

news

Companies Act 2006 – What lies beneath?

The Companies Act 2006 (the “Act”) is quite literally the largest Act ever to hit our statute books. For occupational pension schemes with corporate trustees the Act’s potential impact on the protection of directors from liability has already grabbed the limelight¹. But there are other aspects of the Act with which corporate trustees need to be familiar. Here we bring some of the key points to the surface.

The Act

Background

- Essentially a consolidation of existing company law, the Act introduces new requirements relating to directors’ duties and the conduct of private companies.
- With phased implementation, the Act will not be fully in force until October 2008.

Directors’ duties

From 1 October 2007 /
1 October 2008

- The Act sets out the following seven general duties owed by directors to the company:
 - acting within their powers in accordance with the company’s constitution;
 - promoting the success of the company;
 - exercising independent judgment;
 - exercising reasonable care, skill and diligence;
 - avoiding conflicts of interest;
 - not accepting benefits from third parties; and
 - declaring interests in proposed transactions or arrangements to co-directors.
- The first four duties came into force on 1 October 2007, with the remaining three due in from 1 October 2008.

Avoiding conflicts of interest

From 1 October 2008

- Significantly, once in force, this duty will not arise in relation to a transaction or arrangement with the company.
- Many potential pensions conflicts (for example, over scheme funding) should fall within this exception.
- However, trustee directors must still be alive to potential conflicts and ensure that they are dealt with appropriately in accordance with their general trust law responsibilities.

¹ See our Sackers Extra Alert: “The Companies Act 2006 – Exonerations and Indemnities” dated 8 August 2007

“Derivative claims”

From 1 October 2007

- If a director breaches his/her duty to the company, shareholders have a new statutory right to sue (in the company's name) to recover any loss.
- A shareholder has to make an application to the court for permission to pursue such a claim.
- Whilst there has been some speculation as to how this might apply to a trustee company (whether as a shareholder of a sponsoring employer or vice versa), current pensions legislation probably more adequately (and easily) protects the interests of both.

Record-keeping

From 1 October 2007

- Companies must retain their records (such as minutes of directors' meetings and resolutions) for at least ten years.
- Records may be kept in either hard copy or electronic form (provided this is capable of being reproduced in hard copy).
- Although failure to comply with these requirements will be a criminal offence (punishable by a fine), in practice pension scheme records tend to be retained for much longer.

Miscellaneous

From April 2008

- Private companies will no longer have to appoint a company secretary (although trustee companies are likely to continue to need someone to fulfil this role).
- The following alternatives to executing a document by affixing the company seal will be available:
 - as now, the signature of two directors or a director and the company secretary; or
 - the signature of a director in the presence of a witness.
- The time frame for private companies submitting reports and accounts to Companies House will reduce from ten to nine months.