



CLIENT ALERT

Companies Act 2006

The Companies Act 2006 ("the Act") received Royal Assent on 8 November 2006. The Act comprises 1300 sections (contained in 47 parts) and 16 schedules, and will effectively replace existing companies legislation.

The Government believes that the Act - which is the largest Act in UK legislative history - will bring major benefits to businesses by modernising and simplifying the law.

A number of provisions (including electronic communication with shareholders and new requirements on disclosures to be given on company websites and emails) were brought into force earlier this year. However, the bulk of the new provisions will be brought in on three implementation dates namely, 1 October 2007, 6 April 2008, and 1 October 2008 respectively.

Directors

From 1 October 2007, the Act introduces a statutory statement of directors' duties for the first time, and a new right for members to bring claims against the directors. While the Act generally codifies the existing case law position, significant changes include the introduction of a statutory requirement for directors to have regard, among other things, to a list of factors in exercising their duty of good faith. There are also new requirements dealing with:

- ◆ The appointment of corporate directors;
- ◆ The new minimum age for directors;
- ◆ The use of service addresses for directors;
- ◆ The declaration of directors' interests in company transactions;
- ◆ Transactions requiring shareholder approval.

Resolutions and Meetings

The Act will, from 1 October 2007, abolish the current obligation for private companies to hold annual general meetings. There are also changes in the rules governing written resolutions of shareholders. The Act allows written resolutions to be passed with a simple majority for written ordinary resolutions or a 75% majority for written special resolutions - written resolutions currently require unanimity.

The minimum notice period for members' meetings will be 14 days. A special resolution will no longer require 21 days notice.

Company Secretary

Private companies will, from 6 April 2008, no longer be required to have a company secretary, although they may continue to have one if they wish. However, as the requirement to carry out the usual company administrative duties will remain, Thorntons Law LLP will continue to provide a comprehensive "company secretarial administration" service to company clients, whether or not the company continues to have a secretary.

Accounts, Reports, and Audit

From April 2008, the time limit for private companies to file their accounts with the Registrar of Companies will reduce from ten months to nine months from their year end.

There are also changes in the following areas:

- ◆ The approval and signature of accounts;
- ◆ The disclosure of directors' benefits;
- ◆ The content of the business review in the directors' report;
- ◆ Directors' liability for false or misleading statements;
- ◆ The publication and filing of accounts and reports;
- ◆ The preparation of group accounts by medium-sized companies.

Given the abolition of annual general meetings, an auditor will be deemed to be reappointed for the following year unless the company takes steps to end his appointment or to appoint a different auditor. It will also be possible for the company, by ordinary resolution, to choose to agree a limitation of the auditor's liability for a financial year.

Model Articles

From October 2008, new model articles for private companies will be introduced which will eliminate much of the complex regulation which is contained in the current model (Table A), but which is not relevant to small companies. If existing companies wish to benefit from the new model articles these will require to be specifically adopted by the members passing an appropriate special resolution.

Other Key Changes

A number of other significant changes are made under the Act. These include: -

- ◆ The current "elective" regime (set out in the Companies Act 1985) is made the default regime for private companies (October 2007);
- ◆ The simplification of the process for forming a company (October 2008);
- ◆ Private companies may give financial assistance for purchases of their own shares (October 2008).

Do you want to know more?

These are just some the more significant changes brought in by the new Act. If you want more information, or wish to discuss any of the points in this Alert, please contact:

Iain Hutcheson, Partner

ihutcheson@thorntons-law.co.uk

Jack Robertson, Partner

jrobertson@thorntons-law.co.uk

Michael Royden, Partner

mroyden@thorntons-law.co.uk



Corporate Law Unit, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ

Tel 01382 229111

www.thorntons-law.co.uk