



The Association of Investment Companies

Companies Act 2006: Implementation timetable and AIC plan of support

Part 1 of AIC Members' Guide to
implementing the Companies Act 2006

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To discuss the issues raised in this paper please contact:

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Important information

This document is intended to provide general guidance only and is not exhaustive. It has been prepared for the sole use of the AIC's Members. AIC Members in any doubt over their legal duties and responsibilities should take professional advice before relying on anything contained in this document. This document cannot in any way override the requirements of current legislation.

The AIC accepts no responsibility for any errors or omissions in this document or for any loss occasioned to any person or organisation acting or refraining from action as a result of any material contained in this document. This document is based on our current understanding of law and practice. This can change over time and information contained within this document is based on our understanding as at time of print.

Introduction

The Companies Act 2006 ("2006 Act") received Royal Assent on 8 November 2006 after an extensive consultation period. The new provisions are being phased in, with full implementation by October 2009.

The AIC has been considering the impact of the key areas of these new regulations for investment companies and planning what forms of support it can provide to assist Members deal with its implementation.

The key changes introduced in the 2006 Act include the following:

- There is a new statutory statement of seven duties owed by directors to the company, including a new duty to promote the success of the company.
- There are enhanced shareholder rights, including:
 - new rights for shareholders to sue directors (derivative claims)
 - new statutory damages regime in respect of false or misleading statements in periodic financial reports
 - better access to information and voting rights for indirect shareholders.
- There are new provisions relating to electronic communications (which have been introduced before other provisions).
- The Act no longer covers disclosure of major shareholdings nor the majority of regulations governing the publication of periodic financial information which have moved to the FSA's Disclosure and Transparency rulebook.
- Auditors can limit their liability.
- The upper age limit for directors has been removed.
- Directors will be able to provide a service address for the public record rather than a home address.
- There are new restrictions on obtaining shareholders' personal details from the company.

The AIC has produced a table (attached) to assist Members with understanding the introduction of the 2006 Act. The table highlights some of the key areas of regulation relevant for investment companies and shows the dates that these key regulations are effective from. It includes section references so that Members can refer to the specific rules. The full text of the Companies Act 2006 can be found at www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060046_en.pdf

The table also identifies specific areas in which the AIC has, or is planning to, provide guidance or support to its Members.

If you have any further suggestions on areas in which the AIC might provide guidance or support to its Members, or if you have any questions relating to this timetable, please contact Alison Andrews at: alison.andrews@theaic.co.uk.

The AIC would like to thank **Shepherd and Wedderburn LLP** for assisting with this paper.

Subject area	Provision	Company Act 2006 section	Commencement date ¹	Additional information
DIRECTORS (Part 10)				
General duties	Scope and nature of general duties, and supplementary provisions	170,178-180	1 October 2007 (180 - 1 October 2008 in relation to conflicts of interest)	The AIC held a seminar on 17 April 2008 on directors' duties and liabilities. A summary of the main points can be found at www.theaic.co.uk/files/technical/AICCompaniesActseminar17April2008recommendations.pdf
	Duty to act within powers	171	1 October 2007	
	Duty to promote the success of the company	172	1 October 2007	
	Duty to exercise independent judgment	173	1 October 2007	
	Duty to exercise reasonable care, skill and diligence	174	1 October 2007	
	Duty to avoid conflicts of interest	175	1 October 2008	
	Duty not to accept benefits from third parties	176	1 October 2008	
	Duty to declare interest in proposed transaction or arrangement	177	1 October 2008	
Declaration of interest in existing transaction or arrangement	182-187	1 October 2008	The AIC has circulated a note containing useful links and references to other articles and guidance on this subject. This can be found at www.theaic.co.uk/files/technical/AICDirectorsdutiesusefullinks24Jan2008.pdf	
Directors' liabilities	Provisions protecting directors from liability Shareholders ability to approve (ratify) acts of directors	232-239	1 October 2007	
Appointment and removal	Requirement to have directors	154	1 October 2007	
	Appointment to be voted on individually	160	1 October 2007	
	Validity of acts of directors	161	1 October 2007	
	Removal	168-169	1 October 2007	
	Natural person	155	1 October 2008 (October 2010 if no natural director on 8 November 2006)	
	Intervention from Secretary of State	156	1 October 2008	
	Minimum age	157-159	1 October 2008	
Register of directors	162-167	1 October 2009 ³		
Transactions requiring shareholder approval	Service contracts Substantial property transactions Loans, quasi-loans and credit transactions Payments for loss of office	188-226	1 October 2007	

Subject area	Provision	Company Act 2006 section	Commencement date ¹	Additional information
DIRECTORS (Part 10) continued				
Directors' service contracts		227-230	1 October 2007	
Directors' residential addresses		240-246	1 October 2009 ³	
Meetings with directors	Minutes	248-249	1 October 2007	
RESOLUTIONS AND MEETINGS (Part 13)				
Resolutions and meetings	Written resolutions	281-361 (Sections 327(2)(c) and 330 (6)(c) are not being introduced for the time being)	1 October 2007	
	Notice of meetings			
	Procedures at meetings			
	Proxies			
	AGM			
	Website publication of poll results			
	Records of resolutions and meetings			
	<i>Except provisions relating to electronic communications:</i>			
	Manner in which notice must be given	308	20 January 2007	
	Publication of notice of meeting on website	309	20 January 2007	
	Sending meeting documents in electronic form	333	20 January 2007	
SHARE CAPITAL AND SHAREHOLDERS				
Shares (Parts 17, 20 and 22)	Information about interests in a company's shares	791-828	20 January 2007	
	<i>Except:</i>			
	Content of request for access to register of interests	811(4)	6 April 2008 ²	
	Court supervision of purpose for which rights may be exercised	812	6 April 2008 ²	
	Offences in connection with disclosing register of interests	814	6 April 2008 ²	
	Minimum share capital requirement for public companies	761-767	6 April 2008	

Subject area	Provision	Company Act 2006 section	Commencement date ¹	Additional information
SHARE CAPITAL AND SHAREHOLDERS continued				
Shares (Parts 17, 20 and 22) continued	Allotment of shares	540-657	1 October 2009 ³	The AIC is lobbying for amendment to rules on distributable reserves following a reduction of share capital to bring position back to 1985 Act ie allowing reserves arising from a reduction of share capital to be distributable.
	Payment for shares	(except		
	Share premiums	641(1)(a)&(2)-(6), 642		
	Alteration of share capital	and 643 which		
	Classes of share and class rights	relate to private		
	Reduction of share capital	companies)		
	<i>Except:</i>			
	Shares	540(1)&(4)	Fully in force by 1 October 2009 ³	
	Companies having a share capital	545	but may be earlier if	
	Issued and allotted share capital	546	relevant for the	
	Equity share capital	548	commencement of certain other	
	Classes of shares	629	provisions	
	Transferability of shares	544	6 April 2008	
	When shares are allotted	558	6 April 2007 so far as necessary for certain other provisions, fully in force by 1 October 2009	
	Effect of reduction of capital	652, 654	1 October 2008	
Securities (Part 21)	Certification and transfer of securities	768-790	6 April 2008	
Debentures (Part 19)		738-754	6 April 2008	
Acquisition by limited company of its own shares (Part 18)	Financial assistance Redeemable shares Purchase of own shares Treasury shares	658-737	1 October 2009 ³	
Distributions (Part 23)		829-853	6 April 2008	

Subject area	Provision	Company Act 2006 section	Commencement date ¹	Additional information
SHARE CAPITAL AND SHAREHOLDERS continued				
Shareholders	Register of members (Part 8)	112-128	1 October 2009 ³	The AIC has issued a paper covering the new rules on public access to the register of members which is available on our website at www.theaic.co.uk/files/technical/Publicaccesstoshareholderinformation.pdf
	<i>Except:</i> Provisions relating to rights to inspect and require copies of register	116-119	Requests made on or after 1 Oct 2007 and after submission of first annual return made up to a date after 30 Sept 2007	
	Register of members: removal of entries belonging to former members	121,128	6 April 2008 ²	
	Exercise of members' rights (Part 9)	145-153	1 October 2007	
	Derivative claims (Part 11)	260-269	1 October 2007	
RECORDS AND REPORTING				
Accounts and reports (Part 15)	Accounting records Financial year Annual accounts Directors' report Directors' remuneration report Publication Laying accounts and reports before general meeting Filing Defective accounts	380-474	6 April 2008	The AIC has published a guide on the publication and dissemination of periodic financial information which covers some of these rules. It is available on our website at www.theaic.co.uk/files/technical/Publicationanddisseminationofperiodicfinancialinformation.pdf
	<i>Except:</i> Business review	417	Financial years beginning on or after 1 October 2007	The AIC has published a paper on business reviews and OFRs which is available at www.theaic.co.uk/files/technical/OFRandBusinessReview(Feb2006).pdf
	Liability for false or misleading statements in reports	463	For reports and statements sent to members on or after 20 January 2007	

Subject area	Provision	Company Act 2006 section	Commencement date ¹	Additional information
RECORDS AND REPORTING continued				
Communications by a company	Communications in hard copy form, electronic form, and on website	1143-1148 1168 Schedule 4 Schedule 5	20 January 2007 As necessary for provisions brought into force 20 January 2007 20 January 2007	The AIC has published a guide on the publication and dissemination of periodic financial information which covers key issues. This guide is available on our website at www.theaic.co.uk/files/technical/Publicationanddisseminationofperiodicfinancialinformation.pdf
Audit (Part 16)	Requirement for audited accounts Appointment of auditors – public companies Functions of auditors Removal and resignation of auditors Rights of members to raise audit concerns Auditors' liability (including liability limitation agreements)	475-539 (except 485-488 which relate to private companies and came into force on 1 October 2007)	6 April 2008 (sections 503-507 relate to audit reports on accounts for financial years beginning on or after 6 April 2008)	
Auditors (Part 42)	Statutory auditors	1209-1264 (except some provisions relating to registered third party auditors)	6 April 2008	
Annual return (Part 24)		854-859	1 October 2009 ³	The AIC has issued a paper covering access to shareholder information via the annual return. This paper is available on the AIC's website at www.theaic.co.uk/files/technical/Publicaccesstoshareholderinformation.pdf The AIC has also responded to the Dept of BERR to support further changes to reduce the volume of shareholder information disclosed in this way, which are now being implemented.
Company charges (Part 25)		860-894	1 October 2009 ³	

Subject area	Provision	Company Act 2006 section	Commencement date ¹	Additional information
COMPANY FORMATION ETC				
Company formation, constitution and capacity (Parts 2, 3 and 4)	Articles of Association	7-38	1 October 2009 ³	
	Company's capacity and constitutional limitations	39-52	1 October 2009 ³	
	<i>Except:</i> A company's constitution	17	1 October 2007 and 6 April 2008 if relevant for the commencement of certain other provisions	
	Resolutions and agreements affecting the constitution	29-30	1 October 2007	
	Execution of documents	44	6 April 2008	
Company's name (Part 5)	Company's name	53-85	1 October 2009 ³	
	<i>Except:</i> Objection to company names	69-74	1 October 2008	
	Trading disclosures	82-85	1 October 2008	
Registered office (Part 6)	Registered office	86-88	1 October 2009 ³	
Re-registration (Part 7)	Public company becoming private	89-111	1 October 2009 ³	
OTHER				
Company secretaries (Part 12)	Requirement to have a secretary	270-280	6 April 2008	
	Qualifications of secretaries of public companies	(except 270(3)(b)(ii) which relates to private companies and comes into force on 1 October 2009)		
	<i>Except:</i> Register of secretaries	275-279	1 October 2009 ⁴	

NB. This paper only covers some of the key areas of the Companies Act 2006 which the AIC believes are directly relevant for investment companies. It does not cover, for example, the control of political donations and expenditure, matters relating to the registrar of companies, or rules for private companies.

¹ Further details on how the commencement dates operate in practice, together with information on certain transitional provisions, are set out in the Commencement Orders, available on the BERR website at <http://www.berr.gov.uk/bbf/co-act-2006/made-or-before-parliament/page35232.html>

² Commencement date was previously published as 1 October 2008 however, following discussions between the Government and key stakeholders at the end of 2008, the commencement date was brought forward to 6 April 2008.

³ Commencement date was previously published as 1 October 2008 but implementation has now been delayed until 1 October 2009.

⁴ Commencement date was previously published as 6 April 2008 but implementation has now been delayed until 1 October 2009.



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