

The Companies Act 2006

Introduction

The Companies Act 2006 outlines the changes to be made to the rules that govern the systems and controls firms registered with Companies House have to abide by. There are a number of minor changes, which should affect firms in ways that are hardly noticeable; however some changes will have more impact.

Brief overview

The 2006 Act will introduce a 'code' of accounting and reporting requirements for small companies. The Act makes distinctions between companies that are small and those that are not, and those that are quoted and those that are not. This has the effect of reducing the time allowed to file accounts. The Act introduces a new criminal offence for an auditor to knowingly or recklessly include anything that is materially misleading, false or deceptive in an audit report. Companies will be able to agree a limit on their auditors' liability arising from an audit for a specified year, subject to shareholders approving the main terms of the agreement. The amount of the limit must be 'fair and reasonable' in order to be effective. Audit reports will be signed by the 'senior statutory auditor' in their own name, for and on behalf of the firm. Small and medium-sized companies will continue to be able to file abbreviated accounts.

Authorised share capital

From October 2009, new companies will not be required to specify their authorised share capital. Instead, they will need to deposit an initial statement of capital or, as appropriate, a statement of guarantee when incorporating. This will then need to be updated by the company when appropriate, such as when new shares are issued.

Electronic communications

Some of the first provisions of the Act to come into force allow companies to make greater use of electronic communications. Electronic communications with shareholders by email, or via a website with notification, are allowed where an individual shareholder consents. Individual shareholders who prefer not to use this option have the right to request continued communication as hard copy.

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Decision making

The decision making process has been simplified in a number of ways, including:

All resolutions of private companies will be capable of being passed in writing, with the exception of those to remove a director or an auditor, where written resolutions will be able to be carried with a majority of:

- Over 50 per cent (for ordinary resolutions).
- At least 75 per cent (for special resolutions) of eligible votes.

A private company will no longer need to hold an Annual General Meeting (AGM) unless the shareholders positively opt to do so. Public companies will continue to be required to hold an AGM, which must be within six months of the financial year end.

Forming a company

The formation and administration of companies will become simpler. The company memorandum will become a formal document recording the details of the company at the time of registration. Going forward, the articles alone will be the continuing constitutional document, containing the minimum key rules on the internal workings of the company. Private companies will have separate, simple model articles that will better reflect the way that they operate.

The Company Secretary

The requirement for a private company to have a company secretary is abolished from 6 April 2008, although it may continue to appoint one if it wishes. Public companies will continue to require a company secretary.

Rules for Directors

The Act sets out simplified rules concerning the expectations placed on directors of companies. There is now a duty placed on all directors to avoid any actual or possible conflicts of interest. After 1 October 2009 all directors who face conflicts of interest must be specifically authorised to continue to act in such a case by the board, where previously directors needed to be authorised by shareholders. Under the new law, simply 'sitting out' on deliberations will not be sufficient. It is also worth noting that directors are now bound by a duty to promote the success of the company; all directors may now file their service addresses on the public record rather than their private residential addresses; and shareholders now have the right to sue directors for negligence and other defaults.

Other Simplifications

The existing rules regarding capital maintenance and share capital provisions are complex and the Act simplifies these by removing unnecessary and burdensome requirements for private companies. In addition, private companies will not be prohibited from giving financial assistance for the purchase of their own shares, provided they are not subsidiaries of public companies. The requirement to have an authorised share capital is removed for both public and private companies. Finally, the 2006 Act repeals and replaces virtually all of the existing Companies Acts.

Small Companies audited accounts exemption

A company's annual accounts for a financial year must be audited in accordance with the rules laid down by Companies House, unless the company is exempt from audit under section 477 (small companies), or section 480 (dormant companies). To qualify as a small company, a company must meet the following conditions in respect of a financial year:

- (a) The company qualifies as a small company in relation to that year.
- (b) Its turnover in that year is not more than £5.6 million.
- (c) Its balance sheet total for that year is not more than £2.8 million.

For a period which is a company's financial year, but is not in fact a year, the maximum figure for turnover shall be proportionately adjusted.

Companies excluded from small companies exemption

A company is not entitled to the exemption conferred on small companies if it was at any time within the financial year in question:

- (a) A public company.
- (b) A company that is an authorised insurance company, a banking company, an e-money issuer, an ISD investment firm or a UCITS management company, or carries on insurance market activity.

Commencement timetable

The government published an overview of the commencement timetable for the new Act at the end of February 2007. Three common commencement dates were announced, 1 October 2007, 6 April 2008 and 1 October 2009. Secondary legislation will bring the detailed sections of the new Act into effect in line with these dates. The first provisions of the act were introduced in January 2007.

Changes from 1 January 2007

Description of changes 1 January 2007
All electronic communications, including emails and websites, need to include the company's name, number, registered office and other particulars.

Changes from 1 October 2007

Description of changes (section in the act) 1 October 2007
Exercise of Members Rights (145-153)
A Companies Directors (154-259)
Derivatives claims and proceedings by members (260-269)
Company secretaries (270-280)
Accounts and reports (380-474)
Audit (475-539)
Debentures (738-754)
Private and public companies (755-767)

Certification and transfer of securities (768-790)
Distributions (829-853)
Arrangements and reconstructions (895-901)
Mergers and divisions of public companies (902-941)
Statutory Auditors (1209-1264)

Changes from 6 April 2008

Description of changes (section in the act) 6 April 2008
Company secretaries (270-280)
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Mergers and divisions of public companies (902-941)
Statutory Auditors (1209-1264)

Changes from 1 October 2009

Description of changes (section in the act) 1 October 2009
General Introductory Provisions (1-6)
Company formation (7-16)
A company's constitution (17-38)
A company's capacity and related matters (39-52)
A company's name (53-85)
A company's registered office (86-88)
Re-Registration as a means of altering a company's status (89-111)
A company's members (112-144)
A company's share capital (540-657)
Acquisition by Limited company of its own shares (685-737)
A company's annual return (854-859)
Company charges (860-894)
Dissolution and restoration to the register (1000-1034)
UK companies not formed under the Companies Acts (1040-1043)
Overseas Companies (1044-1059)
The registrar of companies (1060-1120)
Company Directors: Foreign disqualification (1182-1191)
Business names (1192-1208)

What do you need to do?

From 6 April 2008

1. You may request permission from shareholders to contact them by e-mail, or by posting information on your website with a notification to shareholders that it is there. If they refuse, you will have to continue communication in hard copy.
2. If you are a private company, you may abolish your company secretary as this is only a requirement for public companies.
3. If you qualify as a small company, as outlined above, you no longer have to have your annual accounts audited in accordance with the rules laid out by Companies House, unless the exemption does not apply as detailed above.
4. If you are a private company the deadline to file annual accounts and reports will reduce from ten months to nine.
5. You must now have at least one actual person as a director and cannot just have companies acting as directors. A new minimum age of 16 is set for directors.

From 1 October 2009

1. New firms will no longer have to specify their authorised share capital. Instead they will have to deposit an initial statement of capital, or initial statement of guarantee, when incorporating.
2. If you are a private company you may choose to reduce your capital by special resolution supported by a solvency statement by each of the directors.
3. If you are a private company, you may pass resolutions in writing, unless it is a resolution to remove a director or auditor.
4. If you are a private company you no longer have to hold an annual general meeting unless the shareholders positively request you to do so.
5. The company memorandum will become a formal document recording details of the company at the time of registration.
6. Directors will be required to file a service address on the public record at Companies House, which may be their company's address, rather than their private home address. A director's private address will be held as protected information at Companies House.
7. Where a conflict of interest arises for directors, it will now be possible for those directors who do not have an interest in the matter to authorise it if this is specifically permitted by the company's Articles, where previously only shareholders could authorise such conflicts of interests.

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