



Explanatory Note

The companies Act 2006: Seventh Commencement Order

This explanatory note serves to highlight and summarise some of the main provisions of The Companies Act 2006 that will take effect from 1 October 2008.

DIRECTORS

Duty to avoid conflict of interests

There will be a new statutory duty imposed on directors. A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. The duty will not be breached either where the situation "cannot reasonably be regarded as likely to give rise to a conflict of interest", and/or where the situation has been authorised by the board of directors.

Public companies will be required to change their articles in order to enable board authorisation. It is not necessary for private companies to change their articles to enable board authorisation provided their articles do not actually prohibit authorisation (it is therefore recommended that they check that there is no such prohibition). However, private companies incorporated before 1 October 2008 will require their shareholders to pass an ordinary

resolution to grant the board the right to authorise conflicts if they have not previously done so.

Duty not to accept benefits from third parties

A director must not accept a benefit from a third party conferred by reason of his being a director, or his doing (or not doing) anything as a director.

Companies with pre-existing internal policies regarding gifts or corporate hospitality should review these in light of the new provisions whilst companies without such policies would be advised to introduce them. Records should also be kept of any benefits received.

Duty to declare interest in proposed transactions or arrangements

There will be a new statutory duty imposed on directors to declare any interest in a proposed or existing transaction or arrangement with the company. Such declarations must be in writing, detailing the extent and nature of the interest, and the declaration must be made before the relevant transaction or arrangement is entered into. For existing transactions, the declaration must be made as soon as reasonably practicable.

Any existing declarations need to be reviewed to ensure that their context complies with the nature and extent of the new duty.

Corporate directors

Every company will be required to have at least one director who is a natural person, i.e. an individual.

Companies that did not have a natural person as a director as at 8 November 2006 will have until 1 October 2010 to appoint one. Where these requirements are not met, the Secretary of State will be able to enforce adherence by issuing a notice, to which it would be an offence not to comply.

Under-age directors

The minimum age for a director will be 16 years old (there was no minimum under the 1985 Act).

Existing under-age directorships will cease. No notification to the Registrar will be required but it will be the company's responsibility to amend the register of directors accordingly.



OTHER

Repeal of the restrictions on financial assistance for acquisition of shares in private companies.

A private company will no longer be prohibited from giving financial assistance for the acquisition of its own shares (although if it has a subsidiary which is a public company, the public company may not assist the acquisition of shares in the private holding company). The “whitewash procedure” will also be abolished.

The restrictions will continue to apply to public companies.

The cost and timetabling implications of the “whitewash procedure” will be removed. Directors will no longer be threatened by criminal sanction for breach of the prohibition of giving financial assistance. In reality it is expected that financial institutions will still require some analogous exercise to be undertaken by the Company’s accountants and/or directors. It also ought to be remembered that the removal of the financial assistance provisions for private companies does not affect the general duty of directors to act in the best interests of their company.

Share capital reduction through the solvency statement route

Private companies limited by shares will be able to reduce their share capital by special resolution supported by a solvency statement made by the directors.

The solvency statement route provides a simpler and cheaper alternative for a company to reduce its share capital (though any party subsequently dealing with or acquiring the company may prefer to have seen the court sanctioned route followed until this practice becomes common place).

Objection to company’s registered name

Any person or company can object about a company name where the objector can show the company name has been registered with the intention of extracting money from him or to prevent him from registering a name in which he has “goodwill.”

If the objection is upheld, the Company Names Tribunal may order the company to change its name. Where there is failure to comply the Tribunal may choose a new name for the company. (N.B. these rules will apply retrospectively, i.e. to companies registered before 1 October 2008.)

Trading disclosures

Every company must

- display its registered name at its registered office and any place the company carries on business;
- include its name and other specified information on business correspondence and specified documents, and;
- provide specified information to those who request it in the course of business.

If there is failure to comply the company and every one of its officers in default will be committing an offence and may be liable to a fine. Minor variations in form of a name will be permitted (e.g. punctuation, accents, etc), but there must be no potential for confusion.

Changes to the annual return requirements

Annual returns will contain reduced information on the company’s shareholders. Private and non-traded public companies are only required to provide names of shareholders, not addresses. Traded public companies are required to provide both in relation to those shareholders holding at least 5% or more of any share class.

No company is required to include the addresses of all its shareholders. Only those appropriate shareholder details need be disclosed.

Caveat – this document is intended as a summary only and should not be relied upon for taking decisions.

In all circumstances, further specific advice should be sought on the matter in question.



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