

Other specific legislative changes affecting private companies

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In addition to the [measures affecting all companies](#), the Act includes the following measures applicable to private companies. Existing companies may need to make amendments to their articles to take advantage of some of the deregulatory measures.

Governance

Articles of Association

Separate and simpler model Articles of Association for private companies – a consultation draft of a replacement ‘Table A’ for private companies was included in the March 2005 White Paper, and a further consultation is expected shortly.

Resolutions, meetings and administration

No requirement for AGM

There is no requirement for a private company to hold an annual general meeting, and no requirement to lay the accounts at a general meeting, although companies are still required to send them to shareholders, in hard copy or electronically, in accordance with the communications provisions.

Written resolutions

It will be easier to take decisions by written resolutions, requiring a simple majority or 75% of votes for ordinary or special resolutions (respectively), rather than unanimity. A resolution to remove a director or an auditor before the expiration of his or her term cannot be passed by written resolution. The company's auditor will also be entitled to receive a copy of all communications sent to shareholders relating to a written resolution. As with board minutes, all records of shareholder resolutions and meetings will need to be retained for ten years.

Company secretaries

No need to have a company secretary unless the company wants one – if one is appointed, he/she will have the same rights and responsibilities as currently apply.

The Government backed down and amended the Act to provide that, where private companies opt to appoint/retain a company secretary, that secretary will be within the statutory regime, with the same rights and responsibilities as a secretary of a PLC (withdrawing the Government's earlier compromise provisions for *Authorised Signatories*). ICAEW fully supported this, and we supported ICASA's lobbying efforts on this issue through the passage of the Bill, as we thought the *Authorised Signatories* regime would have resulted in more formalities, whereas simply enabling private companies to opt in to the existing regime is simpler and less burdensome.

Large private companies are likely to want to retain a company secretary for compliance matters. However, if a private company decides not to appoint/retain a company secretary then anything usually done by the company secretary can be done by a director or another authorised person. The address that needs to be given for the secretary in the register of secretaries is a service address, which may be the registered office. A secretary need not be a natural person. Transitional measures are being proposed on how to interpret provisions in articles that assume that a company has a secretary.

Accounts

The provisions on accounts and reports are simplified and made clearer.

The deadline for filing accounts will be reduced from ten to nine months.

SMEs

The Act removes the specific medium-sized group exemption from preparing group accounts (this exemption has been particularly useful for UK sub-groups of US groups that cannot currently benefit from the "equivalence" exemption).

Small and medium-sized companies will continue to be able to file abbreviated accounts, but the Government's intention is that regulations will require them to disclose turnover (these regulations will be under consultation in the Spring 2007). In relation to small companies filing abbreviated accounts, the Institute will continue to oppose this requirement to disclose turnover. We will not opposing turnover disclosure in relation to medium-sized entities as they will be required to disclose financial KPIs, even where they opt to file abbreviated accounts (this is an EU requirement).

Share capital and distributions

The concept of 'authorised share capital' is abolished, and the default position for a private company with one class of shares will be that its directors can allot up to any number of shares unless its articles provide otherwise.

The rules prohibiting financial assistance for private companies are abolished.

There is a new 'solvency statement' mechanism for private companies to make capital reductions, and the Government will be issuing regulations stipulating that surpluses arising on capital reductions are realised and distributable.

Private companies will be able to issue redeemable shares unless prohibited by its articles.