

Companies Act 2006 – a summary of what it means for private companies

We have updated company law to ensure that it reflects modern needs. In doing so we wanted to make it easier to set up and run a company both now and in future. To achieve this aim, we have consulted extensively with a wide range of stakeholders, including both small and large companies.

The Companies Act 2006 has now become law. Its provisions will be brought into force in stages, with all of it in effect by October 2009. The timetable and more information is available at <http://www.berr.gov.uk/bbf/co-act-2006/index.html>

The new legislation, as well as introducing a number of changes, allows companies greater flexibility in choosing how they operate. We are focusing in this summary leaflet on those parts of the new legislation which will be of interest to most small private companies. We have also published a more detailed leaflet entitled 'Private Company Information' (URN 07/1460).

The key areas of change which private companies in particular will want to think about are set out on the next page.

New choices

How decisions are taken by shareholders – from October 2007

- Written resolutions signed by shareholders are an alternative to calling meetings of shareholders, and we are making it easier to use them. Written resolutions will no longer need to be signed by all the shareholders. Instead, the required majority will be similar to that for shareholder meetings – a simple majority of the eligible shares for ordinary resolutions, or 75% for special resolutions.

Decisions can be made more quickly – from January 2007

- Companies can choose to make more use of electronic methods. Resolutions can be circulated by email or by other electronic methods such as websites, with shareholder agreement. This will speed up the decision making process, and means most small businesses will be able to

make most shareholders' decisions more quickly without the need for a general meeting.

Shareholder meetings can be streamlined – from October 2007

- Private companies will no longer hold an annual general meeting. Shareholders can demand a meeting if at least 10% (5% in certain circumstances) wish to. Shareholders still have the right to receive accounts.
- Shareholder meetings for private companies can now all be on a 14 day notice period, unless different arrangements are specified in a company's Articles.

There will be choice over whether to have a company secretary – from April 2008

- Private companies will not have to appoint a company secretary unless they choose to do so. But if a company does decide to have one, the secretary will have the same authority and responsibilities as now and will continue to be registered at Companies House.

A new option on filing directors' addresses – from October 2009

- Directors will be required to file a service address on the public record at Companies House, which may for example be their company's address, rather than their private home address. A director's private address will be held as protected information at Companies House.

It will be simpler to reduce share capital – from October 2009

- As an alternative to the current process requiring court approval, private companies can in future choose to reduce their capital by special resolution supported by a solvency statement by each of the directors. As every small company will know, these simpler procedures are similar to those which apply currently when a company redeems or purchases its own shares out of capital.

Financial assistance to buy a private company's own shares is no longer prohibited

- The previous statutory rule that companies cannot give financial assistance for the purchase of their

own shares is to be abolished for private companies. Previously, private companies who wished to give such financial assistance had to comply with a “whitewash” procedure. The new arrangements should make transactions easier.

Directors’ conflicts of interest

- Directors have always had a duty to avoid a situation in which they have an interest which conflicts or may conflict with the company’s interests, unless the matter has been duly authorised. At the moment, only the shareholders can authorise such a conflict of interest.
- In future, in the case of existing companies, it will be possible for those directors who do not have an interest in the matter to authorise it if this is specifically permitted by the company’s Articles.

Forming a company – from October 2009

- 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 2009 the articles rather than the memorandum will set out the principles covering the way the company conducts its business.

- From October 2009 new companies registering under the Companies Act 2006 will be able, if they wish, to take advantage of new default model Articles of Association for private companies. These will be set out in clearer language and reflect the way many small companies operate. Existing companies can also choose to adopt these new Articles.
- There will be no requirement in future, either in the Memorandum or the Articles, for companies to state their objects. So companies need not be restricted in what they do: but they can choose to be restricted if they wish.

New or Revised Requirements

Electronic documents – from January 2007

- Electronic communications, including emails and websites, will in future need to include the company's name, number, registered office and other

particulars (as business letters are already required to do).

New accounting arrangements – from April 2008

- The deadline for private companies to file annual accounts and reports will reduce from ten months to nine, reflecting increased use of new technology.
- The exemption from preparing consolidated accounts by medium sized groups has been changed so as to apply now only to small groups.

At least one person as a director

- All companies must now have at least one actual person as a director and cannot just have companies acting as directors.

Child directors

- A new minimum age of 16 is set for directors. Existing under age directors will cease to be directors when the age criteria comes into force.

Confirmation of existing responsibilities

Directors' duties

- The general duties of directors have been developed until now in case law. In order to make the rules more accessible, the Act confirms the existing case law by stating that the duty of directors is to act in a way which they consider 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 long term factors, the interests of other stakeholders and the community, and the company's reputation.

More information and guidance

We will be increasing the coverage of Companies House plain English guidance which will be available at

<http://www.companieshouse.gov.uk/about/guidance.shtml>.

Companies House will be developing their website for customers, including the presentation of web based guidance and more links to related websites.

At a glance – Ten things for private companies to know about The Companies Act 2006

Company Secretaries

There is no need to appoint a company secretary unless you want to. If you do have one, he/she will have the same rights and responsibilities as now.

Directors

All companies must have at least one actual person as a director. All directors must be at least 16. Directors file service addresses on the public record, with residential addresses held as protected information at Companies House.

Shareholder meetings

Private companies will no longer hold an AGM. 10% of shareholders can demand a meeting (5% in certain circumstances). If private company meetings take place they require a 14 day notice period.

Decision making

Written resolutions will become easier to use, requiring a simple majority (for ordinary resolutions) or 75% (for special resolution) of eligible votes.

Electronic communications

Arrangements can be made so that communications can be sent and received in certain ways, especially electronically. If there is agreement from shareholders, emails and websites can be used much more than at present. Individual members can still ask for hard copies. A company's name, number, registered office and other particulars, currently required to be displayed on business letters and other documents, must now also be provided on electronic documents, as well as on any company website.

Articles

Companies formed under the new Act can choose to have new streamlined default model Articles. Existing companies can also choose to take advantage of these new model articles in whole or in part.

Financial assistance

The statutory rule that private companies can't give financial assistance to buy their own shares has been abolished.

Accounts

Private companies must file their annual report within nine (previously ten) months of the year end. The medium-sized group

exemption from preparing consolidated accounts has now been removed.

Capital reductions

There is now a simpler solvency-based procedure to enable private companies to reduce capital without court approval.

General compliance

There is very little companies have to do now, but they can take steps to take advantage of the deregulatory benefits of the Act. Transitional arrangements will make it as easy as possible for companies to take up these benefits.