

Pictons Commercial

Welcome to the Summer edition of Pictons Commercial, the legal briefing produced by Pictons' Commercial Department to provide information to its clients, contacts and businesses generally in the northern home counties. If you have any questions, please feel free to contact the individuals listed in this newsletter or your usual contact with Pictons.

Companies Act 2006

The Companies Act 2006 finally received Royal Assent on 8 November last year, nearly 10 years after the reform process began. With 1300 sections and 16 schedules, it is the longest Act ever to have been passed by Parliament and introduces key reforms which will affect directors, auditors, shareholders and company secretaries of private, public and quoted companies.

The complex implementation timetable beggars belief but the Government intends that the Act will be fully in place by October 2008. The Act aims to be a "complete code of company legislation" and to, ultimately, replace the bulk of the existing Companies Acts. It also aims to make the law clearer and easier to understand. Margaret Hodge (Industry and Regions Minister with responsibility for

Continued on next page...

...continued.

implementing the Act) has already called it “a huge achievement, bringing major benefits to businesses by modernising and simplifying company law” and is confident that the Act will increase competitiveness in the UK, stating that “a robust yet flexible company law framework is one of the essential ingredients of a successful, competitive economy”.

Whilst impossible to summarise all 1300 sections in a short article, key areas of reform include the following: -

- **The codification of directors’ duties** (combining both existing common law and statutory duties)
- The introduction of a **cap on auditors’ liability** (being a “fair and reasonable” limit” applicable per audit)
- Allowing for **electronic and website communications with shareholders** (provided shareholders’ consent is obtained, the use of the company’s website for shareholder communications will be the default position)

- The general **de-regulation of private companies** (for example, abolishing the AGM requirement and the need for a company secretary, abolishing financial assistance provisions altogether and introducing new default articles)

- Giving **shareholders improved rights** (including extended rights to sue directors for negligence, default, breach of duty or breach of trust, subject to the court allowing the action to proceed)

- **Share capital can now be stated in a currency other than sterling** (recognising the international commercial environment in which we now operate, although the same alternative currency must then be used consistently by that company)

- **The introduction of a new Independent Report on a poll** (applies to quoted companies and can be requested by either 5% of its shareholders or 100 members of that company)

- **Privacy for directors** (through the introduction of a service address)

which can be registered at Companies House instead of a director's home address)

For readers who feel brave enough to decipher the implementation of the Act, the full timetable is

available on the Department of Trade and Industry's website – **www.dti.gov.uk**. Alternatively, for expert guidance about the Act and its application, contact either **Funke Abimbola** or **Roger Talbot**.

Landlords beware!

On 6th April 2007, tenancy deposit schemes for assured shorthold tenancies came into operation under the Housing Act 2004. Despite the Act receiving Royal Assent some time ago, a significant proportion of residential landlords are unaware of the requirements. What issues might a residential landlord consider?

Housing Act 2004

The new provisions ensure that the deposit paid by the tenant is safeguarded by both preventing a landlord from mismanaging or misappropriating the deposit and facilitating the resolution of disputes relating to the recovery of the deposit.

The new requirements are not retrospective and so do not apply to those tenancies that began before 6th April 2007. If the fixed term period of the tenancy expired before 6th April 2007 and a statutory periodic tenancy has arisen, the tenancy deposits still fall under the old regime.

There are two types of tenancy deposit scheme: the custodial scheme and the insurance-based scheme. Existing letting/managing agents cannot be scheme administrators and contracts have been awarded to three companies to run the schemes. There are two insurance-based schemes and one custodial scheme. For further

Continued on next page...

...continued.

information about the companies running the schemes please visit the website for the Department for Communities and Local Government at www.communities.gov.uk.

Custodial Scheme

The landlord pays the deposit into a designated account held by the tenancy deposit scheme administrator. The funds are held in the account until the tenancy is terminated. At the end of the tenancy, if the landlord and tenant agree as to how the deposit is to be allocated, they notify the administrator who then pays the deposit to the appropriate person(s) in the agreed proportion(s) within 10 days so long as he is content with the instruction.

Insurance-based Scheme

Here, the landlord (or his agent) retains the deposit but pays a premium to an insurer for a policy that covers any default by the landlord. Upon termination of the tenancy, if there is a dispute concerning the deposit, the administrator directs the landlord to

pay the disputed amount into a designated account. The deposit is then held until the dispute is resolved. Until the tenancy expires, the deposit is held by the landlord or its agent.

Dispute Resolution

The dispute may be resolved directly between the landlord and the tenant or alternatively by the court; the scheme administrator will then pay the sums in accordance with any agreement or order.

One of the benefits of having scheme administrators is that they must offer alternative dispute resolution (ADR), free of charge, as a method of resolving any disagreements that may arise concerning the deposit and how it is to be allocated. Whilst such schemes must be and are offered by the scheme administrators, it is not compulsory for the landlord and tenant to submit their dispute for ADR. However, costs consequences may follow for any party unreasonably refusing to use the ADR offered by the scheme administrators.

Sanctions

Under the new regime, within 14 days of receiving a tenant's deposit, the landlord must comply with any initial requirements of the tenancy deposit scheme to be used and must give the tenant prescribed information about the scheme. Should a landlord fail to comply with these requirements, the tenant can apply for a court order requiring the landlord or letting/managing agent to pay the deposit to the tenant or that the person holding the deposit pay it into a designated account held by a custodial scheme administrator. The court can also require the landlord to pay compensation to the tenant for a sum equal to three times the amount of the deposit to be paid within 14 days.

Conclusion

Landlords should embrace the new provisions as they are here to stay and cannot be contracted out of by clever drafting from solicitors. The purpose of the legislation is to protect tenants and whilst the new provisions may appear onerous, they should assist the landlord and tenant in resolving any disputes that may arise in a cost-efficient manner especially if ADR offered by the scheme administrators is used.

For further information regarding the changes to the law regarding tenancy deposits or any other property litigation issues, please contact **Ints Ahmed** (Property Litigation Team) on **ints.ahmed@pictons.co.uk**.

Charities and companies

The Charities Act 2006 (“Act”) was passed on 8th November 2006 and its various changes, large and small, are beginning to come into force. This article is intended to concentrate on new bodies called Charitable Incorporated Organisations (“CIOs”). At present, charities that want a corporate structure (providing reduced risk of personal liability for trustees) have to register both as charities and as companies. The Act introduces a new legal form of incorporation that is designed specifically for charities, namely the CIO.

The CIO form will have numerous advantages for charities which choose a corporate structure, as compared to a company, including:

- **A single registration** – A charity, which is also a company (a charitable company), has to register with the Registrar of Companies at Companies House and the Charity Commission. A CIO will only need to register with the Charity Commission.

- **Less onerous requirements for preparing accounts** – Small CIOs will be able to prepare “receipts and payments” accounts; only larger charities will have to prepare “accruals” accounts.

- **One Annual Return** – Charitable companies have to prepare an annual return under both Company Law and Charity Law.

- **Reduced filing requirements** – CIOs will only have to send accounts, reports and returns to the Charity Commission and not (as now) to Companies House as well.

- **Lower costs for charities** – The Charity Commission makes no charges for registration and filing of information whereas Companies House does.

- **Simpler constitutional form** – The Charity Commission intends to produce model forms of constitution, which will include fewer fixed governance provisions than is

the case with limited companies (even under the changes anticipated by the Companies Act 2006).

•More straightforward arrangements for merger and reconstruction – The Act contains a number of provisions designed to facilitate merger and reconstruction, which are not available to charitable companies.

As well as new organisations being able to register as CIOs, the Act contains provisions to enable charitable companies and charitable industrial and provident societies to convert to CIOs. That said, there will be no compulsion to require

any existing unincorporated or incorporated charity or any new charity to become a CIO.

The implementation of CIOs is expected early in 2008. Regulations are to be made by the Minister for the Third Sector and drafts of such Regulations will be published and consultation will take place later this year before the final Regulations are made.

Any existing charity or anyone considering setting up a new charity should be interested. For further information in connection with this development, please contact **Roger Talbot**.

*****STOP PRESS!*****

The WEEE (Waste Electrical and Electronic Equipment) Directive became UK law in January this year, with its main aims of:-

- Reducing the amount of WEEE disposed of to landfill
- Promoting separate collection, treatment and recycling of WEEE; and
- "Producer responsibility" from manufacture to final disposal/recovery

The deadline for producers joining a Compliance Scheme has now passed (15th March). We can help readers comply with the WEEE Directive, including both advising on the law and introducing readers to Compliance Schemes. If you are a "producer" caught by the Directive and are yet to join a Compliance Scheme, please contact **Funke Abimbola** for more information.

CONTACT US

If you require further information on any of the topics featured in this Bulletin or assistance in any area of Commercial Law please contact:

COMMERCIAL LITIGATION

Alec Brall

E alec.brall@pictons.co.uk

T 01582 878538

COMMERCIAL PROPERTY

Gerard Sampson

E gerard.sampson@pictons.co.uk

T 01582 878501

COMPANY/COMMERCIAL

Roger Talbot

E roger.talbot@pictons.co.uk

T 01582 878537

Funke Abimbola

E funke.abimbola@pictons.co.uk

T 01582 870817

EMPLOYMENT

Jacqueline Webb

E jacqueline.webb@pictons.co.uk

T 01582 870806

Or fax us on **01582 870872**

LUTON (HEAD OFFICE)

28 Dunstable Road

Luton

Bedfordshire

LU1 1DY

T 01582 870870

F 01582 870872

HEMEL HEMPSTEAD

1 The Waterhouse

Waterhouse Street

Hemel Hempstead

Hertfordshire

HP1 1ES

T 01442 242441

F 01442 248569

MILTON KEYNES

2nd Floor, Moorgate House

201 Silbury Boulevard

Milton Keynes

Buckinghamshire

MK9 1JL

T 01908 663511

F 01908 661800

www.pictons.co.uk



© Pictons 2007

Pictons Solicitors LLP is a Limited Liability Partnership regulated by the Law Society. Every care is taken in the preparation of this Bulletin. However, no responsibility can be accepted to any person who acts on the basis of information contained in it. You are recommended to obtain specific advice in respect of individual cases.