



The Companies Act 2006: What's happening on 1 October 2007?

In late February 2007, the Government announced that the remaining provisions of the Companies Act 2006 (the "2006 Act") will come into force on one of three dates - 1 October 2007, 6 April 2008 and 1 October 2008. This alert summarises the 2006 Act provisions that will come into force on 1 October 2007. It was first issued in March 2007 but has been updated to reflect changes since that announcement.

Our alert "The Companies Act 2006 implementation timetable" sets out a timetable showing the dates on which all provisions of the 2006 Act have, or are expected to, come into force, and has also been updated.

The following Parts and sections of the 2006 Act will come into force on 1 October 2007. In some cases, the sections that are coming into force are subject to transitional provisions and savings.

Resolutions and agreements affecting a company's constitution (ss29 and 30)

These provisions essentially restate the requirement for a company to forward certain types of resolutions and agreements to the registrar of companies within 15 days after they have been passed or made.

Inspection of register of members (ss116 to 119)

These provisions set out the revised requirements that apply when a person (whether or not a member) asks to inspect a company's register of members or to obtain a copy of it. The request must include, among other things, the purpose for which the information is to be used. If a company receives a request it must within five working days either comply with the request or apply to the court. The court will allow the company not to comply with the request if the court is satisfied that the inspection or copy is not sought for a proper purpose.

These new provisions will only apply to a request made on or after 1 October 2007 if the company has filed an annual return made up to a date after 30 September 2007. In the meantime, the current regime, as set out in the Companies Act 1985 (the "1985 Act") will continue to apply to these types of requests.

Exercise of members' rights (Part 9)

A new provision removes any doubt that a company can provide in its articles of association for a member to nominate one or more persons to enjoy or exercise all or specified membership rights.

Also, new provisions will enable indirect investors to receive information that a UK company whose shares are admitted to trading on a regulated market (such as the London Stock Exchange's main market but not AIM) sends to its members. A member who holds shares on another person's behalf may nominate that person to enjoy "information rights". Information rights entitle that person to receive a copy of all communications that the company sends to its members, for instance reports and accounts.

Members will be able to send nominations to companies from 1 October 2007. Companies are not required to act on a nomination before 1 January 2008 but can choose to do so, in which case, the relevant provisions of Part 9 will apply.

A company's directors (Part 10)

The new statutory statement of directors' duties will apply from 1 October 2007 but some duties, namely the duty to avoid conflicts of interests, the duty not to accept benefits from third parties and the duty to declare interests in proposed transactions or arrangements with the company, will not apply until 1 October 2008. The delay in implementation of the duties relating to conflicts is aimed at giving companies (especially those that are listed or AIM traded) more time to amend their articles to enable directors' to authorise conflicts. All companies should now be thinking about making their directors aware of the reformulated duties as well as thinking about any ramifications of these duties on board decision-making processes.

Most other aspects of Part 10 will also apply from 1 October 2007, including those relating to:

- directors' appointment and removal (although the requirement for a company to have at least one director who is a natural person and the new general rule that a director must be at least 16 years old will not apply until 1 October 2008);
- transactions with directors requiring members' approval, namely: (a) long term service contracts; (b) substantial property transactions; (c) loans, quasi-loans and credit transactions; and (d) payments for loss of office;
- directors' service contracts; and
- directors' liabilities and indemnities.

The provisions aimed at protecting the disclosure of directors' residential addresses (including the provisions dealing with the register of directors) and those on directors' declarations of interests in existing transactions or arrangements will only apply from 1 October 2008.

Derivative claims and proceedings by members (Part 11)

Part 11 contains the new procedure for members of a company to bring derivative claims in the company's name against the company's directors.

Resolutions and meetings (Part 13) and the appointment of auditors by a private company (ss485 to 488)

Part 13, which broadly deals with meetings and resolutions (both written resolutions and resolutions at meetings), introduces a number of changes that will affect the way private, public and quoted companies make or disclose decisions.

Private companies will no longer be required to hold an AGM (but can choose to do so); public companies must hold one within six months of their year end (down from seven months, although this change will not take effect immediately). It will be easier for private companies to pass written resolutions but public companies will no longer be able to do so. Only 14 days' notice will be needed to call a general meeting (although 21 days will be needed to call a public company's AGM). New additional requirements will apply to quoted companies (i.e. UK companies whose shares are officially listed in the UK or another EEA State or are admitted to dealing on the New York Stock Exchange or Nasdaq) relating to website publication of poll results and independent reports on polls.

Sections 485 to 488 generally restate the law on the appointment of auditors of private companies but with some limited changes.

Control of political donations and expenditure (Part 14)

Part 14 generally restates, with certain modifications, the current restrictions in the 1985 Act on a company making a political donation or incurring political expenditure unless it has been authorised by a members' resolution.

Under the new rules, the definitions of political donation and political expenditure will include donations to, and expenditure in relation to, independent election candidates though those provisions will not come into force until 1 October 2008.

Contents of directors' report: business review (s417)

Section 417 sets out the purpose and content of the business review section of the directors' report. For the first time, the purpose of the business review is stated, being to inform members and help them to assess how the directors have performed their statutory duty to promote the company's success. New additional content requirements will apply for a quoted company. Section 417 applies to directors' reports for financial years beginning on or after 1 October 2007.

Fraudulent trading (Part 29)

Part 29 restates the criminal offence of fraudulent trading.

Protection of members against unfair prejudice (Part 30)

Part 30 restates ss459 to 461 of the 1985 Act, which provide a remedy where a company's affairs are being conducted in a manner which is unfairly prejudicial to the interests of its members.

Company investigations: amendments (Part 32, s1124 and Schedule 3)

These provisions amend Parts 14 and 15 of the 1985 Act.

Part 14 gives the Secretary of State power to appoint inspectors to carry out company investigations and will continue to apply even when the 2006 Act is fully in force. Part 32 amends Part 14 by giving the Secretary of State new powers (for instance, the power to issue directions as to the scope of an investigation) and providing for situations not explicitly dealt with in Part 14 at the moment (for instance, an inspector's resignation).

Some changes are also being made to the offences that are set out in Parts 14 and 15 of the 1985 Act.

General supplementary provisions relating to offences (Part 36)

Part 36 (other than s1124), which contains general supplementary provisions relating to offences, applies from 1 October 2007 to offences under Parts 14 (investigations of companies and their affairs) and 15 (orders imposing restrictions on shares) of the 1985 Act.

Interim changes to Tables A and C

In addition to the provisions of the 2006 Act that will come into force on 1 October 2007, some limited changes will apply to the current versions of Tables A and C from that date. (Table A sets out model articles of association that a company limited by shares can adapt (partly or wholly) as its articles and Table C sets out the form of the articles of association of a company limited by guarantee.) The changes to Table A primarily reflect the provisions of the 2006 Act relating to resolutions and meetings that will come into force on 1 October 2007.

The revised versions of Tables A and C will apply to new companies formed on or after 1 October 2007 that choose to adopt them and the revised version of Table A will apply by default to companies formed on or after that date that do not register articles of association of their own with the registrar of companies. Companies formed before 1 October 2007 with articles partly or wholly in the form of either Table A or C will not be subject to these changes unless they choose to adopt the changes by amending their articles.

- **If you have any questions or require specific advice on any matter discussed in this publication, please contact Eric Campbell (DDI: +44 (0)20 7782 8965 or E-mail: ecampbell@mayerbrown.com) or your regular contact at Mayer Brown.**

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