
COMPANIES ACT 2006

You may be aware that late last year the Companies Act 2006 became law. This Act is said to be the largest single piece of legislation ever enacted in the UK with some 1300 sections and 16 schedules. The purpose of this bulletin is to highlight the key issues arising from the Act and its impact on the day-to-day operation of a private company.

General

In principle the Act attempts to simplify and clarify the way in which companies operate with a specific focus on small private companies. As in most cases where new legislation is introduced with the objective of simplification, it is debatable to what extent this has been achieved, especially in the short term, when advisors and company officers will have to come to terms with transitional procedures and an implementation timetable which will see the various provisions take effect in stages during 2007 and 2008. In addition much of the detail of these changes will not be determined until the relevant secondary legislation is introduced.

It should be remembered that the Act also represents the result of a consolidation/codification exercise in which many existing provisions have simply been carried over into the new Act with little, or no, change.

The remainder of this bulletin outlines the key changes that will take place which are likely to affect private companies.

Electronic Communications (Effective date 1 January 2007)

All electronic communications (principally e-mails but also applicable to text messages etc) must include details of the company's full name, place of registration, registered office and registered number. Similar provisions apply to company websites. Limited liability partnerships are also bound by these requirements, breach of which will incur a fine of up to £1,000.

Directors' Shareholdings (Effective 6 April 2007)

There will no longer be a requirement to maintain a register of directors' (and their close relatives') shareholdings or to disclose such shareholdings in directors' reports signed after 6 April 2007.

Annual General Meetings (Effective 1 October 2007)

There will no longer be any requirement to hold an annual general meeting or indeed any other meeting at which shareholders are physically present, except in respect of resolutions to remove a company director or the company auditors.

Written Shareholder Resolutions (Effective 1 October 2007)

Most resolutions to be considered by shareholders will be able to be passed by written resolution. Written resolutions will require the approval of a simple majority (ordinary resolutions) or 75% (special resolutions) of those eligible to vote.

Directors Duties (Effective 1 October 2007 except statutory duty to avoid conflicts of interest which becomes effective 1 October 2008)

Perhaps the most significant change is that the duties of directors which have built up over the years via case law have been clarified, expanded and will be codified as statutory obligations as follows:-

- Must only act within appropriate authority, i.e. in accordance with the company's Articles of Association and decisions taken by the company's members.

- Must promote success of the company for shareholders' benefit.
- Must exercise independent judgement and use reasonable care, skill and diligence.
- Conflicts of interest should be avoided, personal benefits should not be accepted from third parties and personal interests in proposed transactions or arrangements with the company must be declared. Note that directors will not be deemed to have breached the first or second of these duties if authorisation has been provided by independent directors or the shareholders respectively, nor will a director be deemed to have breached the third duty if the other directors were already aware of the interest.
- Must consider long-term consequences of any decision, the interests of the company's employees, the impact of the company's operations on the environment and community, the need to act fairly as between the members, the need to maintain high standards of business conduct, the interests of creditors and the need to foster business relationships with suppliers, customers and others.

The Act also eases the procedure for action to be taken for breaches of the above duties. One relaxation, however, is that the previous prohibition on loans to directors is removed provided such loans are approved by the shareholders. (NB This relaxation does not extend to the adverse tax implications of loans to directors which continue to apply unchanged.)

Accounting Records (Effective 1 October 2007)

The requirement under the Companies Act 1985 to keep "proper" accounting records is replaced with a requirement to keep "adequate" accounting records. A new statutory duty is also imposed on directors to approve only accounts that give a true and fair view of the company's assets, liabilities, financial position and profit or loss (thus clarifying the previous legal position under which company accounts had to be prepared to show a true and fair view or be prepared in accordance with International Accounting Standards).

Group Accounts (Effective 1 October 2007)

The previous exemption for medium sized companies from the requirement to produce group accounts is abolished and all companies except those which are small will have to include a business review as part of the directors' report.

Accounts Filing Deadline (Effective date 6 April 2008)

The accounts for private companies will need to be filed at Companies House within nine (currently ten) months of the balance sheet date. Where the balance sheet date is, say, 30 June the filing date will, however, be 31 March the following year rather than 30 March, as is the case currently under the "corresponding date" rule. The exact format and content of both full accounts and abbreviated accounts is to be announced in due course.

Company Secretary (Effective date 6 April 2008)

There will no longer be a requirement for a company secretary, although the position may be retained if so desired.

Company Constitution Matters (Effective date 1 October 2008)

Companies will be incorporated under the 2006 Act with effect from 1 October 2008. Such companies will not need to have a "Memorandum of Association" in the current sense (the 2006 Act "Memorandum" simply consisting of the names of the subscribers), the need for Authorised Share Capital will disappear and new simplified model "articles" will be available. Existing companies will be able to adopt the new structure should they so desire. The ability of private companies to repay issued share capital will be simplified and involve a statutory solvency declaration by the directors rather than the need for court approval and the requirement for an auditor's report for providing certain types of financial assistance will also be removed. Both new and existing companies will only be able to appoint directors aged 16 or over and will have to have at least one natural (i.e. living) person as a director, so it will no longer be possible to avoid director's responsibilities through sole corporate appointments or the appointment of minors.

In conclusion, there are significant changes to company law as a result of Companies Act 2006. Companies will need to have regard to the various effective dates for different statutory provisions and monitor the content of secondary legislation to be introduced prior to the later changes. In the meantime if there are any specific issues you wish to discuss then please do not hesitate to contact me accordingly.