

# Review

## Corporate Strategy & Finance



## Companies Act 2006: removal of residential addresses from Companies House records

In our [last article](#), we discussed the provisions of the Companies Act 2006 (the 2006 Act) coming into force on 1 October 2009 which will provide greater protection for directors and company secretaries by restricting the public availability of their residential addresses.

We now consider the rules that will be introduced at the same time to allow for the removal of residential addresses from some (but, unfortunately, not all) of the public records already held at Companies House. The new rules will apply not only to directors and secretaries but also to shareholders and charge-holders (among others).

### SOME BACKGROUND

**Directors and secretaries:** as from 1 October, a director who is an individual will have to provide two addresses to the company and to Companies House: a service address and his usual residential address. However, it is only the director's service address that will appear on the public record (that is, in the company's register of directors and at Companies House). The director's residential address will be treated as 'protected information' and may only be disclosed, whether by the company or by Companies House, in limited circumstances. A secretary will only be required to give a service address.

### Shareholders:

- **Register of members:** the 2006 Act has already limited the rights of public access to the company's register of members by making it subject to a 'proper purpose' test. If a company considers that an application either to inspect the register or for a copy is not made for such a purpose it must refer the matter to the court for decision. There is no statutory definition of what constitutes 'proper purpose' and, as yet, no judicial decision on this point, although The Institute of Chartered Secretaries and Administrators has published some helpful guidance.
- **Annual returns:** new rules already apply in relation to the disclosure of members' addresses in annual returns made up to dates on or after 1 October 2009. Public companies whose shares are traded on a regulated market (which includes the main market of the London Stock Exchange, but not AIM) must disclose the address of those shareholders who have held 5% or more of any class of shares at any time during the year in question. The addresses of other categories of shareholders need not be disclosed. The position is different for all other public companies and private companies: they are not required to supply the address of any shareholder, whatever the level of their holding.

### REMOVAL OF ADDRESSES FROM THE PUBLIC RECORDS AT COMPANIES HOUSE

In addition, The Companies (Disclosure of Address) Regulations 2009 (SI 2009/214) ('the Regulations'), which have been made under the 2006 Act and come into force on 1 October, require the Registrar of Companies to make other residential addresses held at Companies House unavailable for public inspection following receipt of a successful application.

### INDIVIDUALS WHO MAY MAKE APPLICATION UNDER THE REGULATIONS

The following individuals may apply for the removal of their residential address from Companies House records:

- a current, former or prospective director;
- a current or former secretary;
- a current or former permanent representative of an overseas company; and
- a person who has registered a charge.

In this article, we review the new regime coming into force later this year which will allow an individual's residential address to be removed from the public records at Companies House

An application may only be made in respect of an address placed on the register on or after 1 January 2003. Information registered before that date is excluded from the ambit of the Regulations as it is held on microfiche, not electronically, and is difficult to remove.

With the exception of charge-holders, such individuals may make an application on the following grounds:

- that the applicant, or a person living with him, is at serious risk of violence or intimidation because of the activities of the company;
- that the applicant is, or has been, employed by certain organisations, including the security services or a police force; or
- where the applicant is a director who has registered his service address at Companies House under the new regime discussed in our last article and has made a successful application under the 2006 Act preventing the disclosure by Companies House of his residential address to credit reference agencies. A director or secretary who, on 30 September 2009, holds a confidentiality order under the existing regime (because of a serious risk of intimidation or violence due to the activities of the company) will automatically be treated as though he had made a successful application under the Regulations.

A charge-holder may apply under the Regulations if there is a serious risk that he or his employees, or persons who live with them, will be subjected to violence or intimidation as a result of the activities of the company which is, or was, subject to the charge.

### **CIRCUMSTANCES WHEN COMPANIES MAY MAKE AN APPLICATION UNDER THE REGULATIONS**

Companies may apply to Companies House for the removal from the public records of the residential addresses of:

- members and former members whose addresses were contained in an annual return or return of allotment delivered to Companies House on or after 1 January 2003; and
- the subscribers to its memorandum of association where that memorandum was delivered to Companies House on or after 1 January 2003.

A company may make an application if its activities are such that the public availability of these addresses creates a serious risk that its members, former members or subscribers (or other people who live at these addresses) will be subjected to violence or intimidation.

### **WHAT STEPS SHOULD COMPANIES TAKE IN LIGHT OF THE NEW REGIME?**

As mentioned, the residential address of any current director or secretary who, on 30 September 2009, holds a confidentiality order will automatically be removed from Companies House records on the introduction of the new rules.

Companies whose officers will be protected in this way should prepare to apply to Companies House once the Regulations come into force for the removal from the public record of the residential addresses of their members, former members and subscribers.

These companies should also, where practicable, notify any former director or secretary whose residential address was registered at Companies House on or after 1 January 2003 of the new regime in case that person wishes to make application under the Regulations in respect of that address.

### **FURTHER INFORMATION**

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