



COMPANY LAW MEMO 2008

Newsletter Issue 5

September 2008

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Welcome to the *Company Law Memo 2008* newsletter, highlighting important recent developments in company and insolvency law. You can also access comprehensive updates to specific paragraphs via our online updating service. We always welcome suggestions from readers, so please contact us if you have any comments.

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NEWS ROUND-UP

BERR consultation on reform of limited partnership law

See CLM ¶17

The Government is consulting on its proposals to **modernise** and **simplify the law** on limited partnerships (neither general partnerships nor LLPs are affected by the proposals). The proposed changes will extend to the whole of the UK and are intended to benefit limited partnerships and third parties who deal with them by:

- » removing legal uncertainties in the way limited partnerships may operate; and
- » ensuring that UK limited partnerships remain attractive to investors in the competitive European market.

The proposed changes relate to the:

- » **establishment, registration and de-registration** of limited partnerships;
- » **liability** of limited partners (including a list of what they can and cannot do without losing their limited liability); and
- » **rights and obligations** of general and limited partners.

The Government proposes to implement the changes in October 2009. Responses are sought by 21 November 2008.

The consultation document is available on BERR's website:

<http://www.berr.gov.uk/files/file47577.pdf>.

The Government intends to extend the provisions to the new Companies Act relating to names and the powers of the registrar to limited partnerships. This will be dealt with by a separate statutory instrument made under the new Companies Act (Companies Act (Index of Company Names and Consequential Provisions relating to Limited Partnerships) Order 2008). The Government has decided not to take up the Law Commission's recommendation that limited partnerships should have a separate legal personality.

New guidance on directors' duty to avoid conflicts of interest

See CLM ¶2390+

The **GC100** has published new guidance on directors' duty to avoid conflicts of interests. This duty to avoid **situations** in which directors have, or could have, a direct or indirect interest or duty that conflicts, or may conflict, with the interests of the company was codified in the new Companies Act from 1 October 2008. There is a common sense exception to this duty so that directors in situations that cannot reasonably be regarded as giving rise to a conflict of interest will not breach the duty.

In the case of a situational conflict, or potential conflict, a director will be required to obtain **prior authorisation** to avoid a breach of duty. The board will be able to authorise a director to act despite having a conflict, provided:

- » in the case of **private companies**, the articles do not prevent it from authorising conflicts; or
- » in the case of **public companies**, the articles enable it to authorise conflicts and it does so in accordance with the articles.

The GC100 has published three guidance notes on the authorisation process:

- » a suggested **checklist** for company secretaries designed to help them ensure that their directors will comply with the new law;
- » A sample **directors' briefing** which may be provided to directors to ensure that they are aware of their responsibilities under the new law. This includes a brief explanation of the statutory duties which came into force on 1 October 2008, including their duty to avoid, or obtain prior authorisation for, situational conflicts of interest; and
- » a **questionnaire** for directors designed to assist them in identifying conflicts of interest that may need to be authorised.

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To recap, the **general duties are:**

- » to act within their powers;
- » to exercise independent judgment;
- » to exercise reasonable care, skill and diligence;
- » to avoid conflicts of interest;
- » not to accept benefits from third parties;
- » to declare interests in proposed transactions or arrangements; and
- » to declare interests in existing transactions or arrangements.

Some of these general duties have been in force under the new Companies Act since October 2007; the last four listed above came into force on 1 October 2008.

APB proposes revised ISA (UK and Ireland) 700 and issues further example auditor's reports

See *CLM* ¶4314, ¶4321

The Auditing Practices Board (APB) has recently published an Exposure Draft containing proposed changes to the International Standard on Auditing (ISA) in the UK and Ireland, which gives guidance on the **preparation** of an auditor's report. It is proposed that the revised ISA (UK and Ireland) 700 will be effective for accounting periods ending on or after 5 April 2009. Comments should be submitted by 28 November 2008.

The APB has also issued further example auditor's reports for use in the UK relating to short accounting periods beginning on or after 6 April 2008 but ending before 5 April 2009 (APB Bulletin 2008/8). These update previous example reports issued by the APB (Bulletin 2006/6) to reflect the requirements of the new Companies Act (see *CLM 2008 Newsletter Issue 2*).

These documents can be freely downloaded from the APB website:
<http://www.frc.org.uk/apb/>.

CESR updates its FAQs on prospectuses

See *CLM* ¶4845

The Committee of European Securities Regulators (CESR) has **updated** its FAQs on the Prospectus Directive to:

- » clarify that there is no specific requirement upon a guarantor to assume and declare responsibility for the contents of a prospectus or for certain parts of it, even though he is generally permitted to accept responsibility for the whole prospectus;
- » explain the UK's dissenting view that a report by an accountant or auditor should not be required where issuers provide pro forma financial information on a voluntary basis in documents relating to non-equity securities;
- » clarify the exact wording to be included in the auditor's statement on pro forma information;
- » explain why qualifications and emphasis of matter paragraphs may not be included in the auditor's statement on pro forma information; and
- » explain the circumstances in which more than one document with final terms for a specific issue of bonds could be filed.

The updated FAQs can be found on CESR's website:
http://www.cesr-eu.org/index.php?page=home_details&id=301.

News



NEWS ROUND-UP cont...

Insolvency Service consults again on insolvency law reform

See *CLM* ¶¶7364, ¶7404, ¶8227, ¶8339, ¶8449, ¶8530, ¶8648, ¶9019, ¶9369, ¶9378, ¶9546

The Insolvency Service has issued a **further consultation** paper on the changes to the Insolvency Act 1986. It suggests two further changes to the Service's proposals to update the Insolvency Act 1986 to complement forthcoming new Insolvency Rules. The initial consultation on this closed in December 2007 (see *CLM 2007 Newsletter Issue 7*). These changes have been proposed in the light of the responses received. A full summary of the responses has not yet been published.

The changes are:

- » to remove the proposed requirement for insolvency practitioners to obtain the **prior consent** of creditors to make information and documents available on a **website**. Instead it is proposed that the IP will be required to send a notice to the creditors (in hard copy unless the creditor has agreed to receive communications by email) informing them that the document can be viewed on a website, giving the address of the web site and any password required to access it. The creditor will be able to **request a free hard copy** of the document if they do not wish, or are unable, to access the document via the website; and
- » the Insolvency Service has decided not to proceed with the proposal to allow creditors to **opt-in** to receiving information from insolvency practitioners (rather than requiring the IP to send it out to all creditors).

Earlier this year, the Insolvency Service announced that the implementation of the new Rules would be postponed until October 2009 (except the proposal to give insolvency practitioners a discretion as to when to advertise insolvency events in the general press, which is due to be implemented on 6 April 2009). The proposed structure for the Insolvency Rules was outlined in *CLM 2007 Newsletter Issue 5*. Drafts of the new Rules and other secondary legislation are not yet publicly available.

This consultation paper can be found in the consultations section of the Insolvency Service's website: www.insolvency.gov.uk.

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RECENT CASES

Is the scope of a company's business relevant to directors' fiduciary duties?

See CLM ¶12392, ¶12399, ¶12406

Re Allied Business and Financial Consultants Ltd, O'Donnell v Shanahan & Others [2008] EWHC 1973 (Ch)

The Chancery Division of the High Court has reviewed the authorities and confirmed that it is necessary to have regard to the **scope of a company's business** (actual or contemplated) in applying the duties to **avoid conflicts of interest** and to **account for profits**, particularly in cases where a company operates as a quasi-partnership. The court concluded that two directors had not breached these fiduciary duties in purchasing a property for investment purposes on their own behalf rather than through the company as this had not been within the scope of the company's business.

Mr S, Mr L and Ms O were all shareholders and directors of AB&FC Ltd. The company was operated on the basis of a quasi-partnership and they each received an equal share of its profits. AB&FC Ltd's business was that of providing financial advice and assistance (including arranging commercial loans, residential mortgages and insurance). Mr S and Mr L had acquired an interest in a property for investment purposes in their own right rather than through AB&FC Ltd. Ms O contended that this amounted to breaches of Mr S and Mr L's fiduciary duties.

The court found that the acquisition of properties for investment was not in fact within the scope of AB&FC Ltd's business and that, although its objects were wide enough to allow the directors to diversify into property investment, there was no suggestion that it was ever contemplated by the directors that AB&FC Ltd might do so. There was no real sensible possibility of breach of the duty to avoid conflicts of interest. The fact that the opportunity to participate in the property investment had come to the attention of Mr S and Mr L in their capacity as directors of AB&FC Ltd did not of itself give rise to a breach of the duty to account for profits.

The court also found that the two directors had not breached their fiduciary duty **not to misuse company property and/or information** as the information they had used in acquiring the property was confidential to a third party and therefore the duty of confidentiality in relation to that information was owed to the third party and not to the company.

Contingent creditor's petition for winding up

See CLM ¶17617

Re a Company [2008] All ER (D) 69 (Sep)

Contingent creditors (whose debt will only become due when a particular event, which may or may not occur, happens) may petition for a company's winding up. However, the court will **only allow** the petition to **proceed if** appropriate in the circumstances.

In this case the petitioner was a shareholder of the non-trading parent company of eight companies, five of which were the subject of his petitions. He petitioned as a contingent creditor by reason of personal guarantees he had given to the bank in relation to the group. It was wholly speculative as to whether and when the companies would become indebted to him and whilst two of the companies were insolvent on the balance sheet test, the others were trading profitably. Even the contingent creditor believed that with continued support from the bank (which it was willing to give) the businesses would succeed. In the circumstances it was not in his interests to have the companies wound up and the petitions were struck out.

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LEGISLATION

Changes to stamp duty land tax rates

See CLM ¶5308

SI 2008/2338

SI 2008/2339

The Government has announced that the zero rate threshold for SDLT on **residential property** will be **temporarily increased** to include acquisitions up to £175,000 (SI 2008/2339). This will **apply to** transactions which:

- » have an effective date (normally the date of completion) on or after 3 September 2008 but before 3 September 2009;
- » consist entirely of residential property;
- » are to acquire major interests in land (which do not include leases of less than 21 years); and
- » are for a chargeable consideration of £175,000 or less.

The exemption must be claimed using Form SDLT1 (SI 2008/2338) (see CLM ¶5301+).

Non-residential properties are not covered by this temporary exemption as its purpose is to demonstrate the Government's support for first time buyers and the housing market generally. **Mixed use properties** also do not qualify for the exemption (reg 3 SI 2008/2339).

Changes to the Civil Procedure Rules

See CLM ¶7119, ¶7152+, ¶7406+, ¶7660

SI 2008/2178

New regulations which came into force on 1 October 2008 introduced several changes to the Civil Procedure Rules (CPR). Most importantly, the regulations substitute the rules relating to **service of documents** changing the procedure for the service of claim forms and other documents within the jurisdiction (England and Wales). The regulations also make several consequential amendments to other rules and practice directions.

Service of a claim form

A claim form **must be served** before 12.00 midnight on the calendar day four months after the date of issue of the claim form (r 7.5 CPR). A claim form will be **deemed** to have been properly served on the second business day after it was served by the appropriate method and at the relevant address (r 6.14 CPR). This applies regardless of the method of service used.

Method of service

A **company** or **limited liability partnership** may be served with a claim form or other document by any of the methods set out in the CPR or companies legislation. Which method applies depends upon the legislation governing the application.

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Document to be served	Method of service permitted	Category of address ¹	Reference
Any document (including a claim form and other documents in proceedings)	Leaving at or sending by post to registered office	-	s 725 CA 1985
	Leaving at or sending by post to principal place of business (with a copy being sent to registered office)	-	s 1139 CA 2006 ²
Claim form	Leaving it with a person holding a senior position with the company/LLP ³	Personal service	r 6.5 CPR
	At the business address of the solicitor	Service on solicitor ⁴	r 6.7 CPR
	At that address given by the defendant	Service at defendant's address ⁵	r 6.8 CPR
	At the principal office or any place of business of the company/LLP within the jurisdiction which has a real	Where none of the above apply	r 6.9 CPR
Document in proceedings (other than a claim form)	Sent or transmitted to, or left at, the party's address for service given	Party's address ⁶	r 6.23 CPR

Note:

1. This must be stated on the certificate of service of a claim form; see below (r 6.17 CPR).
2. This method of service will also be permitted for LLPs from 1 October 2009, when s 1139 CA 2006 will be applied to LLPs.
3. The wording of the new r 6.5 CPR refers to either "a company or other corporation" or "a partnership". There is no specific reference to an LLP. It is assumed here that an LLP would come within the rules for personal service relating to a company or other corporation based upon the definition used within the practice directions on company and insolvency proceedings. These confirm that references to a company include an LLP.
4. Where the defendant has given in writing the business address of a solicitor as an address at which he may be served, or a solicitor acting for him has notified the claimant that they are instructed to accept service of the claim form.
5. Where the defendant has given an address within the jurisdiction for the purpose of being served in court proceedings.
6. A party to proceedings must give an address at which he may be served with documents relating to the proceedings. This address must include a full postcode and must be the business address within the UK of a solicitor acting for him or, where there is no acting solicitor, an address within the UK at which he resides or carries on business. If he indicates that he will accept service by fax, the fax number given must be at the service address. Where he indicates that he will accept service by electronic means (other than fax), the email address or electronic identification will be deemed to be at the service address.

The court may make an order permitting service of a claim form or other document by an **alternative method** or at an **alternative place** where it appears that there is a good reason to do so (rr 6.15, 6.27 CPR). On an application under this rule, from 1 October 2008 the court may order **retrospectively** that **good service** has taken place. The court can also **dispense with service** of a claim form (in exceptional circumstances) and of any document which is to be served in the proceedings (rr 6.16, 6.28 CPR).



LEGISLATION cont...

Certificate of service

Where the claim form is served by the claimant, rather than the court, there is a new **time limit** for filing a certificate of service. The claimant must file a certificate of service of a claim form within 21 days of service of the particulars of claim, unless all the defendants to the proceedings have filed acknowledgements of service within that time (the former deadline was within 7 days of service of the claim form) (r 6.17 CPR). The certificate of service must **also state** the category of address (noted in the table above) at which the claimant believes the claim form has been served in addition to the other information already required (r 6.17 CPR).

The new regulations also:

- » **amend Parts 43-47** and the accompanying practice directions to enable **costs orders** in civil cases where the successful party was represented either wholly or partly by a lawyer working free of charge (**pro bono**). These amendments apply from 1 October 2008; and
- » insert a **new Part 78** and accompanying practice direction to provide procedures to deal with the European order for payment (EC Regulation 1896/2006) which allows the **recovery of uncontested money claims** and the European small claims procedure (EC Regulation 861/2007) which simplifies **cross border small claims litigation** in civil and commercial matters. Practice Direction 74B is also amended so as to be consistent with the new Part 78. These amendments will come into force:
 - relating to European orders for payment, on 12 December 2008; and
 - relating to the European small claims procedure, on 1 January 2009.

The text of the amended CPR can be found on the Ministry of Justice website: http://www.justice.gov.uk/civil/procrules_fin/pdf/preview/47th_update_SI.pdf.

In force 1 October 2008

See *CLM* ¶14060, ¶17750, ¶18229, ¶18468, ¶19021, ¶19368, ¶19480

SI 2008/1659

SI 2008/1860

SI 2008/1861

SI 2008/1897

- » changes to the information required on **annual returns** and new versions of Forms 363a and 363cym (for Welsh companies) (see *CLM 2008 Newsletter Issue 4*); and
- » changes to the **trading disclosures** required during insolvency (see *CLM 2008 Newsletter Issue 4*).

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COMPANIES ACT 2006: IMPLEMENTATION

The text of the Companies Act 2006, explanatory notes and tables of destinations and origins are freely available to download at: <http://www.opsi.gov.uk/acts/acts2006a.htm>.

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To see when specific sections of the Act will or have come into force, check the implementation timetable on the FL Memo Ltd newsletter homepage (follow the link to "Companies Act 2006 implementation timetable"). This document will be updated as new secondary legislation is passed and further announcements are made. The implementation timetable is now up to date to the draft 8th Commencement Order.

October 2008 implementation

On 7 November 2007, the Government announced that the commencement date for most of the provisions which were due to come into force on 1 October 2008 would be postponed until 1 October 2009. The various commencement orders (SI 2007/2194, SI 2007/3495, SI 2008/1886) set out the provisions brought into force on **1 October 2008**.

The Government does not intend to make any **transitional amendments** to **Table A** in October 2008 because Table A does not conflict with any of the new provisions.

Also in force are the regulations on how the **accountancy provisions** of the new Companies Act apply to **limited liability partnerships** (see *CLM 2008 Newsletter Issue 4*). These **apply to** financial years beginning on or after 1 October 2008.

Company and business names

See *CLM* ¶278

Provisions affected: ss 69–74 CA 2006

The new procedure for **objecting to a company name** came into force on 1 October 2008. This allows any person to apply to a new **names adjudicator** for a company to change its name. The applicant will have to show that the name is the same as one in which he had acquired goodwill, or is so similar to such a name as to suggest an association between the two businesses. The company will be able to defend the application on various grounds, including by showing that it was using the name before the applicant.

The **application procedure** is set out in the Company Names Adjudicator Rules 2008 (SI 2008/1738), which also came into force on 1 October 2008.

Company formation and constitution

See *CLM* ¶259, ¶585, ¶2580

Provisions affected: ss 82–85 CA 2006

The **trading disclosures** provisions came into force on 1 October 2008. These set out the requirements for companies to disclose their names and other important trading information (such as their registered addresses and registration numbers) to the public. The associated Companies (Trading Disclosures) Regulations 2008 (SI 2008/495) set out the detailed **requirements** on what information has to be displayed where and the **penalty for breach**. These provisions are similar to the current ones, but there are some differences, for example the list of documents on which the name needs to be displayed is more comprehensive.

From 1 October 2008, a company will have to publish its **registered name** at its registered office, any other location at which it is allowed to keep its company records (an inspection place), and any other business location (except somewhere used primarily as a dwelling or which is a director's residential address). If 6 or more companies use the same address, the name must be displayed for at least 15 seconds in every 3 minutes (e.g. on an electronic



COMPANIES ACT 2006: IMPLEMENTATION cont...

display). Otherwise, the name must be displayed continuously. A company must also disclose its registered name on all business documents and correspondence and on its websites (SI 2008/495).

A company must disclose its **domicile** (i.e. England and Wales, Wales or Scotland), **registered number** and **registered office** address on all business letters, websites and order forms (SI 2008/495).

These regulations will be **amended** by other regulations as follows:

- a company will not be required to display its name at its registered office and any inspection places if it is in insolvency and the registered office/inspection place is the relevant insolvency practitioner's office; and
- a company will not have to display its name at other business locations where every director benefits from the protection of his residential address.

These amendments will not come into force until 1 October 2009, when the corresponding provisions of the new Act are due to come into force.

Shares and share capital

See *CLM* ¶1435, ¶1436

Provisions affected: ss 641(1)(a), (2)-(6), 642-644, 652(1), (3), 654 CA 2006

From 1 October 2008, a private company limited by shares can **reduce its share capital** using a new **solvency statement procedure** instead of having to go to court. Under this procedure, the reduction needs to be approved by the shareholders after all of the directors have made a statement regarding the solvency of the company. The Companies (Reduction of Share Capital) Order 2008 (SI 2008/1915) prescribes the form of the statement. Reserves created by a reduction of capital using this procedure will be **distributable** to the extent that the reserve is treated as realised profit.

The provision dealing with **shareholders' liability after a reduction of capital** will now only come into force on 1 October 2008 as far as necessary in relation to the new solvency statement procedure (s 652(1), (3) CA 2006); it will come fully into force on 1 October 2009.

This new procedure can be used to reduce the company's share premium account and capital redemption reserve as well as its general share capital (ss 610(2)-(4), 733(5), (6) CA 2006; see *CLM* ¶1245+, ¶1360+)

Directors

See *CLM* ¶2230, ¶2242, ¶2244, ¶2246, ¶2337, ¶2390+, ¶2398+, ¶2405+, ¶2505, ¶3310

Provisions affected: ss 155-159, 175-177, 182-187, 1157 CA 2006

From 1 October 2008, every company must have **at least one** director who is an **individual**. This is intended to address the difficulties of applying sanctions to corporate directors and to make it easier for third parties to identify who runs the company. The individual can be a corporation sole or be appointed because of another office that he holds. The secretary of state can order a company to make an appropriate appointment if it fails to comply. There will however be a **grace period** until 1 October 2010 for any company that only had corporate directors on 8th November 2006 (the day the new Companies Act received Royal Assent) giving them time to comply (para 46 Sch 4 SI 2007/3495).

A **minimum age** for individual directors of 16 years old has been introduced. The secretary of state can specify exceptions to allow under 16s to act as directors in certain circumstances, but as yet he has not done so. Therefore, any attempt to appoint a director who is under the age of 16 years will be void. Any **existing directors** under 16 **automatically ceased** to be a director on 1 October 2008, so any company affected must amend their register of directors to reflect this. Where this leaves the company without an eligible director, it must appoint at least one eligible director to remedy the position.

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The remaining directors' **general duties** came into force on 1 October 2008. These are:

- » to avoid **conflicts of interest and duty**. A director must obtain **prior authorisation** to avoid a breach of this duty, unless the situation cannot reasonably be regarded as giving rise to a conflict of interest. The **board** (rather than the shareholders) can authorise a director to act despite having a conflict, provided:
 - in the case of private companies, the articles do not prevent it from authorising conflicts; or
 - in the case of public companies, the articles enable it to authorise conflicts and they do so in accordance with the articles;
- » not to accept **benefits from third parties**. This codifies the current fiduciary duty to account for profits; and
- » to declare **interests in proposed and existing transactions and arrangements**. These provisions require directors to continue to disclose their interests in both proposed and existing transactions and arrangements. The duty is now wider than before, requiring directors to declare the extent of any interest, as well as the nature of it. The declaration may be made at a board meeting, in writing, or by general notice. There is no requirement to declare an interest in an existing transaction if it was declared when the transaction was proposed. Interests already declared under CA 1985 do not have to be declared again under these new provisions (paras 48, 50 Sch 4 SI 2007/3495).

Transitional arrangements which held back the implementation of other sections pending these duties coming into force have now been revoked (para 1 Sch 3 SI 2008/674). Therefore the general provision dealing with shareholder's consent (s 180 CA 2006) and the provision adapting the duties to charitable companies (s 181 CA 2006) are now fully in force.

There is a **difference** in wording between **Table A** and the **new provisions** on conflicts of interests in relation to which interests must be disclosed. Table A restricts a director's ability to act if he does not disclose material interests (reg 85 TA 1985) whereas the new statutory provisions require disclosure of any interest unless it cannot reasonably be regarded as likely to give rise to a conflict of interest. The Government has decided that a company's articles cannot limit the effect of the new statutory provision and therefore that **transitional amendments** to Table A are not necessary.

In **proceedings for** negligence, default, breach of duty or breach of trust directors (and any other officer of a company or its auditor) can still apply to court for **relief from liability**. The court is able to grant relief in certain circumstances, where the person acted reasonably and honestly. This new provision is slightly wider, as it allows the applicant to apply for relief in advance where a claim is likely to be made against him (s 1157(2) CA 2006).

Company management and decision making

See *CLM* ¶3204, ¶4247

Provisions affected (so far as not already in force): ss 362-367, 378 CA 2006

Companies legislation specifically restricts a company's ability to make **political donations**. A company is required to be **authorised** by its shareholders before it:

- » makes a donation to a political party or political organisation; or
- » incurs expenditure in preparing publishing or disseminating material or other activities which could reasonably be regarded as supporting a political party or organisation or which could influence voters.

These provisions now extend to donations to or expenditure incurred in relation to **independent election candidates** (reg 5 SI 2007/2194).

COMPANIES ACT 2006: IMPLEMENTATION cont...

Buying and selling a company

See CLM ¶5557+

Provisions affected: ss 151-158 CA 1985

Private companies are no longer prohibited from giving **financial assistance** for the acquisition of their own shares or the shares in their private holding companies. This repeal of the 1985 Act provisions has been brought into force ahead of the implementation of the shares provisions of the new Act. The prohibition remains in place for **public companies** and their subsidiaries (for the acquisition of a public company's shares, or the acquisition by a public subsidiary of shares in its private holding company) unless the financial assistance falls within the statutory exceptions, and will continue to do so when the financial assistance provisions of the new Act come into force in October 2009.

The Fifth Commencement Order specifically states that the repeal of the prohibition does not resurrect the effect of previous case law (if it did, financial assistance by private companies would still be unlawful) (para 52 Sch 4 SI2007/3495). This is to prevent any uncertainty as to whether the repeal is effective or not.

Dissolution

See CLM ¶7537

Provisions affected: s141(4) CA 1989

The normal time limit for making an application for a declaration that a company's **dissolution is void** is two years from the date it was dissolved. This can be waived for **applications relating to personal injury or fatal accident claims** no matter when the dissolution occurred (there had been a provision preventing such applications where the company was dissolved before 16 November 1969, which has now been removed) (SI 2008/1886).

The new Companies Act will extend the normal **time limit** to six years and will simplify the **application procedure** from 1 October 2009.

Draft secondary legislation

BERR has published **new drafts** of various statutory instruments under the new Companies Act. The text of the new draft SIs can be found on BERR's website: <http://www.berr.gov.uk/bbf/co-act-2006/draft/page40411.html>.

Overseas companies

See CLM: ¶140+

A **new draft** of the regulations under the new Companies Act dealing with overseas companies has been published.

The Government's approach to these companies remains the same. The **minor amendments** that have been made include:

- » a **UK wide database** so that returns no longer have to be filed with a particular UK registry. The requirement for overseas companies to state **where the establishment is registered** is therefore no longer required and has been deleted;
- » the **structure** of the regulations has been amended with the provisions dealing with trading disclosures now appearing towards the end as Part 10;
- » the **accounting provisions** have been developed further adding:
 - additional regulations setting out the circumstances in which a parent company does not have to prepare group accounts;
 - a requirement for the balance sheet and profit and loss accounts for individual accounts (of both overseas companies and credit and financial institutions) to clearly indicate the currency in which it is prepared; and

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- the definition of “material” has been expanded;
- » the provisions dealing with applications to **withhold residential addresses** from credit reference agencies have been extended to include a serious risk that a person who lives with the applicant will be subject to intimidation or violence; and
- » a **new regulation** has been added to provide for transitional arrangements to deal with the change over from the existing law to that under the new Companies Act. The schedule setting out these transitional provisions has not yet been published.

The Government proposes to issue **guidance notes** to sit alongside the regulations. These have not yet been published. The regulations are intended to come into force on 1 October 2009.

Interestingly, whilst Schedules 5 and 6 have been updated in relation to the **disclosure of addresses** to mirror the provisions relating to UK directors’ residential addresses, they do not include the changes made in the latest draft of the Companies (Disclosure of Address) Regulations 2008 (see below). A further draft is anticipated to include the transitional provisions and is likely to also include further amendments to Schedules 5 and 6.

Addresses

See *CLM*: ¶3907

A new draft of the regulations under the new Companies Act dealing with the protection of **directors’ residential addresses** has been published. Under the new Act, directors’ residential addresses will only be disclosed to certain public authorities (e.g. government departments, HMRC and local authorities) and credit reference agencies. The draft Companies (Disclosure of Address) Regulations 2008 (formerly called the Companies (Particulars of Usual Residential Address) Regulations 2008) sets out the circumstances in which these addresses will be disclosed, and the procedure by which directors can apply to have their addresses withheld from credit reference agencies.

The new draft is in substantially the same form with minor amendments made to:

- » add certain public authorities to the list of those to whom the registrar can disclose residential addresses; and
- » extend the purposes for which credit reference agencies may use residential addresses disclosed by the registrar (providing the information to other credit reference agencies and conducting checks for the prevention and detection of crime and fraud).

It is due to come into force on 1 October 2009.

Statutory auditors and third country auditors

See *CLM*: ¶4290, ¶4345

Draft regulations under the new Companies Act dealing with the regulation of the audit profession in the UK have been published. These make minor amendments to the Statutory Auditors and Third Country Regulations 2007 (SI 2007/3494) which deal with the **supervision of auditors** and **recognition of qualifications** of foreign auditors in the UK. The EC has not yet made proposals for determinations of equivalence, but transitional measures have been agreed, which will allow the recognition of foreign auditors from **certain specified countries**.

The proposed changes:

- » set out the **information required** to be given by certain foreign auditors to the Professional Oversight Board (POB), the body responsible for implementing these arrangements in the UK; and
- » will enable POB to **remove** certain foreign auditors from the register.

It is intended that these changes will take effect by the end of October 2008.
