

## **New UK Companies Act** *Companies Act 2006—Provisions Introduced on October 1, 2007*

**October 12, 2007**

On October 1, 2007, additional sections of the UK Companies Act 2006 (the 2006 Act) came into force, introducing changes to the previous UK company law regime in a number of areas. The results of these changes include the following:

1. A **statutory statement of directors' duties** now sets out the duties and responsibilities of directors. Of the seven express duties laid out in the 2006 Act, those in force as of October 1, 2007 are:
  - The duty to act within powers
  - The duty to promote the success of the company
  - The duty to exercise independent judgement
  - The duty to exercise reasonable skill, care, and diligence

By way of example, the directors are required to promote the long-term success of the company while considering factors such as the environment, community, and employees. The remaining three duties (the duty to avoid conflicts of interest, the duty not to accept benefits from third parties, and the duty to declare an interest in a proposed/existing transaction or arrangement with the company) are due to come into force on October 1, 2008.

2. The 2006 Act **codifies the common law on the ratification of acts of directors**, putting the shareholders' ability to ratify a director's conduct amounting to negligence, breach of duty, or breach of trust on a statutory footing.
3. There is no longer a statutory requirement for private companies to hold **annual general meetings** (AGMs). Companies, however, are able to decide to hold AGMs if they wish. If a private company decides to continue to hold AGMs, only 14 days' notice is now required for such meeting.
4. It has become much easier for a private company to make decisions by **written resolution** of its shareholders. A written ordinary resolution is passed by a simple majority if it is passed by members holding at least 50% of the voting rights, and a written special resolution can be passed by members holding at least 75% of the voting rights (which differs from the regime under the

Companies Act 1985 where the consent of *all* members was required to pass a resolution whether ordinary or special).

5. There is now a clearer way for shareholders to make a **derivative claim** to sue directors on behalf of a company (e.g., for fraudulent mismanagement). The 2006 Act introduces statutory provisions that are intended to reflect the recommendation of the UK Law Commission to introduce a more modern, flexible, and accessible derivative claims procedure.
6. The directors of medium-sized and large private companies and all public companies must now include a **business review** in their reports. The 2006 Act states that the purpose of the business review is to inform the shareholders of the company and help them to assess how the directors have performed their duty to promote the success of the company. Quoted companies (i.e., those listed on the Official List of the London Stock Exchange) now have to include information on environmental, employee, social, and community issues relevant to the company's long-term success.
7. Holding companies are now able to seek authorization from shareholders for **political donations and expenditure** through a single approval resolution. The resolution has effect for four years unless a shorter period is specified or required by the company's articles of association. Quoted companies should bear in mind that institutional investors are likely to take the view that such a resolution should only take effect up until the company's next AGM.

For further information on the Companies Act 2006 or other UK company law issues please contact:

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