

The ICSA

Companies Act 2006

Handbook

Second edition

Consultant Editor

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PUBLISHED IN ASSOCIATION WITH

Linklaters



Published by ICSA Publishing Ltd
16 Park Crescent
London W1B 1AH

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Given the size and complexity of the Companies Act 2006, this Guide does not purport to contain a comprehensive summary of the Act's provisions but merely to highlight changes to company law which we believe to be of particular interest. This Guide is intended to give general information only, and should not be relied on as legal advice.

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Typeset in Palatino and Vectora by RefineCatch Limited, Bungay, Suffolk
Printed and bound in Great Britain by Hobbs the Printers

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN13 978-1-86072-4381

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Preface

The second edition of this *ICSA Handbook* is intended to provide in a single volume a detailed reference guide to the Companies Act 2006 and its implementation over the 2½ years which have elapsed since Royal Assent in November 2006. As from 1st October 2009 the commencement of the Act is complete and this Handbook deals with the Act as in force from that date.

It is organised into three parts:

Part 1 is a concise guide to the key provisions of the Act, originally written by the corporate team at Linklaters for the first edition of this Handbook and now updated by ICSA with the assistance of Linklaters. This introduces the Act, focusing on the main changes from the former requirements of the 1985 Act to which companies need to have regard as they take account of the 2006 Act as implemented.

Part 2 comprises the text of the Act itself, shown as amended to 1st October 2009 (based on finalised Statutory Instruments and other legislation published up to mid-July 2009). The many amendments, affecting shareholders' meetings in particular, made to the Act, with effect from 3rd August 2009 by the Companies (Shareholders' Rights) Regulations 2009 have been fully incorporated in to the text of the Act in the Handbook (for details see the "Voting and Meetings" section of the guide in Part 1 at page 67). It must be stressed that a number of provisions of the Act have been amended during the implementation/commencement process and that it is no longer prudent to rely for practical purposes on the text of the Act as originally enacted, published by the Queen's Printer.

Part 3 provides a range of reference material to supplement the Act and to help navigate it and to plot the changes between the new legislation and the Companies Act 1985. This comprises:

- an implementation timetable of the various Parts of the Act over the past 2 ½ years,
- a table of the mass of subordinate legislation made under the Act,
- the texts of the most important Statutory Instruments made under the Act and of the Model Articles prescribed under the Act,
- the texts of the continuing transitional provisions set out in the various commencement orders (particularly affecting companies already in existence on 1st October 2009 – cross references are given to these continuing transitional provisions in the text of the affected sections of the Act in Part 2),
- derivation and destination tables,
- a brief overview of the remaining provisions of current company legislation, and
- comprehensive indexes.

Keith Walmsley
Consultant Editor
July 2009

Acknowledgements

ICSA Publishing would like to thank the following for their contributions to this Handbook:

Keith Walmsley for acting as Consultant Editor.

Lucy Fergusson, Judy Pink and **Wilma Rix** at Linklaters for the use of their Guide, *The Companies Act 2006: A Guide to the Reforms*.

Structured data files of Companies Act material used in the preparation of this publication, provided under licence from Complinet Ltd.

Part 1

The Companies Act 2006:

A Guide to the Reforms

Introduction

This Guide is intended as an introduction to the major issues for listed companies and their UK subsidiaries arising from the Companies Act 2006, and reflects the position at 1 October 2009. The 2006 Act has been brought into force progressively in a number of stages by eight successive commencement orders, which are listed in Part 3 of this Handbook (Part 3 also contains a schedule of the commencement dates for the various parts of the Act). This second edition of the Handbook sets out the position when the Act has been brought fully into force.

Since its original enactment in 2006, the Act has been subject to a number of textual amendments (by eg commencement or implementation orders), and these have been duly incorporated in the updated text of the 2006 Act, in Part 2 of the Handbook. The text of the Act in Part 2 has also been updated to include the amendments made to it (with effect from 3 August 2009) by the Companies (Shareholders' Rights) Regulations 2009.

For companies incorporated on or after 1 October 2009, the Act will fully apply as enacted. However, particularly for companies already in existence before that date, the application of the Act will in some respects be modified by transitional provisions set out in commencement orders – those of continuing effect are, for convenience of reference, extracted in Appendix 1, and are annotated against the affected provisions in the text of the 2006 Act in Part 2 of the Handbook.

It should be emphasised that most of the transitional provisions (or savings) set out in the commencement orders are in fact likely to be only of short-term concern (eg to the effect that a commenced provision applies only to events occurring on or after the commencement date and that the earlier provision which the new provision replaces will apply to events occurring before that date) – such transitional provisions are not extracted in Appendix 1 but may, in case of need, be consulted in the relevant full commencement order (on eg the OPSI website).

The detailed aspects of some of the Act's new provisions (particularly those concerned with company accounts) have had to be dealt with by implementing orders or regulations made under the Act. Account is taken of these in this Guide, and the most important of them are reproduced in Part 3. Special mention should also be made of the new model articles applicable to companies incorporated on or after 1 October 2009 (in place of Table A and the related Tables) – these are reproduced in Appendix 2.

Scope of the Act

The Act restates existing companies legislation and introduces wide-ranging reforms

Many familiar provisions are restated in more modern language

When the Act was first introduced in the House of Lords in January 2006, as the Company Law Reform Bill, it was described as “gargantuan”.¹ In the course of its passage through Parliament, around 400 additional clauses were introduced, and hundreds of amendments made. It is now said to be the largest piece of legislation ever passed by Parliament, with 1300 sections and 16 schedules. Its impact on the administration and management of UK companies will be correspondingly far-reaching – not so much because there are many radical reforms, but because of the sheer number of more modest changes.

The growth of the Act during its progress through Parliament was largely not the result of substantive new measures being added. Instead, it came about because of the restatement of existing provisions of the 1985, 1989 and 2004 Companies Acts.² These Acts are therefore repealed, with the exception of a small number of provisions – principally those dealing with community interest companies and with investigations (as these apply more widely than to companies). The Act is longer than the existing Companies Acts in part because the drive for simplification has led to a less concise, but easier to understand, drafting style. The reforms contained within the Act have a variety of provenances, including:

- the Company Law Review commissioned by the Government in 1998 – this involved a large number of practitioners, business people and academics in a wide-ranging consideration of how existing company law could be improved upon;
- various Law Commission recommendations (the Law Commissions are independent bodies established by Parliament to keep the law under review and recommend reforms); and
- EU directives, including the Takeovers Directive, the Transparency Directive and the Statutory Audit Directive.

Based on these initiatives, the Government developed the new law with the key objectives of:

- enhancing shareholder engagement and a long-term investment culture;
- ensuring better regulation and a “think small first” approach;
- making it easier to set up and run a company; and
- providing flexibility for the future.

¹ Lord Hodgson of Astley Abbots, Hansard col. 188, 11 January 2006.

² The Companies Act 1985 (the “1985 Act”), the Companies Act 1989 (the “1989 Act”) and the Companies (Audit, Investigations and Community Enterprise) Act 2004 (the “2004 Act”).

The Act is in many respects deregulatory – with private companies benefiting most – but there are also a number of areas where new obligations or potential burdens are introduced, particularly for publicly-traded companies. The result is a widening of the gap between the regulatory burden for publicly traded companies and that for private companies, which could encourage more businesses to stay, or go, private.

The benefit of deregulatory measures will be tempered by new obligations for listed companies