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news

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Companies Act 2006

The Companies Act 2006 (the "Act") received Royal Assent on 8 November 2006 but, for the most part, will not come into force until October 2008. This newsletter looks at the key provisions for pension schemes and when they are likely to be implemented.

Companies Act 2006

Background

- The Act is intended to be a restatement of most of the provisions of the current Companies Acts and the objective is to simplify and modernise company law.
- Once in force, the Act will largely apply to companies directly. However, many provisions will need to be set out in secondary legislation.

Which provisions…

…will affect pension schemes?

- The Act's main direct impact on pension schemes (from 2008) will be in two areas:

  - the provision of indemnities to directors of corporate trustees;

  - dealing with conflicts of interest.

Indemnities

Special provision for directors of corporate trustees

- Subject to certain exceptions, existing company law prohibits companies from indemnifying their own directors and the directors of any "associated companies" against any liability incurred in relation to the company.
- The Act recognises the need for special provisions in respect of corporate trustees and permits "qualifying pension scheme indemnity clauses".
- Companies will be allowed to indemnify trustee-directors against liability incurred in connection with the company's activity as trustee of a pension scheme.
- However, such indemnities may not cover criminal fines, fines imposed by regulatory bodies or any liability incurred in defending civil or criminal proceedings in which judgment is given against the director or directors in question.

Conflicts of Interest

- The Act purports to codify existing common law duties owed by directors to their company.
- Of particular significance for directors of a corporate trustee are the duties to:

  - declare the nature and extent of any interest in proposed transactions or arrangements to fellow directors; and
  - avoid conflicts of interest[1] generally (this duty will not be infringed provided authorisation has been given by the remainder of the board).
- The new Act will therefore bring the need to manage conflicts of interest which already exist into even sharper focus.

Disclosure

- The Act includes a power to introduce regulations in the future to require institutional shareholders (such as pension schemes) to disclose how they exercised their voting rights at company general meetings.

Transparency Directive

- The Transparency Directive contains provisions about the disclosure by investors of major shareholdings in publicly traded companies.
- Under the Act, the Financial Services Authority (FSA) is given the job of introducing rules to implement this.
- The FSA has now made final rules which come into force on 20 January 2007, the broad thrust of which is similar to the rules which already apply under existing company law.

Implementation Timetable

- The majority of the provisions of the Act which implement the Transparency Directive will be effective from 20 January 2007.
- The codification of directors' duties will be effective by October 2008.
- The Government intends to consult on its implementation plans (including those relating to secondary legislation) in February this year. Its plans may include possible transitional arrangements.
- But because implementation is likely to be on a piecemeal basis, it may be some time before more information is available on the issues of specific interest to pension schemes.

1 The duty is to avoid a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

SACKER & PARTNERS

Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com