

UK Company Law

Topic Gateway Series No. 14



About Topic Gateways

Topic Gateways are intended as a refresher or introduction to topics of interest to CIMA members. They include a basic definition, a brief overview and a fuller explanation of practical application. Finally they signpost some further resources for detailed understanding and research.

Topic Gateways are available electronically to CIMA members only in the CPD Centre on the CIMA website, along with a number of electronic resources.

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The Chartered Institute of Management Accountants

26 Chapter Street
London SW1P 4NP
United Kingdom

T. +44 (0)20 8849 2259

F. +44 (0)20 8849 2468

E. tis@cimaglobal.com

www.cimaglobal.com



UK Company Law - updated

Definition and concept

Company Law (known as Corporate Law in some countries) refers to the formation and governance of corporate entities. In the UK, the responsible body is the Corporate Law and Governance Directorate of the Department for Business, Enterprise and Regulatory Reform (BERR), formerly the Department of Trade and Industry (DTI). This directorate also represents UK interests in the development of EU company law. It is worth noting that some matters are dealt with in law while other aspects of corporate governance are dealt with in codes of best practice.

Context

In the current syllabus, CIMA students will learn and may be examined on this topic in paper C5 Business Law, Financial Analysis (paper P8) and Financial Accounting and Tax Principles (paper P7).

Overview

The main piece of legislation is the Companies Act 2006 (CA 06). This new Act is the largest single piece of legislation ever passed by the UK Parliament, and is the product of eight years of consultation on company law reform. CA 06 is a consolidation of all the company law provisions of CA 85, CA 89 and the Companies (Audit, Investigations and Community Enterprise) Act 2004 or C(AICE) 04.

The elements of those acts which were not incorporated into CA 06 relate to community enterprise companies or to investigations which are wider in scope than just companies. These remnants are listed in paragraphs 9 and 10 of the explanatory notes to CA 06 which can be found on the BERR Companies Act web pages. Effectively CA 06 repeals and replaces about two-thirds of CA 85.

The Government's motivation for CA 06 was to increase shareholder engagement and to promote a long-term view of investment, rather than decisions made on the basis of immediate returns. It also aimed to simplify regulation by 'thinking small first', recognising that the vast majority of UK companies are small, and to achieve cost savings for industry.

Other significant developments incorporated into CA 06 include:

- a statutory statement of directors' duties
- encouragement for electronic communication with shareholders
- protection against liability for forward-looking statements.

See below for further detail.

BERR list the benefits of the CA 06 to companies, shareholders and others at:

www.berr.gov.uk/bbf/co-act-2006/Major%20Benefits%20to%20Business/page35194.html
[Accessed 25 April 2008]

Companies Act 2006

The Companies Act 2006 is available online at:

www.opsi.gov.uk/acts/acts2006a.htm

[Accessed 25 April 2008]

The main sections likely to be of interest to members are (but are not confined to):

Directors' duties (sections 170 -177). CA 06 embedded in statute the concept of Enlightened Shareholder Value, which introduced a statutory statement of directors' duties. This clarified that directors must continue to promote the success of the company for the benefit of its shareholders. However, they also have to take into account wider factors such as the company's impact on the environment and the need to foster relationships with customers, suppliers and other stakeholders.

Contents of Directors' Report and Business Review (sections 416-417)

Electronic Communication with Shareholders (Schedule 5, Part 3). The goal is to make it common practice for shareholders to vote electronically, and for companies to distribute annual reports and other communications electronically. This is one of the biggest money (and tree) saving aspects of the Act, hence its early implementation.

Forward looking statements (section 463). Directors are protected against statements (including forward looking statements which didn't subsequently come true) if they were made in good faith and carefully. A director can be held liable for statements in the directors' report only if the director knew they were untrue or misleading (or was reckless as to whether they were untrue or misleading) or if the director knew an omission was dishonestly concealing a material fact.

Auditor liability (sections 534 – 538). With the agreement of the company and the approval of shareholders, auditors are allowed to limit their liability (using a specified monetary cap, a formula or other means). The limit must be no less than what is 'fair and reasonable', considering the nature of the auditors' responsibilities and what is expected of them.

There is also a useful index of defined expressions at Schedule 8 of the Act, at: www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en_85 [Accessed 25 April 2008]

Phased implementation

CA 06 gained the Royal Assent in late November 2006, at which point only a small proportion of its provisions were implemented. Those mainly related to the EU Transparency Directive which had to be implemented by January 2007, and included the statutory basis for directors' liability in respect of the Business Review.

Other provisions will be implemented by a succession of Regulations over the following three years, with the aim that the entire Act will be in force by 1 October 2009. This represents a slippage of the original timetable, to accommodate Companies House' concerns about its readiness for an October 2008 implementation of certain provisions.

BERR has published a final implementation timetable called the Table of Commencement Dates which is usefully colour-coded according to the different implementation dates. Annoyingly, BERR advises that this should not be seen as the definitive timetable, and it advises users to refer to the individual commencement orders on the OPSI website. Unless advised otherwise, this is the timetable. Available from: www.berr.gov.uk/bbf/co-act-2006/index.html [Accessed 25 April 2008]

Other legislation: Limited liability partnerships

- The Limited Liability Partnerships Act 2000 created a new form of organisation for businesses, the Limited Liability Partnership (LLP). LLPs need to be registered at Companies House, and are subject to the same rules as private limited companies in respect of registration and audit. It has not been significantly amended by CA 06. Available from: www.opsi.gov.uk/ACTS/acts2000/20000012.htm [Accessed 25 April 2008]
- The Limited Liability Partnerships Regulations 2001 (Statutory Instrument 2001 No.1090) adds reference to LLPs to the then CA 85 and 89, Insolvency Act 86 and Company Directors Disqualification Act 1986.

Other legislation: Regulatory matters

- The Companies (Audit, Investigations and Community Enterprise) Act 2004 at made the system of supervising auditors more independent, strengthened the enforcement of accounting and reporting requirements (reflecting the new role of the Financial Reporting Council) and introduced a new category of company, the community interest company. CA 06 repealed some of CAICE, please see Schedule 16 of CA 06. Available from:

www.opsi.gov.uk/acts/acts2004/ukpga_20040027_en_1

[Accessed 25 April 2008]

Other legislation: Directors' responsibilities

- The Company Directors Disqualification Act 1986 covers the various grounds on which a person can be disqualified from holding office as a director, and has not been amended by CA 06. Guidance about the Act is available from the Insolvency Service website. Available from:

www.insolvency.gov.uk/guidanceleaflets/Guides.htm#5

[Accessed 25 April 2008]

Other legislation: Insolvency

The main Acts (covering company liquidation, bankruptcy, receivership and administration) are the Insolvency Act 1986, as amended by Insolvency Acts 1994 (two Acts) and 2000. It has been amended only slightly by CA 06.

Other legislation: audit exemption limits

The Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 (SI 2008/393) has introduced new thresholds for audit exemption which apply for financial years beginning on or after 6 April 2008. These regulations can be found at:

www.opsi.gov.uk/si/si200803

[Accessed 25 April 2008]

Briefly, the new limits to be considered a small company are £6.5m turnover and balance sheet totals of less than £3.26m. Please read the full guidance for the medium sized company limits and the arrangements for companies hovering about the thresholds. Available from:

www.berr.gov.uk/bbf/financial-reporting/small-companies/page45467.html

[Accessed 25 April 2008]

Other legislation: investor matters

The Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 (Statutory Instrument 1991 No. 1998) Act contains requirements for inspection and provision of copies of statutory registers. It has not been amended by CA 06. Available from:

www.opsi.gov.uk/si/si1991/Uksi_19911998_en_1.htm

[Accessed 25 April 2008]

The Companies (Registers and other Records) Regulations 1985 (Statutory Instrument 1985 No. 724) contains requirements for keeping statutory registers, including retention in electronic form. It has not been amended by CA 06.

Other legislation

The Corporate Manslaughter and Corporate Homicide Act gained the Royal Assent in July 2007, and the majority of it came into force on 6 April 2008. It aims to better hold to account senior management of companies and other organisations where their failings have fatal consequences. It complements, rather than replaces, health and safety legislation and can be found at:

www.opsi.gov.uk/acts/acts2007/ukpga_20070019_en_1

[Accessed 25 April 2008]

The Act applies to corporations operating in the UK (including charities and voluntary organisations where they are bodies corporate), government departments as listed in the Act, partnerships and trade associations. Individuals cannot be prosecuted under the new Act as the statutory offence of 'corporate manslaughter' ('corporate homicide' in Scotland) only applies to organisations. However, as now, directors and senior managers can be prosecuted under common law for 'gross negligence manslaughter' or under section 37 of the Health and Safety at Work Act 1974.

In conjunction with the Institute of Directors, the Health and Safety Executive has published guidance 'Leadership Actions for Directors and Board Members' which is available at: www.hse.gov.uk/pubns/indg417.pdf

[Accessed 25 April 2008]

UK company law in practice

Regulators and their remits

The Companies Act delegates the following powers to other bodies (source: FRC website).

Role	Body
Issue of accounting and reporting standards (s464)	"any body or bodies as may be prescribed by regulations".
Recognition, supervision and de-recognition of those accountancy bodies responsible for supervising the work of auditors or offering an audit qualification.	Professional Oversight Board For Accountancy (POBA).
Ensuring that the financial information provided by public and large companies complies with Companies Act requirements. Enforcing compliance with the directors' report requirements of the Companies Act. Monitoring compliance with the listing rules of issuers of listed securities.	Financial reporting and review panel (FRRP).

Legislative process

In the UK, there are several stages to the legislative process:

- Green paper – a consultation document intended to encourage comment from stakeholders and politicians. Not all green papers make it to the next stage, and there is no requirement for a green paper stage. There may have been preceding discussion and consultation, but this is generally felt to be the first stage at which thoughts become focused and reasonably specific.
- White paper – a document outlining the proposed policy.

- Draft Bill – there is no requirement for a Draft Bill, but the current Government announced its intention to publish more Draft Bills to encourage more pre-legislative scrutiny of proposals. Draft Bills before Parliament are listed on the UK Parliament website. Available from: www.parliament.uk/bills/draftbills.cfm [Accessed 25 April 2008]
- Bill – passes through both Houses of Parliament. The House of Commons Weekly Information Bulletin lists at what stage are the Bills currently before the House. The full text of Bills can be found from the Parliamentary Information Management Service Bill index. Bills become Acts once they have passed all stages within both Houses of Parliament and receive Royal Assent. Act – legislation is published (mostly in print first, but occasionally electronically) in batches depending upon the parliamentary timetable. Available from: <http://bills.ais.co.uk/AC.asp#top> [Accessed 25 April 2008]

Forthcoming company law legislation or regulation

Since the CA 06 was such a comprehensive act, there is unlikely to be another Companies Act for a good many years. The Government has promised a 'stable platform' at least in respect to reporting requirements. However, there will be a sequence of regulations to introduce various provisions of CA 06, according to the implementation timetable above. This Topic Gateway will be periodically updated but may lag behind developments. We recommend that users monitor the BERR Companies Act 2006 web pages.

The full text of all Bills currently before the UK Parliament can be found on the UK Parliament website. Available from: <http://services.parliament.uk/bills/> [Accessed 25 April 2008]

Further information

Full text articles from Business Source Corporate through My CIMA

www.cimaglobal.com/mycima

[Accessed 25 April 2008]

Borrie, S. and Stojanovic, A. *The United Kingdom's corporate law overhaul: the Companies Act 2006*. Corporate Governance Advisor, January 2008, Volume 16, Issue 1, pp 29-32. Provides a good overview, written by lawyers.

Gray, R. *In good company*. Lawyer, 10/1/2007, Volume 21, Issue 38, p. 31. Outlines the situation in Northern Ireland in respect of the extension of the Companies Act 2006.

Holden, S. W. *Pain and litigation*. International Financial Law Review, October 2007, Volume 26, Issue 10, p. 47. Argues that the codification of directors' duties might result in the loss of flexibility inherent in common law and equitable principles which previously governed this area, and thinks that one effect of the act will be increased litigation.

Howell, A. and Shepherd, T. *Mind the cap*. Accountancy, July 2007, Volume 140, Issue 1367, pp 125-126. Discusses the new powers for auditors to negotiate liability limitation agreements (LLAs). Outlines the impact on accountants and auditors.

King, R. and Philipson, K. *Go carefully*. Accountancy Age, 9/20/2007, p. 17. Advises readers not to underestimate the implications of the new rights for shareholders to mount derivative actions against directors. Includes a checklist for FDs and advisers.

Mirchandani, N. and Huntsman, R. *Directors' cut*. Lawyer, 11/19/2007, Volume 21, Issue 45, p. 31. Argues that the combination of the CA 06, the increased attention paid by the FSA to senior management of the organisations it regulates, and the rise in shareholder activism means that directors can expect their responsibilities to be more onerous than they were, say five years ago.

Signposts readers to useful guidance from The GC100 (a group of senior in-house lawyers of FTSE 100 companies) on compliance with the duties outlined in the Companies Act.

Sykes, C. and Peijun X. *Companies Act 2006: directors' duties*. Credit Management, March 2008, pp 23-24. A good overview, including discussion of whether the Act will inhibit individuals from holding multiple directorships; or whether the new powers for derivative actions might lead to a flurry of test cases, especially during sensitive times such as takeovers.

Books

Ebooks available to CIMA members at: www.netlibrary.com
[Accessed 25 April 2008]

Harper, J. (2007). *Chairing the Board: a practical guide to activities and responsibilities*. London: Kogan Page. Updated to account for CA 06.

Henriques, A. (2007). *Corporate truth: the limits to transparency*. London: Earthscan. Argues that accountability and transparency fall far short of what society should expect. Although there has been an increase in the extent to which corporate reports include societal or environmental impacts, the quality of many of these reports could be improved. Reporting such impacts (transparency) is not enough as action (accountability) is also necessary.

Inkpen, A. and Ramaswamy, K. (2006). *Global strategy: creating and sustaining advantage across borders*. New York: Oxford University Press. (Strategic Management Series). This book is about globalisation, rather than company law, but it includes some interesting material on legal and governance matters.

It argues that international strategy is not just an extension of classic strategic analysis, because it requires companies to deal with (and sometimes exploit) differences in legal and governance matters when doing business across international boundaries.

The book includes useful analysis, for example, of countries which offer similar levels of investor protection because of their shared common-law origins of company law. This is in comparison to those countries whose company law originates from French civil law.

Knell, A. (2006). *Corporate Governance: how to add value to your company: a practical implementation guide*. London: Elsevier

(2006). *Doing business 2007: how to reform: comparing regulation in 175 economies*. Washington, DC: World Bank. Self-explanatory title for an interesting guide to the pace and extent of reform in other countries. A snapshot of the reforms undertaken in 2005-2006 to simplify business regulations, to increase access to credit, to reduce the costs of importing and exporting, and to strengthen property rights.

CIMA Publications

Starovic, D. and Hayward, C. *The role of the non-executive director: making corporate governance work*. (PDF 312KB). CIMA Technical Guide, April 2003.

Available from: www.cimaglobal.com/technicalguides

[Accessed 25 April 2008]

Emphasises the role that finance professionals have to play in ensuring good governance by providing relevant and timely information to their boards.

CIMA Mastercourses

List of CIMA Mastercourses available from Law Regulatory and Tax page.

www.cimaglobal.com/cps/rde/xchg/live/root.xsl/26320.htm

[Accessed 25 April 2008]

Company law update: how the changes affect you

Company secretarial practice for PLCs

Company secretarial practice for support staff

Directors and their duties

Narrative reporting in practice

The role of the company secretary

Understanding commercial contracts (one and two day courses)

Other publications

FRC guidance on auditor liability limitation agreements. At the time of writing in April 2008, only the draft guidance was available, although the relevant section of the Companies Act had just been implemented. Final guidance from the FRC working party will be published at:

www.frc.org.uk/about/auditorliability.cfm

[Accessed 25 April 2008]

Best practice guidance on how to comply with CA 06 - CG100 (aka General Counsel 100, the general counsels of FTSE 100 companies) is available at:

www.practicallaw.com/6-378-7923

[Accessed 25 April 2008]

Directors' duties: sleepless nights or business as usual? Published by the Institute of Directors. Available from: www.iod.com

[Accessed 25 April 2008]

Directors and Secretaries Guide - GBA1. Guidance from Companies House.

Available from: www.companieshouse.gov.uk/about/gbhtml/gba1.shtml

[Accessed 25 April 2008]

Websites

Office of Public Sector Information. Full text of all Acts of Parliament and Statutory Instruments since 1996 (and since 1988 in some cases). Available from: www.opsi.gov.uk

[Accessed 25 April 2008]

UK Parliament – live coverage of Parliament, future business, Parliamentary Committee pages and full text of all Bills currently before the UK Parliament website. A list of useful fact sheets is at:

www.parliament.uk/parliamentary_publications_and_archives/factsheets.cfm#leg

[Accessed 25 April 2008]

Hansard – edited verbatim proceedings of the proceedings in the Commons Chamber, Westminster Hall and Standing Committees (Commons Hansard); and the Lords Chamber and its Committees (Lords Hansard). Available from:

www.publications.parliament.uk/pa/pahansard.htm

[Accessed 25 April 2008]

Department for Business, Enterprise and Regulatory Reform. Government department (formerly known as DTI) which aims to support business success.

Available from: www.berr.gov.uk

[Accessed 25 April 2008]

Companies House. Publishes many guidance documents explaining Companies Act requirements for various activities such as company formation.