

JOELSON WILSON

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**THE COMPANIES ACT 2006**  
**AN OVERVIEW**

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## **COMPANIES ACT 2006**

The Companies Act 2006 (formerly the Company Law Reform Bill) received Royal Assent on 8 November 2006.

Alastair Darling, the then Secretary of State for the DTI (now BERR), commented that:

“The [Companies] Act [2006] will help ensure that Britain remains one of the best places in the world to set up and run a business. It makes sure the regulatory burden on business is ‘light touch’, promotes shareholder engagement and will help encourage a long term investment culture in the UK.”

### **A) Introduction**

The Companies Act 2006 (“CA 06”) effectively replaces existing companies legislation such as the Companies Act 1985 (as amended), with the exception of provisions relating to company investigations and community interest companies, and introduces major changes for all areas of company law and practice.

One of the main aims of the Government in introducing the Legislation has been to make it easier to set up and run a company. The CA 06 uses simpler and clearer language than the 1985 Companies Act and it also removes a number of procedures and regulations for private limited companies.

### **B) Timetable**

The following is an overview of some of the more pertinent provisions of the CA 06 and their commencement dates, taken from the Government’s commencement timetable.

#### **i) January 2007**

##### **1. Provisions dealing with Electronic Communication**

These include:

- Circulation of documents in relation to written resolutions by directors or members in electronic form.
- Allowing documents in relation to meetings to be sent in electronic form.
- Allowing a declaration of an interest to be in electronic form (providing the recipient has agreed to this form).
- Allowing members to require directors to call General meetings electronically.
- Allowing members to require website publication of audit concerns.
- Certain documents to be delivered to the registrar by electronic means.

The intention is that this should simplify certain company procedures in relation to communications with shareholders and reduce the amount of administration in relation to these communications.

## **2. Implementation of the Transparency Directive within the Companies Act 2006.**

This will deal with the following:

- Companies, with securities admitted to trading on a regulated market, will be required to disclose annual and half-yearly financial reports.
- The disclosure of major shareholders' transactions.
- The dissemination and storage of regulated information. Companies, with securities admitted to trading on a regulated market, will be required to disseminate regulated information in a fast, non discriminatory manner on a pan-European basis.
- Increased harmonization which allows home Member States to impose additional requirements on issuers with securities admitted to trading on a regulated market.

### **ii) April 2007**

#### **Implementation of the Takeover Directive within the Companies Act 2006.**

This incorporates:

- General principles that apply to the conduct of takeover bids.
- A regulatory framework for the bodies that supervise takeover bids.
- Basic rules about takeover bids i.e.: when a bid must be made, the price that must be paid to the shareholders, the contents of the offer documents etc...
- Provisions restricting barriers to takeovers.
- Disclosure requirements for companies whose shares are traded on a regulated market.
- Provisions dealing with the problems of, and for residual minority shareholders following, a successful takeover bid.

### **iii) October 2007**

#### **1. Resolutions and Meetings**

The changes include:

- Changes to the requirements of holding an AGM - private companies will not be required to hold an AGM whereas public companies must hold their AGM within 6 months of the financial year end.
- Shareholders may appoint more than one proxy and each proxy may be entitled to vote.
- Records of resolutions and meetings to be kept for a minimum of 10 years.
- Maximum sentence for fraudulent trading will be increased from 7 years to 10 years imprisonment

#### **2. Directors' Duties**

- Generally these changes codify the common law rules.
- For further details relating to the inclusion of Director Duties, please see our article on Directors' Duties at [www.joelsonwilson.com](http://www.joelsonwilson.com)

iv) **April 2008**

**1. Company secretaries**

- A private company will no longer be obliged to appoint a company secretary.

**2. Accounts and reports**

The changes will include:

- Duty to keep accounting records and a reduction in the time to file audited accounts
- Length of time records are required to be kept increased to 10 years
- Contents of accounts
- Liability for breach
- Publication

v) **October 2008**

All of the Companies Act 2006 will be in force by this time and as such the following key changes will be introduced:

**1. Company's Constitution**

The changes will include:

- Memorandum of Association will merely be a historic document evidencing an intention to form a company and therefore not able to be amended or updated.
- The company's key internal rules will be set out in the Articles of Association.

**2. Directors' Duties**

The changes will include:

- Provisions relating to conflict of directors' interest.
- Minimum age requirement for a director will be 16 years.
- Changes to the requirements of registered details of directors.
- For further details relating to the inclusion of Directors' Duties, please see our article on Directors' Duties at [www.joelsonwilson.com](http://www.joelsonwilson.com)

**3. Share Capital**

The changes will include:

- Provisions prohibiting the conversion of shares into stock.
- Share capital must have a fixed nominal value.
- Relaxation of rules relating to authorised share capital.

**4. Financial Assistance**

The rules relating to financial assistance will be relaxed for private limited companies.

## **C) Implications of the Companies Act 2006**

The CA 06 is one of the largest Acts ever, with 1,300 sections. About a third of these sections are a re-statement in clearer and simpler language of the existing legislation. However, it is a fundamental change in company law replacing the statutory regime which has been in force for over 20 years.

### **Need to know more?**

**Ask us. Joelson Wilson's experienced team of lawyers undertake a wide range of corporate and commercial transactions for private limited companies and listed clients in both the UK and overseas, please contact:**

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**This document is not intended to be a comprehensive review of all developments in the law or practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publications to specific issues or transactions.**

**Joelson Wilson LLP**

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