

A Guide to the Companies Act 2006

What does it mean for private companies?

The Companies Act 2006 is the longest Act ever to have been passed by Parliament with over 1,200 Sections and 16 Schedules.

It is vital that Directors and Shareholders alike are aware of what provisions of the new Act.

This article sets out the various implementation stages of the new provisions. You will need to be complying as failure to comply with some provisions is a criminal offence.

Although the government stated the objective was to simplify company law, especially for private limited companies, some of the changes made have actually resulted in significant extra work for Directors.

Changes in force since January 2007

Some changes came into force on 1 January 2007, such as provisions relating to communications with shareholders and increased facilities for electronic communication e.g. electronic filing of accounts.

It is now a legal requirement for a company's website and its e-mail communications to include the following information:

- Company name (this may differ from its trading name);
- The company's registered office address (this must not be a PO Box No);
- The company's registration number and country of registration;
- An e-mail address where the company can be contacted (this is not a requirement for e-mails);
- If the company is a member of a trade or professional association, its membership details including any registration number (not required for e-mails);
- If the business has a VAT number, the VAT number (not a requirement for e-mails).

The information must be clear and easily accessible, however, it need not appear on every page of a website just in "about us" or "legal page".

Changes in force since October 2007

On **1 October 2007** the following changes came into force:

- You no longer have to hold Annual General Meetings
- All meetings can be called on 14 days' notice unless the company's Articles say otherwise
- 90% rather than 95% of members can agree to hold a meeting on short notice
- Written resolutions no longer need to be signed by all shareholders but only by a 75 % majority for Special Resolutions and a 50 % majority for Ordinary Resolutions (decisions to remove directors and auditors cannot be made by written resolution)
- 10% of shareholders can call a meeting (5% in some circumstances)
- Copies of a director's service contract (or if not in writing, a memorandum of its terms) to be kept available for inspection
- Contracts between a sole member and his/her company (other than in the ordinary course of business) to be recorded in writing
- Minutes of directors meetings to be kept for 10 years
- New procedure for shareholders to bring claims on behalf of a company against a director for misconduct.

One of the most significant changes introduced by the new Act is the statutory statement or code of directors' duties. The following general duties must now be observed:

- Duty to act within powers (no change)
- Duty to promote the success of the company (see below*)
- Duty to exercise independent judgement and
- Duty to exercise reasonable care, skill and diligence (no change).

****Duty to promote the success of the Company***

This is one of the most controversial additions and requires directors to have regard to:

- The likely consequences of any decision in the long term
- The interests of the company's employees
- The need to foster the company's business relationships with suppliers, customers and others
- The impact of the company's operations on the community and the environment
- The desirability of the company maintaining a reputation for high standards of business conduct and
- The need to act fairly as between members of the company.

Only time will show how these duties will work in practice, especially as some of them appear to conflict. For example, a company which cuts down trees might have a detrimental effect on the environment but the decision to cut down the trees might be beneficial to the shareholders and employees.

Changes in force since April 2008

On 6 April 2008 the following changes came into force:

- You can choose whether to have a company secretary
- Private companies will have only 9 months to file their annual accounts instead of 10 months after the end of their accounting year
- Changes to the way documents are executed

Changes in force since 1st October 2008

The following general duties of directors came into force on **1st October 2008**:

- Duty to avoid conflicts of interest
- Duty not to accept benefits from third parties
- Duty to declare interest in proposed transaction or arrangement

Until these changes are introduced, directors remain subject to current case law on directors' duties and conflicts of interest.

Other changes that came into force on **1st October 2008** are as follows:

- Companies must now have at least one 'natural person' as a director (as opposed to a corporate body)
- All directors must now be over the age of 16
- Financial assistance on purchase of own shares is no longer prohibited
- It is now easier to reduce share capital

Changes in force since 1st October 2009

The key areas of the 2006 Act which will come into force on 1 October 2009 relate to:

- company formation and re-registration;
- constitution and corporate capacity (except as already in force on execution of documents);
- company names (except as already in force on company names adjudicators);
- registered office;
- membership and share capital (except as already in force for private companies on financial assistance and reductions of capital without a court order);
- registers of directors and secretaries and service addresses;
- annual returns;
- company charges;
- overseas companies;
- dissolution and restoration to the Register;
- Registrar of Companies.

There are other changes that this article does not cover due to brevity. Should you require further detail please do not hesitate to contact us.

CALL NOW to speak to a member of the Company & Commercial team.

We would be happy to discuss your particular situation and offer specific guidance to help you navigate this transition more effectively and efficiently.

Disclaimer

These notes have been prepared by **Curwens Solicitors** as general guidance only and cannot be taken as legal advice. **Curwens Solicitors** will not be liable for any loss, direct or consequential, suffered by anyone acting or omitting to act as a result of the contents of these notes.

Enfield:
020 8363 4444
enfield@curwens.co.uk

Cheshunt:
01992 631 461
cheshunt@curwens.co.uk

Hoddesdon:
01992 463 727
hoddesdon@curwens.co.uk

Royston:
01763 241 261
royston@curwens.co.uk

Enfield:
020 8363 4444
enfield@curwens.co.uk

Cheshunt:
01992 631 461
cheshunt@curwens.co.uk

Hoddesdon:
01992 463 727
hoddesdon@curwens.co.uk

Royston:
01763 241 261
royston@curwens.co.uk