

## An A to Z of The Companies Act

Here is our quick A-Z guide to the reforms contained in the Act, highlighting the key changes for private companies only.

**A**rticles of association will be simplified to reflect the changes introduced by the Act. Table A will no longer be relevant; instead standard articles will be produced for private companies limited by shares or by guarantee which will apply in default of amendment.

**B**earer shares will be easier to issue. There will be no need to issue shares in registered form and then convert to bearer shares, as it will be possible to issue shares directly to bearer.

**C**apital will no longer be capped by the authorised share capital. A company will have shares of a fixed nominal value (ie £1) and a statement of the initial share capital will be provided on formation. After that shares may be issued without limitation, and the share capital will increase accordingly.

**D**irectors are now subject to a statutory code of directors' duties, making it easier for them to understand the responsibilities and liabilities of the office. To ensure that there is always one adult individual responsible for the company's affairs, a corporate director may not be the sole director.

**E**lectronic communication between companies and shareholders is facilitated and encouraged throughout the new Act.

**F**inancial assistance no longer restricts share issues by private companies unless they are wholly owned subsidiaries of public companies. The financial assistance provisions remain in relation to public companies.

**G**oodwill is protected by new provisions preventing company names from being registered to exploit a third party's goodwill. There are also provisions, which prevent the registration of too similar names.

**H**ome addresses for directors may be kept off the public register. This will dispense with the need to apply for a confidentiality order. Residential addresses will also have to be provided, to both the company and Companies House, but they will be kept confidential unless it proves impossible to contact the director through their service address.

**I**ssuing shares has been simplified for some companies. The directors of a private company with only one class of shares may allot shares without shareholder authority, unless the company's articles provide to the contrary. The provisions relating to the allotment of redeemable shares have also been simplified.

**J**udges could be kept busy with the new derivative claims and actions sections in the Act. These will allow a member of a company to bring an action against a director for negligence, default, breach of duty or breach of trust where the cause of action is vested in the company.

**K**eeping it simple is one of the aims of the Act and so there have been a number of changes to make life easier. For example, the majority required to consent to holding a meeting on short notice reduces from 95% to 90%, changes are proposed to the place of business and branch registration provisions to simplify them and it will be easier to amend the public register at Companies House if errors occur.

**L**iability of and insurance for directors remains substantially the same as under the changes introduced in April 2005. However, there is a new section setting out the procedure for ratification, by shareholders, of the directors' acts.

**M**emorandum of association will change substantially. The Act gives the company all the powers of a natural person, and so objects clauses will no longer be required. The Memorandum will become a very short document which simply says

that the members wish to form a company and that they agree to subscribe for at least one share or to give a guarantee, as appropriate.

**N**ames of companies may be changed by whatever level of shareholder approval the shareholders decide upon.

**O**ne person is able to form a company, acting as both director and shareholder. The office of company secretary is optional for private companies. If a secretary is appointed it will be a statutory appointment.

**P**ower is given in the Act to allow reform or restatement of company law to be made in the future by a form of secondary legislation. This will ensure that the law remains responsive to the changing business environment.

**Q**uorum at meetings are one of the many procedural aspects of meeting law which are slightly revised and restated by the new Act to take away uncertainties or to simplify.

**R**eduction of share capital no longer needs a court procedure. Instead, creditors are protected by a declaration of solvency that the directors are required to make as part of the new procedure.

**S**ecretarial matters have been simplified by the removal of the need to hold an Annual General Meeting each year. However, other secretarial obligations remain, such as maintaining registers, documenting director and shareholder decisions, preparing and filing the annual return and making other returns to Companies House.

**T**hink small company first. This is one of the mantras to which the legislation has been drafted and as a result it aims to use simpler language than previous legislation and removes the private company from a number of the corporate procedures that it had been subject before, for example the AGM regime.

**U**ltra vires – ie the concept that the company can act beyond its own powers – is removed as the Act gives the company all the powers of a natural person.

**V**arious small amendments have been made to the accounts and audit sections of the Companies Act 1985. However, the key change is the reduction in the period for filing accounts: from 10 months to 9 months for a private company and from 7 months to 6 months for a public company

**W**ritten resolutions that are not signed by all shareholders within 28 days of circulation will lapse.

**X**changing sterling share capital for euro share capital is laborious under the current law and so the Act introduces a new procedure to simplify the process of redenominating share capital in one currency into share capital in another currency. Yes, we know it is cheating but X is really difficult!

**Y**oung people under 16 are unable to hold office as company director. This falls in with the principal that at least one adult must be responsible for the company's affairs. Any child who held office when this restriction became law automatically ceases to be a director. The company was not be obliged to notify Companies House of this automatic cessation as the Registrar is given power to amend the register accordingly.

**Zzzzzz.** How you may feel after reading all 700 plus pages of the Act – but hopefully not after reading this quick A-Zzzzzz!

**We will be producing further bulletins to keep you up to date with the Act. Visit [www.companiesact.co.uk](http://www.companiesact.co.uk) for more information and to register to receive our updates via email.**

*October 2008*