

Legal Update

November 2006



Contributors

- Amanda Gamlen
- Stuart Marriner

Information

If you would like further information about this article, please contact:

Amanda Gamlen
Corporate Support Executive
Commercial Services group
0117 917 7892
mgamlen@TLTsolicitors.com

TLT produce monthly Legal Updates on a wide range of topics and circulate a number of other publications including a weekly Employment On Line Update. These publications can be viewed on our website, www.TLTsolicitors.com

If you would like to receive further publications, or if you would like your contact details amended, please contact:

Tasha Downing
Communications Executive
Business Development team
0117 917 7537
tdowning@TLTsolicitors.com

Commercial Services Group

The Companies Bill 2006

The UK was one of the first countries to establish a legal framework regulating the organisation and management of corporate bodies. The current statutory footing for England and Wales is found within the Companies Act 1985 (the “1985 Act”). However, it has long been felt that much of the current legal regime is simply not compatible with, nor appropriate for, today’s dynamic and fluid trading environment.

In addressing some of these concerns, the Department of Trade and Industry has introduced a new Bill - the Companies Bill 2006¹ (the “Companies Bill”) - which is expected to receive Royal Assent in Autumn 2006 and be substantially operative by Autumn 2007. There is now growing speculation suggesting that the implementation date may be put back to October 2008, and is still subject to change.

Companies should make appropriate use of the transitory period to “put their houses in order”. This update does not seek to give an overview of the Bill in its entirety rather it considers the administrative and management changes that companies should consider making.

1. Changes affecting all companies

a) Formation

The Registrar of Companies proposes that businesses will be able to incorporate online during 2007 if they desire.

b) Constitution

New companies will have a single constitutional document consisting solely of the Articles of Association. A company will no longer need to have a Memorandum of Association; on incorporation subscribers will simply state that they wish to form a company and agree to become members of it. Any other provisions in the Memorandum of an existing company will be deemed to be contained within the company’s Articles.

c) Abolition of authorised share capital

Presently, companies must have an authorised share capital which acts as a ceiling, limiting the maximum number of shares that a company can issue at any one time. In practice, a company simply raises the limit at times of share allotments through approval by a simple majority of shareholders. However, with the Memorandum’s change of status (above), it has resulted in the abolition of the company’s authorised share capital, so that in future there will be no need to check whether a company has sufficient “head room” in which to issue further shares.

¹ The law stated in this update is as published by the House of Commons on 20 July 2006.

d) Statements of capital

Notwithstanding the abolition of the authorised share capital concept, at the time of a company's incorporation (and at times in which shares are allotted) a statement of capital and shareholdings will now have to be delivered to the Registrar of Companies detailing amongst other things, the company's aggregate share capital and the number and aggregate value of any class of shares.

e) Entrenched provisions within the articles

It is proposed that companies will be able to entrench elements of their Articles; an entrenched provision may not be altered without the unanimous consent of all the shareholders, or only on satisfaction of certain specified conditions laid down in the Articles.

f) Execution of documents

A company will be able to validly execute documents with the signature of a single director made in the presence of a witness who attests the signature, rather than the current practice requiring documents (in the absence of a company seal) to be executed by two directors or one director and the company secretary.

g) Directors

Every company will be required to have at least one director who is a natural person and who is also over the age of 16 years. However, a fundamental provision in the Companies Bill is the codification of seven directors' duties, namely for each director:

- to act within his powers;
- to promote the success of the company for the benefit of its shareholders as a whole;
- to exercise independent judgment;
- to exercise reasonable care, skill and diligence;

- to avoid conflicts on interest;
- not to accept benefits from third parties; and
- to declare to the other directors any interest in a proposed transaction or arrangement with the company.

We can advise directors, or collectively a company's board, as to the terms of each of these duties and the practical requirements necessary to satisfy each of these.

Of significance too for those directors who wish to maintain their secrecy, or who, for example, work in a particularly sensitive industry, they will no longer be obliged to disclose their home address on the public record, they may simply provide the Registrar of Companies with a service address. The company will still be required to maintain a register of the directors' residential addresses but this shall not be open to public inspection except in cases of persistent default where notices to service addresses remain unanswered. Please note that residential addresses already on the public record will not be removed.

Finally, directors' service agreements which continue for more than five years currently need approval by a simple majority of the shareholders for their duration to be binding on the company and the director. The Companies Bill proposes to reduce the need for prior approval from five years to two years. Therefore, readers may like to reconsider the duration of their service contracts if shareholder consent is unlikely.

2. Private Companies

a) Time limit for filing accounts

The Companies Bill reduces from ten months to nine months the time in which private companies are required to file their annual report and financial statements at the Registrar of Companies after the end of the respective financial year.

b) Company secretaries

The requirement for private companies to have a company secretary is abolished, although, following much lobbying by the Institute of Chartered Secretaries and Administrators (ICSA), many private companies may choose to appoint (or retain, as the case may be) a secretary and, on appointment, their powers will remain intact. Company secretaries with prescribed qualifications will continue to be mandatory for public limited companies.

c) AGMs

Presently, all companies are required to hold an annual general meeting (AGM) in each calendar year (unless, in the case of private companies, it has dispensed with this requirement in accordance with the elective regime). However, the Companies Bill proposes that all private companies will no longer be required to hold an AGM or any other general meeting unless they wish to do so. By automatically dispensing with this need, private companies will also avoid the obligation to lay their accounts on shareholders or the need to appoint an auditor (if they have one) at an AGM. Notwithstanding this dispensation, shareholders will nonetheless be entitled to receive a set of the company's accounts either in the post or by electronic means.

d) Written resolutions

Written resolutions will no longer require unanimous consent of the shareholders eligible for voting, instead each shareholder will receive one vote for each voting share that they hold and in the case of a written ordinary resolution, the written resolution will require a simple majority of all those eligible to vote. A written special resolution will require a majority of 75% of all those shareholders eligible to vote. Where a written resolution does not receive the necessary votes (simple majority or 75%) within 28 days of its circulation, then the proposed written resolution will lapse.

Accordingly, the existing regime relating to elective and extraordinary resolutions will be abolished.

e) Notice periods and short notice

Currently, all companies must give at least 21 clear days' notice of an AGM and at least 14 clear days' notice for any other general meeting depending upon whether the business to be conducted is ordinary or special business. However, in respect of private companies, only the Companies Bill proposes that the notice period for all general meetings, including those at where a special resolution is proposed, is at least 14 days. The majority of shareholders required to convene a general meeting on shorter notice is reduced from a majority in number of those who are eligible to vote and who hold 95% of voting rights to 90% of voting rights.

f) Authority to allot shares

It is proposed that, subject to anything of the contrary contained in the company's Articles, the directors of a private company with only one class of shares will be free to allot shares without first seeking authority of the company's shareholders. Such allotments will still be subject to rights of pre-emption on cash issues in favour of existing shareholders but the removal in the Articles of the requirement for directors to seek prior authority should expedite share allotments.

In light of the proposed changes we would advise a legal audit of your company's constitution and legislative compliance. It would also be advisable before the Companies Bill comes into force to consider the removal of any unwanted dormant companies using the procedures laid down in S.652 of the 1985 Act.

How TLT can help

TLT's Company Secretarial team offers an extensive service, tailored specifically to meet individual client's requirements, which includes the provision of bespoke incorporations for many different types of company (including property management companies, limited liability partnerships and the new community interest

companies). The team also provides assistance to companies in complying with the statutory requirements with regard to Companies House filings and maintenance of statutory books. We are also happy to act as your company secretary. Our offices may be used as the registered address of the company and/or as the service address for any number of your company's directors who wish to take advantage of the new privacy legislation.

Further Information

The text of the Companies Bill as at 20 July 2006 on completion of the Committee stage in the House of Commons (published on 28 July 2006) can be found at <http://www.publications.parliament.uk/pa/pabills/200506/companies.htm>

For further information on this update, please contact Amanda Gamlen on 0117 917 7892 or mgamlen@TLTsolicitors.com.

About the Authors



Amanda Gamlen is a legal executive in **TLT's** Commercial Services group, specialising in providing company secretarial services to a variety of regional, national and international clients.



Stuart Marriner is a member of the Corporate Finance team and specialises in mergers and acquisitions, corporate finance, private equity and general company and commercial law and compliance.