

Companies Act 2006 Update

Change to requirements relating to directors' and shareholders' addresses

Currently, both directors' and shareholders' addresses are a matter of public record.

The Government recognises that there have been instances where the right of public inspection has been abused - for example, using intimidation to directors/shareholders to force a company to withdraw from a contract. Accordingly, changes are being made in the Act as follows:

- New provisions coming into force on 1 October 2007 will require a person seeking to exercise a right to inspect the company's register of members to tell the company what the information will be used for and whom it will be passed to. The company will be entitled to refuse a request if it can persuade a Court that a request has not been made for a proper purpose.
- New provisions coming into force in October 2008 will limit the amount of information about shareholders required to be disclosed in a company's annual return and require directors to provide a service address for the public record, which can be other than their home address. Directors will still be required to provide their home address but this will be kept on a separate secure register to which access will be restricted.

Register of members

From 1 October 2007, where:

A company receives a request (whether from a member or otherwise) to inspect the company's register of members or for a copy of the register and the company is not at that time obliged to deliver an annual return made up to a date before 1 October 2008, the person making the request will be required to tell the company what the information will be used for and whom it will be passed to.

Following such a request, the company has 5 working days to decide whether to comply with the request or make an application to Court for an order relieving it of that obligation on the ground that the request has not been made for a proper purpose.

If the Court makes an order directing the company not to comply with the request, the Court may also require the person who made the request to pay the company's costs. It is also possible for an order to be made in respect of a group of people, rather than just the person who made the request.

The Act contains no definition of “proper purpose” and it will be for the Court to determine whether any particular application is for a proper purpose.

Annual returns

In order to ensure that the new provisions relating to the register of members are not subverted by the availability of information regarding shareholders' addresses at Companies House, the amount of information about shareholders required to be disclosed in a company's annual return is also to be limited. Private companies and PLCs whose shares are not admitted to trading on a regulated market in the UK or EU (a regulated market includes the LSE but not AIM) will be exempt from the obligation to supply their shareholders' addresses. PLCs whose shares are admitted to trading on a regulated market will be exempt from the obligation to supply addresses of shareholders who hold less than 5% of the company's shares. These changes will affect annual returns filed after 1 October 2008.

Directors' home addresses

With effect from 1 October 2008:

- Directors will be required to provide a service address for registration in the register of directors, which will continue to be available for public inspection. The service address can be the director's home address but as will be seen below, this will no longer be apparent from the public record. A director may give “the company's registered office” as his or her service address.
- Every company will be required to keep a new register called a “register of directors' residential addresses”. The home address of each director who is an individual must be recorded in this register. If the director's home address is the same as his service address, all that is required is an entry to that effect. This register will not be open to public inspection.
- Companies House must be notified of both addresses on appointment and of any change in either of those addresses.
- Any information as to a director's home address or information that a director's service address is the same as his home address will constitute “protected information” for the purposes of the Act.
- Protected information must not be disclosed or used either by the company or Companies House except as is permitted by the Act.
- Since there are around 5 million registered directors, Companies House have said that they will be unable to remove all existing home addresses from the public record. In the circumstances, the changes will not be retrospective.
- However, it is proposed that certain categories of directors (in particular, those at risk of violence or intimidation) whose home address was filed during the period 1 January 2003 to 1 October 2008 will be able to apply for their home address to be made unavailable for public inspection (pre-2003 information is held on microfiche rather than electronically and is therefore difficult to remove) and for their addresses not to be provided to credit reference agencies.

- Companies House need only omit a director's home address where it is contained on a form where directors' home addresses are required and where it is entered on the form in the appropriate place. Companies House will not be obliged to check all documents submitted to ensure that an address has not been inadvertently disclosed. In the circumstances, care will need to be taken when filing forms at Companies House.
- The company or Companies House can disclose protected information where permitted to do so by Court order. The Court can make an order where there is evidence that service of documents at a director's service address is not effective to bring them to the notice of the director or where the home address is needed for the enforcement of a Court order (an application can be made by the company, Companies House, liquidator or any other person appearing to the Court to have a "sufficient interest"). Companies House will also have power to put a director's home address on the public record if the director's service address proves ineffective.

It will therefore be in a director's interests to respond to all communications from Companies House promptly and to ensure that the service address on the public record is kept up to date and accurate.

Contact us

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