

The Companies Act 2006

The Companies Act 2006 (the “Act”) received Royal Assent on 8 November 2006 and is expected to come into force in stages between January 2007 and October 2008, together with related secondary legislation. These changes to the law will affect all companies and the way they are organised and managed.

The Act is a huge piece of legislation with more than 1200 sections. However only approximately one third of the Act comprises new law, another third is partly new or a variation on existing legislation and the remainder is a carryover of long standing rules. Some of the principal changes to company law that will be made by the Act are as follows:

More accessible regime for running private companies

- There will no longer be any requirement for a private company to have a company secretary. If a private company does have a company secretary, the person appointed to such office may also be the sole director and shareholder of the company.
- There will no longer be a requirement to hold an annual general meeting.
- The Memorandum of Association will have reduced importance, effectively representing a snapshot of the position at the time the company is incorporated, and will not be able to be changed or modified during the company’s life. Companies will have unrestricted objects unless these are specifically restricted by their Articles of Association.
- New, up to date, model Articles will be introduced.
- Directors and shareholders will be entitled to file a service address on a company’s public records instead of their private residential address. This service address could, for example, be the registered office of the company.

Financial assistance

- The prohibition on private companies giving financial assistance for the acquisition of their own or their holding company’s shares will be abolished. Currently private companies wishing to give financial assistance have to satisfy the requirements of a “whitewash procedure” which can be quite costly.
- The prohibition on giving financial assistance will remain in place for public companies.

Statutory statement of directors duties

- A statutory statement of directors’ general duties will be introduced which will mean that directors will have to have regard to a specified list of factors such as their staff, customers, investors, the environment and the local community, when exercising their duty of good faith.

Shareholder actions

- For the first time shareholders will be given a statutory entitlement to pursue a “derivative action” on behalf of the company to sue directors for negligence or breach of duty. These extended rights to sue are aimed at promoting “shareholder engagement”, giving to people who invest money into companies more of a say in how they are run.

Share capital

- The requirement for public and private companies to have an authorised share capital will be abolished.
- Private companies with only one class of share capital will not need authority to allot such shares unless their Articles of Association require it.

Shareholder resolutions

- A minimum notice period of 14 days will be introduced for all general meetings of a private company regardless of the nature of the general meeting or the types of resolution proposed to be passed at that meeting. This change will not preclude shareholders from providing consent to short notice. In fact the requisite majority of shareholders from whom consent to short notice must be obtained will be reduced for private companies to those holding 90% of the voting shares, or such higher percentage (not exceeding 95%) as may be specified in the company’s Articles.
- Private companies will be provided with the ability to pass ordinary written resolutions by a simple majority of those shareholders eligible to vote, and written special resolutions by a 75% majority of those eligible to vote. Company law currently requires written resolutions to be passed unanimously.

Declaration of directors interests

- The requirements for directors to declare matters in which they are interested will be extended in part so that directors will be required to declare both the nature and extent of their interests. However no declarations of interests will be required by a sole director of a private company, and there will be no need for a director to disclose to fellow directors anything the directors already know about or ought reasonably to have known.

Prohibition on directors loans

- The prohibition on the company making loans to its directors or providing related guarantees or security will be removed and replaced by a requirement for the company to obtain shareholder approval before entering into such arrangements.

Approval of directors service contracts

- Shareholder approval will be required for all directors' service contracts which guarantee the director will have at least 2 years' employment with the relevant company or its subsidiary. Currently shareholder approval is only required for service contracts which guarantee at least 5 years' employment.

Auditors and accounts

- The period for filing accounts at Companies House will be reduced from ten months from the end of the relevant accounting reference period to nine months for private companies and from seven months to six months for public companies.
- Auditors will be permitted to limit their liability by agreement with a company to the extent that it is fair and reasonable.
- A new criminal offence of knowingly or recklessly causing an auditors' report to include any matter which is misleading, false or deceptive will be introduced, which will apply to auditors and their directors, members, employees or agents.

Greater use of e-communications

- The Act facilitates the filing of documents electronically at Companies House, which is considered by Companies House as a more secure way of filing documents than the paper based alternative as security and authentication codes are required. The relevant parts of the Act in this regard were implemented with effect from 1 January 2007.
- A company is also required to display its particulars, including its registration number, legal form and registered office, on its websites and on all its letters and order forms, whether in electronic form or otherwise. This change was implemented with effect from 1 January 2007.
- Provisions regarding email communications between a company and its shareholders will be extended with effect from 20 January 2007.
- The Government expect the Act will help businesses save £250 million a year, including an annual £100 million for the benefit of small companies. "Deregulation" in certain areas such as the abolition of the prohibition on financial assistance for private companies is very welcome. However the size of the Act may be off putting to many companies which may prevent them making the most of its benefits.

Contact Us

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