

The Companies Act 2006

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CATEGORY:

ARTICLE

1. Is it true that we no longer have to have an annual general meeting?

From 1 October 2007, a private company will not need to hold an AGM, unless, unusually, required to do so by its articles of association. Many private companies will already have passed elective resolutions to dispense with the need for an AGM and if this has been done it is expected that no further action will need to be taken. Some of our clients, particularly charitable companies, have expressed a wish to continue holding AGMs, in which case they will have to review their articles.

2. What is changing regarding shareholders' meetings?

Companies will still be able to hold general shareholders' meetings as before. However, it will usually only be necessary to give 14 (rather than 21) days' notice of any meeting and proxies will have improved rights.

We anticipate that private companies will hold fewer shareholders' meetings. From October 2007, written resolutions of shareholders will no longer require the consent of all the shareholders, merely the majority required to pass the resolution as if it had been put before a meeting (a simple or 75% majority, depending on the type of resolution).

3. Everyone is talking to me about changes in directors' duties. Has anything really changed in practice?

The Companies Act 2006 has, for the first time, introduced a written statement of directors' duties, which will come into effect in October 2007. Generally, these are based on the existing duties which apply to directors, but in some cases go further. For example, there is a new duty to promote the success of a company for the benefit of its members, and in doing so to have regard to its employees, business relationships and its impact on the wider community and the environment. From October 2008, directors (as well as shareholders) will be able to authorise a director's conflict of interest, provided the articles of association allow it.

4. Is it true directors can keep home addresses confidential?

Yes. Previously it was only possible for directors to keep their home addresses confidential if they faced a risk of violence or intimidation. However, with effect from October 2008, you will be able to keep your home address confidential from the public provided you provide the company with a service address (which could, for example, be your company's registered office).

5. My company only has corporate directors. Does this need to change?

Yes. From October 2008 all companies must have one director who is a natural person (over the age of 16).

6. I am told I will not need to have a company secretary any more. Is this true?

Yes. From April 2008 the requirement to have a company secretary will be abolished. However, you can still choose to retain a company secretary since the administrative functions of a company secretary will remain. We expect most companies to retain the company secretary role.

7. I have heard I need to do something with my website?

Yes, you may do. You now need to include your company's name, number, registered office and place of registration on your website, as well as on all business letters, order forms and other documents (whether in hard copy or electronic form).

8. Is it true that we can now use our website for all communications with our shareholders?

Yes, provided certain steps are taken first. Previously there was some uncertainty as to what could be communicated to shareholders via a company's website. The Companies Act 2006 makes clear that all communications to shareholders can now be made via the company's website or be e-mailed to them. This does, however, require the consent of the shareholder concerned (which will be deemed if the shareholder fails to

respond to the contrary when asked) and either a change in the company's articles of association or shareholder approval at an extraordinary general meeting. Shareholders will still have the right to demand hard copies.

9. We have heard that our auditors can now limit their liability?

From April 2008, if shareholders agree, auditors will be allowed to agree a limit to their liability which is 'fair and reasonable', bearing in mind their role and responsibility.

10. I understand the period for filing accounts is going to change?

Yes. From April 2008, private companies will have to file their accounts with the Registrar of Companies nine months (as opposed to ten months) after the end of the relevant accounting period.

11. Our shareholders are worried that the directors will be able to issue shares without their consent which will result in a dilution of their shareholdings.

The new rules should not generally result in any increased risk of dilution of your shareholding since most articles of association include pre-emption rights to protect shareholders against this.

What is changing is that directors of private companies will be able to issue shares without shareholder approval if the company has only one class of shares, unless the articles provide otherwise and subject always to any rights of pre-emption.

The concept of authorised share capital is also being abolished so there will be no limit on new share issues.

We expect most private companies to retain full pre-emption rights so that shareholder approval will be needed for any new issue of shares unless they are first offered pro-rata to existing shareholders. If no pre-emption provisions are included in a company's articles, existing shareholders risk dilution, for example, from the issue of employees' share options and share for share acquisitions.

12. I have heard that the directors will have the power to change the company's name without shareholder approval.

Yes. This will be possible from October 2008 so long as the board is given the power to do so under the articles of association. A company will need to amend its articles to permit the board to do this.

13. Do we really need to update our memorandum and articles of association?

Generally, no. You will be able to continue with your existing constitution. However, all new companies will have to operate under the new regime and in order for existing companies to take advantage of many of the new rules, they will need to amend their articles of association. Also, if a company's articles contain any unusual provisions, it may be necessary to amend them in order for them to remain workable.

A new set of model articles for private companies will be introduced in October 2008. These are simpler than the previous prescribed versions and are written in plain English. The model articles will be 'default' in that they will apply where a company does not have its own tailor-made articles, or where its articles do not cover a particular subject. As before, companies can exclude or amend some or all of the model articles. As is usually the case now, it is likely that companies will choose to incorporate some parts of the model articles but will also set out their own provisions separately.

We will be producing separate briefing notes on the more significant changes made by the Companies Act 2006.

This memorandum is intended as an outline guide only. It is not intended to be exhaustive and reliance should not be placed upon it without seeking more detailed advice in the light of your own circumstances.

The memorandum is based on English law and practice some of which is in force at the date it was prepared and some of which is due to be implemented in the future. As legal provisions change frequently any comment in this memorandum should be reconfirmed before any action is taken.

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