

COMPANIES ACT 2006

WHAT IT MEANS FOR PRIVATE COMPANIES.

A SUMMARY

The Companies Act 2006 updated and consolidated company law. It aimed to ensure that the needs of the modern corporation were being met, to allow the law to adapt to future business practices and to give companies greater flexibility to choose the way in which they operate. The introduction of the changes has been staggered and all of the changes are expected to be brought into force by October 2009.

This article aims to summarise what the changes mean for private companies in practical terms.

FORMATION OF A COMPANY

1) Articles - October 2009

The Articles of a company rather than the memorandum will set out the principles covering the way the company conducts its business. New companies registering under the Companies Act 2006 will be able, to use new default model Articles of Association for private companies. The new model Articles will be designed to be more accessible and representative of the way many small companies operate. Existing companies can also take advantage of this change and adopt the new Articles or amend their existing articles to take advantage of the new changes now already in place.

2) Objects – October 2009

Companies will not be obliged to restrict the scope of their activities as there will be no requirement to state the objects of the company in either the Memorandum or the Articles. Companies can however choose to restrict themselves and adopt objects should they so wish.

DIRECTORS

1) Directors' conflicts of interest – October 2009*

Directors have always had a duty to avoid situations where a conflict of interests may arise. Any potential conflict under the old regime could only be authorised by the company shareholders. However after the 2006 Act it will be possible for the Articles of a company to be amended to allow another director who does not have an interest in the matter to authorise the conflict.

2) Child directors – October 2009*

A new minimum age of 16 has been introduced for directors. Those existing directors who are under 16, when the age criteria comes into force will cease to be directors.

3) Confirmation of existing responsibilities – October 2007

The Act consolidates existing case law which until now has provided a piecemeal statement of the duties incumbent on directors. The new regime confirms and encompasses case law, stating that the duty of directors is to act in a way which they consider

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most likely to promote the success of the company for the benefit of its shareholders as a whole and that, in doing so, they will need to have regard, where appropriate, to matters including long term factors, the interests of other stakeholders, the community and the company's reputation.

4) At least one person as a director – October 2009*

The extent to which companies can engage companies to act as directors has been limited. Under the Act all companies must have at least one natural person as a director and cannot just have companies acting as directors.

** - dates in italics are provisional. The government is currently consulting stakeholders to consider whether these provisions should be brought forward to be effective from October 2008.*

COMPANY SECRETARY AND ADMINISTRATION

1) Company Secretary – from April 2008

Private companies will not be obliged to appoint a company secretary. If, however a company does decide to have one, the secretary will have the same authority and responsibilities as at present and will continue to be registered at Companies House. If a company elects not to have a secretary then the duties currently performed by the secretary must be undertaken by other personnel, such as the directors. Opting out of the secretary role does not exempt companies from their key filing obligations.

2) New option on filing directors' addresses – from October 2009

Directors will be required to file a service address to go on the public record at Companies House; this may for example be the companies' address, rather than their private home address. Directors' private addresses will be held as protected information at Companies House.

3) Electronic documents – from January 2007

Electronic communications, such as emails and websites will need to include the company's name, number, registered office and other particulars (as business letters are already required to do). This change is to take account of an increasing trend for electronic communication over paper correspondence.

THE DECISION MAKING PROCESS

1) Written resolutions - October 2007

Written resolutions signed by shareholders can be used as an alternative to calling meetings of shareholders. In addition written resolutions will no longer need to be signed by all the shareholders; instead, a simple majority of the eligible shareholders will be required for ordinary resolutions, or 75% of the vote for special resolutions.

2) Electronic methods – January 2007

The statute has updated company law to reflect the widely practised use of electronic communication by companies and speed up shareholders' decisions as mentioned above. From January 2007 resolutions can be circulated by email or by other electronic methods such as via a link to

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a website, provided that there is shareholder agreement to this procedure.

3) Shareholder meetings – October 2007

Private companies will no longer be obliged to hold an annual general meeting. Shareholders can demand a meeting if they wish too, provided that there is a quorum of at least 10% (5% in certain circumstances) in support of it. This does not affect the shareholders' right to receive accounts. In addition, private companies can now hold shareholders meetings on a 14 day notice period, provided that this does not conflict with the company's Articles.

FINANCIAL INFORMATION

1) Reduction of Share Capital – from October 2009

The current process which requires court approval will be replaced to allow private companies in the future to reduce their share capital by special resolution supported by a solvency statement from each director. These simpler procedures are similar to those which apply currently when a company redeems or purchases its own shares out of capital and the change is considered to create a consistent and less bureaucratic approach to these issues.

2) Prohibition on financial assistance

The existing statutory rule that companies cannot give financial assistance for the purchase of their own shares is to be abolished for privately owned companies. Previously, private companies wishing to give such financial assistance had to

comply with a complex, costly and often drawn out "whitewash" procedure. The new arrangements will, in theory, make transactions easier. However there is ambiguity as to the impact this will have in practice, as it is thought that any financial institutions involved in a deal will insist on the procedure being carried out for protection of their investment.

3) New accounting arrangements – from April 2008

The new deadline for private companies to file annual accounts and reports will reduce from ten months to nine months. In addition the exemption from preparing consolidated accounts for medium sized groups has been limited in scope so as to apply now only to small groups.

The points outlined above cover the main changes brought in by the Companies Act 2006. Should you require any further information or tailored advice, please do not hesitate to contact us below:

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