

# Corporate Alert

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**With the Companies Act 2006 now coming into force, we highlight 10 key points applicable to private companies and which private equity practitioners ought to be aware of:**

Already in force...

## 1 Electronic Communications

If authorised to do so (by shareholder resolution or its Articles) a company may now communicate electronically with its members. Information can be e-mailed, sent by text or posted onto the website.

...from 1 October 2007...

## 2 Directors' Duties Formalised

The Act now prescribes formal duties directors owe to the company – a controversial step. Directors need to familiarise themselves with seven specific duties.

## 3 Written Resolutions – Redundancy of EGM's?

Written resolutions need no longer be signed by all members – only 50% for ordinary resolutions and 75% for special resolutions. Given the relative ease of obtaining written resolutions, the EGM may well become a thing of the past for private companies.

## 4 Notice of EGM

A uniform 14 days' notice will be required irrespective of the resolutions proposed. This is subject to two exceptions where the removal of a director or auditor is proposed.

## 5 Abolition of AGM

Private companies will no longer be required to hold an Annual General Meeting. (NB: check current Articles do not retain requirement for AGM).

## 6 Directors' Loans

The statutory prohibition on loans to directors will be removed, so long as shareholder approval is obtained. In specific exemptions, such as a loan for £10,000 or less, even that approval is not required.

## 7 Directors' Service Contracts

Shareholder approval will be required if a director's service contract is for a guaranteed term of 2 years or more (currently 5 years). Inspection and copying of contracts by shareholders is also provided for.

...from 6 April 2008...

## 8 Abolition of Company Secretary

Private companies will no longer be required (though may still elect) to have a company secretary.

...from 1 October 2008...

## 9 Abolition of Authorised Share Capital

Private companies will no longer have an authorised share capital – subject to any restrictions in the Articles or in an Investment Agreement, the board are free to issue shares as they see fit.

...and by no means least...

## 10 Abolition of Financial Assistance

From 1 October 2008 the prohibition on providing financial assistance will be abolished for private companies. There ought to be no more "whitewash", no more directors' statutory declarations or auditors reports as part of the acquisition process.

Whether institutional funders will still wish to have the comfort of some form of directors' statement, solvency "certificate" or report remains to be seen but the statutory requirements (and hence the rationale) for this will have been removed.

We would be very happy to come in and discuss these issues with you or deliver an informal presentation in greater detail – please contact:

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