

COMPANIES ACT 2006 - A NEW LEGAL FRAMEWORK FOR COMPANIES

INTRODUCTION

One of the most long awaited and lengthy pieces of legislation, the Companies Act 2006, received Royal Assent in November 2006. This major overhaul of companies legislation is drafted on a "Think Small Company First" principle and as a result, it supposedly uses simpler language and aims to reduce the often-criticised red tape burden faced by private companies, removing a number of procedures and regulations applying to them.

There are other provisions which principally affect public companies, including provisions relating to takeovers and disclosure of information and to promote communication between company and shareholders. E-communications are also addressed in the Act, with provisions allowing companies to communicate with their shareholders via email or websites.

Even though the Act is referred to as the Companies Act 2006, many of its provisions will not in fact come into force until 2008, with certain provisions drip feeding through 2007.

KEY PROVISIONS ALREADY IN EFFECT

Relatively few provisions of major significance affecting private companies have taken effect as yet. The principal matters to note include:

- From the beginning of this calendar year every company in the UK is legally required to include certain regulatory information on their websites and in their emails. There was always the requirement that your registered name, place of registration, registered office address and company number be included on other business stationery. The scope of this is extended in effect to include emails (where this information is probably best included in the email footers) and websites (where it is probably sufficient for disclosure to be made in the "About Us" section of the site).
- With effect from 20 January 2007, new rules have been enacted which will allow communications between a company and its shareholders on a more cost-effective basis. These provisions will most probably mainly affect public companies with large shareholder bodies. Where the shareholders have agreed that information may be supplied in an electronic format, companies will be permitted to communicate with shareholders through their websites and/or email. Moving towards electronic communication may require the company's articles of association to be amended; alternatively, the shareholders can pass a resolution to allow such communication. Whether this provision will result in a reduction in the costs of distributing material in a paper format remains to be seen, as shareholders can still require the company to send the information or document in hard copy and each shareholder must consent to receiving documents in an electronic format.
- Commenting on the Act's introduction of a statutory code of directors duties, The Lawyer magazine said that "There is compelling evidence that when the company law reform bill comes into force, the risks facing company directors will be at an all time high". Arguably the duties of directors have been widened, as directors will have a duty to act in a way which they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.

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WHAT DOES THE FUTURE HOLD ?

The main aspects of the Act affecting private companies over the next 18 months or so include:

• Company formation and administration

These will be simplified through, among other things, the elimination of the need to appoint a company secretary, simplification of the Memorandum and Articles of Association and abolition of the authorised share capital. The requirement to hold an annual general meeting is also withdrawn.

• Meetings, resolutions and share issues

There are various provisions which will make it easier to allot shares without shareholder authority, unless the articles provide otherwise. There will also be changes relating to the majority needed for consent to short notice and provisions regarding the appointment of proxy and corporate representatives, quorums and polls.

• Accounts and auditors

The accounts filing deadline for private companies is to be shortened to nine months and auditors will be permitted to limit their liability to the company by contract. There will also be various provisions concerning the auditors' right to information as well as directors' liability for false or misleading statements in accounts.

• Corporate Procedures

A wide variety of changes will be enacted in due course including:

- The rules and prohibitions on financial assistance relating to the acquisition of own shares are to be abolished for private companies
- The procedures for reduction of share capital will be simplified
- The re-registration procedures associated with changing the status of companies from private to public and vice versa will be revised
- The migration of the registered office from England to Wales or Scotland and vice versa will be permitted
- Other changes will allow public companies to take advantage of the voluntary strike-off procedures that already exist under the Companies Act 1985 as well as changes to the purchase of own shares provisions

SUMMARY

The Companies Act 2006 will have a major effect on companies. With the detailed provisions being enacted over a period of at least 18 months, it is not yet clear what all the practical implications of these changes will be. This is a real case of "watch this space". We will keep you advised of the principal changes as they are introduced.

Rawlinson & Hunter

Chartered Accountants

Eagle House, 110 Jermyn Street
London SW1Y 6RH

and at

Lower Mill, Kingston Road
Ewell, Surrey KT17 2AE

T +44 (0)20 7451 9000

F +44 (0)20 7451 9090

E firstname.lastname@rawlinson-hunter.com

W www.rawlinson-hunter.com

Partners

Philip Prettejohn FCA

Bob Drennan FCA

Simon Jennings FCA

Chris Bliss FCA

James Kelly FCA

Mark Harris FCA

Frances Stephens ACA

David Barker CTA

Kulwam Nagra FCA

Ben Melling FCA

Paul Baker ACA

Sally Ousley CTA

Derek Rawlings ACA

Directors

Mike Cunningham ACA

Anne Fairpo CTA

Nigel Medhurst AIT

Graham O'Connell ACA

Consultants

Ken Dent FCA

Ralph Stockwell FCA

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