



# Companies Act 2006 Latest commencement of provisions, 6 April 2008

## New provisions

**6 April 2008 sees the latest set of provisions of the Companies Act 2006 come into force. These provisions include –**

### Execution of deeds by a company

A company may execute a deed under the law of England and Wales by affixing the company seal, by signature by two directors, by signature by one director and a secretary or (for the first time) by signature of a single director if that signature is witnessed and attested.

### Company secretary

Private companies will no longer have to appoint a company secretary unless they choose to. If they do, the secretary will still have the same authority and responsibility as now. If they do not, a director or person authorised by the directors can do anything required to be done by the secretary. Public companies are still required to appoint a company secretary.

A private company whose articles of association expressly require it to have a secretary will need to amend its articles of association to remove the requirement before

it can take advantage of this change. The 1985 Table A does not expressly require a company to have a secretary.

Tasks which are usually performed by the company secretary, such as maintaining company registers and filing returns at Companies House, will still need to be performed. If a company chooses not to have a secretary, directors will, therefore, need to perform these tasks themselves or arrange for someone else to perform them.

### Transfers of shares

At the moment, directors do not need to give reasons for refusing to register a transfer of shares unless articles of association require this (and it is common for articles of association of private companies not to require this). The law will, however, change so that a company must register the transfer or give the transferee notice of refusal to register together with reasons for the refusal. This must be done as soon as reasonably practicable and in any event within 2 months of the transfer being lodged. The company must also provide the transferee with such further information about reasons for the refusal as the transferee may

reasonably request. This does not, however, extend to copies of board minutes.

### Various provisions relating to accounts and audits. These include –

#### • Reducing the deadline for filing accounts at Companies House

The deadline reduces from ten to nine months from the year end for private companies and from seven to six months from the year end for public companies. As the requirement for private companies to hold an annual general meeting was abolished on 1 October 2007, private companies will no longer need to send out their accounts to shareholders before a meeting. Instead, the accounts must be sent to shareholders by the deadline for filing or, if earlier, by the date they are actually filed.

#### • Auditor liability limitation agreements

The Act makes it possible for auditors to limit their liability by agreement with a company, but the agreement will only be effective to the extent that it is fair and reasonable. The court will be able to substitute its own limitation if the agreement purports to limit liability to an



## Companies Act 2006 Latest commencement of provisions, 6 April 2008

amount that is not fair and reasonable in all the circumstances. Such agreements can only cover one financial year and they require the approval of the company's members, which, in the case of a private company, can include a resolution waiving the need for approval.

### Clarification of earlier changes

**The commencement order dealing with the above provisions also clarified some unintended effects of changes which were introduced on 1 October 2007. These include –**

#### Casting votes

Changes which were introduced on 1 October 2007 had the effect of preventing a casting vote being used by a chairman to pass an ordinary resolution in general meeting where votes were equal. This was because the new provision requiring a simple majority of votes of members to pass an ordinary resolution had the effect of overriding any casting vote provisions in the articles. This was only relevant in relation to a vote on an ordinary resolution, since a special resolution requires a 75% majority to vote in favour.

It was, however, unintentional that this should apply to companies which immediately before 1 October 2007 already had casting vote provisions contained in their articles of association. Accordingly, a saving provision has now been introduced which states that companies whose articles of association gave a chairman a casting vote immediately before 1 October 2007 may continue to rely on the relevant article. In addition, any such company which amended its articles after 1 October 2007 to remove the casting vote

may reinstate the provision and continue to rely on it.

The 1948 and 1985 Table A contained provisions giving the chairman a casting vote and so companies which had adopted either of those versions of Table A immediately before 1 October 2007 can continue to rely on the casting vote provision unless the relevant provision in Table A was excluded.

#### Annual General Meetings

The requirement for private companies to hold an annual general meeting was abolished unless the articles of association expressly required a company to hold an annual general meeting. So, for example, companies which had adopted the 1948 Table A would be required to hold an annual general meeting unless the relevant provision in Table A requiring such a meeting was excluded.

Before 1 October 2007, many companies took advantage of the elective resolution regime and so passed an elective resolution that the company did not need to hold an annual general meeting. Such an elective resolution overrode any inconsistent provision of articles of association which required an annual general meeting to be held (such as the 1948 Table A provision mentioned above). As of 1 October 2007, such an elective resolution was effectively cancelled by the Companies Act 2006, which meant that any provisions in articles of association which required an annual general meeting to be held were, in effect, resurrected for those companies which had passed such an elective resolution. This meant they would have to hold an annual general meeting unless they amended their articles of association to remove the requirement.

A saving provision has now been introduced which states that companies which had immediately before 1st October 2007 passed an elective resolution not to hold an annual general meeting are not required to hold one even if the articles of association expressly require one to be held.

### Remaining provisions

**After 6 April, the next set of provisions is expected to come into force on 1 October 2008 and these will include provisions dealing with –**

- objections to company names;
- corporate directors and under-age directors;
- general duties of directors in respect of conflicts of interest; and
- repeal of the restrictions under the Companies Act 1985 on financial assistance for acquisition of shares in private companies, including the "whitewash" procedure.

The final set of provisions is now expected to be brought into force on 1 October 2009.

#### 25 February 2008

For further information please contact Tom Farrington on 01482 337301 or email [tom.farrington@rollits.com](mailto:tom.farrington@rollits.com)

#### Hull Office

Wilberforce Court, High Street,  
Hull HU1 1YJ  
Tel +44 (0)1482 323239

#### York Office

Rowntree Wharf, Navigation Road,  
York YO1 9WE  
Tel +44 (0)1904 625790

[www.rollits.com](http://www.rollits.com)