



Legal Brief

Companies Act 2006 – Implementation, January 2009

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With effect from 1st October 2008, the following provisions of the Companies Act 2006 came into force:

- The general duties of directors to avoid conflicts of interest which previously had evolved through case law are now set out in Section 175 of the Companies Act 2006;
- The new procedure for private companies to make capital reductions greatly simplifies the previous statutory procedure which required a High Court application to be made to reduce a company's capital, after consultation with all creditors. Now directors may reduce a company's capital if a special resolution has been passed by the members of the Company and the directors can give the required solvency statement.
 - Two things to watch out for:
 - By giving a declaration of solvency, directors can become personally liable to creditors in the event of an insolvent liquidation within 12 months of a capital reduction; and
 - Some banks are introducing clauses into their lending documentation prohibiting capital reductions without their prior written consent;
- Private limited companies are now required to have at least an individual as a director. Since April 2008, a private limited company has also had the option to elect not to have a secretary. If however, a company chooses to have a secretary, the secretary cannot be the same person as the sole director;
- All company directors now must be at least 16 years of age to act.

In addition to the incoming legislation, the restrictions under the Companies Act 1985 on financial assistance by private companies for the acquisition of their own shares, were also repealed with effect from 1 October 2008. This will prove to be a significant cost saving for private limited companies seeking to enter into any transaction which would have technically fallen foul of the old financial assistance legislation.

Further elements of the Companies Act 2006 are due to come into force on 1st October 2009 including the new default model Articles of Association and Memorandum of Association.

If you would like to speak to Lynda about the new duties, a review of your Articles or any other matter relating to your business needs, please call her on 01256 854627 or e-mail her at llawson@phillips-law.co.uk