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## Companies Act 2006 Further Company Law Reform

1 October 2007 saw a wave of significant Companies Act 2006 (the "Act") implementations particularly in the areas of directors' general duties and corporate governance.

### Directors' Duties

Directors' duties have now been codified with the aim of setting out the standard of conduct expected of a director. Four of the seven duties owed to a company, which are based on and replace common law rules and equitable principles, have come into force. In brief, these are:

- to act within his powers;
- to exercise independent judgment;
- to exercise reasonable care, skill and diligence; and
- to promote the success of the company for the benefit of its members as a whole

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by having regard to all matters, including fostering business relationships, the impact of the company's operations on the community and the environment, and its employees.

The above is not intended to be an exhaustive list and has codified what is commonly referred to as the principle of "enlightened shareholder value".

One concern that this gives rise to is how the decision making process should work in practice. This remains to be tested whether by usage or in the courts.

Recognizing that there will be some uncertainty on this, the GC100 Group (formerly known as the Association of General Counsel and Company Secretaries of the FTSE 100) published a paper in February 2007 setting out the group's best practice guidelines for compliance with the codification of directors' duties.

Among a number of suggestions, the GC100 recommended that the formal decision making process should avoid a needlessly slavish consideration of all of the matters listed in s.172 of the Act. This, they suggest, would create bureaucracy and potentially expose directors to a greater risk of litigation.

Their recommendation is therefore that the process should be limited to refer to those factors "where the particular circumstances make it necessary or relevant".

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The GC100 Group also recommend that companies should ensure that all their directors are aware of their duties under the new Act, for example, by providing a thorough briefing (perhaps by way of presentation or by a briefing paper). Equally, their terms of appointment and description of their role should specifically refer to their duties.

### Directors' Report

New provisions have been introduced to clarify the purpose and content of the business review element of the directors' report (which all companies, other than small companies must produce) for shareholders to assess how the directors have performed their duty to promote the success of the company.

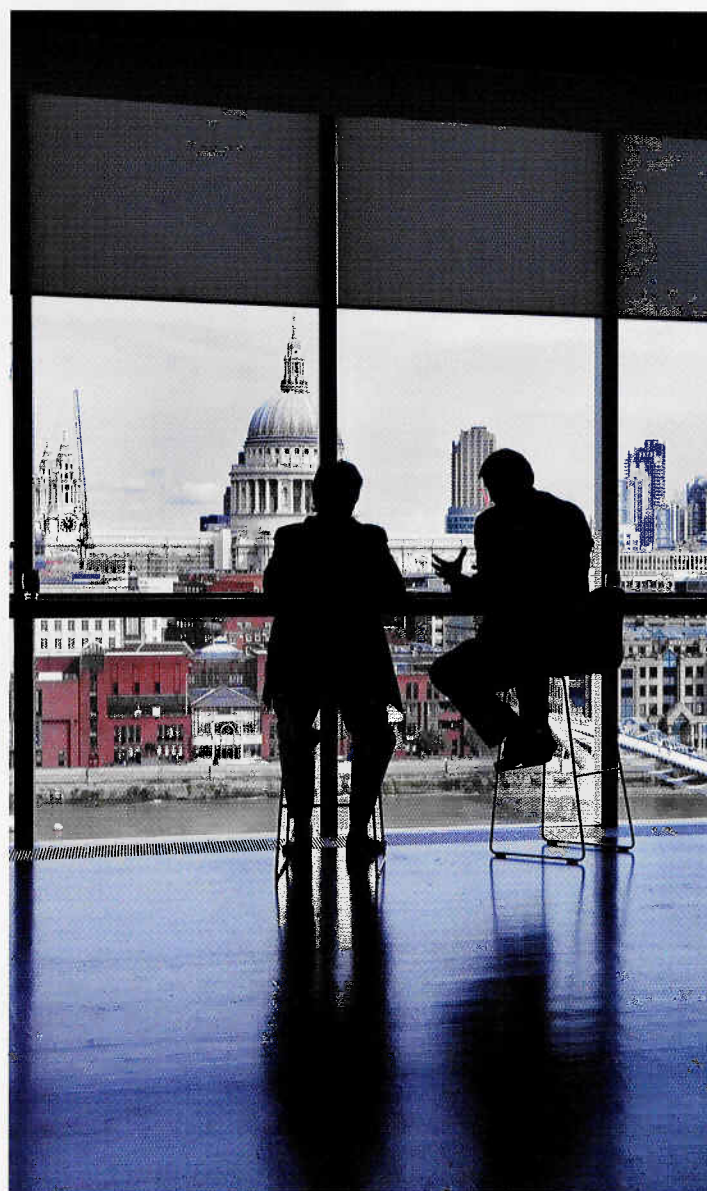
The Act also introduces new guidelines for quoted companies which state that the business review should include information on:

- the main trends and factors likely to affect the future development, performance and position of the company's business;
- information about environmental matters, employees and social and community issues; and
- persons with whom the company has contractual or other arrangements essential to the business (unless this disclosure of information would, in the opinion of the directors, be seriously prejudicial to that person and contrary to public interest).

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Companies must now keep all records for at least ten years from the date of the relevant resolution, decision or meeting.

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### Annual General Meetings

The holding of AGMs has now become optional for private companies, provided those companies who wish to take advantage of this change amend their articles of association to remove the requirement to hold AGMs. This change does not apply to public companies which are still required to hold AGMs.

### Notice Periods

Subject to the articles of association requiring a longer period, the notice period for all general meetings of a company (other than AGMs of a public company) will be at least 14 days, regardless of the type of resolution proposed to be passed at the general meeting (as opposed to 21 days for special resolutions under the Companies Act 1985 (the "1985 Act"). The short notice consent threshold required is also now reduced from 95 per cent to 90 per cent of members entitled to vote (or such higher percentage not exceeding 95 per cent as may be specified in the company's articles of association.)

### New Written Resolution Procedure

Written resolutions no longer require the signature of all shareholders of the company.

