



Companies Act 2006 Update

Resolutions and meetings

New provisions come into force on 1 October 2007 that are intended to streamline the decision-making process for private companies by:

- Removing the requirement for private companies to hold AGMs.

Existing private companies whose Memorandum/Articles require the company to hold an AGM will, however, need to change their Memorandum/Articles if they want to take advantage of the removal of this requirement.

- Make it easier for shareholders of private companies to take decisions by way of written resolution.

The combined effect of the above changes, taken together with the new company communication provisions, which came into force on 20 January 2007 (these provisions enable private companies to circulate written resolutions electronically subject to shareholder agreement – see our earlier briefing note) should enable private companies to make most shareholder decisions quickly and without the burden of having to hold shareholder meetings.

Other changes coming into force on 1 October 2007 streamline the procedure for the convening and holding of shareholder meetings.

AGMs

Currently, the law requires all companies to hold AGMs at least once a year and other meetings as required. Private companies may (under the elective regime) opt to dispense with AGMs but only if all their shareholders agree.

Under the Act, the requirement for private companies to continue holding AGMs is being dispensed with. This change does not, however, affect any provision of an existing private company's Memorandum/Articles that expressly requires the company to hold an AGM. Any such provision continues to have effect as it had immediately before 1 October 2007. This means that such companies will need to amend their Memorandum/Articles if they want to take advantage of the change. Provision specifying that one or more directors are to retire at the AGM of the company is not treated for these purposes as provision requiring the company to hold an AGM.

Private companies that wish to continue holding AGMs will be able to do so. However, there will be no special statutory provisions for the laying of accounts or appointing an auditor at such meetings or for the convening or holding of such meetings. Shareholders will, however, still have rights to receive accounts and appoint auditors as well as a right to demand a meeting if a specified minority of shareholders want one.

The requirement for PLCs to continue holding AGMs is carried forward in the Act. However, a key change is that the Act provides for the timing of the AGM to be linked to the company's reporting cycle (the AGM is to be held within 6 months of the end of the financial year), so as to ensure that the company's shareholders have a more timely opportunity to hold the directors to account.

Written resolutions

Under the CA 1985, private companies may opt (under the elective regime) to pass resolutions of its shareholders by written resolution. Even if they opt to do so, written resolutions can only be passed if all the shareholders agree. On this basis, written resolutions are only likely to be used where it is probable that the resolution will receive the unanimous approval of the company's shareholders and therefore, are really only appropriate where the company is either a single member company or has a relatively small number of shareholders.

Under the Act, private companies will no longer need to elect to use the written resolution procedure. Further, a simple or 75% majority of those eligible to vote will be required for a written ordinary or written special resolution respectively, rather than unanimity. This change should make written resolutions more accessible to private companies that have a number of shareholders.

The Act provides that except for resolutions requiring special notice (for example, in relation to meetings to remove a director or auditors before the expiry of their term), private companies can use written resolutions to take all shareholder decisions and any provision to the contrary in a company's Articles is void.

PLCs continue to be unable to use written resolutions under the Act.

Since, in the light of the changes, private companies are more likely to use written resolutions in future, the written resolution provisions are much more detailed in the Act than under the CA 1985 and in accordance with the "think small first" policy in the Act, are all set out in a new Chapter 3 of Part 13 of the Act.

The new provisions seek to clarify some of the current confusion regarding the procedure for the circulation and the passing of written resolutions - for example, the period after which a written resolution lapses if it has not been agreed to by the relevant majority of shareholders and how a shareholder signifies his agreement to a written resolution.

A specified minority of shareholders may require the circulation of a written resolution together with a statement of up to 1,000 words.

Shareholder meetings

Where private companies continue to hold shareholder meetings, either because the written resolution procedure is not available (for example, the resolution to be passed is one that requires special notice under the Act), because they are required to do so (for example, the company's Memorandum/Articles contains express provision requiring the company to hold an AGM) or because they wish to do so, in accordance with the "think small first" policy in the

Act, all of the relevant provisions dealing with the convening and holding of such meetings (including a private company AGM) are set out in a new Chapter 3 of Part 13 of the Act. There are additional requirements set out in Chapters 4 and 5 of Part 13, which apply where the company is a quoted company or where the meeting is a PLC AGM.

Key changes being made in the Act are as follows:

- **Simplification of notice periods and short notice requirements**

Under the CA 1985, a minimum of 21 days' notice is required for an AGM and 14 days for an EGM. However, this rule is complicated by the fact that if it is proposed to pass a special resolution at an EGM, then 21 days' notice is required.

Under the Act, the minimum notice period for all shareholder meetings will be 14 days, even if a special resolution is proposed (a company's Articles can continue to specify a longer period of notice).

However, there are some exceptions – for example, in relation to resolutions requiring special notice and in respect of PLC AGMs, where the minimum notice period will remain 21 days.

As under the CA 1985, companies will still be able to hold meetings under the Act at short notice if the holders of a sufficient majority of shares or voting rights agree. The majority is currently set at 95% although private companies may (under the elective regime) opt to reduce the majority required to 90%. The Act makes 90% the default figure for private companies although the company's Articles can continue to specify a higher majority, not exceeding 95%. Unanimous consent continues to be required to hold a PLC AGM on short notice.

- **Proxies**

Under the Act, members of both private companies and PLCs will be able to appoint more than one proxy and all proxies will have the same rights as the registered member to ask questions, demand a poll and vote on a show of hands at general meetings (as well as on a poll).

Changes have also been made to the requirements relating to the form of a notice of a general meeting to reflect the more extensive rights given to proxies under the Act.

- **Quoted companies**

In order to increase transparency for shareholders (both registered members and indirect investors alike), such companies are required under the Act to disclose on their websites the results of all polls taken at general meetings. A specified minority of shareholders will have a right to require independent scrutiny of any polled vote.

The new company communication provisions in the Act already enable notices and other documents relating to shareholder meetings to be sent electronically, subject to shareholder agreement (see our earlier briefing note).

Contact us

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