

## AGMs under the new Companies Act

The implementation of the Companies Act 2006 (the Act) continues with many companies now concerned about their 2008 AGMs.

The general flavour of the Act is to de-regulate the way private companies are run and one key change for private companies is that, since 1st October last year, private companies no longer have to hold AGMs at all unless their Articles of Association (Articles) expressly say so - only public companies must continue to hold AGMs under the Act.

So if a private company's Articles expressly provide for AGMs to be held, the company must hold AGMs – “indirect” references to an AGM (for example, provisions requiring rotation of directors i.e. retirement/reappointment) will be disregarded and will not oblige a private company to hold an AGM. Many companies provide for rotation of directors at AGMs yet it would seem that, unless their Articles also expressly provide for AGMs to be held (and many do not because the previous Companies Acts provided for AGMs to be held so it was unnecessary for Articles to expressly require it), these rotation provisions is ineffective! As a result, existing directors will remain directors indefinitely, unless (for example) they retire voluntarily or by shareholders’ resolution.

Private companies who want to continue to have AGMs and rotation of directors provisions in their Articles will need to amend their Articles to expressly provide for AGMs to be held, including when they should be held and what kind of business should be carried out at them. Without this change, rotation in their Articles are ineffective. If directors call a shareholders’ meeting which they call an 'AGM' without realizing that the law has changed, it would seem that any director could refuse to resign at that meeting on the basis that it is not really an AGM and therefore the rotation provisions are inapplicable!

This is just one of the many changes and quirks that has been brought about by the new Act. Public companies must now, with the exception of transitional provisions, hold their AGMs within 6 months of their accounting reference date, replacing the rule that there must be no more than 15 months between one AGM and the next. The AGM paperwork for public companies will also need to change – for example proxy notices must, amongst other things, set out the new rights of shareholders to appoint one or more proxies who can exercise all or any of the shareholders’ rights to attend, speak and vote at company meetings.

### Contact

Funke Abimbola  
Senior Solicitor  
Email [funke.abimbola@ibblaw.co.uk](mailto:funke.abimbola@ibblaw.co.uk)  
Tel 01895 207271