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Audit & Accounting Newsletter

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Foreword:

Welcome to the Anderson Anderson & Brown LLP Audit and Accounting newsletter which we hope you will find useful and informative.

This issue deals with the most interesting changes to company legislation introduced by the Companies Act 2006. Changes impact accounting periods commencing on or after 6 April 2008 unless otherwise noted.

Where you believe it to be appropriate, please feel free to copy the newsletter to your colleagues.

If you would like to discuss any of the points noted or the much wider range of changes introduced by the Companies Act 2006 then please do not hesitate to contact your partner or manager at A²+B, alternatively contact Allan Hunter, our Senior Manager responsible for technical guidance.

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Companies Act 2006: Main Highlights

- **Changes to thresholds for small and medium sized companies**
- **Medium sized groups and consolidation requirements**
- **Changes to Companies House filing deadlines**
- **Changes to penalties for late filing of accounts**
- **Changes in related party disclosures**
- **Abolition of authorised share capital**
- **Reduction of share capital**
- **Abolition of AGMs**
- **Financial Assistance**
- **FAQs**

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Changes to thresholds for small and medium sized companies

The thresholds for small and medium sized companies have changed. Further, the thresholds for audit exemption have also been changed. Refer to the FAQs.

Medium sized groups and consolidation requirements

Medium sized groups will have to prepare and file consolidated accounts with the Registrar of Companies and cannot now opt out of the requirement to prepare them. Such accounts will also require consolidated comparatives including a cash flow statement. While consolidation is not necessarily complicated it will require some effort to ensure that all the relevant information for consolidation is available. This is especially important given the shortening of filing deadlines which Companies House has introduced.

Changes to Companies House filing deadlines

Filing deadlines have been reduced for PLC's from 7 to 6 months after the year end and for private companies from 10 to 9 months. Refer to the FAQs.

Changes to penalties for late filing of accounts

The late accounts filing penalties irrespective of the accounting reference date have been increased with effect from 1 February 2009. Refer to the FAQs.

Changes in related party disclosures

Legal disclosure requirements have been significantly softened although the requirement to disclose loans to directors remain for companies. Obviously, the requirements of FRS 8 remain for full accounts but for abbreviated accounts the only disclosure remaining is that for directors loans.

Abolition of authorised share capital

With effect from 1 October 2009 the concept of an authorised share capital, the ceiling of the number of shares which may be issued without having to obtain the consent of the shareholders to an increase, will be abolished. As a result, if the shareholders wish to restrict the ability of the company to issue new shares then they would need to amend the Articles to include suitable restrictions; otherwise there is no restriction on the scale of share capital. Existing authorised share capital can be removed by ordinary resolution.

Reduction of share capital

Historically, reduction of share capital could only be done with the consent (by special resolution) of the shareholders, where the company had the power in its Articles to do so, and the reduction of capital had to be confirmed by an application to the Court. In addition, there was no guarantee that the Court would consent where the arrangement did not ensure the safeguarding of the interests of the company's creditors.

As of 1 October 2009, however, private companies limited by shares can take advantage of a streamlined route. Firstly they will not require a specific authority in their Articles to do so - they will be able to do so unless the Articles specifically state they cannot. Secondly, instead of having to apply for Court approval, a new solvency statement has been introduced.

Abolition of AGMs

With effect from 1 October 2009, private companies are not obliged to hold annual general meetings - only public companies are required to do so, and they must be held within six months of the accounting reference date.



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Financial Assistance

There had been a historic prohibition on a private company giving any sort of financial assistance for the purpose of acquisition of shares in itself or its holding company. Whilst it was possible to 'whitewash' the transaction by a prescribed set of steps, these were cumbersome, necessitated the involvement of the auditors, and generally added considerable expense to the transaction.

As of 1 October 2008, where the transaction is the acquisition of a private company, an intra-group reorganisation, or a public-to-private transaction, procedures have been simplified such that whitewash procedures are no longer required. Where there are public company elements to the structure then the prohibition will still apply.

The directors will still have to bear in mind a number of issues, including:

- whether the company has the capacity to give the financial assistance, which will be determined by its Memorandum and Articles;
- the codified directors' duties already imposed by the new Act, including in particular the duty of a director to act in good faith to promote the success of the company for the benefit of its members as a whole;
- where the company is on the verge of insolvency the duty outlined above is replaced by a duty to have regard to the interests of the creditors of the company;
- whether or not the financial assistance would breach other provisions relating to the maintenance of capital - for example, a company with no distributable reserves gifting money to a shareholder to purchase further shares in the company would be prohibited as it would result in an unlawful reduction of capital in the company.



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What are the conditions to qualify as a small company?

A small company must meet at least two of the following conditions:

- annual turnover must be not more than £6.5 million;
- the balance sheet total must be not more than £3.26 million;
- the average number of employees must be not more than 50.

What are the conditions to qualify as a small group?

To qualify as small, a group of companies must meet at least two of the following conditions:

- aggregate turnover must be not more than £6.5 million net (or £7.8 million gross);
- the aggregate balance sheet total must be not more than £3.26 million net (or £3.9 million gross); and
- the aggregate average number of employees must be not more than 50

What are the conditions to qualify as a medium-sized company?

To be a medium-sized company, you must meet at least two of the following conditions:

- annual turnover must be no more than £25.9 million;
- the balance sheet total must be no more than £12.9 million;
- the average number of employees must be no more than 250

Are there special rules for medium-sized groups?

No. A medium-sized parent company must prepare group accounts and submit them to Companies House.

Which small companies qualify for audit exemption?

To qualify for audit exemption, a company must

- qualify as small (see above);
- have a turnover of not more than £6.5 million; and
- have a balance sheet total of not more than £3.26 million.

How much are the penalties for late filing?

As outlined in the table below increased penalty bands apply to all accounts that are delivered late on or after 1 February 2009. The amounts set out in the table below will be doubled in cases where:

- The accounts are filed late under the Companies Act 2006; (i.e. accounts for financial periods beginning on or after 6 April 2008) and
- The previous year's accounts under the 2006 Act were also late.

The following table shows these bands:

Length of delay (measured from the date the accounts are due)	Private company	Public company
Not more than 1 month	£150	£750
More than 1 month but not more than 3 months	£375	£1,500
More than 3 months but not more than 6 months	£750	£3,000
More than 6 months	£1500	£7,500



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