

## Companies Act 2006 – can it simplify a private company’s administrative affairs

The Companies Act 2006 (CA06) represents the widest reaching review and restatement of company law in the UK for over 20 years.

Its implementation has been staggered over a 24 month timeline, with the most recent provisions coming into force on 1 October 2008.

There are numerous provisions of the CA06 that may reduce your company’s administrative burden, some key aspects of which we have chosen to discuss below.

### Meetings

The CA06 removes the requirement to hold an annual general meeting (AGM) unless a company’s Articles of Association (Articles) contain an explicit requirement otherwise.

Those companies still wishing to hold an AGM are subject to similar provisions as under the Companies Act 1985 (CA85), however, (unless lengthened by the company’s articles), all AGM’s can be held on 14 days notice or, shorter notice provided that 90% of the members agree.

All meetings other than AGM’s are to be referred to as ‘General Meetings’, rendering the term “extraordinary” general meeting defunct. All General Meetings can now be held on 14 days notice or, shorter notice provided that 90% of the members agree.



General Meetings can be called by members holding 10% of the voting rights, although this is reduced to 5% if the members have not met during the previous 12 months.

### Written resolutions

Having a written resolution avoids the need to call a meeting of shareholders and allows companies to make necessary changes or get necessary consents to take some actions immediately.

Under the CA85, in order to pass a written resolution, the resolution had to be agreed and signed by or on behalf of all the members eligible to vote.

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company commercial

To better facilitate the passing of resolutions, the CA06 allows companies to pass written ordinary resolutions by a simple majority of those eligible to vote, and written special resolutions with a 75% majority, thereby aligning the rules with those for passing a Resolution at a formal meeting.

Written resolutions can now be proposed either by the Directors, or by the members representing either 5% of members eligible to vote, or whatever lower percentage the company's Articles may provide for.

### Company Secretary

Private companies are no longer obliged to have a Company Secretary (Secretary), although they may continue to have one if they wish. Decisions previously requiring the Secretary's authorisation may now be taken by a Director, or any person authorised by the Director.

If a company no longer wants to have a Secretary then the Secretary would either need to resign, or be formally removed by the company, as was previously done.

Although there is no longer a legal requirement to have a Secretary, any company considering removing their Secretary must be conscious of any employment rights that may be attached to the position.

The abolition of the requirement to have a Secretary is aimed at providing companies with a greater degree of flexibility in relation to their internal administrative arrangements. However, companies who choose to remove their



Secretary will need to ensure that they have strong internal procedures to ensure that the duties previously carried out by the Secretary are still actioned. Where the Directors of a company are based overseas, then it may be sensible to retain the services of a UK based Secretary in order to ensure that various contractual and statutory documentation are executed correctly.

### Electronic communications

The CA06 makes it easier for companies to communicate to their members electronically, either by email, through a website, or other electronic form. Not only does this cut down on the administrative burden of sending all documentation out in hard copy, but it will also reduce a company's costs and in addition align with the growing number of environmental policies that companies are adopting

### Email

Under the CA06, electronic form documents or information can now be sent to or by a company electronically, but only if the company or recipient has agreed

generally that this can be done, or has agreed specifically in relation to a particular document or piece of information.

Various provisions of the CA06 deem a company to have agreed to receiving documents and information electronically, however there is no position of deemed acceptance in relation to a company's individual members. A company can therefore only communicate to their individual members via email if the individual has granted their consent to this. If the member has not given their consent, or has not responded to the company, then the individual member must be allowed to continue to receive information in hard copy.

### Website

Under the CA06 a company can provide information to their members (e.g. annual accounts) over the company website. There is no automatic right to do this, (unless there is already a provision in the company's Articles) and the members must agree to accessing information in this way.

Individual members will have 28 days in which to respond to a company's request to provide information on their website. If the individual member does not respond, but the members generally have agreed, then there is deemed acceptance by all. If however, a member does not agree to receive information in this way, then the company must provide them with hardcopy documents.

Every time new information is made available on the website, the company must inform the relevant member of this, either in hard copy or electronically (depending on whether the member has agreed to receive notices via email), providing details of how to locate the information. The information must stay on the website for a specified period or 28 days.

## Shares

There have been notable changes with regard to the administration of share capital in a private company, the main ones of which come into force in October 2009. Of particular note is the abolition of the rule against private companies giving financial assistance for the purchase of their own shares and the removal of the need for a company to obtain court approval should they wish to reduce their capital.

Under the CA06 the status of the memorandum of association (Memorandum) will be reduced so as to contain very limited information and will no longer affect the operation of the company going forward. The CA06 abolishes authorised share capital (ASC) and



states that new companies will not therefore have to specify their ASC in the Memorandum.

On incorporation, new companies must submit, as appropriate, either an initial statement of capital, or statement of guarantee. For existing companies, what was previously ASC in their Memorandum, will now act as a restriction in the Articles setting an upper limit on how many shares may be allotted. Should an existing company wish to allot shares beyond that limit they need to amend their articles.

Unlike under the CA85, where shareholder approval was required, the CA06 states that where a company has just one class of share, they may allot (subject to pre-emption rights and the Articles) further shares in that class without the authorisation of the shareholders. A company may need to amend its Articles to take advantage of this change, however, it could be the case that a company wishes to keep the procedural safeguard of obtaining shareholder approval and may decide to amend the Articles to ensure stronger restrictions on the power of the directors in this area.

In companies where they have more than one class of share, the Directors will still require shareholder approval, in the form of an ordinary resolution, to allot.

## How to take advantage of these changes

The decision that will face companies now is what changes they need to make in light of the CA06 and when these changes, if any, should be made?

Companies need to scrutinise their Articles to see what changes are potentially needed as for some companies it may be that little, or no action is required, but for others the Articles may need a complete overhaul.

The Act will not be in force in its entirety until October 2009 and there is argument that any amendments should be made after that date, however, depending on their individual Articles, many companies may want to make the changes sooner rather than later, to take advantage of the simplified procedures.

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## David Little Partner

David heads up the Company Commercial department at Magrath LLP and advises companies and private individuals on a wide range of corporate and commercial matters.

David has broad experience of advising on acquisitions and disposals of companies and businesses, joint ventures, investments and shareholders agreements, fund raisings (both on public markets and private). David also advises on corporate governance issues and company secretarial matters and on a wide range of commercial agreements, particularly distribution, agency and licence agreements and standard terms of business. David has also previously worked in industry and has served as a non-executive Director and Company Secretary for an AIM listed company.

If you want to discuss any aspect of this note or if you have any questions of a commercial nature, please contact David Little on 0207 495 3003 or [david.little@magrath.co.uk](mailto:david.little@magrath.co.uk)



## Abigail Nevill Trainee Solicitor

Abigail joined Magrath LLP in September 2007 and is now in her second year as a Trainee Solicitor, currently in the Commercial Property and Company Department. Abigail has trained in Employment Law, Company/Commercial Law and Corporate Immigration.

Abigail will be joining the Company/Commercial Department as a qualified Solicitor in September 2009.

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