

## Companies Act 2006 Update

### Private company AGMs after 1 October 2007

The 1 October 2007 changes outlined in our earlier briefing notes are now in force, including removal of the requirement on private companies to hold AGMs. Existing private companies should not assume, however, that the removal of this requirement means that they will not be required to hold any more AGMs:

- The removal of this requirement does not affect any provision of a company's Memorandum/Articles requiring the company to hold AGMs (although references in a company's Articles to the directors retiring by rotation at the company's AGM can be discounted for these purposes). Any company so affected must continue holding AGMs unless and until the company's Memorandum/Articles are changed to remove such provision.

A private company with Articles in the form of unamended 1948 Table A is required to hold an AGM.

- Where the company received, prior to 1 October 2007, a requisition from a specified minority of its members under section 376 CA 1985, requiring the company to circulate a resolution at the company's next AGM, the company must hold a further AGM in order to comply with that requisition.
- Private companies whose last year-end occurred on or before 1 October 2007 continue to be required to lay before the company's members in general meeting the company's accounts for the last financial year, meaning that for all intents and purposes, a further AGM will be required... [read more >](#) The company may also be required to deal with the appointment of the company's auditors for the next financial year at such meeting.

Even if not required to hold any further AGMs, companies need to be aware of their continuing obligations under the Act regarding circulation of the company's accounts and the appointment of auditors... [Read more >](#) Companies may decide that, although not a statutory requirement, it is sensible to continue holding AGMs to ensure that these obligations are dealt with.

### Requirement to lay the company's accounts before members in general meeting

Prior to 1 October 2007, all companies were required to lay before the company's members in general meeting the company's accounts for the last financial year and to circulate the accounts to the members at least 21 days prior to that meeting. In the case of a private

company, this meeting had to be held within 10 months of the company's year-end. A private company could, however, elect to dispense with this requirement (under section 252 CA 1985), in which case, the company was merely required to circulate the accounts to the members no later than 28 days before the end of that 10 month period.

In practice, most companies have used the company's AGM for the purpose of laying the accounts before the company's members.

Since the Act has now removed the requirement on private companies to hold AGMs, the requirement on private companies to lay their accounts before the company's members in general meeting has also been removed. However, this only affects accounts for financial years ending on or after 1 October 2007. This means that companies whose last year-end occurred before 1 October 2007 continue to be required to lay the accounts for the last financial year before the company's members in general meeting, if they have not already done so (although any elective resolution passed prior to 1 October 2007 under section 252 CA 1985 above remains valid).

### **Appointment of auditors by private companies**

Prior to 1 October 2007, unless a company was exempt from the audit requirements, the company's shareholders were required to appoint auditors annually at each general meeting at which the accounts were laid. If a private company had passed an elective resolution under section 252 CA 1985 dispensing with the requirement to lay the company's accounts before the company in general meeting, the company's shareholders had to appoint auditors no later than 28 days after the date the company's accounts were circulated to the members. Private companies could elect to dispense with the obligation to appoint auditors annually under section 386 CA 1985, in which case, auditors would be deemed to be re-appointed for each successive year.

Given the removal of the requirement on private companies to lay the accounts before the company in general meeting, the requirement for private companies to deal with the appointment of the company's auditors at the general meeting at which the accounts are laid is also being removed as from 1 October 2007. However, this does not affect a company whose last year-end fell before 30 September 2007. Such a company continues to be required to appoint the company's auditors at the general meeting at which the accounts for the last financial year are laid (unless the company is exempt from audit and any elective resolution that has already been passed under section 252 or 386 CA 1985 remains valid). Although a company whose last year-end fell on 30 September 2007 is not actually required to deal with the appointment of auditors at such meeting, it would seem sensible to do so.

### **Circulating accounts and appointing auditors – new requirements**

As regards accounts for financial years ending on or after 1 October 2007, private companies are required to circulate those accounts to the members no later than 10 months from the company's financial year-end (this period is being reduced to 9 months by the Act from April 2008) or if earlier, the date on which the accounts are filed at Companies House.

With regard to the appointment of auditors for financial years beginning on or after 1 October 2007, the company's shareholders are required to make an appointment for each financial year within 28 days of the accounts for the last financial year being circulated to them ("the period for appointing auditors"). However, any elective resolution passed under section 386 CA 1985 prior to 1 October 2007 dispensing with the requirement to appoint auditors annually, continues to have effect and no appointment need be made where the directors have

reasonably resolved that audited accounts are unlikely to be required for the next financial year (for example, where an exemption from audit applies).

Another change introduced by the Act means that if no other auditor has been appointed by the end of the next period for appointing auditors, the auditors are deemed to have been automatically re-appointed (in other words, an elective resolution under section 386 CA 1986 is no longer required, with deemed re-appointment being the default position for private companies). There are, however, certain exceptions to deemed re-appointment, including where a specified minority of the members have given notice to the company preventing deemed re-appointment or where the company's Articles require actual re-appointment.

## Contact us

If you would like us to review your Articles in the light of the removal of the requirement on private companies to hold AGMs or require any further advice on your continuing obligations with regard to AGMs, accounts or the appointment of auditors, please contact:

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