

Firm changes

The Companies Act 2006 received royal assent last November. Alan Ma provides an overview of the changes, which represent a complete overhaul of UK company law

The new act reforms the existing legislation for private, public and quoted companies. Some of the major changes to UK company law that apply to private companies are outlined here.

Under existing law, directors owe duties to their company based on principles established in case law, most of which dates back to the 19th century. In an attempt to make the law more consistent, in line with modern business practice and to increase the directors' awareness of their duties, the 2006 act imposes seven general duties on directors. These are specified to ensure directors act in good faith promoting the success of the firm for the benefit of its members, avoid conflicts of interest and do not profit from their position. The duties also ensure that companies consider non-financial social, environmental and other issues and not simply pursue profits.

The act introduces a new procedure under which a shareholder may bring proceedings, on behalf of the company, against a director for negligence, default, breach of duty or breach of trust. Unworthy claims are controlled as shareholders are required to obtain court's consent to continue a claim.

One of the government's objectives of the reform was to deregulate. It has aimed to do this by including the following terms:

- Companies no longer need to have a company secretary.
- The act abolishes the prohibition on companies providing financial assistance for the acquisition of their own shares.

- Companies can reduce their share capital without court approval. Instead, the process can be started by passing a special resolution based on a solvency statement by the directors.
- Firms are not required to hold an AGM.
- Companies are able to make decisions by passing written resolutions more quickly and easily than was the case. Unanimity of all eligible votes in making business decisions is not required under the new act. Furthermore, the written resolution is not required to be sent to the auditors. The resolution may also be circulated electronically; for example, by publication on website.
- In the formation and constitution of a company process, the memorandum of association becomes a far simpler document. It records the position at the point of registration and of historical significance only. The company's constitution is contained in the articles of association.

In line with modern business practice and to deliver cost-savings to business, the act allows companies to make greater use of electronic communications. Any information sent electronically to a company is deemed to have been validly sent as long as the company has agreed to it being sent electronically and it is sent to an electronic address specified by the company for that purpose. Also, any information made available by a company on a website is deemed to have been validly supplied to a recipient provided that the recipient agrees to it.

A small number of provisions have been implemented and the government intends to start the rest by October 2008. As the act requires companies to change the way they operate, they need to familiarise themselves with the parts of the act that affect them.

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Taken from Supply Management magazine, archived article, Law update, 1 February 2007