



COMPANIES ACT NEWSLETTER FEBRUARY 2009

The Companies Act 2006 is now nearly fully implemented. Having received Royal Assent on 8 November 2006, it has been phased in over the last 2 years with the final parts of the Act only coming into force with effect from 1 October 2009.

The purpose of this brief summary is to give you an indication of some of the regulations that are now in force:-

Company Name

- The name has to be displayed at the registered office and at any location from which the company carries on business (unless this is primarily used for living accommodation). The name must be capable of being read with the naked eye! The registered name needs to be disclosed on all business communications and on business letters, orders, forms, websites and emails of the company, together with the part of the UK where the company is registered (e.g. England and Wales), the registered number and the registered office address.

Meetings

- Annual General Meetings are now optional with Extraordinary General Meetings becoming now General Meetings.
- All shareholders meetings can now be called on 14 clear days notice with shortened notice being implemented by 90% of shareholders entitled to attend and vote. Written resolutions do not now need to be signed by all shareholders but can be signed by the necessary majority, that is 75% for special and 50% for ordinary resolutions.
- Proxies now have the right to speak at General Meetings.

Share Capital

- Financial assistance and buy-back of share capital rules have been relaxed. There is no longer a need for what was known as the 'whitewash' procedures and the company can buy-back and reduce share capital by way of a solvency statement as against formal court procedures.

Company Constitution

- Where a company has been formed after 1 October 2007, the provision for the chairman's casting vote in the event of a deadlock can no longer be included.
- The minimum age for directors is now 16 (previously there wasn't one).
- A company secretary is no longer needed. If one is currently in place all that is needed is a directors meeting to remove the company secretary. No changes are needed to the Memorandum and Articles unless there is a formal requirement to have a secretary for various actions.
- Annual returns do not need to show the addresses of shareholders.



Directors

- Private companies must have at least one director who must be a natural person.
- Directors can use a service address on public record but a register of residential addresses has to be maintained in the statutory books.
- There is no longer any need for the directors to include details of other directorships held (it hasn't taken that long to change this rule as this was a promise in 1998!).
- Where a director has had more than one name, all names must be stated. There is no longer an exception for a married woman's maiden name.



Directors duties

- Directors must act within their powers and in accordance with the company's constitution.
- Directors duties have been codified with a new duty placed on directors to promote the company's success so they must act in a way which they consider

would be the most likely to promote the success of the company for the benefit of the members as a whole. In so doing they must have regard to the consequences of any decision in the long term, the interest of its employees, the need to foster business relationships with suppliers, customers and others and the impact of the company's operations on the community and the environment.

- Directors must exercise independent judgement.
- Directors must exercise reasonable care, skill and diligence. This is a tricky concept but, the general knowledge, skill and experience is that which may reasonably be expected of a person carrying out the same function as the director in relation to that company and the general knowledge, skill and experience that the director actually has. For example, the 30 years qualified accountant must show the care, skill and diligence of a 30 years qualified accountant. Unfortunately, directors who might not be considered to be the 'sharpest knives in the drawer' now cannot hide behind their subjective stupidity. They must show the care, skill and diligence that a sensible observer would expect of such a director.

- Directors must identify where there are conflicts of interest and declare these to the company.
- A new duty has been introduced, this is a duty not to accept benefits from third parties. This is of course subjective and will evolve but in general this duty is not infringed if the acceptance of a benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. There has been a lot of talk about this being the end of corporate hospitality and it remains to be seen how the courts react to this new duty and as to whether it will be measured against the value of the benefit provided by the company or against the personal wealth of the director concerned.
- Duty to declare an interest in proposed transaction.
- Directors associates have been widened to include the directors *parents* as well as children and stepchildren *over* the age of 18. There has also been a widening of connected parties and now include an individual (whether of same or different sex) in an enduring family relationship. At least some people are still excluded from connected parties, that is grandparents, grandchildren, sisters, brothers, aunts, uncles, nephews and nieces.

Accounts

- All companies (except those under the small companies regime) must produce a business review for any financial year beginning on or after 1 October 2007.
- For all accounting periods beginning after 6 April 2008 the following changes have been introduced:-
 - a. Filing of accounts will have to be within 9 months of the year end rather than 10 months.
 - b. Small company limits have been increased and are now turnover of not more than £6.5m; gross asset balance sheet total of not more than £3.26m.
 - c. Medium sized company thresholds have increased.
 - d. Medium sized groups will now have to prepare consolidated accounts.
 - e. Audit reports will now have to be signed in the name of the auditor preparing the report and must be signed and dated by that auditor. It is now an offence if a person knowingly or recklessly causes an auditors report to

include any misleading false or deceptive material.

- Directors loans of up to £10,000 are permitted without shareholder approval. Above this sum prior shareholder approval is required.
- Auditors can now limit their liability by agreement with the company.
- Charitable companies can choose to have an independent examination (similar to that of unincorporated charities). This will apply to charitable companies whose turnover is greater than £90,000 but less than £500,000.



In brief:

Fines applicable to late filing of accounts are amended from 1 February 2009 to:-

Private companies

less than 1 month overdue

£150

More than 1 month less than 3

£375

More than 3 months less than 6

£750

Greater than 6 months

£1,500

And finally, after 1 October 2009

- Companies formed after 1 October 2009 will not require authorised share capital and this concept disappears.
- The Company's Memorandum disappears and in future the company will simply have a constitution.

Disclaimer

This newsletter is intended to give general guidance only and no liability can be accepted for any action taken based on the information given.

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