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The Companies Act 2006 what you need to know

Timetable

The Companies Act 2006 ('the Act') was granted Royal Assent on 8 November 2006 and will come into force in stages with the vast majority of the Act commencing in October 2008. Some provisions relating to electronic communications with shareholders are already in force.

The Act is a huge piece of legislation and while a significant part of it restates existing legislation there are major changes to the law which will affect all companies and the way they are organised and managed.

The Aim of the Act

The Act aims to make it easier to set up and grow a business, encourage increased shareholder participation and confidence and generally ease the regulatory burden on new companies.

Main Changes for Private Companies

Directors Duties

- **Statutory statement of duties** – there is now a statutory statement of seven general duties and this should enable directors to be clear in their own minds as to what their basic duties are although there will still be plenty of scope for interpretation and debate. For further details, please see the Powells newsletter issue 15 October 2006.
- **Conflicts of interest** – a new provision allows a transaction giving rise to a director's conflict of interest to be authorised by the other directors but this area is still likely to create difficulties.
- **Derivative claims procedure** – a new statutory procedure enabling shareholders to take action on behalf of the company against a director in the case of negligence, default, breach of duty or breach of trust on the part of that director.
- **Transactions with directors and connected persons** – there has been some relaxation of the rules prohibiting certain transactions between a company and its directors or connected persons including loans and substantial property transactions.
- **Directors service agreements** – directors' service contracts with a guaranteed term of more than two years are prohibited unless approved by shareholders in advance.
- **Directors' home addresses** – home addresses will no longer appear on the register at Companies House for new directors or existing directors where they move house but this anonymity is not guaranteed.
- **Director: Natural Person** – at least one director must be a natural person whereas previously it was possible to have entirely corporate directors.

Shareholder Resolutions and Meetings

- **Annual general meetings** – a private company will no longer need to hold an AGM unless it wishes to do so, there is no need to lay accounts at an AGM and auditors are deemed to be reappointed.
- **Written resolutions** – these will no longer require unanimity and shareholders will be able to pass ordinary and written resolutions by a simple majority and written special resolutions by a 75% majority with no requirement to send a copy to the auditors.
- **Notice period for meetings** – these are changed to 14 days for all meetings. However, if 90% of those entitled to vote (or such higher percentage not exceeding 95% as provided in the Articles) agree the notice period may be shortened.

Share Capital

- **Authorised capital** – the concept of authorised capital is being abolished so a company will no longer need to include a ceiling on the number of shares which may be issued in its Memorandum of Association.
- **Financial assistance** – the prohibition on a company giving financial assistance on a purchase of its own shares is abolished so that the complicated and expensive procedure known as the 'whitewash' will disappear simplifying many company acquisitions.
- **Shareholder authorisation to allot shares** – private companies with only one class of share capital will no longer require directors to be authorised to allot shares unless the Articles provide otherwise.
- **Capital reductions** – a new procedure is introduced for capital reductions which can be carried out by means of a members resolution and a directors solvency statement rather than requiring court approval.
- **Distributable profits** – a power is introduced to specify in what circumstances a reduction of capital can result in the creation of distributable profits.
- **Intra group transfers** – new statutory provisions clarify previous ambiguities relating to intra group transfers of assets and when such transfers may constitute unlawful distributions.
- **Redenomination** – the new procedure allows companies to redenominate all or part of their share capital into foreign currency without court approval.
- **Variation of class rights** – a simplified regime is introduced for the variation of class rights.

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The Companies Act 2006 what you need to know (continued)

Memorandum, Articles and Company Records

- **Consolidation** – a company's Memorandum of Association will only contain details of the initial subscribers for shares. It will be relevant to the initial formation of the company but no further. For existing companies, provisions that were in the Memorandum will be treated as provisions of the company's Articles.
- **Objects clause** – the company no longer needs to have an objects clause and the company's objects will be unrestricted. The existing objects clause is likely to be treated as a restriction.
- **Entrenched articles** – companies will only be able to adopt provisions entrenching rights (such as weighted voting rights) in Articles on initial formation or with the agreement of all the members to the amendment of the Articles.
- **Company formation** – companies may now be formed online.
- **Company secretary** – there will no longer be a requirement to appoint a company secretary.
- **Shareholders register** – although still in the public domain those wishing to obtain information will in turn need to provide information about themselves and the proposed use to guard against possible misuse.
- **Electronic communications** – revised procedures are introduced for obtaining consent from shareholders to use electronic communications by means of a company website to disseminate company information.
- **Filing accounts** – the period permitted for filing accounts will be shortened from ten to nine months.
- **Company name** – the Articles may provide that the company's name may be changed other than by way of special resolution including by board resolution. There is also the right to challenge the improper registration of a company name to which someone else has a better right.

Auditors

- **Liability limitation agreements** – for the first time auditors will be able to agree with a company (subject to shareholder approval) that their liability in respect of their audit responsibility is limited although they cannot reduce their liability to less than is fair and reasonable.
- **New criminal offence** – auditors will now be subject to a new offence where they knowingly or recklessly cause an audit report to be false or misleading or omit any statement that is required.
- **Signing off reports** – the audit report must be signed by an individual 'senior' auditor rather than just in the firm's name.

CONCLUSION

It is not yet clear how the Act will apply to existing companies as transitional provisions have not been issued. These are expected in April 2007 at which point companies will need to consider how to implement the new law.

If you would like any further information or advice, please contact **Glyn Evans** on **01934 637911** or email **evans@powellslaw.com**.