

# THE COMPANIES ACT 2006

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This is a comprehensive Act which sets out to provide a simple, efficient and cost-effective framework for the operation of companies. It replaces most of the provisions contained in the 1985 and 1989 Companies Acts. All parts of the new Act will come into force by October 2008, and some will be effective sooner.

The main points of the Act are as follows:

- The requirement for authorised share capital is abolished, but shares must still have a nominal value. (Public companies must have an authorised minimum share capital – currently £50,000).
- Use can be made of electronic methods – email and websites – to communicate with shareholders (subject to shareholder agreement).
- A Memorandum of Association is no longer needed – the Articles of Association set out the way in which the company conducts its business. There is no longer a requirement for companies to have an objects clause – although they can do so if they wish. For private companies the Act provides a ‘model’ Articles of Association which the company can adopt if it wishes.
- For a quoted company the Act expands the business review in the annual directors’ report to include:
  - the main trends and factors likely to affect the future development, performance and position of the company’s business
  - information about environmental matters, the company’s employees, and social and community issues
  - information about contractual arrangements entered into by the company
- The duties of directors are set out in law (see below).
- There are a number of points which apply to private companies only (see below).

## **Duties of directors**

- Directors have a duty to ‘promote the success of the company.’ The Act sets out various factors that directors must take into account in the decision-making process. Such factors include:
  - the interests of employees
  - the business relationships with suppliers and customers
  - the impact on the community and the environment
  - the need to maintain a reputation for high standards of business conduct
  - the need to act fairly as between the shareholders of the company

- Directors have a duty:
  - to act within their powers (normally derived from the company's constitution – eg the Articles of Association)
  - to exercise independent judgement
  - to exercise reasonable care, skill and diligence
  - to avoid conflicts of interest
  - not to accept benefits from third parties
  - to declare interest in any proposed transactions or arrangements with the company

### **Private companies**

Much of the Act is concerned with simplifying and deregulating the legal requirements for running private companies – defined by the Act as “any company that is not a public company”. These measures for private companies include:

- no requirement to have a company secretary
- all private companies must have at least one director (who must be at least 16 years of age)
- no longer a requirement to hold annual general meetings (unless at least 10% of shareholders demand a meeting)
- the deadline to file annual accounts and reports with the Registrar of Companies is nine months (previously ten months)
- new ‘model’ Articles of Association, which the company can adopt if it wishes
- simplified procedures under which share capital can be reduced by a special resolution of the members
- financial assistance can be given in connection with the purchase of the company's own shares