



Understanding the Companies Act 2006

Introduction

The Companies Act 2006 received Royal Assent in November 2006. This new Act - which replaces almost all earlier companies' legislation - updates company law with the aim of ensuring that it reflects the modern business world. The Act has been phased in over a period of three years. Final implementation was on 1 October 2009.

Amendments to the previous legislation include changes to the regulations on directors, secretaries, meetings and financial reporting. There are also updated rules on company names, business disclosures, Articles of Association and share capital. This Fact Sheet explains some of the main impacts of the Act on businesses and offers advice on how to comply.

Rules for Directors and Secretaries

Since October 2008, each company has to have at least one director who is a 'natural person' or an individual. Companies that only had corporate directors on 8 November 2006, must comply with these rules by October 2010. This rule also applies to dormant companies. Any company without a suitable director by October 2010 will be in default.

Directors still need to file their residential address with Companies House. However, since 1 October 2009, they have also been able to file a service address for the public register. Residential addresses are held on a private register and are only available to specified public bodies and credit reference agencies.

Credit reference agencies won't be able to obtain the residential address of any director who held a valid Confidentiality Order on 30 September 2009. Affected directors currently without such an order can apply to the registrar to have their residential address withheld on security or personal safety grounds.

Since April 2008, private companies have had the option to decide whether or not to have a company secretary. If the company decides not to have a secretary, you need to inform Companies House. Since 1 October 2009, secretaries who are an individual person have been able to file a service address for the public record. Corporate secretaries have also had to give details of where they are registered and the registered company number, if appropriate.

Accounting and Reporting Requirements

The Act imposes a new obligation on quoted companies to publish the preliminary announcement of annual results and their full annual report and accounts on their websites. Many companies already do this. More importantly, the Act introduces contractual liability limits for auditors to such amount as would be "fair and reasonable". This is not defined and will no doubt be open to debate. Any limitations on liability will require annual shareholder approval in advance of the audit. Shareholders holding at least 5% of the shares or more than 100 shareholders in number will have the right to require a quoted company to put a statement which the member proposes to raise at the AGM about the audit of the accounts on its website, and the accounts must mention this right. The time limit for filing annual reports and accounts at Companies House after the yearend will be reduced from 10 to 9 months for private companies and from 7 to 6 months for public companies.

Directors Duties

One of the most significant changes is that the duties of directors which have built up over the years via case law have been clarified and codified as statutory obligations as follows:

- Directors 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.
- Directors must promote success of the company for shareholders' benefit.
- Directors 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.
- Directors 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.

There will be a new criminal offence for auditors of knowingly or recklessly issuing an incorrect audit report, punishable by a fine.

Business Review Requirements

Accounting periods beginning on or after 1 October 2007 must contain a Business Review in the directors' report. This applies to all companies except those that file small company accounts. A Business Review should be a fair review of the company's business within the reporting period. It must be a balanced and comprehensive study of the development and performance of the company, including a description of the principal risks.

Meeting and resolution rules under the Companies Act 2006

Under the Companies Act 2006, private companies that are not traded companies do not have to hold annual general meetings (AGMs). A 'traded company' in these circumstances means a company whose shares carry rights to vote at general meetings and which are admitted to trading on a regulated market in an European Economic Area state by, or with, the consent of the company. If you are such a private non-traded company, you must involve shareholders when making the decision whether or not to continue with AGMs, but you can make



many of these decisions by written resolution. If necessary, you may need to pass a resolution to remove any existing clauses about AGMs from your company's Articles. However, you still need to hold meetings to dismiss directors or remove auditors before the end of their term of office. The shareholders and directors still have the power to call a meeting, if needed. Shareholder meetings for non-traded private companies require a notice period of at least 14 days - unless it says differently in a company's Articles.

However, for traded private companies, they must give at least 21 days' notice for a general meeting unless three conditions are satisfied, in which case it can be held at 14 days' notice.

These conditions are that:

- The meeting is not an AGM.
- The company allows all members eligible to vote at general meetings the facility to vote by electronic means.
- The company has passed a special resolution reducing the period of notice to 14 days at the previous AGM (or meeting held since the AGM).

You can call adjourned meetings at shorter notice, but where a meeting is adjourned for lack of a quorum, you must hold the meeting at least ten days after the original meeting and must not include any new business.

Extraordinary Resolutions

Since October 2007, a company has to hold an extraordinary general meeting to pass an extraordinary resolution only if it is stated in its Articles. Any resolution that was passed as an extraordinary resolution under the Companies Act 1985 can now be passed as a special resolution.

Resolutions

The majority for written resolutions is the same as for shareholders' meetings:

- A simple majority of eligible shares for ordinary resolutions.
- 75 per cent for special resolutions.
- Members can either sign a paper copy of the resolution or show agreement electronically.

Elective resolutions have now been repealed. But elective resolutions already filed by companies will stay in force - the company doesn't need to amend its Articles.

Company Name Registration

Since October 2009, companies have been able, in certain circumstances, to register a name which is the same as another in the index of company names. For example, 'ABC Limited' and 'ABC (UK) Limited'. This will only be permitted if the company to be registered forms, or is to form, part of the same group as the company whose name is already on the index. Companies wishing to apply for a name such as this will need to send written consent from the company already in the registrar's index.

Business Disclosure Rules under the Companies Act 2006

Every company must display its registered name:

- At its registered office and its inspection place - dormant companies are exempt.

- At any place where the company carries on business - unless that place is mainly used as a home - eg the director's address.
- In the company business correspondence, websites and documents - including documents in hard copy, electronic or any other form.

Every company must also display its place of registration, registered office and registered number on its business letters, order forms and websites. Minor variations in the name are allowed - including the case of letters, use of punctuation, accents and formatting - as long as these differences are not misleading.

Requests for Company Information

Since October 2008, a person can ask for the following information in writing from any company they deal with:

- The address of its registered office.
- Any inspection place.
- The type of company records kept at that office or place of business.

The company must reply in writing to that person within five days. If it fails to do so, the company may be liable to a fine.

The Companies Act 2006 has taken away the statutory obligation to allow anyone access to its register of members. The company must either comply with the request for access within five days or apply to the court. The court will allow the company to not comply if it thinks the purpose for the access is improper.

Changes to the Share Capital Rules

The rules on the minimum authorised share capital for public limited companies have changed. Since 6 April 2008:

- A public company on incorporation, when applying for a trading certificate, or a private company re-registering to a public company, can meet the authorised minimum requirement in sterling or euros - a combination of the two is not allowed.
- The minimum authorised share capital is £50,000 or €65,600.
- An application for a trading certificate by a public company no longer needs to be in the form of a statutory declaration.

The 2006 Act does not require a company limited by shares to have an authorised share capital. A company's directors will be able to issue shares by board resolution. Shareholders who wish to restrict the directors' power to do this will need to include suitable provision in the company's articles of association.

Directors will still require shareholder authorisation to allot shares. However, this is subject to a new exception which applies to private companies with only one class of share capital. Directors of those companies will be able to allot new shares of the same class without a shareholder resolution, subject to any prohibition in the company's articles.

Since 1 October 2008, private companies are able to reduce issued share capital using a special resolution supported by a solvency statement, as an alternative to getting a court order.

The prohibition on financial assistance by private companies for acquisition of their own shares has also been lifted.

Articles of Association

Where a company changes its Articles of Association, a copy of the



amended Articles must be sent to Companies House within 15 days. Failure to do so is a criminal offence. On 1 October 2009, the Companies Act 2006 introduced a civil penalty of £200 for not complying. There will continue to be default model articles, but there will be separate model articles for private companies and public companies. (There are already separate model articles for companies limited by guarantee.)

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How Harrington Kelly can help

The Companies Act 2006 is one of the largest statutes ever enacted in the UK in terms of its sheer number of pages and complexity. This Fact Sheet can only cover a relatively small number of the Act's provisions and to understand its full impact on your business and its finances without doubt needs specific professional advice. Please contact us for more information and guidance on this topic to meet your needs.