

Companies Act 2006: 1 October 2008 Implementation

The next stage of implementation of the Companies Act 2006 occurred on 1 October 2008. The provisions that came into force include:

(1) **The duties of directors to avoid conflicts of interest**

This is a duty to avoid a situation in which the director has, or can have, a direct or indirect interest or duty that conflicts (or possibly may conflict) with the interests of the company.

This applies in particular to the exploitation of property, information or opportunity (whether or not the company could take advantage of the property, information or opportunity).

The duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter is authorised by the directors.

(2) **The duties of directors not to accept benefits from third parties**

This is also a duty not to accept benefits from third parties by reason of the director's position as director. This duty will prohibit (with certain exceptions) the acceptance of benefits (including bribes).

(3) **The duty of directors to declare interests in proposed transactions or arrangements**

Directors must declare to the other directors the nature and extent of any interest, direct or indirect, in a proposed transaction or arrangement with the company. The director need not be a party to the transaction for the duty to apply. An interest of another person in a contract with the company may require the director to make a disclosure under this duty, if the other person's interest amounts to a direct or indirect interest on the part of the director. Such declarations must be made before the company enters into the transaction or arrangement.

(4) **Provisions relating to corporate directors and underage directors**

All companies must have at least one actual person as a director. All directors must be at least 16. Existing underage directors will cease to be directors from October 2008.

(5) **The repeal of the restrictions under the Companies Act 1985 on financial assistance for the acquisition of shares in private companies, including the "whitewash" procedure.**

(6) **The solvency statement procedure for private companies to reduce their share capital**

From 1 October 2008, the Companies Act 2006, provides a new procedure for a private company to reduce its issued share capital by special resolution if the directors are able to confirm that the company will remain solvent for a year after the reduction.

This will allow private companies, but not public companies, to reduce their share capital without the need to obtain a Court Order confirming the reduction, and creditors have no right of objection. However, it is not possible to reduce the capital so as to leave the company with no share capital or with only redeemable shares in issue.

The existing reduction of capital procedure under section 135 of the Companies Act 1985 (requiring the reduction to be confirmed by Court Order) can still be followed if the company so chooses.

(7) Display of the company's name at its registered office and other locations

New regulations regarding the display of a company's name at its registered office and other locations have come into effect.

There are certain exemptions from these requirements for companies which are subject to formal insolvency proceedings, but these exemptions will not come into effect until 1 October 2009.

The provisions that came into effect on 1 October 2008 state, briefly, that a company's registered name must be displayed at:

- its registered office
- other places at which records are kept for inspection under the provisions of the Companies Act, and
- any location at which it carries on business (unless that location is primarily used for living accommodation).

Other changes this month:

(1) Notification of Insolvency in Electronic and Other Media

The rules regarding notifications that a company is subject to insolvency proceedings have been extended to include notification in electronic media. Other minor changes have also been made with effect from 1 October 2008.

From this date, where a company is in administration, administrative receivership, receivership (in Scotland) or is subject to a moratorium under section 1A of the Insolvency Act, this fact must be stated on all the company's websites, and in all business documents whether in hard copy, electronic or any other form. Equivalent provisions have been applied to companies in liquidation since 1 January 2007.

For companies which are in liquidation, receivership or administrative receivership, or are subject to a moratorium, the requirement is extended to orders for services as well as goods (in administrations the disclosure requirements apply to all business documents).

In all cases the requirement will no longer be confined to documents on which the company's name appears.