

Stop Press

Companies Act 1989

The Companies Bill was given Royal Assent on November 16 and became the Companies Act 1989. The Department of Trade and Industry has issued the following information (Press Notice 89/778).

The Bill was introduced in the House of Lords on December 21 1988. It updates and improves company law and also amends the law on merger control, some aspects of financial services legislation and certain other enactments. **Apart from a very few sections which come into force on Royal Assent the provisions of the Act will be brought into force, progressively by Order.** Dates of commencement of the various provisions will be announced in due course.

The main provisions of the Act are as follows:

Part I – Company Accounts

The primary purpose of Part I is to implement the Seventh EC Company Law Directive on consolidated accounts and otherwise to improve financial reporting by companies. The Act specifically tackles the following areas of concern:

- (i) Off balance sheet financing: the new definition of a subsidiary undertaking is intended to curb the practice of keeping debt off the balance sheet by the use of special purpose vehicles which are controlled by a parent company but structured to fall outside the existing definition of a subsidiary;
- (ii) Accounting for acquisitions and mergers: the Act requires better disclosure of the way in which companies account for mergers and acquisitions.

In addition this part of the Act:

- (iii) Changes certain financial reporting requirements in response to the recommendations of the Review Committee on the Making of Accounting Standards chaired by Sir Ron Dearing. The Act requires public companies and large private companies to state whether their accounts have been drawn up in accordance with accounting standards. It also introduces a new civil procedure under which a company can be required to revise accounts which do not comply with the statutory requirements;
- (iv) Removes the obligation on many small and medium sized groups to prepare consolidated accounts;

(v) Includes a provision enabling listed companies to send summary financial statements to shareholders who do not wish to receive the full accounts.

Part II – Eligibility for appointment of Company Auditors

This part of the Act:

- (i) Implements the Eighth EC Company Law Directive which lays down minimum requirements for the education and training of auditors, and obliges Member States to ensure both that there are appropriate safeguards in national law to protect auditors' independence, and that company audits are carried out with integrity;
- (ii) Lays down procedures whereby accountancy bodies can apply to the Secretary of State for recognition as supervisory bodies for auditors. They may also apply to have their professional accountancy qualifications recognised. The criteria the Secretary of State must have regard to in deciding whether or not to recognise a body or its qualification are largely drawn from the requirements of the Directive;
- (iii) Other provisions of the Part end the present prohibitions on auditors incorporating, and enable regulations to be made on the keeping of a register of auditors.

Part III – Investigation Powers and disclosure of information

- (i) This part amends and strengthens the investigation powers available to the Secretary of State under the Companies Act 1985, the Financial Services Act 1986 and the Insurance Companies Act 1982;
- (ii) The present investigation powers are strengthened and refined in various ways, including:
 - by improving inspector's access to information in various circumstances;
 - by extending the purposes for which information obtained may be disclosed, especially to other DTI inspectors;
 - by introducing the new power which enables the Secretary of State to be able to investigate in order to assist overseas regulators, exercising similar regulatory functions to our own, to obtain information in the UK.

Part IV – Registration of company charges at Companies House

The Act streamlines the procedures for companies registering charges over their property, improves the quality of the register of charges and enables

Companies House to operate more efficiently.

Part V – Other amendments to the Companies Act 1985

These include the following measures:

- (i) The threshold for disclosure of interests in shares is reduced from 5 per cent to 3 per cent and the deadline for notification from 5 to 2 days;
- (ii) The information contained in the returns delivered annually to Companies House will be reduced, and the return itself made easier to complete. Other enabling measures will help Companies House to develop systems for receiving and handling data in electronic form;
- (iii) The provisions of the Companies Act 1985 relating to limitations to the capacity of a company and to the authority of its board of directors are amended. Generally, acts done by a company are not capable of being called into question on the ground of lack of capacity by reason of anything in the company's constitution; and persons dealing with a company in good faith are to be protected against any limitations under the company's constitution on the power of the board of directors to bind the company or authorise others to do so;
- (iv) Private companies will be enabled to take decisions by unanimous written resolution of all the shareholders in place of resolutions made at general meetings. The new 'elective regime' enables private companies to elect to dispense with the holding of annual general meetings and the laying of accounts at AGMs;
- (v) A new enabling provision allows companies to execute documents as if they were under seal by signature instead of using a seal;
- (vi) The scope of the exclusion on the prohibition of a company giving financial assistance to acquire its own shares is extended to assist employee share schemes. A paving provision for partnership companies will also enable the Secretary of State to table regulations for a new form of model articles for a company whose shares are mainly held by its employees;
- (vii) The Secretary of State is given power to make regulations which define the nature of a company's obligations where the Act requires that a register must be available for inspection and copying;
- (viii) The present limitation of two

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years to the period within which a dissolved company can be restored to the register for the purpose of being subject to a claim for damages for personal injury has been removed. This will come into force immediately.

Part VI – Merger Provisions

The Part makes the procedural improvements suggested in the *Mergers Policy Blue Paper* published in March 1988:

- (i) A new formal procedure for voluntary pre-notification of mergers, with automatic clearance in four weeks in the majority of cases;
- (ii) Power for the Secretary of State to accept undertakings to divest part of a merged business as an alternative to making a reference to the Monopolies and Mergers Commission;
- (iii) Powers to charge fees to recover the costs of merger control.

It also includes:

- (iv) A prohibition on parties to a proposed merger which is referred to the Monopolies and Mergers Commission acquiring shares for the duration of the reference, except with the consent of the Secretary of State;

- (v) Improved provisions for examining cases where there is a gradual build-up of shareholdings and it is not obvious when the crucial degree of control are reached;

- (vi) A new offence of giving false or misleading information to the competition authorities.

Some of the provisions in this Part will come into force immediately.

Part VII – Financial Market Clearing Arrangements

Amendment to insolvency law has been made to enable financial market clearing arrangements to work securely.

Part VIII – Amendments to the Financial Services Act 1986

- (i) A multi-tier structure for the regulation of investment business is introduced, including principles, designated rules and codes of practice;
- (ii) Changes are made to the test to be applied by the Securities and Investments Board for recognition of a self-regulating organisation or professional body;
- (iii) The provision is made for the removal of the right of all but private investors to sue under s 62 of the Act;
- (iv) Another measure amends s 195 of the FSA 1986 to make provision for

onshore issues of unlisted debentures to professionals without prospectuses of up to 5 years in maturity, rather than 1 year as now. Before issuers can take advantage of this amendment, the Banking Act (Exempt Transactions) Regulations require revision. Details will be announced in due course.

Part IX – Transfer of Securities

This paves the way for new methods of dealing with shares and other securities whereby title may be recorded and transferred by computer rather than on paper. It also allows for the regulation of such schemes.

Part X – Miscellaneous and General Provisions

The miscellaneous provisions include:

- (i) Measures to allow the Secretary of State to consent to prosecution for insider dealing cases by bodies or persons other than himself, *eg* the International Stock Exchange.
- (ii) The requirement for insurance companies to submit annually a statement of premium income on which the Policy Holder Protection Board may raise a levy has been changed so that statements would only be required when needed.