

Focus on the Companies Act

The new Companies Act 2006 (Act) repeals, and restates in plain English, almost all of the current Companies Acts (which it will largely replace) and introduces reforms which will affect all companies. The Act is intended to be a complete code of company legislation. A brief synopsis of some of the most significant substantive reforms are set out below.

What is already law?

Whilst most provisions of the Act will come into force by October 2008, some come into force sooner in order to comply with EU directives.

A few of these became law in January 2007 including a requirement for companies to disclose their registered name and number on company websites and order forms and the introduction of provisions allowing companies to communicate electronically with shareholders and others.

In addition Official List, AIM and Plus Markets companies are required to announce their issued share capital and voting rights.

What happens next?

From February 2007 there is to be a consultation exercise to address how the rest of the act is to be implemented. It will then allow time for businesses to plan for the commencement of the act with a view

to bringing all parts of the act into force by October 2008.

The fact that there is a preparatory period for the bulk of the provisions affords companies time to prepare for its implementation but delays private companies benefiting from certain deregulatory provisions of the act, such as the abolition of the financial assistance rules and a simpler method for effecting capital reductions.

The Government is to publish explanatory notes on the act and a plain English guidance for directors which will hopefully provide advice on how certain aspects of the new regime will apply in practice.

What is the main emphasis for private companies and public companies?

For private companies the intention behind the act is to introduce a generally simpler, less regulated, compliance regime. As to public and quoted companies

Points to watch

- Companies should review their business letters, order forms, electronic communications and websites and, if necessary, add the extra information required by the regulations.
- If companies would like to start communicating electronically with their shareholders after 20 January 2007 under the new regime, they may need to amend their articles, seek shareholder approval and request appropriate consents from individual shareholders. They should therefore seek legal advice.

there are new requirements principally designed to ensure greater timeliness and transparency of company information and proceedings as well as accountability, and to give all shareholders, including indirect shareholders, a greater opportunity to participate in company business.

There is very little that 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. The department for trade and industry is inviting comments on the act.

A full consultative document can be found at <http://www.dti.gov.uk/files/file37972.pdf> which will give you contact details for comments.

10 things for private companies to know about the Companies Act 2006

1. Company secretaries – There is no need to appoint one unless you want to.
2. Directors – at least one director must be a natural person, aged 16 or over. Directors have a duty to promote the company's success.
3. Shareholder meetings – private companies are no longer required to hold an AGM
4. Decision making – written resolutions will become easier to use, a simple majority to pass a written ordinary resolutions or 75 per cent majority for a written special resolution.
5. Electronic communications – subject to members' consent in general meeting (or a power in the articles), all companies may use electronic communications with members.
6. Articles – companies formed under the new act can now choose to have new streamlined default model articles.
7. Financial assistance – private companies can give financial assistance for the acquisition of their own shares.
8. Accounts – private companies must file their annual report within nine (previously 10) months before year end. The medium-sized group exemption from preparing consolidated accounts has no been removed.
9. Capital reductions – There is now a simpler solvency-based procedure to enable private companies to reduce capital without court approval.
10. Shareholders rights – Shareholders have extended statutory right to sue directors for broader range of conduct.

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