



The Companies Act 2006

The Companies Act 2006 was passed on 8 November 2006, but will not be fully in force until October 2009. It will replace existing companies legislation entirely (save for a few specialised purposes) and represents a substantial revision of UK company law. It is being brought into force in stages, and this note is intended to highlight some of the key changes which will be of interest to existing private companies.

Already in force

- **Directors must comply with the list of directors' duties contained in the Companies Act 2006.** In summary, these duties are:
 - to act within his powers
 - to promote the success of the company
 - to exercise independent judgement
 - to exercise reasonable skill, care and diligence
 - to avoid conflicts of interest
 - not to accept benefits from third parties
 - to declare his interest in any proposed transaction or arrangement
- **Every company must state its full company name, place of registration, company number and registered office on all emails and websites.** This is an extension of the previous law, which already requires this information to be on hard copy letters and order forms.
- **There is no longer a prohibition on a company making payments to a director which are calculated by reference to the director's income tax.** Accordingly, companies may now make payments to directors which are grossed up for tax.
- **Companies may communicate information to shareholders by email, but only to shareholders who have agreed in advance to receive information in this way.**

These duties are not new; the list is intended as a codification of the duties which have evolved or been clarified by the courts over the years. The purpose of codification is to allow directors to see easily the duties they are required to comply with.

- **Directors' service contracts for longer than two years must be approved by the shareholders.** Previously this rule applied only to contracts for more than five years.
- **A private company is not required to hold annual general meetings (AGMs) unless the shareholders wish to do so.** Companies must still hold AGMs if their articles of association require them to do so, but most existing companies' articles do not require the holding of AGMs.
- **Loans by a company to its directors are no longer prohibited.** They do however require approval by the shareholders.
- **Written resolutions no longer require to be unanimous.** Shareholders' resolutions may be passed with the signatures of only the necessary majority of the shareholders (over 50% for an ordinary resolution, and 75% for a special resolution).
- **Shareholder meetings of private companies require only 14 days' notice.** Previously, some shareholder meetings (including AGMs) required 21 days' notice. There are also other changes to the formalities of calling shareholder meetings.
- **Private companies are no longer required to have a company secretary.** They may, however, do so if they wish. The functions carried out by the company secretary, e.g. giving notice of meetings, writing up the statutory registers, still require to be carried out.
- **The deadline for private companies to file their accounts with Companies House has been reduced from ten months after the year end to nine months after the year end.** This applies to accounts for years starting on or after 6 April 2008.
- **A person under the age of 16 is no longer able to be a director of a company.** This was already the case in Scotland, but is now applicable to the whole of the UK.
- **Every company must have at least one director who is a natural person i.e. an individual.** A company is no longer allowed to have another company as its sole director.
- **Private companies are no longer prohibited from giving financial assistance in connection with the acquisition of their own shares.**
- **New procedures allow private companies to reduce their share capital without the need for an application to court**

- Directors have a duty to avoid a conflict of interest (i.e. a conflict between the director's interests and the company's). Previously only the shareholders could override this by authorising a conflict of interest in a particular case. **Since October 2008, a potential conflict of interest by a director may be authorised by the other directors.**

Coming into force October 2009

- **Directors' residential addresses need no longer be made public.** Whereas companies will still be required to keep a register of directors' residential addresses and supply this to Companies House, that information will not be made public. Instead, the public record will show a service address for each director. The service address may be any address nominated by the director for service of documents, including the company's registered office or the office of a professional adviser such as a solicitor.
- **Companies will be able to entrench provisions in their articles of association.** Currently the articles of any company can be changed by special resolution i.e. a 75% shareholders' vote. It is therefore not currently possible, but will be possible under the Companies Act 2006, to provide that any provision of the articles can only be changed or deleted with unanimous agreement of the shareholders.
- **Companies will no longer be required to specify an authorised share capital.**

For advice on the Companies Act 2006 or any other corporate or business law matter, please contact Chris Smith or Derek McCulloch in our Corporate Department on 0131 225 1677 or email christopher.smith@gillespiemacandrew.co.uk derek.mcculloch@gillespiemacandrew.co.uk

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