

Companies Act 2006

The Companies Act 2006 received Royal Assent on 8 November 2006. With 1,300 sections and 16 schedules, it is said to be the longest piece of legislation ever enacted by Parliament. It amends or restates almost all existing company law. This short article highlights a few of the significant changes.

There is a statutory statement of duties which is intended to make this area of the law more accessible to those who act as directors. The new statutory provisions reflect existing common law, consequently, knowledge of the principles developed by the Courts over the years will still be required. The Act simplifies company administration. For private companies, this is reflected in the abolition of the requirement to hold an annual general meeting (currently available only if the shareholders pass an elective resolution), of the need to have a company secretary and of the requirement for written resolutions to be signed by all of the shareholders (subject to following certain procedures).

Those who have had to go through the whitewash procedure will be pleased to hear that the rules against financial assistance are to be abolished for private limited companies, though it is thought that lenders may well require some equivalent comfort in the future.

Communications with shareholders by email and via a website are also made easier, provided they have given general or specific agreement (shareholders will be taken to have agreed if they fail to respond to a request for agreement within 28 days). At the same time, increased shareholder rights mean that those holding shares through nominees will be able to insist upon receiving certain information from the company.

Incorporation of a company should be easier in the future as the memorandum of association will become a much simpler and shorter document stating simply that the subscribers wish to form a company and a company will have unrestricted powers unless the articles of association contain restrictions. In future, the articles will be a company's key constitutional document. The requirement to state an authorised share capital or to have a specific objects clause will also be abolished.

Although some transparency provisions of the Act which affect listed companies and the provisions regarding communications by email or via a website came into force in January 2007, the timetable for the implementation of the remainder of the Act has not yet been determined. It is the Government's stated aim to have all the provisions in force by October 2008.

On a separate point, from 1 January 2007, Regulations implementing a European Company Law Directive require the company's name, registration, place of registration and registered office address to appear on all order forms, on all the company's websites and on all electronic documents, such as emails.

Chamber Tax Finance and Legal Committee.
Martin Tomsett, Consultant & David Ashplant Partner
Lester Aldridge Solicitors, January 2007

The information contained on these web pages is for general guidance only and is in no way a substitute for seeking professional advice on your specific circumstances.