

Modernising Company Law

The Proposed Changes

Over 90 per cent of UK companies are small, private and owner-managed. With this in mind, the Government is continuing with its plans to change the emphasis of company law so as to 'think small first', with the publishing of the Company Law Reform Bill (the Bill). In this bulletin we consider how the proposed changes may affect you and your company.

The reform process so far

The review of company law began as far back as 1998, with an independent review. White Papers followed in 2002 and 2005. The Bill, published in November 2005, represents the latest stage.

The overall objectives

The Government's overall objectives are to simplify and modernise company law so that it better meets today's business needs and provides flexibility for the future. While the reform process aims to 'think small first', the proposals will have an impact on directors, auditors and shareholders of private, public and quoted companies.

The main objectives are to:

- enhance shareholder engagement and a long-term investment culture
- ensure better regulation and a 'think small first' approach
- make it easier to set up and run a company
- provide flexibility for the future.

The proposed changes

Auditors and accounts

There has already been some progress in this area. You may remember that in January 2004 the definition criteria for small and medium-sized companies and the audit exemption limit were raised significantly, meaning that many more companies could benefit from the exemptions available.

Proposals in the 2005 Bill include:

- **Reducing the time allowed to file accounts at Companies House**

	Current filing deadline	Proposed filing deadline
	months from the end of the accounting period	months from the end of the accounting period
Private limited company (Ltd)	10	9
Public limited company (Plc)	7	6

Comment

The potential impact of this change has been somewhat lessened, as earlier proposals intended to decrease the filing deadline for private limited companies to 7 months. It is worth remembering that there are automatic penalties if your company's accounts are filed late. These range from £100 to £1,000 for private companies and from £500 to £5,000 for public companies, dependant upon how late the accounts are filed.

- **Plans to continue to improve audit quality**

Amongst the proposals in this area is the introduction of a new criminal offence for an auditor to knowingly or recklessly include anything that is materially misleading, false or deceptive in an audit report.

Auditors will also be able to agree, subject to annual shareholder approval, contractual liability limits in respect of any negligence, default, breach of duty or trust occurring in the course of an audit.

- **Retaining the option to file abbreviated accounts at Companies House**

Small and medium-sized companies will continue to be able to file abbreviated accounts.

Comment

Earlier proposals intended to abolish the option for small and medium-sized companies to file abbreviated accounts at Companies House. Those that currently choose to file abbreviated accounts will no doubt welcome this unexpected option.

Directors

- **Director's duties**

In order to help make it easier to understand the general duties that a director owes to their company, there are proposals to introduce a formal, statutory statement of directors' general duties to the company. This will largely replace the existing duties that have developed over the years through case law. The statement will include a duty to act in a way in which a director considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.

There will also be more guidance available for new directors on what these duties mean.

Comment

This is essentially good news, as having director's duties laid down in one place, rather than in a somewhat bewildering array of case law, should make it easier for all directors to both locate and understand them.

- **Transactions with directors**

The current rules that regulate transactions between directors and their company, which require shareholder approval, will also be reformed and restated. In particular, the Bill permits companies, with shareholder consent, to make loans, give guarantees or provide security in connection with a loan to a director.

Comment

This reverses the existing prohibition on such transactions.

There are also proposals to:

- enable directors to provide a service address for the public records at Companies House, rather than their private home address. Home addresses can be kept on a separate record, access to which will be restricted
- continue to allow companies to have corporate directors, although at least one director will have to be a natural person.

Comment

Proposals here will allow a single person to form both private and public companies.

Decision making

Here the intention is to modernise and simplify the ways in which companies take decisions. There are proposals to:

- simplify the rules on written resolutions to make it easier for private companies to take decisions in this way, rather than by holding a formal general meeting. All resolutions of private companies will be capable of being passed in writing, with the exception of those to remove a director or an auditor
- allow written resolutions to be carried with a majority of:
 - over 50 per cent (for ordinary resolutions)
 - 75 per cent (for special resolutions)
 of eligible votes, rather than requiring unanimity as at present
- make greater use of electronic options for communicating with shareholders
- allow shareholders in a private company to hold a general meeting at short notice with a 90 per cent majority, rather than the 95 per cent currently required
- remove the requirement for private companies to hold an Annual General Meeting (AGM) unless the shareholders positively opt to do so. Public companies will continue to be required to hold an AGM. This must be within six months of the financial year end.

Comment

These proposals more accurately reflect the way in which private companies conduct their business in practice and are generally welcomed as useful changes. They should prevent unnecessary meetings from being held and therefore the decision making process should eventually become easier and quicker.

Other areas

- **Forming a company**

Amongst the proposals aimed at streamlining the formation and administration of companies, there is a proposal for new companies to adopt a single document company constitution, consisting of the articles of association. This will be simpler and clearer for both private and public companies and will replace the existing 'Table A'. Separate model articles of association will be available for private companies, which will contain the minimum key rules on the internal workings of the company.

- **The company secretary**

The requirement for a private company to have a company secretary will be abolished, although it may continue to appoint one if it wishes.

Comment

While the office of company secretary will not be mandatory, the responsibilities previously carried out by the secretary will continue to exist.

- **Other simplifications**

The existing rules regarding capital maintenance and share capital provisions are complex and the Bill proposes to simplify these by removing unnecessary and burdensome requirements for private companies. In addition, under the Bill, private companies will not be prohibited from giving financial assistance for the purchase of their own shares, provided they are not subsidiaries of public companies.

The requirement to have an authorised share capital will be removed for both public and private companies.

Going forward

In order to keep company law up to date and to ensure that it meets all of our needs, there are proposals to put those elements which are likely to need regular amendment into secondary legislation. This means that Statutory Instruments, rather than full Acts can be used in the future to amend these elements of company law

Conclusion

The Bill is not expected to come into force before April 2007 and may go through a number of amendments during the Parliamentary process. Generally, the Bill is to be welcomed, as it is aimed at simplifying the law and reducing the regulatory burden on small businesses. However, once the Bill becomes an Act it will need to be read together with the existing 1985 Companies Act. More comprehensive simplification may have to wait until we have a single consolidated Companies Act.

If you would like to discuss the proposed changes to company law in more detail please contact us.

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