

COMPANIES ACT 2006: BRIEFING ON

A.) SECOND COMMENCEMENT ORDER;

B.) REGULATIONS APPLYING PROVISIONS OF THE COMPANIES ACT 2006 CONCERNING TAKEOVERS TO UNREGISTERED COMPANIES

Contents

Subject	Page
1. Overview of the Companies Act 2006	2
2. Second Commencement Order	2
3. The Companies Acts (Unregistered Companies) Regulations 2007	3
4. Background and Additional Information:	
a.) Implementation of the Takeovers Directive	3
b.) Extension of Community Interest Companies to Northern Ireland	3
c.) Directors' Report (Directors' interests)	4
d.) Copies of the legislation	4
5. The First Commencement Order	4
6. Commencement of remaining provisions in the Act	4

1. OVERVIEW OF THE COMPANIES ACT 2006

The Companies Act 2006 was given Royal Assent on 8 November 2006. The Act has substantially rewritten company law to make it easier to understand and more flexible, especially for small businesses. The Act partly restates some of the previous Companies Acts 1985 and 1989; partly rewrites some of the previous Companies Acts 1985 and 1989 to make the provisions simpler and easier to understand; and partly introduces new provisions.

2. SECOND COMMENCEMENT ORDER

The draft second Commencement Order (the Companies Act 2006 (Commencement No.2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (“the Order”) was today laid before Parliament in draft and, if approved by both Houses, will come into force on 6 April 2007. The Order:-

(a) brings into force certain provisions of the Companies Act 2006. These are as follows:-

- Part 28 (Takeovers) connected with implementation of the EU Takeovers Directive. These provisions, placing the regulatory activities of the Takeover Panel within a wholly statutory framework, will replace Regulations which came into force on 20 May last year and implemented the Directive on an interim basis whilst the Companies Act completed Parliamentary passage (SI 2006/1183);
- section 1284(1) extending Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (concerning community interest companies (CICs)) to Northern Ireland. This will make the CIC corporate vehicle available in Northern Ireland for the first time - making it simpler and more convenient to establish a business whose profits and assets are to be used for the benefit of the community; and
- specified repeals of the Companies Act 1985 (and equivalent provisions in Northern Ireland):-
 - sections 428 to 430F of the 1985 Act (takeovers);
 - section 744 of the 1985 Act (definition of “EEA State”); and
 - paragraphs 2, 2A and 2B of Schedule 7 for limited purposes (matters to be dealt with in directors’ report).

(b) amends primary and secondary legislation in consequence of, and related to, the commencement of the above provisions;

(c) restores protection for members of limited liability partnerships who have been granted confidentiality orders from having their details open to inspection on the public register. This right was inadvertently

removed by the first Commencement Order for the Companies Act 2006 (SI 2006/3428).

3. THE COMPANIES ACTS (UNREGISTERED COMPANIES) REGULATIONS 2007

Alongside the draft second Commencement Order, the Companies Acts (Unregistered Companies) Regulations 2007 (“the Regulations”) were laid. These regulations (which have already been made, because they do not require approval in draft) extend certain provisions of the Act regarding takeovers to unregistered companies and are designed to give full effect to implementation of the Takeovers Directive together with Part 28 of the Act. The provisions of the Regulations will also come into force on 6 April 2007.

4. BACKGROUND AND ADDITIONAL INFORMATION

a.) Implementation of the Takeovers Directive

Part 28 of the Companies Act 2006 implements the Takeovers Directive. The Directive was required to be implemented by 20 May 2006. As the Companies Act 2006 had not completed Parliamentary passage at this date, interim implementation of the Directive was given effect to by The Takeovers Directive (Interim Implementation) Regulations 2006(SI 2006/1183) (“the interim takeover Regulations”). The interim takeover Regulations are revoked by the present commencement Order. Full guidance notes, “Implementation of the EU Directive on Takeover Bids - Guidance on changes to the rules on company takeovers” are available on the DTI website:

<http://www.dti.gov.uk/bbf/co-act-2006/index.html>.

b.) Extension of Community Interest Companies to Northern Ireland

Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (“CAICE Act”) made provision for the establishment of a new corporate vehicle, the “community interest company” (“CIC”). The CAICE Act does not extend to Northern Ireland, although there is equivalent Northern Ireland legislation (the Companies (Audit, Investigations and Community Enterprise Order 2005 (SI 2005/1967 (N.I.17))). However, the parts of the Order related to CICs were never brought into force awaiting the making of necessary further secondary legislation. It was always the intention that the CIC corporate vehicle would be available in Northern Ireland. Events, however, have now been overtaken by the project to merge the company law legislation in Great Britain and Northern Ireland achieved through the Companies Act 2006. It has been decided to extend CICs to Northern Ireland in advance of bringing into force the rest of the Companies Act 2006.

Further guidance on CICs is available from the website of the regulator of CICs <http://www.cicregulator.gov.uk/>.

c.) Directors' Report (Directors' interests)

Sections 324 to 326, 328 to 329 of, and Schedule 13 to, the Companies Act 1985 impose requirements relating to a director's interests in shareholdings in his company. All of these requirements will be repealed with effect from 6 April 2007 under the first Commencement Order.

Schedule 7 to the Companies Act 1985, together with section 234, sets out the contents of the directors' report required of all companies. Paragraphs 2, 2A and 2B of Schedule 7 require the disclosure of directors' interests in shares and debentures of the company and group companies, reflecting the requirements of sections 324 to 326, 328 to 329 and Schedule 13 of the 1985 Act. Paragraphs 2, 2A and 2B of Schedule 7 are repealed with effect from 6 April 2007 by the Second Commencement Order, but, under a saving in Schedule 6 to the Order, the repeal does not affect the operation of these provisions in relation to any directors' report referred to in section 234 of the 1985 Act that is approved before 6 April 2007.

d.) Copies of the legislation

The Companies Act 2006 (Commencement No.2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (draft) and the Companies Acts (Unregistered Companies) Regulations 2007 will be made available on the website of the Office of Public Sector Information:

<http://www.opsi.gov.uk/stat.htm>.

5. THE FIRST COMMENCEMENT ORDER

The first commencement Order, the Companies Act 2006 (Commencement No.1, Transitional Provisions and Savings) Order 2006 (SI 2006/3428) was laid before Parliament on 21 December 2006. Further information about the contents of the first Commencement Order is available on the DTI website:

<http://www.dti.gov.uk/bbf/co-act-2006/index.html>.

6. COMMENCEMENT OF REMAINING PROVISIONS IN THE ACT

An announcement of the timetable for the balance of the implementing provisions will be made shortly.

Department of Trade and Industry

8 February 2007

URN 07/662