

Major changes to company law with the coming into force of provisions of The Companies Act 2006

1 OCTOBER SAW THE INTRODUCTION OF SIGNIFICANT CHANGES TO COMPANIES LEGISLATION AS PARTS OF THE COMPANIES ACT 2006 ("THE ACT") CAME INTO FORCE. THE PROVISIONS OF THE ACT, THE LONGEST ACT TO HAVE BEEN PASSED BY PARLIAMENT, ARE BEING BROUGHT INTO FORCE IN STAGES, WITH ALL OF IT IN EFFECT BY OCTOBER 2009.

The Act introduces reforms which will affect directors, shareholders, auditors and secretaries of private and public companies and will allow companies greater flexibility in choosing how they operate. Particularly, the Government's "Think Small First" approach has resulted in sweeping changes being brought into the running of the private companies.

The key areas of change which private companies in particular will need to be aware of are set out below.

Company Administration

Company decision-making process has been streamlined:

- Private companies are no longer required to hold an annual general meeting. The directors can call a meeting if necessary and shareholders holding at least 10% of the voting rights can still demand a meeting. Shareholders still have the right to receive accounts.
- Unless different arrangements are specified in the articles of association, the notice period for shareholders meetings for private companies has been shortened to 14 days, regardless of whether a special resolution is proposed.
- Other than resolutions to remove a director or auditors, all resolutions of private companies can now be passed in writing. Using written resolutions as an alternative to calling meetings of shareholders is now easier as they no longer need to be signed by all the shareholders. Instead of needing unanimity, written resolutions can be passed by simple majority (for ordinary resolutions) or 75% majority (in case of special resolutions).
- Shareholders now have the right to appoint more than one proxy and proxies have been given the same rights as registered holders to speak, demand a poll and vote both on

a show of hands and on a poll at general meetings.

- The Act makes it easier for companies to use the Internet to communicate with shareholders. The range of information and documentation that can be sent to shareholders electronically has been extended and (provided it is appropriately authorised under its articles of association) the Act allows companies to make certain material available on a website and default shareholders into 'deemed consent' to website communication. Note that the company is still required to notify the shareholders that such material has been placed on the website and where to find it.
- From April 2008 private companies will no longer have to appoint company secretaries unless they choose to do so.

Directors' Duties

The Act introduces a new statutory code of directors' duties to their companies, many of which have until now evolved through case law. Some of the provisions (those dealing with conflicts of interests) will come into force by October 2009.

The general duty is to act in a way that the director considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. The most significant change is a statutory requirement that in doing so the director must have regard, inter alia, to a list of factors including

the likely long term consequences of any decision, the interests of the company's employees, relationships with suppliers, customers and others, the impact on the community and the environment and the need to act fairly as between the members and the company.

Other duties include the duty to act within powers, duty to exercise independent judgement, duty to exercise reasonable care skill and diligence (and note that where a director has specialist knowledge a higher subjective standard must be met), and by October 2009, duty to avoid conflict of interests, duty not to accept benefits from third parties and duty to declare interest in proposed transaction with the company (replace the equitable rule).

In the next issue of PG Lore we will write further on directors' duties and various other aspects of the Act not discussed here.

Do companies need to take action?

The new law is intended to simplify and modernise existing rules and should be welcomed by many of the smaller companies. Some companies will want to change their articles of association to take account of the Act and it would be advisable to ensure that directors are aware of their duties and the implications to the company of the changes made under the Act.



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