companies) explaining the reasons.

financial assistance

The statutory prohibition on a private company giving financial assistance for the acquisition of its own shares has been lifted. A private company is also now able to give financial assistance in relation to the acquisition of shares in its holding company, provided that the holding company is also a private company.

The so called "whitewash" procedure, under which private companies have been able to provide financial assistance notwithstanding the previous prohibition, is therefore redundant.

This should make some transactions less complex, and therefore less costly, and lifts the threat of imprisonment for directors. However, directors will still need to ensure that they comply with their duties, for example, to promote the success of the company, and that any assistance given does not amount to an unlawful reduction of capital.

It is still likely, however, that financial institutions will continue to require, on a non-statutory basis, a similar report from an auditor and declaration from the directors as those which they currently receive under the statutory provisions.

Private companies will still be prohibited from giving financial assistance for the acquisition of shares in their parent companies, if the parent is a public company. A public company remains prohibited from giving any financial assistance for the acquisition of its own shares or the shares of its parent company (whether public or private).

reduction of capital

Previously if a company wished to reduce its share capital, for example, to create distributable reserves from a share premium account, it had to be confirmed by a court order which incurred significant costs.

Now private companies are able to reduce their share capital without going to court if each of the directors signs a solvency statement. Each director must confirm that he has formed the opinion that the company is able to pay its debts and will continue to be able to do so during the following year.

directors

From 1 October 2008, a company must have at least one director who is a natural person (not a company). However if a company had only corporate directors on 8 November 2006, when the Companies Act received Royal Assent, it will have until 1 October 2010 to comply with this requirement.

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In addition, the minimum age for a company director will be 16 years. Any director who was under 16 on 1 October 2008 will automatically cease to hold office.

company names

For the first time it is possible to object to a company's registered name if it was chosen to exploit someone else's reputation or goodwill. There will be a new system of adjudication to handle such objections.

annual returns

Annual returns made up to dates on or after 1 October 2008 will no longer be required to include full details of all the company's shareholders.

Private and non-traded public companies must still provide the name of each shareholder and details of the shares held, but not the shareholder's address.

For more information please contact your usual engagement partner or David Cox.

about haysmacintyre

haysmacintyre, Chartered Accountants and tax advisers, comprises 23 partners and 160 staff based in Holborn, London. We provide high quality auditing and assurance, business and personal taxation, corporate finance, financial planning and other business support services.

Around 40% of the firm's business is within the corporate sector – small and medium sized enterprises, many of which are within the property, media and entertainment, motor trade and manufacturing sectors.

Over 30% is for charitable and not for profit organisations and the remainder is for professional practices and private individuals. haysmacintyre currently acts for eight listed companies and assists many new companies achieve initial funds and listings on the capital markets.

haysmacintyre is a founding member of MSI Global Alliance (MSI), an international alliance of independent legal and accounting firms, with 250 members in 100 countries.

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