

Companies Act 2006

Briefing Note

Much of the Companies Act 2006 is already in force, with the remaining provisions due to be introduced by October 2009. Key points are set out below (all already in force unless noted otherwise).

1. Directors' duties

Directors' duties are now set out in statute for the first time:

- to act in a way that the directors consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole;
- to act in accordance with the company's constitution and to use their powers for the purposes conferred;
- to exercise independent judgment;
- to exercise reasonable care, skill and diligence;
- not to accept benefits from third parties (from 1 October 2008);
- to declare interests in proposed transactions and arrangements (from 1 October 2008); and
- to avoid conflicts of interest (from 1 October 2008).

In exercising these duties directors need to have regard to, among other matters:

- 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 and conduct; and
- the need to act fairly as between shareholders.

2. Derivative actions

Shareholders now have an enhanced right to bring an action against directors on behalf of the company.

However, there is a two-stage process to prevent speculative claims: Court permission is required before a shareholder can proceed with a claim.

3. Meetings

AGMs are no longer required for private companies.

The notice period for EGMs has been standardised as 14 days.

Written resolutions now require the same majority as shareholder meetings (over 50% for ordinary resolutions and 75% for special resolutions), not the signature of all shareholders.

4. Directors' report

Directors must include a business review in their annual report (except "small companies").

A director is liable if he or she knowingly or recklessly produced false or misleading statements or dishonestly concealed a material fact.

5. Register of members

The right to inspect a company's register of members now only applies if for a "proper purpose".



6. Electronic communications

Electronic communications, including emails and websites, must include company name, place of registration, registered number and registered office.

Arrangements can be made so that a company's communications to/from shareholders can be sent and received electronically.

7. Others

A company secretary will no longer be required for private companies from 6 April 2008.

Directors will be entitled to register a service address rather than their residential address at Companies House from 1 October 2009.

The prohibition on financial assistance will be abolished for private companies from 1 October 2008.

8. Action points

The Government has issued the following general guidance for company directors.

- Act in the company's best interests, taking everything you think relevant into account.
- Obey the company's constitution and decisions taken under it.

If you would like to know more about the Companies Act 2006 or discuss any other corporate issues, please contact:

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- Be honest and remember that the company's property belongs to it and not to you or to its shareholders.
- Be diligent, careful and well informed about the company's affairs. If you have any special skills or experience, use them.
- Make sure the company keeps records of your decisions.
- Remember that you remain responsible for the work you give to others.
- Avoid situations where your interests conflict with those of the company. When in doubt, disclose potential conflicts quickly.
- Seek external advice where necessary, particularly if the company is in financial difficulties.

Company directors should also consider the following specific points:

- Check that directors' and officers' insurance policies are adequate in light of the new provisions.
- Consider board procedures and review the form of board minutes for compliance with the new requirements.
- Review document retention policies – evidence may be needed to defend against a derivative claim, eg board papers.
- Consider whether to introduce electronic communications with shareholders if not already done.

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This briefing note is a summary only, is not intended to be comprehensive and does not constitute legal advice. If you do not wish to receive further information from Hugh James relating to legal developments, please contact Sian Hughes at Hugh James, Hodge House, 114-116 St Mary Street, Cardiff CF10 1DY or sian.hughes@hughjames.com

