

# client briefing

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## Companies Act 2006

By any standard the Companies Act 2006 is a significant piece of legislation. At over 700 pages long and containing some 1,300 sections, it will take around three years to implement in full.

In this briefing we provide an overview of the key areas of change as well as a summary of where we are now with this important legislation. We also outline some of the practical changes you can expect to see in 2009. If you would like to discuss how any of the changes might affect you or your company in more detail please contact us.

### Looking back

The company law reform process began as far back as 1998, with an independent review. White Papers followed in 2002 and 2005 and a Bill was eventually published in November 2005. The Act itself finally received Royal Assent on 8 November 2006.

### The overall objectives

The government's overall objectives in respect of the new legislation were to simplify and modernise company law so that it better meets today's business needs and provides flexibility for the future. While the reform process aimed to 'think small first', the resulting legislation has an impact on directors, auditors, shareholders and company secretaries of private, public and quoted companies.

The Act itself has been written in simplified language, with a particular focus on small companies.

### Progress to date

Eight Commencement Orders have been issued to date, which bring the individual sections of the new Act into force. There has also been a raft of supporting legislation issued in the form of Statutory Instruments that provide us with further details. This has certainly been keeping us busy!

### Key areas of change

#### Directors

- **A statement of director's duties**

In order to help make it easier to understand the general duties that a director owes to their company, there is now a formal, statutory code of directors' general duties to the company. This clarifies the existing duties that have developed over the years through case law.

The Act requires each director to act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders as a whole. This broadly replaces the previous duty to act in the company's best interests.

- **Wider social responsibility and safe harbour from liability**

In performing the above duty, the Act requires that directors give some consideration as to how their decisions affect the wider interests of their employees, the community, the environment, their suppliers as well as other factors.

As reporting requirements increase for some companies, the Act gives directors a 'safe harbour' that will restrict their civil liability in respect of material omissions from, or statements made in, directors' reports.

- **Transactions with directors**

The rules that regulated transactions between directors and their company, which required shareholder approval, have been reformed and restated. In particular, the Act permits companies, with shareholder consent, to make loans, give guarantees or provide security in connection with a loan to a director.

- **Other changes**

The information that must be filed at Companies House in respect of company directors is due to change. For each director, a service address and the country of usual residence will be required in addition to the home address. This will apply from 1 October 2009 for new appointments; for existing directors, a service address and the country of residence will be required in Annual Returns made up to dates after 30 September 2009. Home addresses will not be placed on the public record after that date.

The Act continues to allow companies to have corporate directors, although at least one director must be a natural person (ie an individual).

#### Accounts and reports and audits

Much of the new legislation governing these areas came into effect on 6 April 2008, although it is often only effective for accounting periods beginning on or after that date. The majority of companies will not therefore see the full effects of these changes until April 2009 year ends and onwards.

#### Shorter filing deadlines

The period available to file accounts at Companies House has been reduced under the new Act:

Filing deadline	Old	New
	months from the end of the accounting period	
Private limited company (Ltd)	10	9
Public limited company (Plc)	7	6

In addition, the penalties associated with late filing of accounts have been increased.

## New size limits - is your company small or medium-sized?

January 2004 saw the definition criteria for small and medium-sized companies and the audit exemption limit rise significantly, meaning that many more companies could benefit from the exemptions available.

The limits have been increased again in respect of accounting periods that begin on or after 6 April 2008:

Individual company limits	Old small company limits	New small company limits
Turnover not more than	£5.6m	£6.5m
Balance sheet total not more than	£2.8m	£3.26m
Number of employees not more than	50	50

	Old medium-sized company limits	New medium-sized company limits
Turnover not more than	£22.8m	£25.9m
Balance sheet total not more than	£11.4m	£12.9m
Number of employees not more than	250	250

You may recall that qualification depends upon the company meeting at least two of the three relevant criteria.

These limits are important as they determine whether a company can benefit from:

- the preparation of simpler accounts

### Comment

A small company can take advantage of exemptions from certain disclosures in its accounts and can make use of simpler accounting standards to prepare its accounts. Some companies do however continue to be prohibited from taking these advantages, including certain financial services companies.

- filing abbreviated accounts on the public record at Companies House

### Comment

There had been early indications that the government intended to abolish the option for small and medium-sized companies to file abbreviated accounts at Companies House. However these were not realised.

Unfortunately this option is of less value to medium-sized companies generally and such companies also have to disclose turnover in their abbreviated accounts under the new rules.

- audit exemption

### Comment

There are differing views on the value of the audit process to owner managed companies. The decision for you and your business is clearly a personal one. If your company now falls under the higher audit thresholds, which are equivalent to the small company turnover and balance sheet limits, this will provide us with the opportunity to provide you with a more flexible service.

## Higher group limits - but do you now need to prepare group accounts?

The limits that apply to groups of companies have also been increased:

Group limits	Old small group limits	New small group limits
Net turnover not more than	£5.6m	£6.5m
Gross turnover not more than	£6.72m	£7.8m
Net balance sheet total not more than	£2.8m	£3.26m
Gross balance sheet total not more than	£3.36m	£3.9m
Number of employees not more than	50	50

Group limits	Old medium-sized group limits	New medium-sized group limits
Net turnover not more than	£22.8m	£25.9m
Gross turnover not more than	£27.36m	£31.1m
Net balance sheet total not more than	£11.4m	£12.9m
Gross balance sheet total not more than	£13.68m	£15.5m
Number of employees not more than	250	250

Qualification again depends upon the group meeting at least two of the three relevant criteria, although the group may qualify on the basis of either the net or gross figures.

### Comment

Importantly for medium-sized groups, the exemption from the preparation of group accounts has been abolished under the new Act. Therefore many groups which were previously exempt may now have to produce group accounts for the first time.

We should begin to plan early if you think that group accounts will now be needed.

## Improving audit quality

Changes in this area include:

- the introduction of a new criminal offence for an auditor to knowingly or recklessly include anything that is materially misleading, false or deceptive in an audit report
- the ability for companies to be able to agree a limit on their auditors' liability arising from an audit for a specified year, subject to shareholders approving the main terms of the agreement. The amount of the limit must be 'fair and reasonable' in order to be effective
- audit reports for accounting periods beginning on or after 6 April 2008 will be signed by the 'senior statutory auditor' in their own name, for and on behalf of the firm.

Auditors will also be required to include in their report if the directors have prepared accounts in accordance with the small companies regime and in the auditors' opinion, they were not entitled to do so. There are also now provisions in place for the audit report to disclose the required particulars of any disclosures regarding directors' benefits that have not been made in the accounts.

## Electronic communications

Some of the first provisions of the Act that came into force allowed companies to make greater use of electronic communications.

Electronic communications with shareholders by email, or via a website with notification, are allowed where an individual shareholder consents. Individual shareholders who prefer not to use this option have the right to request continued communication as hard copy.

## Decision making

The corporate decision making process has been simplified in a number of ways, including:

- all resolutions of private companies are capable of being passed in writing, with the exception of those to remove a director or an auditor
- written resolutions are able to be carried with a majority of:
  - over 50 per cent (for ordinary resolutions)
  - 75 per cent (for special resolutions) of eligible votes
- a private company is no longer required to hold an Annual General Meeting (AGM), although shareholders can positively opt to do so. Public companies continue to be required to hold an AGM. This must be within six months of the financial year end.

## Other areas

- Forming a company

The formation and administration of companies will soon become simpler. The company memorandum will become a formal document recording only very limited information, for example, the names of the people registering the company. Going forward the articles alone will be the continuing constitutional document, containing the minimum key rules on the internal workings of the company. Private companies will have separate, simple model articles that will better reflect the way that they operate.

- The company secretary

The requirement for a private company to have a company secretary has been abolished, although it may continue to appoint one if it wishes. Public companies continue to require a company secretary.

### Comment

While it is no longer mandatory for a private company to have a company secretary, a number of the tasks that they traditionally carried out continue to exist. Please contact us if you would like to discuss these in more detail before making a decision in this area.

- Other simplifications

The rules regarding capital maintenance and share capital provisions were complex and the new Act has simplified these by removing unnecessary and burdensome requirements for private companies. In addition, private companies are no longer prohibited from giving financial assistance for the purchase of their own shares, provided they are not subsidiaries of public companies.

The requirement to have an authorised share capital has been removed for both public and private companies.