

Company secretarial update

[Directors to authorise conflicts of interest from October 2008](#)

From 1 October 2008 directors will have a duty to avoid a situation in which they have, or may have, a conflict of interest with the interests of the company...[click here](#)

[Chairman's casting vote no longer guaranteed](#)

Table A of the Companies Act 1985 allowed for the chairman at a general meeting to have a casting vote in the event of an equality of votes on either a show of hands or a poll. This provision was removed by the Companies Act 2006... [click here](#)

[New provisions for the Combined Code](#)

The Financial Reporting Council has announced changes to the Combined Code which will apply to accounting periods for public companies listed on the London Stock Exchange beginning on or after 29 June 2008... [click here](#)

Jonathan Gibson
+44 (0)20 7213 8038
jonathan.s.gibson@pwclegal.co.uk

Marc Boston
+44 (0)20 7212 1015
marc.boston@pwclegal.co.uk

Charlotte Thackrah
+44 (0)20 213 8152
charlotte.thackrah@pwclegal.co.uk

Mark Cleland
+44 (0)121 265 6512
mark.cleland@pwclegal.co.uk

Monica Peters
+44 (0)20 7212 1451
monica.peters@pwclegal.co.uk

To give your feedback or to be removed from the *Company secretarial update* mailing list [click here](#).

Directors to authorise conflicts of interest from October 2008

From 1 October 2008 directors will have a duty to avoid a situation in which they have, or may have, a conflict of interest with those of the company. This requirement is very broad and such a situation could arise where a director is a major shareholder in the company; where a director owes duties to different entities within a group; or has cross directorships with a supplier or customer of the company.

In a significant change to existing law this duty will not be infringed if the matter has been authorised by other independent directors in accordance with the articles of association (articles). Companies should therefore change their articles before 1 October 2008 to enable independent directors to authorise other directors' conflicts of interests to avoid them being in breach of the new legislation.

What are the rules?

Private companies incorporated before 1 October 2008

Authorisation can be given by such disinterested directors if:

- members of the company pass an ordinary resolution to permit the directors to authorise conflicts; or
- members of the company pass a special resolution to change the articles to include a provision allowing the directors to authorise any actual or potential conflict.

Private companies incorporated after 1 October 2008

Authorisation can be given by the board provided that nothing in the company's articles invalidates such authorisation.

Public companies

Authorisation can only be given when its articles include a provision allowing the directors to authorise the matter.

What should companies do?

- Private companies (incorporated before 1 October 2008) should update their articles to allow the directors to authorise any actual or potential conflicts.
- Private companies (incorporated after 1 October 2008) should check their articles to ensure that nothing invalidates the ability of the board to authorise conflicts of interests.
- Public companies should update their articles to include a provision to allow the directors to authorise actual or potential conflicts.
- Private and public companies should update their articles to:
 - I. contain provisions dealing with the use of confidential information received other than as a director of the company, provisions allowing the director to be absent from meetings and provisions allowing the availability of board papers to protect a director being in breach of duty if an actual or potential conflict arises; or
 - II. contain provisions allowing the independent directors to impose certain conditions to any authority granted, i.e. relating to the management of confidential information.
- Ensure that governance safeguards are put in place to help directors decide whether to authorise a conflict of interest.

Chairman's casting vote no longer guaranteed

Table A of the Companies Act 1985 allowed for the chairman at a general meeting to have a casting vote in the event of an equality of votes on either a show of hands or a poll. This provision was removed by the Companies Act 2006 but was re-introduced for companies incorporated before 1 October 2007 who already had such a provision in their articles of association (articles).

There has been some discussion over how the changes under the Companies Act 2006 will operate given the chairman's casting vote appears to have been removed.

What are the rules?

Companies incorporated before 1 October 2007

Companies incorporated prior to 1 October 2007 with existing chairman's casting vote provisions in their articles can take advantage of the saving provisions. Those without an existing chairman's casting vote provision cannot now amend their articles to include such a provision.

Companies incorporated on or after 1 October 2007

As a general rule, companies incorporated on or after 1 October 2007 cannot be incorporated with a chairman's casting vote provision in their articles. However, for companies incorporated after 1 October 2007 where deadlock provisions are required, the articles can include specific provisions for dealing with a deadlock situation.

How to deal with deadlock situations

If the chairman is a member of the company in his own right, then it would be possible to provide that the chairman has the casting vote so long as he retains a share. It should be noted that any amendment to such clauses relating to the chairman's casting vote will not constitute a variation of class rights.

The Companies Act 2006 is silent however on how deadlock situations could be remedied where the chairman of a general meeting is not a member of the company. It is therefore suggested that some wording dealing with weighted voting rights of shareholders is incorporated into private company articles, where deemed appropriate.

What should companies do?

- UK registered companies should review their articles to check whether they provide the chairman the right to exercise a casting vote at general meetings.
- Companies without a chairman's casting vote should consider whether deadlock may be an issue and take advice as to how best to provide for such a situation.

New provisions for the Combined Code

The Financial Reporting Council has announced changes to the Combined Code which will apply to accounting periods for public companies listed on the London Stock Exchange beginning on or after 29 June 2008. In practice this means most companies will begin to apply the new rules in 2009.

What are the changes?

- Removal of the restriction on an individual chairing more than one FTSE 100 company.
- Listed companies below the FTSE 350, may allow the company chairman to be a member of, but not to chair, the audit committee provided they were considered independent on appointment.

Schedule C to the Code (which summarises the disclosure requirements in the Listing Rules and the Code) will also be updated to include the new FSA Corporate Governance Rules (which incorporate EU requirements on audit committees and corporate governance statements).

What should companies do?

- Notify directors of these changes.
- Listed companies below the FTSE 350 should consider whether the chairman should be invited to attend the audit committee.



This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers Legal LLP, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2007 PricewaterhouseCoopers Legal LLP. All rights reserved. PricewaterhouseCoopers Legal LLP is a member of the PricewaterhouseCoopers network of firms, each of which is a separate and independent legal entity. Csec027