

# Companies Act 2006: April and Afterwards

Business Law Department  
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# Recap and Reflection

Daniel Milnes



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# Recap and Reflection

- Companies Act 2006
- Implementation in Stages
- Transitional Rules
- Guidance – published after implementation
- Variable effects on existing companies
- Action to resolve (some) uncertainty



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## Recap and Reflection

- January 2007
  - Communications between members and companies
  - Hard copy, electronic or website
  - Directors' liability for false & misleading reports



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## Recap and Reflection

- April 2007
  - Repeal of director's notification of dealing in company shares
  - Takeovers



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## Recap and Reflection

- October 2007
  - Statutory Duties of Directors
    - SS171-178
    - Especially 172
  - New rules on Directors dealing with own companies
    - Loans to Directors permitted
    - Payments for loss of office more regulated



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## Recap and Reflection

- October 2007
  - Written Resolutions by Majority
    - Effect on inconsistent Memorandum and Articles of Association?
    - New statutory procedure overrides
  - New Table A (modified twice)
    - Removes obsolete rules on Directors
    - Takes out old regulation on written resolutions



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## Recap and Reflection

- Casting Votes
  - SS 281 and 282 abolish casting vote
  - Saving for Articles of Association which provide for it
  - Can revert back if had it before 01.10.07
- Private Company AGMs
  - Still required if in Articles of Association
  - But not if Elective Resolution in place to dispense with AGMs
  - 1948 Table A companies most affected



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## Accounts and Audit

Pauline Rigby



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## Accounts and Audit

- Accounts
  - Most of these rules come into force on 6<sup>th</sup> April 2008
  - The accounting rules have not greatly changed except as follows:
    - Private companies must now file their accounts within nine months;
    - Plcs must file their accounts within six months;
    - Quoted companies must publish their accounts, reports and preliminary results on websites;
    - The Secretary of State will have new powers to alter accounting requirements by regulation.



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## Accounts and Audit

- Directors' Report
  - The requirements of the directors' report have been expanded to include a new item the **Business Review**
  - This came into force with effect from 1<sup>st</sup> October 2007



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## Accounts and Audit

- Business Review
  - Content of the business review are largely repeated
  - Now states underlying purpose of it is:
    - To inform members; and
    - Help them assess how the directors have performed their duty to promote the success of the company under s.172



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## Accounts and Audit

- Applies to all companies except those subject to small companies regime for accounts and reports.
- The general provisions are:
  - Fair review of the company's business; and
  - A description of the principal risks and uncertainties facing the company
- Additional content to be included for companies admitted to the Official List



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## Accounts and Audit

- S 463 – compensation for loss if report untrue, misleading or dishonestly conceals a material fact
  - 20<sup>th</sup> January 2007 came into effect



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## Accounts and Audit

- Audit
  - Changes with effect from 6 April 2008 – much of the law restates what is already in place
  - Appointment of auditor for private companies – regime came into effect 1<sup>st</sup> October 2007



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## Accounts and Audit

- Auditors
  - Auditor (where there is one) must be appointed within 28 days of date of sending out the accounts to the shareholders
  - Appointment will run from the end of the 28 day period from the circulation of the accounts until the equivalent date next year
  - Deemed reappointed unless decided otherwise



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## Accounts and Audit

- Senior Statutory Auditor?
- Prosecution for knowingly or recklessly causing an auditor's report to include anything misleading, false or descriptive, or omitting a required statement of a problem with the accounts



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## Accounts and Audit

- Auditors' Liability
  - Indemnity from the company?
  - **Liability Limitation Agreement**
    - Members' approval required
    - Must be fair and reasonable
    - Terms likely to be indicated in the annual report
    - Terms that are acceptable to be included in such agreements have yet to be established in regulations to be drawn up



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## Secretaries and Signatures

Alexandra Sagar



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## Secretaries and Signatures

- April 2008: the end of the Company Secretary?
- Not in public companies
- Not necessarily in private companies



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## Secretaries and Signatures

- Provisions of the Companies Act 2006 on Secretaries
- Part 12: SS 270 – 280 inclusive
- Private company not required to have a secretary
  - “private company without a secretary”
  - “private company with a secretary”



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## Secretaries and Signatures

- In a private company without a secretary
  - Things authorised or required to be given or sent to the secretary
  - Things authorised or required to be done by or to the secretary
  - “A person authorised generally or specifically in that behalf by the directors”



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## Secretaries and Signatures

- In a public company
  - Rules remain as they were
  - Must have a Secretary
  - Secretary of State can order appointment
  - Secretary must be suitably qualified



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## Secretaries and Signatures

- In any company with a secretary
  - What if office vacant or cannot act?
  - Keep records of Secretaries
  - Notify Companies House of changes
  - Can register a service address (registered office will do)
  - Acting in dual capacity not valid



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## Secretaries and Signatures

- Dealing With Documents after April
  - SS 43 – 47 inclusive
  - Company Contracts
    - Signing v Execution
    - In writing under common seal or
    - By a person acting under its authority, express or implied



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## Secretaries and Signatures

- Executing Documents after April
  - Common Seal or
  - Signature under s44
    - Two authorised signatories or
    - A director in the presence of a witness
  - Who is a authorised signatory?
    - Director
    - Secretary (where there is one)



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## Secretaries and Signatures

- Executing Documents after April
  - S44(4): “A document signed in accordance with subsection (2) and expressed in whatever words to be executed by the company has the same effect as if executed under the common seal of the company.”
  - Watch out for what is written near the dotted line
  - Valid in favour of a purchaser if purports to be signed under s44
  - Sign separately for each company
  - Works for deeds as well (e.g. property sales)
  - Company can still grant power of attorney



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# Debentures and Distributions

Charlotte Wood



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# Debentures and Distributions

- Debentures

- SS 738 – 754 inclusive
- Minor changes from the 1985 Act
- Fundamentals stay the same
- Does cover debentures creating charges over company assets
- New provisions on company charges
  - October 2009



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# Debentures and Distributions

- Debentures

- What is a “debenture”?
- Can be perpetual
- Registration of Allotment of Debentures
- Register of Debenture Holders
- Rights to inspect and take copies



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## Debentures and Distributions

- Debentures
  - Time for response to request
  - S745 – new in 2006 Act
  - Five days to comply or apply to Court
  - Court may order not to comply if request not for a proper purpose
  - Order may cover future similar requests
  - Offence of making false requests
  - Ten-year time limit for claims in connection with registration of debentures



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## Debentures and Distributions

- Debentures
  - Priority where Debenture secured by a floating charge (S 754)
  - If floating charge holder takes possession of property and the company is not being wound up then assets must be used to pay preferential debts first



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## Debentures and Distributions

- Distributions (SS 829 – 853)
  - Largely the same as the 1985 Act but:
    - Some changes
    - Case on interpretation
  - What is a “Distribution”?
  - Only out of profits “available for the purpose” (S 830)
  - Net asset restriction on public companies



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## Debentures and Distributions

- Distributions
  - Different rules for investment companies
  - Justification by reference to Relevant Accounts
    - Last annual accounts circulated or
    - Interim Accounts or
    - Initial Accounts
  - Roll up dividends where same Relevant Accounts used



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## Debentures and Distributions

- Distributions
  - Non-cash distributions
  - SS 845 and 851 – new content
  - Amount of distribution assessed by reference to book value of relevant asset
  - Amount = book value – consideration
  - Adjustment of distributable profits



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## Debentures and Distributions

- Unlawful Distributions (S 847)
  - Case on s277 of 1985 Act
  - *It's A Wrap (UK) Limited (in liquidation) v Gula and Anor* (Court of Appeal 2006)
  - "...the member **knows or has reasonable grounds for believing** that [a dividend was declared in contravention of the Act]."
  - Ignorance of the law is no defence
  - Liquidators can pursue directors and shareholders



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# Planning and Predicting

Daniel Milnes



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# Planning and Predicting

- October 2008 and October 2009
- Delayed because Companies House not ready yet
- Still happening in October 2008
  - Objection to company names
    - SS69-74 – all new content
    - Objections for similar names that are not company names
  - Trading disclosures
    - Company name and other information to be provided in places and documents to be specified



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# Planning and Predicting

- Still happening in October 2008
  - Corporate and Under-Age Directors
  - General Duties of Directors in respect of Conflicts of Interest
    - Rules for approving continued involvement
  - Declarations of Interest by Directors
  - Repeal of restrictions on financial assistance for acquisition of shares in private companies
  - New Capital Reductions procedure
    - No need to go to Court for approval



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## Planning and Predicting

- Now In October 2009
  - Company formation
  - New form Memorandum and Articles of Association
  - A company's capacity
  - Re-registration altering a company's status
  - Share capital
  - Acquisition by limited company of its own shares



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## Planning and Predicting

- Now in October 2009
  - Company charges
  - Dissolution and restoration
  - UK companies not formed under the Companies Act
  - Overseas companies
  - The Registrar of Companies
  - Business Names



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