

Companies Act 2006 Changes Affecting Directors

More of the provisions of the Companies Act 2006 affecting directors will come into force on 1 October 2008, in particular:

- All directors must be over 16 and underage directors will cease to be directors.
- At least one of the directors must be a natural person – companies which had only corporate directors on 8 November 2006 will have until October 2010 to comply. The Secretary of State is empowered to make an appointment if a company is in breach of this provision.
- The remaining parts of the new statutory code of directors' duties (most of which came into force on 1 October 2007), namely the duties
 - ◆ to avoid conflicts of interest;
 - ◆ to declare interests in proposed and existing transactions or arrangements;
 - ◆ not to accept benefits from third parties.

Conflicts of Interest

Situations in which directors have direct or indirect interests which conflict, or may conflict, with the company's interests must be avoided, but there will be no breach if the director's interests cannot reasonably be regarded as giving rise to a conflict or if the matter giving rise to it is authorised by the board of directors (though the vote of the director who has the conflict cannot be counted).

The board of a public company must have express power to authorise a conflict by virtue of a provision in its constitution, while the board of a private company has general power to give authorisation unless its constitution expressly invalidates that power. Provided a conflict is authorised in accordance with provisions in the articles for authorising conflicts, the directors will not be in breach of any of their other general duties to the company.

Declarations of Interest

The nature and extent of a director's interest in (a) a proposed contract and (b) a contract which has already been entered into with the company must be declared at a meeting of the directors or by notice to them in accordance with the Act. Failure to declare an interest in an existing contract will be a criminal offence, but there is no need to declare an interest if it cannot reasonably be regarded as likely to give rise to a conflict of interest.

Benefits from Third Parties

These include payments to directors to persuade them to act or vote in a particular way, but there is no breach, if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest, or to a breach of the director's general duties to the company.

Ideally, policies and procedures for identifying and reviewing existing and potential conflicts of interest should be put in place and articles amended where necessary.

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