

This fact sheet is part of a wide range of technical services provided by Bond Partners LLP.

Mike Marcus, the Technical Partner, can be contacted on 0870 850 6007 or mdm@bondpartners.co.uk if you have any queries on any of the topics covered or for a range of technical services.

Unless otherwise stated, the following Companies Act 2006 changes only apply to companies. Applying the provisions of the Act to LLPs will not generally commence until October 2008.

All Section numbers refer to the Companies Act 2006

Company Secretary of Private Companies

From 6 April 2008, private limited companies will no longer be required to have a Company Secretary. However, some companies whose Articles are based on a pre-1985 version of Table A may be required by their Articles to have one and they will have to amend their Articles to take advantage of this change.

All Secretaries in office at 6 April 2008 will continue to hold office, but it will not be necessary to replace them once they retire as Secretary.

Where a company does not have a Company Secretary, under Section 270 of the Companies Act 2006, anything:

- addressed to the Company Secretary is to be treated as being addressed to the Company.
- that is required to be authorised or done by the Secretary must be done by a director or a person specifically authorised on behalf of the directors.

Whilst companies are required to keep a Register of Directors & Secretaries, where there is no Secretary, the Register of Secretaries will be empty.

Public Companies are still required to have a Company Secretary.

Execution of Documents

From 6 April 2008, Section 44 permits a single director to execute a deed or document provided his signature is witnessed (previously 2 directors or one director and the secretary were required).

The previous position relating to the use of the company seal is preserved under the new legislation.

Filing Requirements of Accounts

For accounting periods commencing on or after 6 April 2008:

- the filing deadlines for filing accounts with the Registrar of Companies have reduced by 1 month. Private companies will have to file their accounts within 9 months, PLC's within 5 months (*Section 420*).
- the filing date is measured to the end of the month in which they are due, rather than the equivalent day in the month. For example a private company with an accounting reference date of 28 February, will have until 30 November to file them.

These changes apply to both companies and LLPs.

Publication of Small Company Accounts

Since 1 October 2007 private companies have not needed to hold an AGM. Accounts must therefore be distributed to Members when filed with the Registrar or by the end of the period allowed for doing so, if earlier.

For accounting periods commencing on or after 6 April 2008, small companies need only file a balance sheet and notes. Section 444 allows a company using the 'small companies regime' to file just a balance sheet and supporting notes, although it can also deliver a copy of its Profit & Loss Account and Directors Report. This means that a small company can avoid filing its full accounts without the need to prepare abbreviated accounts. The copy balance sheet must include the statement on the balance sheet that the accounts have been delivered in accordance with the provisions applicable to the Small Companies regime and show the name of the person who signed the balance sheet on behalf of the Board of Directors.

Where a small company having an audit deposits only a copy balance sheet, it must attach a copy of the audit report on the full accounts.

If abbreviated accounts are filed and the company has been audited, the special auditors report on the abbreviated accounts must be filed (*Section 449*).

Medium Sized Groups

For accounting periods commencing on or after 6 April 2008 medium sized groups will need to prepare consolidated accounts. Small groups will still be exempt from preparing group accounts.

The exemptions from preparing group accounts under the 1985 Act have been carried forward. They relate to the following and it is important to check that the detailed conditions apply before taking advantage of them:

- *Section 400*: Exemption for company included in EEA group accounts of a larger group.
- *Section 401*: Exemption for company included in non-EEA group accounts of larger groups, provided these accounts are prepared in accordance with accounting principles largely equivalent to IFRS or UK GAAP.
- *Section 402*: Exemption if no subsidiary undertakings need to be included in the consolidation; the specific details of this exemption are contained in Section 405.

As a result of the changes to the legal duties of auditors not to knowingly or recklessly cause an audit report to include any matter that is misleading, false or deceptive in a material particular, or omit a statement required by legislation (including in respect of the directors wrongly taking advantage of the exemption from preparing group accounts) (*Section 507*), there is a burden placed on auditors to make sure that group accounts are prepared where they are required by law. Therefore, where a medium-sized group does not prepare group accounts a qualified audit report would need to be issued in relation to group accounts. Also where group accounts are prepared, but they are based on limited information, a qualified audit report will be required.

This change will have a significant effect on the preparation of accounts of medium-sized groups. We should ensure, whilst doing the current accounts, that the information required to prepare group accounts is available, particularly in respect of acquisition costs and fair values of assets acquired. Also it may be cost-effective to prepare the group accounts that will comprise the comparatives when this comes into force at the time of preparing those accounts.

Narrative Reporting

The requirements for an expanded business review are largely unchanged for unquoted companies.

All companies, including quoted companies, are exempt from disclosing information about impending developments or matters in the course of negotiation if the disclosure would be, in the opinion of the directors, seriously prejudicial to the interest of the company.

For accounting periods commencing on or after 6 April 2008, the Act requires quoted companies to ensure that their business review includes, to the extent "necessary for an understanding of the development, performance or position of the company's business":

- the main trends and factors likely to affect the future development, performance and position of the company's business
- information about:
 - environmental matters (including the impact of the company's business on the environment)
 - the company's employees
 - social and community issues, including information about any company policies on those matters and their effectiveness
 - persons with whom the company has contractual or other arrangements which are essential to the company's business (the 'supply chain clause').

This largely replicates the requirements of the OFR.

The supply chain clause does not require companies to list their suppliers and customers, or to provide detail about contracts. Instead quoted companies need to disclose the 'significant relationships', such as with major suppliers, key customers or key employees, which are likely to influence the performance of the business and its value. It will be for the directors to judge what they need to report. The Act does not require quoted companies to disclose information about a person if the directors believe that the disclosure would be "seriously prejudicial to that person and contrary to the public interest".

The Act gives directors a safe harbour from civil liability in respect of statements or omissions made in the directors' report and directors' remuneration report (and any summary financial statement derived from those reports). Liability will only attach to directors if such statements are untrue or misleading and are made in bad faith or recklessly or, in the case of an omission, there is dishonest concealment of material facts.

However, directors will only be liable to the company, and not to shareholders, potential investors or third parties. The criminal liability regime remains unaffected by this change. The change means that statements included in the expanded business review (including the forward-looking, non-financial elements) will benefit from the safe harbour.

Directors' service agreements

Under Section 188, any director's service agreement of more than two years requires the consent of the members. If this approval is not obtained, the notice provision becomes void and the director will only be entitled to reasonable notice.

Under Section 227, the members are entitled to inspect any director's service contract, contract for services and letter of appointment, which must be kept available at the company's registered office for that purpose. Exceptions for contracts with less than a year to run and those requiring the director to work outside the UK have not been retained.

Calling General Meetings

Under Section 302, the directors may call a general meeting.

Section 303 allows members with 10% voting rights to require the directors to call a general meeting. If the company is a private company that has not had a general meeting for more than a year, the percentage is reduced to 5%.

The Signature on the Auditors Report

For audits for accounting periods commencing on or after 6 April 2008, auditors will need to sign the audit report in their own name, for and on behalf of the firm.

Section 503 requires that, where the auditor is a firm, the report must be signed by the "Senior Statutory Auditor" in their own name, for and on behalf of the firm and be dated.

The APB has issued Bulletin 2008/6 "The 'Senior Statutory Auditor' under the United Kingdom Companies Act 2006" to clarify the meaning of the term "Senior Statutory Auditor".

The Senior Statutory Auditor must be a person eligible for appointment as auditor of the company and the APB Guidance takes this to be the same as that of "Engagement Partner" used in the International Standards on Auditing.

Where there is a change of Engagement Partner during the reporting period, the new Engagement Partner should review the work done to the date of the change, and not rely on the work of his predecessor, in forming his opinion.

Only the Senior Statutory Auditor may sign the audit report – another responsible individual in the firm cannot sign on his behalf. Where the Senior Statutory Auditor is absent, but takes responsibility for the audit they may sign the auditors report using electronic means (such as fax or email).

In the case of joint audits, both firms must appoint Senior Statutory Auditors and both of them must sign the auditor's report.

Under section 506 there are some circumstances in which the names of the auditor and that of the Senior Statutory Auditor may be omitted. The circumstances are those of a serious risk of violence or intimidation faced by the auditor or by the Senior Statutory Auditor. In such cases the company must pass a resolution that the names should be omitted from the auditor's report and the Secretary of State must be notified.

Procedures where an Auditor ceases to Hold Office

There are important changes brought in by Sections 519 to 525 that apply where an auditor ceases to hold office on or after April 2008. The term of office runs from AGM to AGM, with deemed reappointment in respect of private companies (under Section 487).

The changes apply differently depending on whether the appointment is in respect of:

- an Unquoted non-major audit
- an Unquoted major audit
- a Quoted Audit

A quoted company is one that is listed on London Stock Exchange Main Market, or is officially listed in a state within EEA, or is admitted to dealing on the New York Stock Exchange or NASDAQ. An AIM company is not quoted.

A major audit is any audit where there is a major public interest in the financial condition of the company. The Professional Oversight Board have defined a major audit as being one of:

- a UK incorporated AIM or PLUS-quoted company.
- an Unquoted company or group which has either
 - group turnover in excess of £500 million, or
 - group long term debt in excess of £250 million and turnover in excess of £100 million.
- an Unquoted company or group which is a subsidiary of a foreign parent company where the turnover of the UK Group or company is in excess of £1,000 million.
- charitable companies with income exceeding £100 million.
- subsidiary companies of the above.

The Rules that apply are shown in the tables overleaf:

Type of Audit	When auditor ceases to hold office	Circumstances	Procedures
Unquoted non-major audit	At end of term of office	N/A	1. A statement of any circumstances connected with the auditor ceasing to hold office must be filed at the company's registered office by the auditor within 14 days. If there are no circumstances connected with leaving office then a statement to this effect must be filed (S519).
	Before end of term of office	No circumstances (i.e there are no matters that the auditors consider they have to tell the shareholders and creditors about)	1. A statement that there are no circumstances connected with the auditor ceasing to hold office must be filed at the company's registered office by the auditor within 14 days (S519) 2. A notice must be sent to the audit authority (probably ICAEW or ACCA, but to be confirmed) by the auditors informing them that they have ceased to hold office. This must be accompanied by a copy of the statement of circumstances. As this states there are no circumstances, there must be a statement of the reasons for ceasing to hold office (e.g. the company has been taken over and the new parent is installing its auditor to replace us). We need to be careful here as there could be a risk if the reason given is something that should have been reported to the members or creditors in a statement of circumstances. 3. The company must also notify the audit authority that the auditors have ceased to hold office and give a statement of the reasons for this.
		Circumstances	1. A statement of the circumstances connected with the

Type of Audit	When auditor ceases to hold office	Circumstances	Procedures
			<p>auditors ceasing to hold office must be filed at the company's registered office by the auditors within 14 days (S519)</p> <ol style="list-style-type: none"> 2. A notice must be sent to the audit authority (probably ICAEW or ACCA, but to be confirmed) by the auditors informing them that they have ceased to hold office. This must be accompanied by a copy of the statement of circumstances. 2. The company must also notify the audit authority that the auditors have ceased to hold office. The notice must be accompanied by a statement of the reasons for the auditors ceasing to hold office and a copy of the auditors' statement of circumstances

Type of Audit	When auditor ceases to hold office	Circumstances	Procedures
Unquoted Major Audit	At end of term of Office	No circumstances	<ol style="list-style-type: none"> 1. A statement that there are no circumstances connected with the auditor ceasing to hold office must be filed at the company's registered office by the auditor within 14 days (S519). 2. A notice must be sent to the audit authority (probably the FRC Professional Oversight Board, but to be confirmed) by the auditors informing them that they have ceased to hold office. This must be accompanied by a copy of the statement of circumstances. As this states there are no circumstances, there must be an additional statement of the reasons for ceasing to hold office. We need to be careful that the reasons given are not circumstances that should have been reported to members or creditors.
		Circumstances	<ol style="list-style-type: none"> 1. A statement of any circumstances connected with the auditors ceasing to hold office must be filed at the company's registered office by the auditor within 14 days (S519). 2. A notice must be sent to the audit authority (probably the FRC Professional Oversight Board, but to be confirmed) by the auditors informing them that they have ceased to hold office. This must be accompanied by a copy of the statement of circumstances.
	Before the end of term of office	No Circumstances	As for unquoted non-major audit, except the relevant audit authority will probably be the FRC Professional Oversight Board.
		Circumstances	As for unquoted non-major audit, except the relevant audit authority will probably be the FRC Professional Oversight Board.

Type of Audit	When auditor ceases to hold office	Circumstances	Procedures
Quoted Audit	At the end of term of office	N/A	As Unquoted major audit with circumstances, since there is no facility for there to be a statement of no circumstances.
	Before end of term of Office	N/A	As Unquoted major audit with circumstances, since there is no facility for there to be a statement of no circumstances.

Note:

Where there are circumstances, the deadline for the deposit of the Statement with the Registrar of Companies and the procedure for informing shareholders etc are the same as under the Companies Act 1985.

In addition to the above reporting, the relevant audit bodies must refer notices sent to them to the accounting authorities. For Listed and large private companies this is the Financial Reporting Review Panel. For smaller companies this is likely to be the FRC Professional Oversight Board.

Handover of Information to Successor Auditors

Article 23(3) of the EU Statutory Audit Directive has led to a change in company law when there is a change of auditor after 6 April 2008.

As a result, the successor auditor has a right (but not an obligation) to look at the working papers of the predecessor auditor. The predecessor auditor has to grant access to the working papers but has no obligation to provide photocopies or extracts from them to the successor auditor.

These new arrangements are designed to help the new auditor to understand the business of the new client and with auditing the opening balances and comparatives. They cannot be used for any other purpose and the new auditor can be asked to provide reasons which demonstrate that information requested is relevant to this.

There is no intention that the procedure will increase liability – the key point is that each auditor (the ‘old’ and the ‘new’) remains solely responsible for their respective audits. The successor auditor is not relieved of any duties or obligations merely by reviewing the predecessor’s working papers, and no new ones are created for the predecessor auditor.

ICAEW and ACCA will be issuing additional guidance on this topic including standard letters that can be sent to the client and between the auditors.

The right only relates to the request for information from the immediate predecessor. If the immediate predecessor did not do an audit, there is no right to go back and request information from their predecessors.

Limitation of Auditor Liability

From 6 April 2008 sections 534-538 come into force. These sections will enable a company to enter into a Liability Limitation Agreement (“LLA”) with its auditors to limit the liability of the auditors.

The LLA can cover any liability for negligence, default, breach of duty, or breach of trust. It cannot cover more than one financial year and so must always specify the year to which it relates. The shareholders must authorise its principal terms (which must cover the sorts of fault by the auditor that are covered and the amount to which liability is limited) and the limit must be “fair and reasonable”.

The shareholder agreement is by ordinary resolution unless the Articles specify a higher majority. Agreement can be withdrawn by special resolution before the LLA is signed or before the beginning of the financial year to which it relates.

Private companies can authorise a LLA by the company by passing a resolution:

- before it enters into the LLA, which either waives the need for approval or approves the principal terms; or
- granting approval of the LLA after it has been entered into.

Any waiver needs to be renewed annually.

The legislation does not require the LLA to be framed in any particular way and the FRC has produced draft guidance on the practical implications of entering into one. The guidance does not attempt to determine what is “fair and reasonable” but it does illustrate the various approaches that companies and their auditors might take and the issues to consider in each case. For example, the LLA could:

- base the liability limitation on the auditor’s proportionate share of responsibility for any loss;
- set the limit purely by reference to the fair and reasonable test;

- set a cap on the auditors liability, expressed either as a monetary amount or based on an agreed formula;
- use a combination of the above

If a Court decides that the limitation would result in the company recovering less than it considered to be fair and reasonable, it could substitute an amount it considered was fair and reasonable.

The FRC hope to finalise this guidance shortly, but there is resistance to aspects of LLA's from some quarters, together with concerns over directors being able to satisfy themselves that it is in the company's best interests for it to enter into a LLA with its auditors. Ironically, final agreement is probably dependent on the opinion of the US SEC.

Where a LLA is in place disclosure will be required in the accounts. Draft Regulations specify that disclosure is required of:

- the principal terms of the agreement.
- the date of the approval resolution or where relevant (in the case of private companies) the resolution waiving the need for shareholder approval. .

APB issues Revised Standard on Using the Work of Another Auditor

The APB has issued a revision of ISA (UK and Ireland) 600 'Using the Work of Another Auditor', effective for audits of financial statements for periods commencing on or after 6 April 2008.

The main effect of the revision is to add a new requirement that in an audit of group financial statements the principal auditor should document any review that it undertakes, for the purpose of the group audit, of the audit work conducted by other auditors. This reflects a new requirement in Schedule 10, paragraph 10A, of the Companies Act 2006, implementing a provision of the European Statutory Audit Directive.

New APB Bulletins

The APB have issued the following Bulletins to update guidance for the changes brought in by the Companies Act 2006 from 6 April 2008:

- 2008/3 "The Auditors Statement on the Summary Financial Statements in the UK" (*replaces Bulletin 1999/6*)
- 2008/4 "The Special Auditor's Report on abbreviated accounts in the UK" (*replaces Bulletin 2006/3*)
- 2008/5 "The Auditor's Reports on revised accounts and reports in the UK" (*replaces the relevant section of Practice Note 8*)

Money Laundering – Risk of dealing with people and firms from certain countries

HM Treasury have issued a notice (originating from FATF) about perceived higher Money Laundering and Terrorist Financing risks in the following countries. As a result people and firms from these countries should be treated as high risk and be subject to Enhanced Due Diligence procedures on client acceptance and ongoing monitoring:

- Uzbekistan

- Iran
- Pakistan
- Turkmanistan
- Sao Tome and Principe
- The northern part of Cyprus

Including goodwill within Capital Resources

The transitional provisions allowing Insurance Intermediaries to include goodwill in their calculation of FSA Capital Resources ended on 15 January 2008.

From this date such firms have to meet the Capital Resources Requirement after deducting goodwill.

Registration of Non-Executive Directors and Charity Trustees with HMRC under Money Laundering Regulations

There has been a lot of debate about whether NED's and Charity Trustees need to register with HMRC.

The short answer is that they do unless:

- They are unpaid. Since it is very rare for Charity Trustees to be paid, it is unlikely that many will be affected.
- They are already regulated under another supervisory body. Hence qualified accountants, lawyers, licensed insolvency practitioners, chartered tax advisors and persons authorised by FSA do not have to register separately with HMRC.

No responsibility for acting upon or refraining to act upon any item included in the factsheet can be accepted by Bond Partners LLP or the contributor of the item.