

## The Companies Act 2006 Provisions coming into force on 1 October 2008



**The Companies Act 2006 received Royal Assent on 8 November 2006. At over 700 pages it is the longest ever Act to be passed through Parliament. The Act aims to simplify and codify the law in relation to companies. From 1 October 2008, a number of new provisions come into force. These relate principally to directors and their duties, the abolition of financial assistance and changes to companies' annual returns.**

### Directors

One of the most significant and controversial proposals of the Companies Act 2006 was the codification of directors duties. The replacement of existing common law rules with a statutory statement of duties applies to all directors of a company, including shadow directors and in some cases former directors. The Act codified seven general duties and the first four of those duties; duty to act within powers, duty to promote the success of the company for the members' benefit, duty to exercise independent judgement and the duty to exercise reasonable care, skill and diligence, came into force on 1 October 2007.

On 1 October 2008 the remaining three general duties come into force:

- Duty to avoid conflicts of interest.

- Duty not to accept benefits from third parties.
- Duty to declare interests in proposed transactions or arrangements with the company.

As of 1 October 2008 companies must have at least one director who is a natural person and not a corporate body. However, there is a grace period which runs until 1 October 2010 for companies that had no natural persons as directors on 8 November 2006.

Also implemented on 1 October 2008 is the new minimum age limit of 16 for directors of all companies.

### Financial Assistance

The prohibition on financial assistance by private companies (including the whitewash procedure) for the acquisition of their own shares is repealed from 1 October 2008. It is expected that the abolition will result in fewer complex structures to avoid the prohibition and a consequent reduction in advisory fees paid by private companies to ensure compliance. Although the prohibition on financial assistance has been abolished, companies are cautioned that the rules on capital maintenance continue to apply and advice should continue to be sought where issues of financial assistance arise.

While a private company giving financial assistance for the purpose of the acquisition of its own shares is no longer prohibited, a private company that is a subsidiary of a public company is still prohibited from giving financial assistance for the acquisition of shares in its public holding company.

### Annual Returns

1 October 2008 also sees the introduction of new provisions relating to information to be provided by companies in their annual returns. The type of information to be supplied depends on whether a company's shares are admitted to trading on a regulated market.

- Non-traded companies (private companies and public companies whose shares are not admitted to trading on a regulated market) will be required to provide the name only, but not the address, of every person who was a member of the company at any time during the return period.
- Traded companies (public companies whose shares have been

admitted to trading on a regulated market) will be required to provide the names and addresses of every person that holds 5% or more of the issued shares of any class at any time during the return period.

The Companies Act 2006 sought to codify, simplify and modernise the law on companies. From 1 October 2008 the latest round of provisions come into force and only time will tell whether or not the law on companies has benefited from this codification.

For further information in relation to this Brief Update, or any other corporate matter, please contact a member of the Paull & Williamsons' Corporate Division.