

Companies Act 2006

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CATEGORY:

ARTICLE

Abolition of financial assistance rules for private companies.

The restrictions contained in the Companies Act 1985 on financial assistance for the acquisition of shares in private companies (including the 'whitewash' procedure) will be repealed. However, private companies will still need to take advice as to whether other rules, such as those relating to an unlawful reduction of capital, could be breached which would prevent a private company from giving financial assistance on or after 1 October 2008.

A private company will no longer be required to obtain court approval to reduce its share capital.

The reduction will need to be approved by shareholders and, in addition, the directors will be required to make a statutory declaration as to the company's solvency.

New rules on directors' conflicts of interest and declarations of interest.

Directors (as well as shareholders) of newly incorporated private companies will be able to authorise a director's conflict of interest, unless the articles of association preclude it. Public companies and existing private companies which choose to do so will need shareholder approval in order for directors generally to be able to authorise a conflict. Public companies will also have to continue to take into account general existing corporate governance issues with regard to directors' conflicts.

In addition to the procedure for authorising a general conflict of interest, the 2006 Act requires a director to declare an interest in a proposed transaction, obliging him to disclose both the nature and extent of the interest. We have been advising clients how to amend their articles to permit a director to discharge his disclosure duties without breaching duties of confidentiality owed to third parties.

Corporate directors and under-age directors.

Companies must all have one director who is a natural person, that is, an individual rather than a company. However, there will be a grace period until 1 October 2010 for companies which did not have an individual as a director on 8 November 2006, to make such an appointment.

Also, any director under 16 years of age will cease to be a director on 1 October 2008 and the company must update its statutory registers.

New regime to protect the goodwill of company names.

It will now be possible for any person or company to object to a company's registered name, which was not previously the case. The objection will be upheld if the objector can show that the name is the same as one in which the objector has goodwill, or is so similar as to suggest a connection between the company and the objector, although the company can justify the registration of the name if it satisfies various requirements under the new Act. However, regardless of the ability to show any such justification, if it is shown that the company registered the name with the main purpose of obtaining money from the objector or of preventing it from registering the name, the objection will still be upheld and the name must be changed.

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