

Companies House Changes for the Companies Act 2006

Some of the changes made by the Companies Act 2006 came into effect on 1st October 2007 and 6th April 2008.

From October 2009 there will be all new forms for companies to file and these can be found at

<http://www.companieshouse.gov.uk/forms/formsOnline.shtml>

PROOF Filing

PROOF allows companies to further protect themselves from fraud by making certain files “online” only. If a company has already applied for PROOF they will need to reapply for it after 1st October 2009 due to the new terms and conditions.

October 2007

The changes will affect those people who are a director of a company, as from 1st October 2007 the law on directors’ duties (fiduciary duties) changed. Primarily the new law codifies all the existing “common-law” directors’ duties. Directors now owe statutory duties to their company.

There are seven general duties which are set out in a statutory statement.

These are:

- A duty to act in accordance with the powers set out in the company’s constitution.
- A duty to promote the success of the company for the benefit of its members.
- A duty to exercise independent judgement.
- A duty to exercise reasonable care, skill and diligence.
- A duty to avoid conflicts of interest.
- A duty not to accept benefits from third parties.
- A duty to declare to the company’s other directors any interest a director has in a proposed transaction or an arrangement with the company.

All of the above came into play on 1st October 2007 except the duty to avoid a conflict of interest which came in one year later.

The duty to promote the success of the company has replaced the old common law duty, which was to act in good faith in the company’s interests. When deciding how to promote the success of the company, directors should

have regard to a wide number of factors when making Board decisions. The types of factors which the Act requires directors to pay heed to are:

- The long term consequences of any decisions made;
- The interests of the company's employees;
- The need to foster the company's business relationship with its suppliers, customers, and others (which commentators feel is likely to include its creditors);
- The impact of the company's operations on the community and the environment;
- The desirability of maintaining a reputation of high standards of business contacts;
- The need to act fairly as between the members of the company.

There is reason to believe that the above factors may mean that the directors should ensure that any Board minutes run through all the above factors to show that the directors considered the above factors in making any decisions. There has been no confirmation, and no legal requirement but it may be prudent that for major decisions, the directors do make sure that they've considered the above factors.

Prior to the new Companies Act, it has been difficult for shareholders to sue a Director, as it was felt in law that only a company, not the individual shareholders, could take action for a wrong done by a director to the company as a whole.

Under the Companies Act 2006 shareholders can now bring a claim against directors in the name of the company as long as the claim is to benefit the company. Directors should be aware that shareholders can now sue in respect of an actual proposed act or omission of a director involving

Negligence
Default
Breach of the new modified duties
Or breach of trust.

A company cannot indemnify a director against any such successful claim.

Private Companies have an additional set of changes to resolutions.

- There is no longer any need to hold an AGM.
- 14 days notice to call a general meeting is now all that is needed.
- There are simpler procedures to pass Written Resolutions.

Previously, companies had the choice to pass Special Resolutions by either calling a shareholders' meeting on full 14 or 21 days notice, depending on the

business to be transacted, on short notice with the consent of 95% of the shareholders, or if all the shareholders signed a members' Written Resolution.

The new Companies Act allows for a members' Written Resolution being valid if it is signed by shareholders holding more than 50% of the shares, in the case of an Ordinary Resolution, and 75% of the shares in the case of a Special Resolution. There are notice provisions to ensure that all shareholders are told that this is what is being proposed, and thus this gives them at least the chance to register any protest. It would be prudent though to retain in practice that, all shareholders should be asked to sign a shareholders' Written Resolution to prevent later disputes.

There have also been changes to proxy and members are now able to appoint more than one proxy to attend a meeting on their behalf. As before, proxies have the same right to attend, vote and speak at company meetings.

Changes may be required to older Articles of Association.

The Companies Act 2006 also changes indirect investor rights

Companies can now have a provision in their Articles to allow members to nominate another person to enjoy or exercise their rights as a member, i.e. if any of the shares are held by a Trustee shareholder they can now nominate a beneficiary under a Trust.

The beneficiary of this Trust then has the right to be sent notices of meetings and has the right to vote. Previously, companies could effectively ignore beneficiaries under a Trust.

From 1st October 2007 Companies can make loans to directors providing shareholder approval has been granted. Shareholders also have the right to void any loan that was made without prior approval. Previously, there were constraints on the extent to which companies could make loans to their own directors

New restrictions have been placed on individuals or companies seeking access to a company's Register of Members. They will have to give names and address and state why this access is required before it is granted. Should a company be opposed they can apply to the Court for an Order that the company will not have to comply with such a request on the grounds that access is not being sought for a proper purpose. This means that any requests to inspect the Register of Members after 1st October 2007, will be subject to these new provisions

Directors' service contracts for over 2 years now require shareholder approval.

6th April 2008

The following details apply for companies with accounting periods starting on or after 6th April 2008

The delivery time for accounts has been reduced by one month (for both private & public limited companies).

- Private companies have reduced from 10 months to 9 months
- Public companies from 7 months to 6 months.

Full calendar months for filing periods have also been introduced. Where the accounting period ends on a month end, the accounts filing period will end on a month end, except for the first accounting period.

The accounts, balance sheet and director's report will be required to refer to the Companies Act 2006 statements.

Other changes to the way that accounts need to be compiled are

- The accounts statements will be changed to refer to the 2006 Act.
- Abbreviated accounts will still be filed for small companies.
- Section 260 of the 1985 Act will be reinstated without modification in the regulations to be made under Part 15 of the 2006 Act.

The company secretary will become optional for private companies but will remain mandatory for public companies.

From 6th April 2008 the provision for enabling private companies to choose whether they wish to have a company secretary will come into force at that point a private company will have the option whether or not they maintain their company secretary.

If the company decide they no longer need a company secretary they will need to inform Companies House via WebFiling or on the standard 288b form.

If there is a specific reference in the Articles to the company having a secretary it will need to amend them. However if the Articles only refer to the secretary's duties there is no need to make an amendment.

The Companies Act 2006 allows for a company to have a sole director and no secretary. In addition the new provisions being introduced on 1st October 2009 relating to natural directors, do not apply to secretaries. Secretaries can still be corporate.

Additional requirements for secretaries will also come into force on 1st October 2009. From that date secretaries who are an individual person will be able to

file a service address for the public record and corporate secretaries will be required to give details of where they are registered and the registered company number, if applicable.

Directors will also be able to have a service address e.g. the company registered office. From 1st October 2009 the director's current residential address will automatically become the service address, unless the details are changed. This can be done online from 1st October.

In addition Public limited companies (PLCs) need to establish whether they are maintaining the minimum share capital in sterling or Euros.

For accounting periods starting on or after 6th April 2008 auditor's reports will have to state, in the case of an individual, the name of the auditor and be signed by him. Firms of auditors must state the name of the senior statutory auditor, the name of the firm and be signed by the statutory auditor in his own name. All signatures on auditor's reports must be dated.

The exception is when the company feels that there is a risk that the auditor or any other person is at risk of serious violence or intimidation as a result of the auditors' name being stated they may pass a resolution to omit the name. A notice of the resolution must be given to the Secretary of State. This will only be applicable to auditor's reports relating to accounting periods starting on or after 6th April 2008.

Section 507 now includes an offence where a person knowingly or recklessly causes an auditor's report to include any misleading, false or deceptive material. Fine are up to a maximum of £5000.