

# Making The Companies Act 2006 Work For You

When the Companies Act 2006 finally came into full force and effect on 1 October 2009 it represented the first major overhaul of company law in over twenty years. With such change being long overdue, Chris Guy, a partner in the Corporate department of Mills Selig, highlights how the Companies Act 2006 can provide practical benefits for companies.



Chris Guy, Partner in the Corporate Department of Mills Selig.

The Companies Act 2006 has introduced significant changes in corporate governance, giving companies the opportunity to streamline and improve their businesses.

A clear benefit for companies is the emphasis placed by the Act on providing a simplified regulatory regime. The main regulatory changes include:

- Memorandum of Association: Objects clauses, which specify what a company can and cannot do, can be removed entirely, so that the company has unlimited capacity.
- Company Secretaries: A private company is no longer required to have a company secretary. However, a company's articles must be reviewed (and, if required, amended) to ensure they do not expressly require a secretary.
- Authorised Share Capital: Companies will no longer be required to have an authorised share capital, meaning that companies are no longer limited in the amount of shares they can issue. Companies incorporated prior to 1 October 2009 will need to either pass an ordinary resolution or amend their articles to remove any restriction of authorised share capital.
- Authority to Allot Shares: the directors of a private company with only one class of share will not need authority to allot shares unless the company's articles require it.

- Simplified decision-making process:
  - No AGMs: private companies are no longer required to hold an annual general meeting, as long as there is no such obligation in their articles.
  - Written resolutions: written resolutions no longer require every shareholder who can vote to sign them and can now be passed if they are signed by shareholders holding the appropriate majority percentage of the issued share capital.

There are also provisions within the Companies Act 2006 which provide clear practical benefits for companies. For instance:

- Directors' Duties: the duties of directors are now codified in statute, replacing many common law and equitable rules. These duties include a duty to promote the success of the company, a duty to exercise reasonable care, skill and diligence and a duty to avoid conflicts of interest, providing a handier reference point for directors and potentially giving shareholders clearer accountability.
- E-communications: Any company can, subject to shareholder approval, be able to default to using e-communications with its shareholders. This means that, once a company has adopted the right to communicate electronically, any

communications with shareholders can be by e-mail or posted on the company's website. However, individual shareholders can elect to retain the right to receive information on paper.

- Director's residential addresses: directors no longer have to give their residential address for inclusion on the public register of directors.
- Web filing: the introduction of online filing for certain company forms with Companies House will provide a faster, more efficient way for companies to keep their public records up to date.

With the Companies Act 2006 having been fully implemented, now is the perfect time for companies to review their articles of association and their corporate governance practice to ensure they can benefit from the changes brought in by these reforms.

## Eye

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