



Companies Act Update 2006

Company records

As you are aware, the remaining provisions of the Companies Act 2006 came into force on 1 October 2009.

There have been some changes in relation to the continuing requirement for companies to keep certain records available for inspection. In some cases, these records are only available for inspection by the members but in others (notably the statutory registers), the public have access to them as well.

These changes also affect companies incorporated prior to 1 October 2009 (“existing companies”).

Statutory registers

Companies incorporated on or after 1 October 2009 are now required to keep a Register of Directors and a separate Register of Secretaries. However, existing companies, who have just one register, the Register of Directors and Secretaries, do not have to now produce two separate registers. One register continues to be sufficient. These registers continue to be available for inspection, either by the members or the public. However, as outlined in our bulletin on home addresses, the key change here is that it is the service address for the director/secretary concerned that is entered in these registers. The service address can be “the company’s registered office”, the director’s/secretary’s home address or another address, provided that it is a physical location where the delivery of documents can be acknowledged (as opposed to a DX number or PO Box).

All companies are also now required to keep a new register, the Register of Directors’ Residential Addresses, in which the company keeps a record of the home addresses of its directors. Importantly, this register is not available for inspection, either by the public or by the members. If a director’s home address is the same as his service address, all that is required is an entry to that effect.

All service addresses and (if different) home addresses for a company’s directors/secretary and any change in those addresses must be notified to Companies House. Unless and until an existing company notifies Companies House of a different service address for its

directors/secretary, Companies House will treat the home address that it already has on record as the service address for the director/secretary concerned.

Companies continue to be required to keep a Register of Members and a Register of Charges and both continue to be available for inspection, either by the members or by the public. A minor change requires companies to advise anyone wanting to inspect the Register of Members (or requesting a copy of it) whether the register is up to date and if not, the date to which it was last made up. As outlined in our previous bulletins, if a company suspects that someone wants to inspect the Register of Members for an improper purpose (bearing in mind that this register continues to include details of shareholders' home addresses), then companies are now able to make an application to the Court seeking permission to refuse to comply with that request.

Directors/secretaries: particulars to be registered

Another key change relates to the particulars that have to be entered in the Register of Directors and Register of Secretaries in respect of directors/secretaries who are individuals. So as to ensure that the public record is fully accurate, the register must now include any name by which the individual was formerly known for business purposes. Where the director/secretary has been known for business purposes by more than one name, all names must be entered in the register. There is no longer an exception for a married woman's former name (except where the former name has not been used for business purposes) although the exception relating to the former names of peers is continued. There is, however, no need to register any former name used for business purposes that was changed before the individual's 16th birthday, was not used after that date or which has not been used for the past 20 years or more. There is also no longer a requirement to register details of other directorships held by directors or make any entries relating to shadow directors (the Act perhaps finally reflecting the reality that the latter requirement is unlikely to be complied with anyway!).

Existing companies have until the date their next Annual Return is due to ensure that its Register of Directors and Secretaries is brought up to date to comply with these new requirements. If any extra details have to be entered in the register as a consequence of the changes, these will need to be notified to Companies House. However, if a company only need to delete existing entries (for example, to remove details of any other directorships held by directors), there is no need to make any notification to Companies House.

Inspection of company records

There is also a new regime in place regarding where a company can keep its records that are available for inspection. Formerly, the requirements varied according to the type of record concerned. Some records could only be kept at the company's registered office (for example, the Register of Directors and Secretaries) but others could be kept at other places (as in the case of directors' service contracts).

The Government was concerned that the old regime allowed companies to thwart the right of inspection by keeping records in many different far-flung places. Accordingly, all of these records must now be kept available for inspection at the company's registered office. However, a company is able to notify Companies House of a single alternative inspection place ("SAIL") where it can keep some or all of those records. The SAIL must be a place that is situated in that part of the UK in which the company is registered (a company registered in England & Wales cannot have its SAIL in Scotland, for example) and all records of the same

type (for example, all directors' service contracts) must be kept in the same place. If a company chooses to have a SAIL, when notifying Companies House of the location of its SAIL, the company also has to specify which records are going to be kept there and will also need to advise Companies House of any change as regards the records that are kept there in its Annual Return. A company must also disclose its SAIL (if any) and the type of records kept there to any person who deals with it in the course of business who makes a written request for that information.

A further key change is that anyone wishing to inspect any of these records or other documents that are available for inspection by the members under the Act must now give the company notice of their intention to do so (the notice period depends on the type of record/document but is at least 2 working days). Formerly, no notice had to be given, which tended to force many smaller companies into choosing their lawyers' or accountants' offices as their registered office so that their records would be readily available.

Annual returns

The changes that have already been introduced regarding the information that has to be provided about shareholders in Annual Returns are being continued. The changes mean that private companies are no longer required to give shareholders' addresses in their Annual Returns (although all shareholder names must continue to be provided).

The new prescribed form of Annual Return (Form AR01) also reflects the new requirements above regarding service addresses for directors and secretaries, the particulars that have to be registered in respect of directors and secretaries who are individuals and the location of a company's SAIL (if any) and the type of records that are kept there.

The new form must be used for Annual Returns made up to a date on or after 1 October 2009.

Contact us

If you would like Berryman to assist in ensuring that your company complies with the new requirements regarding company records or require any further information, please contact:

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