

Companies Act 2006 – Company Secretarial and Administration



The Companies Act 2006 received Royal Assent on 8th November 2006. At over 700 pages it is the longest ever Act to be passed through Parliament. The purpose of the act is to simplify and codify the law in relation to companies. The DTI also wanted to update the law to ensure that it reflected modern business needs. It implements changes and reforms which affect both private and public companies.

One of the main aims of the Act is to streamline the current regulatory regime for private companies. The formalities required for company decision making are to be significantly reduced. It is hoped that this will ease the administrative burden and allow efforts to be concentrated more on relevant business activities. The Act also seeks to provide private companies with greater flexibility in choosing how to operate. An approach which is clear from the Act and from government papers is the "Think Small First" approach which has been key to many of the reforms in relation to private companies.

Private companies will no longer be required to hold annual general meetings. The default position will no longer be that private companies hold meetings, but rather that they conduct as much business as possible by means of written members resolutions. It is also worth noting that the notice periods for AGM's is reduced from

21 to 14 days. Further changes were implemented in January 2007 with the aim of allowing decisions to be made more quickly. Companies can choose to make more use of electronic methods. Resolutions can be circulated by email or via websites subject to shareholder approval. This will hopefully speed up the decision making process, and means that most small businesses will be able to make most shareholders' decisions without the need for a general meeting.

The requirement that private companies must have a company secretary will be abolished from April 2008. If a private company chooses not to have a company secretary then anything that is required or authorised to be done by that secretary will be validly carried out by a director or a person so authorised by the directors.

Another significant change is that the prohibition against a private company giving financial assistance for the purchase of its own shares is abolished. Consequently, the Whitewash procedure will also be repealed and abolished from the 1st October 2008.

The Act also abolishes the requirement for companies to have an authorised share capital with effect from 1st October 2008. Shareholders wishing to restrict the number of shares that can be issued by a company will therefore need to amend the articles by special resolution to include suitable provisions, if the articles do not already contain such restrictions.

Finally, from October 2008 several changes will be introduced which change the way a private company is formed. The Memorandum of Association will become a historic document which, with various accompanying documents, will simply record the facts at the time of incorporation. From October 2008 the Articles instead of the Memorandum will set out the principles covering the way the company conducts its business. There will be no requirement in the future for a company to state their objects either in their Memorandum or Articles. This means that companies will no longer be restricted in what they do unless they expressly so decide. Also, new companies registering under the Act will be able if they wish, to take advantage of the new model Articles of Association for private companies. The new Articles are intended to be set out in a clearer and simpler style to better reflect the way many businesses operate.

The new Act also implements a number of significant changes in relation to directors duties in that it codifies what was formally

common law. This is covered in another brief update.

The Companies Act 2006 sought to codify, simplify and modernise the law on companies. Whether or not the area of directors duties has benefited from this codification only time will tell.

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